

**Yurok Tribal Code, Public Health and Safety**

**YUROK TRIBE CONTROLLED SUBSTANCES ORDINANCE**

*Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance regulating controlled substances for the health, safety, and welfare of Yurok Tribal members and Reservation residents and authorizing civil forfeiture of real and personal property for certain civil violations committed within the Yurok Tribe’s jurisdiction:*

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## GENERAL PROVISIONS

### SECTION 4001. Short Title

This ordinance shall be referred to as the “Yurok Controlled Substances Ordinance.”

### SECTION 4002. Findings

Tribal Council finds and declares that:

- (a) The Tribe pursuant to the Preamble of the Yurok Constitution exercises inherent sovereignty to “Provide for the health, education, economy, and social well being of [Tribal] members and future members” and to “[r]estore, enhance, and manage the tribal fishery, tribal water rights, tribal forests, and all other natural resources”, including wildlife.
- (b) The Yurok Reservation is located within Humboldt and Del Norte Counties in the State of California.
- (c) California was granted limited civil jurisdiction in Indian country under Public Law 280. 28 U.S.C. § 1360. This grant of civil jurisdiction did not deprive the Yurok Tribe of concurrent civil jurisdiction. *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 559-62 (9th Cir. 1991).
- (d) The Yurok Tribe and the Tribal Court maintain exclusive jurisdiction over claims arising within the Yurok Reservation against Tribal members. *Williams v. Lee*, 358 U.S. 217 (1959).
- (e) The Yurok Tribe and the Tribal Court presumptively maintain jurisdiction over nonmember activities within the Yurok Reservation. *Iowa Mutual Insurance v. LaPlante*, 480 U.S. 9 (1987). Tribal civil jurisdiction extends to nonmembers on fee land who enter into a consensual relationship with the Tribe or Tribal members or whose conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. *Strate v. A-1 Contractors*, 520 U.S. 438 (1997). Civil jurisdiction similarly exists over nonmembers on trust land. *Nevada v. Hicks*, 533 U.S. 353 (2001). Direct effect can be found in conduct that imperils the subsistence of the Tribal community with catastrophic consequences for the Tribal government. *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 128 S.Ct. 2709 (2008).
- (f) The Yurok Tribe and the Yurok Tribal Court in implementing and enforcing this ordinance shall comply with all requirements of the Indian Civil Rights Act, 25 U.S.C. § 1302.
- (g) California has adopted the Compassionate Use Act of 1996, California Health and Safety Code § 11362.5, known as Proposition 215, implementing certain policies regarding the cultivation and use of marijuana within areas of state jurisdiction. The Compassionate Use Act authorizes a physician to recommend marijuana to a patient for medical purposes.
- (h) Certain drugs, including marijuana, are regulated under the federal Controlled Substances Act, 21 U.S.C. § 811 *et seq.*

- (i) The Supreme Court held in *Gonzalez v. Raich*, 545 U.S. 1 (2005), that Proposition 215 is preempted by federal law.
- (j) The Yurok Tribe has a Zero Tolerance Policy prohibiting illegal drugs within the boundaries of the Yurok Reservation.
- (k) The Yurok Tribe does not recognize physician-recommended use of marijuana or Proposition 215 medical marijuana cards within the Yurok Reservation or on Tribal lands.
- (l) Search and seizure by Tribal police on the Yurok Reservation is governed by the Indian Civil Rights Act and subject to the exclusionary rule, as held by the Supreme Court in *U.S. v. Lester*, 647 F.2d 869 (1981).
- (m) Marijuana cultivation of more than 6 plants per legal parcel and the use, possession, distribution, and manufacture of controlled substances threaten and have a direct effect on the political integrity, the economic security, and the health and welfare of the Tribe, its members, citizens of the Reservation. Such cultivation and manufacture subject Tribal members and citizens of the Reservation to a high probability of theft, violence, and other criminal activity, imperiling the continued existence of the Tribal community.
- (n) Rural marijuana cultivation, including the failure to adhere to sanitary living site construction and safe agriculture standards, and the manufacture of controlled substances cause damage to the entire Reservation ecosystem, impacting creeks, wildlife, and water quality due to water diversion, chemicals, and unsanitary conditions and imperiling the subsistence of the Tribal community.
- (o) Rural marijuana cultivation and controlled substance manufacture has a profound negative impact to Yurok cultural resources, including polluting sacred lands, dance sites, and waters and limiting access to such resources by Tribal members.
- (p) Nothing in this ordinance is meant to impact the traditional Yurok use of Indian tobacco, which the Yurok Culture Committee by motion on September 20, 2013, determined does not include marijuana.
- (q) Practices purportedly supported by Yurok cultural dictates and inconsistent with the provisions of this ordinance shall not constitute a valid defense to enforcement or prosecution.

**SECTION 4003. Purpose**

Council seeks to enact an ordinance regulating and establishing penalties for controlled substance use, possession, distribution, and production within the Yurok Reservation for the purpose of protecting the Yurok Reservation and Tribal lands and the health, welfare, and safety of people and wildlife within the jurisdiction of the Yurok Tribe.

**SECTION 4004. Scope**

This ordinance and the Tribes power to enforce shall apply to Yurok Tribal members and all persons on lands within the Yurok Reservation.

*Commentary:* Any person within the Yurok Reservation, regardless of Tribal membership, may be charged with an offense under this ordinance. In accordance with the findings of section 4002, a person's action or conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe or Tribal members if that person is involved in the production or distribution of marijuana or a controlled substance within the Yurok Reservation. Such action or conduct establishes a rebuttable presumption that the Tribe maintains jurisdiction over that person.

**SECTION 4005. Sovereign Immunity Preserved**

Except as judicial review is authorized in this ordinance, and in accordance with the Yurok Tribe's Supreme Ordinance, nothing in this ordinance shall be interpreted as a waiver of the Tribe's sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe.

**SECTION 4006. Severability**

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this ordinance are severable.

**SECTION 4007. Effective Date**

This ordinance shall take effect immediately after its adoption by Council.

**SECTION 4008. Repeal of Conflicting Ordinance Provisions**

All prior ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this ordinance are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this ordinance shall control.

**SECTION 4009. Definitions**

- (a) *Allotment* means land held in trust by the United States for the benefit of one or more Indians, but not including land held in trust for the benefit of a federally recognized Tribe.
- (b) *Controlled Substance* means a drug or other substance, or immediate precursor, that is considered a controlled substance under the Controlled Substances Act, 18 U.S.C. § 801 *et seq.*, as defined at 21 U.S.C. § 802(6) and as listed at 21 C.F.R. §§ 1308.11 through 1308.15.
- (c) *Indian Forest Land* means lands considered Indian forest land under 25 U.S.C. § 3103(3), including commercial and non-commercial timberlands that are Tribal lands or held in trust by the United States for an Indian.

- (d) *Listed Chemical* means a chemical used in the manufacture of a controlled substance and as further defined in 18 U.S.C. § 802(33).
- (e) *Marijuana* means all parts of the Cannabis sativa L. plant and as further defined at 21 U.S.C. § 802(16).
- (f) *Personal Property* means any movable or tangible thing that is subject to ownership, including rights, privileges, interests, claims, and securities, and not classified as real property.
- (g) *Production* means the cultivation of marijuana or the manufacture of a controlled substance.
- (h) *Property* means real and personal property, including any right, title, or interest in such property.
- (i) *Real Property* means land and anything growing on, affixed to, erected on or found in the land, including interests in land such as easements.
- (j) *Reservation or Yurok Reservation* means all lands within the exterior boundaries of the Yurok Reservation.
- (k) *Tribal Council or Council* means the Yurok Tribal Council, the governing body of the Tribe pursuant to Article IV, Section 5 of the Yurok Constitution, or its duly authorized representative.
- (l) *Tribal Court* means the Yurok Tribal Court, which maintains primary jurisdiction to hear violations of this ordinance.
- (m) *Tribal Lands* means all fee lands owned by the Tribe or other Tribal entity and any lands held in trust for the Yurok Tribe.
- (n) *Tribal Member or Member* means a duly enrolled member of the Yurok Tribe listed on the Yurok Tribal Membership Roll.
- (o) *Tribal Prosecutor* means the Senior Attorney in the Yurok Tribe Office of the Tribal Attorney, or the Senior Attorney's duly authorized agent.
- (p) *Tribe* means the Yurok Tribe, including any Tribal agency, subdivision, instrumentality, officer, and employee, acting at the direction of Council.

## **CHAPTER 1. VIOLATIONS AND PROHIBITED CONDUCT**

### **SECTION 4101. Marijuana Cultivation**

A person commits the offense of Marijuana Cultivation if the person plants, cultivates, harvests, dries, or processes any marijuana or any part thereof. Each plant shall constitute a separate offense and the violator shall be subject to a minimum fine for immature plants of \$100 per plant and for mature plants 10% of the plants' value or \$500 per plant, whichever is greater, and restitution.

*Commentary:* The Yurok Tribe shall prosecute for the planting, cultivation, harvesting, drying, or processing of more than 6 marijuana plants per year per legal parcel. The fine specified in this section is a minimum fine and does not limit the imposition of a greater monetary sanction or additional sanctions.

### **SECTION 4102. Manufacture of a Controlled Substance**

A person commits the offense of Manufacture of a Controlled Substance if the person manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance. Any person who violates this section shall be subject to a minimum fine per manufacturing incident of \$4,000, or \$5,000 in the case of amphetamine or methamphetamine, and restitution.

*Commentary:* The fine specified in this section is a minimum fine and does not limit the imposition of a greater monetary sanction or additional sanctions.

### **SECTION 4103. Possession of a Listed Chemical with Intent to Manufacture**

A person commits the offense of Possession of a Listed Chemical with Intent to Manufacture if the person:

- (a) Possesses a listed chemical with intent to manufacture a controlled substance, or
- (b) Possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance.

### **SECTION 4104. Distribution of Marijuana**

A person commits the offense of Distribution of Marijuana if the person transports, sells, furnishes, administers, or gives away more than 28.5 grams of marijuana, or attempts or offers to do so, or if the person sells any amount of marijuana, unless such person is registered or otherwise authorized pursuant to 21 U.S.C. Part C §§ 821 through 831 to transport, sell, furnish, administer or give away marijuana.

*Commentary:* If a person sells any amount of marijuana, even if that amount is less than 28.5 grams, then that person would be guilty of violating this section.

Those persons authorized pursuant to U.S.C. Part C §§ 821 through 831 will generally be licensed

physicians and pharmacists issuing prescriptions for a legitimate medical purpose or federally registered pharmaceutical manufacturers. Proof of such authorization shall constitute an affirmative defense against prosecution under this section. In accordance with section 4201, evidence of state authorization to issue a prescription or recommendation for medical marijuana shall not constitute a valid defense to enforcement or prosecution.

#### **SECTION 4105. Distribution of a Controlled Substance**

A person commits the offense of Distribution of a Controlled Substance if the person transports, sells, furnishes, administers, or gives away any controlled substance other than marijuana, or attempts or offers to do so, unless such person is registered or otherwise authorized pursuant to 21 U.S.C. Part C §§ 821 through 831 to transport, sell, furnish, administer or give away the controlled substance.

*Commentary:* Those persons authorized pursuant to U.S.C. Part C §§ 821 through 831 will generally be licensed physicians and pharmacists issuing prescriptions for a legitimate medical purpose or federally registered pharmaceutical manufacturers. Proof of such federal authorization shall constitute an affirmative defense against prosecution under this section. In accordance with section 4201, evidence of state authorization to issue a prescription or recommendation for medical marijuana shall not constitute a valid defense to enforcement or prosecution.

#### **SECTION 4106. Unlawful Possession of a Firearm**

A person commits the offense of Unlawful Possession of a Firearm if the person:

- (a) Commits an offense defined in section 4101 – 4105 or is a convicted felon, and
- (b) In connection with that offense, possesses any semiautomatic firearm, automatic firearm or explosive weapon.

Each firearm possessed in violation of this section shall constitute a separate offense and be subject to a minimum fine of \$500.

*Commentary:* The fine specified in this section is a minimum fine and does not limit the imposition of a greater monetary sanction or additional sanctions.

#### **SECTION 4107. Possession of a Controlled Substance**

A person commits the offense of Possession of a Controlled Substance if the person knowingly or intentionally possesses a controlled substance, excluding marijuana in an amount not more than 28.5 grams, unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner who was acting in the course of his professional practice. Any person who violates this section shall be subject to a minimum fine of \$300.

*Commentary:* A person who has an ounce or more of marijuana would be guilty of violating this section and section 4201 makes it clear that a California medical marijuana card would not be a valid

defense. If a person has any amount of another controlled substance and does not have a prescription, that person would be guilty of violating this section. The fine specified in this section is a minimum fine and does not limit the imposition of a greater monetary sanction or additional sanctions.

**SECTION 4108. Distribution to a Person under Age Twenty-one**

A person commits the offense of Distribution to a Person under Age Twenty-one if the person violates section 4103 or 4104 by distributing a controlled substance to a person under twenty-one years of age. Any person over the age of 21 who violates this section shall be subject to a minimum fine of \$2,500.

*Commentary:* The fine specified in this section is a minimum fine and does not limit the imposition of a greater monetary sanction or additional sanctions.

**SECTION 4109. Diversion of Surface Waters for Controlled Substance Manufacture**

A person commits the offense of Diversion of Surface Waters for Controlled Substance Manufacture if the person:

- (a) Commits an offense defined in section 4101 or 4102, and
- (b) If required, fails to file a Statement of Water Diversion and Use with the California State Water Board in accordance with California Water Code section 5101, and
- (c) Obstructs the natural flow of or substantially diverts the flow of any river, stream, or lake or diverts water from a Tribal water system within the Reservation.

Each diversion in violation of this section shall constitute a separate offense.

**SECTION 4110. Damage of Natural Resources**

A person commits the offense of Damage of Natural Resources if the person:

- (a) Commits an offense defined in section 4101 or 4102, and
- (b) Knowingly, intentionally, or recklessly uses a poison, chemical, or other hazardous substance within the Yurok Reservation or on Tribal lands, and
- (c) Such use may cause any of the following:
  - (1) Creation of a serious hazard to humans, wildlife, or domestic animals, or
  - (2) Degradation or harm to the environment or natural resources, or
  - (3) Pollution of an aquifer, spring, river, or body of water.

Each potential hazard or harm to humans or a distinct natural resource shall constitute a separate offense, regardless of whether the harm arises from the same occurrence.

*Commentary:* Subsection (c) was drafted with the intent that a person whose actions may cause a

hazard or harm to humans or a natural resource, regardless of whether an actual harm is created, may still be found to be in violation of this section. A person's assertion that an actual harm or hazard was not created shall not constitute a valid defense against enforcement or prosecution.

### **SECTION 411. Damage of Yurok Cultural Resources**

A person commits the offense of Damage of Yurok Cultural Resources if the person:

- (a) Commits an offense defined in section 4101 or 4102, and
- (b) The offense was committed within one half mile of a Yurok cultural resource as determined by the Yurok Culture Committee.

Each violation of section 4101 or 4102 shall subject a person to additional liability under this section for each offense. Any person who violates this section shall be subject to a minimum fine of \$2,500 per violation.

*Commentary:* The fine specified in this section is a minimum fine and does not limit the imposition of a greater monetary sanction or additional sanctions.

### **SECTION 412. Damage of Tribal Property**

A person commits the offense of Damage of Tribal Property if the person willfully injures or commits any depredation or damage against any property of the Tribe, or any property which has been or is being manufactured or constructed for the Tribe.

Each harm to a distinct item of Tribal property shall constitute a separate offense, regardless of whether such harm arises from the same occurrence. A person who cultivates or manufactures a controlled substance on Tribal lands shall be subject to a minimum fine of \$2,500 and shall be required to reimburse all cleanup costs.

*Commentary:* The fine specified in this section is a minimum fine and does not limit the imposition of a greater monetary sanction or additional sanctions.

### **SECTION 413. Forest Trespass**

A person commits Forest Trespass if the person trespasses on Tribal land, including the removal of forest products or damage to Indian forest land. Pursuant to the National Indian Forest Resources Management Act, 25 U.S.C. § 3106, the Yurok Tribe adopts the regulations at 25 C.F.R. § 163.29 and assumes concurrent civil jurisdiction to prosecute forest trespass on Indian forest land against any person. In the event of any conflict between this ordinance and 25 C.F.R. § 163.29 as applied to a trespass on Indian forest land that is prosecuted pursuant to 25 U.S.C. § 3106, the provisions of 25 C.F.R. § 163.29 shall prevail.

*Commentary:* While concurrent civil jurisdiction under 25 U.S.C. § 3106 is limited to trespass on Indian forest land, the Tribe asserts jurisdiction to prosecute for trespass on all Tribal lands, not just Indian forest land. The Tribe may prosecute for a trespass on Indian forest land pursuant to this

ordinance or pursuant to 25 U.S.C. § 3106. When prosecuting pursuant to 25 U.S.C. § 3106, the provisions of 25 C.F.R. § 163.29 shall apply. The provisions of this ordinance, rather than 25 C.F.R. § 163.29, shall apply to trespass on Tribal lands that are not also defined as Indian forest lands.

**SECTION 4114. Aiding or Abetting**

Any person who counsels or aids another to commit any offense defined in this chapter shall be subject to the same sanctions as those prescribed for the offense.

**SECTION 4115. Attempt and Conspiracy**

Any person who attempts or conspires to commit any offense defined in this chapter shall be subject to the same sanctions as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy. To establish the offense of conspiracy, the Tribe must prove that:

- (a) The person knowingly engaged with at least one other person in a mutual plan to commit an offense defined in this chapter;
- (b) The person had the intent to commit the offense; and
- (c) One of the conspirators committed an overt act in furtherance of such agreement.

*Commentary:* To establish that a person engaged in a mutual plan, it is not required that there be a formal written or oral agreement. A conviction for the offense of conspiracy or attempt to commit an offense defined in sections 4101 – 4105 would subject a person to the same sanctions as those for the underlying offense, including civil forfeiture of real and personal property. It would also subject a person to section 4106 and similar offenses that require commission of an underlying offense.

**CHAPTER 2. ENFORCEMENT AND SANCTIONS**

**SECTION 4201. Non-Recognition of Proposition 215 Cards**

The Yurok Tribe does not recognize California Proposition 215 or other state law physician-recommended use of medical marijuana or medical marijuana cards and such recommendation or card shall not constitute a valid prescription, order, defense, or excuse for violation of this ordinance.

The posting of a Proposition 215 card or other documents identifying a property as having marijuana plants shall constitute probable cause for law enforcement to come onto the property.

**SECTION 4202. Sanctions**

Any person who violates this ordinance shall be subject to sanctions including, but not limited:

- (a) Imposition of monetary civil fines or penalties as further specified in section 4203;
- (b) Imposition of administrative and enforcement fees and costs;

- (c) Restitution as further specified in section 4205;
- (d) Liens as further specified in section 4206;
- (e) Civil forfeiture of property;
- (f) Stay away from an allotment as further specified in section 4403;
- (g) Suspension of Tribal privileges, including privileges under the Tribal Fishing Rights Ordinance; and
- (h) Exclusion or banishment.

*Commentary:* The sanctions provided in this section may be imposed in addition to any minimum or maximum fine or other sanction specified for a particular violation of this ordinance.

**SECTION 4203. Monetary Civil Fines or Penalties**

The maximum monetary civil fine or penalty that may be imposed for a violation of this ordinance is the maximum permitted under the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302, as amended. Each day during which a violation exists shall constitute a separate offense.

Tribal Council by resolution without amending this ordinance may:

- (a) Establish a Controlled Substance Fine and Bail Schedule setting bail, fines, and administrative fees for any violation of this ordinance; and
- (b) Adjust the minimum monetary civil fine or penalty amounts specified in this ordinance.

**SECTION 4204. Enforcement; Costs**

Any reasonable cost associated with the enforcement of an order issued pursuant to this ordinance may be assessed by the Tribal Court against the violator. This may include, but is not limited to, document reproduction costs, filing fees, and attorney fees and costs.

**SECTION 4205. Restitution**

The Tribal Court, when finding a violation under this ordinance, may:

- (a) Order restitution;
- (b) Order the defendant to reimburse the Yurok Tribe and any federal, state, or local government concerned, for the costs incurred by such entity for the eradication or cleanup associated with the violation by the defendant, or on premises or in property that the defendant owns, resides, or does business in;
- (c) Order the defendant to reimburse the Yurok Tribe for any costs incurred by Tribal law enforcement for enforcement actions associated with a violation of this ordinance by the defendant; and
- (d) Order restitution to any person injured as a result of the offense through direct and proximate harm or, if the injured person is deceased, to that person's estate.

**SECTION 4206. Lien on Property**

Any Tribal Court order finding a violation under this ordinance and imposing monetary fines or penalties, restitution, or other money judgment may be recorded as a judgment lien on the violator's interest in real and personal property.

*Commentary:* A lien on property should only be imposed if the court determines that the lien would not create undue hardship for any innocent property owners that share an interest in the property.

### **CHAPTER 3. JURISDICTION OF THE TRIBAL COURT**

#### **SECTION 4301. Primary Jurisdiction**

The Tribal Court is the court of primary jurisdiction for violations occurring under this ordinance.

#### **SECTION 4302. Failure to Appear; Trial in Absentia**

Any person who fails to appear in Tribal Court for a violation of this ordinance after being appropriately noticed may be deemed to have elected to have a trial in absentia.

#### **SECTION 4303. Transfer of Cases**

The Tribal Court may petition California and federal courts, as appropriate, to bring controlled substance violations before those courts for any reason. The Tribal Court may accept transfer of any controlled substance case filed in a non-Yurok court.

#### **SECTION 4304. Jurisdiction to Enter Orders**

The Tribal Court shall have jurisdiction to enter orders as provided in this ordinance without regard to the location of any property which may be subject to forfeiture under this ordinance or which has been ordered forfeited under this ordinance.

### **CHAPTER 4. CIVIL FORFEITURE OF PROPERTY**

#### **SECTION 4401. Personal Property Subject to Forfeiture**

Any person who commits an offense under section 4101 through 4105 of this ordinance shall be liable for civil forfeiture to the Yurok Tribe, irrespective of any provision of California law, of the following interests:

- (a) Any of that person's interest personal property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and
- (b) Any of that person's interest in personal property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

**SECTION 4402. Real Property Subject to Forfeiture**

Any person who commits an offense under section 4101 through 4105 of this ordinance shall be liable for civil forfeiture to the Yurok Tribe, irrespective of any provision of California law, of the following interests:

- (a) Any of that person's interest in real property, except an allotment interest, constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and
- (b) Any of that person's interest in real property, except an allotment interest, used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

*Commentary:* If a person is found guilty of cultivating marijuana, manufacturing drugs, or distributing drugs, that person's interest in land related to the violation could be forfeited under this section. The forfeiture would be limited to the guilty person's interest in the land, not the interests of innocent persons who may also have an interest in that land. This section does not permit forfeiture of a guilty person's interest in an allotment.

**SECTION 4403. Forfeiture of Allotment Interest Prohibited**

Civil forfeiture of an allotment interest is prohibited. Any person who commits an offense under section 4101 through 4105 and used, or intended to be used, in any manner or part, any of that person's interest in an allotment to commit, or to facilitate the commission of, such violation may be ordered to stay away from that allotment for up to five years.

**SECTION 4404. Forfeiture and Destruction of Controlled Substances**

The Yurok Tribe shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess. The following shall be deemed contraband and seized and summarily forfeited to the Yurok Tribe:

- (a) All controlled substances possessed, manufactured, distributed, dispensed, sold, or offered for sale in violation of chapter 1 of this ordinance;
- (b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, or delivering any controlled substance or listed chemical in violation of chapter 1 of this ordinance;
- (c) All marijuana plants which have been planted or cultivated in violation of chapter 1 of this ordinance, or of which the owners or cultivators are unknown, or which are growing on Tribal, state, or federal property, including on Tribal trust land;
- (d) All property described in paragraph (a) through (c), the owners of which is unknown, and that is seized or comes into the possession of the Yurok Tribe; and
- (e) All property which is used, or intended for use, as a container for property described in paragraph (a) through (d).

**SECTION 4405. Forfeiture of Fungible Property**

In any forfeiture action in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution, or precious metals, any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture.

**SECTION 4406. Protective Orders for Property**

- (a) Protective Order. The Tribal Court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property subject to forfeiture under this ordinance if the Tribal Court determines that:
  - (1) There is a substantial probability the Yurok Tribe will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the Tribal Court, or otherwise made unavailable for forfeiture; and
  - (2) The need to preserve the availability of the property through the entry of a Tribal Court order outweighs the hardship on any party against whom the order is to be entered.
- (b) Notice. Prior to the Tribal Court entering an order pursuant to this section, any person known to have alleged an interest in the property must be provided notice and opportunity for a hearing, unless the Yurok Tribe demonstrates that there is probable cause that the property is subject to forfeiture and the provision of notice will jeopardize the availability of the property for forfeiture. A hearing requested concerning an order entered without notice under this section shall be held at the earliest possible time and prior to expiration of the order.
- (c) Protective Order for Real Property. Real property, before entry of an order of forfeiture, shall not be seized or subject to a protective order, except upon a showing by the Yurok Tribe that less restrictive measures such as a restraining order or bond would not sufficiently protect the Tribe's interests in preventing the sale, destruction, or continued unlawful use of the real property.
- (d) Expiration of a Protective Order. An order entered pursuant to this section shall be effective for not more than 90 days, unless extended by the Tribal court for good cause shown.
- (e) Evidentiary Standard. The Tribal Court may receive and consider, at a hearing held pursuant to this section, evidence and information that would be inadmissible under the Tribal Court or Federal Rules of Evidence, so long as the Tribal Court considers such evidence reasonable and reliable.

**SECTION 4407. Warrant of Seizure**

The Yurok Tribe may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this ordinance in the same manner as provided for a search warrant. If the Tribal Court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that the Tribal Court otherwise may not be assured

of the availability of the property for forfeiture, the Tribal Court shall issue a warrant authorizing the seizure of such property.

*Commentary:* This ordinance section does not restrict the ability of the Tribe or law enforcement to seize property that is not authorized to be on Reservation or Tribal lands by the landowner, or by a beneficial interest holder in the case of land held in trust by the United States. For instance, the Tribe would not require a warrant to seize marijuana plants growing on Tribal lands. Similarly, the Tribe without a warrant may seize marijuana plants growing on an allotment if an interest holder of that allotment indicates the plants are unauthorized.

#### **SECTION 4408. Authority to Destroy Marijuana Plants**

The Director of the Yurok Tribe Department of Public Safety, or that person's duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy marijuana plants:

- (a) Which have been planted or cultivated in violation of Chapter 1 of this ordinance, or
- (b) For which the owners or cultivators are unknown, or
- (c) Which are on Tribal lands, or
- (d) Which are on lands without the authorization of the landowner or any beneficial interest holder.

*Commentary:* The Tribe and Tribal law enforcement maintain full authority to enter Tribal lands, or any building or structure on such lands, to seize and destroy any marijuana plants without any need for a warrant. The Tribe and Tribal law enforcement may also enter private property without a warrant if one of the exceptions to the warrant requirement applies, including to seize and destroy marijuana in an open field or in plain view.

#### **SECTION 4409. Disposition of Forfeited Property**

The Yurok Tribe is authorized to retain, transfer to a state, federal, or tribal governmental entity, or sell property forfeited under this ordinance. For a beneficial interest in an allotment, the Yurok Tribe shall immediately pass the interest forfeited under this ordinance on a pro rata basis to the remaining Indian interest holders.

*Commentary:* The disposal of land should be consistent with the land title. For instance, land that is held in trust by the United States should remain in trust.

## **CHAPTER 5. FORFEITURE PROCEEDINGS**

### **SECTION 4501. Civil Judicial Forfeiture Action; Complaint**

For any property or property interest to be subject to forfeiture, a civil judicial forfeiture action must be initiated against the property or an interest holder in the property. If the Tribal Prosecutor determines that the factual circumstances warrant that property is subject to forfeiture, the Tribal Prosecutor shall file a complaint for forfeiture or include a forfeiture allegation in a civil action against an interest holder for violation of this ordinance. The complaint or allegation shall specifically identify the property subject to forfeiture.

### **SECTION 4502. Notice of Forfeiture Action**

- (a) Notice Generally. Except as otherwise provided in section 4402, the Tribal Prosecutor shall serve notice of a complaint for forfeiture, in accordance with Tribal Court Rules, to every person known to have alleged an interest in the property subject to forfeiture. If the identity or interest of a party is not determined until after the forfeiture action is filed but before an order of forfeiture is entered, notice shall be sent to such interested party no later than 60 days, unless extended by Tribal Court order, from determination of that party's identity or interest.
- (b) Notice for Real Property. In addition to the requirements of paragraph (a), the Tribal Prosecutor shall initiate a civil forfeiture action against real property by posting notice of a complaint of forfeiture on the property.

### **SECTION 4503. Burden of Proof in Forfeiture Proceeding**

The burden of proof is on the Yurok Tribe to establish by a preponderance of the evidence that the property is subject to forfeiture.

### **SECTION 4504. Related Proceedings**

A forfeiture action may be bifurcated from or combined with a civil action in the Tribal Court's discretion or upon motion by a party.

### **SECTION 4505. Order of Forfeiture**

The Tribal court shall enter an order of forfeiture upon sufficient proof that the property is subject to forfeiture. In no case shall the Tribal Court enter a permanent order of forfeiture of a person's real property interest without first entering a judgment against that person for a violation of this ordinance.

### **SECTION 4506. Vesting of Interests in Forfeited Property**

All right, title, and interest in Tribal member fee land that is subject to forfeiture vests on a pro rata basis in the innocent interest holders, if any, in that land upon the commission of the act giving rise to forfeiture under this ordinance.

All other right, title, and interest in real or personal property that is subject to forfeiture vests in the Yurok Tribe upon the commission of the act giving rise to forfeiture under this ordinance.

**SECTION 4507. Third Party Interests in Forfeited Property**

- (a) Innocent Owner. Any property subject to forfeiture shall not be forfeited if the interest holder establishes that he is an innocent owner. An innocent owner is one who establishes in a hearing that:
  - (1) the person did not know of the conduct giving rise to forfeiture or,
  - (2) upon learning of the conduct giving rise to the forfeiture, the person did all that reasonably could be expected under the circumstances to terminate such use of the property.
- (b) Bona Fide Purchaser. Any property subject to forfeiture that is subsequently transferred to a person other than the defendant shall not be forfeited if the transferee establishes in a hearing that:
  - (1) the person is a bona fide purchaser for value of such property, and
  - (2) at the time of purchase the person did not know and was reasonably without cause to believe that the property was subject to forfeiture under this ordinance.

**SECTION 4508. Notice to Third Parties; Petition for Hearing**

- (a) Notice of Forfeiture. Following the entry of an order of forfeiture under this ordinance, the Tribal Prosecutor shall publish notice of the order in the Yurok Tribal newsletter and in a newspaper of general circulation in the county where the property subject to forfeiture is located.
- (b) Petition for Hearing. Any person, other than the defendant, asserting a legal interest in property which is subject of a petition of forfeiture or has been ordered forfeited to the Yurok Tribe pursuant to this ordinance may, within 60 days of the final publication of notice or that person's receipt of notice, whichever is earlier, petition the Tribal Court for a hearing to adjudicate the validity of that person's alleged interest in the property. The hearing shall be held before the Tribal Court alone.

**SECTION 4509. Proceedings for Third Party Petitions**

- (a) Petition Requirements. A petition submitted pursuant to Section 4508 shall be signed by the petitioner under penalty of perjury and shall set forth:
  - (1) the nature and extent of the petitioner's right, title, or interest in the property;
  - (2) the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property;
  - (3) any additional facts supporting the petitioner's claim; and
  - (4) the relief sought.
- (b) Evidentiary Standards. At the hearing on the petition, the petitioner and the Yurok Tribe may testify and present evidence and witnesses on their own behalf and cross-examine witnesses who appear at the hearing. The Tribal Court may also consider relevant portions of any case giving rise to the forfeiture.
- (c) Amended Order of Forfeiture. The Tribal Court shall amend the order of forfeiture,

if, after the hearing, the Tribal Court determines that the petitioner has established by a preponderance of the evidence that:

- (1) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part; or
- (2) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and at the time of purchase he did not know and was reasonably without cause to believe that the property was subject to forfeiture under this ordinance; or
- (3) the petitioner is an innocent owner.

**SECTION 4510. Clear Title After Forfeiture**

Following the Tribal Court's disposition of the underlying civil action and all petitions filed under Section 4508, or if no such petitions are filed following the expiration of the period provided in section 4508 for the filing of such petitions, the Yurok Tribe or Tribal member fee land interest holder shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

**C\*E\*R\*T\*I\*F\*I\*C\*A\*T\*I\*O\*N**

THE FOREGOING ORDINANCE, ENTITLED THE YUROK TRIBE CONTROLLED SUBSTANCES ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON FEBRUARY 6, 2014, AT WHICH A QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY A VOTE OF 7 FOR, 0 OPPOSED AND 1 ABSENTIONS IN ACCORANDANCE WITH ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUROK TRIBE.

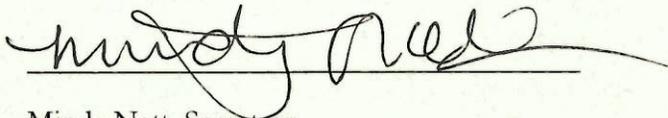
**DATED THIS 6th DAY OF FEBRUARY 2014**



Thomas P. O'Rourke, Sr., Chairperson

Yurok Tribal Council

**ATTEST:**



Mindy Natt, Secretary

Yurok Tribal Council