

Yurok Tribal Code, Natural Resources

YUROK TRIBE MINING ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as ratified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance to protect the natural resources of the Yurok Reservation and to facilitate the economic development of the Yurok Tribe and its members:

SECTION 6001. Short Title

Sections 6001 through 6026 shall be referred to as the “Yurok Tribe Mining Ordinance.”

SECTION 6002. Findings

The Tribal Council hereby finds as follows:

(a) Since time immemorial, the Klamath River, its tributaries, the streambeds thereof, and the riparian areas and gravel bars adjacent thereto, have been natural resources of the most profound significance to the Yurok Tribe, and the Yurok People have always used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life.

(b) The gravel resources on the Reservation are a mineral resource within the meaning of federal and tribal law, and extraction or surface mining of these gravel resources has the potential both to generate revenue and create employment for the Tribe and, if left unregulated, to significantly harm fundamental tribal values within the Reservation, including but not limited to the Klamath River, its tributaries, and riparian area.

(c) Various sites on the Reservation are contaminated with toxic or hazardous materials as a result of previous land use activities, many of which were conducted without adequate review of impacts or without adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may, if not properly contained and cleaned up, pose significant risks to the public health.

(d) Pursuant to federal law, the Yurok Tribe possesses inherent sovereign authority to regulate on-Reservation surface mining and gravel extraction operations, and other activities that affect fundamental tribal interests and the public health and safety, including when such activities are conducted by nonmembers of the Tribe on privately owned lands within the Reservation.

(e) Under 1988 amendments to the Clean Water Act, 33 U. S. C. § 1377, Indian Tribes are entitled to be certified by the U. S. Environmental Protection Agency as authorized to exercise exclusive jurisdiction (tribal primacy) over all on-Reservation surface and ground water quality matters, including over on-Reservation portions of waters, such as those of the Klamath River, that also flow through other jurisdictions.

(f) In the past and continuing to the present, various members or nonmembers of the Yurok Tribe, who own private lands within the Reservation, have extracted gravel from and engaged in surface mining operations within the Reservation, with serious adverse impacts to ceremonial and fisheries values and to water quality in the Klamath River, its tributaries, and riparian areas, and the purported regulation of these activities by agencies of the State and Federal governments has been ineffective to address these impacts.

SECTION 6003. Purpose

(a) The purpose of this ordinance is to exercise comprehensive tribal regulatory authority over surface mining operations and other activities by Yurok Tribal members and other persons within the Reservation in order to:

1. Protect fundamental tribal cultural, ceremonial, water quality, fishery, and property interests;
2. Encourage conservation and production of known or potential mineral deposits for the economic health and well-being of the Tribe and its members;
3. Regulate surface mining operations so as to prevent or minimize adverse environmental effects of surface mining;
4. Provide for the reclamation of mined lands; and
5. Reduce or eliminate hazards to public health and safety due to surface mining operations.

SECTION 6004. Definitions

(a) *Angle of Repose* means the maximum angle of slope (measured from horizontal plane) at which loose cohesionless material will come to rest on a pile of similar material. The angle is generally a few degrees less than the angle of internal friction of the same material. The angle of repose commonly ranges between 33° and 37° on natural slopes and is rarely less than 30° or more than 39°.

(b) *Applicant* means the person who approaches the Tribe with the intent of obtaining formal authorization from, or approval by, the Tribe or its entities and agencies, for a permit to operate a mining operation or for a permit exemption.

(c) *Backfill* means earth, overburden, mine waste, or imported material used to replace material removed during mining.

(d) *Bench* means a flat surface from which a pit or quarry is worked. The height of the slope between benches is the bench interval. The benches that are left on a final cut are generally termed retaining benches, and serve to retain or limit rock falls from the surface above.

(e) *Borrow Pit* means a pit created to provide earth that can be used as fill at another site.

(f) *Committee* means the Permit Review Committee, as established under the provisions of Section 6007 of this ordinance.

(g) *Council* means the Yurok Tribal Council.

(h) *Critical Gradient* means the maximum stable inclination of an unsupported slope under the most adverse conditions that it will likely experience, as determined by current engineering technology.

(i) *Cut Slope (Face)* means a bank or slope that has been created by removing material below the pre-existing ground surface.

(j) *Fill Slope* means a bank or slope that has been built up by the placing of material on top of the existing ground surface.

(k) *Grading* means to bring an existing surface to a designed form by cutting, filling, or smoothing operations.

(l) *Mined Lands* means the surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any such area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located.

(m) *Mineral* means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes or organic substances.

(n) *Mining and Reclamation Plan* means the applicant's submitted plan for reclaiming the lands affected by the surface mining operations conducted after enactment of this ordinance, as required and described in this ordinance, plus any required revisions, modifications, or conditions for approval.

(o) *Mining Waste* means the residual soil, rock, mineral, liquid, vegetation, mill tailings, equipment, machines, tools, or other materials or property directly resulting from, or displaced by, surface mining operations.

(p) *On-site Construction* means those earth material moving activities (such as excavation, grading, compaction, and the creation of fills and embankments) which are required to prepare a site for construction of structures, landscaping, or other land improvements. Such activities are not deemed to be surface mining operations if the resulting excavations, fills, grades, or embankments are beneficially modified by such construction of structures, landscaping, or other land improvements. Excavations, fills, grades, or embankments that of themselves constitute engineered works such as dams, road cuts, fills, catchment basins, or levees are not considered to be surface mining operations. Earth material moving activities in areas either on- or off-site where the resulting excavations, fills, grades, or embankments will not be beneficially modified by the construction of structures, landscaping, or other land improvements, and that do not of themselves consist of engineered works are deemed to be surface mining operations unless exempted under this ordinance.

(q) *Operation or Surface Mining Operation* means all functions, work, facilities, and activities within the Reservation in connection with prospecting, exploration, discovery and assessment work, development, extraction, and processing of minerals by removing overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine.

(r) *Operation Site or Site* means the area of land upon which an operator conducts operations or the area designated in the Mining and Reclamation Plan as required in Section 6018.

(s) *Operator* means any person or entity engaged in surface mining operations, including any person or entity contracting with another person or entity for the performance of surface mining operations.

(t) *Overburden* means soil, rock, or other material that lies above a natural mineral deposit or in-between mineral deposits, before or after its removal by surface mining operations.

(u) *Permit* means any formal authorization from, or approval by, the Tribe or its entities and agencies, the absence of which would preclude surface mining operations.

(v) *Permittee* means the party who obtains authorization from, or approval by, the Tribe or its entities in the form of a Tribal permit under this ordinance to operate a mining operation and is considered legally responsible for the project.

(w) *Person* means, but shall not be limited to, an individual, trust, firm, company, corporation, partnership, association, agency, municipality, commission, department, or other entity.

(x) *Reclamation* means a comprehensive process of land treatment and restoration that minimizes water quality degradation, riverbed or river flow alteration, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are returned to uses existing prior to surface mining or made readily adaptable for alternate land uses and create no danger to public health and safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

(y) *Reservation* or *Yurok Reservation* means all lands within the exterior boundaries of the Yurok Tribe Indian Reservation.

(z) *Resoiling* means the process of artificially building or reconstructing a soil profile.

(aa) *Road Prism* means an area extending from the toe of one fill material slope to the other toe of fill and containing the road surface, cut slope, and fill slope.

(bb) *Severance Fee* means a fee imposed upon natural resources that are removed from the earth.

(cc) *Staging Area* means an area used for the short term, one week to six months, storage of less than 500 cubic yards within the road prism of mined materials, mining waste, or minerals that have been removed from a stockpile, borrow pit, or surface mining operation.

(dd) *Stockpile* means an area used for the long term, more than six months, or permanent storage within the road prism of more than 500 cubic yards but less than 1,000 cubic yards of mined materials, mining waste, or minerals that have been removed from a borrow pit or surface mining operation.

(ee) *Subsoil* means that part of the soil which is below the topsoil.

(ff) *Topsoil* means the upper part of the soil profile that is relatively rich in humus, which in the field of agronomy is known as the A-horizon of the soil profile.

(gg) *Toxic Substance* means any organic compound, certain metal cations, certain anions, and other inorganic substances, including biostimulants, which singly, or upon combining with other substances, create a condition that will inhibit or destroy the growth or function of any living organism.

(hh) *Tribe* means the Yurok Tribe acting through the Tribal Council and its authorized entities and programs.

(ii) *Tributary* means a stream, creek, or river within the Reservation that flows into the Klamath River, either directly or by way of another tributary.

SECTION 6005. Scope

(a) The provisions of this ordinance shall apply to all proposed operations within the Yurok Reservation, subject to exemptions listed in paragraphs (b) and (c) of this Section 6005, including but not limited to:

1. Surface and subsurface removal of mineral resources, overburden, rock, or soil, including removal of previously processed rock or mineral resources and quarry operations (borrow pitting) for road surfacing or other uses;

2. All prospecting activities involving removal of soil or rock material, including operations involving the reopening of existing mine pits, tunnels, or quarries;

3. The production and disposal of mining waste;

4. Sand and gravel operations, including removal of previously processed sand or gravel; and

5. Any operation with potential to affect a tributary or river bed or tributary or river flow, ground or surface water quality, or fishery, cultural, or ceremonial values.

(b) The provisions of this ordinance do not apply to operations for personal use that are categorically exempt pursuant to Section 6009(a).

(c) Certain projects may be exempted from the requirements of this ordinance if the Committee determines that no adverse environmental effects will occur due to the limited size or scale of a proposed project. Such exemptions may include but are not limited to:

1. Excavations or grading conducted for forestry and farming, or onsite construction, or for the purpose of restoring land following a flood or natural disaster as declared by Council.

2. Such other mining, extraction or excavation operations that the Committee and Council determine to be of an infrequent nature or insignificant impact, and which involve only minor surface disturbances.

3. Certain aspects of specific projects after review by the Committee, granted by the Committee on a rational basis pursuant to Section 6007 of this ordinance, and as determined on a project by project basis.

4. Yurok Roads Department activities involving removal of loose material or failed road surface within the road prism, or reasonably related to prevention of road failure in all emergency situations and such activities for preventative maintenance if the department requests an exemption from the Committee stating the reasons for the request.

(d) This ordinance applies to the Tribe in the same manner and to the same extent as any other person. Notwithstanding any other provisions in this ordinance, Council retains full authority to conduct mining in tributaries and to waive any fees, costs, or expenses otherwise required of the Tribe under this ordinance.

(e) Nothing in this ordinance justifies the taking of private property in violation of the Indian Civil Rights Act, 25 U.S.C. § 1302, or other federal law.

(f) For fee simple properties owned by non-Yurok Tribal members, the applicant maintains responsibility for acquiring any permit required under local or state law. For lands held in trust by the United States, the applicant maintains responsibility for acquiring any permit required under federal law.

SECTION 6006. Prohibition on Mining in Tributaries

No mining shall be permitted in any tributary of the Yurok Reservation. This section is not applicable to the Tribe or to those operations for personal use that are categorically exempt or eligible for a permit exemption under Section 6009.

SECTION 6007. Establishment of Permit Review Committee, Duties, Functions, and Authorities

(a) There is hereby established a Permit Review Committee for purposes of carrying out the environmental review, mining and reclamation plan review, and review of any other matters required in order to make a permit recommendation to Council. The Committee shall consist of representatives from the Tribe's Planning, Fisheries, Legal, Environment, Self Governance, Wildlife, and Public Utilities Departments, the Tribal Heritage Preservation Officer, and a representative from Council. The Permit Review Committee shall endeavor to make decisions by consensus, and shall notify Council in those instances where its recommendations are made on a basis other than consensus of the Committee.

(b) The Committee has authority to specify terms, including but not limited to, fees, deposit or performance bonds amounts, and monitoring, compliance, and record keeping requirements which shall be adhered to by all permitted operators.

(c) The Committee shall administer mining and mineral development permits and review procedures, as set forth in this ordinance.

(d) The Committee shall conduct, or cause to be conducted, assessment(s) of any surface mining operation within the Reservation to determine its potential to affect, at a minimum, a tributary or river bed, tributary or river flow, fishery values, water quality, air quality, or ceremonial and cultural values and activities. No permit shall be issued, nor Mining and Reclamation Plan approved, for any activity that does not comply with the requirements of this section.

SECTION 6008. Incorporation by Reference

The provisions of 25 CFR Parts 216 and 225, as those provisions and regulations may be amended from time to time, are made a part of this ordinance by reference with the same force and effect as if the provisions therein were specifically and fully set out herein. However, provisions of this ordinance that are more restrictive than federal provisions shall prevail.

SECTION 6009. Personal Use of Mineral Materials

(a) Operations that will extract no more than 5 cubic yards of rock, gravel, or other mined material per calendar year are categorically exempt from this ordinance if the following conditions are met:

1. Material removed is for the personal use of the landowner and shall not be sold or exchanged for other goods or services; and
2. No mechanized earth-moving equipment, truck-mounted drilling equipment, chemicals, or explosives are used.

(b) The Committee may grant a personal use permit exemption to operations that will extract no more than 150 cubic yards of rock, gravel, or other mined material per calendar year. To be eligible for an exemption under this section, applicant must meet the following requirements:

1. Applicant's permit exemption application is in writing on a form acceptable to the Committee;
2. The operation site is no greater than 5 acres;
3. Material removed is for the landowner's personal use and shall not be sold or exchanged for other goods or services;

4. Applicant shall not use mechanized earth-moving equipment, truck-mounted drilling equipment, chemicals, or explosives below the mean high water mark;
5. The application clearly states the location of the operation, the amount of material to be moved, and the area to be disturbed;
6. Applicant maintains records of the activity satisfactory to the Committee which may include invoices, declarations, photographs, surveys, or other documents;
7. Applicant notifies the Committee in writing within 5 business days of completing the extraction; and
8. Applicant pays all reasonable administrative costs incurred by the Tribe in relation to the operation, including but not limited to review and processing of the application and any monitoring that is determined to be necessary or advisable.

(c) The Committee may include reasonable hour, day, and season operational restrictions or other conditions on extraction activities under this section when deemed in the best interest of the Tribe.

(d) Projects that are categorically exempt or eligible for a permit exemption under this section shall obtain any necessary cultural, environmental, or other permits required by Tribal, local, state, or federal law.

SECTION 6010. Restoration, Staging Area, and Stockpile Operations

(a) Reclamation operations may apply for a water quality permit with an exemption for pollutants and mining materials to the extent allowed under the Water Pollution Control Ordinance and the Water Quality Control Plan.

(b) The Committee may grant a staging area permit to operations that involve no more than 500 cubic yards of rock, gravel, or other mined material per calendar year. To be eligible for a staging area permit, applicant must meet the following requirements:

1. Applicant's staging area permit is in writing on a form acceptable to the Committee;
2. The operation site meets the definition for a staging area;
3. The application clearly states the location of the staging area, the amount of material to be moved, and the area to be disturbed;
4. Applicant maintains records of the activity satisfactory to the Committee which may include invoices, declarations, photographs, surveys, or other documents;

5. Applicant notifies the Committee in writing within 5 business days of completing the operation;

6. Applicant pays all reasonable administrative costs incurred by the Tribe in relation to the operation, including but not limited to review and processing of the application and any monitoring that is determined to be necessary or advisable;

7. Applicant complies with reasonable hour, day, and season operational restrictions or other conditions on operations under this section when deemed in the best interest of the Tribe by the Committee;

8. Applicant applies for and obtains a cultural and environmental permit as required by Tribal law; and

9. Applicant obtains any other permits required by local, state, or federal law.

(c) Stockpile operations shall comply with Section 6011 permit requirements.

SECTION 6011. Permit Requirements

(a) Any person who proposes to engage in surface mining operations shall, prior to the commencement of such operations:

1. Apply for and obtain a valid permit from Council according to the review procedure set forth in this ordinance; and

2. Obtain approval of a Mining and Reclamation Plan, in accordance with the provisions set forth in this ordinance.

(b) All submissions of a Mining and Reclamation Plan for approval shall be made on any forms developed by the Committee for such purposes.

(c) Permit applications, any required environmental and cultural documents, and Mining and Reclamation Plan proposals must demonstrate compliance with applicable Tribal, State, and federal regulations, including but not limited to those pertaining to air and water quality, hazardous substances, environmental impact evaluations, National Historic Preservation Act evaluations, and stream bed alterations.

(d) Applicant shall be responsible for acquiring all necessary federal permits and compliance with applicable federal law.

(e) Applicant shall be responsible for acquiring all necessary state and local permits, e.g., encroachment permits for County or State roadways, and compliance with applicable state and local law.

SECTION 6012. Permit Fees, Costs, and Deposit

(a) Severance Fees, as established by a fee schedule approved by Council, for a permitted operation on Tribal land shall be paid to the Tribe at the time of filing and quarterly. Such a fee schedule may be approved and changed by Council resolution without amending this ordinance.

(b) Applicant shall be responsible for payment of all costs incurred by the Tribe, its agents and representatives, including those incurred by the Planning Department, Yurok Tribe Environmental Program, and Cultural Department, for the issuance and administration of any and all necessary permits, including costs associated with permitting, monitoring, inspection, review, and any other activities necessary to permit or administer the project. Council may establish a fee schedule of foreseen costs for review, issuance, and administration of a permit. Such a fee schedule may be approved and changed by Council resolution without amending this ordinance.

(c) Applicant may be required to make a deposit in order to cover increases in estimated costs over the lifetime of the project. The deposit shall be in addition to bonding, the non-refundable application fee, and severance fees.

SECTION 6013. Review Procedure

(a) Upon submission of a pre-project evaluation form, the Committee shall review the operation. If the operation site is within the external boundaries of the Yurok Reservation, the Committee shall perform an initial field review (Review Process detailed in Diagram 1). If the project appears feasible, the Committee will request that a full application and a non-refundable application fee set pursuant to Section 6014 be submitted to the Planning Department. The Committee shall review the permit application and the Mining and Reclamation Plan. The Committee shall identify relevant Tribal departments to perform a feasibility study of the operation to be submitted to the Committee for review.

(b) Upon completing review of the application and any feasibility studies, the Committee shall request additional information or issue a preliminary recommendation. The Committee shall schedule a public hearing within 30 days of issuing its recommendation. Such public hearing shall be held by the Committee for the purpose of deciding whether to recommend issuance of a permit for the proposed surface mining operation.

(c) Following a 30 day public comment period, Council shall review the application and issue its decision to conditionally approve or deny the application. If conditionally approved, applicant shall pay cultural, environmental, and any other permitting fees required by a Tribal department and any deposit specified by the Committee or Council. Following the completion of

the cultural and environmental review processes, the Committee will review all reports and make its recommendations to Council, which shall make a final decision to approve or deny the permit.

(d) If a permit is issued by Council and prior to beginning any work, applicant shall be responsible for payment of any performance bond or deposit specified in the permit. Applicant shall be responsible for quarterly severance fees as applicable and specified in the permit. Applicant shall reimburse the Tribe for all costs associated with initial and quarterly topographic surveys to assess quantity of material removed.

(e) As a condition of approval for a permit and Mining and Reclamation Plan, the Committee shall set a schedule for periodic inspections of the site to evaluate continuing compliance with the permit, Mining and Reclamation Plan, and applicable regulations. The Committee may conduct or cause to be conducted unannounced spot checks pursuant to the provisions of Section 6020.

(f) Mining permits shall be granted by Council for a period of not less than two years and not more than 15 years. The Committee shall recommend a permit term to Council based on the life expectancy of the operation and any special circumstances related to the operation. The term of the permit is a discretionary decision of Council.

SECTION 6014. Determination and Appeals of Application Fees

(a) The Committee shall determine an appropriate non-refundable application fee based on the size and scope of the project and any fee schedule established by Council for such purposes. The Committee may set any individual fee amount up to \$15,000.

(b) If the Committee sets the application fee at an amount less than or equal to \$10,000, applicant shall have the right to appeal that fee determination to the Executive Director. The Executive Director's decision on appeal shall be final and unreviewable.

(c) If the Committee sets the application fee at an amount greater than \$10,000 but less than or equal to \$15,000, applicant shall have the right to appeal that fee amount to the Council. Council's decision on appeal shall be final and unreviewable.

(d) If the Committee determines that an application fee in excess of \$15,000 is warranted, it may not set that fee but shall submit its recommendation to Council. Council may set an application fee in excess of \$15,000 upon Council motion. Council's fee determination shall be final and unreviewable.

(e) Fee categories established in paragraphs (a)-(d) of this section may be changed by Council resolution without amending this Ordinance.

(f) The fee determination and appeals processes outlined in this section are exclusive of the rights and procedures set forth in Section 6023 of this Ordinance.

SECTION 6015. Performance Bond

Upon a finding by the Committee that a supplemental guarantee for the reclamation of the operation site is necessary, and upon the determination by the Committee of the cost of the reclamation according to the Mining and Reclamation Plan, a surety bond, lien, or other security guarantee conditioned upon the faithful performance of actions as described in the Mining and Reclamation Plan shall be filed with the Committee. Such surety shall be executed in favor of the Yurok Tribe, and reviewed and revised, as necessary. Such surety shall be maintained in an amount at least equal to the cost of completing the remaining reclamation of the site as prescribed in the approved Mining and Reclamation Plan.¹

SECTION 6016. TERO Fees

All projects will be subject to the Tribal Employment Rights Ordinance.

SECTION 6017. Mining and Reclamation Plan Purpose

(a) The basic purpose and objectives of this ordinance are to ensure protection of fundamental tribal interests in the tributary and river beds, tributary and river flows, air and water quality, and ceremonial and cultural values, and to provide for continued beneficial alternative uses of mined and reclaimed lands. The purpose of the mining and reclamation plan is to provide a program by which to attain these objectives.

(b) New mining operations offer the greatest opportunity for planning, designing for, and carrying out effective reclamation activities. In determining the degree or level of reclamation to be effected, the applicant shall consider a number of factors, including but not limited to those set forth in Section 6018 of this Ordinance.

SECTION 6018. Mining and Reclamation Plan Requirements

(a) Applicant shall be responsible for preparing and submitting to the Committee a Mining and Reclamation Plan which, at a minimum, conforms to the requirements of this ordinance. Applicant shall also be responsible for making any revisions, modifications, or conditions for approval deemed necessary by the Committee or Council.

¹ On trust land a bond is required by federal law: 25 CFR Part 216.8.

(b) At a minimum, the following factors shall be taken into account in determining the level, character, and detail of the Mining and Reclamation Plan design:

1. The size and area of the proposed mined lands;
2. The complexity of the operation and the manner and degree to which the mined lands are disturbed;
3. The site potential for mineral and other uses;
4. The environmental setting of the operation site and the effect that reclaimed site conditions may have upon the existing and future uses of surrounding lands;
5. The effect that the proposed reclamation activity may have upon the site's remaining un-mined resources and/ or upon continued mining on adjacent lands;
6. The public health and safety, giving consideration to the degree and type of present and probable future exposure of the public, including but not limited to:
 - (A) likelihood of direct contact with or exposure to safety hazards or toxic substances;
 - (B) potential for contamination of drinking water by toxic substances, due to groundwater or surface water contamination; and
 - (C) potential for public exposure to toxic substances in dust from ore pilings, tailings, waste piles, or other project-related sources, and the use of mined materials for off-site applications, including but not limited to road construction and rock slope protection.
7. The potential for impacts to a tributary or river bed, tributary or river flow, ground and surface water quality, fishery values, or ceremonial and cultural values and uses.

(c) The longevity of mining operations varies greatly. In many operations much of the reclamation can be effected only after the mining is completed. However, in certain operations the reclaiming of mined areas may be undertaken concurrently with the mining of adjoining lands. In those operations where concurrent reclamation is possible, the Committee shall require:

1. A timetable for commencing such operations; and
2. Periodic submittal of updated progress reports for concurrent reclamation operations.

(d) Applicant shall, in the Mining and Reclamation Plan, propose the end condition of the site and reasonable and practicable uses of the reclaimed site. Such proposals shall be in conformance with the policies and regulations contained herein, and with the policies and regulations of other applicable Tribal ordinances.

(e) Instructions for preparation of Mining and Reclamation Plans and any required forms shall be provided by the Committee.

(f) Applicant shall provide an initial assessment as to the type, character, and composition of the minerals being removed. At a minimum, site soils shall be tested for asbestos content.

SECTION 6019. Mining and Reclamation Practices

The following subsections set forth minimum acceptable practices to be followed in surface mining and reclamation operations.

(a) Soil Erosion Control

1. The removal of upland vegetation and overburden in advance of mining shall be kept to the minimum. All riparian woody vegetation and wetlands must be avoided to the maximum extent possible. Prior to disturbance, riparian vegetation or wetlands must be clearly identified by mapping. Riparian vegetation comprising a contiguous 1/8 acre complex or at least 2 inches diameter at breast height must be mitigated for adverse impacts. Impacts to other vegetation must be described and submitted to the Committee within the Mining and Reclamation Plan. These impacts may require mitigation at the discretion of the Committee. Impacted areas, which must be mapped, consist of woody vegetation which have drip lines within 25 feet of excavation activities (excavation, stockpiling, parking, etc.), or wetlands that are filled, excavated, or drained. Impacts to woody vegetation shall not include existing haul roads, stockpiles, etc.

2. Stockpiles of overburden and minerals shall be managed to minimize water and wind erosion. This may include, but is not limited to covering stockpiles with netting, canvas, or other materials to prevent detachment and transport loose material by water or wind.

3. Erosion control facilities such as retarding basins, settling ponds, ditches, stream bank stabilization, and diking shall be constructed and maintained where necessary to control erosion.

4. Grading and revegetation shall be designed to both prevent excessive erosion and to convey surface runoff to natural drainage devices or interior basins designed for water storage.

Basins that will store water during periods of surface runoff shall be designed to prevent downward erosion of spillways when these basins have outlet to lower ground.

(b) Water Quality and Watershed Control

1. A method of compliance with the U.S. Environmental Protection Agency, Tribal, and other applicable regulations and requirements is hereby incorporated into the review process under this ordinance.

2. Settling ponds or basins shall be constructed downslope from areas of potential erosion at operations where they are necessary to protect water quality and comply with tribal water quality regulations, or where they will provide significant benefit to water quality. Settling ponds and basins shall not be constructed in such a manner to impound a natural watercourse. Settling ponds or basins shall be located and constructed in such a manner that they will not be a hazard to downstream resources in the event of natural or anthropogenic events, such as an earthquake, flood, landslide, or fire.

3. Temporary stream or watershed diversion shall be restored in final reclamation in a manner which will prevent undue erosion and water quality degradation.

4. At sites where ground-water recharge is a significant consideration, operations shall be conducted to substantially prevent siltation of recharge areas.

5. Infiltration of toxic substances into groundwater basins shall be prevented where such basin may contribute to domestic or agricultural water supplies.

(c) Flood Control

Compliance with the applicable requirements of other agencies in addition to the Committee, including the Tribal Fisheries Department and federal flood control agencies, is required when operations occur in or near tributaries and other drainage channels.

(d) Protection of Fish and Wildlife Habitat

All reasonable measures shall be taken to protect the habitat of fish and wildlife, and to prevent alteration of tributary and river beds and tributary and river flows. The Committee and Fisheries Departments shall prescribe measures as deemed necessary to better protect such resources.

(e) Disposal of Mine Waste Rock and Overburden

1. Waste piles and piles of overburden shall not be allowed unless provisions for such were submitted and approved as part of the original proposal for mitigation. In any case,

any such mitigation plans which allow for piling of overburden or waste rock shall be in strict conformance with the Yurok Tribe Water Quality Control Plan and all other provisions of this ordinance, as well as any conditions imposed by the Committee. Any piles not properly provided for and approved in the original mitigation plan will be considered a violation of this ordinance

2. Stable slopes at angle of repose shall be permitted as a final slope, when a qualified professional has determined that subsequent slope failures will not deliver earth materials to a water course, would deliver less than 10 cubic yards to the receiving slope, and will not threaten life or property. Where seismic and or water saturation can adversely alter slope stability a qualified professional shall determine final slope requirements.

3. Old equipment and other similar inert mining wastes shall be removed. These types of materials shall not be buried.

4. Toxic material shall be removed and shall be protected to prevent leaching until it is removed.

(f) Soil Salvage

1. The salvage of existing topsoil is an important factor in revegetation and thus is a crucial part of the reclamation process.

2. A detailed soil survey may be necessary to determine soil type, and soil chemistry. The complexity of such a survey will depend upon site geology, vegetation, areal extent, and post-mining uses.

3. In areas of good soil development, topsoil is a valuable asset and should be segregated for future use in revegetation. In some areas, because of poor or very limited soil conditions, it may be impractical or impossible to salvage soil.

4. When the reclamation plan calls for resoiling, coarse hard mine waste shall be leveled and covered with a layer of finer material and weathered waste. A soil layer shall then be placed on this prepared surface.

5. Mining operations that did not salvage soil during their initial operations shall attempt, where feasible, to upgrade remaining native materials. The use of soil conditioners, mulches, or imported topsoil shall be considered where revegetation is part of the reclamation plan and where such measures appear necessary. It is not justified, however, to denude adjacent areas of their soil, for any such denuded areas must in turn be reclaimed.

(g) Final Slope Gradient

1. The designed steepness and proposed treatment of the final slopes of the mined lands shall take into consideration the physical properties of the slope material, its probable maximum water content, seismic loading, landscaping requirements, and other pertinent factors.

2. The maximum stable slope angle might range from 90 ° in a sound limestone, igneous rock, or similar hardrock to less than 20 ° in highly expansive clay. In all cases, reclamation plans shall specify slope angles flatter than the critical gradient for the type of material involved. The Committee will require a geotechnical analysis of the slope stability for any cut or fill slopes steeper than 2:1. Special emphasis on slope stability and design will be necessary when public safety or adjacent property may be affected.

(h) Backfilling and Grading

1. Most backfilling and grading is undertaken to store mine waste rock and overburden, to produce designed slopes, to establish drainage, or to raise the ground surface above the local water table. Any area mined to produce additional materials for backfilling and grading must also be included in the reclamation plan.

2. Settlement of filled areas must be considered in all reclamation plans. Where probable ultimate site uses include roads, building sites, or other improvements sensitive to settlement, the reclamation plans shall include compaction of the fill materials in conformance with good engineering practice to avoid excessive settlement. Fill placement shall conform to local grading ordinances or, in their absence, the California Building Code.

(i) Revegetation

Before final revegetation is undertaken, the Operator shall make use of the available research addressing revegetation methods and the selection of species having good survival characteristics, for the topography, resoiling characteristics, and climate of the area. Native species are required wherever possible. Reclamation plans may also include development of screens and roadside plantings at mines currently in operation, where such screens and plantings are practicable and desirable.

SECTION 6020. Authority to Enter and Inspect Premises and Records

(a) In order to carry out the purposes of this ordinance, any duly authorized representative of the Tribe has the authority to enter and inspect any property, premises, or facility involved in any mining or other activities under this ordinance on any lands within the exterior boundaries of the Reservation. Such inspection may include:

1. Obtaining samples of soil, rock, vegetation, air, water, or other substances deemed necessary.
2. Setting up and maintaining monitoring equipment for the purpose of assessing compliance with applicable regulations or identifying health or safety hazards.
3. Photographing any equipment, sample, activity, or environmental condition, subject to the following conditions:
 - (A) the Committee shall notify the permittee whose operation was photographed prior to public disclosure of such photographs; and
 - (B) upon request of the permittee, the Tribal representative shall allow the permittee to inspect any such photograph prior to public disclosure to determine whether trade secret information would be revealed by the photograph.
4. Reviewing and obtaining copies of required records.
 - (b) The Committee and Council are authorized to obtain from the Tribal Court a warrant for such entry and inspection if necessary.

SECTION 6021. Monitoring and Compliance

All applicable compliance requirements will be determined on a case-by-case basis by the Committee based upon the specifics of a proposed plan or application and applicable law.

All compliance requirements must be completed at the cost of the applicant and prior to the approval and permitting of any application under this ordinance. Any monitoring requirements identified in the completion of the compliance process will become terms and conditions of operations for any permit issued under this ordinance and must be completed at the cost of the applicant.

SECTION 6022. Enforcement and Sanctions

(a) The Committee shall assign staff to monitor operation compliance. If the permittee is not in compliance with provisions of this ordinance, citation(s) shall be issued and shall be enforced by the Department of Public Safety. It shall be a civil offense, for which a fine, of not less than \$100.00 per day nor more than \$10,000.00 per day, shall be assessed for each day of the offense, to obstruct or otherwise interfere with investigative or other activities of any agent or officer of the Tribe.

(b) Violation of a permit issued under this ordinance, of any terms of this ordinance, including notices or failure to pay costs or make any deposit required under Section 6012, or of

any required permit related to this project, including environmental and cultural permits, may result in the immediate cancellation of any permit, injunctive relief, and damages. Permittee shall be liable for all costs, including staff time, involved in preparing a cancellation of a permit due to such a violation.

SECTION 6023. Appeals and Judicial Review

(a) Any person aggrieved by any act or decision of the Committee shall have the right to seek administrative review before the Committee, provided that any appeal or complaint must be filed within thirty (30) days after the effective date of written decision. The Committee shall conduct a hearing on any such appeal, and develop a decision record that is adequate for judicial review.

(b) Any person who has exhausted available administrative remedies may seek judicial review of an order or decision by the Committee pursuant to the rules of the Tribal Court. The Yurok Tribe specifically waives its sovereign immunity to suit but only for the purpose of the Tribal Court determining whether the order or decision shall be upheld or reversed. No suit or claim is authorized to recover money damages against the Committee, Committee members, Council, or the Yurok Tribe as a result of any act or omission pursuant to this ordinance. The Tribal Court shall sustain the decision of the Committee if based on substantial evidence in the record before the Committee. The Tribal Court shall issue any and all orders reasonably necessary to carry out the provisions of this ordinance, and may assess civil fines for conduct of operations in violation of permit or Mining and Reclamation Plan terms and conditions. The Tribal Court may also order the impoundment of equipment used in persistent or serious violation of the requirements of this ordinance.

(c) Decisions of the Council pursuant to this ordinance are not reviewable.

SECTION 6024. 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.

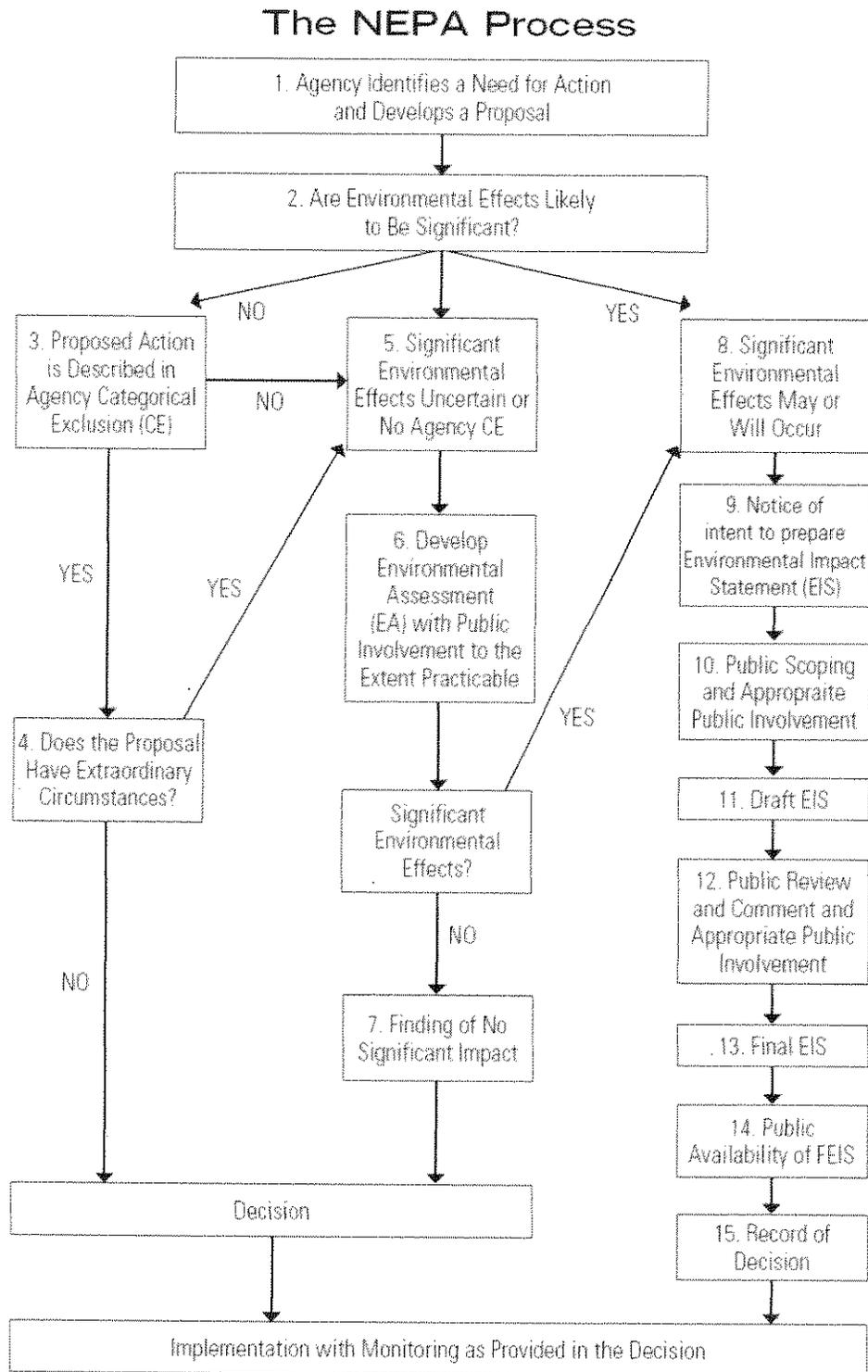
SECTION 6025. Sovereign Immunity Preserved

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 from the Tribe.

SECTION 6026. Governing Law

This ordinance shall be governed by and construed in accordance with the law of the Yurok Tribe. All applicants for permits and permittees agree that any and all actions which may arise from or out of this ordinance shall be adjudicated in Tribal Court.

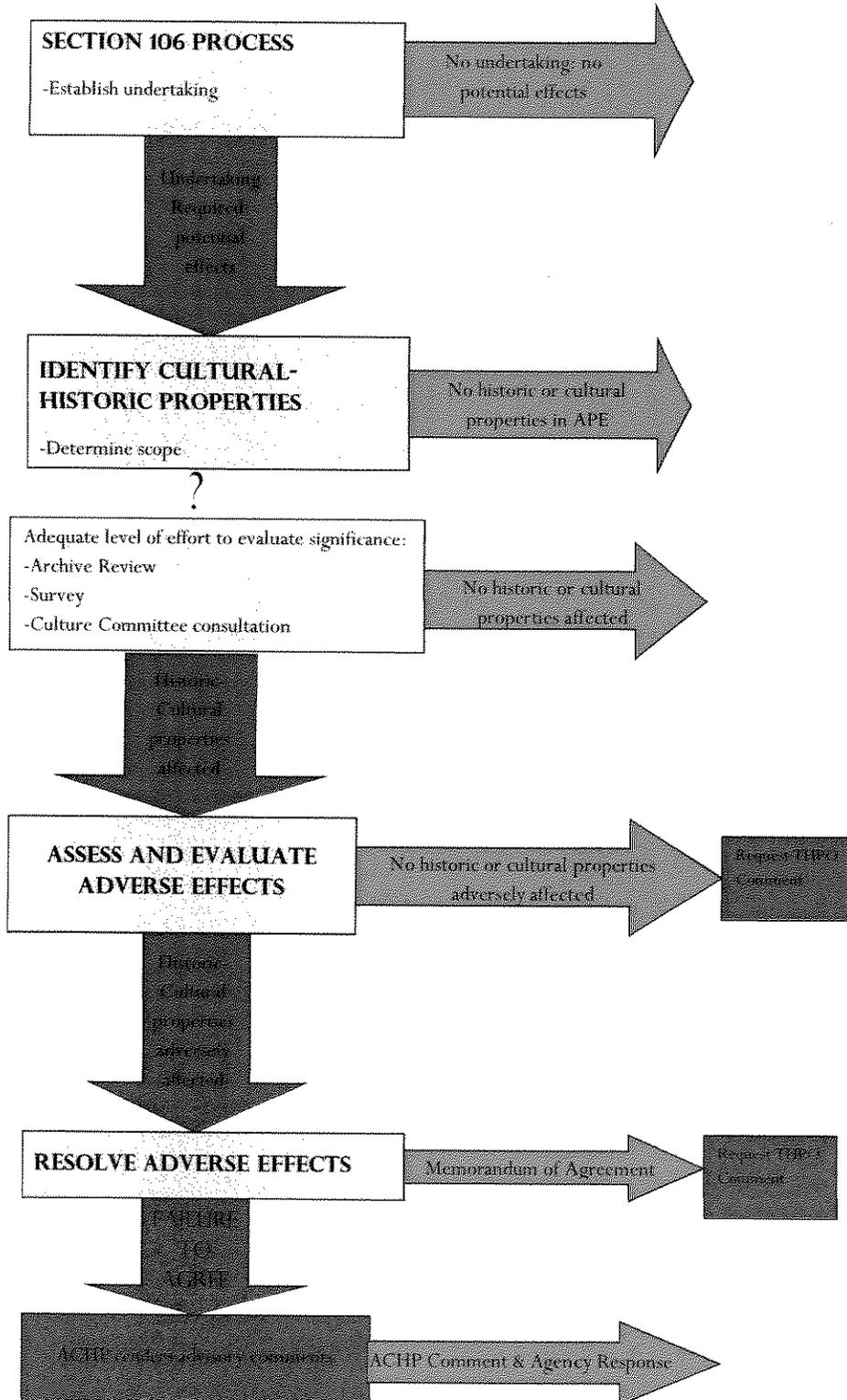
Diagram 2. NEPA Process



**Significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns may necessitate preparation of a supplemental EIS following either the draft or final EIS or the Record of Decision (CEQ NEPA Regulations, 40 C.F.R. § 1502.9(c)).*

Diagram 3. NHPA Process

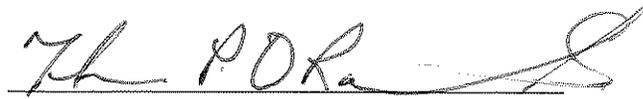
NHPA PROCESS



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

THE FOREGOING ORDINANCE, ENTITLED THE YUOK TRIBE MINING ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUOK TRIBAL COUNCIL ON JUNE 27, 2012, AT WHICH A QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY CONSENSUS IN ACCORDANCE WITH TRIBAL TRADITION AND ARTICLE V, SECTION 6 AND ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUOK TRIBE..

DATED THIS 27th DAY OF JUNE 2012



Thomas P. O'Rourke, Sr., Chairperson
Yurok Tribal Council

Attest:



Bonnie Green, Secretary
Yurok Tribal Council