

# HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

## Table of Contents — Appendix I: Regulations and Compliance

I.1	Fire-Safety Regulations .....	I-1
I.1.1	Humboldt County Fire-Safe Regulations and Ordinances .....	I-1
	SRA Fire Safe Regulations: Humboldt County Code Title III, Div. 11.....	I-1
I.1.2	State of California Regulations.....	I-2
	Fire Safety Standards: California Public Resources Code 4290 and 14 CCR 1270 .....	I-2
	Wildland-Urban Interface Building Standards: California Government Code 51189 .....	I-2
	State Responsibility Area (SRA): Public Resources Code 4102, 4125-4229 and 14 CCR 1220 .....	I-2
	Hazardous Fire Areas: Public Resources Code 4251-4255 and 14 CCR 1200 .....	I-2
	Defensible Vegetation Clearing Around Structures: Public Resources Code 4291/14 CCR 1299.....	I-2
	CAL FIRE Fuel-Hazard Exemptions .....	I-3
	General Plan Fire Safety Element Review: Government Code 65302.5 .....	I-3
	Sprinkler Systems: California Residential Code, Chapter 3, Section R313.....	I-4
	Very High Fire Hazard Severity Zones: Government Code 51175 .....	I-4
I.2	Environmental Compliance .....	I-5
I.2.1	Humboldt County Environmental Compliance Laws .....	I-5
	Humboldt County Zoning Ordinance, Section 314-61.1: Streamside Management Area Ordinance.....	I-5
	County Regulation of Timber Harvesting Operations Located in Residential Zones and Outside of Sensitive Habitats.....	I-6
I.2.2	State of California Laws .....	I-7
	California Environmental Quality Act (CEQA) .....	I-7
	California Endangered Species Act (ESA) .....	I-8
	Air Quality Regulations.....	I-9
I.2.3	Federal Laws .....	I-11
	National Environmental Protection Act (NEPA).....	I-11
	Federal Endangered Species Act (ESA) .....	I-12
	Migratory Bird Treaty Act .....	I-12
	National Historic Preservation Act (NHPA) .....	I-13
	Tribal Heritage Preservation Officers (THPOs) for Tribes Located Within Humboldt County .....	I-14
	Cultural and Historical Preservation Contacts .....	I-15

## Figures

Figure I.1	Humboldt County SRA Fire Safe Regulation Categories .....	I-1
Figure I.2	CAL FIRE Fuel Hazard Exemptions – 14 CCR § 1038.....	I-3
Figure I.3	General Plan Safety Element.....	I-3

## APPENDIX I — REGULATIONS AND COMPLIANCE<sup>1</sup>

### I.1 FIRE-SAFETY REGULATIONS

State and local policies and regulations require landowners to carry out activities such as maintaining defensible space and reducing vulnerability to damage or loss from wildfire. This section outlines the most important policies and regulations related to residential wildfire safety in Humboldt County.

#### I.1.1 HUMBOLDT COUNTY FIRE-SAFE REGULATIONS AND ORDINANCES

##### SRA Fire Safe Regulations: Humboldt County Code Title III, Div. 11<sup>2</sup>

These standards apply to proposed development within the State Responsibility Area (SRA) to reduce the risk of fire. These regulations are a locally adopted equivalent to the state’s SRA Fire Safe Regulations and have been approved by the Board of Forestry and Fire Protection (BOF) as meeting or exceeding state regulation (*see Public Resources Code 4290 below*). The Humboldt County Planning and Building Department, with CAL FIRE, oversees the development permitting process to ensure that these standards are met. County Building Division staff inspect vegetation clearance and other improvements at the time of construction.

Requests for exemption from these regulations may be submitted to the County Planning Director. Detailed reasoning and information about the area are required. Any person in violation of these regulations shall be guilty of a misdemeanor and subject to penalties provided for in 112-5 of Title I, Division 1, Chapter 2 in the Humboldt County Code.<sup>3</sup>

The County’s SRA Fire Safe Regulations address the following four categories:

FIGURE I.1 HUMBOLDT COUNTY SRA FIRE SAFE REGULATION CATEGORIES	
<b>ROAD AND DRIVEWAY ACCESS</b>	Regulations for road width, roadway surfaces, grades, radius, and turnarounds and turnouts ensure safe access for fire equipment and civilian evacuation. Regulations also apply to clearance and weight-bearing capacity of roadway structures and to driveways and gate entrances.
<b>STREET AND ADDRESS SIGNS</b>	Clear visibility and legibility of signs assists emergency responders.
<b>EMERGENCY WATER</b>	1) Water sources must be clearly marked. 2) Water hydrant valves must meet regulations. 3) At least 2,500 gallons of water must be immediately available to ensure rapid and effective firefighting response.
<b>SETBACKS AND GREENBELTS</b>	Having defensible space for properties adjacent to green belts is critical for firefighter and civilian safety. Greenbelts must be strategically placed to act as a buffer between wildland fuels and structures. Buildings must be set back a specific distance from property lines and roadways. Flammable vegetation or fuel resulting from development and construction must be removed safely. <i>See information on Landscape Debris Burning below.</i>

*For the full text of the Humboldt County SRA Fire Safe Regulations, see **Appendix J**.*

<sup>1</sup> This appendix was researched and written by Humboldt State University students Christopher Alberts, Michael Erickson, Jessica Lammers, and Cameron Spencer, with assistance from Humboldt County staff.

<sup>2</sup> Full text for the Humboldt County SRA Fire Safe Regulations available at: <https://humboldt.gov.org/1812/Fire-Safe>

<sup>3</sup> Full text for the penalties available at: <https://humboldt.county.codes/Code/112-5>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

### I.1.2 STATE OF CALIFORNIA REGULATIONS

#### **Fire Safety Standards: California Public Resources Code 4290 and 14 CCR 1270<sup>4</sup>**

Public Resources Code (PRC) 4290 and regulations in 14 CCR 1270 outline regulations governing roads, driveway width, clearance, turnarounds, signing, and water related to fire safety throughout California. PRC 4290 is typically enacted through regulation at the county level, as described above.

<b>CAL FIRE HUU (HUMBOLDT-DEL NORTE UNIT)</b>	Fortuna Office 118 S. Fortuna Blvd., Fortuna, CA 95540 Telephone: (707)-726-1270 Website: <a href="http://www.fire.ca.gov/HUU">http://www.fire.ca.gov/HUU</a>
<b>CAL FIRE (HEADQUARTERS)</b>	Sacramento Headquarters 1416 9th Street, Sacramento, CA 94244 Telephone: (916) 653-5123 Website: <a href="http://www.fire.ca.gov">http://www.fire.ca.gov</a>

#### **Wildland-Urban Interface Building Standards: California Government Code 51189**

This code directs the Office of the State Fire Marshal to create building standards for wildfire resistance. The code guides construction of buildings in the wildland-urban interface to utilize fire-resistant materials to save life and property.<sup>5</sup>

As of 2011, the WUI standards relevant to fire-safe construction for all new structures in the SRA are the California Building Code, Chapter 7A (applied to commercial construction) and the California Residential Code, Chapter 3, Section R327 (applied to residential construction).<sup>6</sup> The County of Humboldt has adopted these codes.

#### **State Responsibility Area (SRA): Public Resources Code 4102, 4125-4229 and 14 CCR 1220**

These statutes and regulations establish the locations where CAL FIRE has the financial responsibility for preventing and suppressing fires. Not only are these designations important to local communities for defining the financial arrangements for fire protection services, they establish the locations where fire safe and defensible space laws or regulations apply.

#### **Hazardous Fire Areas: Public Resources Code 4251-4255 and 14 CCR 1200**

These laws and regulations allow petitioners to the Board Forestry and Fire Protection (BOF) or CAL FIRE to establish hazardous fire areas (HFA). The designation provides for area closures and other restrictions for fire prevention within the HFA.

#### **Defensible Vegetation Clearing Around Structures: Public Resources Code 4291/14 CCR 1299**

PRC 4291, or “4291”, regulates fuel management around a property. Section 4291 states that a person who owns or controls a building or structure in or adjoining to forest, brush, or grass covered lands shall follow certain guidelines as outlined in the Public Resources Code §4291: Structures in Mountainous Areas; Flammable Materials.<sup>7</sup>

<sup>4</sup> Full text available at: [http://calfire.ca.gov/fire\\_prevention/fire\\_prevention\\_wildland\\_codes.php](http://calfire.ca.gov/fire_prevention/fire_prevention_wildland_codes.php)

<sup>5</sup> California Government Code 51189, Section A. (2009). Retrieved from [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=51189](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=51189)

<sup>6</sup> California Building Standards Commission. (2016, effective Jan. 1, 2017). California Building Standards Code. Retrieved from <http://www.bsc.ca.gov/Codes.aspx>

<sup>7</sup> Public Resources Code §4291. Mountainous, Forest-, Brush- and Grass-Covered Lands. Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4291.&lawCode=PRC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4291.&lawCode=PRC)

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

Under PRC 4291, at least 100 feet of defensible space is required. The owner of the property is liable for making these changes to protect habitable structures<sup>8</sup>. The 100 feet is separated into two zones with the closer zone, 30 feet out from the structure, being managed more intensively.

*For the full text of PRC 4291, see **Appendix K**.*

CAL FIRE is the statewide agency that enforces PRC 4290 and PRC 4291. For many reasons, it is to the homeowner’s advantage to meet these minimum standards. As discussed throughout this CWPP, the condition of this 100-foot area can make the difference between losing a home and saving it.

### **CAL FIRE Fuel-Hazard Exemptions**

There are various exemptions related to vegetation management associated with wildfire hazard reduction. A consultation with CAL FIRE, (*see contact information in **section I.1.2 above***), and/or a Registered Professional Forester is recommended to fully understand the application of the following exemptions.

FIGURE I.2 CAL FIRE FUEL HAZARD EXEMPTIONS – 14 CCR § 1038	
○	150’ Structure Protection Exemption (14 CCR § 1038 (c))
○	150’-300’ Structure Protection Exemption (14 CCR § 1038(c)(6))
○	Harvesting Dead, Dying, Diseased Trees (14 CCR § 1038 (b))
○	Drought Mortality Exemption (14 CCR § 1038 (k))
○	Substantially Damaged Timberland (14 CCR § 1038 (d))
○	Woody Debris & Slash for Energy Production Exemption (14 CCR § 1038 (g))
○	Forest Fire Prevention Exemption (14 CCR § 1038 (i))
○	Forest Fire Prevention Pilot Project (14 CCR § 1038 (j))

### **General Plan Fire Safety Element Review: Government Code 65302.5**

Government Code 65302.5 requires the Board of Forestry (BOF) to provide recommendations to a local jurisdiction’s General Plan Safety Element at the time that the General Plan<sup>9</sup> is being amended. This is not a direct and binding fire-prevention requirement for individuals. BOF recommendations include goals and policies that provide for contemporary fire-prevention standards for the jurisdiction. The programs and standards typically recommended by the BOF are related to:

FIGURE I.3 GENERAL PLAN SAFETY ELEMENT	
<i>Recommended Programs and Standards</i>	
Local agency development of fire plans	Adoption of Fire Hazard Severity Zone maps
Adoption of ignition-resistant building codes	Reduction of hazards to structures and neighborhoods
Planning for emergency access in open-space areas associated with the jurisdiction	Providing adequate levels of emergency services
Addressing post-wildfire safety and recovery programs	Adding fire safe standards to neighborhoods

<sup>8</sup> Senate Bill 1595, Chapter 366. (2008). Retrieved from [http://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=200720080SB1595](http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=200720080SB1595)

<sup>9</sup> The Humboldt County General Plan (2017) is available online: <https://humboldtqov.org/205/General-Plan>. A chapter of interest for fire safety is the Safety Element, Chapter 14.

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

### **Sprinkler Systems: California Residential Code, Chapter 3, Section R313**

California code requires all new dwellings, dwelling units, and one- and two-family townhomes to be equipped with an automatic fire-sprinkler system.<sup>10</sup> The sprinklers must be able to protect the entirety of the dwelling. Dwellings and homes constructed prior to January 1, 2011, that do not have a sprinkler system, may be retrofitted, but it is not required. This code is locally enforced by the Humboldt County Planning and Building Department.

**Sprinkler Exemptions:** Exemptions to California Residential Code, Chapter 3, Section R313 include additions or alterations made to existing townhouses and dwellings that do not already have automatic sprinkler systems. Spaces within dwellings that are exempt include attics, crawl spaces, clothes and linen closets, bathrooms less than 55 square feet in size, and detached garages or carports without habitable spaces.

### **Very High Fire Hazard Severity Zones: Government Code 51175**

CAL FIRE is required by California code to identify lands with a Very High Fire Hazard so that public officials may develop measures to reduce the rate of spread and the potential intensity of fires in those areas.<sup>11</sup> CAL FIRE's Fire and Resource Assessment Program (FRAP)<sup>12</sup> provides updated maps of fire hazard severity zones so that defensible space and building standards may be required as needed.

The hazard designation for a property influences which precautionary actions are required. Different standards, such as roofing material, also apply to differently designated areas. Much of northeastern and southwestern Humboldt County are classified as Very High Fire Hazard Severity Zone. *For more information on Fire Hazard Severity Zones, see Chapter 5.2, **Wildfire Environment**, and the **Planning Unit Action Plans**, in Part 4 of this CWPP.*

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<sup>10</sup> More information on sprinkler systems in Humboldt County can be found at:

<https://humboldtqov.org/185/Sprinkler-Systems>

<sup>11</sup> California Government Code 51176. Chapter 6.8 Very High Fire Hazard Severity Zones. Retrieved from [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=51176](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=51176)

<sup>12</sup> CAL FIRE. (2007). FRAP Projects [Webpage]. Fire Hazard Severity Zone Re-Mapping Project. Retrieved from <http://frap.fire.ca.gov/projects/hazard/fhz.html>

## I.2 ENVIRONMENTAL COMPLIANCE

Performing fuel-reduction projects or other wildfire-protection activities, although advisable and sometimes required, can have an adverse impact on the environment. Before engaging in wildfire hazard-reduction activities such as clearing vegetation, it is important to be aware of federal, state, and local laws to safeguard the environment. The most important relevant policies and regulations are described in this section.

### I.2.1 HUMBOLDT COUNTY ENVIRONMENTAL COMPLIANCE LAWS

#### Humboldt County Zoning Ordinance, Section 314-61.1: Streamside Management Area Ordinance<sup>13</sup>

Humboldt County applies standards to the use of and proposed development within or affecting *Streamside Management Areas* (SMAs) and other wet areas such as natural ponds, springs, vernal pools, marshes, and wet meadows (exhibiting standing water year-long or riparian vegetation). The provisions of this ordinance pertain to all Land Use and Development permits issued by the County related to Planning, Subdivision Regulations, Building Regulations, and Protection and Control of County Roads and Permits. A site evaluation shall be made where necessary to determine, if a project/activity (such as hazardous-fuel reduction) meets the exemption standards of these regulations or if the proposed development requires a special permit.

Proposed activities within an SMA may be exempt from these requirements (sometimes including hazardous-fuel reduction), require a special permit, or may not be permitted at all. Development and activities in SMAs require specific mitigation measures such as retention of trees used by wildlife for nesting and erosion control. Certain activities are also prohibited such as discharge of organic or inorganic materials at levels that would be harmful to fish, wildlife, or other beneficial uses

A landowner who is unsure of the law, or unclear about whether a proposed development or activity applies to an SMA, may contact the County Planning and Building Department for guidance prior to moving forward. Landowners interested in determining where SMAs may be located on their property, can visit the Humboldt County Web GIS Portal ([http://webgis.co.humboldt.ca.us/HCEGIS2.6\\_cwpp](http://webgis.co.humboldt.ca.us/HCEGIS2.6_cwpp)). A menu on the right-hand side of the web page allows one to select "SMAs," then zoom in to the desired location. Alternatively, use a parcel number to locate a property and identifying relevant SMAs.

#### Encroachment Permit Regulations for the Protection of County Highways<sup>14</sup>

Projects that take place within the county right-of-way are required to obtain an encroachment permit from the Department of Planning & Building.<sup>15</sup> This would include shaded fuelbreaks along county roads, for example. For projects that are intended to improve public safety, the permit fee may be waived by the Department if the nature of the project is noted on the application. A special permit can be obtained for tree trimming for overhead utilities that eliminates the necessity of obtaining an encroachment permit for each such encroachment activity.

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<sup>13</sup> The full text of the Streamside Management Area ordinance is available at: Humboldt County Code. Title III Land Use and Development, Division 1 Planning, Chapter 6 Regulations. Section 314-61.1: Streamside Management Area Ordinance. Retrieved from <https://humboldtqov.org/1680/Development-Regulations>

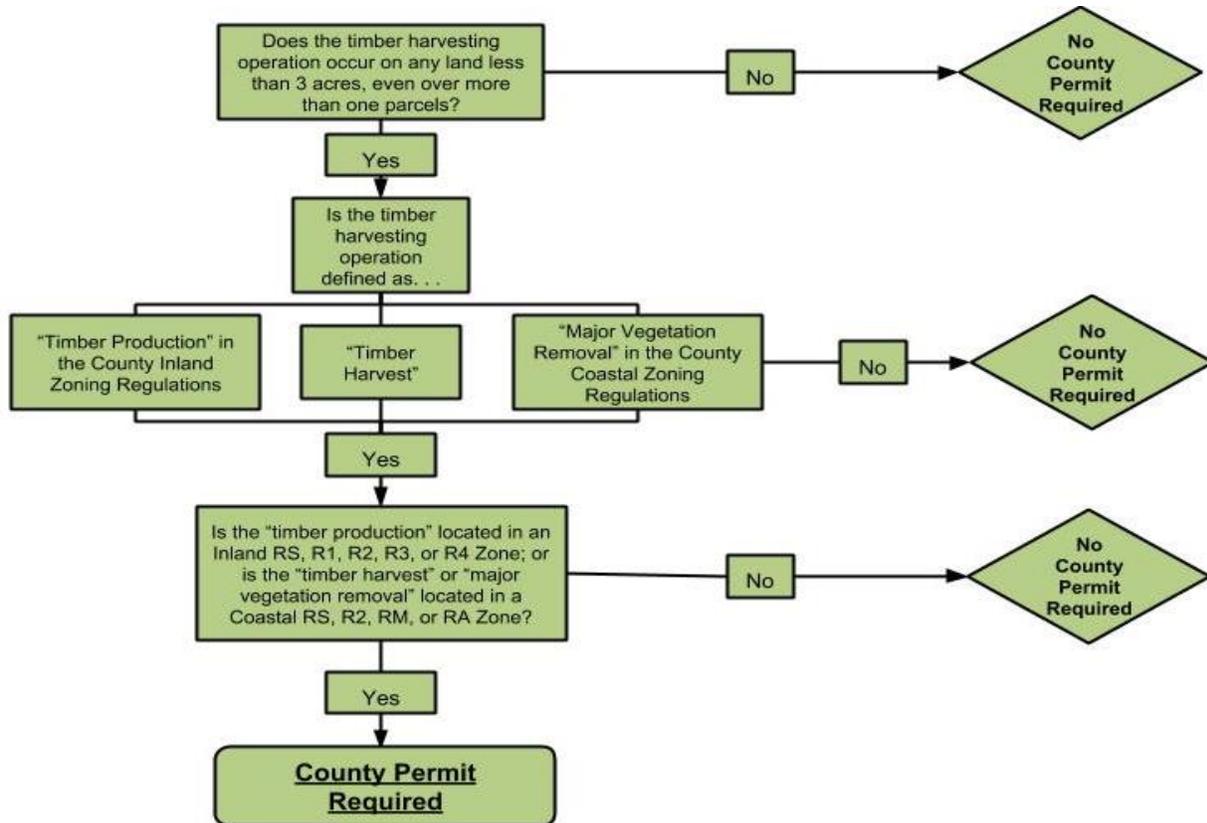
<sup>14</sup> The full text of the Encroachment Permit Regulations is available at: Humboldt County Code. Title IV, Streets and Highways, Division 1 Protection and Control of County Roads, Chapter 1 Encroachment Permit Regulations for the Protection of County Highways. Retrieved from <https://humboldt.county.codes/Code/411>

<sup>15</sup> The Encroachment Permit Application is available on the Humboldt County website: <https://humboldtqov.org/2291/Encroachment-and-Transportation-Permits>

County Regulation of Timber Harvesting Operations Located in Residential Zones and Outside of Sensitive Habitats

Projects involving vegetation removal are subject to the requirements in this regulation. While not primarily focused on timber-harvesting operations, vegetation management associated with creating defensible space may trigger requirements under this regulation. Whether or not a permit is required for vegetation removal depends on the purpose of the removal, where the project occurs, and the size of the parcel. Further details on compliance with this regulation are expanded on below.

Figure I.1 County Regulation Timber Harvesting Operations in Residential Zones



Further Description of Process Boxes from Flow Chart Above

Section 4516.5d of the Public Resources Code (PRC) states “individual counties shall not, otherwise regulate the conduct of timber operations as defined by this chapter, or require the issuance of any permit or license for those operations.” However, Section 4516.5f states that Section 4516.5d “does not apply to timber operations on any land area of less than three acres and which is not zoned timberland production.” County Counsel has confirmed that Section 4516.5f continues to permit local regulation of timber operations.

1. Section 4527 of the PRC defines timber operations regulated by the State Forest Practices Act. Section 314-155 of the County Inland Zoning Regulations and 313-155 of the County Coastal Zoning Regulations include identical definitions of “timber production” inland and “timber harvest” coastal zone. **The County Inland and Coastal Zoning Regulations exclude all of the following from the definition of timber production or timber harvesting which are not located in environmentally sensitive habitats (as identified in the Framework Plan, Community Plans, Local Coastal Plans, Redway Q Zone, or Open Space Agreement):**

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

- A. Cutting or removal of timber and solid wood forest products to protect existing dwellings, or as part of a building and/or encroachment permit (implemented as including the access driveway, building footprint and fire safe setbacks of 30 feet from the footprint of the existing dwelling or proposed building pad).
- B. Removal of diseased and/or dangerous trees which have no commercial value (implemented as including “diseased or dying trees” as defined by the Forest Practice Act Rules, and identified by a registered professional forester, or certified arborist, where the cost of tree removal exceeds the value of the trees removed, and the trees are a danger to an existing structure).
- C. Removal or harvest of identical vegetation which cannot normally be expected to result in a threat to forest, air, water or soil resources (Implemented as including the removal of incidental vegetation such as berries, ferns greenery, mistletoe, herbs, etc.).

Tree removal involves numerous considerations including fire safety, neighborhood character, and protection of sensitive resources such as habitat. In general, it is easier to remove trees from a property in the inland areas than in the coastal zone. If the area of major vegetation to be removed is under three acres, no permit is required in inland areas. However, a Coastal Development Permit is required for any major vegetation removal in the coastal zone, as indicated in Figure I.1 above. Clear cuts are not permitted in the coastal zone and at least 50% of major vegetation must be left standing.

*Refer to Humboldt County Code Section 313-64.1.4<sup>16</sup> for a detailed definition of major vegetation removal.*

2. A county permit is required if the “timber production”, “timber harvest”, or “major vegetation removal” is located in the listed residential zones.

**A landowner, who is unsure of the law, or unclear about whether a proposed activity applies, may contact the County Planning and Building Department for guidance prior to moving forward.**

**HUMBOLDT COUNTY PLANNING AND  
BUILDING DEPARTMENT**

John H. Ford, Director  
3015 H St. Eureka, CA 95521  
Telephone: (707) 445-7541  
Website: [www.co.humboldt.ca.us/planning](http://www.co.humboldt.ca.us/planning)

### I.2.2 STATE OF CALIFORNIA LAWS

#### **California Environmental Quality Act (CEQA)**

The California Environmental Quality Act (CEQA)<sup>17</sup> requires state and local agencies to take certain environmental considerations into account prior to the implementation of projects, or “undertakings,” that may adversely affect the environment, whether directly or indirectly. CEQA requires an Initial Study (IS) to determine the potential environmental effects a project may have. If there is potential for significant impacts to the environment, more substantive review through an Environmental Impact Report (EIR) is necessary to evaluate alternative options and ways of mitigating the potential impacts.

Projects on state or local public lands in California are subject to CEQA. **Although Fire Safe Councils are not considered public agencies, they may be responsible for compliance with these regulations when implementing community projects supported by state funding.**

<sup>16</sup> Humboldt County Code. Title III Land Use and Development, Division 1 Planning, Chapter 3 Regulations Inside the Coastal Zone. Retrieved from <https://humboldt.county.codes/Code/313-64>

<sup>17</sup> California Natural Resources Agency. (2007). Frequently Asked Questions about CEQA. Retrieved from <http://resources.ca.gov/ceqa/more/faq.html>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

### CEQA and Tribal Cultural Resources

CEQA now specifies that a project that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. The general procedure is that the CEQA lead agency must begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation. These changes to CEQA are applicable to projects that will file a Notice of Preparation for an Environmental Impact Report or Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration on or after July 1, 2015. <sup>18</sup> See *National Historic Preservation Act* below for local tribal contact information.

The agency responsible for administering CEQA is the California Department of Fish and Wildlife (CDFW). A timber harvest plan (THP) is the forestry and tree removal equivalent to CEQA and is handled by CAL FIRE and the BOF. CAL FIRE may also be a valuable resource in assessing the necessary environmental compliance requirements for wildfire mitigation activities. Regional contact information for these agencies is listed below:

<b>CALIFORNIA DEPARTMENT OF FISH &amp; WILDLIFE, NORTHERN REGION</b>	<p style="text-align: center;">Main Office: 601 Locust Street Redding, CA 96001 Telephone: (530) 225-2300 Fax: (530) 225-2055</p> <p style="text-align: center;">Field Office: 619 Second Street Eureka, CA 95501 Telephone: (707) 445-6493 Fax: (707) 445-6664 Website: <a href="https://r1/dfq.ca.gov/portal">https://r1/dfq.ca.gov/portal</a></p>
<b>ARCATA FISH AND WILDLIFE OFFICE (U.S. FISH &amp; WILDLIFE SERVICE)</b>	<p style="text-align: center;">1655 Heindon Road, Arcata, CA 95521 Telephone: (707) 822-7201 Fax: (707) 822-8411 Website: <a href="http://www.fws.gov/arcata">http://www.fws.gov/arcata</a></p>
<b>CAL FIRE HUU (HUMBOLDT-DEL NORTE UNIT)</b>	<p style="text-align: center;">Fortuna Office: 118 S. Fortuna Blvd, Fortuna, CA 95540 Telephone: (707) 726-1270 Website: <a href="http://www.fire.ca.gov/HUU">http://www.fire.ca.gov/HUU</a></p>
<b>CAL FIRE (HEADQUARTERS)</b>	<p style="text-align: center;">Sacramento Headquarters: 1416 9th Street, Sacramento, CA 94244 Telephone: (916) 653-5123</p>

### California Endangered Species Act (ESA)

The California Endangered Species Act (CESA) serves to protect all species of fish, amphibians, reptiles, birds, mammals, invertebrates, and plants, and their habitats, threatened with extinction. The Act further seeks to prevent those species experiencing significant population declines, from becoming

<sup>18</sup> California Department of Transportation. (2014). California Public Resources Code (Native Americans: CA Environmental Quality Act). Assembly Bill 52. Retrieved from <http://www.dot.ca.gov/ser/vol1/sec1/ch2statelaw/chap2.htm#lawPRC509794>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

threatened or endangered. The California Department of Fish & Wildlife (CDFW) oversees the protection and preservation of these sensitive species and their habitats through the enforcement of CESA.<sup>19</sup>

Endangered species found locally in Humboldt County include five bird species: marbled murrelet, western yellow-billed cuckoo, bald eagle, little willow flycatcher, California Ridgway's rail; and four plant species: Humboldt County milk-vetch, Menzies' wallflower, beach layia, and western lily.

*For more information on local threatened and endangered species, see Appendix D.*

Questions about how to identify threatened or endangered species should be directed to the California Department of Fish & Wildlife, Northern Region or the US Fish and Wildlife Service (USFWS), Arcata office. Online resources such as NatureServe Explorer (<http://explorer.natureserve.org/servlet/NatureServe>) can help identify plant and animal species.

To determine whether a project has the potential to adversely affect a listed species, the CDFW or the nearest USFWS office may be consulted. A biologist from one of these agencies will visit a landowner's property to help determine whether federally listed species may be present or not. *For regional contact information for these agencies, see the tables above.*

### Air Quality Regulations

The North Coast Unified Air Quality Management District (NCUAQMD) is the regional environmental regulatory agency with jurisdiction over air quality in Humboldt, Del Norte, and Trinity Counties. The NCUAQMD applies rules and regulations that maintain and protect health-based state and federal Ambient Air Quality Standards to prevent the deterioration of air quality levels that may jeopardize human health and safety.

Air quality management enforces regulations related to *open burning*—the use of outdoor fires for vegetation disposal. Vegetation may only be burned on the property from which it originates.<sup>20</sup> Before burning, the vegetation must be properly dried and be free from waste such as garbage, plastic, treated or painted wood, tires, tar paper, demolition debris, etc.; burning of poison oak should be avoided.

In February 2002, the California Air Resource Board (CARB) adopted an Airborne Toxic Control Measure (ATCM) to regulate emissions of air contaminants from residential open burning. District Staff worked with fire protection agency representatives, to develop the current NCUAQMD burn program—an agreement that the District would be the primary entity responsible for issuing permits and determining compliance.

The open burning of vegetation can result in significant quantities of particulate matter emissions (smoke) along with emissions of Toxic Air Contaminants (TACs). As such, the regulation of open burning plays a key role in the District's Plan to achieve compliance with the National Ambient Air Quality Standards (NAAQS) for particulate matter as well as its strategy to minimize exposure to carcinogens.

The NCUAQMD works in collaboration with CARB to balance the fuel reduction needs of land managers, agriculture, and property owners, while protecting public health. These permitted activities allow emissions into air basins that may already be burdened with other air pollution impacts, however, these emissions pale in comparison to emissions from catastrophic wildfires that have immediate and long-lasting health and economic impacts. While it is understood that prescribed burns have less impact on air quality than catastrophic wildfires, current federal policy does not allow for exceedances of air quality standards that may occur with a prescribed burn. By exceeding these standards, communities risk losing attainment status of NAAQS. Non-attainment areas are required to develop a plan to meet the standards or else risk losing some form of federal financial assistance.

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<sup>19</sup> California Department of Fish & Wildlife. California Endangered Species Act (CESA) Permits. [Webpage]. Retrieved from <https://www.wildlife.ca.gov/Conservation/CESA>

<sup>20</sup> North Coast Unified Air Quality Management District. Regulation II, Open Burning Rule: 200-208. Retrieved from <http://www.ncuaqmd.org/index.php?page=rules.regulations>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

The two most common types of burn permits available are a “Standard Burn Permit” and a “Non-Standard Burn Permit”. A Standard Burn Permit allows residential open burning in piles no larger than four feet in diameter. Non-Standard Burn Permits are issued for larger burns (single, 10 ft. in diameter pile, up to a thousand or more acres of material). To ensure public health and safety, a Smoke Management Plan (SMP) may be required for large debris burns that meet the requirements of Regulation II, Rule 206.

A Standard Burn Permit can be purchased for \$20 (as of July 2018) and authorizes an individual to burn a maximum of one pile (4’ in diameter) of approved materials on the ground at a time. The burn hours are from 6:00 AM – 12:00 PM on permissive burn days only.

Non-Standard Permits are tiered based on the amount of material to be burned and vary in cost. A Non-Standard Burn Permit allows individuals, businesses, or government agencies to dispose of approved materials in a burn pile no larger than 10’ in diameter, unless the permit-holder has an approved Smoke Management Plan. Burn hours for this permit are from 6:00 AM until one hour before dusk on permissive burn days.<sup>21</sup>

Under special circumstances, a No Burn Day Permit may be issued authorizing open burning on a No Burn Day. Fire Training Permits are issued at no charge to fire protection agencies conducting training exercises involving the open burning of vegetation, structures, or other materials.

During declared fire season, additional permits are required by CAL FIRE. Three dollars of every Standard Burn Permit fee collected goes to local and volunteer fire districts.

Smoldering is a slow burn with smoke but no flame. Smoke released at ground level can negatively affect the health of people in close proximity to the burn. Smoke travels easily through neighborhoods and may become a public nuisance. Smoldering fires can be avoided by:

1. Only burning vegetation free of soil and moisture
2. Covering vegetation piles to prevent rain exposure
3. Stacking burn material loosely to allow air circulation

Biomass energy utilization and recycling are effective alternatives to open burning.<sup>22</sup>

**NORTH COAST UNIFIED AIR QUALITY  
MANAGEMENT DISTRICT**

**Eureka Office:**

707 L Street  
Eureka, CA 95501

Telephone: (707) 443-3093

Website: <http://www.ncuaqmd.org>

To find out burn day status call **(707) 443-7665** or  
**(866) 287-6329 (866-BURNDAY)**.

### Encroachment Permits for Projects along State Highways

The California Department of Transportation, better known as Caltrans, requires encroachment permits for all proposed activities that take place within, under, or over State highway rights of way. This includes vegetation trimming that might be included as part of a fuels reduction project. Applicants must submit a completed Standard Encroachment Permit Application to the District 1<sup>23</sup> Encroachment

<sup>21</sup> North Coast Unified Air Quality Management District. (n.d.) District Burn Permits [Webpage]. Retrieved from <http://www.ncuaqmd.org/index.php?page=burn.permits>

<sup>22</sup> For more information about alternatives to burning vegetation, including biomass conversion to energy, visit: California Environmental Protection Agency (CEPA), Air Resources Board. (2011). Biomass Burning Alternatives. Retrieved from [http://www.arb.ca.gov/smp/biomass/bio\\_map/altern\\_treat.htm](http://www.arb.ca.gov/smp/biomass/bio_map/altern_treat.htm)

<sup>23</sup> Caltrans District 1 homepage: <http://www.dot.ca.gov/d1>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

Permits Office.<sup>24</sup> To streamline the permit application and review process, Caltrans encourages the applicant to consult with Permit staff prior to submitting an application.

<b>CALTRANS DISTRICT 1</b>	<b>Eureka Office Physical Address:</b> California Department of Transportation District 1 1656 Union Street Eureka, CA 95501 <b>Phone</b> (707) 445-6600	<b>Eureka Office Mailing Address:</b> California Department of Transportation District 1 P. O. Box 3700 Eureka, CA 95502-3700
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### I.2.3 FEDERAL LAWS

#### National Environmental Protection Act (NEPA)

The National Environmental Protection Act (NEPA) is the federal equivalent of CEQA. It exists to help preserve the health of the environment and the ecological integrity of federal landscapes.

NEPA requires an Environmental Assessment (EA) for any federal action that cannot be “categorically excluded” from a detailed environmental analysis. Categorically excluded projects are those that—as determined by a federal agency—do not “individually or cumulatively have a significant effect on the human environment”. If there is potential for significant impacts to the environment, more substantive review is required through an Environmental Impact Statement (EIS), to evaluate alternatives and mitigation options.<sup>25</sup>

Any project on Federal land or funded with federal dollars is subject to NEPA. **Although Fire Safe Councils and other community organizations are not considered public agencies, they may be responsible for compliance with these regulations when implementing community projects with federal funding.**

<b>ARCATA FISH AND WILDLIFE OFFICE (U.S. FISH &amp; WILDLIFE SERVICE)</b>	1655 Heindon Road, Arcata, CA 95521 Telephone: (707) 822-7201 Fax: (707) 822-8411 Website: <a href="http://www.fws.gov/arcata">http://www.fws.gov/arcata</a>
<b>BUREAU OF LAND MANAGEMENT (BLM) ARCATA FIELD OFFICE</b>	1695 Heindon Road, Arcata, CA 95521 Telephone: (707) 825-2300 Fax: (707) 825-2301 Website: <a href="http://www.blm.gov/ca/st/en/fo/arcata.html">http://www.blm.gov/ca/st/en/fo/arcata.html</a>
<b>NATIONAL MARINE FISHERIES SERVICE SOUTHWEST SECTION</b>	Southwest Regional Office 501 West Ocean Boulevard Long Beach, CA 90802 Telephone: (562) 980-4000 Website: <a href="http://swr.nmfs.noaa.gov">http://swr.nmfs.noaa.gov</a>

<sup>24</sup> To access the application and other relevant information see: <http://www.dot.ca.gov/trafficops/ep>

<sup>25</sup> U.S. Environmental Protection Agency. (n.d.) National Environmental Policy Act Review Process [Webpage]. Retrieved from <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

### Federal Endangered Species Act (ESA)

The Federal Endangered Species Act (ESA) requires the USFWS and National Marine Fisheries Service (NMFS) to list imperiled species as either threatened or endangered and to designate “critical habitat” for these species.<sup>26</sup> This law makes it illegal for any person to “take” a federally listed plant or animal without a permit. “Take” is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct”.

It is important for landowners to be aware of any listed species that may be present on or near their property prior to conducting wildfire mitigation projects to avoid any accidental takings. If a listed species may be affected by a project on private land, Section 10 of the ESA outlines guidelines to follow. Section 7 of the ESA governs actions by federal agencies.

Section 7 of the ESA, called “Interagency Cooperation,” applies to federal agencies, which “must consult with the USFWS when any action the agency carries out, funds, or authorizes (such as through a permit or grant) may affect a listed endangered or threatened species.”<sup>27</sup> The details and procedures pertaining to Section 7 of the ESA are accessible through this link: [http://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf).

Section 10 of the ESA stipulates that private activities occurring on private land that are likely to result in an “incidental take” of a federally listed species must be permitted in advance. If it is possible to avoid impacting listed species, it is advisable to do so. The details and procedures pertaining to Section 10 are accessible here: [http://www.fws.gov/endangered/esa-library/pdf/HCP\\_Incidental\\_Take.pdf](http://www.fws.gov/endangered/esa-library/pdf/HCP_Incidental_Take.pdf).

### Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) provides for the protection of migratory birds within the United States. The Act makes it illegal “to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to Federal regulations”.<sup>28</sup> California State Code 3503 echoes this same policy. Despite the name, all migratory and non-migratory birds are protected under the MBTA. This law does not protect the habitat of migratory birds, only their nests and eggs.

Examples of activities related to fire management which are likely to result in a “take” of migratory birds include: tree pruning or limbing, prescribed burning, or vegetation removal in nesting habitat during nesting season when migratory bird eggs or young are likely to be present. Nest destruction and accidental taking of migratory birds can be avoided by refraining from vegetation removal during the breeding/nesting season. The breeding/nesting season for birds varies by species and location, but most species found in Humboldt County nest between March and August.

**Why it is important to protect bird nests during nesting season:** A bird’s nest is where a bird lays and incubates its eggs and raises its young. Nests provide a safe place for eggs and young birds to develop. It is illegal to destroy a nest that has eggs or chicks in it or if there are young birds that are still dependent on the nest for survival. It is also illegal to keep a nest taken out of a tree or found on the ground unless you have a permit issued by the USFWS.<sup>29</sup>

**Identifying Backyard Nests:** Bird nests are often camouflaged and hard to spot. They are extremely diverse, although each species typically has a characteristic nest style. Some birds do not make nests at all

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<sup>26</sup> U.S. Fish and Wildlife Service. (2017). Endangered Species Act: Overview. Retrieved from <http://www.fws.gov/endangered/laws-policies/index.html>

<sup>27</sup> U.S. Fish and Wildlife Service. (2017). Section 7 Consultation: A Brief Explanation. Retrieved from <http://www.fws.gov/midwest/endangered/section7/section7.html>

<sup>28</sup> Full text of the Migratory Bird Treaty Act can be found here: <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>

<sup>29</sup> U.S. Fish and Wildlife Service. (n.d.). Permits [Webpage]. Retrieved from <https://www.fws.gov/birds/policies-and-regulations/permits.php>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

and instead lay their eggs in a simple depression in the ground or on a branch. Other birds construct nests from natural materials, such as grass, leaves, mud, lichen, and fur, or from man-made materials like paper, plastic, and yarn. Nests can be found almost anywhere – on the ground, in trees, in burrows, on the sides of cliffs, in and on man-made structures, etc.<sup>30</sup> Signs to look for when birds are nesting include: collecting non-food materials, fixation on a spot with no food, and unusual levels of bird activity and calling.

**Avoiding nesting birds during construction and tree trimming:** Brush removal, tree trimming, building demolition, or grading activities should be conducted outside of the nesting season. If other timing restrictions make it impossible to avoid the nesting season, construction areas should be surveyed for nesting birds and active nests should be avoided. If adult birds are observed flying to and from a nest, or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest should be delayed until the nest is no longer active. When the chicks have left the nest and activity is no longer observed around the nest, it is safe to continue construction activity in the nest area, including removal of the nest.

It is a good idea to consult with a biologist to assist with the survey for nesting birds and to determine when it is safe to commence activities. Depending on the size of the area, a professional survey may only take an hour or two. If an active nest is found, one or two short follow-up surveys would be needed to check on the nest and determine when the nest is no longer active.



Green heron nest. Photo: M. Wills, *Backyard and Beyond*.

### National Historic Preservation Act (NHPA)

The National Historic Preservation Act (NHPA) requires federally funded, permitted, or implemented projects to undergo a review process that aims to preserve historic, archaeological, and cultural sites listed in the National Register of Historic Places.<sup>31</sup>

**Projects which utilize funds from a federal, state, or local agency are usually subject to Section 106 of the NHPA.** Section 106 requires the federal agency involved to consult with the Advisory Council on



Pair of American Robins preparing a nest. Photo: National Audubon.

Historic Preservation (ACHP) and the State Office of Historic Preservation to resolve or mitigate any potentially adverse effects. In addition, the federal agency must consult with the Tribal Historic Preservation Offices (THPO) of those Tribes potentially affected by the proposed project.<sup>32</sup>

Tribes that are on the National Park Service's list of participants in the National Historic Preservation Program have assumed the staffing responsibilities of the State Historic Preservation Officer with respect to tribal land. A THPO's responsibilities include identifying and maintaining inventories of

<sup>30</sup> City of Newport Beach. (2018). "Protection of Nesting Birds During Construction & Tree Trimming". Retrieved from <https://www.newportbeachca.gov/home/showdocument?id=20658>

<sup>31</sup> The National Register may be accessed here: <http://www.nps.gov/nr/research>

<sup>32</sup> National Park Service. (2012). Quick guide: National Historic Preservation Act, Section 106. [PDF]. Retrieved from <https://www.nps.gov/history/tribes/Documents/106.pdf>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

culturally significant properties, nominating properties to national and tribal Registers of Historic Places, conducting Section 106 reviews of federal agency projects on tribal lands, and conducting educational programs on the importance of preserving historic properties.<sup>33</sup>

Private landowners conducting fuel treatments should be mindful of the possibility that cultural resources exist on their property, regardless of whether or not they are receiving public funds. This is particularly true in Humboldt County, which has a rich and diverse local Native American history. Often, these sites exist without landowner knowledge, and may only be identifiable by those trained to recognize them. Several archaeological firms in Humboldt County are able to perform cultural resource surveys.

If a possible archaeological or cultural site or artifact is found, the California State Historic Preservation Office or one of the local THPOs listed below should be contacted to report the findings. If one encounters any human remains on one's property, they should not be disturbed. State Health and Safety Code Section 7050.5 prohibits any person from wantonly disturbing or willingly removing such remains without authority of law. If human remains are found, the Humboldt County coroner should be contacted by calling **(707) 445-7242**.

### Tribal Heritage Preservation Officers (THPOs) for Tribes Located Within Humboldt County

<b>BEAR RIVER BAND OF ROHNERVILLE RANCHERIA</b>	<p>Erika Cooper, M.A.                      Tribal Heritage Preservation Officer (THPO)                      266 Keisner Road                      Loleta, CA 95551                      Telephone: (707) 733-1900 ext. 233                      Fax: (707) 733-1727                      Email: <a href="mailto:erikacooper@brb-nsn.gov">erikacooper@brb-nsn.gov</a></p>
<b>BLUE LAKE RANCHERIA</b>	<p>Janet P. Eidsness, M.A.                      Tribal Heritage Preservation Officer (THPO)                      P.O. Box 428 (428 Chartin Road)                      Blue Lake, CA 95525                      Telephone: (707) 668-5101 ext. 1037                      Fax: (707) 668-4272                      Email: <a href="mailto:hjeidsness@bluelakerancheria-nsn.gov">hjeidsness@bluelakerancheria-nsn.gov</a></p>
<b>HOOPA VALLEY TRIBE</b>	<p>Keduescha Colegrove                      Tribal Heritage Preservation Officer (THPO)                      Department of Historic Preservation                      PO Box 1348                      Hoopa, CA 95546                      Telephone: (530) 625-4284 ext. 112                      Email: <a href="mailto:hvt.thpo@gmail.com">hvt.thpo@gmail.com</a></p>

<sup>33</sup> National Park Service. (2012). Quick guide: Tribal Historic Preservation Officer (THPO). [PDF]. Retrieved from <https://www.nps.gov/history/tribes/Documents/THPO.pdf>

## HUMBOLDT COUNTY COMMUNITY WILDFIRE PROTECTION PLAN, 2019

<b>KARUK TRIBE</b>	<p>Dr. Alex Watts-Tobin  Tribal Heritage Presentation Officer (THPO)  Department of Natural Resources  39051 HWY 96, P.O. Box 282  Orleans, CA 95556  Telephone: (530) 627-3446 ext. 3015  Fax: (530) 627-3448  Email: <a href="mailto:atobin@karuk.us">atobin@karuk.us</a></p>
<b>TRINIDAD RANCHERIA</b>	<p>Rachel Sundberg  Tribal Heritage Preservation Officer (THPO)  PO Box 630  Trinidad, CA 95570  Telephone: (707) 677-0211  Fax: (707) 677-3921  Email: <a href="mailto:rsundberg@trinidadrancheria.com">rsundberg@trinidadrancheria.com</a></p>
<b>WIYOT TRIBE – TABLE BLUFF RESERVATION</b>	<p>Theodore Hernandez  Cultural Director/THPO  1000 Wiyot Drive  Loleta, CA 95551  Telephone: (707) 733-5055  Fax: (707) 733-5601  Email: <a href="mailto:ted@wiyot.us">ted@wiyot.us</a></p>
<b>YUOK TRIBE</b>	<p>Frankie Myers  Tribal Heritage Preservation Officer (THPO)  HC Box 196, HWY 96  Hoopa, CA 95546  Telephone: (530) 625-4130 ext. 1629  Fax: (530) 625-4148  Email: <a href="mailto:fmyers@yuroktribe.nsn.us">fmyers@yuroktribe.nsn.us</a></p>

### Cultural and Historical Preservation Contacts

<b>CALIFORNIA OFFICE OF HISTORIC PRESERVATION</b>	<p>1725 23rd Street, Suite 100  Sacramento, CA 95816  Telephone: (916) 445-7000  Fax: (916) 445-7053  Email: <a href="mailto:calshpo@parks.ca.gov">calshpo@parks.ca.gov</a></p>
<b>CALIFORNIA STATE HISTORIC PRESERVATION OFFICER</b>	<p>Carol Roldan-Nawi, PhD  Telephone: (916) 445-7050</p>

Further information about the NHPA and the ACHP’s efforts to protect historical and cultural resources, is available on the ACHP’s National Historic Preservation Program website, accessible here: <http://www.achp.gov>.<sup>34</sup>

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<sup>34</sup> Also see: National Conference of State Historic Preservation Offices website: <http://ncshpo.org/resources/federal-historic-preservation-program>