

RESOLUTION OF THE YUROK TRIBAL COUNCIL

YUROK TRIBE MINING ORDINANCE

WHEREAS, the Yurok Tribal Council is the duly elected and authorized governing body of the Yurok Tribe, a federally recognized Indian Tribe which is eligible for all rights and privileges afforded to a federally recognized Indian Tribe and, as such, enacts this ordinance by the power and authority granted under the Yurok Tribal Constitution, Article IV, Section 5(a), which states that the Tribal Council may, inter alia, “enact legislation, rules and regulations not inconsistent with this constitution to further the objectives of the Yurok Tribe...; administer and regulate affairs, persons and transactions within Tribal Territory; and enact civil and criminal laws” and

WHEREAS, since time immemorial, the Klamath River, its tributary streams, 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 Yurok Indians have always used these resources for cultural, ceremonial, religious, fishery, seasonal residential, and other purposes fundamental to the Tribe's way of life; and

WHEREAS, 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 revenues and create employment for the Tribe and, if left unregulated, to significantly harm fundamental tribal values within the Reservation; and

WHEREAS, various sites along the Klamath River and its tributaries are contaminated with toxic or hazardous materials as a result of previous land use activities, many of them having been authorized without adequate review of impacts or adequate disclosure to the Tribe of the potential for such impacts, and the contamination at these sites may pose significant risks to the public health; and

WHEREAS, the Yurok Tribal Council has concluded that it is necessary to exercise comprehensive tribal regulatory authority over surface mining and other activities on the Reservation, including but not limited to the Klamath River riparian area and in the riparian areas of tributary creeks and streams, in order to protect fundamental tribal ceremonial, fishery, and property interests, and the public health and safety; and

WHEREAS, 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

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activities are conducted by non-members of the Tribe on privately owned lands within the Reservation; and

WHEREAS, under the Clean Water Act, 33 U. S. C. § 1377, Indian Tribes are entitled to be certified by the U. S. Environmental Protection Agency (EPA) 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; and

WHEREAS, in the past, and continuing to the present, various nonmembers of the Yurok Tribe, who own private land within the Reservation, have extracted gravel from and engaged in surface mining operations on those lands with serious adverse impacts to ceremonial and fisheries values and to water quality in the Klamath River; and

WHEREAS, the Counties of Humboldt and Del Norte lack jurisdiction to issue mining permits, because such purported jurisdiction would infringe upon the Tribe's authority to regulate such activities to insure the protection of fundamental tribal interests, and would interfere with the Yurok Tribe's relationship with federal agencies; and

THEREFORE BE IT NOW RESOLVED THAT: The Tribal Council hereby approves the attached Mining Ordinance, to take effect immediately.

BE IT FURTHER RESOLVED THAT: It shall be the policy of the Tribe and its authorized entities and departments to vigorously enforce the provisions of this Ordinance, and to resist any assertion of jurisdiction by Del Norte or Humboldt County, or by the State of California or any of its agencies, that may encroach upon tribal regulation of the matters herein.

YUROK TRIBE MINING ORDINANCE

SECTION 1. SHORT TITLE, FINDINGS, AND PURPOSE

1.1. Short Title. This Ordinance shall be known as the Yurok Tribe Mining Ordinance.

1.2 Findings. The Tribal Council hereby finds as follows:

(a) Since time immemorial, the Klamath River, its tributary streams, 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 Yurok Indians 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 revenues 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 and its 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 (EPA) 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 and/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.

1.3. Purpose. The purpose of this Ordinance is to exercise comprehensive tribal regulatory authority over surface mining and other activities by Yurok tribal members and nontribal members 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;
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 2. DEFINITIONS

2.1 *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 °.

2.2 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.

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

2.4 *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.

2.5 *Borrow Pit* means excavations created for the mining of rock, unconsolidated geologic deposits or soil which are not on-site construction as defined in this Section are considered to be surface mines unless exempted under this Ordinance.

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2.6 *Committee* means the Permit Review Committee, as established under the provisions of Section 4 hereof.

2.7 *Council* means the Yurok Tribal Council.

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

2.9 *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.

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

2.11 *Grading* means to bring an existing surface to a designed form by cutting, filling and/ or smoothing operations.

2.12 *Mined Lands* means the surface, subsurface, and ground water of an area above the mean high water mark of the Klamath River 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.

2.13 *Minerals* means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes or organic substances.

2.14 *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.

2.15 *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.

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2.16 *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.

2.17 *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.

2.18 *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.

2.19 *Permittee* means the party who obtains authorization from, or approval by, the Tribe or its entities in the form of a Tribal Permit to operate a mining operation and is considered legally responsible for the project

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

2.21 *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 reclaimed to a usable condition which is 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.

2.22 *Reclamation Plan* means the applicant's (operator's) completed and approved plan for reclaiming the lands affected by the surface mining operations conducted after enactment of this Ordinance, as required and described in this Ordinance.

2.23 *Reservation* means the Yurok Tribe Indian Reservation as it exists as of the date of enactment of this Ordinance or as it hereafter may be enlarged.

2.24 *Resoiling* means the process of artificially building or reconstructing a soil profile.

2.25 *Severance Fee*: means a tax imposed upon natural resources that are removed from the earth.

2.26 *Subsoil* means that part of the soil which is below the topsoil.

2.27 *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.

2.28 *Toxic Substance* means any organic compound, certain metal cations, certain anions, and other inorganic substances, including biostimulants, which singly, or upon combining with other

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substances, create a condition that will inhibit or destroy the growth or function of any living organism.

2.29 *Tribe* means the Yurok Tribe acting through the Tribal Council and its authorized entities and programs.

2.30 Tributaries of the Yurok Reservation are those streams, creeks, or rivers that drain the surrounding drainage basin and eventually flow into the Klamath River, either by way of another tributary or directly.

2.31 *Yurok Reservation* means all lands within the exterior boundaries of the Yurok Reservation.

SECTION 3. SCOPE

3.1 The provisions of this Ordinance shall apply to all proposed mining, extraction, excavation or mineral development activities above the mean high water mark of the Klamath River within the Reservation, subject to exemptions pursuant to paragraph 3.2 of this section, including but not limited to:

(a) surface and subsurface removal of mineral resources, overburden, rock, or soil, including quarry operations (borrow pitting) for road surfacing or other uses, unless exempted by the Committee and Council under (b) below;

(b) all prospecting activities involving removal of soil or rock material, including operations involving the reopening of existing mine pits, tunnels, or quarries;

(c) Sand and gravel operations.

(d) Any activities with potential to affect the tributaries and/or river bed or creek and/or river flow, ground or surface water quality, or fishery, cultural and ceremonial values.

3.2 Some 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:

(a) 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.

(b) 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.

(c) Certain aspects of specific projects may be exempted from certain of these regulations after review by the Permit Review Committee. Such exemptions will be granted on a rational basis pursuant to Section 4 of this Ordinance and as determined on a project by project basis.

SECTION 4. ESTABLISHMENT OF PERMIT REVIEW COMMITTEE, DUTIES, FUNCTIONS, AND AUTHORITIES

4.1 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 the Tribal Council. The Committee shall consist of representatives from the Tribe's Planning, Fisheries, Legal, Environment, Self Governance, Wildlife, and Yurok Public Utilities Departments, Tribal Heritage Preservation Officer and a representative from the Yurok Tribal Council. The Permit Review Committee shall endeavor to make decisions by consensus, and shall notify the Council in those instances where its recommendations are made on a basis other than consensus of the Committee.

4.2 The Committee has authority to specify terms, including but not limited to, fees, monitoring, compliance and record keeping requirements which shall be adhered to by all permitted operators.

4.3 The Committee shall administer mining and mineral development permits and review procedures, as set forth in this Ordinance.

4.4 The Committee shall conduct, or cause to be conducted, assessment(s) of any surface mining activity within the Reservation to determine its potential to affect, at a minimum, the creek and/or river beds, creek and/or river flows, fishery values, water quality, air quality, and 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 5 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, excepting that when the provisions of this ordinance are more restrictive than federal provisions, this ordinance shall prevail.

SECTION 6. PERMIT REQUIREMENTS

6.1 Any person who proposes to engage in surface mining operations as defined in this Ordinance shall, prior to the commencement of such operations:

(a) Apply for and obtain a valid permit from the Tribal Council, subject to the review and recommendations of the Committee;

(b) Obtain approval of a Mining and Reclamation Plan, in accordance with the provisions set forth in this Ordinance.

(c) Severance Fees, as established by a fee schedule approved by Council, for the permitted uses shall be paid to the Tribe at the time of filing and quarterly. In addition, the permittee shall be responsible for payment of all costs incurred by the Tribe, its agents and representatives for the issuances and administration of a permit, including reviews, costs associated with permitting, monitoring, inspection, review and any other activities necessary to permit or administer the project. The applicant may be required to make a deposit in addition to bonding and permit fees to cover increases in estimated costs over the lifetime of the project.

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

(e) Permit applications, any required environmental documents, and Mining and Reclamation Plan proposals must demonstrate compliance with applicable Tribal 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.

(f) The applicant is responsible for compliance with applicable federal permit requirements and regulations.

(g) The applicant shall be responsible for compliance with all other permits which may be applicable (i.e. Encroachment permits for County or State Roadways).

SECTION 7. MINING and RECLAMATION PLAN PURPOSE

7.1 The basic purpose and objectives of this Ordinance are to ensure protection of fundamental tribal interests in the creek and river beds, creek 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.

7.2 New mining operations offer the greatest opportunity for planning and 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 8 of this Ordinance.

SECTION 8. MINING and RECLAMATION PLAN REQUIREMENTS

8.1 The applicant shall be responsible for preparing and submitting to the Committee a Mining and Reclamation Plan which, as 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 and Council.

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8.2 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:

- (a) The size and area of the proposed mined lands;
- (b) The complexity of the operation and the manner and degree to which the mines are disturbed;
- (c) The site potential for mineral and other uses;
- (d) 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;
- (e) 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;
- (f) 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:
 - (i) likelihood of direct contact with or exposure to safety hazards or toxic substances;
 - (ii) potential for contamination of drinking water by toxic substances, due to groundwater or surface water contamination;
 - (iii) potential for public exposure to toxic substances in dust from ore pilings, tailings, waste piles, 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.
- (g) The potential for impacts to the creek and/or river beds, creek and/or river flows, ground and surface water quality, fishery values, and ceremonial and cultural values and uses.

8.3 The longevity of mining operations varies greatly. In some operations the reclaiming of mined areas will be undertaken concurrently with the mining of adjoining lands, whereas in many operations much of the reclamation can be effected only after the mining is completed. In those cases where concurrent reclamation is possible, the Committee shall require:

- (a) a time table for commencing such operations;
- (b) periodic submittal of updated progress reports for concurrent reclamation operations.

8.4 The operator shall, in the Mining and Reclamation Plan, propose what the end condition of the site will be, and propose 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.

8.5 Instructions for preparation of Mining and Reclamation Plans and Reclamation Plan Forms shall be provided by the Committee.

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8.6. The operator shall provide an initial assessment as to the type, character, and composition of the minerals being removed. As a minimum the site soils shall be tested for asbestos content.

SECTION 9. REVIEW PROCEDURE

9.1 Upon submission of a pre-project evaluation form, the Committee shall review project. If the project site is within the external boundaries of the Yurok Reservation the Committee will perform an initial field review (Review Process detailed in Figure 1). If the project appears feasible, the Committee will request that a full application and a non-refundable application fee of \$15,000 plus costs be submitted to the Planning Department. The Committee shall review the permit application and the Mining and Reclamation Plan and Tribal Departments shall perform a feasibility study to be submitted to the Committee for review.

9.2 Upon completion of review, 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.

9.3 Following the 30-day public comment period, Council shall review the application and issue its decision to conditionally approve or deny the application. If conditionally approved, the applicant will pay permit fees and environmental review fees specified by the Committee. Following the completion of the environmental review process, the Committee will review all reports and make their recommendations to Council, which shall make a final decision to approve or deny the permit.

9.4 If a permit is issued by Council, applicant shall be responsible for payment of a performance bond and quarterly severance fees. Applicant shall reimburse the Tribe for all costs associated with initial and quarterly topographic surveys to assess quantity of material removed.

9.5 As a condition of approval for a Permit and Mining and Reclamation Plan, a schedule for periodic inspections of the site shall be established to evaluate continuing compliance with the Permit and Mining and Reclamation Plan, and applicable regulations. The Committee may, however, conduct or cause to be conducted unannounced spot checks pursuant to the provisions of Section 11 of this Ordinance.

SECTION 10. PERFORMANCE BOND

Upon a finding by the Committee that a supplemental guarantee for the reclamation of the mined land 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 Plan¹.

SECTION 11. TERO FEES

All projects will be subject to the Tribe's TERO fees.

SECTION 12. MINING AND RECLAMATION PRACTICES

12.1 Soil Erosion Control. The following subsections set forth minimum acceptable practices to be followed in mining and reclamation operations:

(a) 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.

(b) 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.

(c) Erosion control facilities such as retarding basins, settling ponds, ditches, streambank stabilization, and diking shall be constructed and maintained where necessary to control erosion.

(d) 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.

12.2 Water Quality and Watershed Control

(a) A method of compliance with the United States Environmental Protection Agency, Tribal, and other applicable regulations and requirements is hereby incorporated into the review process under this Ordinance.

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

(b) 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.

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

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

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

12.3 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 streams and other drainage channels.

12.4 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 the creek and/or river channels and creek and/or river flows. The Committee and Fisheries Departments shall prescribe measures as deemed necessary to better protect such resources.

12.5 Disposal of Mine Waste Rock and Overburden

(a) 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

(b) 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 not threaten life or property. Where seismic and or water saturation can adversely alter slope stability a qualified professional shall determine final slope requirements. See Section 12.

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

(d) Toxic material shall be removed and shall be protected to prevent leaching until it is removed.

(e).

12.6 Soil Salvage

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

(b) 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.

(c) 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.

(d) 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.

(e) 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.

12.7 Final Slope Gradient

(a) 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.

(b) 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.

12.8 Backfilling and Grading

(a) 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.

(b) 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 (CBC).

12.9 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 13. AUTHORITY TO ENTER AND INSPECT PREMISES AND RECORDS

13.1 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 on any lands within the exterior boundaries of the Reservation. Such inspection may include:

- (a) Obtaining samples or soil, rock, vegetation, air, water, or other substances deemed necessary;
- (b) Setting up and maintaining monitoring equipment for the purpose of assessing compliance with applicable regulations, or health or safety hazards.
- (c) Photographing any equipment, sample, activity, or environmental condition, provided that:
 - (i) the Committee shall notify the person whose operation was photographed prior to public disclosure of such photographs;
 - (ii) upon request of that person, the Tribal representative shall allow such person to inspect any such photograph prior to public disclosure to determine whether trade secret information would be revealed by the photograph.
- (d) Reviewing and obtaining copies of required records.

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13.2 The Committee or Tribal Council are authorized to obtain from the Tribal Court a warrant for such entry and inspection if necessary.

SECTION 14 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 15. ENFORCEMENT

The Committee shall assign staff to monitor project compliance. If 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.

SECTION 16. APPEALS AND JUDICIAL REVIEW

16.1 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.

16.2 Any person who has exhausted his/her/its administrative remedies may seek judicial review of an order or decision by the Committee/Tribal Council pursuant the rules of the Tribal Court, and the Yurok Tribe specifically waives it 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 members, the Tribal Council, or the Yurok Tribe as a result of any act or omission pursuant to this Ordinance. The Court shall sustain the decision of the Committee/Tribal Council if based on substantial evidence in the record before the Review Committee/Tribal Council. The 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 reclamation plan terms and conditions. The Court may also order the impoundment of equipment used in persistent or serious violation of the requirements of this Ordinance.

SECTION 17. SEVERABILITY

| [Type text]

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 18. 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 19. 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 agreement shall be adjudicated in the Yurok Tribal Court.

| [Type text]

Full Review Feasibility Study Fees

Consultant: \$6,500
Indirect: \$2,500
Committee: \$8,500

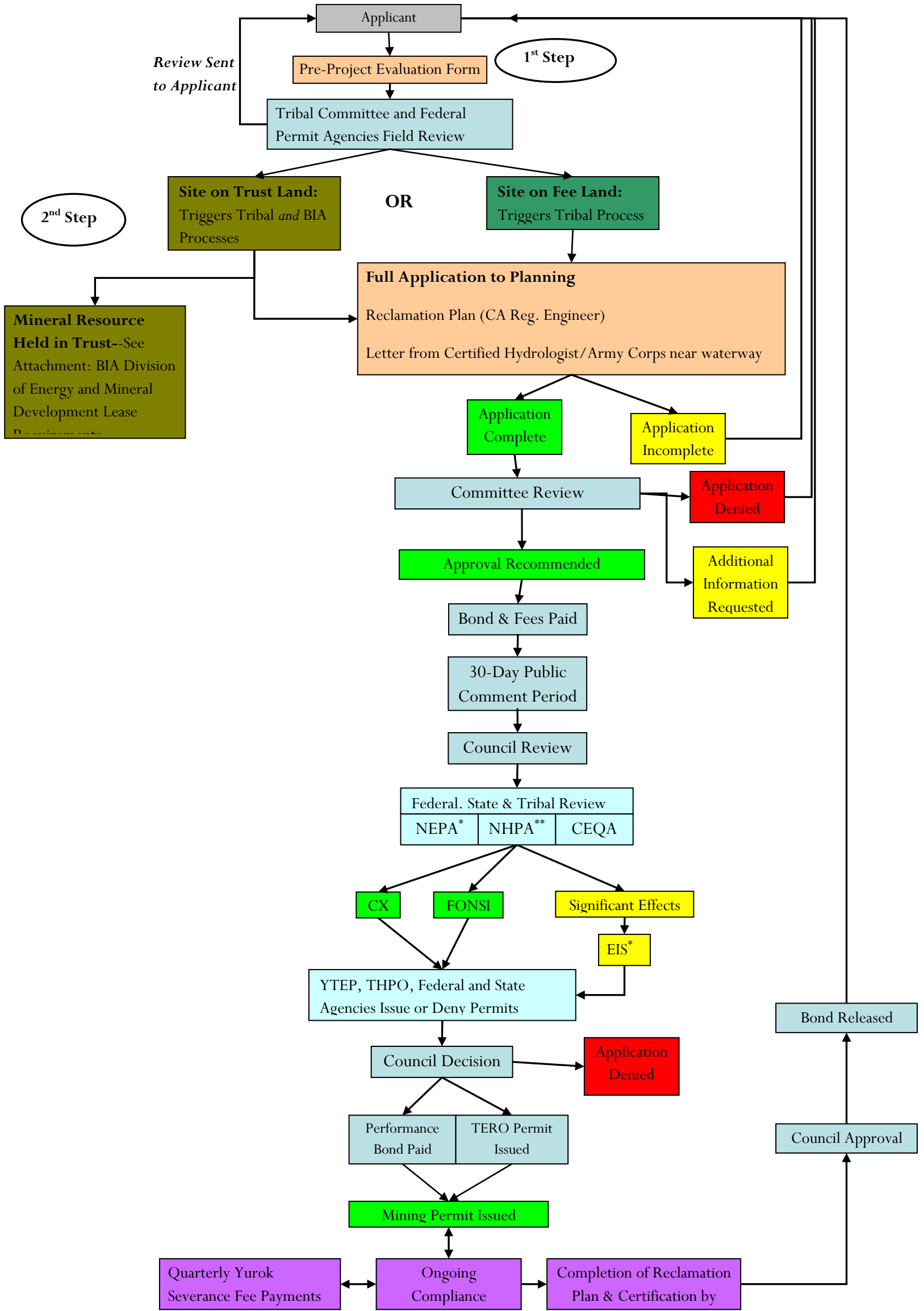
Full Review Committee Fee Breakdown

Planning \$2,800
YTEP \$1,000
Fisheries \$1,000
Forestry \$1,000
YPUD-Roads \$1,000
Self Governance \$ 500
Wildlife \$1,000
THPO \$ 200
\$8,500

Mini Review Committee Fee Breakdown

Planning \$800
YTEP \$500
Fisheries \$500
Forestry \$500
YPUD-Roads \$500
Wildlife \$500
THPO \$200
\$3,500

Diagram 1. Permit and Review Processes



*See Diagram 2, NEPA Process

**See Diagram 3, NHPA Process

Digram 3. NHPA Process

NHPA PROCESS

