

WILDLAND FIRE TRAINING MEMORANDUM OF UNDERSTANDING
Between
THE NATURE CONSERVANCY
And
THE YUOK TRIBE

This is a Wildland Fire Training Memorandum of Understanding ("MOU") between The Nature Conservancy, hereinafter referred to as the "Conservancy", and The Yurok Tribe, hereinafter referred to as the "Tribe". This agreement is to facilitate cooperation of the two parties in wildland fire training. The Tribe and the Conservancy shall be referred to individually hereinafter as a "Party" and collectively as the "Parties".

WHEREAS, the Conservancy's and the Tribe wish to cooperate in wildland training activities to be held on dates mutually agreeable to the Parties, including a training event on May 24-June 4, 2014, which training[s] shall include prescribed burns to be conducted on property owned by the Tribe and private land within the exterior boundary of the Yurok Reservation in Humboldt County, California ([collectively,] the "Training");

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

1. The Tribe agrees to permit prescribed burns to take place on property owned or managed by the Tribe in association with the Training. The Conservancy shall prepare the prescribed burn plan (the "Burn Plan"). Both the Conservancy and the Tribe will provide qualified crewmembers, trainee crew members and equipment. The crewmembers and trainee crewmembers may also include individuals from other agencies and organizations who are participating in the Training.

2. The Burn Boss will be an employee or delegated designee of the Conservancy or an independent contractor hired by the Conservancy (the "Lead Party"). A Chief-of-Party shall be designated for overseeing the other Party's employees and equipment (the "Assisting Party"). The Chief-of-Party shall work closely with the Lead Party. Members of the Assisting Party's crew shall follow instructions of the Burn Boss when implementing this MOU, provided, however, that if the Chief-of-Party determines that the proposed burn is unsafe or has serious concerns about the advisability of burning, and is unable to reach a satisfactory agreement with the Burn Boss to rectify the situation, he or she retains the option of refusing the assignment. Individual crewmembers of the Assisting Party shall have the right to refuse assignments or directives during a burn that they deem to be unsafe. Such individuals shall report their safety concerns to the Chief-of-Party.

3. The Assisting Party shall be responsible for consulting with local fire districts, air quality departments, and sheriff offices, for getting necessary permits, licenses, and authorizations (including but not limited to obtaining any necessary governmental burn permits, air quality permits, and other required authorizations at its own expense), for obtaining access, and for serving as the principal point of contact with third parties. The Lead Party shall also be responsible for obtaining written permission to burn and waivers of liability from third-party landowners. Release of liability against the Conservancy shall be included on all third-party landowner waiver forms when the Conservancy is assisting the Tribe on a prescribed burn; where time does not allow the Conservancy to specifically be named, the Conservancy shall be included on third-party waiver forms through a catch-all provision releasing other cooperators from liability.

4. Unless expressly agreed to in a written addendum to this MOU, each Party shall pay all salaries and benefits to its own employees and shall cover the costs of operation and maintenance of its own equipment, and there shall be no exchange of funds for the obligations described herein.

5. On behalf of itself, its officers, directors, members, employees, volunteers, agents, and representatives, each Party agrees that it shall be responsible for its own acts and omissions and the results thereof and that it shall not be responsible for the acts or omissions of the other Party, or those of the employees of other organizations or agencies participating in the Training, nor the results thereof. Each Party therefore agrees that it will assume the risk and liability to itself, its agents, employees, and volunteers for any injury to or death of persons or loss or destruction of property resulting in any manner from the conduct of the Party's own operations and/or the operations of its agents, employees, and/or volunteers under this MOU. Each Party further releases and waives all claims against the other Party for compensation for any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the performance of this MOU, except to the extent caused by the gross negligence or willful misconduct of the other Party, provided, however, that either Party may agree to voluntarily compensate the other for damage to equipment in accordance with Paragraph 8 below. Notwithstanding the foregoing, the Conservancy shall be entitled to any and all applicable protections afforded under local, state, and/or federal law relating to the fire management activities conducted hereunder, either directly or indirectly through its assistance of the Tribe, or any government agency.

6. Unless otherwise expressly provided by law, personnel or volunteers of one Party shall not be considered to be agents or employees of the other Party for any purpose, and no joint venture or principal-agent relationship shall be deemed to exist. Each Party shall carry appropriate workers compensation coverage for its employees participating in fire management activities under this MOU.

7. The Parties to this MOU appoint the following Project Officers for implementation of this MOU:

The Conservancy:

Name: Jeremy Bailey
Address: 559 E. South Temple
Salt Lake City, UT 84102
Phone: (801) 599-1394

The Tribe:

Name: Susan Masten / Jim Erlen
Address: 190 Klamath Blvd.
Klamath, CA 95548
Phone: 707-482-1350

8. In the event of injury to any participants, the Burn Boss or Incident Commander, as appropriate, shall provide or arrange for immediate medical treatment of any injuries incurred at the scene. Serious accident investigations (including but not limited to escaped prescribed fire, and accidents involving hospitalization or fatalities) will be undertaken at the discretion of either Party. All Parties will cooperate in any such investigation. In the event that either Party's equipment is excessively damaged (i.e., in excess of \$1000.00) or destroyed, an investigation shall be conducted in accordance with the Lead Party's policy and procedures. The investigation will produce a recommendation for reimbursement, replacement, or repair. The Project Officers shall communicate promptly regarding any injury to personnel or damage to equipment and documentation shall be provided as requested.

9. This MOU shall be effective from signature date by both Parties and, unless terminated earlier shall continue in effect until December 31, 2014. This MOU supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire agreement between the Parties relating to the work set out above. No amendment shall be effective except in writing signed by all Parties. Any party may withdraw from this MOU thirty days following written notification to all the other Parties.

10. This MOU shall be interpreted, construed and governed by the laws of California and such laws of the United States as may be applicable. In the event of any litigation over the interpretation or application of any of the terms or provisions of this MOU, the Parties agree that litigation shall be conducted in the State of California.

11. If any provision of this MOU is held invalid by a court of competent jurisdiction, the other provisions shall not be deemed invalid as a result, and the Parties shall revise this MOU as necessary consistent with the intent of the Parties. Any recital or preliminary statement in this MOU and all Exhibits referred to in this MOU are an integral part of this MOU and are incorporated by reference into this MOU.

12. This MOU may be executed in counterparts, each of which when executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this MOU, effective as of the last date written below.

THE YUOK TRIBE

By: 

Print Name: Susan Masten

Its: Vice Chair, Yurok Tribe

Date: 5-20-14

THE NATURE CONSERVANCY

By: 

Print Name: Lynn M. Decker

Its: N. America Fire Learning Network Dir.

Date: May 22, 2014