

# Cultural Burn Agreements – Senate Bill 310

## Frequently Asked Questions

### **What is Cultural Burning?**

“Cultural burn” or “cultural burning” means the “intentional application of fire to land by a California Native American tribe, a tribal organization, or a cultural fire practitioner to achieve cultural goals or objectives, including for sustenance, ceremonial activities, biodiversity, or other benefits.” (California Public Resources Code § 4002.4)

### **What is a Cultural Fire Practitioner?**

“Cultural fire practitioner” means a person recognized by a California Native American tribe or tribal organization as having substantial experience in burning to meet cultural goals or objectives, including for sustenance, ceremonial activities, biodiversity, or other benefits. (California Public Resources Code § 4002.6).

### **What is Senate Bill 310 and What Does It Do?**

[Senate Bill 310](#) (SB 310) (Dodd, Stats. 2024, ch. 666) was authored by Senator Dodd and signed by Governor Newsom in September 2024, with an effective date of January 1, 2025. This law reaffirms California’s commitment to addressing historical wrongs and partnering with federally recognized California Native American tribes to advance beneficial fire as a critical tool to meet fuel management and wildfire resilience goals of the state.

This law further authorizes the Secretary for the California Natural Resources Agency (CNRA) and local air districts to enter into cultural burning agreements in lieu of certain permits:

- CNRA may enter into written agreements with federally recognized California Native American tribes with respect to cultural burning in their ancestral territories. Burns conducted under a tribal CNRA agreement may not need to comply with the state permitting or regulatory requirements for private burning of lands under permit (California Public Resources Code, §§4491-4494) (“burn permit”) or the burn plan requirement for the Prescribed Fire Liability Pilot Program (California Public Resources Code §4500 (e)) (“burn plan”).
- Local air districts may also enter into written agreements with federally recognized California Native American tribes with respect to cultural burning in their ancestral territories. Burns conducted under tribal local air district agreements may not need to comply with certain permits, regulatory, or other administrative requirements. The

Secretary for the California Environmental Protection Agency shall assist in resolving any disagreements between local air districts and tribes.

It is important to note that this new law authorizes two potential agreement processes: one with CNRA and one with local air districts. Tribes who want agreements with both CNRA and their local air district(s) will need at least two separate agreements, as the process for entering into and implementing these agreements will be different. In instances where a tribe's ancestral territory spans multiple air districts, the tribe would need to establish a separate agreement with each relevant district.

A cultural burn conducted within the parameters of an agreement under this new law will meet the intent of burn permit requirements. Further, an individual following the terms of an agreement will not be liable for any fire suppression or certain other state costs resulting from a cultural burn absent a finding of gross negligence as long as the cultural burn meets certain conditions.<sup>1</sup> (See California Civil Code §3333.8, subd. (b)). A person may still be liable for fire suppression or other costs otherwise recoverable pursuant to California Health and Safety Code section 13009 or 13009.1 if that person's conduct constitutes gross negligence. The law does not affect the ability of a private or public entity to bring a civil action against any defendant, including for third party damages. (California Civil Code, § 3333.8, subd. (d) and (e).)

### **Why is This New Law Needed?**

California is facing an unprecedented and growing forest and wildfire crisis. Decades of fire exclusion, coupled with the increasing impacts of climate change, have dramatically increased wildfires' size and intensity throughout the state. Further, the California of today was built on a series of historical wrongs against California Native American tribes and people, including forced removal of tribal communities from their lands and the criminalizing of cultural burning.<sup>2</sup> To address

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<sup>1</sup> The following conditions must be met:

- (1) the purpose of the burn is for wildland fire hazard reduction, ecological maintenance and restoration, cultural burning, silviculture, or agriculture;
- (2) a burn boss has reviewed and approved a written prescription for the burn that includes adequate risk mitigation measures;
- (3) the burn is conducted in compliance with the written prescription;
- (4) the burn is authorized pursuant to the Public Resources Code, §§ 4411 et seq., 4461 et seq.;
- (5) the burner has a landowner's written permission or the approval of the governing body of a California Native American tribe to burn; and
- (6) the burn is conducted in compliance with any air quality permit required under the Health and Safety Code, §§ 41850, et seq.

Cultural burns are exempt from the requirements that "a person certified as a burn boss review and approve a written prescription and that the burn be conducted in compliance with the written prescription." (#2 and 3 above).

<sup>2</sup> Kimberly Johnston-Dodds, Early California Laws and Policies Related to California Indians, 23 (California Research Bureau, California State Library 2002), available at [https://www.csus.edu/college/education/engagement/\\_internal/\\_documents/indian\\_early\\_california\\_laws\\_and\\_policies\\_related\\_to\\_california\\_indians.pdf](https://www.csus.edu/college/education/engagement/_internal/_documents/indian_early_california_laws_and_policies_related_to_california_indians.pdf).

these historical wrongs and prepare for a changing climate, California needs to be proactive and partner with tribes to advance cultural fire across the landscape.<sup>3</sup>

Cultural fire regimes were likely responsible for a significant portion of this acreage. They burned—and continue to burn—for a variety of reasons, including recycling nutrients, manage plant and wildlife habitat, provide community protection, control insects and disease, and engage in cultural and spiritual practices. With colonization, many of these practices were significantly reduced or eliminated, fundamentally altering fire scope and intensity across the state.

The California Wildfire & Forest Resilience Task Force has developed *California's Strategic Plan for Expanding the Use of Beneficial Fire* and has identified partnering with tribes for the application of cultural fire as a critical component to California's resiliency efforts. To learn more, please visit the Task Force's website at <https://wildfiredtaskforce.org/> and read the *California's Strategic Plan for Expanding the Use of Beneficial Fire* at [https://wildfiredtaskforce.org/wp-content/uploads/2022/12/RXFireStrategicPlan2021\\_2-1.pdf](https://wildfiredtaskforce.org/wp-content/uploads/2022/12/RXFireStrategicPlan2021_2-1.pdf).

To address the long history of suppressing cultural fire practices and to respect the inherent sovereignty of tribes, this law works to shift the tribal state relationship towards collaborative government-to-government partnership. Cultural burn agreements are a helpful tool in respecting tribal sovereignty and partnering with California Native American tribes to utilize cultural fire as a necessary tool to address wildfires.

### **Does Cultural Burning Raise Concerns about Wildfire Smoke and Public Health?**

Wildfires and the smoke caused by these fires contribute to impaired air quality for communities living near or downwind of fires. Smoke carries increased particulate matter (PM), which is a regulated air pollutant with ambient air quality standards defined at the federal and state level. This impaired air quality has compounded impacts on underserved communities and California Native American tribes, who are also grappling with other air pollutants and public health considerations.

Cultural fires are one solution to address the increasing intensity of wildfires and their resulting smoke and myriad public and environmental health impacts. However, even well-coordinated burns can produce short-term increases in smoke and temporarily impair local air quality, potentially affecting public health. Maintaining close communication, carefully planning burn activities, and raising public awareness are critical steps to ensure that cultural and other beneficial fires can be used effectively across California while minimizing health impacts.

### **Are all Cultural Fire Practitioners Covered by this Law?**

No. Cultural fire practitioners are only covered by this law if they have been designated by a federally recognized California Native American tribe as a cultural fire practitioner and that federally recognized tribe has a signed written agreement with CNRA and/or a local air district.

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<sup>3</sup> Governor Gavin Newsom Apology to California Native Americans, Executive Order N-15-19, available at <https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf>.

Cultural fire practitioners not covered by a cultural burn agreement with CNRA and/or the local air districts are not explicitly exempt from CAL FIRE and local air district permitting processes. Non-federally recognized tribes and cultural fire practitioners can conduct cultural burns using CAL FIRE and local air district standards and permitting processes. To learn more, please visit the following websites:

- CAL FIRE burn permits – <https://burnpermit.fire.ca.gov/>
- Each local air district has its own burn permits. Please visit your local air district’s website for their specific burn permit information at <https://ww2.arb.ca.gov/california-air-districts>

### **Which Type of California Native American Tribe can Enter into a Cultural Burn Agreement?**

Only federally recognized California Native American tribes can enter into a cultural burn agreement pursuant to California Public Resources Code section 4505 (Senate Bill 310 (Dodd 2024)). Federally recognized means the tribe has been added to the Bureau of Indian Affairs (BIA) list in the federal register, which is updated annually. Due to the complexities of tribal, federal, and state jurisdiction and federal Indian law precedence, the new law only authorizes CNRA and local air districts to enter into Senate Bill 310 cultural burn agreements with federally recognized California Native American tribes.

CNRA and the local air districts are committed to working closely with non-federally recognized tribes and their cultural burn practitioners to advance beneficial cultural fire across California. We warmly welcome the opportunity to partner with all California Native American tribes on cultural burns. For more information, please visit the following websites:

- CAL FIRE burn permits – <https://burnpermit.fire.ca.gov/>
- Each local air district has its own burn permits. Please visit your local air district’s website for their specific burn permit information at <https://ww2.arb.ca.gov/california-air-districts>

### **What Lands can be Burned Under These Agreements?**

Senate Bill 310 cultural burn agreements are required to identify the area where cultural burning under the agreement may occur, which must be within the federally recognized California Native American tribe’s ancestral territory. Nothing in Senate Bill 310 provides authorization to enter or burn property without the permission of the landowner.

It is best practice to get written permission or a request from landowners before burning on their property. This will ensure transparency and ease of coordination between the cultural burn practitioner and the landowner.

### **Can State Lands Be Burned Under These Agreements?**

Not automatically. Permission for cultural burn practitioners to burn on state lands could be accomplished under a separate process with the state department with authority over the lands. It

should not be assumed that having a cultural burn agreement with CNRA equates to authority to burn on state owned lands. CNRA can be available to help coordinate with the appropriate state department(s).

### **What Should be Included in a Cultural Burn Agreement?**

Cultural burn agreements are a collaborative process built between a tribe and CNRA and/or local air districts. The new law requires the tribal party to the agreement to provide “a clear description of the area covered by the agreement and an attestation that the area is within the boundaries of the tribe’s ancestral territory.” (California Public Resources Code §4505, subd. (g)).

CNRA will have required language for some sections in all agreements to ensure communication and public safety. These sections must include, but are not limited to:

- Description of how the tribe will designate cultural fire practitioners and the documentation the tribe will maintain.
- The notification processes the tribe will follow, including, but not limited to; (1) before lighting a burn, (2) in the event of an emergency, (3) report out of number of burns completed under the agreement.
- Other standard agreement terms, including but not limited to, amendments, disputes, termination, and non-fund obligation.

### **What Should be Included in a Cultural Burn Agreement with Local Air Districts?**

Local air districts agreements may have requirements specific to their jurisdictions to ensure communication and public health and safety. Please coordinate directly with your local air district to learn more.

### **How does Senate Bill 310 Interact with the Prescribed Fire Claims Fund Pilot?**

The Prescribed Fire Claims Fund Pilot is administered by CAL FIRE and currently has \$20 million allocated to cover losses in the rare instance that a prescribed or cultural burn escapes control, providing up to \$2 million in coverage for damage claims resulting from prescribed fire projects. The fund is meant to demonstrate that carefully planned, resourced, and implemented beneficial fire is a low-risk land management tool to mitigate high-severity wildfires and promote healthy and resilient landscapes.

Senate Bill 310 does not amend any provision of the Prescribed Fire Claims Fund Pilot. However, the two are related since “cultural fire practitioners” are eligible to enroll in the Prescribed Fire Claims Fund. If a cultural fire practitioner that acted pursuant to a cultural burn agreement seeks access to the Prescribed Fire Claims Fund, the relevant agreement is an appropriate substitute for certain burn plan approval and permit requirements as enumerated in the agreement. These

cultural burn practitioners are still required to follow all the other requirements to enroll in and access funds from the Prescribed Fire Claims Fund Pilot.

More information on the Prescribed Fire Claims Fund Pilot can be found at <https://wildfiretaskforce.org/prescribed-fire-liability-claims-fund-pilot/> and <https://experience.arcgis.com/experience/84e096e452b545baa75450e3401b2616>.

### **Does This Law Have a Sunset Clause?**

Yes. Unless reauthorized by the California Legislature and signed by the California Governor, this law will no longer be in effect after January 1, 2030. Any agreement entered into before January 1, 2030 will be no longer in effect if the law is not reauthorized.

### **What is the California Natural Resources Agency (CNRA)?**

The California Natural Resources Agency oversees and supports more than 26 distinct departments, conservancies, and commissions. Our Agency Executive Team leads efforts to steward California's natural environment and to advance Governor Newsom's key priorities.

Over 21,000 Californians work within our Agency all across the state to meet our mission "to restore, protect and manage the state's natural, historical and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration, and respect for all the communities and interests involved."

To learn more, please visit this website: [California Natural Resources Agency](#)

### **What is California Department of Forestry and Fire Protection (CAL FIRE)?**

The mission of the California Department of Forestry and Fire Protection (CAL FIRE) is to serve and safeguard the people and protect the property and resources of California. CAL FIRE organizationally reports to the California Natural Resources Agency (CNRA).

CAL FIRE is an emergency response and resource protection Department comprised of more than 12,000 permanent and seasonal employees and thousands of other affiliates responsible for protecting over 31 million acres of California's privately-owned wildlands. CAL FIRE also provides varied emergency services in 36 of the State's 58 counties via contracts with local governments.

CAL FIRE's 2019 Strategic Plan, posted internally and externally, reiterates the Department's priorities, focus, energy, and resources. CAL FIRE's vision is to be the leader in providing fire prevention and protection, emergency response, and enhancement of natural resources systems.

To learn more please visit this website: <https://www.fire.ca.gov/>

### **What is the California Air Resources Control Board (CARB)?**

The California Air Resources Board (CARB) is a state agency charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change. From requirements for clean cars and fuels to adopting innovative solutions to reduce greenhouse gas emissions, California has been at the forefront of a range of effective approaches that have set the standard for effective air and climate programs. Other jurisdictions have utilized California's approach.

CARB's mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. CARB is the lead agency for climate change programs and oversees all air pollution control efforts in California to attain and maintain health-based air quality standards.

To learn more please visit this website: <https://ww2.arb.ca.gov/>

### **What are the Local Air Districts?**

California has 35 local air districts who partner with CARB to develop, implement, and enforce strategies to comply with federal and state Clean Air Act requirements. Local air districts are responsible for protecting public health through regional air quality planning, monitoring, and stationary source and facility permitting. They also implement smoke management programs to help minimize the impacts of prescribed and agricultural burning. In addition, the districts administer air quality improvement grant programs and are CARB's primary partners in efforts to ensure that all Californians breathe clean air.

Local air districts provide expertise and knowledge of local conditions and needs to address local and regional air pollution. They are independent local agencies with their own authorities and laws and are governed by boards consisting primarily of elected officials, and are staffed by engineers, planners, attorneys, inspectors, meteorologists, chemists, and technicians.

To learn more and locate your local air district, please visit this website: <https://ww2.arb.ca.gov/california-air-districts>

### **Have Additional Questions?**

Please email us at [tribalaffairs@resources.ca.gov](mailto:tribalaffairs@resources.ca.gov) or check out our website at <https://resources.ca.gov/Cultural-Burn-Agreements>.