



Legal Framework of Open Burning in Mendocino County

FOR MENDOCINO AIR QUALITY MANAGEMENT DISTRICT



CLERE

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Introduction

Ongoing droughts, a century of fire suppression, widespread tree mortality due to insect attacks and disease outbreaks, and a changing climate have led to significant changes to the landscapes across California. Even though California received record-breaking rains during the winters of 2016-2017 and 2018-2019, the effects of five consecutive years of drought (2010-2015), an increase in bark beetle populations, and warming temperatures have led to continued die-off. Forests in the southern Sierra were decimated in 2015 and 2016, tree die-off is continuing to move north and to higher elevations.

Aerial detection surveys of California forestlands taken by the U.S. Forest Service have revealed high tree mortality. Based on the surveys, as of January of 2019 an estimated 147 million standing dead trees in the state have been killed by drought, bark beetles, wildfire, and other damaging agents. Removing and utilizing as many dead trees as practically and economically possible is a high priority given the public safety hazard posed by dead trees close to infrastructure like roads, powerlines, buildings, etc.; wildfire hazard; and to re-establish resilient forests. As of late 2018, a total of one million trees had been removed; less than one percent of the total dead inventory.

Consequently, the risk of wildfire has continued to rise in the face of overcrowded stands and accumulating fuel loads. In 2017, California first experienced the cost of limited forest management destroying more structures than the previous nine years combined. Following the shock of the 2017 wildfire season, California then became victim to what CAL FIRE has named the deadliest and most destructive wildfire season on record totaling just under 1.7 million acres burned. The Department of Interior released a statement from a USGS staff calculations on California's 2018 wildfires, where they equate carbon emissions from the wildfires alone were equal to the annual greenhouse gas (GHG) emissions produced by supplying power to the entire state for a year.¹

Ultimately, the continued occurrence of large, high intensity wildfires borne out of tree mortality, fire suppression and climate change could push California away from current state mandates to become carbon neutral by 2040. Both Governors Brown's and Newsom's issuance of relevant proclamations and executive orders, the passage of several new pieces of legislation in the past two years, CAL FIRE drafting and implementing its "45 day report" which prioritizes 35 fuel reduction projects, and the staffing of the Forest Management Task Force by the California Natural Resources Agency reflect serious state support for a concerted response to this real threat.

In 2018 the Mendocino Complex Fire was the largest recorded fire complex in California history at the time. It was a large complex comprised of two wildfires, the River Fire and Ranch Fire, which burned in the Mendocino County AQMD area. These fires combined for a total of 459,123 acres (1,858 km²), before they were 100% contained on

¹ <https://www.doi.gov/pressreleases/new-analysis-shows-2018-california-wildfires-emitted-much-carbon-dioxide-entire-years>

September 18, 2018. The fires collectively destroyed 280 structures while damaging 37 others; causing at least \$267 million (2018 USD) in damages, including \$56 million in insured property damage and \$201 million (2018 USD) in fire suppression costs.² Currently there are active “Firewise” community efforts underway through the Mendocino County Community Wildfire Protection Plan managed by the Mendocino County Fire Safe Council.³ However, in August 2020, a dry lightning storm ignited the largest wildfire in California’s recorded history burning a total of 1,032,648 acres before it was extinguished in November. Called the August Complex fire, the wildfire was an amalgam of 38 wildfires and largely burned in the Mendocino National Forest with portions spilling over to nearby National Forests. Due to the remote location of the fire, there were no civilian fatalities although 935 structures were reported destroyed. The total suppression costs are still being calculated but estimates surpass \$319 million. Mendocino County’s rugged terrain, remote location and high severity wildfire risk landscapes make the County highly susceptible to continued wildfire threat. The State has approved funding for several large scale fuel reduction projects with the approval of California Climate Investments (CCI) grants to reduce fuels, remove dead trees from high wildfire threat areas, and employ biomass diversion strategies, as well as replant seedlings in the affected areas.

Among the projects are CAL FIRE’s Priority Fuel Break Communities, the Willits Brooktrails Shaded Fuel Break. Another project, the Cal Fire (Ukiah) Westside Project goals include: to create and maintain shaded fuel breaks along existing roads, and fire breaks along ridges of the west hills to provide access and assist in fire control, and reduce the hazardous fuel load with controlled burning managed through a vegetation management program (VMP). Other projects aim to implement a recovery program to remove dead or dying trees on private property. The Applied Innovative Forest Health Strategies on Post-Fire Landscapes project operated by the Mendocino Resource Conservation District (MCRCD) is the largest recipient of funds. The MCRCD is considering the use of new mobile biomass utilization generators to handle the removal of dead and dying trees on private property that convert the biomass waste to electricity, thermal energy and biochar. Combined, these projects have invested over \$3.1 million into forest health and fire prevention projects to create a more resilient Mendocino County.

The Mendocino County Air Quality Management District (District) has been in place for over 50 years with the purpose of maintaining air quality within its District. Smoke management is a key part of this work. Recently, the District has been following several forest fuel reduction projects, and other efforts to reduce wildfire. Additionally, new grant funding related to air monitoring of smoke from prescribed fires, and other state funding has been approved by the state to support local air districts and their air quality mission. Stemming from the growing concern of wildfire, and the associated increased fuel reduction activities, the Board last year expressed interest in the way that burning is regulated within the District, and asked staff to review Regulation 2, adopted in 1976,

² <https://www.census.gov/topics/preparedness/events/wildfires/2018-ca-wildfires.html>

³ <https://firesafemendocino.org/mccwpp/>

that was last updated in 2011. This memo outlines the regulation of burning by air districts, and more specifically the Mendocino Air Quality Management District, as well as the rules related to CAL FIRE, and local fire agencies.

Section One: Legal Context and Historical Background

The Authority to Regulate Burning by California Air Districts

Air Districts were created by the State of California as regional authorities that are subject to the powers and duties of CARB. Districts must adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emission sources under their jurisdiction, and shall enforce all applicable provisions of state and federal law.⁴ Note that the failure to maintain state ambient air quality standards would require the Mendocino AQMD to write an Attainment Plan, make permitting of new processes generating air emissions more stringent, and may trigger the necessity for motor vehicles registered in the County to pass smog checks. Districts have the power to pass their own rules to enforce and achieve their mandated goals.⁵ The control of smoke emissions is within Air Districts' purview and has been a part of the regulatory landscape in Mendocino County since the 1970s.⁶

Local government, including special districts, generally have the authority to be more stringent than state law, unless the State "occupies the field".⁷ The State occupies the field when it explicitly defines the spectrum of local authority in a given context through a statute or regulation. When a law is explicit about the breadth of local governmental authority, a local agency must be consistent with that law, and cannot be more lenient, or stringent.⁸ Otherwise, state laws set the low bar for regulatory compliance so that local agencies can generally be more restrictive. This is important to consider as the District reviews its Regulation 2, "Open Outdoor Burning Regulations" (referred to as "Regulation 2"), as is the historical context of the Rule, and future implications of potential amendments of the rule.

All burning activities can be categorized into two main groups: Agricultural or Non-Agricultural burning. There are very different regulatory settings between these two, thus it is important to understand which category encompasses the burning in question. Note that prescribed burning is defined under the definition of agricultural burning. We will now look at each category closely and in turn.

Non-Agricultural Burning

⁴ California Health and Safety Code 40001

⁵ Id.

⁶ See Mendocino County Code 9.33.050

⁷ Nolo Plain English Law Dictionary

⁸ Id. Also see California Constitution, Article XI Sec. 7, and the Supremacy Clause of the United States Constitution.

In the case of regulating non-agricultural burning, the Health and Safety Code Section 41800 states that “Except as otherwise provided in this chapter, no person shall use open outdoor fires for the purpose of disposal or burning of petroleum wastes, demolition debris, tires, tar, trees, wood waste, or other combustible or flammable solid or liquid waste; or for metal salvage or burning of motor vehicle bodies.”

Residential “backyard” or “dooryard” Burning and other narrow exceptions

This general prohibition on the use of burning as a waste removal process by the State is qualified by subsequent sections of the law. The explicit exceptions to the general prohibition against burning include disposal of Russian thistle⁹, solid waste dumps in some narrow circumstances,¹⁰ and three other situations including (a) Burning for the disposal of the combustible or flammable solid waste of a single- or two-family dwelling on its premises; (b) Open outdoor fires used only for cooking food for human beings or for recreational purposes; (c) The burning, in a respectful and dignified manner, of an unserviceable American flag that is no longer fit for display.¹¹ These narrow exceptions to the basic prohibition are subject to the interpretation of each air district. Many districts interpret these exceptions very narrowly, and may use other provisions of law that generally prohibit all open burning within their District.

More specifically related to residential burning, as listed in section (a), many districts allow it through permitting in certain circumstances, and still others ban it, or allow it, outright. Note that the distinction between “one or two family dwelling” language in Section (a) of the statute is subject to interpretation. Often lot size plays a significant role in a district’s process, as well as whether an area is urban or rural in nature.

In Mendocino, both the County code and the District rules mention residential burning as something that can be permitted by the District, and more specifically the County defers to the District on these matters in its County Code.¹² As a matter of practice the District has been permitting residential burn projects for several decades. Permit forms tell citizens that residential burning is prohibited except for the disposal of vegetative matter on the property where it was grown, and limit burn hours from 9 AM to 3 PM. The permits also describe drying times for various green materials, and encourage rapid combustion, and prohibit burning (including in barrels) if wind direction is toward an area with a significant number of people. District permits also contain fire safety information and refer permit holders to fire agencies.

Additionally, CARB adopted a regulations known as an Airborne Toxic Control Measure (ATCM) to reduce Emissions of Toxic Air Contaminants from Outdoor Residential Waste Burning of “disallowed combustibles” within enclosed or partially enclosed vessels, such as incinerators or burn barrels, or in pits or piles on the ground.¹³ The regulation defines “disallowed combustibles” to include all kinds of waste, including treated wood, paper, ashes, and construction or demolition wood waste. It allows for

⁹ California Health and Safety Code 41809

¹⁰ California Health and Safety Code 41808

¹¹ California Health and Safety Code 41806

¹² Mendocino County Code Section 9.33.050(A)(1) Note the ordinance was adopted in 1990.

¹³ 17 CCR 93113

the burning natural yard vegetation waste as long as it is reasonably free of dirt. Note that some locations in California applied for an exception from CARB to allow for paper burning within barrels, and some of these rural communities maintain this allowance to burn through their annual action with their local air district to preserve permission to do so. This CARB regulation adds another layer of complexity on the issue of residential burning.

Because the typical person is not educated in fire science and smoke management, permits from air districts and fire agencies have relevance and purpose, as is reflected by the broad air district discretion related to how to permit and manage residential burning. Fire agency permits do not include the same kind of information that the District provides in its permit form, as will be discussed in more detail below. This memo reflects the start of the District's analysis of potential changes in its residential burning regulations, policies and permit forms that it will bring to your Board for consideration and possible adoption.

Local Government Allowance to Burn, Including Right of Way Clearance

Another exception to the general prohibition is when public entities or utilities use outdoor burning for levee, reservoir or ditch maintenance, if permitted by the District and relevant fire agencies.¹⁴ Such burning must take place on days that would otherwise allow for agricultural burning, and permission from the land owner, if the land is not government property, must be obtained. Note that if these burns are taking place at a designated waste disposal site, CARB approval is also needed.¹⁵

If burning to clear a right of way, levee, reservoir or ditch is needed, a permit can be issued by the District. The state statute goes into unusual detail specifying how the material must be prepared for such burning. The District uses that language, and other directions are put into the permit "as specified by the Air Pollution Control Officer having jurisdiction".¹⁶

Land Development Clearing

When a land owner is clearing land for commercial purposes, including subdivision or conversion of timberlands, they may wish to burn woody materials produced from that activity. This third exception to the general prohibition has an additional state law requirement that districts must have a rule in place to handle these requests.¹⁷ Mendocino AQMD has such a rule in place- Rule 2-310(c)(2)(a).¹⁸ Without a permit process in place for these projects, each commercial land burn project would need to get approval from the District Board, and CARB, on a case by case basis.

The District adds to the state definition of agricultural burning by establishing that the burning of perennial crops and conversion of timber land is not considered agricultural

¹⁴ California Health and Safety Code 41804.5. This is the only place in this Article where fire agencies are mentioned.

¹⁵ California Health and Safety Code 41808

¹⁶ California Health and Safety Code 41807

¹⁷ Health and Safety Code Section 41802-41804

¹⁸ See Health and Safety Code Section 41804.

burning, and as such must be permitted under the non-agricultural property development portion of Regulation 2.¹⁹ This was in place because the removal of commercial timber, vineyards and orchards are a more intensive activity that happens less frequently and could involve more serious smoke impacts than other agricultural activity. The District has determined, however, that it no longer should call out these specific burn projects from the agricultural burn projects, based on the District's plan clarify that such projects will still require a permit, and based on the District's intention to set up a properly developed fee program that will adequately cover District costs.

Public Officer Exception: No Air District Permit Needed

The final exception to the general prohibition against non- agricultural burning is the “public officer” exception. A public officer can set or allow a fire when such fire is necessary for several different purposes in an emergency or teaching context, which are described in the statute without obtaining a District permit.²⁰ Regulation 2 generally reflects these exceptions in Section 2-130(b). Mendocino AQMD has a more restrictive rule in place by creating a distinction between imminent and potential fire threat.²¹ Only imminent fire threat falls under this exception under Regulation 2.²² This means that the use of fire to abate an imminent fire threat does not need a permit. The lack of urgency associated with a potential fire threat, as compared with an imminent threat, provides the time required to obtain a District burn permit.

Conclusion: Non-agricultural burning is limited

Generally speaking, the state and the air districts discourage the use of outdoor burning to dispose of waste. Particulate matter, toxic air contaminants and CO₂ are released in large quantities and have serious impacts on human health and the environment. The exceptions laid out above have been made available to this general rule for each District to use at their discretion, based on the geographic and climatological variations of their area. Mendocino AQMD has specific recommendations for the application of these exceptions and will develop policies and new permit language after subsequent stakeholder engagement and Board review and discussion.

Agricultural Burning

The state takes a more permissive approach to the use of open burning in the agricultural setting. Health and Safety Code Section 41850 states that:

“It is the intent of the Legislature, by the enactment of this article, that agricultural burning be reasonably regulated and not be prohibited. The state board and the districts shall take into consideration, in adopting rules and regulations for

¹⁹ Mendocino AQMD Rule 2 Section 2-200 (p)(3)

²⁰ California Health and Safety Code 41801; See also Section 13055.

²¹ Regulation 2-200(f1) The District relies on Public Resources Code 4117 for the application of this restriction on the exception.

²² Regulation 2-310(c)(3)

purposes of this article, various factors, including, but not limited to, the population in an area, the geographical characteristics, the meteorological conditions, the economic and technical impact of such rules and regulations, and the importance of a viable agricultural economy in the state.”

The state defines “Agricultural burning” as open outdoor fires used in any of the following:

- (a) Agricultural operations in the growing of crops or raising of fowl or animals, or open outdoor fires used in forest management, range improvement, or the improvement of land for wildlife and game habitat, or disease or pest prevention.
- (b) The operation or maintenance of a system for the delivery of water for the purposes specified in subdivision (a).
- (c) Wildland vegetation management burning.
 - (1) For purposes of this subdivision, wildland vegetation management burning is the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency, to burn land predominantly covered with chaparral, trees, grass, or standing brush.
 - (2) For purposes of this subdivision, prescribed burning is the planned application and confinement of fire to wildland fuels on lands selected in advance of that application to achieve any of the following objectives:
 - (A) Prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels. (*emphasis added*)**
 - (B) Watershed management.
 - (C) Range improvement.
 - (D) Vegetation management.
 - (E) Forest improvement.
 - (F) Wildlife habitat improvement.
 - (G) Air quality maintenance.
 - (3) The planned application of fire may include natural or accidental ignition. (*Amended by Stats. 2004, Ch. 693, Sec. 1. Effective January 1, 2005.*)²³

The State sets out a general rule that agricultural burning requires a permit,²⁴ unless a District has adopted a rule based on a finding by the District board that agricultural burning does not significantly affect air quality in that District.²⁵ The legislature required that CARB establish rules and regulations for agricultural burning, which includes prescribed fire projects.²⁶ The current version of those regulations were adopted in 2001, and referred to as the “Smoke Management Guidelines”, which require Air Districts to adopt “Smoke Management Programs”, under which property owners or land managers who want to burn on their land can apply for a “Smoke Management Plan” (SMP) for their planned burn project that is issued by a district. Plans have specific state

²³ Health and Safety Code 39011

²⁴ Health and Safety Code Section 41852

²⁵ Health and Safety Code Section 41852.5

²⁶ 17 CCR 80100

requirements for projects over 10, 100 and 250 acres in size. Currently the program generally runs smoothly, but there are issues we plan to address in this effort that are listed below in the recommended changes section.

CAL FIRE Authority related to Agricultural Burning (Including Prescribed Fire and Forest Fuel Reduction) and State Legislative Efforts

CAL FIRE may also issue agricultural burn permits within State Responsibility Areas (SRA), as they are a Designated Agency by CARB.²⁷ CAL FIRE can issue burn permits under the State's Smoke Management Guidelines.²⁸ Additionally private land owners can apply to CAL FIRE to do prescribed fire projects where Cal Fire Units have such a process.²⁹ There are also Cal Fire regulations that apply to private land owners when they dispose of wood waste produced on their land when they are managing defensible space around their homes.³⁰ New legislation allows for the director of CAL FIRE to enter into an agreement, including a grant agreement, for prescribed burning or other hazardous fuel reduction that is consistent with state law with any person to conduct prescribed burning operations and joint prescribed burning operations that serve the public interest and are beneficial to the state.³¹

The issuance of CAL FIRE agricultural burn permits, however, are "subject to the rules and regulations of the District".³² Air Districts are tasked with the responsibility of preparing permits, with consultation from designated agencies.³³ Mendocino AQMD and the local CAL FIRE unit are beginning discussions that the District hopes will lead to an agreement on permit language and administrative processes to best serve the community. Strengthening the relationship with CAL FIRE is even more important as several new requirements pertaining to prescribed fire have recently been approved by the legislature.

In the 2018 session, the Legislature passed and the governor signed several bills related to fire and forest health. One law, Senate Bill (SB) 901, provides CAL FIRE \$1 billion over five years for forest health and fire prevention activities - including \$35 million a year for prescribed fire and other fuel reduction projects (the \$1 billion in funding is generated by California's greenhouse gas cap-and-trade program). The same law specifies that CAL FIRE and UC Cooperative Extension (UCCE) will cooperate to deliver technical assistance on wildfire resilience to non-industrial timberland owners.

SB 1260 requires CAL FIRE to cooperate on prescribed burns with public and private landowners.³⁴ It also instructs CAL FIRE to create a program for pre-certification of "burn bosses" (individuals who direct operations at prescribed fires) so that vetting of

²⁷ 17 CCR 80101(j)

²⁸ Id.

²⁹ Public Resources Code 4491-4494

³⁰ Public Resources Code 4290

³¹ Public Resources Code 4475

³² 17 CCR 80120(f) ; District Smoke Management Program, Section 6(A).

³³ 17 CCR 80120(b)

³⁴ Public Resources Code 4475. Sec 9

burn bosses needn't be conducted for each proposed burn.³⁵ SB 1260 also, along with Assembly Bill 2091, aims to ease the way for prescribed burners to purchase private insurance.³⁶ According to Sierra Forest Legacy, since SB 1260's passage CAL FIRE now oversees 10 fuel reduction crews and a draft burn boss curriculum has been completed with the debut of the program expected in early 2021.³⁷ Once approved, this will open up opportunities for liability and resource sharing with CAL FIRE in addition to prescribed fire insurance. Meanwhile, CAL FIRE is making progress on expanding insurance opportunities with a per-project insurance option through a private partner expected in 2021. CARB has purchased Environmental Beta-Attenuation Mass Monitors (EBAMs) for more accurate monitoring of particulate emissions during fires as a result of SB 1260.³⁸

SB 1260 created Public Resources Code Section 4495 states that "In coordination with local air pollution control and air quality management districts, the Natural Resources Agency and the State Air Resources Board shall develop and fund a program, upon appropriation by the Legislature, to enhance air quality and smoke monitoring, and to provide a public awareness campaign regarding prescribed burns. The program may include, but not be limited to, purchasing new, rapidly deployable air quality monitors. The program shall include adequate funding, upon appropriation by the Legislature, for local air pollution control and air quality management district participation and implementation costs." Funding has been allocated in the current version of the Governor's budget for this program.

Moving forward, several bills have been introduced to the 2021 legislative session which underscore State direction to address prescribed fire, air emissions and fuel reduction activities as tools to increase wildfire resiliency.

- **AB 9 (Wood) Wildfires:** This bill would state the intent of the Legislature to enact subsequent legislation that would increase California's capacity to prevent and reduce the impact of wildfires, and would make related findings and declarations.
- **AB-297 (Gallagher, Bigelow, Dahle, Patterson) Fire Prevention:** This bill would exempt from the requirements of CEQA projects or activities related to forest health and fuel reduction that involve thinning overgrown brushes or trees 10 inches or less in diameter by mechanical thinning, pile burning, prescribed fire, and grazing
- **SB 45 (Portantino, Allen, Hurtado, and Stern) Wildfire Prevention, Safe Drinking Water, Drought Preparation and Flood Protection Bond Act of 2022** This bill would authorize the issuance of bonds in the amount of \$5,510,000,000 pursuant to the State General Obligation Bond Law to finance projects for a wildfire prevention, safe drinking water, drought preparation, and flood protection program.

³⁵ Public Resources Code 4477. Sec14

³⁶ Public Resources Code 4476; AB 2091 added Article 4 to Chapter 7 of Part 2 of Division 4 of the Public Resource Code 4500

³⁷ The Sierra Forest Voice. Sierra Forest Legacy. Vol 13, No 1, March 11, 2020. Web version: https://www.sierraforestlegacy.org/NR_SFVoiceNewsletter/2020-09-08_V13N3.php

³⁸ Ibid.

- **SB 63 (Stern)** This bill would require the Department of Forestry and Fire Protection, under Good Neighbor Authority agreements entered into between the state and the federal government, as provided, to establish a program for purposes of conducting landscape scale ecological restoration and fire resiliency projects on national forest lands, including the development of specified federal and state environmental protection documents for landscape scale ecological restoration and fire resiliency projects on national forest lands that are at least 25,000 acres

The area of prescribed burning within the context of the agricultural burning law continues to be an important area of regulation as wildfires continue to worsen in the state. The District will keep a close watch on developments and keep the board apprised of changes proposed.

CAL FIRE Authority related to Non- Agricultural Burning

CAL FIRE can also issue burn permits for non-agricultural burning in State Responsibility Areas (and Local Responsibility Areas if a contract is in place for them to provide such services pursuant to an agreement with the local agency) relating to the burning of brush, stumps, logs, fallen timber, fallows, slash, grass-covered land, brush-covered land, forest-covered land, or other flammable material.³⁹ This authority, however, does not usurp or remove the requirement for air districts to continue to satisfy its mandates to issue permits for non-agricultural burning. The LE-62A permit issued by Cal Fire includes permit requirements such as restricting residential burn pile size to 4 by 4 ft.; limiting burning to “permissive” burn days as determined by ARB or MCAQMD; and listing MCAQMD’s burn day status telephone number. However, the LE-62A permit does not refer to MCAQMD open burning regulations or smoke management related information, such as requirements for how and what to burn to be in compliance with local Air District regulations. The District will be working with CAL FIRE to create a process by which both of their statutory mandates are met and administrative ease for residents is achieved, without delegating authorities vested by the state to each agency.

California Local Fire Districts Authority to Regulate Burning

Fire Districts have specific statutes that govern their activities.⁴⁰ Specifically pertaining to burning, if a fire district board has adopted regulations for the control of open fires, “no person shall burn any material without a permit. A fire district shall not issue a permit to burn any material which would not be permitted by an air pollution control district or an air quality management district, or any other state or federal agency.”⁴¹ As is demonstrated by this language, the legislature has contemplated these issues and found that air districts have the responsibility to determine what materials can and cannot be burned by the public in order to continue to support its mandate to reduce public exposure to smoke. Also, based on this provision, the legislature understood

³⁹Public Resources Code 4423

⁴⁰ Health and Safety Code Section 13055, 13860

⁴¹ Health and Safety Code Section 13874

more than one permit may be required for open burning through local air and fire districts.

The allowance of exceptions to the general prohibition against non-agricultural burning are specifically given to air districts (as described above), and are not available to fire agency burn permit authorization. The extent of fire agency burn permit governance and authority should be referenced within the fire agency's governing rule and ordinances, and referenced within their burn permit.

If a fire district would like to regulate agricultural burning, a request by that agency is made to the relevant air district so that the agency can become a "designated agency" for the purpose of issuing Smoke Management Plans. Then the air district must review the fire agency's proposal, and if sufficient, request CARB approval for official designation. In the case of Mendocino County, the Air District delegated many local fire agencies with this authority, which is described more below.

Section Two: Staff Recommendations

Mendocino County AQMD Regulation 2: Staff Recommends Public Workshops to Consider Updating Rules

Consider Amendments to Regulation 2

The Mendocino AQMD Rule 2 Section 310 (c) states that permits issued by designated fire agencies serve as valid permits for the purpose of agricultural burning, residential burning and fire hazard burning. Rule 2-340 lists the specific fire agencies that the District designated in 1994, and has not been amended since that time. Staff recommends amending these sections. As we have covered in this memo, the state law governing agricultural and non-agricultural burning are distinct. The current District Rule does not reflect the legal differences of authority, and should be updated to reflect current local fire agency status and related regulatory frameworks.

Many fire agencies in Mendocino do not want to process Smoke Management Plans or large agricultural burns. For this reason, the District plans to discuss with each local fire agency the current rules and policies in place at that agency, and determine what their desired vision for the future is for their permitting process. Second, the other two burning types, residential and hazard burning, are governed by the Health and Safety code as exceptions to the general prohibition against burning, which as stated above, are permitting authority given to air districts through state law. State law does not grant air districts the authority to share this delegation with fire and other agencies. Fire agencies have specific authority to regulate residential and hazard fire projects through their own legal frameworks. Mendocino County AQMD can work with local fire agencies to develop a permit issuance process that covers both air and fire district statutory mandates, and includes both agency's review and approval as needed under the applicable law. If the District Board and local fire agencies advocate for this path forward, the District would likely require a co-funding source.

The District would also like to explore how to more clearly define residential burning. Note that burn permits issued by Local Fire Agencies typically limit pile size to 4 by 4 ft., as do Cal Fire's online permits available for residents living in State Responsibility Areas (SRA). The District plans to put in place important limitations to residential burning, such as burn pile size limitations. The District also plans to propose that residential burning of materials on parcels that are less than one half (1/2) acre should not be allowed where green waste curb services are available.

Additionally, the District is not currently collecting adequate burn permit fees to fund the administrative cost of the program. The District needs to consider the costs of the program and properly account for the resources needed to adequately pay for the services provided to permit applicants. The District plans to embark on a six month fee study process to evaluate the program.

The District will continue to explore other important issues related to residential burning through discussions at upcoming stakeholder meetings and workshops in order to update its regulations to reflect best practices.

Remove Rule 2 Section 320: Multiple Site Permit

The District has determined that the multiple agricultural site permit, Rule 2-320, has not been effective and should be removed from the District Code. First, the process has not produced efficiencies or reduced the use of the District's staff or resources, and as such has become a costly process that does not provide the revenue to offset expenses associated with the permit issuance. Additionally, the multiple permit process is not compatible with the District's computer database, which makes the process even more awkward. Finally, a deletion of this section is warranted because this Rule was seen as experimental at the time it was approved, reflected by language within Rule 2-320(c), which states that the "Air Pollution Control Officer may discontinue the issuance of Agricultural Burning Multiple Site Permits at any time". The impact of this Rule's removal is not expected to be significant because there have been few multiple agricultural site permits requested, and the analysis of issues and substance of the permits will not change.

Add new language to Rule 2, Section 330 to Permit "Gap Projects": Small Agricultural Burns and Large Residential Burns

Procedures and permitting for larger burns that are nevertheless below the SMP thresholds (10 acres in size or capacity to produce over one ton of Particulate Matter) but are clearly not what was envisioned by state law as 'single family' burning are currently handled on a case by case basis. The District believes that at a minimum controlled burns requiring multiple days to complete, or burns conducted near sensitive receptors, should prepare an SMP in order to protect health and safety. Also, it is often these burns that require more resources from the District because many of the smoke complaints are generated from these projects. Most smoke complaints received by the District tend to be the result of burns occurring in high population density areas, mostly

residential neighborhoods of towns and cities where burning has not been prohibited. The District will be discussing different approaches towards gap projects with a targeted group of stakeholders, including the local fire agencies, Cal Fire and federal land managers, as well as cities who may have input or suggestions about how to deal with these projects from a regulatory perspective. Eventually, the Board will need to make choices about how the District will approach these burn projects.

Section Three: Administrative Improvements

The District implemented an online burn permit application, payment and issuance system through its database in 2019. Refinements made in 2020 further improved efficiency for District staff issuing burn permits online.

The District has upgraded its procedures for management of its Smoke Management Program (SMP) by use of the state-wide Prescribed Fire Information Reporting System (PFIRS) database. This comprehensive online system allows land managers, fire agencies and air districts to coordinate SM Plan application submittal, review, and approval or denial. Land managers can also submit burn ignition requests and District staff can respond following review. The PFIRS database sends email notifications to all parties. The PFIRS public map page shows the locations of planned burns for each day.

District staff recently launched an email-based notification system for approval of SMP Ignition Requests from land managers who do not use the PFIRS database, such as some agricultural burners. This system allows District staff to receive and respond to ignition requests from applicants remotely and outside of office hours.

Conclusion

There are several sections that the District should consider revising within Regulation 2. As understood from the District Board, the goals of these revisions should be (1) to promote administrative ease for the public, (2) to support the fire agencies and others as the community deals with the very real fire risk due to the state of our forested lands, and (3) considerations of cost effectiveness. Taking these considerations into account in conjunction with the District's legal mandates and responsibilities, the District will converse with stakeholders, the public and other air agencies including CARB, and bring to the Board a comprehensive list of specific changes to the District's regulations within 2021.