



EXECUTIVE SUMMARY

In 2020, over four percent of California burned in wildfire. Over 30 people lost their lives in the fires; experts estimate an additional 3,000 premature deaths may have resulted from wildfire smoke. Property damage is expected to top \$10 billion and related greenhouse gas emissions erased California's progress on climate change.

Cultural burning and prescribed fire are essential tools in managing these impacts, restoring California's fire-adapted ecosystems, and repairing the fraught relationship between California, its Indigenous peoples, and stewardship of the landscape. Based on the direct experiences of cultural fire practitioners and other burners, *Good Fire* explores the legal and policy underpinnings of current barriers to expanding the scope of intentional fire in California. From there, the paper identifies legislative, regulatory, and policy solutions. While individuals and agencies have made good progress, far more work is needed if intentional fire is going to have a significant impact on the wildfire-related challenges California faces. The time to act is now.

Recognizing the long-standing role of Tribes and cultural fire practitioners in stewarding California's landscape, the paper begins by exploring the unique barriers they face. Cultural fire practitioners look to the laws of nature to understand when, where, and how to burn.

However, **California's extensive regulation of intentional fire—including air quality permits, burn permits, and environmental review—can significantly interfere with Tribal sovereignty over the practice.** California and its agencies must do a better job of recognizing Tribal jurisdiction and ceding control over cultural burning and cultural fire practitioners. Moreover, **both state and federal agencies lack an adequate understanding of Tribes and cultural fire practitioners, their expertise and authority, land tenure, and the requirements of cultural burns,** leading to confusion, delay, and red-tape. Agencies must invest more in relationships with Tribes and cultural fire practitioners to overcome these obstacles.

Next, the paper addresses the complex federal and state regulation of air quality and smoke. **Burners and cultural fire practitioners report that air quality permitting prevents or curtails the use of intentional fire.** The paper explores multiple routes for recognizing that intentional fire and its related smoke impacts are part of California's air



quality baseline, including through the Exceptional Events rule, expansion of the Regional Haze Rule, and a shifting in prioritization among different sources of smoke and other air pollution to favor public purpose burning. It also recognizes the real public health impacts that may result from intentional fire, and makes recommendations for mitigating such impacts. Finally, the paper recommends relatively minor changes in implementation—such as increased expertise, changes in permit formats, and reduction in fees—that could have outsized benefits for burners.

The paper then turns to CAL FIRE's efforts to regulate the potential public safety impacts of intentional fire through its burn permit program. Again, **burners report that CAL FIRE permitting prevents or curtails the use of intentional fire.** The agency's discretionary approach prevents private burns when CAL FIRE's resources are constrained or potentially constrained by suppression activities. Legislative and regulatory modifications to the permitting system would begin to address these concerns.

The related issues of liability and insurance are then discussed. **California's simple negligence standard continues to impede widespread adoption of intentional fire practices,** even after the modifications made in 2018 to tie a showing of due diligence to CAL FIRE permit compliance. As in four other states, the legislature should amend the public resources code to adopt a broad gross negligence standard. **Likewise, the collapse of the insurance market for intentional fire activities—due in part to the uncertainties caused by California's simple negligence standard—has become a significant**

impediment to private burning in recent years. The state must step in to provide some assurances to organizations and private burners engaged in public purpose burning that the rare escaped burn will not cause financial ruin.

Next, the paper evaluates the impact of environmental review on the use of intentional fire. When state or local agencies are involved—including through funding, planning, or inclusion of public land—they must comply with the California Environmental Quality Act. Though CAL FIRE has invested significant resources in streamlining environmental review for prescribed fire, **burners still report that environmental review is time-consuming and expensive, and results in little or no additional environmental benefit.** Further efforts to exempt intentional burns (while continuing to protect important resources and sensitive receptors), or streamline environmental review that must occur, are warranted.

Finally, attention must be paid to other “softer” barriers, including long-standing agency culture and a lack of resources. **Burners report ongoing hesitancy among some agency staff to engage in intentional burning, which is seen as both risky and outside of the core mission of agencies long directed to engage in suppression at all cost.** Likewise, **a lack of financial and human resources reduces the scope of intentional fire activities.** Particular attention must be paid to addressing risk aversion, rewarding intentional fire activities, and developing both the human and financial capital necessary to burn on the scale necessary to protect California's ecosystems and public health.

