

THE CORPORATION OF THE CITY OF TEMISKAMING SHORES
BY-LAW NO. 2011-138
BEING A BY-LAW TO REGULATE AND CONTROL OPEN AIR BURNING
WITHIN THE CITY OF TEMISKAMING SHORES

WHEREAS Section 7.1 (1)(b) of the *Fire Protection and Prevention Act, 1997, S. O. 1997, c.4* as amended, states that a municipality may pass by-laws, regulating the setting of open air fires, including establishing the times during which open air fires may be set;

AND WHEREAS Section 7.1 (4) of the *Fire Protection and Prevention Act, 1997, S. O. 1997, c.4* as amended, states that a municipality may appoint an officer to enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether by-laws enacted in accordance with this section are being complied with. 2001, c. 25, c. 475 (3);

AND WHEREAS Section 7.1 (5) of the *Fire Protection and Prevention Act, 1997* the exercise of powers by an officer appointed under this section shall be carried out in accordance with Part XIV of the *Municipal Act, 2001*, other than clause 431 (a) of that Act;

AND WHEREAS Section 425 (1) of the *Municipal Act, S.O. 2001, c. 25*, as amended, provides a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the Act is guilty of an offence;

AND WHEREAS Section 429 (1) of the *Municipal Act, S.O. 2001, c. 25*, as amended, provides a municipality may establish a system of fines for offences under a by-law of the municipality passed under the Act ;

AND WHEREAS Section 446 (1) of the *Municipal Act, S.O. 2001, c. 25*, as amended, provides that if a municipality has the authority under any Act or under a by-law under any Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;


AND WHEREAS Council, at the October 4, 2011 regular meeting, acknowledged receipt of Administrative Report No. PPP-009-2011 proposing amendments to the Burning By-law and passed Resolution No. 2011-532 directing staff to prepare the necessary by-law to adopt the amendments to By-law No. 2009-162 as approved by Council at the said meeting;

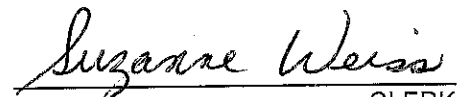
AND WHEREAS Council deems it necessary to adopt a new by-law to regulate and control open air burning within the City of Temiskaming Shores and to repeal By-law No. 2009-162.

NOW THEREFORE the Council of the Corporation of the City of Temiskaming Shores hereby enacts as follows:

1. That Council adopts a by-law to regulate and control open air burning within the City identified as Schedule "A", attached hereto and forming part of this by-law;
2. That By-law 2009-162 being a by-law to regulate open air burning within the boundaries of the City of Temiskaming Shores is hereby repealed.
3. That the Clerk of the City of Temiskaming Shores is hereby authorized to make minor modifications or corrections of a grammatical or typographical nature to the By-law and schedule, after the passage of this By-law, where such modifications or corrections do not alter the intent of the By-law.
4. That this By-Law shall come into force and take effect on the date of its final passing.

READ a FIRST, SECOND and THIRD TIME and FINALLY PASSED this 18th day of October, 2011.


MAYOR


CLERK

**THE CORPORATION OF THE CITY OF TEMISKAMING SHORES
 SCHEDULE "A" TO BY-LAW NO. 2011-138
 BEING A BY-LAW TO REGULATE AND CONTROL OPEN AIR BURNING WITHIN
 THE CITY OF TEMISKAMING SHORES**

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PART 1
GENERAL PROVISIONS

SECTION

1.1 Short Title

This By-Law shall be cited as the "*Burning By-law*".

1.2 Scope

The provisions of this By-law, which includes the Schedules and Appendices annexed hereto and the Schedules and Appendices are hereby declared to form part of this by-law shall apply to all property within the geographic limits of the *City*, except where other wise provided.

1.3 Enforcement

This By-law shall be enforced by a *By-law Enforcement Officer* or a *Fire Prevention Officer*, or *Chief Fire Official*, or a *Police Officer*.

1.4 Conflicts with other by-law

Where a provision of this By-law conflicts with a provision of another by-law in force in the City of Temiskaming Shores, the provisions of this By-law shall prevail in order to protect the health, safety and welfare of the general public.

PART 2
DEFINITIONS

Definitions of words, phrases and terms used in this By-law that are not included in the list of definitions in this section shall have the meanings which are commonly assigned to them in the context in which they are used in this By-law.

The words, phrases and terms defined in this section have the following meaning for the purposes of this By-law.

SECTION

2.1 "**Applicant**" means the person (18) or older that makes application to the Chief Fire Official for a permit to hold open air burning.

2.2 "**By-law Enforcement Officer**" means the *person* or *persons* duly appointed by *Council* as Municipal Law Enforcement Officers for the purpose of enforcing regulatory by-laws of the *City*.

2.3 "**Barbecue**" means a portable or fixed device designed and intended solely for the cooking of food in the open air, but does not include outdoor fireplaces and campfires.

2.4 "**Chief Fire Official**" means the assistant to the Fire Marshal who is the Municipal Fire Chief or a member or members of the fire department appointed by the Municipal Fire Chief under Article 1.1.1.2. of Division C or a person appointed by the Fire Marshal under Article 1.1.1.1. of Division C.

2.5 "**City**" means The Corporation of the City of Temiskaming Shores.

2.6 "**City Property**" means any land situated within the *City* which is owned by the *City* or controlled by the *City* by lease or otherwise, but does not include a *highway*.

2.7 "**Combustible Material**" means materials capable of burning including wood, paper, plastic and vegetation.

2.8 "**Council**" means the Municipal *Council* of the *City* of Temiskaming Shores.

- 2.9 “**Designate**” means the person or persons appointed by the *Chief Fire Official* authorized to issue open air burning permits in accordance with this by-law.
- 2.10 “**Fire Prevention Officer**” means the *person* or *persons* duly appointed by *Council* as Fire Prevention Officer;
- 2.11 “**Farming Business**” means a farming business as defined in the Farm Registration and Farm Organizations Funding Act, 1993, S.O. 1993, c. 21, as amended;
- 2.12 “**Fire Ban**” means a period of time during which the Fire Chief or his/her designates, prohibits all outdoor burning activities within the *City*;
- 2.13 “**Fire Restricted Times**” means the time of day in which open air burning activities are not permitted as set out in Section 3.7.
- 2.14 “**Fire Restricted Zone**” means the area in which the Ministry of Natural Resources has suspended all open air burning.
- 2.15 “**Open Air Burning**” means any fire that is conducted outside a building, including a fire conducted in a garden, yard, alley, field, park, industrial site, construction site, building lot, parking lot, street, or other open place. For the purpose of this definition *open air burning* does not include the following:
 (a) the operation of welding or similar equipment;
 (b) a manufactured outdoor wood furnace installed and operated in accordance with the manufacturer’s instructions;
 (c) an appliance which is fueled by natural gas or propane, including but not limited to a *barbeque*.
- 2.16 “**Open Air Burning Device**” means a manufactured or non-manufactured, non-combustible, enclosed container that is not fueled by natural gas or propane and is designed to hold a small fire for decorative, recreational, cooking or warmth purposes and the size of which is not larger than 1 metre (3.2 feet) in any direction and may include, but is not limited to a chiminea, unless approved by the Chief Fire Official or his/her designate.
- 2.17 “**Outdoor Fire Pit**” means a non-combustible, contained pit that is not fueled by natural gas or propane and is designed to hold a small fire for decorative, recreational, cooking or warmth purposes and the size of which is not larger than 0.6metres (24 inches) in any direction.
- 2.18 “**Owner**” means the registered owner of the land.
- 2.19 “**Person**” means an individual firm or corporation.
- 2.20 “**Police Officer**” means a member of the Ontario Provincial Police Service.
- 2.21 “**Provincial Offences Act**” means the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended.
- 2.22 “**Slash Piles**” means tight piles made up of materials such as stumps, brush, limbs that are more than 0.6metres (24 inches) in diameter and more than 0.6metres (24 inches) high and not exceeding 10 metres (32.8 feet) in diameter and 5 metres (16.4 feet) high.
- 2.23 “**Windrow**” means a pile or row of material made up of stumps, brush, limbs, earth and rock. Generally results from land clearing operations in agricultural areas or from industrial forest operations using mechanical equipment.

PART 3 REGULATIONS

SECTION

- 3.1 No *person* shall set out fires in open air at any time without first obtaining an open air burning permit, in substantially the form set out in Appendix “2” of Schedule “A” attached to this by-law, approved by the Chief Fire Official or his/her designate.

- 3.2 No permit shall be issued to any *person* other than the *owner* of the property where the fire is to occur, save an authorized agent acting on the *owner(s)* behalf who produces written authorization signed and dated by the *owner*.
- 3.3 The *Applicant* shall acquire a burning permit from the *Chief Fire Official* or his/her designate.
- 3.4 Notwithstanding Section 3.1 herein, the following regulations shall apply to *open air burning* associated with the use of *open air burning devices* or *outdoor fire pits* specifically designed for *open air burning*:
- (a) Every *person* conducting *open air burning* associated with the use of an *open air burning device* specifically designed for *open air burning* shall confine the same to less than one (1) metre in diameter (3.2 feet) and no more than (1) metre (3.2 feet) high and include:
 - (i) devices that are designed of a *non-combustible material*;
 - (ii) of a size not larger than described in Section 3.4 (a) herein; and
 - (iii) shall be installed in accordance with the *Manufacturer's* recommendations where applicable.
 - (b) Every *person* conducting *open air burning* associated with the use of an *outdoor fire pit* designed specifically for *open air burning* shall confine the same to less than 0.6 metres (24 inches) in any direction.
 - (c) Every *person* conducting *open air burning* shall ensure the *open air burning device* or the *outdoor fire pit* is at least five (5) meters (16.4 feet) from any building or other combustible materials unless otherwise approved by the *Chief Fire Official* or his or her designate.
- 3.5 *Outdoor fire pits* and *open air burning devices* may be inspected at any time by the *Chief Fire Official* or by his/her designate to determine compliance with set out guidelines and regulations.
- 3.6 No *person* shall conduct an *open air burn* at any time in a Ministry of Natural Resources declared *fire restricted zone(s)*.
- 3.7 No *person* shall conduct an *open air burn* within the Municipality between the hours of eight o'clock in the morning and six o'clock in the evening during the period from the 1st day of April to the 31st day of October in each year unless written approval by the *Chief Fire Official* or his/her designate is issued,.
- 3.8 Application to burn during *fire restrictive time(s)*, as outlined in section 3.7 may be granted by the *Chief Fire Official* or his/her designate.
- 3.9 No person shall set any fire outdoors to burn, or shall burn outdoors, any grass or leaves except in rural or agricultural areas as designated by the City, as approved by the *Chief Fire Official* or his/or her designate. No household garbage, construction materials or materials made of/or containing rubber, plastic, tar, pressure treated or creosote treated wood, or any material which may emit noxious or poisonous substances or pollutants, including PCB's and other chemicals shall be burned at anytime.
- 3.10 All persons conducting an *open air burn* shall ensure that it is controlled and supervised at all times and completely extinguished before the burn site is vacated except as outlined in Section 4.7 and 5.12.
- 3.11 Without limiting in any way the prohibition set forth in Section 3.9, all persons shall ensure that only dry, woody type of materials that do not emit noxious or poisonous substances or pollutants other than those produced by the burning of wood, tree limbs or branches shall be permitted to be burned in an *open air burning device* or *outdoor fire pit*.
- 3.12 No *person* shall conduct an *open air burn* that causes an inconvenience or irritation to others.

- 3.13 Every *person* who is *open air burning* shall ensure that he/she has adequate safety equipment such as water, portable water pumps, portable multi-purpose fire extinguisher, rakes or any other tools necessary to contain the fire.
- 3.14 No *person* shall set *open air burning* in an area near grass or other vegetation where it may spread due to strong winds.
- 3.15 The *Chief Fire Official* or his/her designate can suspend or rescind an open air burning permit at anytime.
- 3.16 *Farming business* shall adhere to the additional open air burning guidelines for burning of *Windrows* as set out in Appendix "3" of Schedule "A"
- 3.17 *Open air burning* permits can be obtained from the Temiskaming Shores Fire Department located at 181 Drive-in-Theatre Road or from City Hall at 325 Farr Drive (8:30 a.m. to 4:30 p.m. Monday to Friday).
- 3.18 The Corporation of the City of Temiskaming Shores By-law No. 2009-162 is hereby repealed in its entirety.
- 3.19 This by-law shall come into force and effect upon the passing of third and final reading.

**PART 4
SLASH PILES**

SECTION Preamble: All *persons* creating *slash piles* or intending to burn *slash piles* shall ensure that the following conditions are complied with:

- 4.1 The *slash pile* does not exceed the size limits as set forth in Section 2.21;
- 4.2 the *slash pile* is constructed on soil other than peat soil types;
- 4.3 a burn plan is filled and submitted for approval by the *Chief Fire Official* or his/her designate as set forth in Appendix "3";
- 4.4 the permit holder shall notify the *Chief Fire Official* or his/her designate and the City's Dispatch Contractor for the Fire Department at the commencing of the *slash pile* burning and again when the *slash pile* burning activity is completed;
- 4.5 the permit holder ceases to add material to the *slash pile* if a *fire ban* comes into effect, and shall extinguish the fire;
- 4.6 the permit holder uses best efforts to aerate and separate any soil from wood, tree limbs and branches in the *slash pile*;
- 4.7 the permit holder ensures that a competent person eighteen (18) years or older maintains care and control over the *slash pile* from the time of ignition until the fire is extinguished; the number of *slash piles* to be burned at any time shall be approved by the *Chief Fire Official* and/or his/her designate;
- 4.8 the permit holder will ensure that prohibited materials, which include garbage, pressure treated or creosote treated wood, or any combustibles that produce toxic fumes other than those produced by the burning of wood, tree limbs or branches.

**PART 5
FARMING BUSINESS**

SECTION Preamble: All *persons* creating *windrows* shall ensure that the following conditions are complied with:

- 5.1 The *windrow* shall be kept as narrow as possible;
- 5.2 *Windrows* should be at least 30 meters (100 ft.) apart and should be no longer than 150 meters (450 ft.) long;
- 5.3 A burn plan is filled and submitted for approval by the *Chief Fire Official* or his/her designate as set forth in Appendix "3";
- 5.4 The permit holder shall notify the *Chief Fire Official* or his/her designate and the City's Dispatch Contractor for the Fire Department at the commencing of burning and again when the burning activity is completed;
- 5.5 *Windrows* should be situated at least 100 meters (300 ft.) from any structure or bush line;
- 5.6 The permit holder uses best efforts to aerate and separate any soil from wood, tree limbs and branches in the *windrow*;
- 5.7 Do not construct *windrows* on peat soil types;
- 5.8 Burn *windrows* when materials have dried and cured;
- 5.9 Permits to burn *windrows* will become effective on or after the 1st day of July, and must be extinguished prior to April 1st of the following year. Permits are valid all day (24 hrs.);
- 5.10 The permit holder shall have on site a minimum of one (1) competent person eighteen (18) years or older and adequate fire equipment which is in serviceable condition with which to extinguish the fire should it become necessary during the ignition stage. Equipment shall include shovels, adequate quantity of water (on site), pails, pack pumps, power pumps and hose or any combination thereof and as may be ordered by the *Chief Fire Official* and/or his/her designate;
- 5.11 No person shall ignite a *windrow* until two hours before sunset and under light winds;
- 5.12 The permit holder will ensure that *windrows* are monitored daily. Any problems must be dealt with immediately. The Temiskaming Shores Fire Department must be notified of such problems immediately;
- 5.13 If the *windrow* is deemed to be unsafe by the *Chief Fire Official* and/or his/her designate, it will result in NO permit being issued, or the permit being cancelled until the necessary steps are taken to correct the problem.

**PART 6
EXEMPTIONS**

SECTION

- 6.1 The Temiskaming Shores Fire Department shall be exempt from the provisions of this by-law with respect to open air fires for the purposes of training, educating individuals in fire safety or for research purposes;
- 6.2 The *City* shall be exempt from the provisions of this by-law with respect to open air fires related to municipal works and *Council* approved or sanctioned events upon approval of the *Chief Fire Official* or his/her designate.

**PART 7
PERMIT FEES**

SECTION

- 7.1 the fees for the issuance of *Open Air Burning* Permits shall be as follows:
- (a) Annual permit: \$10.00 (renewal only);
 - (b) Annual Permit: \$50.00 - Permits requiring inspection (new permits etc.)

**PART 8
PENALTIES**

SECTION

- 8.1 Every person who contravenes any of the provisions of By-law 2011-138 is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.
- 8.2 Any *person* who contravenes any provision of the Ontario Fire Code and every director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for an individual or \$100,000 for a corporation or to imprisonment for a term of not more than one year or both.
- 8.3 Where an offence is a continuing offence, each day that the offence is continued shall constitute a separate and distinct offence.
- 8.4 Every person who sets a fire in contravention of this by-law or who fails to extinguish a fire once ordered to do so by the *Chief Fire Official* or his/her designate shall, in addition to any penalty provided for herein, be liable to the *City* for all expenses incurred for the purposes of investigating, controlling and extinguishing any fire set or left to burn, and such expenses may be recoverable by court action or in a like manner such as municipal taxes.

**PART 9
VALIDITY**

SECTION

9.1 Validity of By-law

If any section, clause, or provision of this By-law, is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not effect the validity of the By-law as a whole or any part thereof, other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention that all remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions thereof shall have been declared to be invalid.

THE CORPORATION OF THE CITY OF TEMISKAMING SHORES
Appendix "1" of Schedule "A"
OPEN AIR BURNING BY-LAW NO. 2011-138

PART 1 PROVINCIAL OFFENCES ACT
SET FINES

Item	COLUMN 1 Short form wording	COLUMN 2 Offence creating provision or Defining offence	COLUMN 3 Set fine
1	Conduct open air burning without a permit.	Sch. A, section 3.1	\$100.00
2	Conducting open air burning without written authorization.	Sch. A, section 3.2	\$100.00
3	Open air burn device beyond restricted size.	Sch. A, section 3.4 (a)	\$100.00
4	Outdoor fire pit beyond restricted size.	Sch. A, section 3.4 (b)	\$100.00
5	Conducting open air burning too close to combustibles	Sch. A, section 3.4 (c)	\$100.00
6	Conducting <i>open air burning</i> in a <i>restricted fire zone</i> .	Sch. A, section 3.6	\$100.00
7	Conducting <i>open air burning</i> during restricted times.	Sch. A, section 3.7	\$100.00
8	Fail to supervise <i>open air burning</i> .	Sch. A, section 3.10	\$100.00
9	Open air burning other than dry woody type materials.	Sch. A, section 3.11	\$100.00
10	<i>Open air burning</i> impacting others.	Sch. A, section 3.12	\$100.00
11	Fail to provide extinguishing agent.	Sch. A, section 3.13	\$100.00
12	Conducting open air burning too close to grass and vegetation.	Sch. A, section 3.14	\$100.00

Note: the general penalty provision for the offences listed above is section 8.1 of By-law No.2011-138, a certified copy of which has been filed.



**TEMISKAMING SHORES FIRE DEPARTMENT
APPLICATION FOR OPEN AIR BURN PERMIT**

APPENDIX "2" OF SCHEDULE "A" TO BY-LAW 2011-138

New Permit

Permit Renewal

Applicant is owner of Property:

Applicant is 18 years of age or older:

Applicant is tenant: Tenant must have written approval of owner for permit:

Name of Applicant: _____

Home Phone #: _____ Cell/Work #: _____

Property Address: _____ P.O. Box: _____

Town/City: _____ Postal Code: _____

Email Address: _____

Location of burning if different from above: _____

Burning/Device Information:

Chimenea Non-Combustible Container Outdoor Fireplace Fire Pit

Slash Pile (Burn plan required) Windrow (Burn plan required)

Other (please specify) : _____

Approved burning sites shall not be altered without approval and inspection by the Fire Department.

Fee Paid: (due upon issuance of permit):

Annual Permit: \$10.00 (Renewal only)

Annual Permit: \$50.00 - Permits requiring inspection (new or altered site)

Please Note: Inspections conducted within 48 hours of receipt of an application.

Permit Approved:

Permit Denied:

Signature of Applicant

Chief Fire Official or Designate

Date of Issue

Date of Expiry

The applicant agrees to comply with the provisions of By-Law 2011-138 and further agrees to assume all responsibility for any damages occurring from the fire for which this permit is issued.

Burn Plan
APPENDIX "3" OF SCHEDULE "A" TO BY-LAW NO. 2011-138

Owner Name: _____

Address: _____ 911 #: _____

City/Town/Township: _____ Postal Code: _____

Home #: _____ Business #: _____ Cell #: _____

1. Where will the burning take place?

Lot #: _____ Concession #: _____

2. When will the burning start?

Date: _____ Time: _____

3. When will burning be completed?

Date: _____ Time: _____

4. What materials are to be burned?

5. Who will be controlling and supervising the burning?

Name of person in charge: _____

Home #: _____ Business #: _____ Cell #: _____

6. What safety equipment will be on hand to contain the fire? (i.e. fire extinguishers, shovels, rakes, water supplies, water supply hose)

7. **What steps will be taken if the fire starts to escape?**

8. **Who will be notified that the burn is taking place?** (Attach list if required)

Which neighbors? _____

What is the Fire/Emergency contact number? _____

What is the MNR Fire/Emergency contact number? _____

9. **Will smoke interfere with traffic/neighbors?** Yes _____ No _____

If yes, how will you warn people? _____

10. **What are the boundaries around the area to be burned?** _____

11. **Other comments/conditions:** _____

Signature Owner/Designate

Signature of Fire Official

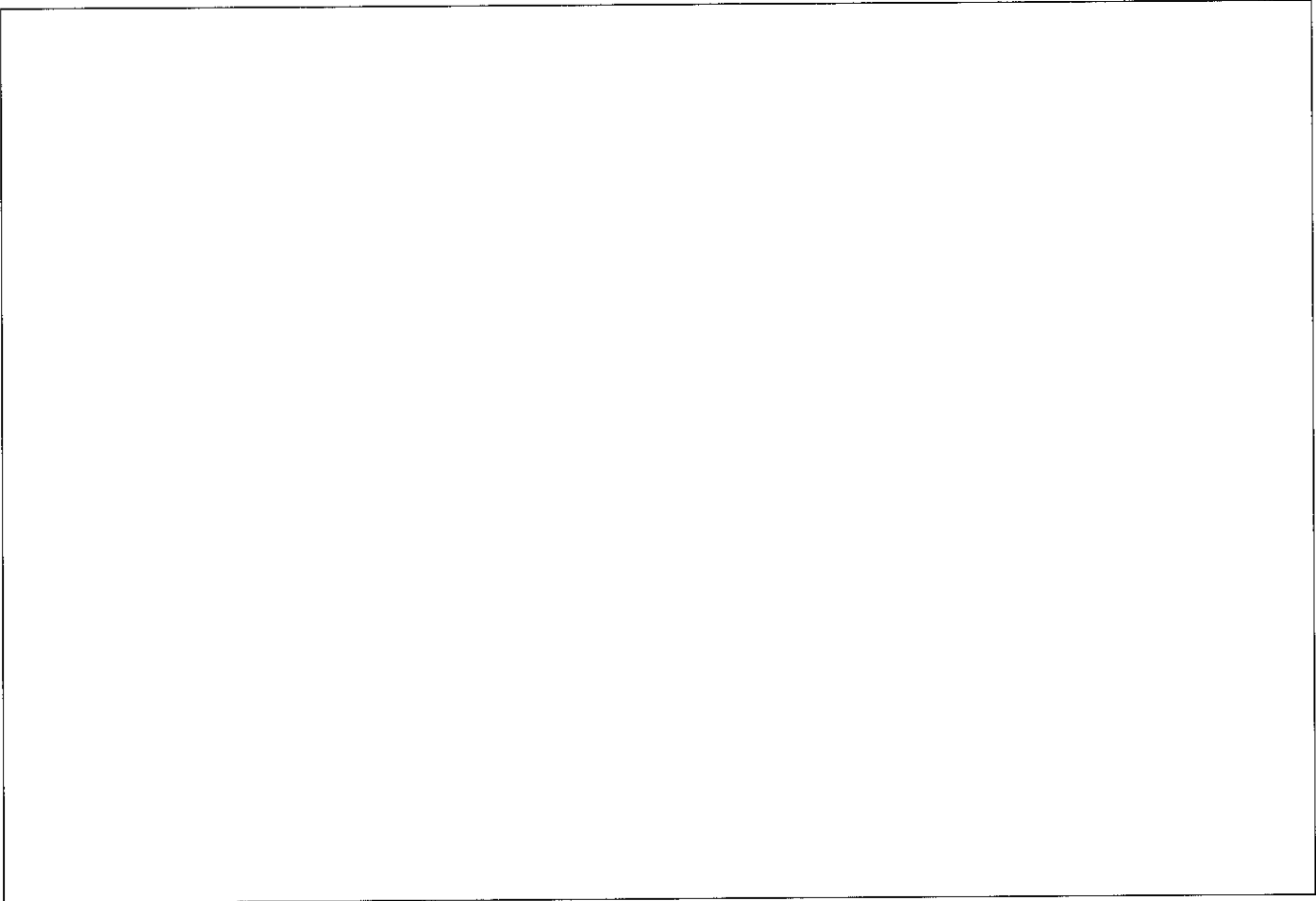
Date: _____

Date: _____

Note

- This agricultural burn plan checklist may form part of the fire permit and if so, should be kept with the fire permit.
- This burn plan and/or fire permit can be cancelled or suspended at any time by the Chief Fire Official or his/her designate.
- The permit holder and/or person in charge are responsible for all costs associated with property damage and firefighting costs resulting from escaped fires.

Sketch of Burn Area:



Remarks: _____

