

Title 20

ENVIRONMENTAL PROTECTION

CHAPTER 1

**HOPLAND TRIBE CULTURAL RESOURCES
MANAGEMENT AND PROTECTION CODE**

**(“PROHIBITING THE ILLEGAL COLLECTION, USE, OR DESTRUCTION
OF CULTURAL RESOURCES WITHIN THE HOPLAND RESERVATION”)**

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Section 1. Short Title.

1.1 This Code shall be known as the “Cultural Resources Management and Protection Code”.

Section 2. Purpose.

2.1. The unauthorized collection, removal, excavation, use, alteration, impairment, or destruction of cultural resources under this Code shows disrespect for the natural and cultural resources of the Reservation, and for the cultural heritage, history, traditions, and knowledge of

the Hopland people, and for the Reservation community; it damages the Reservation's scarce cultural resources, causes irreparable damage to the Tribe's ability to transmit its cultural heritage, history, traditions, and knowledge to future generations, and irreparably harms the land and the environment. Therefore, the unauthorized collection, removal, excavation, use, alteration, impairment or destruction of cultural resources is prohibited within the exterior boundaries of the Hopland Reservation.

Section 3. Definitions.

3.1. "Cultural Resources" are defined as any material remains of past human life or its associated activities which are of archaeological, historical, or cultural interest to the Tribe. Such material remains shall include, but are not limited to, abalone shells, pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of dwellings, burial sites, cemeteries, human skeletal remains, associated or unassociated funerary objects, clothing, artwork, ceremonial objects, sacred objects, or any part of these items.

3.2. A "burial site" is defined as any place of interment, by any means, whether originally below, on, or above the surface of the earth, where human remains or associated funerary objects are deposited, as part of the death rites or ceremonies of the Tribe.

3.3. A "cemetery" is defined as a burial site in which two or more individuals are or were interred.

Section 4. Declarations and Findings.

4.1. The Hopland Band of Pomo Indians is recognized by the people and outside governments as a sovereign government. The Tribe has the inherent authority within the exterior boundaries of its Reservation to manage and regulate its cultural resources in a manner which best protects the Hopland Reservation, its natural and cultural resources, and the health, welfare and economic security of this generation of Hopland people, and the generations to follow.

4.2. The Tribe also has the authority to manage and regulate its cultural resources in a manner which best protects the cultural heritage, history, traditions, and knowledge of the Hopland people on its aboriginal lands outside of the exterior boundaries of the Hopland Reservation. The Tribe will use its authority to the furthest extent possible under both tribal and federal law to protect and preserve its cultural resources. Examples of federal laws that the Tribe may use to protect and preserve its cultural resources include the following:

4.2.1. The Native American Graves Protection and Repatriation Act of 1990 ("NAGPRA") (25 U.S.C. § 3001-3013) requires tribal consent prior to the

intentional excavation of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony (“cultural items”) on federal and tribal lands. The NAGPRA also requires that a person who makes an inadvertent discovery of Native American human remains and cultural items on federal or tribal lands must immediately notify the Tribe, stop work, and protect the human remains and cultural items. The NAGPRA also empowers Tribes to repatriate their sacred cultural items and human remains from museums and federal agencies.

4.2.2. The Archaeological Resources Protection Act of 1979 (“ARPA”) (16 U.S.C. § 470(aa) *et seq.*) requires that a permit is obtained prior to the excavation or removal of any archaeological resource located on public lands or Indian lands, including private lands within the exterior boundaries of any Indian Reservation.

4.2.3. The National Historic Preservation Act of 1966 (16 U.S.C. § 470 *et seq.*) declares that it is a national policy to work in partnership with Indian tribal governments to protect cultural resources.

4.2.4. The American Indian Religious Freedom Act of 1978 (42 U.S.C. § 1996) declares that it is a national policy to promote the inherent right of Native Americans to believe, express, and exercise their traditional religions, including access to ceremonial sites, the use and possession of sacred objects, and the freedom to worship through traditional ceremonies at traditional sacred sites.

4.3. This Code is enacted pursuant to the sovereign power of the Hopland Tribal Council (Council), as a recognized law-making body, to deal with Tribal lands, cultural and natural resources, and property; to promulgate and enforce codes providing for the health, safety and welfare of the Tribe and its members; to maintain law and order on Hopland land; and to protect the Hopland environment.

4.4. The Tribe retains the inherent sovereign power to exercise civil authority and jurisdiction over the conduct of both Tribal and non-Tribal members on all lands within the original boundaries of the Hopland Reservation, as necessary to protect the political integrity, economic security, and health and welfare of the Tribe, and, accordingly, to maintain the environment and protect the cultural and natural resources of the Tribe.

4.5. It is necessary to adopt this Code to protect cultural resources within the Hopland Reservation. Specifically, this Code addresses the collection, removal, excavation, use, alteration, impairment or destruction of cultural resources.

4.6. This Code adopts a permitting scheme, including the assessment of civil fines and damages for non-compliance with the permitting process. This Code is enacted to protect and preserve these significant cultural resources, ensuring that future generations will benefit from the continued existence of such cultural heritage, history, traditions, and knowledge.

4.7. In addition to protecting cultural resources to ensure their preservation for future generations, this Code is also adopted to inventory, document, and catalog all cultural resources on the Reservation. Such documentation will include: a) inventorying and cataloguing cultural resources; and, b) mapping the location of such cultural resources.

4.8. This Code is further adopted to encourage the incorporation of cultural resources into Tribal Programs.

Section 5. Designation of Authority to the Tribal Environmental Protection Agency.

5.1. The Hopland Tribe is entrusted to protect the land, air, water, vegetation and animal life, and cultural and natural resources for the current residents of the Hopland Reservation and for the generations of Hopland people to come. To accomplish this mission as it relates to the protection and management of cultural resources, the Hopland Tribe hereby appoints the Hopland Tribal Environmental Protection Agency as the lead Tribal agency to ensure the proper management of cultural resources. The Tribal EPA (EPA) shall have the powers, duties and responsibilities provided for here, and shall work in conjunction with the Tribal Council and other Tribal Departments in carrying out this Code.

5.2. The EPA shall develop and manage the Tribe's comprehensive Cultural Resources Management and Protection Program; shall communicate to the community information about the Tribe's comprehensive Cultural Resources Management and Protection Program; and shall make reports in a manner, and containing such information, as the Tribe approves regarding the development and management of this Program.

5.3. Duties of the Hopland EPA. The EPA is entrusted to protect the land, air, water, vegetation and animal life, and cultural and natural resources for future generations. The EPA's specific duties necessary to accomplish this task shall include the following:

- A. Develop and implement the Tribe's Cultural Resources Management and Protection Program in accordance with the Tribe's Environmental Master Plan.
- B. Develop processes which incorporate both technical environmental and archaeological cataloguing standards for cultural resources management,

protection, and preservation, and the customs and traditions of the Hopland people.

- C. Inventory, catalog, and map all cultural resources on the Hopland Reservation.
- D. Use existing sources of information to cross-reference and enhance these maps of cultural resources, such as may be maintained by museums, educational institutions, and federal and state agencies.
- E. Prepare environmental and archaeological reports regarding such cultural resources as needed.
- F. Develop a mechanism to ensure continued community involvement and input in the Tribe's Cultural Resources Management and Protection Program. Specifically, those Tribal members with cultural knowledge regarding the identification and use of traditional or culturally significant cultural resources should be consulted.
- G. Approach the Tribal Technical Assistance Program, or similarly oriented nonprofit groups, educational institutions, museums, agencies, and tribal organizations, for assistance in cultural resources inventories. Cultivate partnerships with such groups or agencies in order to better address cultural resources management, protection and preservation.
- H. Identify, investigate, and apply for private funds, federal or state grants, and financial and technical assistance, so as to further implement the Tribe's Environmental Master Plan for cultural resources protection and management.
- I. Train "cultural monitors" to monitor any construction, development, archaeological study, excavation, or ongoing activity on and around the Hopland Reservation.
- J. Develop a permitting process for the collection, removal, excavation, use, alteration, impairment, or destruction of cultural resources on the Hopland Reservation.

Section 6. Inventory, Cataloging, and Mapping of Cultural Resources.

6.1. The EPA, in conjunction with such other agencies, nonprofit groups, and community members as they see fit, will inventory, catalog, and map all cultural resources on the Reservation.

6.2. The EPA will make an inventory of, and create a catalogue with a list of, all cultural resources on the reservation. To the furthest extent possible, the EPA will incorporate community input, especially input from those members with knowledge of the cultural significance and traditional uses of such cultural resources, in developing this list. A copy of the final catalog list will be maintained at the Tribal EPA Office.

6.3. The EPA will make maps of the locations of such inventoried and catalogued cultural resources. These maps will also be maintained at the Tribal EPA Office.

6.4. The maps of such cultural resources shall remain confidential and shall not be accessible to the general public, unless the request is accompanied by an approved Tribal permit in accordance with Section 7 of this Code.

Section 7. Collection, Removal, Excavation, Use, Alteration, Impairment, Destruction, and Discovery of Cultural Resources.

7.1. Any collection, removal, excavation, use, alteration, impairment, or destruction of cultural resources, including parts of such cultural resources, must be done in accordance with the regulations established by the Hopland EPA's Cultural Resources Management and Protection Program.

7.2. The EPA may authorize by permit the collection, removal, excavation, use, alteration, impairment, or destruction of cultural resources, including the parts of such cultural resources.

7.3. The collection, removal, excavation, use, alteration, impairment, or destruction of cultural resources within the Hopland Reservation without a permit issued by the Hopland EPA is prohibited.

7.4. Any person who collects, removes, excavates, uses, alters, impairs, or destroys cultural resources without an EPA permit is subject to civil fines and damages.

7.5. Duty to Report Discoveries: Any person who intentionally or unintentionally discovers, alters, impairs, or destroys a cultural resource, or any part thereof, within the exterior boundaries of the Hopland Reservation has a duty to immediately report such matters to the Hopland EPA and the Tribal Council. If the incident occurred in connection with an ongoing activity, including, but not limited to, construction, mining, logging, and agriculture, the person shall immediately cease the activity, make reasonable efforts to protect the discovered items, and shall not resume the activity until the Tribe has certified that it may do so in writing.

7.5.1. Stop Work Orders: If the EPA receives a credible report from any person that has reason to believe that a cultural resource, or any part thereof, has been inadvertently discovered, altered, impaired or destroyed in relation to any construction or ongoing activity within the exterior boundaries of the Hopland Reservation, regardless of whether or not a Tribal permit has been obtained, the Tribal EPA, in conjunction with the Tribal Police Department, shall immediately

issue a “Stop Work Order” until the EPA has determined that the cultural resource(s) can be adequately protected, preserved, removed, or excavated, as appropriate. No work shall resume on any construction project or ongoing activity until the Tribal EPA has certified that the cultural resource has been adequately protected, preserved, removed, or excavated, and that it is appropriate to resume the activity.

7.6. Cultural Monitors: The EPA has the authority to issue a permit requiring that a cultural monitor is present for construction, an archaeological study or excavation, or any other ongoing activity that may impact the Tribe’s cultural resources. The permit would require that a “cultural monitor” be present during all significant phases of the construction, study, excavation, or ongoing activity, including, but not limited to, surveying, grading, and preparing the site for the actual construction, study, excavation, or ongoing activity. The party obtaining the permit will bear the cost of the cultural monitor.

7.7. Archaeological Studies and Excavations: In addition to obtaining an EPA permit, any intentional or inadvertent excavation and removal of Native American human remains, funerary objects, and cultural items within the exterior boundaries of the Hopland Reservation shall comply with the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. § 3001-3013) and the Archaeological Resources Protection Act of 1979 (16 U.S.C. § 470(aa) *et seq.*). Tribal law shall govern in the case of a conflict of law.

7.8. Duty to Notify: All persons within the exterior boundaries of the Hopland Reservation have a duty to notify the EPA and the Tribal Council if any construction, archaeological study or excavation, or any other ongoing activity that may impact the Tribe’s cultural resources is considered. This will ensure that the protection of the Tribe’s cultural resources is considered prior to the commencement of any activity that could impact such resources, regardless of whether such activity is undertaken on trust or fee land.

7.9. Duty to Investigate: The EPA has a duty to investigate the unauthorized collection, removal, excavation, use, alteration, impairment, or destruction of cultural resources under this Code. Upon receiving a credible complaint or report, the EPA shall, on its own initiative, or in conjunction with Tribal law enforcement or other cooperating groups or agencies, perform a thorough investigation of any alleged violations. The EPA shall have the right to enter any area alleged to be the site of such unauthorized collection, removal, excavation, use, alteration, impairment, or destruction of cultural resources in order to fulfill its duty to investigate.

Section 8. Administrative Remedies.

8.1. If appropriate, the EPA, in its sole discretion, will attempt to resolve any unauthorized collection, removal, excavation, use, alteration, impairment, or destruction of cultural resources through its administrative process, as outlined below. The EPA reserves the right to bypass the administrative process and file a civil action at any time.

8.2. Citation: If appropriate, the EPA will issue a written citation to the offender alleging that he or she has violated this Code. The citation will explain in plain terms what conduct has violated the Code. The citation should include the following information:

- A. The purpose of the Code.
- B. The specific conduct that violated the Code.
- C. The date(s) the conduct occurred.
- D. The section of the Code that has been violated, including its contents.
- E. What steps must be taken to address the violation, including how to avoid violating the Code again.
- F. The date by which the person must come into compliance with the Code to avoid the imposition of further penalties and fines.
- G. The penalties that may be imposed if the offender continues to violate the Code, including the filing of a civil action.
- H. The contact information for the Tribal EPA, and that a meeting may be scheduled with the EPA to discuss in more detail the reasons that the conduct violated the Code.
- I. That the offender may administratively appeal, in writing, the EPA's finding that a violation has occurred, and the date by which this appeal must be received by the EPA.

8.3. A record of all citations will be maintained. If a citation has already been issued to the offender, subsequent citations may increase in seriousness; for example, subsequent citations may impose greater fines for non-compliance, or may require that the offender take specific remedial steps, such as site rehabilitation, as determined by the EPA, to avoid further action being taken against the person. The EPA may, in its sole discretion, proceed to file a civil action or injunction against the offender, or take any other action as it deems necessary, at any time.

- A. First Offense: The EPA may, in its sole discretion, impose a fine up to \$500.00 dollars.
- B. Second Offense: The EPA may, in its sole discretion, impose a fine up to \$1000.00 dollars.
- C. Third Offense: The EPA may, in its sole discretion, impose a fine up to \$3000.00 dollars.

8.4. Administrative Appeal: If, after receiving a citation, the alleged offender believes that he or she has not violated the terms of the Code, he or she may appeal the EPA's finding in writing to the EPA Director. This appeal must be received by the EPA within two (2) weeks of the date of the written warning. The appeal must clearly state why the person believes that he or she has not violated the Code, and may include any supporting documentation. The EPA will include a copy of the appeal in that person's file. Within two (2) weeks of receiving such an appeal, the EPA will either:

- A. Schedule a formal meeting with the Director, the offender, and any other interested parties regarding the appeal; or,
- B. The Director will affirm or deny the appeal in writing without scheduling a meeting.

If a formal meeting is scheduled, a formal decision will be provided in writing within two (2) weeks of the meeting. The EPA will attempt to use a shared decision-making process during this process whenever possible. A copy of the decision will be sent to the offender and placed in his or her file. The decision of the EPA regarding the administrative appeal shall be final.

Section 9. Civil Damages.

9.1. Any person who violates any of the provisions of this Code is subject to an assessment of civil fines and damages for such unlawful activities. The Director of the EPA is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court, or another court of competent jurisdiction, seeking recovery for damages incurred by the unlawful conduct, including the costs of any site rehabilitation and preservation and protection of cultural resources undertaken by the Tribe, and reasonable attorney's fee and costs. Any person who is found by the court to have committed the alleged violations shall be subject to an obligation to reimburse the Tribe for all costs associated with such violations, in addition to, at the court's discretion, a civil penalty in an amount up to \$500.00 for each day of each violation.

9.2. All civil damages shall be paid to the Tribe. Reasonable attorney's fees and costs shall be paid to the Tribe.

9.3. Any person who is not a member of the Hopland Tribe who is found by a court to have violated any provision of this Code may be excluded from the Reservation, and may have his or her rights to engage in commercial transactions or consensual dealings on the Reservation suspended or terminated.

9.4. Civil damages, civil penalties, fees, costs, and related recoveries do not limit any other remedies which may be available to the Tribe, including the filing of an action for an injunction in a court of competent jurisdiction.

Section 10. Traditional Dispute Resolution (“PeaceKeeping Court”).

10.1. The Hopland Tribal Council may, at its discretion, and in accordance with its sovereign power as a recognized law-making body, create a traditional dispute resolution process in accordance with the Tribe’s traditional laws and customs. The forum for this traditional dispute resolution process shall be known and referred to as the “PeaceKeeping Court”.

10.2. Any person over whom the Tribe retains the inherent sovereign power to exercise civil jurisdiction, and over whom the Tribe chooses to exercise such jurisdiction in accordance with any alleged violation of this Code, may elect to use the Tribe’s “PeaceKeeping Court” as an alternative to the Tribal Court, unless the EPA demonstrates that extenuating circumstances indicate that a referral to the “PeaceKeeping Court” is not in the Tribe’s best interests. Such extenuating circumstances may include, but are not limited to: the offender’s recidivism, as demonstrated by previous offenses; previous referrals to the “PeaceKeeping Court” where the offender demonstrated a failure to fully cooperate with the traditional dispute resolution process; a demonstrated lack of good faith in the offender’s request to transfer the action to the “PeaceKeeping Court”.

10.3. If an action is filed in the Hopland Tribal Court by the EPA against any person over whom the Tribe has civil jurisdiction, notice of such a pending action will be provided to the alleged offender. This Notice will inform the alleged offender that he or she, in accordance with the policies and procedures of the Tribal Court, may affirmatively request in writing to proceed in the “PeaceKeeping Court”, as an alternative to the Tribal Court, within thirty (30) days of receipt of the notice of the pending action.

10.4. If the Tribal Court receives a request to proceed in the “PeaceKeeping Court” within the thirty (30) days allotted for responding to the Notice, the Court shall approve such a request, unless the EPA demonstrated that it was not in the best interests of the Tribe, in accordance with section 10.2. The Tribal Court will then provide notice to all relevant parties that the request to transfer to the “PeaceKeeping Court”, as established by the Tribal Council, has, or has not, been approved.

10.5. If the Tribal Court approves such a request to transfer a matter to the “PeaceKeeping Court”, the Tribal Court will forward all associated documentation to the “PeaceKeeping Court”. Once the “PeaceKeeping Court” receives the transferred file from the Tribal Court, it will provide notice to the alleged offender, in accordance with its policies and

procedures, regarding the traditional dispute resolution process. If the offender elects to participate in the Tribe's traditional dispute resolution process, the process will be governed by the traditional laws and customs of the Tribe.

10.6. The Tribal Court will retain continuing jurisdiction over any action transferred to the "PeaceKeeping Court".

Section 11. Arbitration and Mediation.

11.1. The EPA reserves the right to use arbitration or mediation to resolve any conflicts that arise from alleged violations of this Code. The EPA may initiate arbitration or mediation proceedings instead of filing a civil action in the Tribal Court, PeaceKeeping Court, or any other court of competent jurisdiction, in its sole discretion.

11.2. Any person who is alleged to have violated the terms of this Code, and who has had a civil action filed against them in the Tribal Court, PeaceKeeping Court, or any other court of competent jurisdiction, may request arbitration or mediation by requesting this in writing within two (2) weeks of the date of notice regarding the civil action. The written request must be filed with the appropriate court, as well as with the EPA. If the EPA does not object, the court shall grant such a request at its own discretion. The person will receive written notice regarding whether his or her request to proceed in arbitration or mediation has been approved or denied within two (2) weeks of the date of such a request.

Section 12. Severability.

12.1. If any section, provision, or portion of this Code is determined by a court of competent jurisdiction to be invalid, such a determination shall not affect, impair, or invalidate any other section, provision, or portion of this Code, nor shall a determination by a court of competent jurisdiction that a section, provision, or portion of this Code is invalid as applied render such section, provision, or portion inapplicable to other persons or other circumstances.

Section 13. Sovereign Immunity.

13.1. The Hopland Band of Pomo Indians' sovereign immunity shall not be waived or limited in any manner by this Code.

Section 14. Effective Date, Amendment.

14.1. This Code shall be effective from the date of its approval by the Tribal Council. This Code may be amended in accordance with Tribal law.

