

Title 20

ENVIRONMENTAL PROTECTION

CHAPTER 3

HOPLAND TRIBE PLANT MANAGEMENT AND PROTECTION CODE

(“PROHIBITING THE UNAUTHORIZED COLLECTION, USE, OR DESTRUCTION OF PLANTS THAT ARE NATIVE, THREATENED, ENDANGERED, ENVIRONMENTALLY SENSITIVE, OR CULTURALLY SIGNIFICANT WITHIN THE HOPLAND RESERVATION”)

Section Index:

- 1: Short Title**
- 2: Purpose**
- 3: Definitions**
- 4: Declarations and Findings**
- 5: Designation of Authority**
- 6: Inventory, Documentation, and Cataloging of Plant Species**
- 7: Collection, Use, or Destruction of Plants**
- 8: Administrative Remedies**
- 9: Civil Damages**
- 10: Traditional Dispute Resolution (“PeaceKeeping Court”)**
- 11: Arbitration and Mediation**
- 12: Severability**
- 13: Sovereign Immunity**
- 14: Effective Date, Amendment**

Section 1. Short Title.

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

Section 2. Purpose.

2.1. The unauthorized collection, use, or destruction of native, threatened, endangered, environmentally sensitive, and culturally significant plants (“significant plant life” or “significant plants”) under this Code shows disrespect for the natural resources of the Reservation, and for the Reservation community; and, it damages the Reservation’s scarce cultural resources and causes irreparable damage to the land and the environment. Therefore, the unauthorized

collection, use or destruction of such significant plant life is prohibited within the boundaries of the Hopland Reservation.

Section 3. Definitions.

3.1. “Significant plant life” and “significant plants” are defined as any native, threatened, endangered, environmentally sensitive, and culturally significant plants within the boundaries of the Hopland Reservation.

3.2. A “recognized gatherer” is defined as an enrolled member of the Hopland Band of Pomo Indians who collects or uses any culturally significant plants within the boundaries of the Hopland Reservation for his or her personal use. A Hopland Tribal member’s family member or household member who otherwise meets the definition of a recognized gatherer shall be included within the definition of a recognized gatherer regardless of whether that person is an enrolled member of the Hopland Band of Pomo Indians.

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 plant life and vegetation in a manner which best protects the Hopland Reservation, its natural resources, and the health, welfare and economic security of this generation of Hopland people, and the generations to follow.

4.2. 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, 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.

4.3. 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 natural resources of the Tribe.

4.4. It is necessary to adopt this Code to protect native, threatened, endangered, environmentally sensitive, and culturally significant plant life and vegetation within the Hopland

Reservation. Specifically, this Code addresses the collection, use, and destruction of such significant plant life.

4.5. 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 these significant plant populations for future use and conservation, ensuring that future generations will benefit from the continued existence of such plants.

4.6. In addition to protecting significant plants to ensure their survival and use for future generations, this Code is also adopted to inventory, document, and catalog all significant plant life on the Reservation. Such documentation will include: a) inventorying and cataloging native, threatened, endangered, environmentally sensitive, and culturally significant plants; and, b) mapping the location of such plants.

4.7. This Code is further adopted to encourage the development of a community garden and educational program. This will include: a) cultivating examples of such native or culturally significant plants in a community garden for display; and, b) in conjunction with such a community garden, creating an educational program for youth, and interested persons, on the identification, protection, and traditional uses for such native or culturally significant plants.

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 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 plant life and vegetation, the Hopland Tribe hereby appoints the Hopland Tribal Environmental Protection Agency as the lead Tribal agency to ensure the proper management of plant life and vegetation. 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 Plant Management and Protection Program; shall communicate to the community information about the Tribe's comprehensive Plant 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 for future generations from the detrimental effects of improper

management and protection of significant plant life and vegetation. The EPA's specific duties necessary to accomplish this task shall include the following:

- A. Develop and implement the Tribe's Plant Management and Protection Program in accordance with the Tribe's Environmental Master Plan.
- B. Develop processes which incorporate both technical environmental cataloging standards for plant management, protection, and restoration and the customs and traditions of the Hopland people.
- C. Inventory, document, and catalog all native, threatened, endangered, environmentally sensitive, and culturally significant plants on the Hopland Reservation.
- D. Enhance, rehabilitate, and restore plant habitats that include such significant plant life.
- E. Prepare environmental reports regarding such significant plants as needed.
- F. Develop a mechanism to ensure continued community involvement and input in the Tribe's Plant Management and Protection Program. Specifically, those Tribal members with cultural knowledge regarding the identification and use of traditional, native, or culturally significant plants should be consulted.
- G. Approach the California Native Plant Society, or similarly oriented nonprofit groups, for assistance in plant inventories and habitat restoration. Cultivate partnerships with such groups or agencies in order to better address plant management, protection and restoration.
- 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 plant protection and management.
- I. Develop a permitting process for the collection, use, or destruction of native, threatened, endangered, environmentally sensitive, and culturally significant plants.

Section 6. Inventory, Documentation, and Cataloging of Plant Species.

6.1. The EPA, in conjunction with such other agencies, nonprofit groups, and community members as they see fit, will inventory, document, and catalog all native, threatened, endangered, environmentally sensitive, and culturally significant plants on the Reservation, as necessary.

6.2. 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 plants, in developing this list. A copy of the final catalog list will be maintained at the Tribal EPA Office. Moreover, this list will be publicly displayed at this location for at least

thirty (30) days prior to the sections of this Code requiring permits and authorizing civil fines taking effect.

6.3. The EPA will make maps of the locations of such inventoried and catalogued plants that need to be protected because of their status as significant plant life as necessary. These maps will also be maintained at the Tribal EPA Office.

6.4. If necessary, the EPA will create plant habitat restoration or rehabilitation programs for such native, threatened, endangered, environmentally sensitive, and culturally significant plants. These programs will be implemented in conjunction with community members who have cultural and traditional knowledge regarding these plants whenever possible.

6.5. If necessary, the EPA may establish “moratoriums” on the collection, use, or destruction of specific plants, in order to carry out its duties in accordance with this Code.

6.6. The EPA will coordinate the establishment of a community garden for the display of native or culturally significant plants. In conjunction with such a community garden, the EPA will, with the Tribal Education Department’s assistance, create an educational program for youth, and interested persons, for the identification, protection, and traditional uses of native and culturally significant plants. These programs will be implemented in conjunction with community members who have cultural and traditional knowledge regarding the identification, protection, and traditional uses for native and culturally significant plants.

Section 7. Collection, Use, or Destruction of Plants.

7.1. Any collection, use, or destruction of native, threatened, endangered, environmentally sensitive, and culturally significant plants, including parts of such plants, must be done in accordance with the regulations established by the Hopland EPA’s Plant Management and Protection Program.

7.2. The EPA may authorize, by permit, the collection, use, or destruction of such plants for approved uses at established levels, including parts of such plants.

7.3. The collection, use, or destruction of significant plants within the Hopland Reservation without a permit issued by the Hopland EPA is prohibited, unless a person falls within the “recognized gatherer” exemption, in accordance with section 7.5.

7.4. Any person who collects, uses, or destroys listed significant plants without an EPA permit is subject to civil fines and damages.

7.5. A recognized gatherer is exempt from the permitting requirements for culturally significant plants. At no time shall a recognized gatherer be subject to civil fines and damages for the collection, use, or destruction of culturally significant plants for his or her personal use. However, the EPA reserves the right to verify that a person is a recognized gatherer, as defined in this Code in section 3.2.

7.6. The EPA has a duty to investigate the unauthorized collection, use, or destruction of native, threatened, endangered, environmentally sensitive, and culturally significant plants 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.

Section 8. Administrative Remedies.

8.1. If appropriate, the EPA, in its sole discretion, will attempt to resolve any unauthorized collection, use, or destruction of significant plants through its administrative process, as outlined below. The EPA reserves the right to bypass the administrative process and immediately file a civil action.

8.2. Verbal Warning: If appropriate, the EPA will first provide a verbal warning to the alleged offender that he or she has violated this Code. The verbal warning will explain in plain terms:

- 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 the reasons that the conduct violated the Code.

8.3. A written record will be made documenting the verbal warning, including the date, time, and section of the Code that was violated. If it is not feasible to contact the alleged offender

in person or by telephone, or if the conduct is deemed sufficiently serious to warrant the bypassing of a verbal warning, the EPA may, in its sole discretion, immediately issue a written citation.

8.4. Written Citation: If appropriate, the EPA will issue a written citation to the alleged offender that he or she has violated this Code. The citation will explain in plain terms which 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.

8.5. The EPA may issue up to three (3) citations for alleged violations of this Code within one (1) calendar year period.

- A. First Offense: The EPA may, in its sole discretion, impose a fine up to \$100.00 dollars.
- B. Second Offense: The EPA may, in its sole discretion, impose a fine up to \$200.00 dollars.
- C. Third Offense: The EPA may, in its sole discretion, impose a fine up to \$500.00 dollars.

A record of all citations will be maintained. If a citation has already been issued to the offender within the calendar year, subsequent warnings may increase in seriousness; for example, subsequent warnings may impose fines for non-compliance, or may require that the offender take specific remedial steps, 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.

8.6. Administrative Appeal: If, after receiving a written warning, 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 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 \$100.00 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 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 matter 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 by the EPA 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.

CERTIFICATION

The foregoing Code was adopted at a Special meeting of the Hopland Tribal Council held on the 1st day of February, 2006, by the following vote:

5 Ayes 0 Nays 0 Abstain 2 Absent

/signed/
Wanda D. Balderama, Chair

2-01-06
Date

ATTESTED:

/signed/
Roman Carrillo, Secretary

2-01-06
Date