

**RINCON BAND OF LUISEÑO MISSION INDIANS
RINCON INDIAN RESERVATION, CALIFORNIA**



**CULTURAL RESOURCES PROTECTION ORDINANCE
RINCON TRIBAL CODE § 10.100**

Adopted on June 1, 2015

RINCON CULTURAL RESOURCES PROTECTION ORDINANCE

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§ 10.100 PURPOSE AND INTENT

The purpose of this Ordinance is to establish a comprehensive program of historic preservation to promote Luiseno heritage and cultural identity through the protection and conservation of archaeological, historic and cultural properties and resources located on Tribal Land within the exterior boundaries of the Rincon Reservation for purposes of preservation, education and enrichment of Rincon Band of Luiseno Indians members and the public.

It is the intent of the Tribal Council to preserve and protect the cultural resources of the Tribe in compliance with applicable law. The Tribal Council recognizes that development and maintenance of the Reservation infrastructure and Tribal Land is necessary to growth and progress which may have future impacts to Cultural Resources and Properties. In these circumstances, the Tribal Council seeks to strike a balance between practical growth and preservation and protection of Cultural Resources and Properties through planning, management, mitigation, display and educational interpretative value as set forth in this Ordinance.

§ 10.101 AUTHORITY

Pursuant to Section 6 of the Articles of Association of the Tribe, the Tribal Council is authorized to enact ordinances and otherwise deal with Tribal Land and community resources, including but not limited to the preservation and protection of Cultural Resources and Properties of the Tribe.

§ 10.102 DEFINITIONS

(a) **“Application”** means the written request submitted to the Manager for a Permit to Proceed in accordance with Section §10.107 of this Ordinance.

(b) **“Attorney General”** means the chief legal officer of the Tribe appointed by the Tribal Council.

(c) **“Culture Committee”** means that certain committee of Tribal members, established by Section §10.105 of this Ordinance, who serve in an advisory capacity to the Manager.

(d) **“Cultural Resources”** means human remains and burial sites, historic and sacred sites, items and objects, including:

- (1) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or

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later, and both the human remains and associated funerary objects are present, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects;

(2) "funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with the Rincon Band;

(3) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Rincon Band religious leaders for the practice of traditional Rincon Band religions by their present day adherents; and

(4) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Rincon Band culture itself, rather than property owned by an individual Rincon Indian.

(e) **“Cultural Resources Department”** means the Tribal Government department responsible for day-to-day preservation and protection of Cultural Resources pursuant to this Ordinance.

(f) **“Culturally Sensitive Area”** means important archaeological and spiritual sites, historical buildings, monuments, cemeteries, ceremonial burning sites and all areas recognized by applicable laws as cultural property or sacred sites contributing to the local Indian history and important to the continuance of the Rincon Band’s Luiseno identity and culture.

(g) **“Manager”** means the employee authorized to execute and manage the day-to-day functions of the Cultural Resources Department as provided in §10.104 of this Ordinance.

(h) **“Museum”** means the institution established by the Tribe to collect and care for Cultural Resources owned by or in the custody of the Tribe.

(i) **“Ordinance”** means this Rincon Cultural Resources Protection Ordinance, as amended from time to time.

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(j) **“Permit to Proceed”** means written permission from the Manager for undertakings on Tribal Land pursuant to Section 10.107 of this Ordinance.

(k) **“Person”** means an individual, contractor, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or a Tribal instrumentality or department.

(l) **“Qualified Archaeologist”** shall mean archaeologists that satisfy the Secretary of the Interior’s Guidelines for Archeology and Historic Preservation, at 36 CFR Part 61.

(m) **“Reservation”** means all lands within the boundaries of the Rincon Reservation, including, but not limited to:

(1) all lands within the territorial boundaries of the Rincon Indian Reservation as established by the Executive Order of the President issued on March 2, 1881, the Mission Indian Relief Act, 26 Stat. 712 (1891), the trust patent issued by the President on September 13, 1892, the Act of Congress of August 16, 1941, 55 Stat. 622, the February 12, 1968 Order setting aside land for the Rincon Band and the trust patent issued on January 20, 1971, which established and added to the Rincon Reservation, and any fee land acquired in trust pursuant to 25 U.S.C. 461 and its implementing regulations, and such other lands as may thereafter be added thereto or made a part thereof; and

(2) all other trust, restricted, or tribally owned lands, regardless of whether they have been formally added to or made part of the Rincon Reservation.

(n) **“Site Monitor”** means contract personnel assigned by the Manager to monitor ground disturbing activities within the Reservation.

(o) **“Tribal Administrator”** means the employee authorized to coordinate the day-to-day administrative functions of the Tribal Government.

(p) **“Tribal Council”** means the five-member Business Committee established under Section 3 (a) of the Articles of Association. "Tribal Council" shall be synonymous with “Business Committee” or “Rincon Business Committee” as used in this Ordinance or any existing or future Tribal ordinance.

(q) **“Tribal Court”** means the Intertribal Court of Southern California or other tribal forum designated by the Tribal Council to hear and decide violations of Tribal Law.

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(r) **“Tribal Government”** means the administrative and executive arms of the Tribe, its departments, political subdivisions, agencies and enterprises.

(s) **“Tribal Land”** means land within the Reservation that is held in trust by the United States for the benefit of the Tribe, inclusive of assigned land but exclusive of allotted land.

(t) **“Tribal Law”** means laws, ordinances, policies and procedures enacted by the Tribal Council.

(u) **“Tribe”** means the Rincon Band of Luiseno Indians of the Rincon Reservation, Valley Center, California, and the agencies, entities, arms and enterprises of the Tribe, as appropriate, either together or separately.

§ 10.103 TRIBAL CULTURAL RESOURCES DEPARTMENT

A Tribal Cultural Resources Department shall be established to increase efforts in locating, documenting and evaluating Cultural Resources on Tribal Land within the Reservation. This information shall provide a record of the past for future generations and shall be incorporated into the Land Use Plan of the Tribe.

§ 10.104 DUTIES AND AUTHORITY

(a) **Historic Register.** The Manager, shall survey and develop a register of identified Cultural Resources on Tribal Land within the Reservation, including religious sites, traditional cultural properties, burial sites, archaeological sites, districts, buildings and structures significant to the history, life ways and customs of the Tribe. This register shall also contain an inventory of areas that have been investigated and found not to contain historic properties, burial sites, sacred sites or traditional cultural properties. The Manager shall be solely responsible for on-going identification, collection and cataloging of known Cultural Resources in surveyed areas and other locations of potential archaeological sites on Tribal Land.

(b) **Preservation Planning.** The Manager shall prepare and implement a comprehensive cultural preservation planning process, consistent with Appendix A, which includes identification, evaluation, registration and treatment of Cultural Resources so that effective decisions concerning preservation can be made.

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- (c) **Coordination and Consultation.** The Manager shall coordinate, advise and assist Tribal departments, entities and the Museum, and state and federal agencies in carrying out their cultural and historic preservation responsibilities, including but not limited to, consultation with the Tribal Government, federal and state agencies on agreements and undertakings that may affect Cultural Resources, and any plans to protect, manage, avoid or mitigate harm to Cultural Resources of import to the Tribe and protected by this Ordinance. The Manager shall be responsible for ensuring that Cultural Resources maps shall be secured and housed appropriately. All maps that pertain to Cultural Resources of the Tribe shall be property of the Tribe.
- (d) **Culturally Sensitive Designation/Mapping.** The Manager, in consultation with the Tribal Council, shall be authorized to designate, map, assign traditional naming of places and proscribe mitigation measures or restricted activities applicable to Tribal Land designated as Culturally Sensitive Areas. Some Culturally Sensitive Areas may be shown on the Land Use Plan map but some mapped Culturally Sensitive Areas may be confidential and disclosed only by in camera review to Tribal Government departments and entities as permitted by the Tribal Council.
- (e) **Permit Issuance.** The Manager shall issue permits for undertakings and ground disturbing activities authorized by this Ordinance pursuant to Section 10.107.
- (f) **Assignment of Site Monitors.** The Manager is authorized to assign Site Monitors to observe undertakings and ground disturbing activities permitted pursuant to Section 10.107 of this Ordinance.
- (g) **Inadvertent Discoveries.** The Manager, shall serve as the point of contact for Persons who inadvertently discover Cultural Resources on the Reservation. If the discovery occurs in connection with a permitted activity regulated under Section 10.107 of this Ordinance, the Manager is authorized to immediately cease activity in the area of the discovery, secure the site and take measures to protect the Cultural Resources unearthed. The Manager shall provide notice of the discovery in accordance with applicable Tribal law and policy then in effect.
- (h) **Negotiate Agreements.** The Manager may negotiate agreements with private and public entities for paid Tribal Monitors to observe ground disturbing activities that have the potential to impact Cultural Resources, provided that any agreement shall be subject to review and comment by the Attorney General.

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- (i) **Policy Development.** The Manager, in consultation with the Culture Committee, shall recommend and develop procedures to govern day-to-day operations of the Cultural Resource Department provided that said procedures are consistent with this Ordinance.

- (j) **Administrative.** Subject to the approval of Tribal Council, and in consultation with the Tribal Administrator, the Manager shall develop and propose an annual budget for day-to-day operations of the Cultural Resources Department each fiscal year.

§ 10.105 CULTURE COMMITTEE

There is hereby established a Culture Committee to be composed of no more than seven (7) members of the Tribe appointed by the Tribal Council. All Culture Committee members shall demonstrate special knowledge in traditional customs and practices, Cultural Resources or related disciplines to provide for a qualified committee. Members of the committee shall hold office for two (2) year terms, observe a quorum and majority vote requirements in committee meetings. Any vacancy on the committee may be filled by an individual appointed by the Tribal Council for the remainder of the unexpired term. The role of the Culture Committee is not to direct the Manager or the operations of the Cultural Resources Department. The Culture Committee serves in an advisory capacity to the Manager, solely for the purpose of making recommendations with respect to the listing of Cultural Resources on the register, identifying elders or other Tribal members with technical expertise on cultural issues, and general advice and guidance as may be requested by the Manager.

§10.106 PROHIBITED CONDUCT

No Person knowing or having reason to know that a protected Cultural Resource is involved shall excavate, injure, remove, damage, destroy or alter a protected Cultural Resource unless that activity is authorized by a permit pursuant to Section 10.107 of this Ordinance.

§ 10.107 CULTURAL RESOURCES PERMIT

- (a) **Permit Required.** Prior to beginning any undertaking or ground disturbing activities on Tribal Land within the Reservation, all Persons shall have a Permit to Proceed from the Manager.

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(b) Permit to Proceed Procedures.

- (1) Application.** All Persons shall submit an Application to the Manager for a Permit to Proceed. A Permit to Proceed can only be issued by the Manager. The Application shall be reviewed by the Manager to determine if a field investigation or survey is necessary. The Manager shall notify the applicant in writing within thirty (30) days if a field investigation is required. If no field investigation is required, the Manager shall either issue the Permit to Proceed or notify the applicant in writing of the reasons for permit denial.
- (2) Field Investigation.** All Tribal Land, not otherwise excluded by Section 10.109 of this Ordinance, within in the Reservation that will undergo earth disturbing activities and not previously subject to a field investigation, shall be subject to a review process to determine the presence or absence of or historic, burial or sacred sites protected by this Ordinance. The review consists of the following:

 - (A) File Search; Pre-field Investigation.** Within twenty (20) days of receipt of a complete Application, the Manager will check files and maps recording the locations of identified Cultural Resources, as well as the locations of areas previously investigated. Additional information may be sought from the Culture Committee, tribal elders and other individuals with special knowledge if deemed necessary to an undertaking located in or near a Culturally Sensitive Areas.
 - (B) Field Archaeology.** The land area of an undertaking or ground disturbing activity described in an Application will be surveyed, weather and ground conditions permitting, no later than thirty (30) days from receipt of a complete Application by a Qualified Archaeologist, or in some cases a Site Monitor, to record and describe the Cultural Resources.
 - (C) Qualifications for Field Investigations.** All persons permitted to conduct field investigations, including the excavation or removal of archaeological materials from historic or cultural properties within the Reservation, shall be a Qualified Archaeologist, or in some cases, a Site Monitor.
- (3) Permit to Proceed Issuance.** Within fourteen (14) days of completion of the field investigation pursuant to Section 10.107(b), the Manager will determine, based on the results of the investigation, whether or not to issue a Permit to Proceed with one of the following documents:

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- (A) A Permit to Proceed with no contingencies; or
- (B) A Permit to Proceed with contingencies to mitigate impacts to Cultural Resources; or
- (C) A letter denying a Permit to Proceed stating that the undertaking may not proceed according to the plans presented by the applicant. The applicant may resubmit a new Application that incorporates changes after consultation with the Manager which remove or minimize impacts to Cultural Resources.

(4) **Appeals.** An Applicant may appeal any denial of a Permit to Proceed by requesting a hearing before the Tribal Council. A determination from the Tribal Council shall be final and not subject to appeal.

§ 10.108 PAYMENT OF FIELD INVESTIGATIONS

An applicant shall pay for field surveys and investigations that are required by this Ordinance unless otherwise waived by the Tribal Council or included within the annual budget and scope of work for the Cultural Resources Department.

§ 10.109 MANDATORY AND PERMISSIVE EXEMPTIONS

(a) Tribal Land that is subject to an assignment pursuant to RTC § 8.700 *et seq.*, that has been and will be used for a single residential unit shall be excluded from survey, inventory and mapping requirements proscribed by this Ordinance.

(b) At the discretion of the Manager certain activities and Tribal Land may be excluded from survey, inventory and mapping requirements proscribed by this Ordinance:

- (1) Riparian areas or other Tribal Land areas that restrict access and/or provide protected species habitat;
- (2) Emergency situations declared or authorized by an official of the Tribal Government (e.g., hazardous release, septic replacement, criminal investigation, etc.).

§ 10.110 MUSEUM

The purpose of the Museum is to assist the Tribe in the protection and preservation of its Cultural Resources and heritage, as well as to provide a venue for the on-going education and enrichment of Tribal citizens and the public. It is the policy of the Tribe to encourage persons

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possessing materials, artifacts or objects of historical, cultural or religious significance to the Tribe, to donate the same to the Museum in order to prevent the dispersion and loss of materials important to the preservation of the culture of the Tribe. The Manager and the curator of the Museum shall coordinate on accessions of Cultural Resources, including donations of the same for materials, objects or artifacts that are significant to the Tribe.

§ 10.111 ENFORCEMENT

(a) **Civil Penalties.** Any Person violating this Ordinance commits a civil infraction punishable by fine or exclusion from the Reservation. The infraction shall be punishable by a maximum fine of \$500. The Tribe shall have the burden of proving an alleged infraction to the Tribal Court, without a jury, by a preponderance of the evidence. There shall be no right of appeal from the decision of the Tribal Court.

(b) **Damages.** Any Person violating this Ordinance shall be liable to the Tribe for civil damages assessed by the Tribal Court after a hearing without a jury. Civil damages shall be interpreted liberally by the Tribal Court to include, but not be limited to:

- (1) Costs associated with restoration of the site;
- (2) Costs associated with disposition of the Cultural Resources, including restoration and reburial; and
- (3) Costs associated with documentation, testing and evaluation of Cultural Resources in order to assess the characteristics of the site.

(c) **Forfeiture of Contraband.** All protected Cultural Resources obtained in violation of this Ordinance shall be deemed contraband and forfeited to the Tribe after a hearing without a jury in Tribal Court.

§ 10.112 SUPPORT FOR OTHER CULTURAL RESOURCE PROTECTION LAWS

In addition to the protection of Cultural Resources under this Ordinance, it is the policy of the Tribe to also support federal statutes and state laws that protect cultural resources, including, but not limited to the Native American Graves protection and Repatriation Act of 1990, 18 U.S.C. § 1170, 25 U.S.C. §§ 3000-3013, Archaeological Resources Protection Act of 1979, 16 U.S.C. § 3007, National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*, Native American Heritage Commission, Cal. Pub. Res. Code §5097.9 *et seq.*, Mission Indian

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Relief Act, ch.65, 26 Stat. 712 (1891), State preservation laws, including, Administrative Code, Title 14, Section 4307, CCR Section 1427, Senate Concurrent Resolution Number 43, Senate Concurrent Resolution Number 87– Resolution Chapter 104, § 25373, 37361: City/County Protection of Historic Resources, § 50280-50290: Mills Act (Historical Property Contracts), § 5020.5: State Historical Resources Commission, § 5020.7: Public promotion of historical resource protection, § 5024: State-owned historical resources, § 5024.1: California Register of Historical Resources, § 5079.10-5079.15: California Heritage Fund, § 5079.20-5079.28: State acquisition of property to preserve historical resources, § 5079.40-5079.44, § 5097.1-5097.6: Parks and Recreation Code and Sites, § 5097.9: Non-interference with Native American religious expression, § 5097.91-5097.94: Native American Heritage Commission, § 5097.95: State and local agency cooperation with the NAHC, § 5097.96: The NAHC inventory of Native American sacred places, § 5097.97: NAHC investigations, § 5097.98: NAHC identifying most likely descendant, § 5097.99: Prohibition of possession of Native American artifacts and remains, § 5097.991: Repatriation of Native American remains, § 5097.993-5097.994: Native American Historic Resource Protection Act, § 21083.2: California Environmental Quality Act- Archeological Resources, § 21084.1: California Environmental Quality Act- Historic Resources, 6254 (r): California Public Records Act Exemption from Disclosure, § 65092: Public notice to California Native American Indian Tribes, § 65351: Native American Involvement in General Plan Proposals, § 65352: Referral of Action on General Plan Changes to Native Americans, § 65352.3- 65352.4: Consultation with Native Americans on General Plan Proposals, § 65560, 65562.5: Consultation with Native Americans on Open Space, § 12600-12612: Attorney General- Environmental Action, § 622 : Destruction of Sites, § 623: Destruction of Caves(a)(2), California Health and Safety Code 7050.5 Disturbance of human remains, 7051 Removal of human remains, 7052: Felony offenses related to human remains, 7054 Depositing human remains outside of cemetery, 8010-8011: California Native American Graves Protection and Repatriation Act.

§ 10.113 NO WAIVER OF SOVEREIGN IMMUNITY

All inherent sovereign rights of the Rincon Band as a federally recognized Indian tribe with respect to provisions authorized in this Ordinance are hereby expressly reserved, including sovereign immunity from unconsented suit. Nothing in this Ordinance shall be deemed or construed to be a waiver of the Rincon Band’s sovereign immunity from unconsented suit.

§ 10.114 SEVERABILITY

If any provision of this Ordinance shall be held unconstitutional or invalid by the Rincon Tribal Court, only the invalid provision or language shall be severed and the remaining provision and language of this ordinance shall remain in full force and effect.

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APPENDIX A

BRIEF SUMMARY

NATIONAL HISTORIC PRESERVATION ACT

AND

TRIBAL HISTORIC PRESERVATION OFFICE

Section 101(d) (2) of the National Historic Preservation Act provides that “A Tribe may assume all or any part of the functions of a State Historic Preservation Officer. . .” Those functions are listed in Section 101(b) (3) of the Act, as follows:

- (1) (A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

(B) The program under subparagraph (2A) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe's chief governing authority.

(C) The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (2A).
- (2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (D; i; ii; iii) of this section, with respect to tribal lands, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if:

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- (A) the tribe's chief governing authority so requests;
 - (B) the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;
 - (C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;
 - (D) the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106 of this Act), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program:
 - (i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (4C);
 - (ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and
 - (iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with the Rincon Cultural Resource Protection Ordinance.
 - (E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D) the Secretary approves the plan.
- (3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) of this National Historic preservation Act with respect to tribal programs that assume responsibilities under paragraph (2).
 - (4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter

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into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (C; i-xi) of this section on tribal land, if:

- (A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;
- (B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and
- (C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and gives over the following responsibilities:
 - (i) The tribe's traditional cultural authorities;
 - (ii) Representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and
 - (iii) Interaction with the interested public.
 - (iv) Identification and preservation of historic properties as defined in the 1995 Office of Historic Preservation Instruction Manual for recording Historical resources.
 - (v) Determination of the eligibility of properties for listing on the National Register or maintain the tribes Register of Culturally Significant areas; or
 - (vi) Preparation of nomination for inclusion on the National Register
 - (vii) Maintenance of historical and archaeological data base.
 - (viii) Evaluation of eligibility for federal preservation incentives (grants).
 - (ix) Perform or have performed archaeological surveys and inventories of reservation properties.
 - (x) Develop mitigation measures and enforce them.

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- (xi) This includes implementing NHPA 36 CFR PART 800 Section 101, 103, and 106. National Park Service 36 CFR 61, NAGPRA and California Public Health and Safety codes along with the Public Resource Code 5097

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