

# RST Ordinance 2006-02

## ROSEBUD SIOUX TRIBE CULTURAL RESOURCES MANAGEMENT CODE

### ORDINANCE

**Section 101. Title.** This Title is Title 18 of the RST law and Order Code which includes Chapter 26, the Cultural Resources Management Code of the Rosebud Sioux Tribe

**Section 102. Authority of the Tribal Government**

- A. Inherent authority over Cultural Resources. By virtue of its aboriginal rights, treaty guarantees, and sovereign status, the Tribal Government has the power and the duty to exercise its inherent authority over Cultural Resources, by enacting and implementing a Cultural Resources Management Code applicable to cultural Resources. The Code shall be implemented within the purview of the RST-THPO as the administrative lead charged with enforcement of federal, tribal, and customary law.
- B. Tribal laws apply to Cultural Resources to the maximum extent. The codes, ordinances, and other laws of the Tribe apply to Cultural Resources to the maximum extent of the jurisdiction of the Tribe.
- C. Authority of Council to enter into negotiated agreements to implement Code. As provided in the Tribal Constitution, Article IV, sec. 1(a), “the Tribal Council is empowered to enter into any negotiated agreements with the federal, state, and other tribal governments to implement the provisions of this Code.”
- D. Cultural Resources presently owned by tribal members. There is no authority or intent in this Title for the Tribal Government to regulate or take any Cultural Resources that are presently and legally owned by tribal members and used solely for valid personal, family, or spiritual use.
- E. Other rights and powers not abrogated by authority over Cultural Resources. In exercising its authority over Cultural Resources, the Tribal Government does not sanction or cause any abrogation of the rights of the Tribe or tribal members based upon inherent sovereignty or federal law, nor does it diminish any trust responsibility of the federal government, including but not limited to obligations set forth in the Treaty of Fort Laramie of 1868.

**Section 103. Findings Intents and Purposes, and Declarations of Policy**

**A. Findings. The Tribal Council finds that:**

1. Tribal entities have conducted inventories of Cultural Resources; Surveyed the views and needs of tribal communities regarding Cultural Resources Management by the Tribe; and prepared an Economic Development Plan in conjunction with the RST-Dept. of Tourism to be implemented over a five year time period; the RST-THPO will be the Office ultimately charged with compliance and regulatory administration of any development efforts by the tribe or tribal entities affecting the cultural, pre-historic, and historic integrity of the tribe;

2. The inventories, surveys, and assessments affirm that the Tribe has numerous resources related to the prehistoric, historic, and present day cultural ethos of the Rosebud Sioux Tribe and the Great Sioux Nation as a whole, the following is but a partial listing of those resources deemed important; Plant Resources, Cultural Sites (Native and non-Native), Traditional Cultural Properties, Cultural Patrimony, Human Remains, and Cultural Records;

3. The inventories, surveys, and assessment affirm that Cultural Resources are fundamental to the ancestral integrity of the present peoples, future generations, cultural durability, land base, traditional life ways, and sovereignty of the Rosebud Sioux Tribe and its members;
4. The inventories, surveys, and assessment affirm that Cultural Resources are invaluable assets that are irreplaceable, endangered, and threatened; issues of misuse, misappropriation, misconduct, and economic growth have jeopardized the self-same without adequate protections afforded by the establishment of the RST-THPO; the RST-THPO is the concluding tribal authority for the safeguarding of Cultural Resources;
5. Several federal laws, including ARPA, NHPA and NAGPRA expressly recognize the inherent sovereign powers of Indian tribes over their Cultural Resources;
6. The Tribe presently is in the process of establishing regulatory and management policy as guidelines and enforcement criteria within the Office of the Tribal Historic Preservation; the RST-THPO will implement those policies pertaining to the protection and preservation of the Cultural integrity of the Rosebud Sioux Tribe;
7. The Tribal comprehensive regulatory Cultural Resources Code is cognizant of the interests of non-tribal and non-native societies to learn, access, and utilize RST Cultural Resources under the auspices of the RST-THPO;
8. The Rosebud Sioux Tribal Council authorizes the RST-THPO to apply for, receive and expend Federal funds to administer and enforce the Cultural Resources Management Code, subject to the yearly Tribal budget cycle and financial reporting process.
9. Maintenance of histories, ethnographies, site locations, stories, cultural intellectual property, oral narration or chronicle, will be held in confidentiality unless the RST-THPO determines that the integrity and dignity of the RST will not be harmed by access to such information; no literary for profit research may be conducted on the Rosebud Reservation without the expressed written permission of the RST-THPO;
10. No academic research by non-tribal members or non-member tribal higher education academicians regarding the cultural history or present condition affecting the integrity of the Rosebud Sioux Tribe, may be conducted on the Rosebud Sioux Reservation without application to and written permission from the RST-THPO;

**A. Intent and Purposes.** The purpose of this Code is for the protection, preservation, management, conservation, and perpetuation of Cultural Resources administered through the RST-THPO as characterized in a manner that:

1. Protects and provides guardianship of cultural resources, traditions, and the independent cultural sovereignty of the Rosebud Sioux Tribe;

2. Establishes policies, statutory regulations, research, enforcement; and
3. Allows that future Tribal developmental practices will adhere to this Code and other jurisprudence as developed in the course of Tribal expansion.

**B. Declarations of Policy,** It is hereby declared to be the policy of the Tribe that:

1. All Cultural Resources are the communal property of the Tribe and must be treated with respect as living, spiritual entities:
2. The Tribal Government will take primary legislative responsibility for and exhibit leadership in the management of Cultural Resources through support of the RST-THPO;
3. The regulation and management of Cultural Resources as presented within the context of this document is in the best interest of the Tribe and of sovereign homelands.
4. All persons within Tribal Territory will be sufficiently informed about this Code and Cultural Resources.
5. Any person whose acts or omissions is found to have caused adverse effects as defined in Section 106 of the National Historic Preservation Act, as defined by this Code, and by other any other applicable Federal law or Tribal law, including Archaeological Resource Preservation Act, the Native American Graves Protection and Repatriation Act, the National Environmental Protection Act, and Titles 18 and 19 of the Rosebud Sioux Tribal Code, shall be subject to civil fines and criminal penalties including fines and imprisonment as defined by this Code and applicable federal statutes.
6. Persons who know of adverse affects to Cultural Resources should notify the RST-THPO without delay;
7. All persons located within, adjacent to, or near Tribal Territory are encouraged to adhere to the Code provisions with respect to cultural resources located on their own private properties;
8. All tribal members are encouraged to respect Cultural Resources regardless of the location of the Cultural Resources: and
9. The RST-THPO will seek Memorandums of Agreement (MOA) or Memorandums of Understanding (MOU) regarding the enclosed provisions with federal, state, tribal, or local governments that are in the best interest of the Rosebud Sioux Tribe and the protection of Rosebud Sioux Tribal Cultural continuity;

**Section 104. Jurisdiction**

- A. **Personal Jurisdiction.** This Code applies to all persons within the territorial jurisdiction of the Tribe.
- B. **Subject Matter Jurisdiction.** This Code applies to all Cultural Resources within the Territorial Jurisdiction of the Tribe.

C. **Territorial Jurisdiction.** For purposes of this Code, the territorial jurisdiction of the Tribe includes:

1. All land held in trust or restricted status by the federal government for either the Tribe or tribal members within the original boundaries of the Tribe's land base as set forth by the Act of March 2 1889 25 Stat. 896, and the Treaty of Fort Laramie of April 29, 1868, 15 Stat. 635, without regard to whether those boundaries have been judicially held or otherwise declared to have been "disestablished";
2. All land owned in fee simple by the Tribe within the boundaries of the Reservation, and;
3. All other land or geographic areas declared under federal law to be subject to the jurisdiction, sovereignty, or rights of the Tribe.

**D. Areas of non-tribal jurisdiction** such as private "checkerboard" or fee patent lands are subject to the Code upon private agreement with landowners whether tribal or non-tribal members;

**E. Persons who knowingly remove,** cause to be removed, assist in removal, allow to be removed, any Cultural Resources to the outside of the jurisdictional boundaries of the Rosebud Sioux Tribe without the approval of the RST-THPO are subject to fines, incarceration, or both.

## Section 105. Definitions

- A. **Activity** "Activity" or "Activities" means any action, certificate, construction, contract, development, easement, lease, license, permit, policy, program, project, transaction, or under taking that can have an adverse effect on Cultural Sites if any Cultural Sites are located in the area of potential effects.
- B. **Adverse effect.** "Adverse effect" or "Adverse effects" means any direct, indirect, or cumulative abuse, alteration, appropriation, change, collection, curtailment, cutting, damage, defacement, degradation, demolition, desecration, destruction, deterioration, digging, diminishment, disinterment, disruption, disturbance, encroachment, excavation, exposing, gathering, harm, harvest, impairment, injury interference, jeopardizing, loss, misuse, modification, molestation, mutilation, neglect, removal, taking, transporting or waste
- C. **ARPA.** "ARPA" means the Archaeological Resources Protection Act. Pub. L No. 96-95. 93 Stat 721 16 U.S.C. §§ 470aa-470mm, and all amendments thereto
- D. **Code** "Code" means the Tribal Cultural Resources Management Code
- E. **Committee.** "Committee" means the Land and Natural Resources Committee of the Tribal Council.
- F. **Cultural Patrimony Objects.** "Cultural Patrimony Objects" means any objects artifacts, or materials with ceremonial, cultural historical, sacred, spiritual, or traditional value to the Tribe,
- G. **Cultural Plants.** "Cultural Plants" means any plant, tree, shrub or herb, including any part thereof, with ceremonial, cultural, historical, sacred, spiritual, or traditional value to the Tribe,
- H. **Cultural Records** "Cultural Records means any Record with archaeological, Cultural, historical

or traditional value, to the Tribe.

- I. **Cultural Remains** “Cultural Remains” means any remains with archaeological, cultural, historical, sacred, spiritual, or traditional value to the Tribe, and also includes but is not limited to, Cultural Patrimony Objects and Funerary Objects.
- J. **Cultural Research.** “Cultural Research” means any Research of Cultural Resources.
- K. **Cultural Resources.** “Cultural Resources” means Cultural Plants, Cultural Records, Cultural Remains, and Cultural Sites.
- L. **Cultural Sites.** “Cultural Sites” means any sites of archaeological, ceremonial, cultural, historical, sacred, spiritual, or traditional value to the Tribe, and includes tribal ancestral burial grounds, cemeteries, and graves, whether marked or unmarked.
- M. **Office** “Office” means the Rosebud Sioux Tribe Tribal Historic Preservation Office (RST-THPO);
- N. **THPO** “THPO” means the Office and person designated as the Tribal Historic Preservation Officer and facility;
- O. **Discovery.** “Discovery” means any encounter, exhumation, finding, or unearthing, whether intentional or not,
- P. **Elders Advisory Group.** “Elders Advisory Group” means any elders of the Tribe identified or selected to advise under this Code.
- Q. **Endangered.** “Endangered” means in danger of extinction.
- R. **ESA.** “ESA” means the Endangered Species Act, Pub. L. No. 93-205, 87 Stat. 884, 16 U.S.C. §§ 1531-1544. and all amendments thereto.
- S. **Exclusion.** “Exclusion” means the permanent or temporary expulsion of a person from the Tribal Territory pursuant to the exclusionary powers of the Tribe.
- T. **Funerary Objects.** “Funerary Objects” means any objects, artifacts, or materials which are reasonably believed to have been placed with a deceased individual in burial as part of a tribal cultural ceremony or rite.
- U. **In situ.** “In situ” means an undisturbed intact remains or portions thereof in their original site and setting at the time of internment.
- V. **Land Use and Environment Commission.** “Land use and Environment Commission” means the Land Use and Environment Commission of the Tribe.
- W. **NAGPRA.** “NAGPRA” means the Native American Graves Protection and Repatriation Act, Pub. Law. No. 101-601. 104 Stat. 3048, 25 U.S.C. §§ 3001-3013 and 18 U.S.C. § 1170, and all amendments thereto; as amended, 1992.
- X. **NEPA.** “NEPA” means the National Environmental Policy Act of 1966;
- Y. **NHPA.** “NHPA” means the National Historic Preservation Act. Pub. L No. 89-665, 80 Stat. 915,

16 U.S.C. §§ 470-470h-5, and all amendments thereto

- Z. **Person.** “Person” or “Persons” means any individual, estate of a natural person, corporation, partnership, trust, or any other private entity, association, institution, organization, or society
- AA. **Record.** “Record or Records” means all tangible materials including, but not limited to: treaties, laws, rules, regulations, reports, studies, articles, theses, documents, papers, books, volumes, periodicals, pamphlets, newspapers, newspaper clippings, manuscripts, diaries, letters, correspondence, ledgers, journals, church records, government records, administrative records, inventories, catalogs, maps, surveys, plats, deeds, permits, receipts, contracts, photographs, slides negatives, portraits, sketches, drawings, models, films, sound or video recordings, audio tapes, microfilms, micro graphics, reproductions, electronic data, computer data bases, computer discs, printouts, research, field notes and inventories, and intangible things such as oral histories and interviews.
- BB. **Reinterment.** “Reinterment” means the tribal ceremonial or ritual aspect of reburial of disinterred human remains under the direction and auspices of the RST-THPO; this may include items of cultural patrimony determined not significant or necessary to the historical or cultural integrity of the Rosebud Sioux Tribe;
- CC. **Remains.** “Remains” means the physical remains, articulated or unarticulated bones and bone fragments, and the surrounding soil matrix at any stage of decomposition of any deceased human or animal, including any prehistoric human or animal
- DD. **Repatriation.** “Repatriation” means the physical return of any Cultural Resources to the Tribe within the proscribed definitions of this Code and under the supervision and auspices of the RST-THPO;
- EE. **Research.** “Research” means any academic, agricultural, agronomical, anthropological, archaeological, behavioral, biogenetic, botanical, clinical, cultural demographic, ecological, educational, environmental, ethnographical, genetic, historical, linguistic, medical, neurological, orthographical, photographic, psychological, scientific, sociological, theological, toxicological, or video graphical, study, investigation, analysis, or recordation that is not conducted by the Tribe whether involving human subjects or not.
- FF. **Reservation.** “Reservation” means within the geographical exterior boundary area encompassed by the Rosebud Sioux Tribe as proscribed within the legal description of the Act of March 2, 1889, 25 Stat. 896 and the Treaty of Ft. Laramie of 1868, 15 Stat. 635
- GG. **Sicangu Oyate Land Office.** “Sicangu Oyate Land Office” means the Land **Office** of the Tribe
- HH. **Site.** “Site” means: (1) a natural, physical, geographic area, place, or location, whether on, below or above the surface of the earth; or, (2) a building, structure, facility, or landscape made, prepared, produced or modified by humans.
- II. **Threatened.** “Threatened” means likely to become endangered within the foreseeable future.
- JJ. **Tribal Council.** “Tribal Council” means the Tribal Council of the Tribe
- KK. **Tribal Forestry Department.** “Tribal Forestry Department” means the department of Forestry of the Tribe.

LL. **Tribal Government.** “Tribal Government” means the authorized government of the Tribe.

MM. **Tribal Game, Fish, and Parks Department.** “Tribal Game, Fish, and Parks Department” means  
the Game, Fish, and Park Department of the Tribe.

NN. **Tribal Police.** “Tribal Police” means any law enforcement personnel duly authorized by the Tribal Government to enforce the laws of the Tribe.

OO. **Tribal Territory.** “Tribal Territory” means all land and geographic areas within the Territorial Jurisdiction of the ‘tribe as defined by this Code.

PP. **Tribe.** “Tribe” or “tribal” means the Rosebud Sioux Tribe, also known as the Sicangu Lakota Ovate.

**Section 106. Construction of Tense Used.** In construing the provisions of this Code, the present tense includes the past and future tenses and the future tense includes the present tense.

**Section 107. Masculine Gender Inclusive.** In construing the provisions of this Code, the masculine gender includes the feminine and neuter gender, exography.

**Section 108. Reference to Code Includes Amendments.** When reference is made to any portion of this Code, the reference shall apply to all amendments and additions made hereafter.

**Section 109. Severability.** If any part of this Code is invalidated by a court of competent jurisdiction, all valid parts that are severable from the invalid part remain in effect. If a part of this Code is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid application(s).

**Section 110. Repeal of Inconsistent Laws.** All codes, ordinances, resolutions, and other laws of the Tribe inconsistent with this Code are hereby repealed. To the extent that this Code provides other than any other tribal law regarding Cultural Resources, this Code shall govern.

## CULTURAL RESOURCES MANAGEMENT DEPARTMENT

### **Section 201. Tribal Council**

A. The Tribal Council is the governing and policy determining body for the Office of the Tribal Historic Preservation: As the governing and policy determining body the Tribal Council shall;

1. Employ a Rosebud Sioux Tribal Historic Preservation Officer;
2. Provide a suitable office on the Reservation for the THPO, and provide funding for facilities, equipment, and supplies for the Office as deemed necessary and prudent to meet the intent, purposes, and policies of this Code;

3. Review yearly in report formats the circumstances, objectives, goals, accomplishments, and areas of progress regarding Cultural Resources as reported by the RST-THPO:
  4. Regularly consider the conditions, needs, and improvement of Cultural Resources and enact or reject such additional legislation or changes in existing legislation as may be necessary or advisable;
  5. Actively promote and assist in the coordination of tribal programs, services, and activities that affect Cultural Resources;
  6. Approve or disapprove plans and goals regarding Cultural Resources;
  7. Adopt or reject rules or regulations recommended by the Director, or delegate rule making authority to the Director;
  8. Approve or disapprove cooperative agreements regarding Cultural Resources with the federal, state, and other tribal governments;
  9. Approve or disapprove contracts and agreements with consultants regarding Cultural Resources;
  10. Approve or disapprove RST-THPO appropriations and operating budget;
  11. Seek federal, private funding, and grants for the RST-THPO to actively maintain the operations and archives of the Rosebud Sioux Tribe:
  12. Use and rely on the Committee to provide legislative and policy oversight for the Department and to serve the Tribal Council on all legislative and policy matters related to Cultural Resources; provided that, the Tribal Council may delegate other duties and responsibilities to the Committee as it deems necessary or advisable;
  13. Establish advisory committees on Cultural Resources to serve the Tribal Council and the department as deemed necessary or advisable to meet the intents, purposes, and policies of this Code.
- B. **Committee.** The Committee shall provide legislative and policy oversight for the Department and shall serve the Tribal Council on all legislative and policy matters related to Cultural Resources. If the Tribal Council delegates any other duties or responsibilities to the Committee, the Committee shall exercise such authority only in a manner consistent with tribal and federal law.
- C. **Elders Advisory Group.** If and when identified or selected, the Elders Advisory Group shall serve in an advisory capacity to the Tribal Council, the Committee, and the Department as deemed necessary or advisable to implement this Code.

**Section 202. "Office"**

- A. **Establishment.** There is hereby established in the Tribal Government a Tribal Historic Preservation Office;

**B. Tribal Historic Preservation Officer (THPO).** The THPO shall be empowered to exercise all duties and responsibilities as deemed essential to the workings of the RST- Tribal Historic Preservation Office. The THPO will be the principal administrator of this Code and shall oversee the administration of the Code and all Office operations, functions, programs, services, and activities. The Office shall maintain current knowledge of the law, policies, and procedures relative to the Rosebud Sioux Tribe Cultural Resources. The THPO shall serve as the principal administrative advisor to the Tribal Council on all matters relative to this Code and Cultural Resources;

**C. Office, files, and records.** The Tribal Historic Preservation Officer shall maintain an office provided by the Tribal Council on the Reservation. In the Office the THPO shall maintain organized files, papers, reports, documents, correspondence, data, and other information or materials affecting the Cultural Resources generated or received by the Office. These aforementioned records may be maintained in microfiche, electronic, digital format, or paper form;

**D. Staff.** Subject to the approval of the Personnel Office of the Rosebud Sioux Tribe the THPO Officer will employ qualified professional, technical, clerical, and other employees that are necessary and essential to the maintenance of this Code. The THPO Officer shall plan and direct the duties and responsibilities of the Office staff and shall ensure that the Office staff is qualified and receives appropriate training annually;

**E. Fees.** Subject to the approval of the Tribal Council, the Tribal Historic Preservation Office is authorized to initiate and charge reasonable fees for all permits, sub-contractual, and contractual agreements as required or developed under the auspices and intent of this Code. All fees validly collected shall be deposited into account in the Tribal Treasury for the implementation, maintenance, and use as defined in this Code;

**F. Reports.** The THPO Officer shall prepare and submit a report to the Tribal Council as provided for in this Code. This report will detail the following:

1. The conditions, needs, and improvement of Cultural Resources;
2. The operation, accomplishments, programs, services provided, and activities of the THPO Office;
3. Provide receipts of expenditures used by the Office of funds designated for the preservation and protection of Cultural Resources;
4. Submit recommendations regarding necessary or advisable tribal or non-tribal legislation or other governmental action on behalf of Cultural Resources;
5. Initiate recommendations regarding any cooperative agreements with the federal, state, and other tribal governments and their agencies or political subdivisions that further the intents, purposes, and policies of this Code.

**G. Information and communication**

1. There is hereby established within the Office an “Information Disbursement Position”. Subject to funding, the THPO may develop and establish a program of information and education or training for the Tribe and general public, concerning the intents , purposes, and policies of this Code; the functions, programs, services, and activities of the Office of the Historic Preservation and Cultural Resources. Reasonable charges may be made for the dissemination of any such information and education.

2. The THPO may, dependent upon funding, provide a program concerning Cultural Resources to the general public; the dissemination of such information will be at the discretion of the THPO and all applicable federal, state, and customary tribal intellectual property laws, including trademarked, copyrighted, and patent laws, i.e.- Indian Arts and Crafts Act, 25 U.S.C. 305-310 and 18 U.S.C. 1158-1159. Subject to approval, the THPO may investigate and provide recommendations to the Tribal Council about alleged violations of those laws' violated by individuals or institutions infringing upon the cultural integrity of the Rosebud Sioux Tribe.

3. Notwithstanding any other provisions of this subsection regarding an Information Disbursement Position, the THPO will communicate and Provide information to tribal departments, agencies, offices, and entities about the intents, policies, and purposes of this Code, and the functions, programs, services, and activities of the THPO Office. The THPO shall provide information and educate non-tribal governments, departments, agencies, offices, and entities about the intents, purposes, and policies of this Code and the functions, purposes, and programs of the THPO Office.

4. The THPO may create a cooperative liaison environment with Sinte Gleska University, specifically the Tribal Education and Lakota Studies Departments, regarding the development of tribal curricula pertaining to Cultural Resources.

**H. Cooperation with and coordination of tribal programs, services, and activities.**

Consistent within the provisions, stipulations, and requisites stated within this Code, the THPO shall create a cooperative environment with other tribal departments, offices, and entities whose activities affect Cultural Resources; the THPO may coordinate and facilitate the coordination of programs, services, and activities of the departments, agencies, offices, and entities of the RST to ensure adherence and compliance to the intent of this Code.

**I. Investigations.** The THPO is authorized to initiate investigations regarding Cultural Resources violations and the provisions of this Code.

**J. Planning.** The THPO shall coordinate, communicate, and initiate a multi-year comprehensive planning strategy and goals for the management of Cultural Resources with other offices, agencies, entities of the Rosebud Sioux Tribe including Sinte Gleska University.

**K. Rules and Regulations.** The THPO will develop and recommend to the Tribal Council such rules and regulations as may be deemed necessary or advisable to administer this Code and to meet the needs or improve the effectiveness of activities affecting Cultural Resources; provided that the Tribal Council will delegate rule making authority to the THPO and that the THPO will use such authority only in a manner not inconsistent with this Code or federal and tribal or customary law.

**L. Liaison.** The THPO shall liaison with the tribal community and spiritual and traditional leaders when appropriate; additionally the THPO shall serve in the capacity as interactive lead with federal entities, other tribal governments, institutions of higher learning, private concerns, and museums concerning Cultural Resources; the THPO will serve on tribal and non-tribal boards, cultural resource committees, and working groups as directed by the Tribal Council.

M. **Consultations.** The THPO shall monitor the Federal Register of impending legislation affecting the integrity of Cultural Resources on the Rosebud Sioux Reservation and those lands involved in the Ft. Laramie Treaty of 1868 that may impinge on the Great Sioux Nation as a whole; the THPO, if so authorized by the Tribal Council shall participate in federal consultations; comment on or otherwise participate in federal rule making processes impacting Cultural Resources on the Rosebud Sioux Reservation, and lands as described in the Treaty of 1868 Fort Laramie;

N. **Cooperative Agreements.** The THPO, if so authorized by the Tribal Council, may negotiate and implement cooperative agreements with federal, state, other tribes, affiliates, or sub-divisions that further the intent, purpose, and implied purpose of this Code; such agreements or understandings are considered ineffectual until approval by the Tribal Council in sanctioned session.

O. **Consultants.** The THPO shall be empowered to hire or contract with such consultants as deemed necessary or advisable to further the intended purpose of this Code and/or to contract consultants to perform work for the Office of the THPO in meeting standards of compliance as mandated in Section 106 of the National Historic Preservation Act.

P. **Acquisitions.** The THPO may acquire items of Cultural Resources in the name of the Tribe

Q. **Budgets.** The THPO shall annually prepare a written line item budget for the operation(s) of the Office and to meet the requirements of Section 106 of the NHPA. The budget will include but not be limited to costs for: salaries, training, facilities, equipment, supplies, files (electronic and paper), records, consultants, travel (inclusive of expenses), and reports. The THPO will submit the budget with oral or written comment to the tribal council, their designee, or committee. The THPO will be present, upon request, at hearings as called by the council, designee, or committee to clarify, simplify, or elucidate upon budget line items as needed. The THPO shall participate in the preparation of budgets for other Cultural Resources needs as directed by the Tribal Council.

R. **Funding.** The THPO will seek funding from federal, state, or private sources as needed to fulfill the mandates of Section 106 of the NHPA and this Code. In addition, funding may be derived from performance of services to fulfill Section 106 from tribal programs affecting Cultural Resources in the course of their operations.

S. **Funds Expenditure.** The THPO is authorized to expend those funds acquired through federal, state, private, or tribal sources as appropriated to carry out the intents and purpose of this Code.

T. **Fiscal Management.** . The THPO will be responsible for the proper management of all funding acquired for the operation of the Office of Tribal Historic Preservation. The THPO shall adhere to established tribal policies in the receipt and expenditure of such funding. The THPO will assist the Tribal Treasurer in accounting for expenditure line item; audit of expenditures shall be performed annually on July 1<sup>st</sup> of each year of operation. The THPO will be responsible for all tribal properties assigned to the THPO Office and the proper use thereof.

U. **Enforcement assistance.** . The THPO is authorized to recommend to and seek assistance from all enforcement personnel duly invested by the Tribal Council to enforce the laws, codes, and rulings of the Rosebud Sioux Tribe that indirectly or directly affect potential violations of this Code.

## CULTURAL PLANTS

### Section 301. Cultural Plants

A. **Cultural Plants Program.** The THPO shall establish a Cultural Plants Program as a domain of concern for the continuance of the Rosebud Sioux Tribe.

B. **Professional Staff.** The THPO will hire consultants, whether tribal or non-tribal, who have knowledge of and experience with traditional tribal, pharmacopia, the current methods of use, and techniques for identifying, curating, preserving, and protecting Cultural Plants essential to the cultural continuity of the Rosebud Sioux Tribe.

C. **General Duties and Responsibilities.** The Cultural Plants Program

1. The THPO will appoint or contract as needed a principle advisor to advise the Tribal Council or its subsidiaries about the identification, preservation, protection, and improvement of Cultural Plants that are being affected by the activities of those subsidiaries in the course of performance of their program mandates.

2. The THPO or his/her appointee shall prepare a yearly report on Cultural Plants as directed by the THPO Officer.

3. Shall encourage training and education of and may provide training, education, and technical assistance to employees of the Tribe and to tribal members on the Cultural Plants Program;

4. Shall encourage tribal members to become informed about and involved in the Cultural Plants Program;

5. The THPO may publicly post all or any part of this Code regarding Cultural Plants and or any policies, procedures, or other measures regarding Cultural Plants developed and approved under this Code

6. The THPO is the lead in developing, negotiating, and implementing, with Tribal Council approval, any cooperative agreements with federal, state, local, and other tribal governments in furthering the goals and ambitions of this Code.

7. The THPO is the lead in developing, negotiating, and implementing, with Tribal Council approval, any cooperative agreements with federal, state, local, and other tribal governments in furthering the goals and ambitions of this Code.

D. **Inventory.** The Cultural Plants program

1. Develop an electronic based inventory of Cultural Plants within the exterior boundaries of the Rosebud Sioux Reservation; consultants used to develop this inventory may be tribal or non-tribal, scholars, academicians, traditional belief practitioners, cultural herbalists, and oral historians; the inventory developed will use the common non-Lakota name, the Lakota name, and scientific names;

2. A Global Information System generated map will be implemented to show general location, distribution or range of culturally significant plants on the Reservation;
3. Shall regularly retain, maintain, and keep current the inventory, map, and any supporting data thereto
4. Shall provide copies of the inventory and map to all tribal departments, agencies, offices And entities
5. Subject to the approval of the THPO, may limit or prohibit access by the general public to the inventory, map and any other information about Cultural Plants, including their location and meaning, if such limitation or prohibition is in the interest of preserving, protecting, or managing Cultural plants consistent with this Code, or is otherwise in the interest of the Tribe,
6. Subject to the approval of the THPO, may file petitions for listing of Culturally significant plants endangered by human induced practices (i.e.- grazing, construction, road building, etc.) under the Endangered Specie Act;

**E. Classification. The Cultural Plants Program**

1. Subject to approval of the THPO, shall develop three classification categories for Cultural Plants: Category one shall include all Cultural plants which are endangered; Category two shall include all Cultural Plants which are threatened, and Category three shall include all other Cultural Plants, and
2. Shall classify all Cultural Plants on the inventory into one of the three classification categories. The Cultural Plants Program shall retain, maintain, and keep current the classification and categorization.

**F. Coordination with the Land Use and Zoning Codes**

1. Subject to the approval of the THPO, the Cultural Plants Program shall make timely recommendations to the appropriate tribal departments, agencies, offices, and entities regarding necessary or advisable zoning and land use decisions or other action under applicable tribal law and policy. In making such recommendations, the Cultural Plants Program may use the inventory and classification categories developed under this Code.
2. The Cultural Plants Program shall notify promptly the Tribal Council in writing of any recommendations made regarding land use and zoning, and shall timely provide copies of this written notice to other appropriate tribal departments, agencies, offices, and entities.

**G Access**

1. To the extent consistent with applicable tribal land use and zoning codes, and subject to the approval of the THPO, the Cultural Plants Program shall develop a process for issuing permits that provide access to Cultural Plants. The permit process shall ensure:
  - A. that access to Category One Cultural Plants is limited to traditional tribal healers and medicine people or their designated assistants:

- B. that access to Category Two Cultural Plants is limited to traditional tribal healers, medicine people and spiritual leaders, or their designated assistants; and,
- C. that access to Category Three Cultural Plants is limited to tribal members, including tribal leaders, medicine people, spiritual leaders and their Designated assistants

2. The Cultural Plants Program may develop written rules and regulations to implement the access to Cultural Plants provisions in this Section, provided that any such rules and regulatory recommendations are ineffective until approval by the Tribal Council and THPO pursuant to a valid delegation of rule making authority on this matter.

3. Rules and regulations to implement the access to Cultural Plants provisions in this section May include but shall not be limited to:

A. Include language to provide for due process before a neutral and objective administrative tribunal in the process for modifying, suspending or revoking permits for the reason that the Cultural Resources Management Code will apply to both Tribal members and non-members.

B. limits and prohibitions on the manner, means, and methods of gathering collecting, and harvesting Cultural Plants:

C. limits and prohibitions on the location season, and the length or time of day for gathering, collecting, and harvesting Cultural Plants

D. limitations and prohibitions on the size and quantity of Cultural Plants gathered, collected, and harvested; and,

E. limitations and prohibitions on the commercial use, sale, trade, barter, or other for profit transaction of Cultural Plants.

4. In exercising their access rights under this Section tribal members shall respect the private property rights of landowners.

#### H. **Adverse effects**

1. The Cultural Plants Program shall receive and review all notices of proposed activities received from the Cultural Sites Program. The Cultural Plants Program shall promptly determine whether the proposed activity will have any adverse effect on the Cultural Plants. The Cultural plants Program shall promptly report the results of this determination to the Cultural Site Program. The Cultural Plants Program shall make recommendations consistent with the intents and purposes of this Code to the Cultural Sites Program about tribal activity permits, including terms ad condition thereto, issued under the Cultural Sites Program.

2. Tribal members shall exercise their hunting, fishing, gathering, camping, recreational, farming, grazing, pasturing, forestry, and other land use rights only in a manner consistent with the provisions of this Code regarding Cultural Plants.

3. All persons knowing of any adverse effects to Cultural Plants shall promptly report such knowledge to the Cultural Plants Program.

4. The Cultural Plants Program shall investigate all reports of adverse effects to Cultural Plants. All such investigations shall be documented in writing.
5. The Cultural Plants Program may recommend and seek the assistance of the Tribal Police, the Tribal Natural Resources Department the Tribal Forestry Department, the Sicangu Ovate Land Use Office the Tribal Land Use and Environment Commission, the Tribal Attorney, and the U.S. Attorney to address potential adverse effects to Cultural Plants.
- I. **Recovery plans.** Subject to the approval of the THPO the Cultural Plants Program may develop and implement recovery plans for the preservation protection. and management of tribal Cultural Plants, In developing and implementing such recovery plans, the Cultural plants Program shall give priority to endangered and threatened tribal Cultural Plants. In developing and implementing such recovery plans, the Cultural Plants program shall take advantage of federal plant protection and related programs open to tribes through federal agencies including but not limited to the department of the Interior, the department of Agriculture and the Environmental Protection Agency

## CULTURAL SITES

### Section 401. Cultural Sites

- A. **Cultural Sites Program.** There is hereby established within the workings of the Office of Historic Preservation a Cultural Sites Inventory listing;
- B. **Professional staff.** The professional staff of the Office of the Tribal Historic Preservation will have adequate knowledge of and experience with traditional and current tribal practices for identifying, preserving, protecting, restoring, improving, and maintaining cultural site integrity;
- C. **General Duties and Responsibilities.** The Cultural Sites Program:
  1. Shall serve as the principle listing of sites reinforcing the historical, present day, and future cultural reality of the Rosebud Sioux Tribe; the THPO will notify, advise, and recommend measures to the Tribal Council should sites of cultural significance be endanger
  2. The Cultural Sites Inventory shall be reported once a year to the Tribal Council;
  3. Shall encourage education and training, seminars, workshops, and technical assistance to employees of the Tribe and to tribal members of the purpose of the Cultural Sites Inventory; a discretionary divesture of information concerning sites deemed exceptionally significant to the Cultural Sites Inventory may not be publicly distributed unless approved by the THPO;
  4. Shall encourage tribal members to become involved and informed of the function and significance of the Cultural Sites Inventory;
  5. Subject to the approval of the THPO, may publicly post all or any part of this Code regarding Cultural Sites, and any policies, procedures. or other measures regarding Cultural Sites developed and approved under this Code:

6. Shall recommend and develop for the Office of Historic Preservation any cooperative agreements regarding Cultural Sites with Federal, State and other Tribal governments or their agencies or political subdivisions that are necessary or advisable to implement the provisions of this code, and:
7. Shall develop and recommend to the THPO any policies, procedures, or other Measures to preserve, protect, manage Cultural Sites consistent with this Code.

**D. Survey.** Cultural Sites Program

1. Shall develop plans for surveying Tribal Territory to determine the nature and extent of Cultural Sites within tribal territory:
2. Shall prepare a schedule for surveying lands within tribal territory that are likely to contain Cultural Sites;
3. Shall conduct surveys of lands within Tribal Territory to determine whether and where any Cultural Sites exist;
4. May use as a guide but shall not be bound by any state survey standards in planning, scheduling, and conducting the surveys provided for in this Section, and may use as a guide but shall *not* be bound by any federal survey standards in planning, scheduling, and conducting the surveys unless required by federal law; and,
5. May use qualified consultants in planning, scheduling, and conducting the surveys provided for in this section.

**E. Inventory.** The Cultural Sites Program:

1. Shall develop an inventory which may be an electronic data base, of all Cultural Sites within Tribal Territory. In developing such inventory, the Cultural Sites Program shall rely on the surveys provided for by this Section and may use tribal community, spiritual, or traditional leaders in developing such inventories, the Cultural Sites Program may use oral tradition
2. Shall develop a map, which may be electronically generated that shows the location of all Cultural Sites in the inventory
3. Shall retain, maintain, and keep current the inventory, map and any supporting data thereto
4. Subject to the approval of the Office of Historic Preservation, may limit or prohibit copies of the inventory and maps being distributed to any Tribal departments, agencies and entities.
5. Subject to approval of the Department, may limit or prohibit access by the general public to the inventory, map and any other information about Cultural Sites, including their location and meaning, if such limitation or prohibition is in the interest of preserving, protecting or managing Cultural Sites consistent with this Code or is otherwise in the interest of the Tribe.

6. Shall be familiar with the American Indian Religious Freedom Act. Pub, L. No. 95-341. 92 Stat. 469,42 USC. §§ 1996, and all amendments thereto, and Executive Order No. 13007. entitled Indian Sacred Sites. 61 Fed. Reg. 26. 771 (May 24, 1996). and shall ensure that tribal members and tribal employees engaged in official business have access to the Cultural Sites inventory;
7. May erect and maintain markers to identify or commemorate Cultural Sites
8. Subject to the approval of the THPO, may make rules and regulations to restrict access by the general public that any such rules and regulations are ineffective unless approved by the Tribal Council pursuant to a valid delegation of rule making authority on this matter and to a valid delegation of rule making authority on this matter and;
9. Subject to the approval of the THPO, may make nominations of Cultural Sites for inclusion in the National Register of Historic Places under the NHPA.

#### **F. Activity Permits**

1. Subject to the approval of the THPO, the Cultural Sites Program shall develop notice, response, application, permit, progress report, and any other administrative forms to be used under this Section.
2. THPO shall determine whether the proposed activities may result or have resulted in “adverse effects” in assessing the initial application for activity permit and any subsequent activities taking place at Cultural sites and take appropriate action to prohibit, limit or place conditions on the proposed activities to mitigate or eliminate: adverse effects to the Cultural sites.
3. All persons and all tribal departments, agencies, offices, and entities shall give notice in writing of proposed activities to those persons in charge with the protection of Cultural Sites Inventory program of proposed activities which may affect Cultural Sites before initiating or conducting such activities. The Cultural Sites program shall promptly notify the Department of any and all notices received under this Section. In addition, the Cultural Sites program shall promptly notify the Cultural Plants program and the Cultural Remains program of any and all notices received under This Section during this time no activity shall occur.
4. The Cultural Sites Inventory shall receive and investigate promptly any proper notices of proposed activities under this Section. The THPO shall also review any determinations made by the Cultural Sites Inventory personnel regarding notices of proposed activities. The Cultural Sites Inventory shall coordinate its investigation and review with tribal law enforcement personnel or federal agencies as appropriate.
5. Within thirty days (30) of proper notice given under this Section and after review by the Cultural Sites Inventory personnel, the THPO will comment in writing to the office, agency, or entity, as to whether the proposed activity requires a permit before proceeding with such activity that may endanger a Cultural Resource. If it is determined that an activity may endanger a Cultural Resource, the THPO may seek up to an additional thirty (30) days comment period if it determines that;

A. Proposed activity may affect lands, resources, or traditional cultural properties within Tribal Territory that have not been surveyed pursuant to this Section, or;

B. The THPO will seek comment from tribal members, community members, or spiritual/traditional belief practitioners as necessary or advisable; during the comment period interim, no activity as proposed will occur until a determination for clearance to proceed is made by the THPO; the THPO will respond in writing to the office, agency, or entity proposing an activity of its determination;

During this time no activity shall occur

6. Subject to approval of the THPO, the Cultural Sites Inventory may propose and require that an emergency survey of the land or area within Tribal Territory that a proposed activity may affect be surveyed; during this time no ground disturbing activity by an office, agency or entity may occur; should positive results of Cultural Resources be revealed by the survey, the THPO will respond to the office, agency, or entity that a permit is required to proceed with the proposed activity and the THPO may impose stipulations and restrictions of how and where such activity may occur to ensure that impacts to Resources either do not occur or are kept to a minimum of disturbance

7. If the THPO responds in writing to a notice giver that a permit under this section is not required for an activity, because no Cultural Sites will adversely affected the notice giver has further obligations under this section, and shall comply with all applicable provisions of this Code.

8. After giving notice and response from the THPO that it has determined that a permit is required for an activity all persons, tribal departments, agencies, offices, and entities have thirty (30) days within which to file an application with the Cultural Sites Inventory for a permit under this Section. The THPO will be promptly notified by the Cultural Sites Inventory personnel of all completed applications received under this Section.

9. The Cultural Sites Inventory Program shall review all completed applications files under this Section.

During this time no activity shall occur.

10. Within ten (10) days of a completed application, the Cultural Sites Inventory shall determine whether to issue a permit under this Section. Denials of permits shall be made in writing to the applicant.

11. Subject to the approval of the THPO, the Cultural Sites Inventory Program personnel may attach written conditions consistent with this Code to permits issued under this Section before a permit is issued such conditions may include the use of Tribal members to serve on activities, when and how activities may be conducted, and any other means or alternatives to avoid, minimize, or mitigate adverse effects to Cultural Sites. No activity shall occur unless and until a permit is received.

12. Permits issued under this Section are good for one year from the date of issuance unless the permit otherwise provides.

13. Permits issued under this Section are non-transferable to any other person or any other tribal department, agency, office, or entity.
14. After receiving proper notice under this Section, and subject to the approval of the THPO, the THPO may grant temporary permits for up to sixty (60) days, during which time activities may be conducted.
15. All persons, tribal agencies, offices, departments, and entities granted a permit or temporary permit under this Section must report in writing every thirty (30) days to the THPO on the progress of the activity for which a permit was issued concerning compliance with the permit, stipulations, conditions, and requirements attached thereto, and this Code.
16. Subject to review and investigation by the THPO, permits issued under this Code may be suspended, modified, or revoked; such actions by the THPO will be in writing should good cause by the THPO be determined for the protection of Cultural Resources; the THPO may provide warning to the permit holder in writing of impending revocation and provide opportunity for the permit holder to correct any problems or misunderstandings; the THPO will provide for a reasonable time period of ten (10) days for the permit holder to respond and comply.
17. The THPO may issue a written emergency suspension of any permit or temporary permit issued under this Section without notice or an opportunity to respond if the THPO determines that continuation of the activity is not in the best interest of the tribal cultural integrity. The THPO shall promptly review any emergency suspensions and shall report promptly the results of such review to the Tribal Council.
18. The following activities are exempt from the permit provisions of this Section unless otherwise determined by the THPO after advisement from the Cultural Sites Inventory;
  - A. The legitimate practice by tribal members of traditional tribal ceremonial, religious, sacred or spiritual activities
  - B. Maintenance of existing roads, driveways, rights of ways and Easements such as grading, snow plowing, and cleaning and clearing
  - C. Additions or improvements to existing homes. Buildings and structures that are less than five hundred square feet in area: and.
19. This Code is intended to regulate the excavation and removal of Archaeological resources on Indian lands as provided in ARPA such that the Tribal Activity permit provisions supercede the Federal provisions
20. The THPO may develop further rules and regulatory guidelines to implement this Section, provided that such rules and regulations are ineffective unless and until approved by the Tribal Council or by the department pursuant to a valid delegation of rule making authority on this matter

## G. Adverse effect

1. The use of metal detectors or similar devices or collection methods is hereby deemed to irreparably and adversely affect Cultural Sites, and the use of such detectors, devices, or methods is prohibited.
2. Tribal members shall exercise their hunting, fishing, gathering, camping, recreational, farming, grazing, pasturing, forestry, and other land use rights only in a manner consistent with the provisions of this Code regarding Cultural Sites.
3. All persons knowing of any adverse effects to Cultural Sites shall promptly *report* such knowledge to the Cultural Sites Program
4. The THPO or his/her designee will investigate promptly all reports of adverse effects to Cultural Sites all such investigations shall be documented in writing.
5. Subject to the approval of the THPO, the Office of Historic Preservation recommends and seeks the assistance of the Tribal Police, the Tribal Natural Resources Department, the Tribal Forestry Department, the Sicangu Ovate Land Office, the Tribal Land Use and Environment Commission, and the Tribal Attorney or Tribal Prosecutor to address potential violations of the provisions of this Code regarding Cultural Sites.

## . Federal Permits

1. The THPO is the arbiter and compliance enforcement of ARPA and the NHPA on the Rosebud Sioux Reservation; the THPO will have a clear and concise working knowledge of not only these laws but all preservation laws, codes, regulatory practices, and federal permitting laws.
2. The THPO shall receive and review all federal permits applied for or issued under ARPA and NHPA that affect Cultural Resources on the Rosebud Sioux Reservation; the THPO shall ensure that compliance issues contained in this Code in addition to the federal laws are adhered to;
3. The THPO at his/her discretion may enter into consultation for tribal consent concerning a permit validly presented to the Office of Historic Preservation under ARPA and NHPA; the THPO is empowered to negotiate stipulations, conditions, provisos, and requisite circumstances that may be the result of the consultation; the Tribal Council will be promptly informed of any consultation or negotiation by the THPO and the resultant conditions and or recommendations.

I. **Inspection.** The THPO or his/her designee who is properly trained will regularly inspect sites of particular cultural significance for disturbance, condition, and recommend preservation methodologies for stabilization.

J. **Tribal Historic Preservation Program.** Subject to the approval of this Code, the THPO assumes the function of the State Historic Preservation Office as defined under Section 106 of the NHPA and Part 800 of ARPA; this Code shall serve as the principle internal tribal regulatory guide for the Office of Historic Preservation

K. **Restoration plans.** The THPO shall deem sites imperiled by natural forces, or human induced impacts as priority for restoration and preservation; conditional preservation plans, when proposed, will be reviewed by the Land and Natural Committee prior to implementation.

## CULTURAL REMAINS

### Section 501

**A. Cultural Remains Program.** The THPO, as the designee for remains returning to the Rosebud Sioux Reservation is the legitimate and legal authority to accept, after satisfactory investigation of records, skeletal material attributed to be of Sicangu Lakota or Lakota descent.

**B. Professional staff.** The THPO will employ and train staff for the purpose of identifying, preserving, and protecting repatriated remains using the latest techniques, methodologies, and practices until a final disposition is determined by the Cultural Advisement Committee

**C. General Duties and Responsibilities.** The Cultural Remains Program:

1. The THPO shall inform the Tribal Council of repatriated remains and present to the Council proposed and/or implemented preservation, identification, and protective measures of Cultural Remains.
2. The THPO will prepare reports as needed to explicate the process of re-internment or research ownership, if questionable, of returned remains to the rightful owners within the tribe.
3. The THPO will at opportune times provide training and education for tribal members and employees of the tribe concerning the function and purpose for Cultural Remains and Repatriation within the Tribal Historic Preservation Office.
4. THPO shall post publicly portions of this Code regarding Cultural Remains in addition to any policies, procedures, and other measures regarding Cultural Remains developed and approved for posting under this Code.
5. The THPO will establish, as needed, those cooperative agreements (MOU's or MOA's) regarding Cultural Remains with federal, state, or local governments, private institutions, individual landowners, or private entities as necessary to implement the provisions of this Code.
6. The THPO shall develop a criteria, method of operation, procedure, and process to identify, preserve, and protect Cultural Remains consistent with this Code.

### **D. Discovery**

1. The THPO will develop criteria and procedure for the reporting, notice, and claim of discoveries located within the boundaries of the Rosebud Sioux Reservation.
2. All persons residing, visiting, or working within the confines of the Rosebud Sioux Reservation will report promptly to the THPO discovery of Cultural Remains; the THPO will implement compliance measures as required under NAGPRA.
3. The THPO, as lead Officer under the tribal structure regarding Cultural Remains, will receive notices of discovery and in a timely manner, implement a process of investigation with law enforcement officials, research and reach a moderm of disposition until satisfactory results prove sufficient for re-internment.

4. If an adverse effect or threat of adverse effect is imminent to a discovered Cultural Remains, the THPO may take emergency measures to protect such remains that may include their removal; other than such emergencies the staff, contractors, consultants, employees in any capacity of the Office of Historic Preservation or other Tribal offices, agencies, or programs shall not handle, affect, disturb, study, or photograph discovered Cultural Remains until a plan for disposition is affirmed.

5. The THPO is empowered to modify, suspend, or halt any and all activity that may adversely affect discovered Cultural Remains; upon either removal or utilizing the option of leaving the remains in situ and modifying the activities' parameters, the THPO will finalize the disposition of such Remains under compliance with NAGPRA and allow the activity to proceed.

6. The THPO shall make reasonable and good faith efforts to determine the origin and ethnicity of discovered Cultural Remains; should discovered Remains be determined to not be ancestral to the Sicangu Oyate appropriate notification will be sent to federal, state, church, local non- Native communities and other tribal governments of the discovery of such Remains.

7. Cultural Remains determined to be ancestral to the Sicangu Oyate are subject to the criteria developed for this situation by the THPO; the THPO will make a good faith effort to discern whether living descendants or relatives exist and are promptly notified in writing; if no living relatives or descendants can be located, a public notice of re-internment will be publicly posted in conspicuous places and newspapers of intent to re-intern at a place designated by the Tribe upon recommendation by the THPO.

8. A thirty (30) day notification period is allowable for descendants or relatives to assert in writing to the THPO a claim of individual ownership for discovered Cultural Remains; the THPO, upon being satisfied of the claimant's legitimacy, shall release the Remains to the responsible party for final disposition.

9. A period of sixty (60) days for research and examination of a claim may be needed to determine legitimacy; the THPO shall ensure that a notice of ongoing investigation is sent to the claimant's at thirty (30) days to alleviate undue stress and emotional turmoil.

10. Cultural Remains determined to be valid individual ownership shall be returned promptly to the claiming tribal members. Descendants, or relatives.

11. Cultural Remains unclaimed under this Section or determined not to be of valid individual ownership shall be deemed the responsibility of the Tribal Historic Preservation Office.

E. **Repatriation.** Cultural Remains Program

1. The THPO shall be the compliance officer charged with the administration and enforcement of NAGPRA on the Rosebud Sioux Reservation.

2. The THPO will develop rules and regulations through supporting agencies, offices, and programs of the Rosebud Sioux Tribe to implement NAGPRA; these rules and regulations will include but not be limited to the following and are subject to revision at the THPOs' discretion as needed;

- A. to request Cultural Remains inventories;
- B. for tribal consultation with federal agencies, institutions, museums, other governments of tribes, And other entities regarding Cultural Remains;
- C. to establish cultural affiliation of Cultural Remains; and.
- D. to establish right of possession of Cultural Remains;

provided, the above are pursuant and provided that any rules and regulations will be effective upon vote by the Tribal Council as presented by the THPO; the Rosebud Sioux Tribal Council is the rule making authority in regards to this Code and its circumlocutory.

- 3. The THPO shall receive notices and inventories of Cultural Remains, and promptly implement a process of research, investigation, and curation until disposition of such is resolved;
- 4. The THPO shall review and monitor the disposition of Cultural Remains within the care of the Office of Historic Preservation. The THPO may use and compensate tribal community members, consultants, spiritual and traditional leaders as needed to resolve ownership and or affiliation;
- 5. The THPO shall investigate all avenues of potential for repatriation of Cultural Remains and shall determine whether any Cultural Remains should be requested for return and shall request such return;
- 6. May provide technical assistance to individual tribal members in their repatriation claims:
- 7. Shall coordinate and supervise the return of all Cultural Remains
- 8. Shall determine in accordance with the provisions of the section of this Code regarding Discovery, whether any of the returned Cultural Remains are of valid individual ownership, and if so, shall return such Cultural Remains promptly to the claiming tribal members, descendents or relatives, and
- 9. The THPO may recommend and seek the assistance of any legal authority including but not limited to the U.S. Attorney and/or the Tribal Attorney to initiate administrative or legal action to enforce NAGPRA and the provisions of this Code;
- F. **Disposition:** The THPO shall develop procedures for the proper disposition, placement, and curation of any unclaimed Cultural Remains and may prepare an internal plan for the adequate custody, safekeeping, and maintenance by the Tribe of unclaimed Cultural Remains.

**G. Reinterment**

- 1. If Cultural Remains are unclaimed and conditions are favorable for in situ preservation then the Remains will not be removed for re-internment to another location;
- 2. The THPO is charged with decision making authority to determine that if conditions do not favor in situ preservation then removal of the remains may occur and their re-internment in another appropriate location.

3. The THPO may utilize the services, advice, guidance, and opinion of those spiritual and traditional leaders as deemed necessary to re-intern with dignity unclaimed Cultural Remains;
4. Re-internment of unclaimed cultural Remains shall occur at the first opportune time after exhausting of investigative efforts and the Remains shall remain in an organized container and/or facility.

#### H. **Adverse Effects**

1. The THPO will be involved in the proposed planning activities of Tribal agencies, offices, and programs intending to disturb ground or standing structures; the THPO will promptly investigate the potential proposed area of an activity and recommend avoidance if a site or sites may be adversely impacted by the proposed activity; if no sites exist within the proposed area of activity, the THPO will initiate a Cultural Resources survey of the area in question; if it is determined that no Cultural Resources exist within the area then a letter of clearance will be sent within 10 days; if Cultural Resources exist and an adverse impact may occur then avoidance and/or sub-surface testing may be initiated to determine significance of cultural integrity; after testing and no adverse effect is determined then the project may proceed as proposed and planned; a letter of clearance in writing will be sent within 10 days of completion of testing to the agency, office and program proposing such activity.
2. The THPO may at his/her discretion authorize the use of metal detectors when such use is deemed as a non-invasive procedure for locating of buried cultural sites of the historic era; the use of metal detectors for means other than those agreed to and supported by the THPO is prohibited on the Rosebud Sioux Reservation.
3. All persons knowing or aware of adverse affects to Cultural Remains shall promptly report such knowledge of activities to the THPO;
4. The THPO shall investigate all reports of Adverse Effects to cultural sites or Cultural Remains and the results will be documented in writing;
5. The THPO may recommend and seek the assistance of the Tribal Police or Tribal Attorney to address potential violations of the provisions of this Code regarding Cultural sites and remains.

### **CULTURAL RECORDS**

#### **Section 601. Cultural Records**

- A. **Cultural Records Program.** The THPO will establish, maintain, and append new records to a database kept at the Office of Historic Preservation; this database will not be open to the public; no access to these records will be allowed unless and upon request and petition to the THPO;
- B. **Professional Staff.** The Office of Historic Preservation staff will be knowledgeable of and trained for the purpose of maintenance of these records; current methods and techniques will be used to identify, collect, preserve, manage, and make records available as needed for activities of offices, agencies, programs, and researchers conducting projects upon the Rosebud Sioux Reservation;

**C. General Duties and Responsibilities.** The- Cultural Records Program:

1. The THPO will serve as the principle advisor to offices, agencies, and programs of the Rosebud Sioux Tribe concerning the identification, collection, preservation, management, and availability of records; the Tribal Archivist will be qualified through training and/or education in cultural records and resource administration an management.
2. A report of records (numerical sum) within the keeping of the Office of Historic Preservation will be made once a year by the THPO to the Tribal Council;
3. The THPO shall monitor national training seminars, workshops, and classes as needed for staff to attend to keep current of the latest methods and techniques needed to maintain records of cultural sites;
4. The THPO will as needed inform the public of the purpose of the cultural sites record portion of the Office of Historic Preservation;
5. The THPO may post publicly a records or records in question for input from knowledgeable persons to assist the Office of Historic Preservation in safeguarding such site(s) for future generations;
6. The THPO will make cooperative agreements as needed regarding cultural records with Federal, State, and other Tribal governments or their affiliates that are necessary or advisable to fulfill the purpose of record keeping within the stipulations designed under this Code;
7. The THPO will develop and recommend any policies, procedures, or other measures as needed to preserve, protect, maintain, and manage cultural records for the benefit of the Tribe and future generations;

**D. Tribal Archivist**

1. The THPO will establish a position of Tribal Archivist; the Archivist shall be the official custodian, coordinator and administrator of cultural records; the Tribal Archivist will be qualified through training and/or education in cultural records and resource administration and management;
2. The duties of the Tribal Archivist shall include but not be limited to;
  - A. Collecting and acquiring Cultural Records;
  - B. The Tribal Archivist, upon concurrence from the THPO, can receive and accept cultural records for custody, including gifts, requested information, and transfers of cultural records to the Office of Historic Preservation;
  - C. Arrange, classify, curate, and catalog cultural records;
  - D. Store, maintain, and manage cultural records for access by the public or researchers if petition and permit is granted by the THPO;
  - E. Inventory cultural records periodically to ensure that accurate information is contained in the records;

- F. Repair, service, and reproduce cultural records as needed if petition is granted by the THPO and confidentiality is ensured;
  - G. Availability of records is dependent upon petition to the THPO and at the THPOs' discretion, present and encourage the use of cultural records unless confidentiality is or has been compromised;
  - H. Publish and distribute records that may be interesting to the public unless confidentiality may be compromised by such action;
  - I. Develop a strategic plan including the goals and objectives of the cultural records staff for tribal members;
  - J. Develop, after consultation and approval by the THPO, a policy and process for the use and loan of cultural records, not originals, only copies.
  - K. Outline and create a lending policy, after THPO approval for implementation, for use by or lent to libraries, museums, and educational institutions, and;
  - L. Seek grants and other funding for projects to enhance, solidify, and improve the services, standards, and maintenance of the cultural records within the safekeeping of the Office of Historical Preservation;
3. The Tribal Archivist will follow policies and procedures as approved by the THPO for the use, viewing, copying, restrictions, and prohibitions on access and use that are necessary and advisable to meet the intents and purposes of this Code.
  4. The Tribal Archivist may adopt three letterheads for use when loaning archived materials to institutions for viewing; the first letterhead will state "Not For Reproduction"; the second will state "For Research Purposes Only"; the third will state "Property of the Office of Historic Preservation: Copying Allowable by Permission Only"; the Tribal Archivist may charge a reasonable fee for the costs incurred for copies, reproductions, authentication, and certification of records held by the Tribal Historic Preservation Office;
  5. The Tribal Archivist, upon approval by the THPO, may pursue legal assistance from the Tribal Attorney, Tribal Police, US Attorney for potential violations of the provisions of this Code;
  6. The Tribal Archivist is not liable for any infringement of copyright or analogous rights arising out of the custody, use or reproduction of cultural records;

### **Cultural Records Advisory Board**

- E Cultural Records Advisory Board:** The Cultural Records portion of the Office of Historic Preservation is subject to the policies and procedures as established by the Cultural Advisory Board and the THPO;
1. The Cultural Advisory Board is a volunteer board established to assist, advise, and guide the Tribal Historic Preservation Office and its dependent facilities; the Board has no authority to manage, interfere, impede, or otherwise hinder the day to day workings of personnel, their jobs, or purpose of dependent offices within the Tribal Historic Preservation Office operations.

2. The Cultural Advisory Board will serve in the capacity of liaison to the THPO and support the Office of Historic Preservation with its purpose, direction and Function within tribal communities, the Tribal Council, cultural institutions as needed.

A. The cultural records staff will adhere to written procedures to conduct its activities;

B. The cultural records staff will conduct meetings annually to inform the public or tribal agencies of records within it's holding;

C. The cultural records personnel will work directly with the Tribal Archivist concerning the conditions, needs, and planning for the maintenance and preservation of such records as needed;

D. Seek funding for cultural records projects, including grant proposals, pursuing private funding, and/or raising funds through other means to fund such projects deemed important to the maintenance of this portion of the Office of Historic Preservation;

E. Advise the Tribal Archivist on proposals to enhance and improve the cultural records projects and publications;

F. The THPO will review reports of the cultural records inventories, activities, and funding efforts of the Tribal Archivist and the Cultural Records staff;

G. Coordinate and facilitate an aura of cooperative relationship with other tribal offices, agencies, programs, and entities concerning cultural records, especially lower and higher education institutions to raise awareness of cultural history;

H. promote public understanding of the role and value of Cultural Records

## CULTURAL RESEARCH

### Section 701. Cultural Research

A. **Cultural Research Office.** The THPO will establish a working group that may be composed of an educator, a traditional leader, a spiritual leader, a member of the legal fraternity of the Rosebud Sioux Tribal judicial community, and an independent researcher/consultant; the working group may be constituted of all or partial members as suggested above;

B. **Professional Staff.** This group shall serve in the capacity as advisors to the THPO when the Tribe is approached by a researcher interested in the history (written or oral), pre-history, records, collections, or cultural patrimony of the Rosebud Sioux Tribe; this group can advise, append conditions, affirm or suggest denial of research on the Rosebud through the RST-THPO;

C. **General Duties and Responsibilities.** The Cultural Research Office

1. Shall serve the THPO and offer advisement, after researching the purpose and reason for the proposed research, involving the cultural integrity of the Rosebud Sioux Tribe;

2. Shall prepare in writing a report of substantiated reasons for support or denial of a proposed research design to the RST-THPO;
  3. Subject to the approval of the THPO may publicly post all or any part of this Code regarding a research design, whether an internal or external proposal, regarding research being conducted on the Rosebud Sioux Reservation;
  4. Shall recommend to the THPO cooperative affiliations that may be beneficial to the Rosebud Sioux Tribe with institutions, agencies, offices, and programs whether federal, state, and local other tribal governments, and their affiliates;
  5. The THPO shall utilize the working group as an on going affiliate of the Office of Historic Preservation and encourage the group to facilitate the policies, procedures, and other measures regarding Cultural Research on the Rosebud Reservation;
  6. Shall recommend to the THPO any cooperative agreements regarding Cultural Research with the Federal, State, and other Tribal Governments or their agencies or political subdivisions that are necessary or advisable to implement the provisions of this Code:
  7. Shall develop and recommend to the THPO any policies, procedures, or other measures regarding Cultural Research consistent with this Code.
- D. Research Permits.** All persons or institutions proposing to conduct Cultural Research within the exterior boundaries of the Rosebud Sioux Reservation shall apply and obtain from the RST-THPO a permit; the THPO will prior to agreement with the proposed Research Design submit the proposal to the working group on Cultural Research for review and concurrence; the application form, a progress form, and termination of work end date will be included for the conducting of Research; the process will include and not be limited to the following;
1. Name(s), addresses, and contact information of any and all researchers.
  2. The THPO will require a start date, mid-field work progress report, and a date of research termination on the Rosebud Reservation; persons violating this Section of the Code will be subject to permit revocation; these self-same persons will be considered from that time on as persona non gratis on the Rosebud Sioux Reservation;
  3. Description of the nature of the research being proposed including the project hypothesis, intent, methodology, goals, and objectives, the type of information that will be sought from individuals, other participation involving individuals The type of information that will be sought concerning Cultural Resources, and, Where and how any information sought will be obtained, including the disclosure of any intended or possible use of photographic, video, sound, and any other Recording devices.
  4. Description of other related research proposed or previously conducted
  5. Description of research funding or other financial support or sponsorship received or sought from any and all public or private sources, and an explanation of any limits on confidentiality of research results as a result of such funding

6. Justification why the Cultural Research should be conducted at this time.
7. How the Cultural Research will be disclosed or explained to Tribal Communities and individuals participating in or affected by the research.
8. Expected benefits of the proposed Cultural Research, including immediate and long range benefits to: the science or discipline represented in the research, the human subjects or participants of the research, and, the Tribe
9. Risks associated with or inherent in the Cultural Research, including risks to the physical or psychological well being of individual human subjects or participants: risks of adverse Effects to Cultural Resources: and, a detailed explanation of the steps that will be taken to minimize the risks, and the ameliorative and curative steps that will be taken in the event the research causes actual harm to participants or others or causes adverse effects to Cultural Resources;
10. Assurances of confidentiality as appropriately applied to individuals, tribal communities, the Tribe, and Cultural Resources, including but not limited to: assurances of confidentiality for the life of the project; how confidentiality will be protected after the project and for how long; where raw data and other materials will be deposited and stored at the completion of the project; and, the circumstances in which confidentiality may be limited or breached by legal or contractual obligations of the researcher and.
11. How and where the Cultural Research will be used, presented, disseminated, or distributed; to what agencies, offices, programs or their affiliates the Research will be given; should the Research be a commercial venture, to whom would benefit from such Research; should the Research be for a for profit purpose, that just compensation be prearranged with participants; that a fund be developed by the Office of Historic Preservation with a nominal sliding scale of compensation for Office man hours, forms, and personnel field time if a proposal should require the presence of the THPO or his/her designee;

**E. Notice to other programs:** The THPO or his/her designee shall notify the Tribal Council, tribal offices, programs, agencies, communities, tiyospaye, or entities that may be directly or indirectly affected by Research; the aforementioned shall submit written comment should they object to such Research being conducted with factual reasons for objection; those objecting to the Research shall have ten (10) working days after notification to submit the written objection to the THPO;

**F. Permit review Protocol.** The THPO, in consultation with the working group, will review all research permit applications over a period of thirty (30) days; a favorable review and permit approval may occur, if no objections are raised, before the thirty day deadline and the permit and protocol forms sent via certified mail to the researchers;

**G. Permit Review Process.** The THPO will establish the parameters of the Protocol to be used in the Research Application process; such parameters may include additional consultation beyond the working group as deemed necessary by the THPO if the need arises;

**H. Conditions.** The THPO may, if he/she deems it appropriate, attach and append additional stipulations, conditions, provisos, and prerequisites not covered in this Code if such additional requirement is considered justified;

- I. **Fees.** The THPO will establish a fee to cover all costs incurred by the Office of Historic Preservation for processing and managing Cultural Research of curated cultural materials within the keeping of the THPO; such fees will be commensurate with fees as charged by regional governments, institutions, and or other tribal governments;
- J. **Non-transferability.** Research permits issued under this Section are non-transferable to any other person.
- K. **Research Contracts.** The THPO may require an additional contract agreement with Researchers prior to the conducting of work; the THPO will negotiate, construct, develop, and approve contracts; after legal review, the contract will be signed by both parties in attendance and become an effective legal document;
- L. **Reports.** The THPO will require an interim report at mid-point of the research; this report shall contain the progress of the research; any draft research documents will be submitted to the THPO and the final document of research product will be submitted to the THPO as soon as feasibly possible; all research documents (draft and final) submitted shall become the property of the Rosebud Sioux Tribe and held in confidentiality from other researchers and unauthorized inquiry;
- M. **Substantial changes.** The THPO will be promptly notified of changes of Research Design; the THPO may require a complete reapplication and therefore resubmitting of all protocol conditions should changes occur; the THPO will notify the Research Permit holder of conditions, requirements, and/or revocation in writing; no research may continue until such changes have been reviewed by the THPO and either approved or a new application is submitted;
- N. **Confidentiality.** The THPO has the right and privilege to exclude from publication any Cultural Resources locations, conditions, or perhaps other information deemed intrusive or detrimental to tribal descendants or the tribes' cultural integrity and heritage;
- O. **Involvement of Tribe.** All researchers conducting business upon the Rosebud Sioux Reservation may be required to employ or train tribal members; or involve tribal offices, programs, agencies, and entities as deemed necessary by the THPO;
- P. **Copies to Tribe.** The THPO will require copies of all documents, records, pictures, films, and recordings made under the Research Permit and Contract shall become the property of the Office of Historic Preservation and therefore the Rosebud Sioux Tribe; should records or the like be knowingly withheld by a researcher, that researcher shall not be permitted to ever conduct research on the Rosebud Reservation in the future.
- Q. **Exempt research.** Cultural Research proposed or conducted by tribal members which involves family history or which is solely for personal or family use and not for profit is exempt from provisions of this Section of this Code.
- R. **Rules and regulations.** The THPO may change and develop additional policies to implement this Section; those policies shall be protective of the cultural integrity of the Rosebud Sioux Tribe and not hinder the future development of Research criteria.

## VIOLATIONS

Section 801. **Violations.** The THPO will enforce violations of this Code subject to the judiciary; violations may be addressed through civil remedies or criminal penalties as allowed by law.

- A. **Disclosure.** No person and no tribal department, agency, office, or entity shall disclose the nature, location of or any other information about Cultural Resources in violation of this Code.
- B. **Notice.** No person and no tribal department agency, office, or entity shall fail to notify the department as required by this Code regarding any adverse effect or any potential adverse effect on Cultural Resources.
- C. **Expenditures.** Neither the Tribal Council nor any tribal departments, agencies, offices, and entities shall authorize the expenditure of any funds for any activity unless and until the activity is in compliance with this Code.
- D. **Activities.** No person or tribal department, agency, office, or entity shall initiate or conduct any activity requiring a permit unless and until a such permit is applied for and approved by the THPO; No person or any tribal entity shall otherwise cause any adverse effect to any Cultural Resource(s);
- E. **Permits.** No person and no tribal department, agency, office, or entity shall fail to fully comply with all permits properly issued by the THPO, including any terms or conditions attached thereto. no person and no tribal department, agency, office, or entity shall knowingly disobey, disregard, or not comply with a permit modified, revoked, or suspended by the THPO.
- F. **Sales.** No person and no tribal department, agency, office or entity shall sell, purchase use for profit, acquire Barter, conceal, deliver, exchange, possess, receive, ship, traffic, transfer, transport, or offer to sell, purchase or exchange any Cultural resources of the Tribe.
- G. **Regulations.** No person and no tribal department, agency, office or entity shall violate any rule or regulation Promulgated pursuant to authority of this Code.
- H. **Solicitations.** No person and no tribal department, agency, office or entity shall solicit another person or any Tribal department, agency, office, or entity to commit or otherwise cause to be committed any violation Defined in this Code.

## ENFORCEMENT AND REVIEW

**Section 901. Enforcement.** The provisions of this Code and any rules, regulations, or permits validly issued pursuant hereto, shall be enforced by the THPO; the THPO may, in conjunction with and invited by, conjoin efforts with the Tribal Game, Fish, and Parks; Tribal Forestry; the Sicangu Oyate Land Use Office; the Tribal Land Use and Environment Commission; Tribal Police; the Tribal Attorney; the Tribal Prosecutor; the U.S. Attorney; or any other law enforcement agency or official duly authorized to enforce this Code.

## Section 1001. Judicial Review

- A. **Court Jurisdiction.** The Tribal Court shall have original civil and criminal jurisdiction over any actions arising under this Code. The Tribal Court shall have the authority to issue sure orders as may be necessary to enforce the provisions of this Code.
- B. **Review.** Reviewing of all discretionary decisions of the THPO are subject to review by the Tribal Court within thirty (30) days of final decision. In event of judicial review, the Tribal Council shall provide the Office of Historic Preservation with qualified and independent legal counsel.
- C. **Civil Actions.** The Tribe may bring a civil action against any person who is alleged to have violated this Code. There is no intent in this Code to create a private right of action
- D. **Civil Remedies.** After notice and an opportunity to be heard, any person found by a court of competent jurisdiction to have violated this Code may be subject to the following civil remedies.
1. The modification, suspension, or revocation of any permit issued under this Code, provided that, the Tribe shall not be liable for payment of any compensation, reimbursement, or damages in connection with the modification, suspension, or any revocation of any permit issued under this Code
  2. Restraining order, injunctions, and mandamus, including but not limited to the forfeiture, return and restoration of Cultural resources adversely affected.
  3. Damages, including costs of enforcement proceedings and the return, restoration, or disposition of Cultural Resources involved.
  4. Exclusion from tribal Territory
  5. Attorney's fees and costs to the prevailing party, and
  6. All other non-punitive remedies relief
- E. **Criminal Actions.** The Tribal Prosecutor shall be responsible for criminal prosecutions under this Code.
- F. **Criminal Penalties.** Tribal members and non-member Indians who knowingly violate this Code shall, upon conviction, be fined not more than \$1,000.00 or imprisoned for not more than one year, or both, per violation. Each violation of this Code shall be a separate offense. Criminal offenders may also be subject to civil remedies set forth in this Code.
- G. **Monetary Damages and Penalties to Tribal Treasury.** All monetary damages and penalties assessed under this Code shall be deposited in the Tribal Treasury and shall be used solely to implement this Code.
- H. **Sovereign Immunity not Waived.** Nothing in this Code is intended to be nor shall it be construed as a waiver of tribal sovereign immunity from suit.