



**Rincon Band of Luiseño Indians
Environmental Enforcement Code**

July 2007

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TITLE I

GENERAL PROVISIONS

§ 101. Exercise of Authority.

(a) The Rincon Band of Luiseño Indians is a sovereign Indian Band with jurisdiction over the Rincon Indian Reservation;

(b) The Rincon Band of Luiseño Indians, in order to protect the health, safety, and general welfare of its members, residents, and guests, exercises regulatory authority over all lands within the exterior boundaries of the Rincon Indian Reservation; and

(c) The Rincon Business Committee, pursuant to the Articles of Association Section 6. (b) and (c) is vested with the authority to enact ordinances protecting the health, safety, and general welfare of Band Members and non-Indians who are guests or reside on the Rincon Indian Reservation, as well as, to protect the natural resources of the Rincon Indian Reservation.

§ 102. Rincon Business Committee Findings and Declarations.

The Rincon Business Committee, through its vested authority under the Rincon Articles of Association, finds and declares as follows:

- (a) important to protect natural resources on the Rincon Reservation;
- (b) important to protect health, safety and welfare of members, non-members and guests;
- (c) important to comply with Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1301 et seq.;
- (d) important to have tribal environmental enforcement procedures consolidated under one Code;
- (e) important to identify what tribal department is responsible for implementing tribal environmental laws;
- (f) important to provide procedures for environmental enforcement.

§ 103. Short Title. This Code shall be known as the "Rincon Band of Luiseño Indians Environmental Enforcement Code".

§ 104. Effective Date. The provisions of this Code shall become effective upon adoption by the Rincon Business Committee and shall be applicable to all existing and future tribal environmental ordinances. Enactment of this Code shall supersede all due process provisions (notice and hearing) and fine provisions of all existing tribal environmental ordinances.

§ 105. Definitions. Unless otherwise provided herein, the following definitions shall apply throughout this Code and to all the ordinances attached and subject to this Code:

(a) "BIA" means the Bureau of Indian Affairs, an agency under the Department of the Interior of the United States of America.

(b) "Civil Infraction" means a violation of tribal law as set forth in a tribal ordinance.

(c) "Person" means any Band Member, non-member Indian or non-Indian individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(d) "Rincon Band" means the Rincon Band of Luiseño Indians, a sovereign Indian Band, which is recognized as such by the federal government of the United States of America. Reference to "Tribe" in any existing or future environmental ordinance shall mean the "Rincon Band".

(e) "Rincon Environmental Department " or "RED", is a department of the Rincon Band that is responsible for the implementation of the Rincon Band's environmental ordinances unless otherwise specified.

(f) "Rincon Environmental Ordinance" means any tribal ordinance that is or was enacted by the Rincon Band for the protection and preservation of tribal resources and the tribal environment.

(g) "Rincon Security Department", aka Service, means the department/service within the Rincon Band which is charged with the enforcement of tribal ordinances and to provide protection and safety on the Rincon Reservation.

(h) "Rincon Business Committee" or "Business Committee" is the five member committee established under Section 3 (a) of the Rincon Band's Articles of Association. "Rincon Business Committee" shall be synonyms with "Tribal Council" as used in any existing or future tribal environmental ordinance.

(i) "Tribal Court" shall be the Intertribal Court of Southern California or other tribal forum designated by the Business Committee to hear and decide violations of tribal environmental ordinances.

§ 106. Severability. If any provision of this Code, or its application to any person or circumstances, is determined invalid, such determination shall not invalidate any other provisions or applications of this Code and to this end, the provisions of this Code are severable.

§ 107. Amendments. This Code may be amended from time to time by the Business Committee.

TITLE II

RINCON ENVIRONMENTAL DEPARTMENT

§ 201. Establishment of Rincon Environmental Department. The Business Committee hereby establishes the Rincon Environmental Department ("RED"). The RED shall be administered by an Environmental Manager/Director, who will be selected and hired by the Director of Tribal Administration/Tribal Administrator or other Business Committee representative. The Environmental Manager/Director shall report to the Tribal Administrator and directly to the Business Committee upon request.

§ 202. Duties and Responsibilities. The duties and responsibilities of the RED are as follows:

(a) **Enforcement of Code.** Enforce all provisions of this Code and Tribal Environmental Ordinances in conjunction with the Rincon Security Department and/or other local law enforcement agency, unless otherwise specified.

(b) **Coordinate with Other Agencies.** Coordinate and work with appropriate Rincon Tribal Departments, and the environmental enforcement agencies of the federal government when appropriate and where there is concurrent enforcement jurisdiction.

(c) **Development of Programs.** Develop, implement, and conduct environmental inspection, enforcement, and training programs.

(d) **Record Keeping.** Keep and maintain records of its inspection, enforcement, and training programs.

(e) **Consultation with Health Agencies.** Consult with appropriate health agencies concerning environmental matters that may affect the health, safety and welfare of the persons on the Rincon Reservation.

TITLE III

IMPLEMENTATION OF RINCON ENVIRONMENTAL ENFORCEMENT CODE AND ORDINANCES

§ 301. Enforcement Department. The RED, in cooperation with the Rincon Security Department and/or other local law enforcement agency, is hereby designated as the Enforcement Department entrusted with the duty and responsibility of ensuring that this Code, as well as existing and future Environmental Ordinances, are complied with.

§ 302. Enforcement Actions.

(a) **Complaints.** Any person, including a Rincon Security Officer or other law enforcement officer, may file a signed, written complaint with the RED alleging a violation of a Rincon Environmental Ordinance. Given the nature of the alleged complaint, RED may investigate and prepare a written report setting forth the findings of the investigation. All complaints will be held in confidence by the RED.

A complaint may also be initiated by the RED upon its own independent observation and investigation.

(b) **Notice of Violation.** After completing its investigation and determining that there has been a violation of a Rincon Band of Luiseño Indians environmental ordinance, the RED shall file a "Notice of Violation" with the Tribal Administrator and serve the person responsible for the violation a copy of the RED investigative report and the "Notice of Violation". The "Notice of Violation" shall set forth:

- (i) the specific environmental violation;
- (ii) what actions the person must take to correct the violation;
- (iii) the time frame for the corrective action;
- (iv) the complaint will be filed with the Tribal Court should the person fail to take corrective action;
- (v) the penalty that the person will be subject to should she or he fail to take corrective action; and

- (vi) the person has five (5) working days from the date she or he receives the "Notice of Violation" to file a written "Request for Hearing," pursuant to Section 303 of this Code, if she/he contests the findings of the RED.

The "Notice of Violation" may be personally served on the person (on or off the reservation), posted at his or her property, or sent certified mail by the RED. If the person responsible for the violation cannot be located or is intentionally avoiding service of the "Notice of Violation", the RED shall serve the property owner, assignment holder, assignee, lessee, allottee, or other person in possession and/or control of the property upon which the violation is occurring and said person shall become responsible for correcting the violation. After service has been completed, a "Proof of Service" shall be prepared by the serving officer/person setting forth the time, date, manner of service and signed by serving officer/person.

(c) **Emergency Orders.** In all cases where the RED determines, based on available evidence, that a condition exists that is or will cause immediate harm or injury to persons on the Rincon Reservation or cause immediate damage or destruction of tribal natural resources (i.e. land, air, water), the RED shall immediately file a Motion for an Emergency Order with the Tribal Court. The Tribal Court shall, within 24 hours but in no case more than 72 hours of the filing of the RED's Motion, either grant or deny the Motion. If the Motion is granted, the Emergency Order will authorize the RED to take immediate remedial action to prevent harm, injury or impact to persons on the Rincon Reservation or tribal natural resources. Upon the issuance of such an Emergency Order, the RED shall act pursuant to the Order and also serve the Order, if possible, on the person responsible for causing the threatening condition and/or the property owner, assignment holder, assignee, lessee, allottee, or other person in possession and control of the property where the threatening condition is located. The Emergency Order shall provide that the person being served may file a "Request for Hearing" pursuant to Section 303. The filing of a "Request for Hearing" shall not stay the enforcement of the Emergency Order.

§ 303. Request for Hearing and Hearing Process.

(a) **Request for a Hearing.** Any person served with a “Notice of Violation” may contest the findings of the RED by filing a “Request for Hearing” with the Tribal Court within five (5) working days from receipt of the “Notice of Violation”. The “Request for Hearing” shall set forth the grounds upon which the person (herein “Respondent”) contests the “Notice of Violation”. Upon receipt of the “Request for Hearing”, the Tribal Court shall schedule the matter for hearing as soon as possible but no more than 20 calendar days from when the Request is received by the Tribal Court. The Tribal Court shall issue and serve a “Notice of Hearing” to the Respondent and the RED setting forth the hearing date, time, location and that the Respondent may bring witnesses, have legal counsel and/or a representative at his/her own expense and submit any documents relative to his/her case. The “Notice of Hearing” may be served in the same manner as provided for under Section 302 (b).

Either the RED or the Respondent may request that the hearing date be changed by filing a request with the Tribal Court. The Tribal Court may grant one (1) request to change the hearing date upon a showing of good cause. Any subsequent requests for a continuance of the hearing will be granted by the Tribal Court only upon a stipulation of the parties.

(b) **Hearing Before the Tribal Court.** At the hearing, the RED may be represented by legal counsel. The RED shall present the Tribal Court with its investigation report and other documents relied upon in finding that there has been a violation of a Rincon Band Environmental Ordinance. The RED may also call witnesses to testify in support of its finding that a violation has occurred. The Respondent shall be permitted to question the RED representatives and witnesses.

After the RED has completed its presentation, the Respondent shall present his/her oral and/or written evidence. All evidence must be relevant to the violation set forth in the “Notice of Violation”. The RED representatives shall be permitted to question the Respondent and his/her witnesses.

§ 303. Request for Hearing and Hearing Process.

(a) **Request for a Hearing.** Any person served with a "Notice of Violation" may contest the findings of the RED by filing a "Request for Hearing" with the Tribal Court within five (5) working days from receipt of the "Notice of Violation". The "Request for Hearing" shall set forth the grounds upon which the person (herein "Respondent") contests the "Notice of Violation". Upon receipt of the "Request for Hearing", the Tribal Court shall schedule the matter for hearing as soon as possible but no more than 20 calendar days from when the Request is received by the Tribal Court. The Tribal Court shall issue and serve a "Notice of Hearing" to the Respondent and the RED setting forth the hearing date, time, location and that the Respondent may bring witnesses, have a representative at his/her own expense and submit any documents relative to his/her case. The "Notice of Hearing" may be served in the same manner as provided for under Section 302 (b).

Either the RED or the Respondent may request that the hearing date be changed by filing a request with the Tribal Court. The Tribal Court may grant one (1) request to change the hearing date upon a showing of good cause. Any subsequent requests for a continuance of the hearing will be granted by the Tribal Court only upon a stipulation of the parties.

(b) **Hearing Before the Tribal Court.** At the hearing, the RED may be represented by legal counsel. The RED shall present the Tribal Court with its investigation report and other documents relied upon in finding that there has been a violation of a Rincon Band Environmental Ordinance. The RED may also call witnesses to testify in support of its finding that a violation has occurred. The Respondent shall be permitted to question the RED representatives and witnesses.

After the RED has completed its presentation, the Respondent shall present his/her oral and/or written evidence. All evidence must be relevant to the violation set forth in the "Notice of Violation". The RED representatives shall be permitted to question the Respondent and his/her witnesses.

All hearings before the Tribal Court shall be conducted in fair and orderly manner. Hearings before the Tribal Court shall be civil in nature, informal and may be subject to rules and procedures as may from time to time be prescribed by the Tribal Court or the Business Committee.

At the close of Respondent's presentation, the Tribal Court, may either issue a decision at that time or take the case under advisement. In all cases, the Tribal Court shall evaluate all of the evidence and testimony and render a decision on whether the Respondent has violated a Rincon Environmental Ordinance. The Tribal Court shall issue its written decision setting forth its findings within ten (10) days from the date of the hearing and the decision will be served on the Respondent and the RED. If the Tribal Court finds that the Respondent has violated a Rincon Environmental Ordinance, the decision shall order the penalty for such violation and/or other such relief requested by the RED and set forth under §305. All decisions of the Tribal Court shall be final.

§ 304. Failure to Take Remedial Action.

If a Band Member is served with a "Notice of Violation" and fails to take the corrective action as set forth in the "Notice of Violation" and fails to file a timely "Request for Hearing", the RED shall submit a written "Request for Garnishment" to the appropriate Tribal Department requesting that the amount of the fine for the violation be withheld from the Band Member's per capita payment.

If the RED seeks relief other than or in addition to a fine, the RED may file a "Request for Court Order" as provided for below. If the violator is not a Band Member (non-member Indian or non-Indian) and has not taken corrective action after being properly served with a "Notice of Violation" or filed a "Request for Hearing", the RED shall file with the Tribal Court, a "Request for Court Order." With the "Request for Court Order" the RED will also file its investigation report and other relevant documents or evidence related to the violation, a copy of the "Notice of Violation", "Proof of Service" that the violator was served with "Notice of Violation" or that the owner of the land or person who is in possession or control of the land where the violation occurred was served. If the Tribal Court finds that the person named in the "Request for Court Order" was properly served, failed to take corrective action as ordered, and failed to timely "Request a Hearing", the Tribal Court shall issue an Order granting some or all of the relief requested by the RED.

In all cases under this subsection, the RED will prepare and file with the Tribal Administrator an "Action Report" informing him/her of the outcome of the case and final disposition.

§ 305. Civil Penalties.

If the Tribal Court finds a person has violated a Rincon Environmental Ordinance, the Tribal Court shall determine what penalty shall be imposed on the person. The Tribal Court may apply the following penalties:

- (a) A fine of no less than \$100 and no more than \$5,000;
- (b) A cease and desist order; and/or
- (c) An order directing the person to take remedial action in a specified period of time; and/or
- (d) An order directing the person to pay the costs of any and all remedial actions taken by the Rincon Band to correct the violation; and/or
- (e) Costs and legal fees to the prevailing party; and/or
- (f) Any and all other relief the Tribal Court determines is necessary and appropriate.

§ 306. Enforcement of Tribal Court Order.

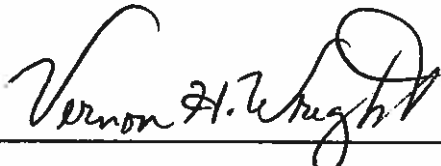
Should a person, who has been found to have violated a Rincon Environmental Ordinance under Section 304 or 305, fail or refuse to comply with an Order issued by the Tribal Court, the RED shall seek enforcement of said Order through any and all legal means available to the RED. All persons having violated a Rincon Environmental Ordinance shall be responsible for all costs and legal fees incurred in the enforcement of a Tribal Court Order. If the person who has violated a Rincon Environmental Ordinance is a Band Member of the Rincon Band, his/her gaming per capita distribution payment may be garnished to satisfy any penalty assessed by Tribal Court, said garnishment being authorized under Article V, Section 2, B of the "Ordinance Prescribing Allocation and Distribution of Net Revenue from the Tribal Gaming Activities of the Rincon Band of Luiseño Indians."

§ 307. Sovereign Immunity.

Nothing in this Code shall be deemed to have waived the Rincon Band's, its department's, employees, officers, agents or other tribal entities' sovereign immunity.

CERTIFICATION

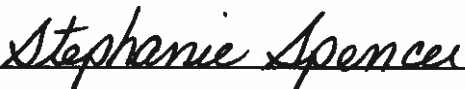
This certifies that the above Rincon Band of Luiseño Indians Environmental Enforcement Code 2007 was duly adopted at a Rincon Business Committee meeting on the 10th day of July 2007 by a vote of 5 "FOR", 0 "AGAINST", 0 "ABSTAIN", and 0 "ABSENT".



Vernon Wright, Chairman



Bo Mazzetti, Vice Chairman



Stephanie Spencer, Council Member



Gilbert Parada, Council Member



Charlie Kolb, Council Member