

CALIFORNIA NATIVE AMERICAN HERITAGE COMMISSION

Open Session Minutes

First Quarterly Meeting

July 20, 2018

10:00 AM to 3:00 PM

Location: The Ziggurat Building, Auditorium

707 3rd Street

West Sacramento, CA 95605

Commissioners Present

James Ramos, Chairman

Laura Miranda, Vice Chairwoman

Merri Lopez-Keifer, Secretary

Reginald Pagaling, Parliamentarian

Julie Tumamait-Stenslie

Russell Attebery

Joseph Myers

Staff Present

Christina Snider, Executive Secretary

Terrie L. Robinson, General Counsel

Samantha Cypret, Associate Governmental
Program Analyst

Debbie Treadway, Environmental Scientist

Katy Sanchez, Associate Environmental Planner

Gayle Totton, Associate Governmental Program Analyst

Sharaya Souza, Staff Services Analyst

Nancy Gonzalez-Lopez, Office Assistant

Commissioners Absent

William Mungary, Chairman Emeritus

Marshall McKay

Call to Order – Native American Heritage Commission:

- 1) Chairman Ramos called the meeting to order at 10:10 AM
- 2) Roll Call – A quorum was established.
- 3) The Native American Heritage Commissioners, Staff, and the Attorney General's representative were introduced.

Public Comment:

Courtney Coyle, Outside Legal Counsel, United Auburn Indian Community

Ms. Coyle reported that the United Auburn Indian Community (UAIC) received a letter from University of California, Davis (UCD) on July 19, 2018 stating they would begin the deaccession process. UAIC is concerned that the Bureau of Reclamation and UCD will withhold items from repatriation. UAIC requested that the Commission post the Notice of Completion for the Auburn Dam Collection and the Brazil Burial Mound inventories online. They also requested that the Commission move forward with UAIC's claim under the California Native American Graves Protection and Repatriation Act (CalNAGPRA).

Brian Guth, Tribal Attorney, United Auburn Indian Community

Mr. Guth reported that there are 4 separate processes that are occurring simultaneously: 1) The NAGPRA process; 2) the CalNAGPRA process; 3) UCD's internal dispute resolution process; and 4) UCD's deaccession process. UAIC requested that the Commission continue moving forward with the CalNAGPRA process as they do not believe the other processes would fully address their concerns.

Sheila O'Rourke, Special Assistant to the Vice Provost, University of California, Davis

Ms. O' Rourke spoke before the Commission as a representative for UC Davis Provost and Executive Vice Chancellor Ralph J. Hexter, who is responsible for CalNAGPRA and NAGPRA implementation at UCD. Ms. O'Rourke apologized on behalf of UCD for the issues that have arisen during the repatriation process. She reported that UCD has elevated NAGPRA responsibility to the Provost, reorganized the governance of their

Anthropology Museum, reconstituted their NAGPRA Advisory Committee, appointed a faculty member from the Native American Studies Department to the Committee, and hired expert staff to facilitate NAGPRA compliance. She stated that in compliance with NAGPRA and CalNAGPRA, UCD completed their inventory of Accession 32 in consultation with the tribes involved including UAIC. UCD and the Bureau of Reclamation jointly concluded that 1,000 items meet the NAGPRA definitions for associated funerary objects. There has been an ongoing dispute with UAIC regarding 6,000 additional items that UCD and the Bureau of Reclamation do not believe meet NAGPRA's definition of associated funerary objects. UCD received approval from the University's Office of the President to send the March 9, 2018 inventory to the National NAGPRA.

Vice Chairwoman Miranda then asked Ms. O'Rourke for the names of the members of the Ad Hoc Committee for NAGPRA that decided to begin the deaccession process. Ms. O'Rourke stated that the two Committee members were Professor Beth Rose Middleton from the Department of Native American Studies and Professor Jelmer Eerkens from the Department of Anthropology. Ms. Robinson asked if UCD would consider delaying the deaccession to allow the Commission process to go forward, as the UCD process might not have identified items correctly due to the definitions under federal NAGPRA differing from the definitions under CalNAGPRA. Ms. O'Rourke stated that UCD cannot go through deaccession without a request from the tribes. Therefore, if there is no request there will be no deaccession. Secretary Lopez-Keifer asked Ms. O'Rourke if there was any outreach made to the descendants regarding the Ad Hoc Committee decision. Ms. O'Rourke stated that outreach to the tribes did not occur during the decision process.

Ms. Robinson announced that there was a letter received from Chairman Raymond Hitchcock of Wilton Rancheria. The letter expressed the tribe's preference that the Auburn Dam collection be processed for repatriation without further handling. They also requested that items be identified based on traditional knowledge of the affiliated tribes rather than the archeological and anthropological methods currently used by museum staff.

Closed Session

Call to Order – Public Session:

- 1) Traditional opening with a prayer.
- 2) Closed Session Report – James Ramos, *Chairman*, **Information Item**

Chairman Ramos stated there was nothing to report from Closed Session.

- 3) Approval of Minutes – James Ramos, *Chairman*, **Action Item**

A motion was made by Commissioner Myers and seconded by Commissioner Attebery to approve the open session minutes from April 6, 2018. Commissioner Pagaling abstained

Ayes: 6; Nays: 0; Abstained: 1
The motion was passed.

A motion was made by Vice Chairwoman Miranda and seconded by Commissioner Myers to approve the closed session minutes from April 6, 2018. Commissioner Pagaling and Commissioner Tumamait-Stenslie abstained.

Ayes: 5; Nays: 0; Abstained: 2
The motion was passed.

Old Business:

- 1) CalNAGPRA Request (United Auburn Indian Community and University of California, Davis), Terrie Robinson, *General Counsel*, **Action and/or Information Item**

Ms. Robinson reported that the item was listed as a possible action item to allow UAIC to come forward to the Commission with their petition. Executive Secretary Snider reported that staff will continue discussions with UCD but no action item came up from closed session.

Secretary Lopez-Keifer thanked representatives of tribes for attending the meeting and noted that the descendants should be included in the determinations as to what is an ancestral funerary object. Commissioner Pagaling expressed his agreement with Secretary Lopez-Keifer's statement and requested to meet with the other agencies involved to find a way to amicably resolve the situation. Commissioner Attebery expressed his disapproval of UCD's current Ad Hoc Committee. He noted that the Karuk Tribe had success stories regarding repatriation and encouraged UCD to look to those examples. Commissioner Tumamait-Stenslie urged institutions to start the dialogue with tribes and encouraged people to send letters to other institutions where cultural items are being held. Vice Chairwoman Miranda encouraged the inclusion of tribes early in the repatriation process before inventories are created.

Ms. Robinson stated that the NAHC will publish the inventory on their website and discussions with UCD would continue. Ms. Robinson thanked the Department of Justice and the Attorney General's Representative, John Applebaum, for assistance in this matter.

Public Comment:

Gabe Cayton, Tribal Council Member, United Auburn Indian Community

Mr. Cayton reported that UCD had begun the repatriation process on the Brazil Burial Mound and it is likely there will be another claim related to this collection. He requested that the Commission direct UCD staff to publish the CalNAGPRA inventory without delay.

Matthew Moore, Tribal Historic Preservation Officer, United Auburn Indian Community

Mr. Moore reported that on April 23, 2018, UAIC was notified by UCD regarding the handling of ancestral remains from the Brazil Burial Mound. On May 24, 2018, UCD met with NAHC staff to discuss the possibility of mediation, but UCD did not allow UAIC representatives to attend the meeting. UAIC has written to UCD requesting reconsideration of their rejection of mediation regarding the Auburn Dam collection, and they have yet to receive a response. On June 13, 2018, UCD staff proceeded to re-handle and re-inventory the burials from the Brazil site despite written objections. UAIC asked the Commission to prepare interim guidance or best practices that advise against unnecessary handling of remains and grave goods, as well as provide California-specific guidance on tribes as authorities for cultural identifications consistent with the Health and Safety Code 8016(i), Public Resources Code 5097.98(a), and the People v. Van Horn case.

Bob Cayton, Tribal Historic Preservation Committee Member, United Auburn Indian Community

Mr. Cayton stated that he came forward to the Commission in support of the testimony of Tribal Council Member Gabe Cayton, and Tribal Historic Preservation Officer Mathew Moore. He expressed his belief that only tribal representatives have the right to identify what is a funerary or sacred object.

Dr. Shasta Gaughen, Tribal Historic Preservation Officer, Pala Band of Mission Indians

Dr. Gaughen expressed her support for UAIC and all tribes who wish to see changes made to the repatriation process under NAGPRA and CalNAGPRA. She called for places of academia to use methods that put tribal needs and values first.

Alex Watts-Tobin, Tribal Historic Preservation Officer, Karuk Tribe

Mr. Watts-Tobin stated that anthropologists and archaeologists cannot tell tribes what the relevant questions are in the identification of their cultural items.

Michele Fahley, Deputy General Counsel, Pechanga Band of Luiseño Indians

Ms. Fahley expressed the Pechanga Band of Luiseño Indians' support of UAIC. She stated that the lack of repatriation by some UC campuses is what has caused the tribe to sponsor AB 2836.

2) Special Interest License Plate Project Update, Samantha Cypret, *Associate Governmental Program Analyst*, **Information Item**

Ms. Robinson reported that the prototypes of the "Protect Native Culture" License Plate have been printed by the Department of Motor Vehicles (DMV) and sent out to the California Highway Patrol (CHP) for testing. Once the final prototype is approved by the CHP and DMV, preparations can begin to launch the plate campaign. Marketing, public relations, and social media plans for the license plate are being made. Commissioners were asked to volunteer as "plate ambassadors" to make presentations to tribes and potential corporate sponsors about the plate once the campaign begins. A prototype website for the license plate is being finalized. The plate campaign and the projected revenue were integral for the consideration and approval of the Commission's Budget Change Proposal for the 2018-2019 fiscal year. The goal is to register 20,000 plates and the revenue generated is to fund the implementation of CalNAGPRA. Ms. Robinson thanked Ms. Cypret and Mr. Curtis Corona for their hard work on the project.

Ms. Cypret reported that the background color for the license plate was lightened for CHP approval. The goal launch date is Indigenous People Day which is October 8, 2018. Ms. Cypret called for tribal support in making the plate a success. She announced that personalized plates are available and plates can be gifted to others.

3) Most Likely Descendant Regulations Update, Terrie L. Robinson, *General Counsel*, **Information Item**

Ms. Robinson reported that the Most Likely Descendent Regulations have been delayed due to the Budget Change Proposal.

4) UCLA/NAHC Tribal Cultural Resources Project, Terrie L. Robinson, *General Counsel*, **Information Item**

Ms. Robinson shared an update from Professor Bill Wood, visiting Associate Professor at UCLA Law School and the lead for the NAHC/UCLA Tribal Cultural Resources Project. Professor Wood reported that they had held the first class in the spring that covered AB 52 and Tribal Consultation. Melissa Rap, a UCLA law student, is working with Vice Chairwoman Miranda and Professor Wood to draft a guidance document that explains the CEQA process. Document to be available in early August for feedback and comments. Lauren van Schilfgaarde, a Tribal Law Specialist with the Tribal Law and Policy Institute, will teach the class in the fall. Fall classes begin August 22, 2018 and end on November 20, 2018 with 4 students taking on 2 projects. Ms. Robinson thanked Professor Wood and Vice Chairwoman Miranda for their guidance and hard work.

New Business:

1) Commissioners' Report, James Ramos, *Chairman*, **Information Item**

Chairman Ramos reported that an update on the NAHC budget and the California Indian Heritage Center will be made by Executive Secretary Snider.

2) Executive Secretary's Report, Christina Snider, *Executive Secretary*, **Information Item**

Staff processed 1,787 CEQA Project requests which required staff to conduct 4,349 searches of the Sacred Lands File. Staff has processed 240 Timber Harvest project requests which required 1,019 searches of the Sacred Lands File. Staff has processed and responded to 177 AB 52 project requests and 78 SB 18 project requests. The Commission received 648 CEQA environmental documents from the California State Clearing House and staff filed comments of concern to 106 of these projects. There were 15 inadvertent discoveries of Native American human remains reported to the Commission and 15 MLD designations were made.

There were various consultations held with tribal governments regarding inclusion on the Tribal Consultation list. There was also consultation with the Indian Canyon Mutsun Band of Costanoan Indians regarding sites to be placed on the Sacred Lands File.

The Tribal Directory will go to the printer next week. Staff will send out order forms to all State agencies for pre-orders and the Directory will cost \$45 to purchase including shipping and handling.

Staff updated 17 Tribal records on the NALIS Database system. Staff attended meetings with the Resources Agency to address database problems and set up an inhouse GIS Mapping capability.

Staff met with State Lands Commission Accounting and Budgets Personnel regarding the 2017-2018 fiscal year expenditures for contract and budget projections. Staff also met with State Lands Commission Human Resources regarding the 10 new positions that were approved in the budget process.

The Commission has a real party interest in 2 lawsuits challenging the settlement reached between the NAHC and the Foothill Eastern Transportation Quarter Agency.

The NAHC was contacted by a tribe interested in appealing the Morro Rock determinations made by Dr. Wendy Teeter of UCLA and requested additional documents to be made available. The Legal Department is gathering these documents. The Legal Department has provided a time extension to tribes to appeal the findings.

To expedite the review and processing of pending and potential CalNAGPRA claims, the Legal Department issued a Request for Proposal for a NAGPRA consultant. No responses were received. The Legal Department now intends to hire an Attorney this year, who will be responsible for handling all NAGPRA matters with the help of a Legal Assistant and an Office Technician.

The Environmental and Cultural Department Director Debbie Treadway and General Counsel Terrie L. Robinson, are working with the State Lands Commission on the recruitment to fill the 10 additional positions approved in the Commission's 2018-2019 Budget Change Proposal. The goal is to fill these positions before the end of the 2018 calendar year.

Ms. Robinson submitted comments on UC Davis's Draft Strategic Plan, encouraging the University to integrate compliance with CalNAGPRA with its NAGPRA compliance.

Proposed Bill AB 2836 was last amended on May 25, 2018. This bill would require the University of California system to adopt system-wide policies to implement NAGPRA and CalNAGPRA in consultation with California Native American tribes. Those policies would be submitted to the NAHC for approval no later than July 1, 2019. It would also allow UC campuses to adopt policies and procedures to supplement the system-wide policies and procedures within 6 months of the Commission's approval of those policies. Campus policies would have to be reviewed and approved by the Commission.

3) California Indian Heritage Center Report, Christina Snider, *Executive Secretary*, **Information Item**

Executive Secretary Snider reported that on June 27, 2018, Governor Brown signed his final State Budget which included \$100 million dollars for the development and construction of the California Indian Heritage Center in partnership with California Tribes and the California Department of Parks and Recreation. Another \$100 million is projected to be raised through private and tribal funding. The Office of the Tribal Advisor is holding 7 formal government-to-government consultation meetings in August to discuss the project. Executive Secretary Snider encouraged constructive comments from individuals and tribal governments.

4) NAHC Budget Update, Christina Snider, *Executive Secretary*, **Information Item**

Executive Secretary Snider reported that the NAHC's request to increase the budget to \$2,749,000 would accommodate 10 new positions that will help the NAHC meet its statutory obligations.

5) Collaboration with Tribes Presentation, Sarah Allred, *Caltrans Native American Cultural Studies Branch Chief*, **Information Item**

Ms. Allred invited tribal leaders and representatives to engage in proactive discussions and consultations with Caltrans about best practices for the identification and treatment of tribal heritage resources in the context of transportation planning and development. Caltrans welcomed tribal input on potential creative mitigation options and encouraged tribes to consider a variety of creative mitigation ideas for future discussions. She encouraged tribes to reach out to her. She is willing to meet with tribes at their tribal offices. She announced dates, times and locations for upcoming Caltrans listening sessions.

Public Comment:

Jason Camp, Tribal Council Secretary, United Auburn Indian Community:

Mr. Camp stated that in recent years there have been Caltrans projects that have impacted cultural resources. In November 2016, the Advisory Council on Historic Preservation published a new policy in the Federal Register stating that federal agencies can and should satisfy the requirements of Section 106 through means other than traditional archaeological excavation, study, and storage. Consistent with these policies, UAIC is requesting that Caltrans initiate amendments to its Federal Highway Administration Agreement.

Brian Guth, Tribal Attorney, United Auburn Indian Community

Mr. Guth stated that in the past when UAIC has suggested their creative mitigation measures to Caltrans, their mitigation measures were rejected. He stated that Caltrans had used their influence to pass policies that don't favor tribes. He stated that there was a lot of work to be done on Caltrans' part to mend their relationship with tribes.

6) Native American Day Report, Christina Snider, *Executive Secretary*, **Information Item**

Executive Secretary Snider reported that Native American Day would take place on September 28, 2018. The sponsor is the Northern California Tribal Chairpersons Association, and the legislative sponsors are Senator McGuire and Assembly Member Wood. She reported that she is working with Assembly Member Gloria to have a floor acknowledgment. Ms. Cypret is working with Anecita Agustinez from the Department of Water Resources on Native American Day coordination efforts.

7) Commission Officer Elections, Christina Snider, *Executive Secretary*, **Action Item**

A motion was made by Commissioner Attebery and seconded by Commissioner Tumamait-Stenslie for Officers to stay in their current roles.

Ayes: 7; Nays: 0; Abstained: 0
Motion was passed.

Public Comment:

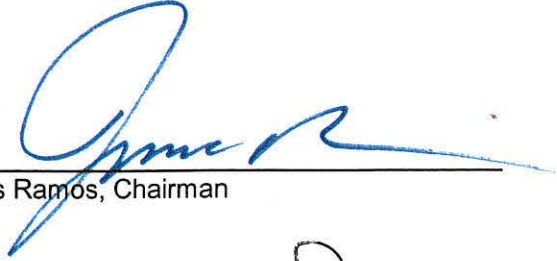
Morning Star Gali, Northern California Organizer, Sacred Places Institute

Ms. Gali questioned why the State Historic Preservation Officer would exclude tribes from the Climate Change Heritage Event occurring in conjunction with the Global Climate Action Summit in September. She requested that the NAHC provide an update at the next meeting as to why tribes were excluded from this event.

Adjournment:

Chairman Ramos adjourned the meeting at 2:50 PM.

Respectfully submitted and approved on behalf of the Native American Heritage Commission



James Ramos, Chairman



Christina Snider, Executive Secretary



Merri Lopez-Keifer, Secretary

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