



NATIVE AMERICAN HERITAGE COMMISSION

EXECUTIVE SECRETARY REPORT

October 2020

I. COVID-19

A. NAHC Office Operations

The NAHC office is currently operating in a limited capacity as a precautionary measure in light of COVID-19. While the public desk for the office has reopened after a temporary closure, we ask that members of the public limit visitation to protect the safety of NAHC staff.

The NAHC remains open for business and staff are available by email and regular mail. Because our office has transitioned to full telework for the duration of this emergency event, there may be some delay as staff work to respond to all requests in a timely manner.

The NAHC has mission tasked one staff member to the State's COVID-19 contact tracing efforts.

B. AB 52 Timeline Extension

In recognition of the fact that many tribes are currently dealing with the impacts of COVID-19, Governor Newsom issued an Executive Order to extend tribal consultation timelines under AB 52.

The Executive Order suspended the timeframes within which a California Native American tribe must request consultation and the lead agency must begin the consultation process for a period of 60 days, effective April 22, 2020.

That extension is no longer active. Tribes that are interested in learning more about the effect of that extension can contact the NAHC legal department for more information.

C. UC Native American Cultural Affiliation and Repatriation Final Policy Extension

On July 27, 2020, the University of California Office of the President issued the [UC Native American Cultural Affiliation and Repatriation Interim Policy](#). President

Napolitano¹ issued this policy as interim in order to allow tribes that have not been able to review due to the COVID-19 pandemic additional time to comment, while at the same time, going forward with a significantly improved process of repatriation. The University will issue a final updated policy on or about December 31, 2020.

Further written comments or requests for consultation on the policy can be submitted to RPAC@ucop.edu through November 15, 2020. More information is available [here](#).

The NAHC Subcommittee on the UC Policy will be hosting an overview webinar on the interim draft on Tuesday, October 27 at 1PM via zoom. Details, including participation information, are available [here](#).

The UC has requested that the NAHC provide nominations for AB 2836 committees. Staff has discussed next steps with the Subcommittee and anticipates publishing and sharing the nominations process and solicitation in the near term.

D. Tribal COVID-19 Resources

The Office of the Tribal Advisor has compiled tribal COVID-19 resources, including forms for testing needs and guidelines documents, on my website at <https://tribalaffairs.ca.gov/covid-19/>.

II. **Budget**

The State has implemented 5% across the board cuts to all funds to address the budget impacts related to the COVID-19 pandemic. How these cuts are determined is based on department plans that are submitted to the Department of Finance. In addition, only essential and mission critical travel is permitted at this time.

As part of the State's costs savings plan, all State employees have received a salary reduction, which was reflected in August salaries. The terms of salary reduction depend on the bargaining unit for each employee.

III. **Staffing and Recruitment**

A. Reorganization

In 2018, the Department of Finance requested that the NAHC produce a budget change proposal that would achieve capacity for the NAHC to fully staff all statutory functions. In response to this request, the NAHC submitted a budget change proposal to the Department of Finance that reflected the staffing plan included in the NAHC's Strategic Plan document.

¹ As a note, the UC has welcomed a new President. Details and bio available [here](#).

As a reminder, until 2015, the NAHC never had more than five staff members at any point in its history despite its broad statewide jurisdiction over Native American cultural resources and Native American access to public lands for religious and ceremonial purposes. And, under Executive Secretary Cynthia Gomez, the NAHC was able to successfully augment staff in 2015 to better meet increased demands on the agency from the passage of AB 52.

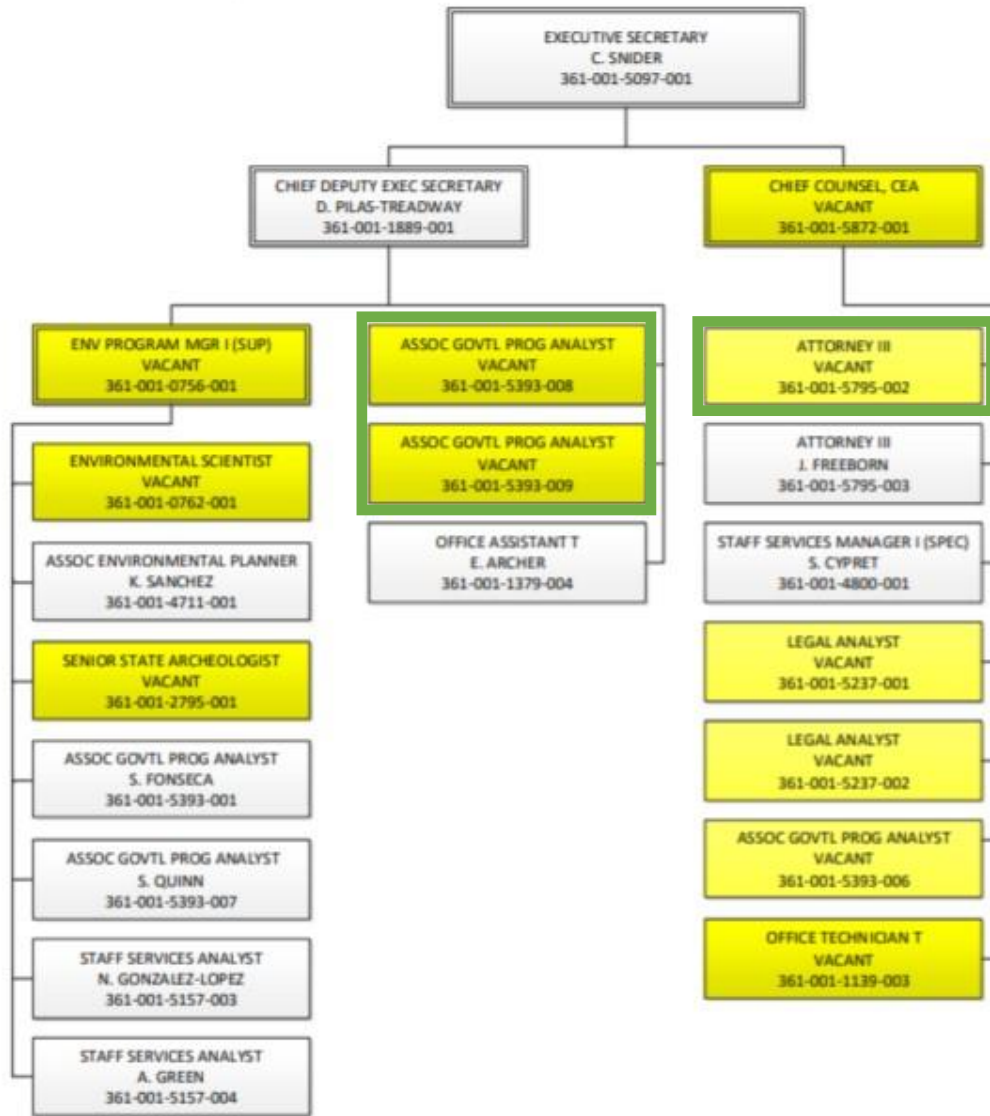
Per the Strategic Plan, the NAHC lacked sufficient staff hours to attend to dormant internal functions and processes that are not as mission critical as identifying Most Likely Descendants, conducting Sacred Lands Inventory searches, providing tribal consultation lists, and commenting on environmental documents. And, at the time the Strategic Plan was adopted in January 2018, all of the Commission's staff, with the exceptions of the Chief Counsel, one retired annuitant, and one Associate Governmental Program Analyst, were programmatic staff, dedicated to maintaining the ongoing day-to-day critical functions of the NAHC.

Some of the programmatic staff also carried out administrative functions in conjunction with accounting and human resources staff from the State Lands Commission, with which the Commission contracts for human resources and accounting services, and with information technology staff from the Natural Resources Agency and the Office of Technology, with which the Commission contracts for information technology services. However, tasking programmatic staff with administrative functions has impacted their ability to carry out their day-to-day critical functions.

The staffing plan included in the NAHC's Strategic Plan document intended to address these issues and augment staffing capacity to take on dormant internal functions so that the NAHC could achieve capacity to be more responsive to needs and opportunities beyond day-to-day critical functions. The Strategic Plan includes a proposal that demonstrates what the NAHC would likely need to be staffed at a level sufficient to carry out all of its statutory duties and powers. (See Section V(B) of the 2018 Strategic Plan).

The NAHC submitted this proposal to the Department of Finance at its request and was granted almost all positions and budget requested in FY 2018/19. NAHC Staff has been diligently working to ensure these positions are filled in order to achieve full capacity to be responsive to the NAHC's legal mandates and additional opportunities as they become available.

A copy of the current NAHC organization chart, with positions in process of being established or currently open for recruitment is available on the following page.



B. Current Job Openings

The NAHC is currently seeking qualified candidates for the following positions:

[Attorney-CaINAGPRA](#). The Attorney will serve as the enforcement of the California Native American Graves Protection and Repatriation Act (CaINAGPRA) and provides expertise and assistance to tribes, state and local agencies, museums, and higher educational institutions for compliance with the federal Native American Graves Protection and Repatriation Act (federal act), Assembly Bill NO. 2836 and 25 U.S. Code section 3000. The Commission will consider filling at an Attorney level.

[Associate Governmental Program Analysis-Business Services Analyst](#). The Business Services Analyst performs a wide variety of complex analytical functions including budgeting, contracting, and purchasing.

Associate Governmental Program Analysis-Human Resources Analyst. The Human Resources Analyst serves as a Human Resources (HR) Liaison with the NAHC's contracting agency for HR administrative services. The incumbent independently gathers, analyzes, and recommends on a wide variety of complex and difficult analytical tasks.

C. Human Resources Matters in Process

In contrast with recruiting to fill positions resulting from staff turnover, establishing new positions—especially positions that are exempt (e.g., appointed positions and certain executive staff roles)—is incredibly time and resource intensive. Establishing new positions requires detailed paperwork and is a largely iterative process involving NAHC Staff, NAHC's human resources contractors (State Lands Commission) and CalHR; so, for a small agency like the NAHC, fully staffing up to capacity temporarily requires the full focus of executive-level staff. Once positions are established, staffing goes much more smoothly and quickly, but we appreciate the Commissioners' patience as we move toward a full complement of staff at agency.

Legal Analyst – Enforcement. The materials to establish this position are currently under human resources review.

Legal Analyst – CalNAGPRA. The materials to establish this position are currently under human resources review.

Chief Counsel. The NAHC is currently in the process of establishing this position with CalHR.

D. Enforcement Attorney

The NAHC welcomed Justin Freeborn to our team as an Enforcement Attorney in the Legal Department. Justin serves as one of the three attorneys that will staff the legal department once the NAHC hiring plan and reorganization is complete and leads the enforcement unit of that department.

Prior to joining NAHC, Justin worked for the California Department of Social Services as an enforcement attorney for the Department's Community Care Licensing Division. In that role, he litigated complex cases involving abuse and neglect of residents in foster homes and senior living facilities. Justin also worked with county child welfare agencies and foster care organizations to create new Due Process regulations for the state's new foster care program.

Prior to joining to the Department of Social Services, Justin worked for Legal Services of Northern California as a retirement & pension attorney. In that role, Justin advocated for seniors' retirement rights by litigating administrative hearings involving retirement benefits and creating community outreach materials.

IV. Internal Processes & Procedures

Pursuant to the NAHC's Strategic Plan, the NAHC continues to develop internal processes and procedures to ensure long-term capacity without disruption of services.

The NAHC's senior staff members—Debbie Treadway, Katy Sanchez, and Rob Wood—have decades of experience working with tribes, agencies, developers, planners, and landowners to enforce the laws under the Commission's authority. Their ability to identify Most Likely Descendants promptly and with few, if any, disputes, is due to the depth of their experience and the respect that tribes and stakeholders have for their expertise.

To memorialize the working knowledge of long-term staff members and commissioners, the NAHC has been actively drafting detailed internal policies, procedures and documents detailing the historical context and current practices performed by staff to maintain critical functions.

V. Critical Functions

A. Sacred Lands File Requests

- Staff has processed 1326 CEQA project requests. Those project requests required staff to conduct 91,991 searches of the Sacred Lands file.
- Staff has processed 202 Timber Harvest project requests. Those project requests required staff to conduct 797 searches of the Sacred Lands file.

B. AB52 Requests

- Staff has processed and responded to 189 AB52 requests.

C. SB18 Requests

- Staff has processed and responded to 76 SB18 requests.

D. CEQA Environmental Documents

- NAHC received 520 CEQA environmental documents from the CA State Clearinghouse to review, analyze, and file comment when needed. These documents include Negative Declarations, Mitigated Negative Declarations, Draft Environmental Impact Reports, and Notice of Preparations.
- Staff filed comments of concern to 114 of those CEQA projects.

E. Most Likely Descendant Designations

- In accordance with California State law, the County Coroner's office reported 18 inadvertent discoveries of Native American human remains to the NAHC.
- 18 MLD designations were made utilizing various resources such as: MLD database register, information submitted by tribal governments and various scholar references.

F. Tribal Consultation

- Staff has conducted 17 tribal consultations.

G. Sacred Lands File

- 3 new records were added to the Sacred Lands File.
- The Sacred Lands File contains a total of 2020 records.

H. NALIS

- Staff updated 12 tribal records on the NALIS data base system.
- Update on Tribal maps of geographic area of tribal traditional and cultural territory maps as determined and submitted by tribes. Edits and approvals have been somewhat delayed from tribes due to COVID-19.
 - Staff has generated 139 maps and sent to Tribes for edits and/or approval.
 - Staff received 15 edits to revise.
 - Staff received 19 approved maps to upload into the database.
 - A cumulative total of 51 maps have been approved by tribes.
- Staff attends ongoing meetings with Resources Agency: 1) to update searchable features to provide more in-depth reports; 2) various data base problems.

I. Regulations

Staff were assigned to assist with the development of regulations in May 2019.

- *Most Likely Descendant* - Regulation Development – Preliminary Activities
 - Reviewing and responding to comments submitted during tribal consultation.
 - Preparing report to present to the NAHC's MLD subcommittee.

- *Sacred Lands File* - Regulation Development – Preliminary Activities
 - Draft completed by staff.
 - Internal review in process – Delayed due to COVID-19.
- *SB18 List* - Regulation Development – Preliminary Activities
 - Evaluating if this should be included with the MLD regs since tribes are required to meet the SB18 criteria to be included as an MLD.
- *Sacred Lands File Fees* - Regulation Development – Preliminary Activities
 - Draft completed by staff.
 - Internal review in process – Delayed due to COVID-19.
 - Follow up with Accounting to incorporate proper accounting procedures and equipment for NAHC to receive fees – Delayed due to COVID-19.

J. Administrative

- Various meeting with State Lands Commission Accounting and Budgets regarding 2019 – 2020 FY expenditures, contracts, and budget projections.
- Meetings with the Department of General Services, Real Estate Division, the current Property Manager, and State Lands Commission regarding increasing current office space to accommodate additional positions.
- Evaluated and assigned one staff member to the Ca Connected COVID-19 Contact Tracing Program for a six month deployment per directive.
- Implemented telework policy for all NAHC staff.
- Attended daily/weekly CA Natural Resources Agency COVID-19 taskforce meetings.
- Implemented California Department of Public Health Guidance regarding COVID-19 in the workplace.
- Participated in various required budget drills to CA Natural Resources Agency to be submitted to the Department of Finance.

VI. **Legal**

A. Sutter Basin

NAHC Legal has performed a preliminary review of the facts and circumstances surrounding this issue and has determined that the NAHC has the ability to

investigate this issue further. NAHC Legal is in the process of drafting recommended next steps.

B. Puvugna Ancient Village

NAHC Executive Staff and Legal are currently engaged in discussions with Cal State University Long beach and tribal interests and will be calling a meeting to gather more information from all interested parties in the near term and to assist the University in developing a workable tribal consultation policy and engagement strategy.

This meeting will be a facilitated informal conversation amongst the University and tribes on the NAHC contact list with cultural resources and/or sacred sites in the relevant area. Once this initial meeting is complete, the NAHC will determine whether further action is advisable and will report out to the Commissioners on recommendations.

C. Owens Valley

NAHC Legal has been working with the Pastiata Tribal Oversight Committee, which is comprised of the THPOs from the five Owens Valley Tribes (Lone Pine, Big Pine, Fort Independence, Bishop, and Timbisha-Shoshone) on both the investigation and the Historical District nomination as the two processes have many similar components.

- All interviews have been completed and transcribed.
- The archival research and archaeological site data has been compiled.
- The boundary has been focused to Pastiata (Owens Lake) and its shoreline.
- The proposed boundary falls at approximately 3700 feet elevation.
- The initial nomination for the Historic District was submitted to SHPO on July 10, 2020
- Staff is compiling and refining the information for the initial investigation report for review by the Enforcement Attorney.
- The Enforcement Attorney will then finalize the report with any recommendations for consideration by the Commissioners.

VII. Legislation

The following bills related to the NAHC's work passed the Legislature and were signed by the Governor by the legislative deadline. These bills will go into effect in January 2021. NAHC Staff are in the process of analyzing these statutes and will provide detailed reports to the Commissioners on NAHC roles and implementation plans.

- [AB-275 \(Ramos\)](#). Amends certain provisions of the California Native American Graves Protection and Repatriation Act (Cal NAGPRA); requires state agencies (and encourages UC) to have a tribal liaison; defines California Indian Tribe as inclusive of those on NAHC contact list with January 2021 deadline for finalization of list; defines tribal traditional knowledge and assigns evidentiary weight; clarifies circumstances under which the Attorney General's Office may be conflicted out of representing the Commission.
- I. [AB 168 \(Aguiar-Curry\)](#). Provides cultural resource protection and tribal consultation process prior to submission of applications for streamlined housing development projects.
- II. [AB-1426 \(Boerner Horvath\)](#). Codifies settlement agreement protecting San Onofre State Beach and the Richard H. and Donna O'Neill Conservancy from a proposed toll road project. The Native American Heritage Commission is a party to the settlement (Native village of Panhe).
- III. [SB 820 \(Committee on Budget and Fiscal Review\)](#). Changes the AB 2836 implementation date from January 1, 2020 to January 1, 2021.

IV. Digital Atlas

Dr. Jason MacCannell has completed the Digital Atlas, which will be an evolving tool as more information is submitted by tribes, and is now available at the NAHC website landing page (direct link [here](#)) and explained in a September 23 walkthrough webinar, available [here](#).

Created in partnership with the California Department of Parks & Recreation with generous financial support from the DRAM Antitrust Settlement, the Digital Atlas is a free online tool to help students and the public visualize California before, during and after European occupation, with a focus on the Native American experience.

The Digital Atlas also links to primary-source evidence presented by Benjamin Madley in his 2016 book *An American Genocide*, which catalogues the depredations committed by early Californians and State Actors against California Native Americans. Californians may use the Atlas to learn more about the acts committed in their own communities, sometimes by the namesakes of the towns they live in, the streets they drive to work on or their children's schools.

The Digital Atlas brings to life the rich diversity, histories and cultures of California Native peoples and the places they have called home since time immemorial. We hope to continue to support and expand the tools available for the public to learn more about the Native experiences that are foundational to the story of California.

VIII. 2020 CalTHPO-SHPO Summit.

The 2020 CalTHPO-SHPO Summit took place virtually on September 30 – October 1. Chairperson Miranda and Secretary Lopez-Keifer attended on behalf of the NAHC to provide an update on the work to update the UC Native American Cultural Affiliation and Repatriation Policy, and Dr. Jason MacCannell attended to provide an update on the newly-release Digital Atlas of California Native Americans.

IX. Statue Removals and Name Changes

The State is currently in the process of inventorying and addressing problematic figures and names within State-owned spaces. These changes are also taking place across several sectors and jurisdictions outside of the Administration's authority, including in privately-owned properties and in areas under the purview of the Legislature. NAHC Staff is in process of drafting a letter to the Legislature per the Commissioner's directive, and the Executive Secretary has expressed that the NAHC must be included in any Legislature-formed body seeking to weigh in on future removals and/or replacements.

X. California Native American Day 2020

Out of an abundance of caution, the California Tribal Chairpersons' Association will held this year's [California Native American Day](#) via webcast from Wednesday 9/23-9/25 with no in-person event this year. Recordings and resources from this year's event are available at the website.

XI. Recognition of Former Chairperson James C. Ramos and the Native Women's Wall of Honor

The NAHC would like to honor former Chairperson Ramos through a commemorative event. NAHC Staff have also been working on updating the Native Women's Wall of Honor and would honor additions to the wall through a commemorative event. These events are pending due to COVID-19 but could be reconfigured to be web-based if recommended by the NAHC. Staff recommends that the Commissioners wait to make a determination until the timeline for COVID-19 social engagement modifications becomes clearer.

XII. Commissioner Emails

As a reminder, NAHC Staff will no longer be using personal emails to distribute NAHC communications to commissioners. Please check your NAHC email periodically or set up email forwarding to ensure that you are receiving the most up to date information.

XIII. Tribal Opportunities

[California Truth & Healing Council](#). The California Truth & Healing Council is currently accepting nominations to serve as a Voting Member of the Council.

Nominations are due Friday, November 13, 2020. More details on the Council, as well as the nominations process and forms, are available [here](#).

Tribal-State Meetings, Consultations and Events. The Office of the Tribal Advisor now publishes information on tribal-state meetings, consultations and event. More information is available [here](#).

California State Grants Portal. The [California Grants Portal](#) has launched. All new state-administered grant and loan opportunities offered on a competitive or first-come basis will be posted at the portal.

Santa Ana Watershed Project Authority Virtual Summit. As a follow up to the Spring Tribal Regional Water Management Series, the Santa Ana Watershed Project Authority and the Local Government Commission are hosting a free statewide virtual Summit on October 8, 13, and 14, with support from California Department of Water Resources. The intent is to share strategies for engaging Tribes and marginalized communities as learned through local implementation of the Integrated Regional Water Management (IRWM) Disadvantaged Communities and Tribal Involvement program. More information on the virtual summit on equitable engagement in water planning can be found at www.lgc.org/summit.