



CALIFORNIA NATIVE AMERICAN HERITAGE COMMISSION
DRAFT FIVE-YEAR STRATEGIC PLAN
2018 - 2022

California Native American Heritage Commission
Draft Five-Year Strategic Plan
2018 – 2022

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I. Executive Summary: The Challenge of Using Our Torch to Light Others

"People are always asking me, "Who will you pass the torch to?" The question makes me angry. There is no one torch – there are many torches – and I'm using my torch to light other torches."

~ Gloria Steinem

This draft Five-Year Strategic Plan is the beginning of a dialogue between the Native American Heritage Commission (NAHC or Commission), California Native American tribes, and stakeholders to decide the mission, principles, priorities, goals, objectives, and performance measures of the NAHC for the next five years and possibly beyond. How should the NAHC best use its expertise, limited staff, and limited resources – it's "torch," if you will – to light the "torches" of tribes, government agencies, developers, planners, archaeologists, and the public at large to protect cultural resources? The protection of cultural resources is at the core of what the NAHC does. It is important because of all the damage that occurred to cultural resources before the advent of historic preservation and environmental review laws, the limited opportunities to prevent further damage to cultural resources, and, most of all, the fact that cultural resources, once destroyed, cannot be replaced.

The dialogue resulting from this draft plan will guide NAHC Commissioners in deciding the NAHC's mission, vision, principles, priorities, goals, and objectives for the next five years and possibly beyond in lighting the torches of cultural resources protection under California's laws.

Part Two of this draft plan is a discussion of where the NAHC stands today, a summary of previous assessments of the NAHC's strengths and weaknesses, a past mission statement, a past vision statement, and past principles, goals, and objectives. Part Two also discusses the results of a survey to determine what programs stakeholders would want revenue from a proposed special interest license plate to fund. Part Three proposes for consideration and dialogue what the NAHC staff has identified as the agency's current strengths and weaknesses. Part Four proposes for consideration and dialogue a proposed mission statement and principles. Part Five proposes for consideration and dialogue priorities, goals, and objectives. Part Six concludes with a recommendation for next steps. Part Seven, Appendix A, is a list of state statutes that incorporate or rely on the NAHC's tribal consultation list.

To reiterate, this draft plan is only the beginning of a dialogue and an inclusive and transparent process to shape the future of the NAHC.

Here's to lighting many, many torches.

II. Summary: Where the NAHC Stands Today; Previous Assessment of Strengths and Weaknesses; Previous Mission Statement, Vision Statement, Principles, and Goals; and Survey Results of What Stakeholders Would Like an NAHC License Plate Program to Fund

A. Where the NAHC Stands Today

The NAHC stands at an existential crossroads. The duties of the NAHC have expanded in the last three years to include the enforcement and administration of more statutes than at any time in its forty-one year history. The passage of the AB 52 amendments to the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.) (Gatto, Chapter 532, Statutes of 2014) and the increased funding for the NAHC that resulted from AB 52 allowed the NAHC to increase its staff and education and outreach efforts to provide sorely needed expertise on AB 52 to tribes, state and local agencies, developers, planners, and attorneys. The NAHC was given the authority to enforce and administer the California Native American Graves Protection and Repatriation Act (CalNAGPRA) (Health & Saf. Code § 8010 et seq.) as a means of consolidating expertise and resources regarding Native American human remains in one agency. As a result of litigation initiated by the NAHC, a state superior court affirmed in an unpublished decision that the NAHC has the authority to file suit under CEQA¹, which is a significant step in maintaining the NAHC's legal options for protecting cultural resources. The NAHC's twelve staff members represent the largest number of staff in the agency's history. For the first time in a very long time, the NAHC has a full complement of Commissioners, reducing the need to cancel public meetings to save money because a quorum was not possible.

Despite these welcome changes, the NAHC is challenged to accomplish its new duties along with its core functions, which include identifying Most Likely Descendants (MLDs) to make recommendations for the treatment and disposition of their ancestors' remains and associated funerary items, conducting searches of its Sacred Lands Inventory and Tribal consultation lists², implementing SB 18 and AB 52, and commenting on environmental documents to ensure that cultural resources are identified and protected as much as possible. In addition to its core functions, the NAHC also has its investigative and enforcement functions under Public Resources Code sections 5097.94, 5097.97, 5097.993, implementation of the California Native American Graves Protection and Repatriation Act (CalNAGPRA, Health and Saf. Code § 8010 et sq.), the NAHC's own internal administrative, planning and compliance functions, including the

¹ *Native American Heritage Commission v. Inyo County Planning Department and Inyo County Superior Court of Inyo County*, Case No. SI CVPT 1557557 (2016).

² For a list of state statutes that incorporate or rely on the NAHC's tribal consultation/contact list, please see Appendix A.

adoption of long overdue regulations for the statutes that it enforces or administers, and outreach and training functions to increase awareness of the laws protecting cultural resources. Added to these challenges is the NAHC's history of waxing and waning general fund budget appropriations, inconsistent political support, past staffing instability due to budget cuts, and limited promotional opportunities for staff. Only the efforts of former Executive Secretary Larry Myers, California tribes, and supportive legislators kept the NAHC from being eliminated during past difficult budgetary and political times. Given the cyclical nature of tax revenues and political support, the NAHC can only assume that past fiscal and staffing instability and prior uncertain political support may in fact be prologue at some point in the future. Yet the NAHC's statutory demands and the needs of its stakeholders remain the same.

B. Previous Assessment of Strengths and Weaknesses (NAHC 1997 Strategic Plan)

A search of the NAHC's files revealed a 1997 Strategic Plan as well as goals, objectives, and performance measures expressed in NAHC newsletters published in fall 1988-89 and fall 1989-90. In the NAHC's 1997 Strategic Plan, the following were identified as the NAHC's strengths and weaknesses:

i. Strengths

- a. Established working relationships with coroners, developers, planners, property owners, and archaeologists regarding discovery of Native American human remains and associated grave goods.
- b. Provision of Native American Contact Lists to environmental firms, planners, and developers to enable consultation with Native American individuals, groups, and tribal governments regarding cultural resources in project areas.
- c. Checking Sacred Land File at the request of environmental firms, planners, and developers to verify recordation of site information for specific projects.
- d. Providing information regarding repatriation.

ii. Weaknesses

- a. Lack of funds.
 - i. Reduction of staff from five to three.
 - ii. Reduced ability to travel to sites to assist in mediations with developers, planning departments, and Native Americans.
 - iii. Need for services of an archaeologist to assist in analyzing environmental documents and to conduct site inspections.

- iv. Reduced flexibility to call emergency commission meetings.
- b. One office in Sacramento that must serve the entire state.
 - i. Inability to disseminate information to Native Americans and hear concerns.
 - ii. Not accessible to all Native Americans.
 - iii. Not accessible to all developers and lead agencies.
- c. Inability to hire outside legal counsel when implement Public Resources Code section 5097.97.
 - i. The Attorney General's staff cannot legally represent the NAHC in cases involving public property and other state agencies.³

C. Previous Mission Statement, Vision Statement, Principles, Goals, and Objectives

The following are a mission statement, goals, principles, and objectives from the NAHC's 1997 Strategic Plan and from NAHC winter newsletters for 1988-89 and 1989-90.

i. Previous Mission Statement (1997 Strategic Plan)

The Mission of the Native American Heritage Commission is to provide protection to Native American burials from vandalism and inadvertent destruction, provide a procedure for the notification of Most Likely Descendants regarding the discovery of Native American human remains and associated grave goods, bring legal action to prevent severe and irreparable damage to sacred shrines, ceremonial sites, sanctified cemeteries and places of worship on public property, and maintain an inventory of sacred places.

ii. Previous Vision Statement (1997 Strategic Plan)

California Native American cultural resources, habitation sites, burial sites, sacred sites, ceremonial sites, and places of worship are limited resources for Indian and non-Indian people. They are important to the culture and spiritual beliefs of California Native Americans.

³ This statement is not completely accurate. The Attorney General's Office may decline to represent the NAHC in matters where it has decided to represent an agency against which the NAHC has directed litigation. See Public Resources Code § 5097.94, subd. (g): "The Attorney General shall represent the commission and the state in litigation concerning the affairs of the commission, unless the Attorney General determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel."

Therefore, they must be protected in a sensitive manner that involves local Native American people. An effective protection program will benefit all citizens of California.

Developers, private property owners, lead agencies, and law enforcement agencies will become aware of the importance of cultural resources to all the citizens of California. Additional State legislation and local ordinances will be enacted to more effectively protect cultural resources.

Tribal governments, Indian organizations, and Most Likely Descendants will become knowledgeable of effective mitigation measures, treatment and disposition of Native American human remains and associated grave goods, protection of sacred places, and state and federal laws. All Native Americans will be permitted access to burials, sacred sites, ceremonial places, and places of worship on public and private property. A cooperative working relationship among California Native Americans, developers, private property owners, and lead agencies will be established. This is a vision that all Californians will come together to protect and preserve this valuable State heritage.

iii. Previous Principles (1997 Strategic Plan)

The Commission will exercise the following principles in an effort to be responsive to its internal and external communities:

- a. The Commission must be sensitive to California Native Americans.
- b. The Commission will facilitate a cooperative working relationship with developers, private landowners, local agencies, and the California Native American population.
- c. The Commission will administer the thorough and complete application of Public Resources Code section 5097.9 et seq. and the Health and Safety Code 7050.5.
- d. The Commission will not express its opinion regarding recommendations for the treatment and disposition of Native American human remains and associated grave goods.
- e. The Commission will not be involved in tribal politics.
- f. The Commission will treat all Native American groups, tribes, and individuals with respect and dignity.
- g. The Commission will conduct State business in a professional and sensitive manner.

iv. Previous Goals (NAHC Newsletters from Winter 1988-89 and 1989-1990, 1997 Strategic Plan)

- a. Promote adoption of protective measures by city/county agencies to protect cultural resources.

- b. Training for law enforcement agencies, public agencies, archaeologists, and Native Americans.
- c. Training for NAHC staff as it relates to the protection of cultural resources.
- d. Determine Most Likely Descendants.
- e. Develop a means of disseminating information and provide a forum to address concerns.
- f. Preserve and protect burial sites and other sites of cultural or spiritual significance to Native Americans.
- g. Work with private landowners and public agencies to ensure that Native Americans have access to sacred sites.
- h. Preserve and protect California Native American cultural traditions.
- i. Facilitate equitable treatment of Native American skeletal remains and associated grave goods held by museums and public agencies.
- j. Work to achieve and maintain full membership on the Commission.
- k. Preserve and protect burial sites and other sites of cultural or spiritual significance to Native Americans.

D. Survey Question and Results, Special Interest License Plate Program Survey

The NAHC conducted an online survey to assess support for a proposed Special Interest License Plate program. The following question asked respondents what NAHC programs they would want funded from an NAHC Special Interest License Plate program, and the responses are listed below.

Question: The California Native American Heritage Commission (NAHC) is considering having a Special Interest License Plate issued by the California Department of Motor Vehicles. What programs would you want created and funded from the proceeds of an NAHC Special Interest License Plate? (Check all that apply).

Answers

and % of Responses

Tribal cultural resources training for tribes, state agencies, cities, counties, and local governments.

90 (65.22%)

A program for the NAHC to purchase conservation easements to Protect tribal cultural resources.

78 (56.52%)

Paid internships for college students to work for the NAHC and learn about tribal cultural resources.

76 (56.52%)

Answers

and % of Responses

A compliance program to make sure that Native American remains that have been reinterred where they were discovered are being protected.

76 (56.52%)

Modernize and update the Sacred Lands Inventory.

71 (51.45%)

California Environmental Quality Act (CEQA) and AB 52 training for Tribal Historic Preservation Officers and tribal cultural resources staff.

67 (48.55%)

Legal clinics with law schools to provide legal services to tribes to help them protect their cultural resources.

63 (43.65%)

A training program for Most Likely Descendants (MLDs).

54 (39.13%)

An NAHC legal defense fund to pay for attorneys to represent the NAHC when the Attorney General's Office can't due to a conflict of interest.

52 (37.68%)

III. Current NAHC Strengths and Weaknesses

A. Strengths

i. Institutional Knowledge

The Commission'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. Moreover, their tenure with the Commission provides them with a perspective on policies and procedures that have worked or failed that isn't always committed to paper. Their ability to impart this institutional knowledge upon the Commission's newer hires will determine whether the Commission will be able to build on its past or have to rediscover it by trial and error in adopting regulations, policies, procedures, and plans.

ii. Increased Staffing

The increase in staff that resulted from a budget change proposal approved to address the increased demands of AB 52 on the Commission has allowed the Commission to provide SB 18 lists and Sacred Land Inventory searches more expeditiously to lead agencies, consultants, and developers. A second budget change proposal and legislation (SB 92, Chapter 26, Statutes of 2017) will allow the Commission to charge a reasonable fee related to the costs of searching and maintaining the Sacred Lands Inventory and SB 18 lists, including staff time. The new staff brought with them expertise in mapping, tribal

history, anthropology, environmental review, and law. One new staff member came with significant prior experience with tribes and AB 52 .

iii. Highly Educated Staff

Every Commission staff member holds a Bachelor's degree, which is highly unusual for a State agency of the Commission's size. Two staff members hold law degrees, one holds a Master's in Public Affairs, and a third holds both a Master's and a Ph.D. in Environmental Planning and Design – Native American Studies.

iv. Acknowledged Experts on AB 52 Tribal Consultation

Through its countless consultations, trainings, training materials, and template forms, the NAHC has become the acknowledged expert agency on AB 52 tribal consultation. Some of these trainings and presentations that the NAHC has given or participated in include:

"AB 52 Tribal Consultation: Legal Requirements and Best Practices," Western Riverside Council of Governments, August 10, 2017.

"AB 52 Roundtable," NAHC Public Hearing, July 21, 2017.

"AB 52 Tribal Consultation: Legal Requirements and Best Practices," Sacramento County Bar Association, May 2, 2017.

"The Basics of Protecting Tribal Cultural Resources Under AB 52 (The California Environmental Quality Act [CEQA]: A Training for Tribes," NAHC Public Hearing, April 20, 2017.

"AB 52: Best Practices and Legal Requirements," Inyo County Board of Supervisors, March 7, 2017.

"AB 52 Tribal Consultation Revisited: Implementation Update and Best Practices," CLE International, December 13, 2016.

"Tribal Consultation Under AB 52: Requirements and Best Practices," California Preservation Foundation, July 20, 2016.

"Tribal Consultation Under AB 52: Requirements and Best Practices," Bureau of Indian Affairs, July 18, 2016.

"Tribal Consultation Under AB 52: Requirements and Best Practices," California Environmental Protection Agency, October 27, 2015.

"Tribal Consultation 101: Practical Approaches to Successful Tribal Consultation from Local and Tribal Governmental Perspectives," American Planning Association California Conference, October 5, 2015.

"Tribal Cultural Resources and CEQA Roundtable: Time to Get Ready for AB 52," American Planning Association California Conference, October 4, 2015.

"The Native American Heritage Commission and Its Role in Implementing AB 52," Los Angeles Department of Water and Power/Great Basin Unified Air Quality District Cultural Resources Task Force, 9/23/15.

v. Expertise and Experience of Commissioners

The Commissioners themselves bring a breadth and depth of experience and expertise that is different from times past. Four of the nine Commissioners are current or past tribal chairpersons. Three Commissioners are attorneys, two of whom represent their tribes. One of our Commissioners has over thirty years' experience in community development and was the former Director of the Community Development Program for Kern County, while another is a county supervisor. One of our Commissioners leads a non-profit which provides legal education, research, and technical assistance program for tribes. All of these skills have come to bear in the Commission's decisions to pursue litigation, to conduct investigations, and to set the direction of the Commission to best serve its stakeholders.

vi. Better Tracking and Communication of the Commission's Efforts and Successes

The Environmental and Cultural Department's tracking of the number of Most Likely Descendant identifications made, environmental documents commented upon, and Sacred Lands Inventory searches conducted better positions the Commission to assess tribes' and stakeholders' needs and advocate for resources commensurate with those needs during the budget process. The revision and upcoming revision of the Commission website and the re-initiation of publishing the Annual Report also better communicate to stakeholders what the Commission accomplishes with the resources it has.

vii. Increased Commission Meetings and Tribal Consultation

The Commission has been able to increase the number and locations of Commission meetings and in-person tribal consultations due to an increased budget and having a full complement of Commissioners. The Commission's 2017-2018 budget, however, has encountered certain one-time demands that will diminish the amount of travel and training available to the Commission. The recent increase in the number and locations of Commission meetings has improved relations between tribes and the Commissions, provided more opportunities in which to hear tribal concerns, and provided more opportunities to provide trainings to tribes, agencies, developers, and other stakeholders on AB 52 tribal consultation and other laws affecting Native American cultural resources.

B. Weaknesses

i. Fiscal Instability

The Commission's dependence on the General Fund, and its waxing and waning political popularity, make the Commission vulnerable during times of budget cuts. With the passage of SB 92 and the authority to charge for Sacred Lands Inventory searches, tribal consultation lists, the Commission's fiscal instability may be partially ameliorated. If the NAHC's Special Interest License Program succeeds, this may also partially ameliorate the NAHC's fiscal instability.

ii. Lack of a Succession/Staff Retention Plan

The Commission lacks a succession/staff retention plan. The senior staff members who possess the agency's institutional knowledge are retirement eligible or retired annuitants. There are few promotional opportunities for newer staff to promote within the agency; yet, the need to retain the staff is great because of the institutional knowledge they have or are gaining and the difficulty of finding candidates with the same kind of knowledge needed to work for the NAHC, i.e., knowledge of cultural resources, inter-tribal and intra-tribal relations, how tribal governments work, and historic preservation, cultural resources, and environmental review laws. The General Counsel position, which is currently classified as an Attorney III position, could present succession challenges in terms of attracting candidates with the years and type of experience needed to address the Commission's advice and counsel, enforcement, and compliance needs in the event that the General Counsel retires or leaves. The result may be that the Commission may inadvertently train its newer staff for better opportunities with agencies and other employers with greater paths to promotion.

iii. Insufficient Staff to Attend to Dormant Internal Functions and Processes

At its current level of staffing, the Commission lacks 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. These internal functions and processes include:

- Notifying private property owners of graves and cemeteries on their property that are on the Sacred Lands Inventory. (Public Resources Code section 5097.94 (a)).
- Reporting to the Legislature on the number of sacred places located on public lands and recommending actions to preserve these sacred places and protect free exercise of Native American religions. (Public Resources Code section 5097.96).
- Auditing compliance with the Most Likely Descendants statute when Native American human remains have been reinterred on the property where they were discovered. Public Resources Code section 5097.98 requires that, if Native American human remains are reinterred on the property where they were found, the landowner is required to do one or more of the following: 1) Record the site with the Commission or the appropriate Information Center; 2) Utilize an open-space or conservation zoning designation or easement; or 3) Record a document with the county in which the property is located titled, "Notice of Reinterment of Native American Remains." The Commission does not currently verify such compliance.
- Ensuring access by tribes to religious or ceremonial sites on public property. (Public Resources Code section 5097.9).
- Conducting investigations as a prerequisite to bringing an action to prevent severe and irreparable damage to Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines located on public property. (Public Resources Code sections 5097.94(g) and 5097.97).
- Updating internal policies and procedures.
- Adopting regulations to implement, interpret, and administer statutes under the Commission's authority, including regulations on the following topics:
 - Definitions.
 - The Most Likely Descendants Statute (Public Resources Code section 5097.98).
 - The Commission (Meetings, Reserved Powers and Duties, Ex Parte Communications).

- Sacred Lands Inventory (Public Resources Code sections 5097.94(a), 5097.96).
- SB 18 Tribal Consultation List (Government Code sections 65352(a)(8); 65352.3(a)(1); 65562.5).
- Mapping of Geographic Areas of Tribal Traditional and Cultural Affiliation for California Native American Tribes (Public Resources Code section 5097.94(m)).
- Investigations and Actions to Prevent Damage to, or Provide Access to, Native American Sacred Sites on Public Property (Public Resources Code sections 5097.94(g), 5097.97).
- California Native American Graves Protection and Repatriation Act (Health and Safety Code section 8010 et seq.; Public Resources Code section 5097.94(n)).
- Interference with Native American Religion or Damage to Cemeteries or Places of Worship (Public Resources Code section 5097.9).
- Native American Commission Conflict of Interest Code.
- Overseeing the Commission's internal compliance with statutes, regulations, and policies applicable to State agencies.
- Administering the California Native American Graves Protection and Repatriation Act, Health and Safety Code section 8010 et seq.
- Enforcing Public Resources Code 5097.993, which prohibits the unlawful and malicious excavation, removal, damage, destruction, injury or defacement of a Native American historic, cultural, or sacred site listed on or eligible for listing on the California Register of Historic Resources if the act was committed with the specific intent to vandalize, deface, destroy, steal or convert a Native American historic, cultural or sacred artifact if the act was committed on public land or on private land by a person other than the landowner.

iv. Lack of Tribal and Stakeholder Knowledge of the Commission's Laws

The Commission has frequently encountered a lack of knowledge on the part of tribes and stakeholders of the Commission's laws, the effect of these laws on tribes' and stakeholders' rights and plans, and the compliance obligation tribes and stakeholders have under those laws. Many landowners do not know of their legal obligations when they reenter on their property Native American human remains discovered on their property. The Commission has spent almost two years educating and training tribes, agencies, and other stakeholders on the legal requirements of AB 52. Despite past efforts at educating coroners of their legal duties when discovered human remains are identified as Native American, many coroners still do not fully understand their obligations.

v. Insufficient Administrative Staffing

All of the Commission's staff members, with the exceptions of the General Counsel, one retired annuitant, and one Associate Governmental Program Analyst, are programmatic staff. Some of the programmatic staff also carry out administrative functions in conjunction with accounting and human resources staff from the State Lands Commission, with which the Commission contracts for human relations 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. The Executive Secretary, who served as the Governor's Tribal Advisor,⁴ had no dedicated administrative staff to whom she could delegate day-to-day administrative operations of the Commission.

⁴ The immediate past NAHC Executive Secretary, Cynthia Gomez, retired on October 2, 2017.

vi. Less Accessibility to Southern California Tribes and Stakeholders

Of California's 164 tribes, 68, or 41%, are located in or south of Kern County. The Commission holds the majority of its meetings in Sacramento and consults with Southern California tribes when it can send staff to Southern California to do so. The lack of a Commission presence in Southern California also limits the Commission's ability to meet in person on confidential or sensitive topics with tribes, local lead agencies, and developers. The Commission will be able to better leverage technology to facilitate video conference and live streaming of Commission meetings. However, many tribes may be reluctant to hold consultations by telephone or video. Like other resources agencies with jurisdiction over lands throughout the State, the Commission and its stakeholders would be better served by the Commission having a presence in Southern California. The newly established Tribal Cultural Resources Project, a collaboration between the Commission, Professor Carole Goldberg, and the U.C.L.A. School of Law, will provide trainings to tribes on protecting their cultural resources during environmental review processes, among other services provided. The project will collect data on the number of tribes served and the types of services provided. These data will provide the basis for a needs assessment for Southern California tribes.

vii. Not Fully Utilizing Technology to Effective Communicate with Tribes and Stakeholders

The Commission communicates with tribes and stakeholders largely through its public meetings, email blasts, website, Annual Report, and its Twitter feed. The Commission now uses webcasting for public meetings and can now use videoconferencing for meetings, but the funding for webcasting for public meetings exists only for the next three years. The Commission has not fully leveraged social and other forms of electronic media to frequently and consistently communicate its initiatives, upcoming regulatory proceedings, and other matters of concern to tribes and stakeholders.

viii. Lack of Regular Training for Commission Staff, Tribes, and Other Stakeholders

The Commission needs to provide consistent and comprehensive training for several audiences: Commission staff, tribes, and other stakeholders, including coroners and law enforcement agencies, public agencies, and archaeologists. The lack of training is primarily due to past budget cuts and insufficient staff time. The training that should occur for Commission staff, tribes, and other stakeholders is on the following areas: 1) State and federal laws protecting tribal cultural resources and artifacts and how to enforce them; 2) legal requirements of the Most Likely Descendants conferral process with landowners; 3) tribal consultation under AB 52 (although the Commission has provided a great deal of training on AB 52 in the last two years); 4) State and federal environmental laws (CEQA and NEPA) and how tribes can participate in those environmental review processes; and 5) NAGPRA and CalNAGPRA. Twenty percent of the revenues from the proposed NAHC Special Interest License Plate, if issued, would go towards training programs for tribes and agencies.

a. Training for Commission Staff

The Commission does not have a consistent training program for new staff in either the Legal Department or the Environmental and Cultural Department when they are onboarded, nor does it have standards or expectations of what employees should know to do their jobs. Senior staff who have the

institutional knowledge are often also working on other administrative duties, and staff time in general is taken up with time critical core functions, requiring new staff to learn from senior staff on a situational basis. Our new staff members have requested that more time be set aside with senior staff to help transfer institutional knowledge, including regional histories of tribes and histories of how specific situations were handled in the past, and a review of background history and staff notes, in order to improve on consistency in answers to the public, particularly in written responses, and to be able to answer basic questions. The “train the trainer” model has been mentioned as a possible solution.

b. Training for Tribes

Many tribes are still not fully informed of the legal requirements for tribal consultation under AB 52 or SB 18 and for Most Likely Descendant conferrals with landowners under Public Resources Code section 5097.98. Additionally, many tribes are not fully informed of the laws under the Commission’s authority and other laws that are not under the Commission’s authority that protect cultural resources. Recent trainings provided by the Commission have been live streamed and video archived, and this approach may be a solution for leveraging the Commission’s resources to reach as many people as possible.

c. Training for Coroners, Law Enforcement Agencies, Other Public Agencies, and Other Stakeholders

There remains a great deal of confusion with respect to the protection of Native American human remains and associated funerary artifacts *in situ* pursuant to Health and Safety Code 7050.5 and Public Resources Code section 5097.98. In particular, staff have noted that county coroners tend to be confused and misinformed on the appropriate process and statutory requirements necessary in case of an inadvertent discovery of Native American human remains, particularly the requirement under Health and Safety Code section 7050.5 to protect the site of such a discovery pending resolution between the Most Likely Descendants and the landowner regarding treatment and disposition. Law enforcement agencies, public agencies, archaeologists, and other stakeholders are not fully informed of the laws under the Commission’s authority prohibiting obtaining or possession Native American artifacts or human remains taken from a grave or cairn after January 1, 1984 (Public Resources Code section 5097.99), excavating or destroying Native American historic, cultural or sacred sites listed on the California Register of Historic Resources with an intent to vandalize the site or steal Native American artifacts (Public Resources Code sections 5097.993 and 5097.994), or other state laws protecting archaeological sites on public lands (Public Resources Code section 5097.5) or prohibiting the deposit or disposal of human remains outside of a cemetery except as provided under agreements reached between landowners and Most Likely Descendants (Health and Safety Code section 7054).

Increased training on these areas for staff, tribes, and other stakeholders would help increase awareness of these laws and, hopefully, increase compliance with them.

ix. Failure to Utilize and Update Office Technology

With the exception of the Native American Lands Information System (NALIS) necessitated by AB 52, its new phone system, and the switch from Apple Mac personal computers to HP PC computers, the Commission has not fully updated its technology to increase efficiency and work seamlessly to provide information to stakeholders. The Sacred Lands Inventory, which is currently in the FileMaker program, records sacred sites using township and range coordinates instead of GPS coordinates. With the exception of the Sacred Lands Inventory and NALIS, the Commission's legal and other files are kept in paper form, which could present a problem in the event of fire or water damage to the office.

x. Small Talent Pool From Which to Recruit Qualified Employees

The work of the Commission is interdisciplinary. The most qualified potential employees are those with education and/or experience in cultural resources law, archaeology, anthropology, California Native American history, environmental planning, and/or working with tribal governments. The talent pool from which to draw such qualified employees in the Sacramento area where the Commission is located is small, which is why it is so important to keep staff who have these qualifications and/or increase the talent pool by opening additional offices.

IV. Proposed Mission Statement and Principles

A. Proposed Mission Statement

A succinct proposed mission statement is as follows:

The mission of the Native American Heritage Commission is to protect Native American sanctified cemeteries, places of worship, religious or ceremonial site, or sacred shrine on public property, and to ensure the respectful treatment and disposition of ancient Native American human remains and associated grave goods, all to the fullest extent of the law.

B. Proposed Principles

Many of the principles proposed in the 1997 Strategic Plan resonate and apply during today's times. Some proposed principles could include:

- i. The Commission must be culturally sensitive to all California Native Americans.
- ii. The Commission will facilitate cooperative working relationships with developers, planners, private land owners, Federal, State, and local agencies, and the California Native American population.
- iii. The Commission will not express its own opinion regarding the treatment and disposition of Native American human remains and associated grave goods.
- iv. The Commission will not become involved in inter-tribal or intra-tribal politics.
- v. The Commission will treat all Native American groups, tribes, and individuals with respect and dignity.
- vi. The Commission will conduct State business in a professional and sensitive manner.
- vii. The Commission will be fair and impartial in enforcing the laws under its authority.

V. Proposed Priorities, Goals, and Objectives

The following are proposed priorities, goals and objectives in light of the strengths and weaknesses assessment. Performance measures will be proposed once the proposed priorities, goals, and objectives are agreed upon.

A. Priority One: Fiscal Stability (Weakness 1)

The Commission cannot consistently do the work it is statutorily required to do without greater fiscal stability. The most recent budget change proposal and statutory change that would authorize the Commission to charge for searches of its Sacred Lands Inventory and SB 18 tribal consultation list database could potentially provide for greater fiscal stability, but revenue generated by these changes would have to be appropriated annually to the Commission by the Legislature and restricted to the covering the cost of providing the services charged for. A proposed Special Interest License Plate program holds the potential to directly fund specific programs within the Commission.

Goal: To generate enough revenue that, if appropriated to the Commission by the Legislature, would support approximately one-half of the cost of programs and operations of the Commission.

Objectives:

- i. Implement legislation authorizing the Commission to charge for Sacred Lands Inventory searches and SB 18 tribal consultation lists to generate approximately \$862,000, of which \$254,000 for fiscal year 2017-2018 and \$485,000 ongoing annually would fund three new positions and address increased work load for Sacred Lands Inventory research and consultation. Revenue generated from the charges will have to be appropriated annually to the Commission.
- ii. Begin and complete a Special Interest License Plate campaign to obtain 15,000 annual subscriptions, eventually generating \$750,000 per year for identified Commission programs, such as tribal and agency training, CalNAGPRA, legal clinics and intern programs, a conflict of interest legal fund, and land conservancy purchases.

B. Priority Two: Succession/Retention Planning and Recruitment (Weaknesses 2, 3, and 10)

Given the increased duties of the Commission and the number of senior staff who are retirement eligible, a plan for succession, retention, and recruitment of employees is crucial to reducing the risk of high employee turnover and loss of institutional knowledge.

Goals: To impart the institutional knowledge of senior staff upon newer hires, increase opportunities for advancement, and create opportunities for those who are interested in the work of the Commission to learn from and work with Commission staff.

Objectives

- i. Draft a succession plan.

- ii. Expedite training of and imparting institutional knowledge of tribes and Commission processes to newer staff by senior staff through a formalized training program.
- iii. Update policies and procedures.
- iv. Provide promotional opportunities for current staff within the agency.
- v. Provide internship and externship and externship programs for college, law, and other students to work with the Commission and learn about tribal cultural resources law.

C. Priority Three: Increased Internal Compliance (Weaknesses 3 and 5)

Goals: The Commission needs to develop a plan for achieving and maintaining internal compliance by the Commission with applicable laws, regulations, and policies, implementing laws under the Commission's authority, and increasing staffing, administrative and otherwise, to do so.

Objectives:

- i. Create an internal compliance calendar and checklist and a process to oversee internal compliance. (Note: The Commission created an internal compliance calendar in August).
- ii. Adopt regulations to implement and interpret statutes under the Commission's authority.
- iii. Update the Commission's internal policies and procedures.
- iv. Audit and enforce landowners' compliance with the Most Likely Descendants' statute when inadvertently discovered Native American human remains are reinterred on their property.
- v. Increase staffing to achieve and maintain internal compliance.
- vi. Update the contents of and technology for the Sacred Lands Inventory.
- vii. Implement CalNAGPRA.

D. Priority Four: Increased Training for Staff, Tribes, and Stakeholders on Cultural Resources Laws, Particularly Those Laws Enforced by the Commission (Weaknesses 4 and 8)

Goals: Staff, tribes and stakeholders should be trained on the following laws: 1) CEQA and the AB 52 amendments; 2) Chapters 1.75 and 1.76 of Division 5 of the Public Resources Code (sections 5097.9 – 5097.994), specifically the Most Likely Descendants statute, Public Resources Code section 5097.98, and Health and Safety Code sections 7050.5 and 7054; 3) SB 18; 4) the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act; 5) the Native American Graves Protection and Repatriation Act (NAGPRA) and the California Native American Graves Protection and Repatriation Act (CalNAGPRA); 6) Public Resources Code section 5024.1, the California Register of Historic Resources; and 7) Public Records act exemptions for cultural resources, Government Code sections 6254(r) and 6254.10, and Evidence Code section 1040. Additionally, Commission staff should be trained on policies and procedures, regional tribal histories, and how senior staff have handled specific types of situations.

Objectives:

- i. Annual training sessions, in person or via webinars and live streaming, for staff, tribes, and stakeholders on:
 - CEQA and AB 52 amendment.
 - Chapters 1.75 and 1.76 of Division 5 of the Public Resources Code and Health and Safety Code sections 7050.5 and 7054.
 - The National Environmental Policy Act and Section 106 of the National Historic Preservation Act.

- The Native American Graves Protection and Repatriation Act (NAGPRA) and the California Native American Graves Protection and Repatriation Act (CalNAGPRA).
- Public Resources Code section 5024.1, the California Register of Historic Resources.
- Public Records Act exemptions for cultural resources, Government Code sections 6254(r), 6254.10, and Evidence Code section 1040.

ii. Internal staff training on Commission policies and procedures, regional tribal histories, and past situation-specific solutions.

E. Priority Five: Leveraging Technology to Increase Efficiency, Accessibility, and Communications (Weaknesses 7, 8, and 9)

Goals: To use technology to increase accessibility, efficiency, and communications with the public.

Objectives:

- i. Update the technology for the Sacred Lands Inventory using GPS and other technologies for greater accuracy and efficiency.
- ii. Utilize the most up-to-date technology for videoconferencing, webinars, and live streaming to reduce travel costs for consultations and training and increase accessibility.
- iii. Utilize all forms of social media to communicate with the public.
- iv. Digitize the Commission's files.
- v. Draft and circulate digital versions of a quarterly newsletter, annual report, SLAA reports, and strategic plans.

F. Priority Six: A Southern California Office (Weakness 6)

Goal: To have a Southern California office to better serve Southern California tribes.

Objective:

- i. To establish the U.C.L.A. Law School Tribal Cultural Resources Project to provide training and representation to tribes and gather data for a needs assessment to determine whether there is a need and support for a Southern California office.

VI. Conclusion

This draft Five-Year Strategic Plan is just the beginning of a conversation about the future of the NAHC. It is the recommendation that this plan be circulated to tribes and stakeholders for public comment; that tribal consultation be held on this draft plan as requested by tribes; and that the Commissioners, after reviewing public comment and tribal concerns, revise and adopt the plan for implementation in 2018.

Appendix A

State Statutes That Incorporate or Rely on the NAHC's Tribal Consultation/Contact List

Civil Code Section 815.3 lists which entities or organizations may acquire and hold conservation easements. Subdivision (c) of Section 815.3 lists: "A federally recognized California Native American tribe or non-federally tribe that is on the contact list maintained by the Native American Heritage Commission" In other words, before a conservation easement is granted to a tribe, the entity granting it must check the NAHC's tribal contact list.

Civil Code Section 816.56 states which entities or organizations may hold greenway easement. Subdivision (c) of Section 816.56 lists: "A federally recognized California Native American tribe or nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission" In other words, before a greenway easement may be granted to a tribe, the entity granting the easement must check the NAHC's tribal contact list.

Code of Civil Procedure Section 835 states who should receive notice of a comprehensive adjudication in actions relating to groundwater from the plaintiff in such a matter. Subdivision (a)(f) lists, "A California Native American tribe that is on the contact list maintained by the Native American Heritage Commission." A plaintiff in an action relating to groundwater would have to check the NAHC's tribal contact list to satisfy the requirements of Code of Civil Procedure 835.

Fish and Game Code Section 3801.6 prohibits the possession of the carcass, skin or any part of any nongame bird except for subdivision (b)(1)(A), which allows an enrolled member of a federally recognized Native American tribe or nonfederally recognized California Native American tribe on the tribal consultation list maintained by the NAHC to possess them. Membership in a tribe on the NAHC's tribal consultation list would be a defense to a prosecution under this statute.

Government Code section 65040.2 requires the Governor's Office of Planning and Research to develop guidelines, in consultation with the NAHC, for consulting with California Native American tribes on procedures for identifying California Native American tribes through the NAHC.

Government Code section 65092 requires notice of public hearings on the adoption or amendment of general plans be provided to any person who has requested notification. Subdivision (b) defines "person" to include "a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission."

Government Code section 65352(a)(11) requires that an action to adopt or amend a general plan shall be referred to "A California Native American tribe that is on the contact list maintained by the Native American Heritage Commission and that has traditional lands located within the city's or county's jurisdiction." Therefore, cities and counties must contact the NAHC for its list before they can adopt or amend general plans.

Government Code section 65352.3 requires a city or county to consult with California Native American tribes on the contact list maintained by the NAHC prior to the adoption or amendment of a city or county's general plan.

Government Code section 65453 provides that a specific plan shall be prepared, adopted, and amended in the same manner as a general plan, meaning that California Native American tribes on the contact list maintained by the Native American Heritage Commission must be given notice and consulted with for the adoption or amendment of specific plans by cities and counties.

Government Code section 65562.5 requires consultation with California Native American tribes that have requested notice pursuant to Government Code section 65092 prior to designating open space, under certain conditions. Government Code section 65092 requires a California Native American tribe to be on the contact list maintained by the Native American Heritage Commission.

Public Resources Code section 4629.3 establishes the Timber Regulation and Forest Restoration Fund. It defines a "recognized tribe" as, among other things, "tribes designated in the list of nonrecognized tribes for California by the Native American Heritage Commission." The Department of Forestry and Fire Protection would look to the NAHC's list to determine if a nonfederally recognized tribe met this statutory definition of a "recognized tribe."

Public Resources Code section 21073, an amendment to CEQA, defines "California Native American tribe" as "a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of Statutes of 2004." (SB 18). CEQA lead agencies look to the NAHC's contact list to determine whether they have to consult with a tribe under the AB 52 amendments to CEQA.

Public Resources Code section 21080.3.1, an amendment to CEQA, requires lead agencies to consult with California Native American tribes if the tribes have met certain conditions and requires lead agencies to contact the person designated as the tribal contact on the NAHC's SB 18 list if no tribal contact information is provided to the lead agency by the tribe.

Public Resources Code section 75102 provides that, before a lead agency adopts a negative declaration or environmental impact report under Section 75070, it shall provide notification of

this proposed action to a California Native American tribe on the contact list maintained by the NAHC, if that tribe has traditional lands located within the area of the proposed project.

Water Code section 13442 provides for the payment of moneys to an entity to assist in cleaning up a waste, abating the effects of a waste on waters of the state, or addressing an urgent drinking water need without regard to whether the need for drinking water is a result of the discharge of waste. Entities entitled to apply for funding include "a tribal government that is on the California Tribal Consultation List maintained by the Native American Heritage Commission and is a disadvantaged community, as defined in Section 79505.5, that agrees to waive tribal sovereign immunity for the explicit purpose of regulation by the state board pursuant to this division." In other words, only tribes on the NAHC's tribal consultation list may be eligible for disbursements under this statute.

Water Code section 79712 states as eligible applicants under the Water Quality, Supply, and Infrastructure Improvement Act of 2014 to include "state Indian tribes listed on the Native American Heritage Commission's California Tribal Consultation List."