

## **Proposed Draft Contact List Regulations**

### **TITLE 14 (Natural Resources), DIVISION 18 (Native American Heritage Commission)**

#### **CHAPTER 1: Native American Heritage Commission Contact List Regulations**

##### **SECTIONS:**

##### **31000. Preamble**

- (a) These rules and regulations are intended to interpret and make specific the term “Contact List” along with establishing the procedures for inclusion and removal from the “Contact List,” for tribal cultural resource protection and repatriation within the State of California pursuant to Title 7, Division 1 (commencing with Section 65352) of Chapter 3, Article 6 of the Government Code; Division 13 (Sections 21073, 21080.3.1 and 21080.3.2) of Chapter 2.6 of the Public Resources Code; Division 13, Article 3 (commencing with Section 8012) of Chapter 5 of Part 2 of Division 7 of the Health and Safety Code; Division 5, Chapter 1.75 of the Public Resources Code (Public Resources Code sections 5097.9 through 5097.991); the Native American Historic Resource Protection Act, Division 5, Chapter 1.76 of the Public Resources Code (Public Resources Code sections 5097.993 and 5097.994 and; and Chapter 3, Article 7 (commencing with Section 2) of the Government Code (Government Code sections 65400 and 65913.4).
- (b) These regulations are not intended to establish State of California recognition of any tribe analogous to federal recognition of tribes under 25 Code of Federal Regulations, Part 83.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 21073, 21080.3.1, and 75102 of the Public Resources Code; Sections 815.3 and 816.56 of the Civil Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

##### **31001. Definitions**

- (a) “Applicant” means either a Federally Recognized Tribe, as that term is defined in subsection (g), or a group requesting inclusion on the Contact List.
- (b) “California Mission Rolls” means the Indian Census books kept and maintained within the California Mission Records Collection.

- (c) “Commission” means the Native American Heritage Commission established pursuant to Section 5097.91 of the Public Resources Code.
- (d) “Commissioners” means the members of the Native American Heritage Commission.
- (e) “Contact List” means the list maintained by the Native American Heritage Commission for the purposes of Title 7, Division 1 (commencing with Section 65352) of Chapter 3, Article 6 of the Government Code; Division 13 (Sections 21073, 21080.3.1 and 21080.3.2) of Chapter 2.6 of the Public Resources Code; Division 13, Article 3 (commencing with Section 8012) of Chapter 5 of Part 2 of Division 7 of the Health and Safety Code.
- (f) “Executive Secretary” means the Executive Secretary of the Native American Heritage Commission or their designee.
- (g) “Federally Recognized Tribe” means any Indian band, nation, pueblo, village, or community acknowledged by the Secretary of the Interior pursuant to 25 Code of Federal Regulations, Part 83, Section 104 of the Federally Recognized Indian Tribe List Act of 1994, and as annually published in the federal register.
- (h) “Final Notice of Incomplete Application” means the final written notice to an Applicant who has either:
  - (1) Failed to timely respond to the Notice of Incomplete Application; or
  - (2) Responded to the Notice of Incomplete Application with insufficient information and/or documentation to establish that its application is complete.
- (i) “Historic California Native American Tribe” means a tribe that was a formerly Federally Recognized Tribe; a party to one of the eighteen unratified treaties with the United States drafted between April 29, 1851, and August 22, 1852; a tribe with members on the California Mission Rolls; and/or a tribe with other evidence of a historical relationship with the United States Government.
- (j) "Listed entity" means an entity that is listed on the Contact List.
- (k) “Notice of Complete Application” means the written notice to the Applicant that its application is complete and contains the information and documentation required under sections 31003-31005.
- (l) “Notice of Incomplete Application” means the written notice to the Applicant informing the Applicant its application is incomplete because it failed to submit all the information and documentation specified in Sections 31003-31005. The notice of incomplete application is not a denial of the application for inclusion on the Contact List.

- (m) “Officers” means the individuals serving on the governing body of a tribe in any capacity.
- (n) “Substantial Evidence” means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly erroneous or inaccurate does not constitute Substantial Evidence. Substantial Evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, as well as tribal traditional knowledge.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2, and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

### **31002. Contact List**

- (a) The Commission shall maintain a Contact List for the following purposes:
- (1) Tribal Cultural Resources protection and consultation pursuant to Sections 8318, 65092, 65352 and 65352.3 of the Government Code, Sections 815.3 and 816.56 of the Civil Code, and Sections 21073, 21080.3.1, and 21080.3.2 of the Public Resources Code.
  - (2) Native American grave protection and repatriation pursuant to CalNAGPRA, Sections 8010, et seq. of the Health and Safety Code.
  - (3) Determination of most likely descendants, pursuant to Section 5097.98 of the Public Resources Code.
- (b) The Commission shall make publicly accessible, including through its website, a copy of the Contact List, which shall include a statement identifying any entities that have been removed from, or added to, the Contact List since its last publication.
- (c) Contact information for each Listed entity on the Contact List will be updated quarterly. In the event an entity is added or removed from a Contact List, the Commission shall update the Contact List upon the effective date of the addition or removal, pursuant to Sections 31008 and 31009.

- (d) Within one year of the effective date of these regulations, the Commission shall publish the first edition of the Contact List. The first edition shall be published regardless of whether the Commission has completed reviewing all applications submitted pursuant to these regulations. Any list published prior to the publishing of the first edition of the Contact List, shall be void.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2, and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

### **31003. Application for Inclusion on Contact Lists**

- (a) All documents submitted pursuant to this section must be accompanied by resolution on the Applicant's letterhead that the documents are true and correct copies of the original documents on file with the Applicant, available for inspection by the Commission, and certifying that the information contained within the records is accurate. The Commission shall provide a sample form with this language for applicants' use.
- (b) To be included on the Contact List, an Applicant must provide information and documentation concerning the following:
- (1) Native American Affiliation of its Officers as specified in Section 31004; and
  - (2) California Aboriginal Territory, as specified in Section 31005.
- (c) Applicants will be required to provide the Commission with the following information to be considered for inclusion on the Contact List:
- (1) The name of the Applicant and the name of the Applicant's contact person;
  - (2) The Applicant's electronic and U.S. mail addresses; and
  - (3) The options for the Contact List's use by the Commission for which the Applicant is applying as specified in section 31002
  - (4) Other related information as specified by the Commission.
- (d) Contact information provided in the application will be made public for purposes of the publication of the Contact List.

(e) The Applicant must provide information and documentation as specified in Section 31003-31005 to demonstrate that it meets the criteria for inclusion on the Contact List.

(f) Any Federally Recognized Tribe located in California shall be deemed to have met the criteria for inclusion on the Contact List as described in sections 31004 and is not required to submit evidence of Native American Affiliation. Prior to inclusion on the Contact List, a Federally Recognized Tribe must submit an application pursuant to subsection (b) and provide documentation sufficient to establish the Federally Recognized Tribe's California Aboriginal Territory as specified in section 31005.

(g) A Listed Entity may change its options for the Contact List's use by the Commission as specified in section 31002 and this section at any time by submitting an updated application form without having to resubmit information required under sections 31003-31005 if it has already been determined by the Commission to have met the standards for inclusion on the Contact List.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2, and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

#### **31004. Evidence of Native American Affiliation**

(a) All documents submitted pursuant to this section must be accompanied by resolution on the Applicant's letterhead that the attached documents are true and correct copies of the original documents on file with the Applicant, available for inspection by the Commission, and certifying that the information contained within the records is accurate.

(b) An Applicant must establish the shared Native American affiliation of its Officers by demonstrating each of its Officers are a direct descendant of a member of the same Historic California Native American Tribe as provided in subsection (c) and provide a tribal membership base roll as provided in subsection (d).

(c) In order to prove an Applicant's Officers are direct descendants of a member of a Historic California Native American Tribe, the Applicant must provide certified birth and/or death records or other primary documents that clearly link the current Officer to a member of a Historic California Native American Tribe with one or more of the following:

(1) Evidence of descent from a member of a formerly Federally Recognized Tribe. Such evidence may include a genealogical report demonstrating the line of descent.

- (2) Evidence of descent from a member of a tribe that was party to one of the eighteen unratified treaties with the United States drafted between April 29, 1851, and August 22, 1852.
- (3) Evidence of descent from an individual(s) on the California Mission Rolls.
- (4) Evidence of descent from a member of a tribe with a historical relationship with the United States Government.

(d) The Applicant must also provide a copy of membership base rolls.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2, and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

### **31005. California Aboriginal Territory**

All documents submitted pursuant to this section must be accompanied by resolution on Applicant's letterhead that the attached documents are true and correct copies of the original documents on file with the Applicant, available for inspection by the Commission, and certifying that the information contained within the records is accurate. An Applicant shall document its California Aboriginal Territory by providing the following:

- (1) A map with a scale that includes the following:
  - (A) A representation of the area covered by the Applicant's aboriginal territory, including outline indicators of the territory's borders and highlighting of the included territory.
  - (B) Descriptive text stating which counties, cities, unincorporated communities, national parks or forests, and State or local parks or forests are located within the Applicant's aboriginal territory.
- (2) Evidence supporting the boundaries of the map described in subsection (a)(1) of this section, including one or more of the following: (i) a written description of tribal history; (ii) historical references to tribal landmarks; (iii) historical references to tribal settlements; (iv) tribal traditional knowledge, including oral histories, folklore and stories; (v) treaties; (vi) scholarly articles; (vii) genealogical reports; or (viii) archaeological reports.

(i) In providing this evidence, all originating sources must be included describing the origin of the information contained within a declaration or other narrative.

(ii) If an originating source of information is based upon tribal traditional knowledge then the individuals providing this information must attest to its authenticity on forms created by the Commission and all underlying sources of information these individuals relied upon must also be separately identified.

(iii) All individuals providing evidence under this section must be identified, along with their tribal affiliation, and attesting that they have authority from the Applicant to provide this evidence. The existence of overlapping boundaries among maps provided by Applicants or Listed Tribes shall not prevent the Commission from accepting an Applicant's map pursuant to this section.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2, and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

### **31006 Application Review Process**

- (a) When the Commission receives an application, the Executive Secretary shall perform an initial review of the application for completeness. If the Executive Secretary determines the application is complete, the Executive Secretary will send the Applicant a Notice of Complete Application. If the Executive Secretary determines the application is incomplete, the Executive Secretary will send the Applicant a Notice of Incomplete Application that identifies the information and/or documentation needed for the application to be considered complete.
- (b) Upon determining that the application is complete, the Executive Secretary shall:
- (1) Evaluate the merits of the application and develop any recommendations to the Commissioners. The evaluation and recommendation shall include a reference to the evidence supporting the criteria set forth in these regulations. During this review of the application, the Executive Secretary may request and receive additional information from the Applicant.
  - (2) Provide the Applicant a copy of the evaluation and recommendation along with the procedures for the public hearing on the application.

- (3) Schedule a public hearing, in accordance with section 31007, on the application where Commissioners will make a final determination on the application.
  - (4) Provide the Applicant at least 30 days to file a response to the Executive Secretary's evaluation and recommendation and provide a response explaining the Applicant's support or opposition to Commissioners.
- (c) An Applicant who receives a Notice of Incomplete Application will have 60 days from the date of the Notice to submit the additional information requested in the Notice of Incomplete Application for the application to be considered complete. The Applicant may submit a request for an additional 60 days to comply with this deadline by providing the reasons it is unable to meet the deadline which shall be granted by the Executive Secretary upon a showing of good cause.
- (1) If the Applicant timely responds to the Notice of Incomplete Application with the information and/or documents requested, the Executive Secretary will send a Notice of Complete Application.
  - (2) If the Applicant fails to timely respond to the Notice of Incomplete Application or fails to provide the documentation requested, the application will be deemed incomplete, and the Executive Secretary will send a Final Notice of Incomplete Application.
  - (3) An Applicant who fails to timely respond to a Final Notice of Incomplete Application will not be eligible to reapply for inclusion on the Contact List for a minimum of 6 months from the date of the Final Notice of Incomplete Application.
- (d) An Applicant may appeal a Final Notice of Incomplete Application within 30-days from the date of the Final Notice of Incomplete Application. Upon receipt of a timely appeal, the Executive Secretary shall:
- (1) Prepare an evaluation explaining the reasons the Executive Secretary determined the application to be incomplete. The evaluation shall include a reference to the evidence relied upon in preparing the evaluation with any applicable sections of these regulations.
  - (2) Provide the Applicant a copy of the evaluation along with the procedures for the public hearing on the application.



- (3) Schedule a public hearing, in accordance with section 31007, on the application where Commissioners will make a final determination if the application was incomplete.
- (4) Provide the Applicant at least 30-days to file a response to the Executive Secretary's evaluation which shall be provided to Commissioners.
- (5) The Commission can hold a hearing for an appeal to a Final Notice of Incomplete Application. However, the Commission can only determine whether or not the Executive Secretary's determination was appropriate and cannot make a final determination about inclusion on the Contact List.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2, and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

### **31007 Public Hearing Procedures**

- (a) All complete applications for inclusion on the Contact List, appeals, and all removals from the Contact List(s) will be decided by majority vote of the Commissioners during a public hearing in determining whether an application, appeal, or removal is supported by evidence described in Sections 31004 and 31005.
- (b) Prior to a public hearing on a complete application, appeal, or removal from the Contact List, the Commission shall do the following:
  - (1) Provide the Applicant or Listed entity with written notice at least 30-days prior to the public hearing;
  - (2) Provide the Applicant or Listed entity a copy of the Executive Secretary's evaluation and recommendation on the application, appeal, or removal from the Contact List, including an evaluation of the Applicant's proposed aboriginal territory under § 31005; and
  - (3) Provide the Applicant or Listed entity at least 15-days to file a response to the Executive Secretary's evaluation and recommendation.

- (4) Provide the Applicant or Listed entity a copy of the public hearing procedures.
  - (5) Provide members of the public the opportunity to provide comment on the application, appeal or removal from the Contact List consistent with the requirements set forth in the Bagley-Keene Open Meeting Act, Government Code section 11125.7.
- (c) During the public hearing, the Commissioners will consider the following:
- (1) The Executive Secretary's evaluation and recommendation(s);
  - (2) Any timely filed written responses to the Executive Secretary's evaluation and recommendation(s);
  - (3) Testimony by the Applicant.
  - (4) Comments from members of the public that are received by the Commission pursuant to the requirements in the Bagley-Keene Open Meeting Act, Government Code section 11125.7.
  - (5) Any additional evidence provided by the Applicant that could not have been previously submitted during the application process.
  - (6) Any other evidence that was not reasonably available at the time the Executive Secretary made their decision on the application, appeal, or removal may be presented to the Commission prior to reaching a decision on the matter.
- (d) During the public hearing, the Commissioners may request additional information from the Applicant, the Executive Secretary or their designees related to the criteria under Sections 31004-31005. The Commission, at its discretion, may continue a public hearing to consider any additional evidence or arguments.
- (e) The Commission will consider the evidence presented at the public hearing to reach a decision. Commission decisions on any application, appeal or removal from the Contact List shall be supported with Substantial Evidence.
- (f) Within 60-days of the Commissioners' final determination, the Commission will provide the Applicant with a final written determination explaining the basis for its decision.
- (g) If the Commissioners approve an application, the Commission will include the Applicant on the Contact List at the next regularly scheduled publication of the Contact List, pursuant to Section 31002.

- (h) If the Commission denies an application or appeal the Applicant may reapply any time after a minimum of one-year from the date of the final written determination. For all reapplications, the Applicant must submit new evidence not previously submitted in conjunction with any prior application, removal, or appeal which is already subject to a final written determination.
- (i) If the Commission grants an appeal finding that an application is complete, then the application shall be remanded to the Executive Secretary for further evaluation under Section 31006.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2 and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

### **31008. Voluntary Removals**

At any time, a Listed entity may request in writing to be removed from the Contact List on which it is included. The Contact List will be updated in accordance with section 31002. A Listed entity voluntarily removed may reapply to be listed on the Contact List at any time.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2 and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.

### **31009. Involuntary Removals**

- (a) The Executive Secretary may initiate proceedings to remove a Listed entity from the Contact List on which it is included for any of the following reasons:
  - (1) The Listed entity no longer meets the criteria specified in Sections 31003-31004.
  - (2) The Listed entity submitted materially false or misleading documentation in connection with its application for inclusion on the Contact List.

- (b) Upon receipt by the Commission of information indicating a Listed entity may no longer be eligible for inclusion on the Contact List for any of the reasons specified in subsection (a), the Executive Secretary may conduct an investigation.
- (c) If the Executive Secretary believes a Listed entity should be removed from the Contact List, the Executive Secretary shall prepare an evaluation and recommendation(s) regarding removal of the Listed entity and schedule a public hearing, in accordance with section 31007. The recommendation(s) shall include the basis for the recommendation(s) and the evidence relied upon by the Executive Secretary in making the evaluation and recommendation(s). The Executive Secretary shall mail and, if available, email a copy of the evaluation and recommendation(s) to the Listed entity at the address provided to the Commission. The Listed entity shall have 60-days from the date of mailing to respond in writing to the Executive Secretary explaining the Listed entity's support or opposition to the Executive Secretary's evaluation and recommendations. The Executive Secretary shall provide the Listed entity's response to Commissioners prior to the public hearing.
- (d) The Executive Secretary will present the evaluation and recommendation(s) and any written response to the Commissioners for a final determination at a public hearing held pursuant to section 31007.
- (e) The Commissioners may remove a Listed entity from the Contact List(s), if they find by Substantial Evidence that the criteria for removal under subdivision (a) has been met.
- (f) Within 60-days of the public hearing, the Commission will provide the Listed entity with a final written determination explaining the basis for its decision.
- (g) The Listed entity will be deemed removed from the Contact List immediately following the issuance of the final written determination. The Contact List will be updated immediately thereafter in accordance with section 31002.
- (h) A Listed entity removed from the Contact List may not reapply until at least 2 years from the date of the final written determination removing the Listed Tribe from either or both Contact List(s).

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections 815.3 and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2 and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section 5097.98 of the Public Resources Code. Reference: Section 835 of the Code of Civil Procedure; Section 3801 of the Fish and Game Code; Sections 50515.06 and 116766 of the Health and Safety Code; Sections 4629.3, 33302, and 80137 of the Public Resources Code; Section 2830 of the Public Utilities Code; Sections 79712, 13172.5, 13182, 13198.4, and 13442.