

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:

SECTIONS:

31000.31030. 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~~established 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) The contact list is intended for the use of the Native American Heritage Commission to facilitate consultation under Chapter 905 of the Statutes of 2004 (SB 18) and Chapter 532 of the Statutes of 2014 (AB 52). Any other use of the Contact List is outside the scope of these regulations.

(c) It is the intent of these Regulations to support, protect, and uplift the inherent tribal sovereignty of Federally Recognized Tribes and in doing so, protect the political status of Federally Recognized Tribes.

~~(b)(d) These regulations are do not intended to establish a State of California recognition of any tribe analogous to process for any culturally affiliated groups within the state that are not recognized by the federal recognition of tribes under 25 Code of Federal Regulations, Part 83-government.~~

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; ~~Sections.~~

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~~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.~~

~~31001.31031.~~ 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.~~

~~(e)(a) “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)(b) “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.~~

~~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)(c) “Executive Secretary” “Cultural Affiliation” means the Executive Secretary of the Native American Heritage Commission or their designee, that there is a reasonable relationship of shared group identity that can be reasonably traced historically or precontact between members of a present-day group and an identifiable earlier tribe or group.~~

~~(d) “Federally Recognized Tribe” means any Indian band, nation, pueblo, village, or community acknowledged recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians by its inclusion on~~

~~(g) the list of recognized Indian Tribes published by the Secretary of the Interior pursuant to 25 Code of Federal Regulations, Part 83, Section 104 of the Federally~~

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~~Recognized Indian Tribe List under the Act of November 2, 1994, and as annually published in the federal register. (25 U.S.C. 5131).~~

~~(h)(c)~~ “Final Notice of Incomplete ApplicationSubmission” means the final written notice to ~~an Applicant~~ Requester who has either:

- (1) Failed to timely respond to the Notice of Incomplete ApplicationSubmission; or
- (2) Responded to the Notice of Incomplete ApplicationSubmission with insufficient information and/or documentation to ~~establish that its application is complete~~ the submission.

~~(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)(f)~~ “Listed ~~entity~~ Entity” means an entity that is listed on the Contact List.

~~(k)(g)~~ “Notice of Complete ApplicationSubmission” means the written notice to the ApplicantRequestor that its applicationsubmission is complete and contains the information and documentation required under sections ~~31003-31005~~ 31033-31035.

~~(h)(h)~~ “Notice of Incomplete ApplicationSubmission” means the written notice to the Applicant ~~informing the ApplicantRequestor that~~ its applicationsubmission is incomplete because it failed to submit all the information and documentation specified in Sections ~~31003-31005~~ 31033-31055. The ~~notice~~ Notice of ~~incomplete application~~ Incomplete Submission is not a denial of the applicationrequest for inclusion on the Contact List.

~~(i)~~ “OfficersPreponderance” means ~~the individuals serving~~ more likely to be true than not true.

~~(m)~~ “Requester” means a group seeking inclusion on the governing body of a tribe in any capacity.

~~(n)(j)~~ “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.~~ Contact List that is not recognized as a tribe by the federal government.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code;

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~~Sections 815.3 and 816.56 of the Civil Code; and Sections 21073, 21080.3.1, 21080.3.2, and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety~~

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~~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 ~~31032.~~ Contact List

~~(a) The Contact List shall include all Federally Recognized Tribes currently located within the geographic boundaries of California, as reflected on the list of recognized Indian Tribes published by the Secretary of the Interior under the Act of November 2, 1994 (25 U.S.C. 5131) and culturally affiliated groups that are not recognized by the federal government as tribes that have been approved for inclusion on the Contact List. The Contact List will clearly identify which Listed Entities are Federally Recognized Tribes.~~

~~(a) The Commission shall maintain a Contact List for the following purposes:~~

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~~(1)(b) Tribal Cultural Resources protection and to facilitate consultation pursuant to Sections 8318, on general and specific plans pursuant to the purposes of Chapter 905 of the Statutes of 2004 (SB 18).~~

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~~The 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.~~

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~~(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.~~

~~(c) The Contact List will also be used by the Commission to facilitate consultation pursuant to Chapter 532 of the Statutes of 2014 (AB 52).~~

~~(b)(d) Upon request, the Commission shall make publicly accessible, including through its website, provide a copy of the Contact List, which shall include a statement identifying to any Listed Entity and to cities, counties, lead agencies, and any entities that have been removed from, or added to, the Contact List since its last publication, other entity as permitted by law.~~

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~~(e)(e)~~ Contact information for each Listed ~~entity~~Entity on the Contact List will be updated quarterly. It is the responsibility of each Listed Entity to update its contact information with Commission staff to ensure the provision of accurate information in support of consultation. 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)(f)~~ Within one year of the effective date of these regulations, the Commission shall ~~publish~~use its best efforts to create the first edition of the Contact List. ~~The first edition, which shall include a link to each Listed Entity's consultation map. However, the first edition shall not be published regardless of whether created until after the Commission has completed reviewing all applications requests submitted pursuant to these regulations. Any list published created prior to the publishing establishment of the first edition of the Contact List, shall be void. Each time the Contact List is updated, it shall include a statement identifying additions and removals from the last version. The first edition and all following updates shall include a link to each Listed Entity's consultation map.~~

Note: -Authority cited: Sections ~~65092~~, 65352, and 65352.3 of the Government Code; ~~Sections~~

~~815.3 and 816.56 of the Civil Code; and Sections 21073, and 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.~~

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~~31003.~~ Application~~31033.~~ Request for Inclusion on
the Contact ListsList

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(a) All documents submitted pursuant to this section must be accompanied by ~~resolution on the Applicant's letterhead~~an attestation that the documents are true and correct copies ~~of the original documents on file with the Applicant, are~~ available for inspection by the Commission staff, and ~~certifying that the~~all information contained within the records is accurate. The Commission shall provide a sample form with this language for ~~applicants'~~ use.

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~~(b) To be included~~A request for inclusion 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.~~

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(c) Applicants will be required to provide the Commission with the following information to be considered for inclusion on the Contact List:

~~(1) The include the name of the Applicant and the name of the Applicant's Requestor and contact person;~~

~~(2)(b) The Applicant's electronic and U.S. mail addresses; and, and information and documentation concerning the following:~~

~~(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 Information establishing cultural affiliation, connection, and documentation capacity as specified in Section 31003-31005 to demonstrate that it meets the criteria for inclusion on the Contact List.~~

~~(f)(1) 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 31004-31034; 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.~~

~~(2) 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. Description of Area for Consultation as specified in Section 31035.~~

(c) Other than records exempt from disclosure under the law, which include records of

~~(g) Native American graves, cemeteries, and sacred places, all documents submitted to the Commission are subject to the California Public Records Act and are required to be disclosed upon receipt of a request for records.~~

Note: Authority cited: Sections ~~650927920~~ – 7931, 65352, and 65352.3 of the Government Code; Sections. 31034. Establishing Cultural Affiliation, Connection, and Capacity.

~~815.3 A Requester must establish its Cultural Affiliation and 816.56 of the Civil Code; Sections 21073, 21080.3.1, 21080.3.2, that it is traditionally and 75102 of the Public Resources Code; Sections 8012 and 8025 of the Health and Safety Code; Section 8318 of the Government Code; Section~~

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~~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~~ culturally affiliated with the geographic area where it seeks consultation. Additionally, a Requestor must demonstrate that it has historically and currently engages in consultations and implemented efforts to preserve and protect archaeological, historical, cultural, and sacred sites that are located within the geographic area where it seeks consultation. Documents submitted pursuant to this section must be accompanied by ~~resolution on the Applicant's letterhead~~ an attestation that ~~the attached documents~~ they are true and correct copies of the original documents on file with the Applicant, that are available for inspection by the Commission staff on request and certifying that ~~the~~ all information contained ~~within~~ in the ~~records~~ documents is accurate.

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~~(b) In order to~~ An Applicant must establish the shared Native American affiliation of demonstrate its Officers by demonstrating each of its Officers are a direct descendant of Cultural Affiliation, a Requester shall submit information that may include, but is not limited to oral tradition evidence; documentation of tribal traditional knowledge; that the group is connected to a member of the same Historic California Native American Tribe as provided linguistic group that shares its cultural identity, and historical federal documentation of its past recognition in subsection (c) and provide a tribal membership base roll as provided in subsection (d). support of

- (e)(b) ~~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 that the group was party a signatory to one of the eighteen unratified treaties with the United States drafted between April 29, 1851, and August 22, 1852.

- (3)(1) ~~Evidence of descent from an individual~~ (s) If more than one Requestor asserts that it is connected to an earlier group that was a signatory to one of the eighteen unratified treaties, then none of the Requestors will be considered for inclusion on the California Mission Rolls Contact List until the Commission makes a determination of which Requestor is the appropriate entity. This determination shall be made prior to the creation of the first edition of the contact list. If this situation arises, Commission staff shall inform each Requestor that the Commission will make a determination of the appropriate entity, if a Requestor chooses, it may

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submit the dispute as to which is the correct group for resolution in accordance with section 31039.

- (4) Evidence of descent from a member of a tribe with a historical relationship with the United States Government.

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

- (2) Evidence that the present-day group was at one time recognized as a tribe by the federal government but was subject to termination in the 20th century. If more than one Requestor asserts that it is connected to an earlier group that was formally federally recognized but later terminated, then none of the Requestors will be considered for inclusion on the Contact List until the Commission makes a determination of which Requestor is the appropriate entity. This determination shall be made prior to the creation of the first edition of the contact list. If this situation arises, Commission staff shall inform each Requestor that the Commission will make a determination of the appropriate entity. if a Requestor chooses, it may submit the dispute as to which is the correct group for resolution in accordance with section 31039.

- (3) Evidence that the present-day group was at one time recognized as a tribe by the federal government.

- (c) A Requester's connection to the geographic area where it seeks consultation shall be determined in the following manner:

- (1) If it is establishing its Cultural Affiliation through evidence that it was a signatory to one of the eighteen unratified treaties, then it shall demonstrate that the area in which it intends to engage in consultation is within the territory ceded under the treaty.

- (2) If it is establishing its Cultural Affiliation through evidence that it was at one time recognized by the federal government but was subject to termination, then it shall demonstrate that the area in which it intends to engage in consultation is within the area occupied at the time of termination.

- (3) If it is establishing its Cultural Affiliation through evidence that it was at one time recognized by the federal government, then it shall demonstrate that the area in which it intends to engage in consultation is within the area occupied at the time of recognition.

- (d) In order for a Requester to demonstrate that it historically and currently engages in consultation and efforts to preserve and protect archaeological, historical, cultural, and sacred sites located within the geographic area in which it wishes to consult, it shall provide the following:

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(1) Names and backgrounds of persons who will be consulting on behalf of the group. The background information shall include, but not be limited to, the number of years working or volunteering in cultural preservation; cultural knowledge and expertise; educational background; and how each person is affiliated with the group.

(2) Information regarding past and current consultations under SB 18 and AB 52 with state, county, and local governments and agencies which shall include approximate dates and the subject of consultation.

(3) Information on locations the Requestor has placed on the Commission's sacred lands file, including approximate date(s) of the request(s).

(d)(c) In addition to the information submitted under subsection (d), a Requestor may provide a resolution of support from all Federally Recognized Tribes of the same Cultural Affiliation attesting that the Requestor has demonstrated capacity to protect and preserve cultural resources within the geographic area that it seeks consultation.

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Note: -Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code; Sections,

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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

31035. Description of Area for Consultation

In order for the Commission to effectively facilitate consultation conducted pursuant to Chapter 905 of the Statutes of 2004 (SB 18) and Chapter 532 of the Statutes of 2014 (AB 52), a Federally Recognized Tribe shall provide the Commission with information regarding the geographic area over which it seeks consultation. This information shall be conveyed via a map and narrative and may include identification of

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~~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:~~

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(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 state and~~ local parks ~~or forests that~~ are located within the Applicant's aboriginal territory.

(2) Evidence supporting the boundaries of the map described in subsection (a)(1) of area. If 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)(a) ~~In providing this evidence, all originating sources must be included describing the origin of the information is not provided, the Commission will use the best information contained within a declaration or other narrative available, to meet its statutory requirements.~~

(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:

(1) When maps and narratives are submitted or updated, Commission staff shall review its records to determine whether another Federally Recognized Tribe is seeking consultation in the same area. If there is more than one Federally Recognized Tribe seeking consultation in an area, the Commission staff shall provide copies of each tribe's submitted map and narrative to the others, requesting confirmation of or revision to the map. If there is a dispute between Federally Recognized Tribes, concerning the geographic area in which consultation is sought, it shall be resolved in accordance with section 31038.

(2) Commission staff will review the information provided and, if necessary, work with the Federally Recognized Tribe to finalize a digital consultation map.

(b) In order for the Commission to effectively facilitate consultation conducted pursuant to Chapter 905 of the Statutes of 2004 (SB 18) and Chapter 532 of the Statutes of 2014 (AB 52), a Requestor shall provide the Commission with information regarding the geographic

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area over which it seeks consultation. This information shall be conveyed via a map and a narrative and may include identification of counties, cities, unincorporated communities, national parks or forests, and state and local parks that are located within the area.

(1) When new maps and narratives are submitted, Commission staff shall review its records to determine whether another Requestor is seeking consultation in the same area. If there is more than one Requestor seeking consultation in an area, the Commission staff shall provide copies of each Requestor's submitted map and narrative to the others, requesting confirmation of or revisions to the map. If there is a dispute between Requestors concerning the geographic area in which consultation is sought, it shall be resolved in accordance with section 31038.

(2) Once a Requestor has been approved for inclusion on the Contact List, Commission staff will work to finalize a digital consultation map and, if necessary, will consult with the newly Listed Entity, a former Requestor.

(3) If any time after inclusion on the Contact List, a former Requestor, now a Listed Entity, wishes to update its consultation map, it must follow the process in this subsection (b). Additionally, the updated consultation map will be reviewed by the Commission staff and is subject to Commission approval in a public meeting in accordance with the provisions contained in section 31037.

Note: Authority cited: Sections 65092, Section 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 31036. 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 For a request for inclusion on the Contact List to be deemed complete, it must contain the Executive Secretary following:

(1) Information and documentation described in section 31033;

(2) Information and documentation establishing cultural affiliation described in section 31034; and

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(3) Area for Consultation described in section 31035.

~~(a) If the submission is determined to be complete, the Requestor will send the Applicant the~~
~~sent a Notice of Complete Application Submission. If the Executive Secretary determines~~
~~the applicationsubmission is determined to be incomplete, the Executive~~
~~SecretaryRequestor will send the Applicantbe sent a Notice of Incomplete~~
~~ApplicationSubmission that identifies the information and/or documentation needed for~~
~~the applicationsubmission to be considered complete.~~

~~(b)~~

~~(b)(c)~~ Upon determining that the applicationsubmission is complete, ~~the Executive~~
~~SecretaryCommission staff~~ shall:

(1) ~~EvaluateReview~~ the ~~merits of the applicationsubmission~~ and develop any
recommendations to the ~~CommissionersCommission~~. 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, Commission staff~~ may request and receive additional information from
the ~~ApplicantRequestor~~.

(2) Provide the ~~ApplicantRequestor with~~ 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~~
~~application31037~~ where ~~Commissioners the Commission~~ will make a final
determination on the applicationsubmission.

(4) Provide the ~~Applicant Requestor with~~ at least 30 days to file a response to the
~~Executive Secretary's Commission staff's~~ evaluation and recommendation.

(5) Provide public notice at least 30 days prior to the scheduled public hearing so as to
allow for review of the submission and to provide information to the Commission
about the submission. Any information submitted to the Commission must be done

so no later than 10 days before the public hearing and, unless exempt under the
Public Records Act, shall be included in the materials made available to the public.

~~(4) If a response explaining the Applicant's support or opposition to Commissioners.~~

~~(e)(d)~~ An Applicant submission is determined to be incomplete, a Requestor who receives
a Notice of Incomplete ApplicationSubmission will have 60 days from the date of the
Notice notice to submit the additional information requested ~~in the Notice of Incomplete~~

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~~Application for the application to be considered complete.~~ The ~~Applicant~~Requestor 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~~Requestor timely responds to the Notice of Incomplete ~~Application~~Submission with the information and/or documents requested, ~~the Executive Secretary~~Commission staff will send a Notice of Complete ~~Application~~Submission.

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(2) If the ~~Applicant~~Requestor fails to timely respond to the Notice of Incomplete ~~Application~~Submission or fails to provide the documentation requested, the ~~application~~submission will be deemed incomplete, and ~~the Executive Secretary~~Commission staff will send a Final Notice of Incomplete ~~Application~~Submission.

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~~(3) An Applicant~~A Requestor who fails to timely respond to a Final Notice of Incomplete ~~Application~~Submission will not be eligible to ~~reapply for request~~

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~~(3)~~ minimum of 6 months from the date of the Final Notice of Incomplete ~~Application~~Submission.

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~~(d)(c)~~ ~~An Applicant~~A Requestor may ~~appeal~~seek review of a Final Notice of Incomplete ~~Application~~Submission within 30-days from the date of the Final Notice of Incomplete ~~Application~~Submission. Upon receipt of a timely ~~appeal~~request for review, the ~~Executive Secretary~~Commission staff shall:

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(1) Prepare an evaluation explaining the reasons the ~~Executive Secretary~~submission ~~was~~ determined ~~the application~~ to be incomplete. ~~The evaluation, which~~ shall include ~~a reference to the evidence relied upon in preparing the evaluation with citations to information provided by the Requestor and~~ any applicable sections of these regulations.

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~~(2)~~ Provide the ~~Applicant~~Requestor with a copy of the evaluation.

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~~(2)(3)~~ Provide those members of the Commission who oversee the staff's work on the contact list with a complete copy of the Requestor's submission along with the procedures for the public hearing on the application ~~a copy of the evaluation~~.

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~~(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.

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~~(4) Provide the Applicant Requestor with~~ at least 30 days to file a response to the Executive

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~~(4) Secretary's Commission staff's~~ evaluation which shall be provided to ~~Commissioners~~ the reviewing Commission members.

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~~(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.~~

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~~(a) If after reviewing the submission and the staff evaluation, the reviewing Commission members determine that the submission is incomplete, they shall inform the Requestor of the decision and indicate what materials are needed for the submission to be complete.~~

~~(b) If after reviewing the submission and the staff evaluation, the reviewing Commission members determine that the submission is complete, they shall inform the Commission staff of the decision and direct that a Notice of Complete Submission be sent to the Requestor.~~

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Note: -Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code.

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~~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.~~

31007-31037. Public Hearing Procedures – Requests for Inclusion

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~~(a) All complete applications requests 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 Commission after a public hearing in determining whether an application, appeal, or removal is supported by evidence described in Sections 31004 and 31005.~~

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~~(b) Prior to a public hearing on a complete application, appeal, or removal from the Contact List, the Commission staff shall do the following:~~

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- (1) Provide the ~~Applicant or Listed entity~~Requestor with ~~written notice~~ at least 30- days ~~prior to the public hearing;~~written notice.
 - (2) Provide the ~~Applicant or Listed entity~~Requestor with a copy of the ~~Executive Secretary's~~Commission staff'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~~submission.
 - ~~(3)~~ Provide the ~~Applicant or Listed entity~~Requestor with at least 15- days to file a response to the
 - ~~(3)~~ ~~Executive Secretary's~~Commission staff's evaluation and recommendation.
 - (4) Provide the ~~Applicant or Listed entity~~Requestor with a copy of the public hearing procedures.
 - (5) Provide members of the public with the opportunity to provide comment on the ~~application, appeal or removal from the Contact List~~submission, 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~~Commission will consider the following:
- ~~(1)~~ The ~~Executive Secretary's~~Commission staff's evaluation and recommendation(s);
 - ~~(1)~~ .
 - (2) Any timely filed written responses to the ~~Executive Secretary's~~Commission staff's evaluation and recommendation(s);.
 - ~~(3)~~ Any timely submitted information submitted by Federally Recognized Tribes and Culturally Affiliated groups that are not recognized as tribes by the federal government.
 - ~~(3)~~(4) Testimony by the ~~Applicant~~Requestor.
 - ~~(4)~~(5) 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~~Requestor that could not have been previously submitted ~~during the application process.~~
 - ~~(6)~~ .

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~~(6) Any other evidence that was not reasonably available at the time the Executive Secretary/Commission staff made their decision/recommendation on the application, appeal, or removal may be presented to the Commission prior to reaching a decision on the matter.~~
~~(7) submission.~~

(d) During the public hearing, the ~~Commissioners/Commission~~ may request additional information from the ~~Applicant/Commission staff~~ and the ~~Executive Secretary/Requestor~~, or their ~~designees/designee~~, related to the criteria under ~~Sections 31004-31005/Section 31034~~. 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 and must find that a Preponderance of the evidence supports the action on the submission.~~

(f) Within 60_ days of ~~the Commissioners' final-its~~ determination, the Commission will provide the ~~Applicant/Requestor~~ with a ~~final~~-written determination explaining the basis for its decision.

(g) If the ~~Commissioners approve an application, the~~ Commission ~~approves a request for inclusion on the Contact List, the Requestor will include the Applicant on the Contact List at the next regularly scheduled publication of be added to~~ the Contact List, ~~pursuant to Section 31002.~~

~~(h) If the Commission denies an application or appeal the Applicant a request for inclusion on the Contact List the Requestor may reapply/submit a new request any time after a minimum of one- year from the date of the final written determination. For all reapplications, the Applicant/Any subsequent request must submit/contain new evidence not previously submitted in conjunction with any prior application, removal, or appeal which is already subject to a final written determination.~~

~~(i)(h) 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/request.~~

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.~~

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~~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, 31038. Public Hearing Procedures –~~

Consultation Map Disputes

(a) All disputes between Federally Recognized Tribes regarding consultation maps that cannot be resolved will be decided by majority vote of the Commission after a public hearing.

(b) Prior to a public hearing, Commission staff shall:

(1) Evaluate the maps and narratives submitted by each party and develop any recommendations to the Commission.

(2) Provide the parties with a copy of the Commission staff's evaluation and recommendation.

(3) Provide the parties with at least 30 days to file a response to the Commission staff's evaluation and recommendation.

(4) Provide the parties with at least 30 days' written notice of the public hearing.

Provide the parties with a copy ~~**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:~~

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- ~~(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.~~
- (5) Within 60 days of the public hearing procedures.
- (6) Provide public notice at least 30 days prior to the scheduled public hearing to allow for review of the maps and narratives and to provide information to the Commission. Any information submitted to the Commission must be done so no later than 10 days before the public hearing and, unless exempt under the Public Records Act, shall be included in the materials made available to the public.
- (c) During the public hearing, the Commission will consider the following:
- (1) The Commission staff's evaluation and recommendation.
- (2) Any timely filed written responses to the Commission staff's evaluation and recommendation(s).
- (3) Any timely submitted information submitted by Federally Recognized Tribes and Culturally Affiliated groups that are not recognized as tribes by the federal government.

- (4) Testimony by the parties.
- (5) Comments from members of the public that are received by the Commission.
- (6) Any additional evidence provided by the parties that could not have been previously submitted.
- (7) Any other evidence that was not reasonably available at the time the Commission staff made their recommendation.
- (d) The Commission may request additional information from the Commission staff and a party, or their designee. 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 and must find that a Preponderance of the evidence supports its decision on the parties' consultation maps.
- (f) Within 60 days of its determination, the Commission will provide the ~~Listed entity~~ parties with a ~~final~~ written determination explaining the basis for its decision.

~~The Listed entity will be deemed removed from the Contact List immediately~~

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31039. Mediation and Dispute Resolution

- (a) When there is a dispute regarding the geographic area over which consultation is sought, Commission staff shall schedule individual consultation with each party to the dispute to determine whether the conflict may be resolved. Prior to consultation, Commission staff shall do the following the issuance of:
- (1) Inquire as to whether participation by a member or members of the Commission is requested.
- (2) Review the information provided under section 31035 and if it would assist in clarifying the area in which consultation is requested, request additional documents in support of the submitted map and narrative.
- (b) If after consultation, one or more party to the dispute revises its map of the geographic area over which it seeks consultation, the result of which is that there is no longer more than one party seeking consultation in that area, Commission staff shall inform any other party to the dispute that the matter is resolved.
- (c) If individual consultation fails to resolve the dispute, the parties will engage in non-binding mediation conducted by a member of the Commission or Commission staff that has received training as a mediator. The mediator will assist the parties in reaching agreement

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on either revising their maps so that there is not more than one party seeking consultation in the same geographic area or in developing a plan to work cooperatively when engaging in consultation in the shared area.

(d) If mediation fails to result in agreement among Requestors, the Commission shall determine, based on a Preponderance of the evidence, the appropriate geographic area over which the parties will engage in consultation as part of the public hearing conducted under section 31038. If a Commission member served as mediator, then they shall recuse themselves from participating in the final ~~written~~ Commission determination. The ~~Contact~~ List will be updated immediately thereafter

(e)(c) If mediation fails to result in agreement among Federally Recognized Tribes, the Commission shall make a determination as to the appropriate area over which the parties will engage in consultation after a public hearing held in accordance with section 31002-31038.

(f) When there is a dispute as to which present-day group is connected to an earlier group that was a signatory to one of the eighteen unratified treaties, or a group that was at one time recognized as a tribe by the federal government, Commission staff shall schedule individual consultation with each party to the dispute to determine whether the conflict may be resolved. Prior to consultation, Commission staff shall do the following:

(1) Inquire as to whether participation by a member or members of the Commission is requested.

(2) Review the information provided under section 31034 and if it would assist in clarifying the Requestor's connection to a treaty signatory or formerly recognized tribe, request additional documents.

(g) If after consultation, one or more party to the dispute withdraws its request for inclusion on the Contact List, the result of which is that there is no longer more than one present-day group asserting that it is connected to an earlier group that was a signatory to one of the eighteen unratified treaties, or a group that was at one time recognized as a tribe by the federal government, Commission staff shall inform any other party to the dispute that the matter is resolved.

(h) If individual consultation fails to resolve the dispute, the parties will engage in non-binding mediation conducted by a member of the Commission or Commission staff that has received training as a mediator. The mediator will assist the parties in reaching agreement on developing a plan to work cooperatively when engaging in consultation.

(i) If mediation fails to result in agreement among Requestors, the Commission shall make a determination as to the appropriate geographic area over which the parties will engage in consultation as part of the public hearing conducted under section 31038.

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31040. Involuntary Removals

- (a) The Commission may initiate an investigation into whether a Listed Entity should be removed from the Contact List because it no longer meets the criteria for inclusion on the Contact List or that it submitted materially false or misleading information and/or documentation in connection with its request for inclusion on the Contact List.
- (b) Upon receipt by Commission staff of written information indicating a Listed Entity may no longer be eligible for inclusion on the Contact List, it shall review the information to determine whether the allegations are sufficient to bring to the Commission at a public meeting.
- (c) If Commission staff determines that the written allegations may support removal of a Listed Entity from the Contact List, it shall present the Commission with the information in a public meeting who may direct Commission staff to conduct an investigation.
- (d) If after an investigation, it is determined that there are grounds for removal of the Listed Entity from the Contact List, the Commission staff shall prepare an evaluation and recommendation(s) regarding removal of the Listed Entity.
- (1) The recommendation(s) shall include the basis for the recommendation(s) and the evidence relied upon in making the evaluation and recommendation(s).
- (2) Commission staff 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.
- (3) The Listed Entity shall have 60 days from the date of mailing to respond in writing explaining the Listed Entity's support or opposition to the evaluation and recommendations.
- (4) Upon receipt of the Listed Entity's response, a public hearing shall be scheduled.
- (e) ~~All~~ A Listed entity removed from the Contact List may not reapply decisions as to whether to remove a Listed Entity will be decided by majority vote of the Commission after a public hearing.
- (f) Prior to a public hearing, Commission staff shall:
- (1) Provide the Listed Entity with at least 30 days' written notice.
- (2) Provide the Listed Entity with a copy of the public hearing procedures.
- (3) Provide public notice and an opportunity for members of the public to provide comment on the submission, consistent with the requirements set forth in the Bagley-Keene Open Meeting Act.

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(g) During the public hearing, the Commission will consider the following:

- (1) The Commission staff's evaluation and recommendation(s).
 - (2) Any timely filed written responses to the Commission staff's evaluation and recommendation(s).
 - (3) Any timely submitted information submitted by Federally Recognized Tribes and Culturally Affiliated groups that are not recognized as tribes by the federal government.
 - (4) Testimony by the Listed Entity.
 - (5) Comments from members of the public that are received by the Commission pursuant to the requirements in the Bagley-Keene Open Meeting Act.
 - (6) Any additional evidence provided by the Listed Entity that could not have been previously submitted.
 - (7) Any other evidence that was not reasonably available at the time the Commission staff made their recommendation.
- (h) During the public hearing, the Commission may request additional information from Commission staff and the Listed Entity, or their designee. The Commission, at its discretion, may continue a public hearing to consider any additional evidence or arguments.
- (i) The Commission will consider the evidence presented at the public hearing to reach a decision and must find that a Preponderance of the evidence supports removal of the Listed Entity from the Contact List.
- (j) Within 60 days of its determination, the Commission will provide the Listed Entity with a written determination explaining the basis for its decision.
- (k) Upon the issuance of a written determination that the Listed Entity is removed from the Contact List, they shall be removed immediately and the Contact List updated in accordance with section 31032.
- (h)(l) A Listed Entity removed from the Contact List may not request to be included on the Contact List until at least ~~two~~ two years from the date of the final written determination removing the Listed ~~Tribe from either or both Contact List(s).~~ Entity.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code.

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31041. Voluntary Removals

At any time, a Listed Entity may request in writing to be removed from the Contact List. The Contact List will be updated in accordance with section 31032. A Listed Entity voluntarily removed may request to be included on the Contact List at any time in accordance with sections 31033 - 31035.

Note: Authority cited: Sections 65092, 65352, and 65352.3 of the Government Code.

~~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.~~

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