

Summary of Public Comments and Responses

On October 23, 2023, the Native American Heritage Commission (NAHC) released draft contact list regulations for a 90-day tribal comment and consultation period. At the January 19, 2024, Commission meeting, the NAHC extended the comment and consultation period to March 1, 2024. During the 120-day tribal comment and consultation period, the NAHC conducted four virtual and five in-person listening sessions. Additionally, the NAHC engaged in individual consultation sessions with 23 tribes and 1 tribal consortium consisting of 12 tribes. Comments received during these various listening sessions and consultations as well as written comments provided by 35 tribes are compiled and summarized below.

The NAHC reviewed and considered all comments prior to revising the draft regulations and have provided our direct responses below, combining similar comments where appropriate.

In response to these comments, we made the following major changes to the draft regulations:

1. Federally recognized tribes will automatically be included on the contact list.
2. Removed all race-based criteria for inclusion on the contact list.
3. When geographic areas overlap there will be tribal consultation and if necessary, dispute resolution offered before a Commission determination is made.
4. Removed the California Mission Rolls as a criteria for inclusion on the contact list.

General Comments

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| 1. | Comment: | The NAHC received three comments questioning its authority to develop the contact list and to draft, adopt, and promulgate regulations. |
| | NAHC Response: | While SB 18 did not explicitly provide the NAHC with express authority or parameters on how to create or maintain a contact list, it does not mean that the Commission is without authority to craft regulations to carry out its responsibilities under the statute. Under the law, the NAHC is authorized to fill up the details of the statute through regulations. |
| 2. | Comment: | It was noted that there is nothing in state law, defining “contact list” or providing clear parameters for inclusion on the list. |
| | NAHC Response: | As the agency tasked with carrying out those provisions of SB 18 related to the contact list, it is within the NAHC’s authority to elaborate the meaning of key statutory terms or fill in details not provided by the statute. |
| 3. | Comment: | Conflicting comments were received on whether tribes previously listed on the contact list should be automatically included in future publications of the contact list. |
| | NAHC Response: | The NAHC has considered these comments and has determined that previous inclusion on the contact list should not control future listing. |

4. **Comment:** We received four comments that if a tribe is not automatically grandfathered into future publications of the contact list, the NAHC should notify the tribe of the planned removal, the reason for the removal, and provide the opportunity to correct any deficient information.
- NAHC Response:** As drafted, the regulations would create a new contact list rather than add to or remove from the existing list so there is no need to include this suggested language.
5. **Comment:** One commenter asserted that the NAHC has failed to provide an economic estimate of what tribes may expect to incur to comply with the draft regulations and a cost estimate of how much the State would be liable for the administration of the regulations.
- NAHC Response:** The NAHC will provide this information in connection with the process of promulgating regulations through the Office of Administrative Law.
6. **Comment:** The NAHC received four comments asserting that the regulations only impact non-federally recognized tribes and could lead to the elimination of non-federally recognized tribes representing/protecting geographic areas within the State of California. A request was made for the NAHC to clarify this issue.
- NAHC Response:** The NAHC considered this comment and based on the updates to the draft regulations is confident that there will not be any areas within the state where cultural resources will not be protected.
7. **Comment:** One comment is that the regulations would encroach upon tribal sovereignty by attempting to determine which tribes are sovereign and by mandating certain governance actions for tribes to maintain access to rights of consultation.
- NAHC Response:** As revised, the process for inclusion on the contact list recognizes the inherent sovereignty of federally recognized tribes by not requiring an application to be on the contact list.
8. **Comment:** One comment requests that the regulations include a statement about the inherent sovereignty of tribes.
- NAHC Response:** 31030 (c) of the updated draft regulations contains a statement affirming tribal sovereignty.

- 9. Comment:** A comment received is that SB 18 only authorizes the NAHC to “identify” tribes for consultation and not to define a California Native American tribe or develop regulations that would impact a tribe’s consultation rights.
- NAHC Response:** Because SB 18 does not define what is a California Native American tribe, the NAHC must fill in the details of the statute and provide requirements for inclusion on the contact list the purpose of which is to facilitate consultation in furtherance of the protection of tribal cultural resources.
- 10. Comment:** One comment received is that the proposed regulations would undermine SB 18’s intent to include both federally recognized and non-federally recognized tribes on the contact list.
- NAHC Response:** The draft regulations provide for inclusion on the list of both federally recognized and non-federally recognized tribes, supporting the intent of the statute.
- 11. Comment:** One commentor stated that a federally recognized tribe that does not want to be included on the contact list retains its statutory right to consult under SB 18 and AB 52.
- NAHC Response:** The NAHC agrees with this comment as the statutory authority for federally recognized tribes to engage in government-to-government consultations under SB 18 and AB 52 are not contingent on inclusion on the contact list.
- 12. Comment:** The NAHC received a comment that it appears the intent of the draft regulations is for the identification of non-federally recognized California Indian groups that have the legitimacy and capacity to engage in government-to-government consultation. If this is the case, it is requested that this intent be clearly stated so that federally recognized tribes have an opportunity to consult with the NAHC on potential impacts.
- NAHC Response:** The draft regulations were updated to reflect the intent of SB 18 and AB 52, which is the protection of cultural resources and focus on affiliation with a geographic area and ability to protect tribal cultural resources.
- 13. Comment:** Three commentors assert that the draft regulations too closely resemble a state recognition process and are not limited in scope to identifying those capable of tribal cultural resource protection pursuant to SB 18.
- NAHC Response:** The preamble of the updated draft clearly states that the regulations do not establish a State of California recognition process for any culturally affiliated groups within the state that are not recognized by the federal government.

- 14. Comment:** A comment was received that the proposed regulations should be as restrictive as possible to avoid the appearance of State recognition so as not to encourage use of the contact list outside the scope of tribal cultural resource protection. This comment acknowledged that the proposed regulations in their current form satisfy this concern.
- NAHC Response:** The NAHC agrees with this comment and the revised draft reflects the underlying purpose of the contact list, which is facilitation of consultation to protect tribal cultural resources.
- 15. Comment:** A comment acknowledges the regulations are not intended to establish state recognition for non-federally recognized tribes but suggests that because the process appears to run parallel to the Bureau of Indian Affairs (BIA) federal petition guidelines, that the NAHC should inquire with the BIA about how the contact list might impact federal recognition.
- NAHC Response:** Because the draft regulations are not a state recognition process, the NAHC has declined to consult with the BIA.
- 16. Comment:** One commentor requests that the draft regulations include a more robust preamble explaining the limited purposes for which the contact list should be used and expressly debunking the misperception that inclusion on the contact list equates to some kind of state recognition process.
- NAHC Response:** The NAHC considered this comment and updated the preamble, adding a statement regarding the use of the contact list and strengthened the statement that this process does not constitute state recognition.
- 17. Comment:** One group expressed concern that the creation of the proposed regulations feels like termination as a “state-recognized tribe.”
- NAHC Response:** Because there is no state recognition process for tribes, the creation of a contact list will not result in termination.
- 18. Comment:** A comment stated that the NAHC should put a moratorium on the use of the existing contact list as it relates to listed entities that are not federally recognized tribes.
- NAHC Response:** Because the purpose of the list is to facilitate consultation in furtherance of cultural resource protection, the NAHC declines to place a moratorium on the use of the contact list.

- 19. Comment:** Two comments suggest there be different lists for federally recognized and non-federally recognized tribes especially for projects with a federal nexus such as NEPA or NAGPRA.
- NAHC Response:** While separate lists are not contemplated, revisions to the draft regulations now require that the contact list includes a notation as to whether a tribe is federally recognized.
- 20. Comment:** A request was made for future contact lists to indicate which tribes are federally recognized and that federally recognized tribes should be afforded deference in consultation.
- NAHC Response:** Revisions to the draft regulations now require that the contact list includes a notation as to whether a tribe is federally recognized.
- 21. Comment:** The NAHC received three comments regarding the misuse of the contact list. These tribes request that the use of the contact list outside of its designated scope be addressed with the California legislature and a preamble be added stating that the contact list is intended solely for the use of tribal cultural resource protection.
- NAHC Response:** While the NAHC is without authority to limit the legislature use of the contact list as a proxy for consultation on various matters, the revised draft includes a statement that the contact list is intended for the use of the Native American Heritage Commission to facilitate consultation under SB 18 and AB 52 and that any other use of the contact list is outside the scope of the regulations.
- A. Section 31000 – Preamble**
- 22. Comment:** The NAHC received a request from two tribes to define a “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 the Statutes of 2004.
- NAHC Response:** The NAHC declines to make this change as this definition already exists in statute.
- 23. Comment:** One comment noted that government agencies outside of the NAHC utilize the contact list for engaging in consultation beyond tribal cultural resources and the NAHC should clarify the intended use of this contact list.
- NAHC Response:** Subsection (b) was revised to emphasize that the contact list is intended for use by the NAHC to facilitate consultation under SB 18 and AB 52 and that any other use of the contact list is outside the scope of the regulations.

- 24. Comment:** The NAHC received two comments regarding subsection (a) – one to clearly state the specific purposes for which the list will be used and the second to add the word “consultation” to the list of purposes.
- NAHC Response:** The NAHC considered this comment and declines to make the requested change as the overarching purpose of the regulations are to make specific the provisions found in SB 18 and AB 52, concerning consultation.
- 25. Comment:** The NAHC received a suggestion that section (b) be replaced with: “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. Deference shall be given to Federally Recognized Tribes in the decision-making processes described in these regulations.”
- NAHC Response:** Subsection (b) was revised to include the first sentence but not the second as it is unclear as to what is intended by that language.
- 26. Comment:** The NAHC received eight comments expressing concern that the regulations would provide non-federally recognized tribes with a state tribal status and a government-to-government relationship with the State of California and its political subdivisions. It is requested that the regulations clearly state that there are no State recognized tribes, nor a process for State recognition within California.
- NAHC Response:** The updated draft regulations are clear that the process for inclusion on the contact list does not establish a state recognition process.
- 27. Comment:** One commentor noted that while there is statutory authority for consultation with non-federally recognized entities, this does not and should not create a state recognition process and that subsection (b) needs to be strengthened from “intend” to “does not.”
- NAHC Response:** Based on this and similar comments requesting a stronger statement regarding state recognition, the draft regulations were updated to make clear that the regulations do not create a state recognition process.

28. Comment: Four tribes commented that subsection (b) contradicts the current language in the California Code of Regulations that defines a “State Recognized Native American Tribe” to mean “a non-federally recognized tribe that is listed on the Tribal Contact List maintained by the Native American Heritage Commission.” These comments stated that the existing use of the term “California Native American tribe” in California state law is defined in numerous statutes as being on the contact list maintained by the NAHC.

NAHC Response: While another agency may have a definition of a state recognized tribe that references the contact list, that definition does not confer state recognition. As such, there is no contradiction.

29. Comment: Two tribes requested that subsection (b) be revised to read as follows: “The purpose of these regulations is to 1) set out the process for identifying those entities that meet the criteria to be included on the Contact List; 2) establish the criteria that Applicants must meet to be included on the Contact List; and 3) set out the limited purposes for which the Contact List may be used to identify entities with an aboriginal tie to certain lands located within the State of California.”

NAHC Response: The NAHC considered this comment and has declined to make the change as the purpose of the regulations is already in the draft.

30. Comment: Two tribes requested that a new subsection be added stating: “Existing law also provides that in order for a California Indian Tribe to be eligible to consult regarding the repatriation of Native American human remains and/or funerary items, it must be able to demonstrate aboriginal ties to the land from which the Native American human remains and/or funerary items were removed, and its members can demonstrate lineal descent from identifiable earlier groups that inhabited the particular tribal territory. The process of cultural affiliation would be confirmed by the Commission pursuant to AB 275 (Health & Safety Code Section 8012(j)).”

NAHC Response: Because repatriation is governed by separate state law, inclusion of this language in these draft regulations is not appropriate.

Section 31001 – Definitions

31. Comment: A request was made to define “Base Roll.”

NAHC Response: Because the draft regulations no longer a reference enrollment records, this change is unnecessary.

- 32. Comment:** Three commentors requested that the regulations include a definition of “California Aboriginal Territory”.
- NAHC Response:** Because the draft regulations no longer contain this language, there is no need to make the change.
- 33. Comment:** The term “Non-Federally Recognized Tribe” should be defined.
- NAHC Response:** Because the term is self-explanatory, adding such a definition would be circular as so the NAHC declined to make this change.
- 34. Comment:** It was suggested that “Historical Relationship” be defined and that a date is included so that it is clear how far back the relationship was established.
- NAHC Response:** Because what constitutes a historical relationship has been made specific in the updated draft, there is no need for this definition.
- 35. Comment:** The draft regulations should include a definition of “Genealogical Evidence” to mean “reliable evidence that meets the genealogical standard or can be considered as substantial evidence.”
- NAHC Response:** Because information regarding individuals is no longer being requested, there is no need for this definition.
- 36. Comment:** A request was made to include a definition of, or standards for the acceptance of genealogical reports, including reviewing the qualifications of the individual preparing the report.
- NAHC Response:** Because information regarding individuals is no longer being requested, there is no need to add this information.
- 37. Comment:** A request was made to revise the definition of “Applicant” to read as follows: “Applicant” means either a Federally Recognized Tribe, as that term is defined in subsection (g), or a group requesting inclusion on the Contact List, or a “Historic California Native American Tribe” as described in subsection (i).
- NAHC Response** The revised draft regulations no longer contain the concept of “applying” for inclusion on the contact list. As such, this change was not made.

- 38. Comment:** Two tribes suggested that federally recognized tribes should not have to apply to be on the contact list and as such the definition of “Applicant” be revised to read: “Applicant” means a non-federally recognized Tribal Entity requesting inclusion on the Contact List.”
- NAHC Response:** Because the revised draft regulations provide for automatic inclusion of federally recognized tribes and the concept of “applying” to be on the contact list is no longer part of the draft regulations, it is not necessary to make this change.
- 39. Comment:** Four comments were made, requesting changes to the definition of “California Mission Roll Record.”
- NAHC Response:** Because the revised draft regulations do not provide for the use of the California Mission Rolls in determining eligibility for inclusion on the contact list, this term was removed.
- 40. Comment:** It was noted that the definition of “California Mission Roll Records” does not indicate where the records are located.
- NAHC Response:** Because the California Mission Rolls are not being used as a basis for inclusion on the contact list, there is no need to address this concern.
- 41. Comment:** Two tribes commented that people currently living will not be on the California Mission Rolls.
- NAHC Response:** The NAHC acknowledges that current living persons will not be listed on the California Mission Rolls.
- 42. Comment:** The NAHC received one comment regarding subsection (g) – the term “Federally Recognized Tribe,” stating it is a drafting error and suggests rewriting it to state: means any Indian tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe and is identified on the list of recognized tribes published annually by the Secretary of the Interior pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994.”
- NAHC Response:** The NAHC considered this comment and revised the definition.
- 43. Comment:** The NAHC received twenty-four comments regarding subsection (i) – the term “Historic California Native American Tribe.”
- NAHC Response:** Because this term is not found in either SB 18 or AB 52, it was struck by the draft regulations. As such, the NAHC will not be providing responses to these comments.

44. Comment: The NAHC received a request to revise subsection (m) to define “Elected or Appointed Leader” as the individuals serving on the governing body of a tribe in any capacity.

NAHC Response: Because the draft regulations no longer require the submission of information from individual tribal leaders, there is no need to make this change.

45. Comment: The NAHC received three comments regarding subsection (n) – “Substantial Evidence.” One comment suggests making this term standard throughout the regulations and applying it to inclusion and removal from the contact list. Another comment questions the justification for the usage of the term and the third comment requests that the subsection be revised so that the terms means “enough relevant facts and reasonable inferences from these facts that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”

NAHC Response: Upon review of the evidence standard in the draft regulations, the NAHC has changed it from substantial evidence to a preponderance of the evidence, which is defined in the California Evidence Code.

Section 31002 – Contact List

46. Comment: The NAHC received a comment stating that the regulations need language that includes the necessity, purpose, and use of the contact list as provided by statute.

NAHC Response: The NAHC has reviewed the draft regulations and determined that no additional language regarding necessity, purpose, or use is required.

47. Comment: The NAHC received a comment that the regulations should require tribes to request in writing to lead agencies their desire to become a consulting party. If they fail to do so, then consultation is not appropriate.

NAHC Response: Because the role of the contact list is to help facilitate consultation under SB 18 and AB 52, it is not appropriate to create an extra barrier for tribes to access tribal consultation.

48. Comment: The NAHC received a request to add a new subsection to read: “Use of the Contact List for any purpose other than the purposes set forth in this section is prohibited.”

NAHC Response: While we are unable to prohibit the use of the contact list for other purposes through our regulations, the revised draft language makes clear that any other use is outside of the scope of the regulations.

- 49. Comment:** The NAHC received a request to delete subsection (a)(2) stating that the Most Likely Descendants statute does not mention the “Contact List” and does not require that the Most Likely Descendant be a “tribe.”
- NAHC Response:** Because Public Resources Code section 5097.98 does not reference the contact list, this language was removed.
- 50. Comment:** The NAHC received a request to delete subsection (a)(3). The commentor asserts that the contact list should be limited to its statutory purposes, which is government consultation under SB 18 and AB 52.
- NAHC Response:** The NAHC agrees with this comment and has removed the subsection.
- 51. Comment:** The NAHC received three comments regarding subsection (b). The commentors ask that the contact list not be made public on a website for anyone to access, for the contact list to include information as to why a group was removed from the list, and to add language indicating whether a tribe is approved, under review, or in process.
- NAHC Response:** After review and consideration, the draft regulations no longer require the publication of the contact list on the NAHC’s website. In regard to removal from the contact list, because the process will be public, there is no need to include any additional information within the contact list on groups that are not included.
- 52. Comment:** The NAHC received one comment regarding subsection (c) stating the language appears to be contradictory in that it is unclear if the list will be updated quarterly or upon the addition or removal of tribes.
- NAHC Response:** The NAHC reviewed this subsection and determined that as drafted it is clear when updates will be made to the contact list.
- 53. Comment:** The NAHC received two comments that the list should be completed before publication.
- NAHC Response:** The NAHC agrees that the list should not be published until all requests are reviewed by the Commission. As such the draft regulations were updated.
- 54. Comment:** Four tribes requested that those who are currently listed remain so until all applications are reviewed or that those who have submitted complete applications within that year should remain on the contact list until the NAHC makes a final decision on their application.
- NAHC Response:** Because the contact list will not be published until all requests for inclusion are reviewed, there is no need to address these comments.

- 55. Comment:** We received a comment that all federally recognized tribes should automatically be included in the contact list.
- NAHC Response:** Based on the language in SB 18, the NAHC has updated the draft regulations to automatically include federally recognized tribes on the contact list.
- 56. Comment:** Two tribes expressed concern about the NAHC’s capacity to review all applications within a year and whether that deadline is realistic.
- NAHC Response:** The NAHC has considered this comment and has revised the draft regulations to state that it will use its best efforts to publish the contact list within one year of the effective date of the regulations, but that the list will not be published until all requests are reviewed and either approved or denied.
- 57. Comment:** We received a recommendation to automatically include all federally recognized tribes in California by adopting the Federal Register List of Federal Recognized Tribes and that given the legal ambiguities and complexities concerning non-federally recognized groups, the first edition of the contact list should only contain federally recognized tribes.
- NAHC Response:** The NAHC considered this request and has updated the draft regulations to automatically include all federally recognized tribes on the contact list. However, because the purpose of the contact list is to facilitate consultation under SB 18 and AB 52, we decline to publish a list that only includes federally recognized tribes.
- 58. Comment:** A request was received to revise the end of subsection (d) to read as follows: “become void as of the publication date of the first edition of the Contact List.”
- NAHC Response:** The NAHC considered this request and has included language expressly stating that after the creation of the list under the regulations, all prior lists use shall no longer be valid.

Section 31003 – Application for Inclusion on Contact List

- 59. Comment:** Two comments were received requesting that federally recognized tribes be exempt from having to apply to be on the contact list. Instead, they should automatically be placed on the contact list while non-federally recognized groups should be required to apply.
- NAHC Response:** The NAHC considered this and other comments and revised the draft regulations to automatically include federally recognized tribes on the contact list.

- 60. Comment:** The NAHC received a comment stating that the application process undermines tribal sovereignty because it “requires tribes to comply with certain governance formalities, such as providing tribal rolls and proof of descendency, and the passing of ‘resolutions’ on ‘letterheads’ and other actions that have attributes of legality but are or may be meaningless to a tribe itself, because of its inherent right to self-govern by methods and means that are entirely its own.”
- NAHC Response:** Because the draft regulations no longer require tribal rolls or proof of descendency of individuals, this comment need not be addressed.
- 61. Comment:** We received two comments that both federally and non-federally recognized tribes should be required to submit the same information for inclusion on the contact list.
- NAHC Response:** The revised draft regulations automatically include federally recognized tribes on the contact list. As such, there is no need to determine whether federally recognized tribes should submit the same application information as non-federally recognized tribes.
- 62. Comment:** Three comments suggest having separate sections describing the application process for federally recognized tribes and non-federally recognized tribes.
- NAHC Response:** Because the updated draft regulations no longer require a federally recognized tribe to apply for inclusion on the contact list, there is no need to make this change.
- 63. Comment:** Two comments propose that non-federally recognized tribes must disclose their non-profit or corporate status which should be noted on the contact list.
- NAHC Response:** The NAHC declines to request this information as a group’s organization as a non-profit or other legal entity is not relevant to whether they should be included on the contact list.
- 64. Comment:** One commentor indicated that a 501(c)(3) owned by and for indigenous groups should be eligible for inclusion.
- NAHC Comment:** The NAHC considered this comment and declined to incorporate this concept into the revised draft regulations.

- 65. Comment:** It is requested that the draft regulations disqualify applicants that operate as a 501(c)(3); operate solely as a Native American Monitoring Firm; or are splinter groups, as defined by the Department of the Interior, of a listed tribe.
- NAHC Response:** After consideration it was determined not to disqualify any requestor based on how they choose to organize. Regarding splinter groups, changes were made to the draft regulations to address this issue and 31034 (b) will govern how these groups are addressed.
- 66. Comment:** Two tribes expressed concerns that as drafted multiple splinter groups from the same “historic tribal entity” would be included on the Contact List.
- NAHC Response:** The NAHC has considered this issue and has made changes to the draft regulations that address this issue. Specifically, 31034 (b) addresses how this situation will be resolved.
- 67. Comment:** We received a request to include language that would avoid situations where splinter groups or factions of a tribe use connections established by the tribe broken off from to obtain listing.
- NAHC Response:** 31034 (b) of the updated draft regulations addresses the situation where more than one requestor is using the same information in support of inclusion on the contact list.
- 68. Comment:** One comment requests that the NAHC consider tribes that straddle California and a neighboring state - tribes that are based in California but also have traditional use areas in other states.
- NAHC Response:** The draft regulations provide that tribes located in California are eligible for inclusion on the contact list. Whether the tribe has traditional use areas in other states does not impact its eligibility.
- 69. Comment:** We received a request to require a tribal government or entity to provide evidence of its political authority dating back to historic times and that if a current political body has predecessor political bodies that a timeline of succession be provided.
- NAHC Response:** Because these regulations do not constitute a state recognition process, the revised draft does not require information about governmental structure or organization.
- 70. Comment:** The NAHC received a comment from two tribes that applicants should be required to demonstrate that they have a place to protect ancestors and other related items.
- NAHC Response:** The NAHC considered these comments and declined to impose such a requirement.

- 71. Comment:** Five comments were received that tribes not currently on the contact list should be required to show support from neighboring tribes that are either Federally Recognized or non-federally recognized tribes that are currently on the contact list.
- NAHC Response:** The revised draft regulations include an option to include resolutions of support from federally recognized tribes of the same cultural affiliation, attesting that the requestor has demonstrated the capacity to protect and preserve cultural resources.
- 72. Comment:** The NAHC received six requests to provide financial assistance to non-federally recognized tribes to help them in compiling the information necessary to be considered for inclusion on the contact list.
- NAHC Response:** Due to budget limitations, the NAHC is unable to provide financial assistance with compiling information in support of a request for inclusion on the contact list.
- 73. Comment:** The NAHC received two requests to require all documents to be provided under penalty of perjury and to provide warnings stating that giving fraudulent or false information may result in removal from the contact list or dismissal of the application and that there should be a five-year ban for providing fraudulent or false information.
- NAHC Response:** This regulation already contains processes to ensure the validity of information and repercussions for when information is submitted fraudulently. Adding additional perjury language and bans is unnecessarily punitive and challenging to enforce.
- 74. Comment:** Four tribes requested that the draft regulations be revised to require evidence of functioning as a tribe such as having a constitution and by-laws and conducting meetings.
- NAHC Response:** Because the intent of the contact list is to facilitate consultation under SB 18 and AB 52, not to determine what entities are or are not tribal governments, the NAHC declines to make this change.
- 75. Comment:** One comment received proposed that a group applying for listing must designate an individual that is knowledgeable with AB 275, SB 18 and the CEQA process specific to AB 52. The comment requests the NAHC develop a course and closed book exam to certify such individuals. Participants must pass the exam with an 80% overall grade.
- NAHC Response:** This comment was considered and while such specific requirements were not included in the updated draft regulations, information about those who will be engaging in consultations on behalf of the requestor is required.

- 76. Comment:** It was requested that the draft regulations require that a non-federally recognized group provide evidence that they have established and maintained an on-going relationship with the NAHC for a minimum of 20 years.
- NAHC Response:** While the updated draft regulations do not require that a requestor have interacted with the NAHC for a specific amount of time, they do request information about locations placed on the Sacred Lands File and date of placement.
- 77. Comment:** The NAHC received a comment regarding subsection (c)(4) which refers to “[o]ther related information as specified by the Commission.” The commentor feels that this provision constitutes an open-door invitation for the NAHC to add and/or consider additional and entirely unknown application requirements on an ad hoc basis that can effectively invalidate an otherwise fully qualified application.
- NAHC Response:** We considered this comment and have removed this language.
- 78. Comment:** One comment received suggests that the NAHC should not make an application publicly available online but should be shared upon request.
- NAHC Response:** Because the NAHC is subject to Bagley-Keene, the state’s open public meetings law, when a request for inclusion on the contact list will be reviewed in a hearing before the full Commission, all documents not exempt from disclosure under the Public Records Act must be made available to the public.
- 79. Comment:** The NAHC received three requests to develop a process for the inclusion of coalitions or confederations of federally recognized tribes and address whether resolutions and maps for each tribe are needed.
- NAHC Response:** The draft regulations were revised to now automatically include all federally recognized tribes located in California. Additionally, the revisions provide that federally recognized tribes submit a map and description of the geographic area over which it seeks consultation. If a coalition of federally recognized tribes wishes to submit one map, it may do so.
- 80. Comment:** A request was received to add a new subsection that states any tribe that holds either a conservation easement pursuant to Civil Code section 815.3 or a greenway easement pursuant to Civil Code section 816.56 shall be deemed to have met the criteria for inclusion on the Contact List as described in section 31004 and is not required to submit evidence of Native American Affiliation. Prior to inclusion on the Contact List, an easement holding tribe must submit an application pursuant to subsection (b) and provide documentation sufficient to establish its aboriginal territory as specified in section 31005.

NAHC Response: The NAHC considered this request and declined to include the holding of an easement under the referenced statutes as a criteria for inclusion on the contact list.

Section 31004 -Evidence of Native American Affiliation

81. Comment: The NAHC received requests from three tribes to add “of Historic California Native American Tribe” to the title and change “Native American” to “California Indian.”

NAHC Response: Because the updated draft no longer uses the requested language, there is no need to make this change.

82. Comment: The NAHC received a concern regarding the requirement to provide evidence of Native American affiliation, noting that adoption of a regulatory process that relies on Native American affiliation and requiring multiple officers to provide genealogies and tribal membership base roles risk violating the State constitution and leaves the entire basis for SB 18 vulnerable.

NAHC Response: The NAHC agrees with this comment and has removed the requirement that individuals demonstrate Native American affiliation.

83. Comment: One commentor stated that the NAHC may make cultural affiliation decisions but may not determine which entities are a tribe. It was suggested that cultural affiliation may be determined by requiring evidence that a group is tied to a California Aboriginal Linguistic Group. However, the draft regulations should not permit splinter groups from larger linguistic groups to be included on the Contact List.

NAHC Response: The Commission considered this and other comments and agrees that the purpose of the contact list is to facilitate consultation based on cultural affiliation within geographic areas and not to determine what groups are tribes. As such, connection to a linguistic group is among one of the criteria used to determine cultural affiliation.

84. Comment: Another comment argues that evidence of Native American affiliation and being a tribal entity are not the same. An entity should be required to show that it functions as a tribe.

NAHC Response: Because the intent of the contact list is to help facilitate consultation under SB 18 and AB 52, not to determine what entities are or are not tribal governments, the NAHC declines to make this change.

- 85. Comment:** It is suggested that a group seeking inclusion should be required to have an active application for federal recognition on file with the Bureau of Indian Affairs that was submitted within the last five years.
- NAHC Response:** Because inclusion on the contact list does not equate to state recognition, the NAHC declines to connect its process with one that is followed when seeking federal recognition.
- 86. Comment:** Three tribes commented that the process for inclusion on the Contact List is akin to the BIA application for federal recognition.
- NAHC Response:** The NAHC considered this comment and others that are similar in nature and revised the draft regulations to make it clear that the process for inclusion on the contact list does not equate to state recognition.
- 87. Comment:** Five tribes commented that the draft regulations are in essence, state recognition.
- NAHC Response:** The revised draft regulations make clear that this is not a state recognition process and include requirements for inclusion that better align with the purpose of the contact list, which is the facilitation of consultation for the protection of cultural resources.
- 88. Comment:** The NAHC received two requests to hire a genealogist knowledgeable in documenting the lineal descent of California Indians for vetting and confirming the genealogy of applicants.
- NAHC Response:** Because the updated draft regulations no longer require the submission of documents related to the lineage of individuals, there is no need to include such language.
- 89. Comment:** One comment received expressed concerns regarding confidentiality of information provided to the NAHC during the application process. The comment requests the regulations to include language regarding what type of information is considered confidential and to provide an opportunity for tribes to respond.
- NAHC Response:** Section 31033 now contains a statement regarding documents submitted in support of a request for inclusion on the contact list and that unless protected by law are subject to public disclosure under the California Public Records Act.

- 90. Comment:** Three tribes suggest documents submitted must be accompanied by a declaration under penalty of perjury.
- NAHC Response:** This regulation already contains processes to ensure the validity of information and repercussions for when information is submitted fraudulently. Adding additional perjury language and bans is unnecessarily punitive and challenging to enforce.
- 91. Comment:** Two tribes suggest that applicant tribes that have officers enrolled in a different tribe other than the one listed on the application should be disqualified.
- NAHC Response:** Because the draft regulations no longer require information on elected officials, there is no need to include this suggestion.
- 92. Comment:** One comment asserts that the requirement for all tribal officers to be California Indians constitutes an intrusion on tribal sovereignty, as it effectively dictates who can hold leadership positions, contradicting a tribe's right to self-governance.
- NAHC Response:** As the draft regulations no longer require information about elected officials' tribal affiliation there is no need to address this comment.
- 93. Comment:** A comment was received that tribal identification or enrollment cards should be acceptable evidence of Native American affiliation of officers.
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to make this change.
- 94. Comment:** Two tribes commented that proof of descendancy of its officers after each election or when officers change should be required.
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to make this change.
- 95. Comment:** One commentor suggested that information regarding tribal officials should be provided from 1976 to the present date.
- NAHC Response:** As the draft regulations no longer require information about elected officials' tribal affiliation there is no need to address this comment.

- 96. Comment:** The NAHC received a comment about the requirements of subsection (b) that stated “NAHC should not step into the shoes of the United States and/or Federally Recognized Tribes by requiring and evaluating birth/death certificates and genealogical reports of lines of descent from a formerly Federally Recognized Tribe as proof of direct descendancy from a Historic California Native American Tribe. These are Federal recognition and enrollment functions that fall within the exclusive purview of the United States and Federally Recognized Tribes, respectively.”
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to address this comment.
- 97. Comment:** Two commentators suggested that applicants should be required to prove that that are organized and function as a government, including providing information as to how officers are elected.
- NAHC Response:** The draft regulations now focus on the cultural affiliation of a group based on past acknowledgement by the federal government and on efforts to engage in consultation and cultural resource protection. As such, the draft regulations are not focused on a requestor’s current governmental organization and structure.
- 98. Comment:** One comment requests that applicants must demonstrate that at least two of their officers are from different families with a request for revision to read as follows “An Applicant must establish the shared Native American affiliation of its Officers by demonstrating that at least two of its Officers are direct descendants of different families from the same Historic California Native American Tribe as provided in subsection (c) and provide a tribal membership base roll as provided in subsection (d). At least two Tribal Members should be from different families to ensure that one family does not constitute an entity.”
- NAHC Response:** Because the draft regulations no longer require information about elected officials’ tribal affiliation there is no need to address this comment.
- 99. Comment:** One commentator suggested that tribes should be required to document at least 40 years of inter-governmental relations with local, state, or federal governments to be considered established tribes.
- NAHC Response:** Because the contact list does not constitute state recognition, we decline to consider whether a requestor is an established tribe. Instead, the NAHC will consider past federal acknowledgment and capacity to engage in consultation and provide cultural resource protection.

- 100. Comment:** We received a suggestion that applicants should be required to provide information on ceremonies performed by the group.
- NAHC Response:** We considered this comment but because the performance of ceremonies is not demonstrative of capacity to engage in consultation and cultural resource protection, we have declined to make this change.
- 101. Comment:** Two tribes commented that all members, not just officers, should provide proof of descendancy from a historic California tribe.
- NAHC Response:** Because the draft regulations no longer require information about elected officials' tribal affiliation there is no need to address this comment.
- 102. Comment:** The NAHC received a request to revise subsection (c) to include language that requires descent to be from more than one family. with a revision to read "In order to prove an Applicant's Officers are direct descendants of more than one family 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."
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to make this change.
- 103. Comment:** We received a comment that subsection (c) should require satisfaction of a minimum of three of the listed criteria.
- NAHC Response:** While the criteria have changed from the last draft of these regulations, we decline to require that a requestor meet more than one of the listed criteria.
- 104. Comment:** It is suggested that subsection (c) be revised to require more than one criterion be met and that (4) should be required.
- NAHC Response:** While the criteria have changed from the last draft of these regulations, we decline to require that a requestor meet more than one of the listed criteria.
- 105. Comment:** The NAHC received a request to revise subsection (c) to require proof of lineal descent from an original allottee.
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to make this change.

- 106. Comment:** One comment stated that any evidence of prior enrollment and records obtained during that enrollment should not be considered as supporting evidence of the applicant's separate and independent Native American affiliation.
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to address this comment.
- 107. Comment:** The NAHC received a request to revise subsection (c) to include language, requiring a minimum number of tribal council members or officers.
- NAHC Response:** Because the draft regulations now focus on cultural affiliation of the group, not individuals, we decline to make this change.
- 108. Comment:** One comment requested that proof of lineal descent of officers be required to be shown by genealogy, including records obtained from country recorders such as birth, death, and marriage and that U.S. and California census records should be used as secondary sources to substantiate sparse evidence.
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to address this comment.
- 109. Comment:** It was requested that the NAHC should not accept Certificates of Degree of Indian Blood or 1928 California Indian Census Rolls as these are unreliable and the BIA does not accept CDIB for proof of Indian ancestry.
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to address this comment.
- 110. Comment:** It was requested that the draft regulations affirmatively state that DNA cannot be permitted to show descendency.
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to make this change.

111. Comment:

Four comments were received to revise subsection (c) to read as follows: “In order to prove an Applicant’s Officers are direct descendants of a member of a Historical California Native American Tribe, the Applicant must provide certified birth and/or death records, a genealogical report demonstrating the line of descent, or other primary documents, including documents certified or prepared by the Bureau of Indian Affairs and other United States Federal Executive Departments, that clearly link the current Officer to a member of a Historical California Native American Tribe with one or more of the following:

- (1) Evidence of descent from a member of such Historical California Native American Tribe that had treaty relations with the United States, including one of the eighteen unratified treaties with the United States drafted between April 29, 1851, and August 22, 1852;
- (2) Evidence of descent from a member of such Historical California Native American Tribe that was denominated a Tribe by act of Congress or Executive Order;
- (3) Evidence of descent from a member of such Historical California Native American Tribe that was treated by the Federal Government as having collective rights in tribal lands or funds;
- (4) Evidence of descent from a member of such Historical California Native American Tribe who obtained, or who was eligible to obtain, a public domain or national forest allotment, or whose Historical California Native American Tribe had land held for it or its collective ancestors by the United States;
- (5) Evidence of descent from a member of such Historical California Native American Tribe that had a land claim accepted or consolidated before the Indian Claims Commission;
- (6) Evidence of descent from a member of such Historical California Native American Tribe that was eligible for the special programs and services provided by the United States to Indian tribes because of an historical relationship with the Federal Government;
- (7) Evidence of descent from an individual(s) on the California Mission Rolls.
- (8) Evidence of descent from a member of such Historical California Native American Tribe identified in a report prepared by the United States Federal Executive Departments, the Congress, the American Indian Policy Review Commission, or the Advisory Council on California Indian Policy.”

NAHC Response: Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to make this change.

- 112. Comment:** It is requested that for the reviewing information being collected under (c)(1), the NAHC should seek guidance from genealogists specifically knowledgeable in documenting the lineal descent of California Indians to better understand these databases and genealogical proof standards.
- NAHC Response:** Because the revised draft regulations do not require information about individuals, there will be no need to consult with a genealogist.
- 113. Comment:** Two tribes commented that tracing genealogy to an ancestral village site is the only proven method to authenticate tribal ancestry and that such information should be made public because without a tie to a village within the claimed ancestral territory, any person who is descendant from someone who is on the California Mission Rolls could qualify for inclusion on the contact list in any part of the state.
- NAHC Response:** Because the draft regulations no longer require evidence of the Native American affiliation of individuals, there is no need to make this change.
- 114. Comment:** One comment requested that subsection (c) (3) be changed from evidence of descent from an individual(s) on the “California Mission Rolls” to any “Native Historical Record.”
- NAHC Response:** The draft regulations have been updated, and the California Mission Rolls are no longer relied upon to demonstrate cultural affiliation of a group.
- 115. Comment:** We received feedback that the California Mission Rolls cannot be a timeline or date benchmark as these records were created and the property of the nations of Spain and Mexico and upon admission of California to the United States, became the property of the Catholic Church. While these records are used internally by tribes for genealogic research, they should not be used for government timeline benchmarks or government applied standards.
- NAHC Response:** After consideration of this and other comments, we agree that the California Mission Rolls should not be used to establish cultural affiliation of a group. As such, the revised draft regulations no longer include these records as among documentation that is to be submitted in support of cultural affiliation.

- 116. Comment:** One comment noted that the use of Mission Rolls is controversial because individuals were captured and taken to missions which makes it difficult to connect persons alive today to indigenous ancestors in what is now California and so reliance should be placed on descent from villages, tribes, families, and clans.
- NAHC Response:** The Commission agrees with this comment and others, regarding the unreliability of these records to demonstrate cultural affiliation versus “Indian” status and the updated draft regulations no longer rely on the California Mission records to establish cultural affiliation.
- 117. Comment:** Ten tribes noted that not all California Tribes were connected to missions so other records should be considered such as Indian Claims Court, 1929 Judgment Rolls, 1928 Baker Rolls, 1950 Roll, 1971 California Judgment Roll, 1970s land claim settlements.
- NAHC Response:** The Commission considered this and other comments and has updated the draft regulations to remove all reference to the California Mission Rolls. Additionally, the NAHC is requesting input as to whether other records should be used as one of the criteria for inclusion on the contact list.
- 118. Comment:** Three tribes urged the NAHC to not only consider California Indian Census Rolls, but to also permit the use of other records such as certificates of birth, death, and baptism records. One comment suggests that the 1928 Rolls and 1968 Indian Court of Claims should only be considered as additional evidence after descent is established through genealogy.
- NAHC Response:** The draft regulations no longer require evidence of the Native American affiliation of individuals. As such, there is no need to make this change.
- 119. Comment:** One comment suggests that the 1928 Rolls and 1968 Indian Court of Claims should only be considered as additional evidence after descent is established through genealogy.
- NAHC Response:** Because the draft regulations no longer require information concerning the Native American affiliation of individuals, there is no need to consider this request.
- 120. Comment:** We received a concern that subsection (c)(4) creates a loophole that permits tribes currently on the contact list to remain there by virtue of interacting with the federal government within the last few years/last few months versus a longer period of time.
- NAHC Response:** The updated draft regulations focus on past federal acknowledgment of a requestor, and not contemporary interaction with the federal government. Accordingly, this concern will not be an issue.

- 121. Comment:** One tribe requested that tribes be required to document at least 40 years of inter-governmental relations with local, state, or federal governments to be considered established tribes to be placed on the contact list.
- NAHC Response:** We note that the purpose of the contact list is to facilitate consultation under SB 18 and AB 52, which have not been in existence for 40 years. As such, we decline to make this change.
- 122. Comment:** One comment suggest that the draft regulations contain a requirement that a tribe show “historic and continuous” existence for at least 20 to 30 years. A comment was received that the term “historic” should be prior to 1950 or pre-historic.
- NAHC Response:** Because the draft regulations no longer rely on the vague concept of a “historic” relationship, there is no need to address this comment.
- 123. Comment:** One commentor urged the NAHC not to impose a time length requirement as a tribe because historical forces and disparity in resources made it so that these groups could not necessarily function as a tribe 20 to 30 years ago.
- NAHC Response:** We note that in addition to past federal acknowledgement of a requestor, the updated draft regulations focus on consultation and cultural resource protection, and it would not be appropriate to impose a time length requirement.
- 124. Comment:** A comment was received that as drafted, historic could mean contemporary relationships such as inviting non-federally recognized tribal groups to consult as interested parties in consultations pursuant to Section 106 of the National Historic Preservation Act. How many contacts must a tribal group have to be considered a “relationship?” Use of the term “historical” could also result in what the Federal Acknowledge Regulations define as “splinter groups” and which those Regulations cabin by requiring them to have existed prior to 1900.
- NAHC Response:** Because the revised draft regulations now look to federal acknowledgment of a requestor based on specific criteria versus having a “historic” relationship, there is no need to address this comment.
- 125. Comment:** Two tribes urged the NAHC to define the timeframe for a historic relationship because as currently written this could be interpreted to mean anywhere from 6 months to 100 years.
- NAHC Response:** The NAHC considered this comment and agreed that the term “historic” as used in the prior draft of these regulations was vague and chose to replace this concept with more clearly defined criteria.

- 126. Comment:** We received a suggestion add “prior to 1950” to the end of subsection (c)(4).
- NAHC Response:** The draft regulations were revised to remove this subsection.
- 127. Comment:** It was noted that a historical relationship should be post-contact.
- NAHC Response:** The NAHC revised the draft regulations to more clearly define what past relationships or acknowledgment by the federal government are necessary to demonstrate cultural affiliation which should address this comment.
- 128. Comment:** One suggestion received is that groups should be required to show that they function as a government and that they are not recently created by demonstrating continuity of government from traditional leadership to the present.
- NAHC Response:** Because the purpose of the contact list is to facilitate consultation in furtherance of cultural resource protection, and not to determine which requestors constitute a tribal government, we decline to include this concept.
- 129. Comment:** A comment was received that showing a historic federal relationship alone is not enough and that there should also be a requirement of proof of lineal ancestry. Without a lineal decedency requirement, it would permit groups that have been around for three or four decades to be on the Contact List, even if they are not lineally descended from a historic tribe, resulting in groups that are not Native being included in the Contact List.
- NAHC Response:** We note that the updated draft regulations no longer require information regarding the Native American affiliation of individuals.
- 130. Comment:** One tribe suggested that historical relationships with Spain and Mexico be considered.
- NAHC Response:** Because there was no information provided as to what would constitute evidence of such a relationship, we are unable to address this comment.
- 131. Comment:** Three comments were received that the NAHC should consider historical relationships with the State of California.
- NAHC Response:** Because the contact list is not a state recognition process, we decline to make this change.
- 132. Comment:** A comment was received that California Assembly Joint Resolutions should be considered valid proof of a government-to-government relationship.
- NAHC Response:** We considered this comment and have declined to make this change.

- 133. Comment:** A comment was received that evidence of a historical relationship with federally recognized tribes should be part of the criteria.
- NAHC Response:** The draft regulations now provide that a requestor may submit documentation from federally recognized tribes, attesting to its demonstrated capacity to protect and preserve cultural resources.
- 134. Comment:** A tribe requested that subsection (c)(4) be revised to require evidence of a historic and enduring relationship with the United States Government.
- NAHC Response:** Because the revised draft regulations more clearly define what past relationships or acknowledgment by the federal government are necessary to demonstrate cultural affiliation, we decline to include the more vague concept of an “enduring” relationship.
- 135. Comment:** It was requested that the idea of a historic relationship with the United States government be clarified to not allow formally enrolled persons to use documents from the tribe they used to belong to as a way to establish this relationship.
- NAHC Response:** Because the revised draft regulations do not require information about individuals, we need not address this comment.
- 136. Comment:** The NAHC received two requests to add a new subsection to disallow splinter groups from federally recognized tribes.
- NAHC Response:** We considered this comment and while the updated draft does not contain this explicit prohibition, we believe that the revisions to subsections (b)(1) and (2) address this concern.

Section 31005 – California Aboriginal Territory

- 137. Comment:** The NAHC received a request to expand this section to include a public hearing process, consultation, and commenting process for tribal governments.
- NAHC Response:** We considered this request but because review of a requestor’s description of area for consultation is one element of what the Commission reviews as part of the public hearing process, we decline to add an additional layer to the review.

- 138. Comment:** One comment suggests that the NAHC meet with federally recognized tribes so tribal governments could designate and agree to their aboriginal territories, including compromises and agreements for geographical areas that may be overlapping or in dispute.
- NAHC Response:** We considered this comment and revised the draft regulations to provide that when more than one federally recognized tribe is seeking consultation in the same area maps and narratives will be shared with the tribes and that mediation is available to resolve any disputes.
- 139. Comment:** One tribe expressed concern that the draft regulations give the NAHC sole authority to determine the territory or boundaries of federally recognized tribes for the purpose of tribal consultation. It was suggested that this concern could be addressed by allowing neighboring tribes the opportunity to participate in the process and by relying on a trained, neutral arbiter such as an Administrative Law Judge to resolve any remaining disputes.
- NAHC Response:** The draft regulations were revised to provide tribes the opportunity to review each other's maps and narratives if they are in the same geographic location and to then confirm or modify their maps. Additionally, mediation and dispute resolution of disputes are available, and it is only after this step that the Commission will make a determination after a public hearing.
- 140. Comment:** Two tribes requested that the documents submitted in support of a tribe's territory should be done so under penalty of perjury.
- NAHC Response:** This regulation already contains processes to ensure the validity of information and repercussions for when information is submitted fraudulently. Adding additional perjury language and bans is unnecessarily punitive and challenging to enforce.
- 141. Comment:** The NAHC received a suggestion to rename the section to "California Tribal Traditional Use Area" and use this term throughout the regulations as the word territory often leads to a territorial mindset and can lead to confusion and misunderstanding by lead agencies that do not understand traditional tribal protocols or intertribal relationships.
- NAHC Response:** We considered this and other comments, regarding the name of this section and have revised it to "Description of Area for Consultation."
- 142. Comment:** The NAHC received a comment that it should consider the use of "geographic areas of traditional and cultural affiliation" like in AB 52.
- NAHC Response:** After consideration of this and other comments, the draft regulations were revised to reflect the purpose of the maps which is to identify tribes in a certain geographic location that seek consultation under SB 18 and AB 52.

- 143. Comment:** Another comment received suggests that if a group is considered a Historical California Tribe based solely on their descent from individuals represented in California Mission Rolls, the regulations need to limit mission-based identities to the immediate scope of the mission itself and not permit these groups to assert larger aboriginal territories of a group that is descended from a group that was a signatory to one of the unratified treaties.
- NAHC Response:** Because the revised draft regulations do not rely on the California Mission Rolls, there is no need to address this comment.
- 144. Comment:** One comment suggests there should be two categories of aboriginal territory – one for direct descent from a village or rancheria, and the second for social ties.
- NAHC Response:** Because the revised language omits the concept of aboriginal territory, focusing instead on the geographic area in which consultation is sought, we decline to make this change.
- 145. Comment:** We received a comment expressing concern that the required documentation for confirming an applicant’s aboriginal territory places a burden on the smaller, underfunded, and understaffed non-federally recognized tribes to present evidence that oftentimes is no longer even available. As such, the commentator urged the NAHC to involve the widest array of tribes in consultation, rather than narrowing the number of tribes consulted by imposing burdens that many tribes may be unable to meet.
- NAHC Response:** We considered this and other comments and have revised the draft language, removing the list of evidence required to support a map and replacing it with a narrative regarding connections to the geographic area in which consultation is sought.
- 146. Comment:** One comment recommends the NAHC adopt a specific process for federally recognized tribes that gives deference to their assertion of aboriginal territory and provides a dispute resolution mechanism for when multiple federally recognized tribes disagree on a particular aboriginal territory.
- NAHC Response:** After consideration of this and other comments, the draft regulations were revised to provide for the opportunity for tribes to review each other’s maps and narratives if they are in the same area and to then confirm or modify the area. Additionally, mediation and dispute resolution of disputes are available.

- 147. Comment:** It was requested that the NAHC use the Federal Communications Commission’s shapefiles related to the 2.5 GHz Band Plan to determine aboriginal territory.
- NAHC Response:** We considered this comment and determined that it is best to give deference to a tribe’s determination as to the geographic area in which it seeks consultation`.
- 148. Comment:** The NAHC received two suggestions that the regulations specify what kind of map and level of detail is required and whether tribes will have the option to submit in GIS or another format.
- NAHC Response:** We considered this comment and have made changes to the draft regulations, indicating in greater specificity what information should be included in maps and narratives. Additionally, the draft regulations provide that NAHC staff will work with tribes to create a digital consultation map.
- 149. Comment:** One tribe expressed concern that others may try to claim a larger territory based on travel to areas outside their traditional territory for ceremonies or trade and that the NAHC needs to be able to address lack of true cultural affiliation with an area by requesting a tribe revise its map or make modifications.
- NAHC Response:** The revised draft regulations largely defer to tribal identification of the geographic area in which it seeks consultation.
- 150. Comment:** Three tribes requested that the regulations require evidence of actual use versus only having a name for a geographic feature or location.
- NAHC Response:** The NAHC considered this comment and declines to make this change.
- 151. Comment:** One tribe criticized subsection (2) as elevating non-Native, academic, “expert” sources over traditional tribal knowledge and that it appears that the NAHC is being dismissive of Native testimony and sources.
- NAHC Response:** Because the revised draft no longer contains this language, we decline to address this comment.
- 152. Comment:** It is suggested that subsection (2) be revised to require two or more of the listed forms of evidence in support the boundaries of an applicant’s territory so as to counter any embellished tribal traditional knowledge and to bolster the applicant’s claim of aboriginal territory.
- NAHC Response:** Because the revised draft no longer contains this language, we decline to address this comment.

- 153. Comment:** Two tribes commented that the NAHC should defer to a federally recognized tribe's determination of its own territory and should not require documentation in support.
- NAHC Response:** After consideration, the Commission has removed the extensive evidence requirement in favor of a narrative, regarding the tribe's connection to the geographic area in which it seeks consultation.
- 154. Comment:** We received two comments that federally recognized tribes should only be required to provide documentation in support of their territory when multiple federally recognized tribes have a dispute regarding concurrent claims to a specific territorial overlap.
- NAHC Response:** After consideration, the Commission has removed the extensive evidence requirement in favor of a narrative, regarding the tribe's connection to the geographic area in which it seeks consultation.
- 155. Comment:** The NAHC received three comments regarding overlapping boundaries, suggesting that the NAHC provide notifications when boundaries overlap or when a new tribe applies for inclusion on the list and their boundary is in the area of a tribe that is already on the list. Further, tribes sharing territory should be given advance notice of applications.
- NAHC Response:** After consideration of this and other comments, the draft regulations were revised to provide for the opportunity for tribes to review each other's maps and narratives if they are in the same area and to then confirm or modify the map.
- 156. Comment:** A request was made that when territory overlaps the NAHC notify the impacted tribes or make outline maps available for public review.
- NAHC Response:** The revised draft regulations provide the opportunity for tribes to review each other's maps and narratives if they are in the same area. Additionally, all maps will be made public as part of the hearing process.
- 157. Comment:** A comment expressed concern that mapping consultation territories could show gaps in where sacred sites are not protected. Additionally, this comment stated that the regulations as drafted would minimize the number of tribes protecting tribal cultural resources.
- NAHC Response:** The NAHC considered this comment and disagrees that the draft regulations would result in areas where cultural resources are not protected.

- 158. Comment:** A comment was received that because it will take a significant amount of time to review all of the information received, the NAHC should begin reviewing map information prior to finalizing contact list regulations.
- NAHC Response:** The revised draft regulations provide that the contact list will not be created until all requests are reviewed. As such, there is no need to make this requested change.
- 159. Comment:** Three comments were received that the final maps map should be an overlay in that a larger area would indicate traditional territory with a smaller area delineated for consultation.
- NAHC Response:** Based on this and other comments, regarding the use of “territory,” the draft regulations were updated to reflect that the purpose of the contact list is to facilitate consultation within a geographic area and not to determine a tribe’s territory.
- 160. Comment:** A request was received to revise subsection (2) to read “Clear and convincing evidence supporting the boundaries of the map described in subsection (a)(1) of this section, and establishing that the lands were regularly and consistently used by the Applicant and/or its predecessor in pre-contact times, 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 (vii) archaeological reports. Evidence as set forth in (iv) must be corroborated by written documentation, as detailed in (i)-(iii) and (v)-(vii).”
- NAHC Response:** After consideration of the purpose of the contact list, the draft regulations were revised to focus on area of consultation and not defining a tribe’s territory. As such, a detailed process for the confirmation of maps is not necessary.
- 161. Comment:** A request was received to revise subsection (2) to address how an applicant is supposed to verify historical references to tribal settlements if elders have passed.
- NAHC Response:** Because the requirement to submit evidence that may be supported by elder testimony is no longer part of the draft regulations, we decline to address this comment.
- 162. Comment:** A request was received to revise subsection (2) to add the following “(ix) academic linguistic publications, reports, or letters.”
- NAHC Response:** Because this language is not included in the revised draft regulations, we do not need to address this comment.

- 163. Comment:** A request was received to revise subsection (2) so that submission of Aboriginal Territory has the same burden of proof as genealogical information submitted as a part of the contact list application.
- NAHC Response:** Because individual genealogical information is not required under the revised draft, we need not address this comment.
- 164. Comment:** Regarding subsection (2)(iv) one commentor indicated that tribal traditional knowledge should be weighed equally or greater than western evidence.
- NAHC Response:** After consideration of this and other comments, the draft regulations were revised to focus more on a tribal narrative of the area in which it seeks consultation and less on a rigid list of required evidence.

Section 31006 – Application Review Process

- 165. Comment:** Three tribes suggest that the NAHC hire certified genealogists to review the documentation received with applications.
- NAHC Response:** Because the revised draft regulations do not require individuals to demonstrate Native American affiliation, there is no need for a certified genealogist.
- 166. Comment:** One comment suggested the hiring of a subject matter expert to be part of the Executive Secretary review process and that the Executive Secretary recuse themselves in any review in which they may have a potential conflict of interest.
- NAHC Response:** After review of this and other comments related to the Executive Secretary's role in review of submitted information, the draft was revised so that Commission staff, which include individuals who regularly work with tribes located within the same geographic area, conduct the review.
- 167. Comment:** We received two requests to revise the draft regulations to provide that during the review process the Executive Secretary must consult with Commission staff having relevant historical, ethnographic, or anthropological expertise.
- NAHC Response:** The current draft provides for review by Commission staff and not just delegated to the Executive Secretary.

- 168. Comment:** It was suggested to revise subsection (a) to establish a timeline by which the Executive Secretary must reach a determination of whether an application is either complete or incomplete.
- NAHC Response:** We considered this comment and decline to make the change because it is more important that all requests are thoroughly and carefully reviewed without the pressure of a deadline.
- 169. Comment:** The NAHC received two requests to notify tribes when other tribes in the area are being considered for inclusion on the contact list so they can provide input.
- NAHC Response:** The draft regulations provide for notice of the public hearing at which a request for inclusion on the list will be considered by the Commission. As such we decline to make this change.
- 170. Comment:** One commentor expressed concerns that subsection (b)(1) gives the Executive Secretary the power to exercise judgment that is beyond purely administrative tasks and removes the decision-making power away from the Commission and puts it into the hands of one person who may not, by statute, exercise discretionary authority.
- NAHC Response:** In reviewing the language in subsection (b)(1) it is noted that Commission staff will be making a recommendation, not exercising any final administrative decision.
- 171. Comment:** A comment raises the fact that subsection (b)(1) fails to address whether and under what conditions the Executive Secretary's recommendations will be made available to and discussed with the applicant (and others) prior to submission to the Commissioners.
- NAHC Response:** We note that the revised language now vests Commission staff, not solely the Executive Secretary, with the responsibility of reviewing requests for inclusion on the contact list, during which time they may request additional information from a requestor.
- 172. Comment:** A request for revision was received for subsection (b) to read: "Upon determining that the application is complete, the Executive Secretary shall contact an ethnographer to determine authenticity of all evidence provided. Once authenticity is established, the Executive Secretary shall:"
- NAHC Response:** Because the draft regulations no longer require individual genealogical information, there is no need to address this comment.

- 173. Comment:** One tribe requested that the following language be added to subsection (b): “Provide each federally recognized Tribe with potentially overlapping aboriginal territory with a copy of the application, evaluation and recommendation at least 90 days prior to issuance of notice of a public hearing on the application, and invite each such Tribe to submit comments supporting, opposing or otherwise commenting on the application.”
- NAHC Response:** The revised draft regulations provide the opportunity for tribes to review each other’s maps and narratives if they are in the same area. While all materials that will be reviewed by the Commission for the public hearing will be made publicly available in advance, due to scheduling issues that it may create, we decline to require that this be done 90 days ahead.
- 174. Comment:** It was requested that the procedures for public hearings be developed and shared with the public as part of the proposed regulations so that a lack of advance notice regarding key hearing processes does not become an issue or otherwise result in due process violations.
- NAHC Response:** We considered this request and are developing hearing procedures concurrently with these regulations that will be made publicly available in the future.
- 175. Comment:** The NAHC received a request to allow another 60 days for tribes to comply when the NAHC asks for additional information after they previously have provided additional information.
- NAHC Response:** Because the draft regulations allow for a requestor to ask for an additional 60 days in which to provide additional information, we decline to make this request.
- 176. Comment:** One comment requests that the NAHC reconsider the 6-month waiting period for resubmission of an application after it has been determined to be incomplete and extend the period to one year.
- NAHC Response:** After considering this comment, we decline to make this change.
- 177. Comment:** A comment suggests there should not be appeals of final notices of incomplete applications because the proposed regulations already provide applicants with an opportunity to submit additional materials and/or to apply again after a certain time from when their application is deemed incomplete.
- NAHC Response:** The NAHC considered this comment and revised the draft regulations to provide for review of a final notice of incomplete submission by a Commission subcommittee instead of a full public hearing.

- 178. Comment:** It was noted that subsection (d)(2) appears to have an erroneous reference to the public hearing. According to the commenter It is unclear why subsection (b), which is limited to the Final Notice of Incomplete Application, would refer to a “public hearing on the application.” It was suggested that the reference, along with that set forth in (d)(3), should refer only to an “Incomplete Application.”
- NAHC Response:** The draft regulations have been revised so as to remove this reference. As such, there is no need to address this comment.
- 179. Comment:** One tribe raised a concern that subsection (d)(5) limits the Commission’s ability to review the Executive Secretary’s determination that an application is incomplete and does not permit the Commission to make the final determination. The commentor asks that this subsection be revised.
- NAHC Response:** We revised the draft regulations to provide for review of a final notice of incomplete application by Commission subcommittee members.

Section 31007 – Public Hearing Procedures

- 180. Comment:** The NAHC received a request to apply the hearing process to not only applications and removals, but also for cultural affiliation determinations and decisions.
- NAHC Response:** We note that the public hearing will include consideration of cultural affiliation.
- 181. Comment:** One comment expressed concerns with the span of time between NAHC public hearings and requested that when a decision for removal from the contact list must be considered, a special meeting be held within seven days of notifying the applicant of the proposed removal.
- NAHC Response:** Under the state’s open public meetings act, unless there is an emergency, no public hearing may be held any sooner than 10 days after notice is given to the public.
- 182. Comment:** One comment asks that personal information be redacted from public view.
- NAHC Response:** Because the NAHC is subject to the state’s open public meeting law, Bagley-Keene, unless there is an exemption from disclosure of any of the information submitted in support of a request for inclusion on the contact list, all information that will be considered by Commissioners during a public hearing will be made available to the public.

- 183. Comment:** With respect to subsection (b)(1), we received a request that scheduling of public hearings be arranged at a time mutually agreeable to the applicants and the NAHC.
- NAHC Response:** The NAHC considered this request, but due to the number of public hearings that will need to be conducted, we are unable to incorporate this concept into the draft regulations.
- 184. Comment:** We received a request to give interested federally recognized tribes direct notice of the public hearings and be guaranteed an opportunity to participate and testify. They also request that the notice includes a copy of the NAHC's evaluation and recommendations as well as the public hearing procedures.
- NAHC Response:** We considered this comment and revised the draft regulations to provide for Commission consideration of information submitted by federally recognized tribes and culturally affiliated groups that are not recognized as tribes by the federal government separate from information submitted by the general public. We declined to include a separate public hearing notice requirement.
- 185. Comment:** One comment suggests revising subsection (e) to read: "The Commission will consider the evidence presented at the public hearing to reach a decision and such decision shall be made by majority vote of the Commissioners during the public hearing at which the evidence is presented or at a subsequent public hearing to which the application or removal was continued pursuant to section 31007(d). Commission decisions on any application, or removal from the Contact List shall be supported with Substantial Evidence."
- NAHC Response:** We considered this request and decline to make the suggested change as the draft language encompasses similar language and no substantive difference would result from the suggested change.
- 186. Comment:** The NAHC received a request that for determinations of aboriginal territory, the standard should not be substantial evidence aka fair evidence but should be clear and convincing.
- NAHC Response:** We reevaluated the evidence standard and determined that requiring all Commission findings under these regulations be by a preponderance of the evidence is most appropriate.

- 187. Comment:** The NAHC received a request to allow denied applicants to reapply for inclusion on the contact list after a minimum of 270 days (9 months) and to inform denied applicants of the date from which the reapplication date starts.
- NAHC Response:** The Commission considered this request and declined to shorten the time in which a denied requestor may reapply for inclusion on the contact list.
- 188. Comment:** One comment requested that a tribe that fails to fulfill or meet the minimum number of required criteria be provided with an opportunity to file appeals. In regard to requests for appeals from the same group, it is recommended that one appeal may be filed every three or five years.
- NAHC Response:** While the NAHC considered this request, it declines to include an appeals process. Instead, a requester that is denied inclusion on the contact list may seek judicial relief in the appropriate forum.

31009 – Involuntary Removals

- 189. Comment:** The NAHC received two requests to immediately notify agencies when a group has been removed or is being considered for removal by the Commission. Another comment requests that federally recognized tribes also be provided notice of any involuntary removals.
- NAHC Response:** We reviewed this comment and declined to adopt these suggestions as the information regarding involuntary removals will be publicly available.
- 190. Comment:** The NAHC received five comments regarding grounds for removal suggesting that the following be considered:
- providing fraudulent information or engaging in fraud;
 - inactivity such as failure to respond to the NAHC’s request for updated contact information or communication;
 - misrepresentation of the group’s listing as “State Recognized” and issues of misuse of the group’s listing status when consulting with lead agencies;
 - being a “bad actor” in dealing with Most Likely Descendant determinations and processes; and
 - submitting materially false information about its aboriginal territory.
- NAHC Response:** After consideration of this comment, we note that involuntary removal may occur when a listed entity is found to have submitted materially false or misleading information and/or documentation with its request for inclusion on the contact list. The additional suggested grounds for removal are better addressed through regulations related to the most likely descendant determination process, outreach, and/or education.

- 191. Comment:** With respect to subsection (e), one tribe requested that removal should occur when a lack of substantial evidence for inclusion has come to light.
- NAHC Response:** The NAHC considered this comment and determined that the grounds for removal, including providing materially false or misleading information amount to the same idea as lack of substantial evidence and so declines to make this change.
- 192. Comment:** One tribe noted the use of the word “Lists” in subsection (e) and requested clarification as to whether there is more than one list that will be created.
- NAHC Response:** As there is only one Contact List, all references to “Lists” have been revised throughout the draft regulations.