

Draft Contact List Regulations – Summary of Comments Received

General

- Updates to the current regulations are necessary.
- This draft is so different from the last that the NAHC should have an entirely new consultation period, not a continuation of the prior timeline. (two tribes)
- There needs to be clarity in the Contact List regulations, but this version is less clear and less fair than the last version of the regulations. (two tribes)
- The revised regulations differ significantly from the 2023 draft proposed regulations. (five tribes)
- The current draft is more troubling than the original.
- The NAHC should slow down to consider more tribal opinions. (two tribes)
- The NAHC should pause for 120 days before moving forward with the final draft regulations.
- The NAHC should withdraw the current proposed draft regulations and begin the process again. (ten tribes)
- The NAHC should not submit the current draft to the Office of Administrative Law; it should revise the current draft instead. (five tribes)
- The NAHC should withdraw the current regulations and start by meaningfully incorporating input from non-federally recognized tribes. This would promote sovereignty and equality among California tribes and ensure that consultation remains rooted in historical truth and lived stewardship. (two tribes)

- The NAHC should immediately schedule quarterly consultations with tribal representatives to ensure ongoing, robust dialogue and urgent collaboration. The consultations should follow a structured agenda, starting with setting the meeting objectives and allowing time for agenda amendments upon participant suggestions. Participant selection should ensure representation from all relevant tribes, ensuring diverse perspectives and inclusive dialogue. Each consultation will conclude with a summarization of discussions, followed by a formal reporting procedure to document outcomes and actions taken. This structured approach will facilitate sustained collaboration and enhance the effectiveness of tribal engagement.
- The NAHC should create a working group of California tribes, not just federal tribes, to handle the new draft regulations. The working group members should be compensated for their expertise. (five tribes)
- We are worried about remaining on the Contact List during the draft regulation process. (two tribes)
- We are already on the Most Likely Descendant list. We should not have to qualify to be on this List, too.
- Tribes will not participate in this process for fear of being diminished or removed from the List.
- Qualifying for the Contact List will be expensive, time-consuming, and burdensome. (two tribes)
- The NAHC should help tribes that don't have as many resources or as much knowledge to get on the List.
- The NAHC should secure State or grant funding to assist with applying to get on the Contact List. (two tribes)
- The NAHC should be better funded and more empowered to conduct mediation, because tribes currently lack a mechanism for tribal dispute resolution. (two tribes)
- The NAHC should add a check-in process. After a few years of implementation, the NAHC should re-open this process to see what is working and what isn't. After a few years, folks will have a better idea of what evidence is available to tribes. (three tribes)

- The NAHC’s citing of specific laws and regulations within these regulations can be problematic as it limits the application of these regulations and is not exclusive of all existing or future state regulations that govern tribal consultation. (two tribes)
- This is not a neutral administrative clarification; it is a status-based policy choice that conflicts with statutory definitions and legislative purpose and invites unlawful exclusion of culturally affiliated California tribes from consultation pathways. (two tribes)
- The NAHC can, and should, continue to implement an internal guiding policy, similar to what has been used in the past, that continues to ensure that the list is not filled with imposters.
- The NAHC should return to the proposed criteria entitled “Documentation for Inclusion of Non-Federally Recognized California Native American Tribes on the Native American Heritage Commission Tribal Consultation List” dated January 16, 2018.
- The planning agency, not the NAHC, must determine whether the tribe has traditional lands within its jurisdiction.
- The proposed regulations exceed the Commission’s delegated authority by creating a quasi-recognition process the Legislature has never authorized.
- The removal of government-to-government consultation for non-federally recognized tribes not only disrespects the sovereignty of these California Native American Tribes but also opens the door for state-sanctioned violence against our lands and cultures. (seven tribes)
- The NAHC’s enabling statutes do not include any express power to adopt the Contact List regulations. The statutes requiring the NAHC to “maintain” a Contact List of California Native American tribes do not include a fixed primary standard to guide the NAHC’s regulations, and therefore no implied authority to regulate exists. (five tribes)
- Public Resources Code §§ 5097.94 and 5097.98 authorize the NAHC to maintain a Contact List and notify tribes for consultation. Nothing in statute authorizes the NAHC to require tribes to submit historical or genealogical evidence, evaluate or verify tribal identity, conduct hearings or appeals, remove tribes based on evidentiary determinations, or create criteria resembling federal acknowledgment standards.
- The NAHC is not required to have regulations, only guidelines.

- The charge of “maintain a list of tribes” implies maintaining a list of existing tribes, rather than the Legislature delegating some authority for the NAHC to recognize or de-list tribes or determine the extent of their territories. (four tribes)
- The NAHC does not have authority to develop regulations that allow it to become the arbiter of California tribal sovereignty. (four tribes)
- While there is no legislative authority for the NAHC to promulgate regulations regarding the SB 18 Contact List, the NAHC does have express authorization to develop a list of all California Indian tribes and their respective state aboriginal territories solely for the purpose of implementing the Cal-NAGPRA. . . The NAHC statute is clear that it has authority to establish a Cal-NAGPRA list, but it is silent on the SB 18 Contact List. That silence is guidance here, especially given that SB 18 requires consultation between the NAHC and LCI. It does not appear that has occurred. (two tribes)
- The current draft is unlawful on multiple grounds, including ultra vires rulemaking inconsistent with governing statutes. The Commission may adopt regulations only to implement the statutes within the scope delegated by the Legislature. The draft regulations’ stated purpose—protecting the political status of federally recognized tribes (14 CCR § 31030(c))—is not an authorized statutory objective for administering a consultation Contact List.
- These regulations would function as a de facto amendment of statutes. The revised draft does more than “administer” a list - it would convert the Contact List into an exclusionary adjudication mechanism, with eligibility criteria and a removal framework that would predictably eliminate or burden non-federally recognized tribal communities. Because SB 18 and AB 52 define consultation eligibility by reference to the Contact List, narrowing that list by regulation operates as an indirect amendment of the statutes themselves, which an agency cannot do. (two tribes)
- The Legislature did not grant the NAHC express or implied authority to determine whether an Unacknowledged Tribe may be included on the Contact List. The procedures for identifying Unacknowledged Tribes must be developed by LCI, not the NAHC. The NAHC should implement those procedures to maintain a list of California Native American tribes for SB 18 and AB 52 purposes. (four tribes)
- The NAHC should consult with the LCI so that process can be vetted at the highest level of state government, rather than one agency creating disruption across the state. (two tribes)

- The NAHC should propose new legislation authorizing the NAHC to promulgate “Contact List mediation regulations” rather than trying to make determinations itself, which would be more aligned with the NAHC’s statutory role as a facilitator where tribes are concerned. (two tribes)
- The NAHC should seek legislative authority and direction on whether it may regulate the Contact List, to what extent, and in what manner.
- The Legislature knows how to grant rulemaking authority when it wants to; the absence of such a delegation is dispositive.
- The regulations exceed the limited role assigned to the NAHC under AB 52, SB 18, and CalNAGPRA. AB 52 and SB 18 impose obligations on lead agencies, not the NAHC, and limit the NAHC’s role to maintaining contact information and identifying tribes that may be traditionally and culturally affiliated with a project area. The proposed regulations improperly shift these statutory responsibilities to the NAHC by creating binding eligibility requirements, mandatory processes, hearings, appeals, and dispute-resolution procedures that the Legislature never authorized. CalNAGPRA, as amended by AB 275, permits the NAHC to verify non-federally recognized groups solely for CalNAGPRA. The proposed regulations unlawfully extend that authority to all state cultural resource and consultation frameworks.
- While the NAHC has long-required individual Most Likely Descendants (MLDs) to submit genealogical information for the narrow statutory purpose of identifying the closest descendant of a specific ancestor, the Commission has never required tribes to submit documentation to justify their existence, continuity, or legitimacy. These are categorically different processes with different legal foundations, evidentiary expectations, and scopes of authority.
- The current draft is unlawful on multiple grounds, including CEQA noncompliance, because the rulemaking is a “project” capable of causing reasonably foreseeable indirect physical change to the environment, and specifically, to tribal cultural resources. The CEQA review must occur at the rulemaking stage. The NAHC should complete CEQA compliance before taking any action to adopt regulations that restrict, expand, alter, or eliminate consultation pathways for California Native American tribes pursuant to AB 52, SB 18, or any other state, federal or local laws.

- The current draft is unlawful on multiple grounds, including disqualifying conflicts of interest requiring disclosures and recusals. The draft regulations openly advance the political interests of federally recognized tribes, including the federally recognized tribes of which the Commissioners are members. These conflicts have been apparent throughout the development of the draft regulations, and raise serious concerns regarding objectivity, transparency, and procedural integrity. At minimum, to protect the validity of this rulemaking record and avoid post-adoption invalidation, the Commission should: (1) disclose Commissioner economic interests implicated by the Draft Regulations; (2) apply the Act’s disqualification rules; and (3) ensure recusals.
- The proposed regulations impose unauthorized, inequitable, and operationally unworkable burdens on non-federally recognized tribes. The draft framework transforms the Contact List from a ministerial notification tool into a gatekeeping mechanism that conditions tribal participation on evidentiary submissions, adjudicatory review, and periodic re-verification. This shift is inconsistent with the Legislature’s intent and would disproportionately harm tribes whose identities are well-documented through mission records, community continuity, and MLD status. They also conflict with the statutory Most Likely Descendant (MLD) framework, which is the Legislature’s chosen mechanism for determining appropriate tribal representatives. The proposed regulations disregard this framework and substitute an untested evidentiary regime that excludes mission records and undermines the MLD system.
- Although described as procedural refinements, the regulations would create an expansive regulatory system that exceeds the limited statutory authority granted to the NAHC, conflicts with the California Administrative Procedure Act (“APA”), intrudes into areas governed exclusively by federal law, and undermines principles of tribal sovereignty protected by both state and federal law. As drafted, the regulations are unlawful, unenforceable, and vulnerable to both facial and as-applied challenge.
- Nothing in Public Resources Code section 5097.94, whether express or implied, authorizes the NAHC to determine which governments qualify as tribes, regulate tribal lineage, membership, or internal governance, impose eligibility criteria for participation in CEQA, AB 52, SB 18, or CalNAGPRA consultation processes, adjudicate the political or cultural identity of tribal governments, assign or restrict tribal territories, conduct hearings or appeals, or remove tribes from the statutory Contact List.

- The Commission’s proposed regulations would, in effect, narrow by regulation the pool of tribes/tribal communities that the Legislature has already chosen to include by statute. That outcome is in direct tension with AB 275’s pro-consultation, pro-inclusion amendments to CalNAGPRA, and it would create downstream conflict wherever the Contact List is used as a statutory gatekeeper.
- Government Code section 11342.2 prohibits any agency from adopting any regulation that conflicts with, exceeds, or enlarges its statutory authority. By creating powers that do not exist in Public Resources Code section 5097.94, the proposed regulations violate Government Code section 11342.2, exceed the NAHC’s jurisdiction, and are therefore invalid.
- The NAHC does not possess authority to construct an expansive adjudicatory regime that determines which entities qualify as tribal governments, imposes mandatory procedural obligations on sovereign tribal nations, adjudicates or reallocates territorial interests, or conditions the exercise of statutory consultation rights on the Commission’s approval.
- If adopted, the Proposed Rules will be improper because they will not comply with the California Administrative Procedures Act. The Proposed Rules violate the APA because (i) they conflict with their authorizing statutes, and (ii) they are not reasonably necessary to effectuate the purposes of the statutes. (two tribes)
- If the NAHC intends to adhere to SB 18, it must not give deference or create distinctions between its treatment of federally and non-federally recognized tribes. The draft Contact List regulations will be in conflict with the goals and intentions of the state and several state agencies, including the LCI, California Natural Resources Agency, and the Governor, to build partnership and trust with all California tribes.
- This NAHC rulemaking process openly contradicts State Executive Orders #B-10-10 and #N-15-19 and is a continuation of the “historical wrongs” of the racist and inhumane treatment of California tribes.
- By imposing evidentiary burdens only on non-federally recognized tribes, the regulations create a discriminatory two-tiered system of access to consultation rights. (two tribes)
- The proposed changes to the Contact List Regulations are not a recognition policy. They’re a termination policy. The new regulations are flawed, as they only serve to protect the rights of federally recognized tribes. The new regulations will only create more lateral violence and further divide the state and the intertribal community. (seven tribes)

- The draft is not clear about the practical impact on unrecognized tribes. The inequality posed by the draft could be resolved by requiring all tribes to go through the same process.
- The new rules as drafted would: impede non-federally recognized tribes from cooperating and partnering with State and Federal agencies in projects and efforts to protect and manage natural resources; could possibly jeopardize protective designations (i.e. TCRs, Traditional Cultural Properties) acknowledged during consultations; and would establish administrative barriers that could lead to the erasure of tribal culture and history and the possible physical damage and destruction of historic cultural sites.
- Because the Draft Regulations would create a significant barrier for non-federally recognized tribes to be included on the Contact List, fewer non-federally recognized tribes would be likely to request inclusion, and, in turn, fewer tribes would ultimately participate in the consultation process in the future. That outcome would be directly contrary to the purpose and goals of California’s cultural resource protection laws, which are intended to promote tribal consultation — including consultations with non-federally recognized tribes — in order to protect and preserve cultural resources in the state.
- The revised draft expressly frames its intent and operative effects in a way that disadvantages non-federally recognized California tribal communities, including by treating them as “groups,” imposing heightened eligibility burdens, and creating a structure that presumptively include federally recognized tribes while requiring others to prove themselves worthy of remaining beneficiaries of statutory consultation protections.
- The Proposed Regulations impede on the inherent right of sovereign tribes by limiting the ability of tribes to engage in efforts to protect tribal territory and the cultural resources located therein. (two tribes)
- The Proposed Rules would greatly reduce environmental protections and threaten irreplaceable cultural resources and sacred sites. . . By dismantling these protections for non-federally recognized tribes, the Proposed Rules eliminate these opportunities for advocacy and perpetuate the marginalization of non-federally recognized tribes. Non-federally recognized tribes would lose tools for cultural preservation, and California would lose a significant portion of its protected cultural resources. This change represents a systemic rollback of rights and protections that undermines years of advocacy for cultural preservation and inclusion.

- If adopted, the proposed draft regulations would be disastrous for non-federally recognized California Native American Tribes. They would be tantamount to ushering in a new wave of genocide and erasure that would devastate nearly a third of the Native American Tribes in California. (eight tribes)
- By conditioning inclusion largely on federal-status evidence, non-federally recognized tribes are effectively barred from the Contact List, and, in turn, marginalized from the consultation process under SB 18, thereby encroaching upon and diminishing the sovereignty of such tribes.
- These draft regulations would fundamentally reshape the NAHC's policy on tribal recognition and consultation, resulting in the elimination of State recognition and consultation rights for numerous non-federally recognized tribes—particularly those whose ancestry is tied to the California Missions.
- The Regulations may cause yet another State-sanctioned impairment of tribes' ability to seek federal acknowledgement . . . or through other legal avenues.
- If self-determined Tribes are removed from the NAHC Contact List, our inherent right to consultation will be systematically dismantled. This is deeply concerning. . . Keeping self-determined Tribes from this list would inhibit us from having a say in how culturally significant items are handled, protected, and preserved. Furthermore, we have the natural inherent right to organize for our own governance and to protect the cultural traditions, languages, and customs of our ancestors. (two tribes)
- The way the NAHC is trying to operate the Contact List will negatively affect us as non-federal tribes. It will disenfranchise us. (two tribes)
- The Regulations may prevent legitimate California Native American tribes from enjoying their legal rights to protect TCR under California law.
- The current regulations, if enacted into law, will leave huge sections of the state unprotected, especially on the coast. (four tribes)
- The proposed regulations would give others authority over our ancestral lands while excluding the people who have lived here since time immemorial. (three tribes)
- The new draft Contact List regulations have created an adversarial situation between non-federally recognized tribes and the NAHC, and possibly with federally recognized tribes. (three tribes)

- It seems like the State is worried about its relationship with individual tribes, but not as worried about the relationships between tribes.
- These draft regulations threaten to remove non-federally recognized Tribes from the Consultation List. This is not a technical adjustment. It is devastating. It strips us of the right to protect our lands. It removes our ability to speak for our own ancestors. And for many Tribal members, it takes away their only source of income earned while performing sacred responsibility and cultural stewardship.
- We worry these regulations will lead to federally recognized tribes speaking for us, controlling our sites, and determining what happens to our ancestors. We do not need that.
- The NAHC's potential exclusion of non-federally recognized tribal communities from consultation and decision-making is not only an affront to Indigenous sovereignty but also a violation of California's stated commitments to restorative justice.
- The exclusion of non-federally recognized Tribes contradicts long-established state policy, including SB 18, AB 52, and Executive Orders B-10-11 and N-15-19. (seven tribes)
- The NAHC should . . . examine the proposed regulations for additional ways to uplift Federally Recognized Tribes and fully support our unique political status and inherent sovereignty. This includes acting beyond the Contact List regulations at hand and providing meaningful guidance to State agencies and local governments that in all cultural resource consultation processes, they must 1) understand the sovereign status of Federally Recognized Tribes, 2) defer first and foremost to the Federally Recognized Tribe(s) involved, and 3) understand that these regulations and the Contact List have limited purposes and can no longer be used by the State for any other reasons.
- The NAHC is a state commission with state funding, not an arm of the federal government. (five tribes)
- This process is a form of federalization. The Commission is supposed to uplift and support non-federally recognized tribes, too.
- People are tired of dealing with factionalism, and so there is a push towards federalism. (two tribes)
- It is not up to the NAHC to determine whether a group is a tribe, but it should not be relying on the federal government to make this determination, either. (two tribes)

- The NAHC is erasing the work of a lot of individuals by designating one point person. The NAHC should move beyond picking one point person.
- The NAHC should conduct hearings in the Central Valley, so that California tribes have access to such hearings. Many non-federally tribes are in the Central Valley and Southern California.
- Notification procedures must reflect the full extent of a Tribe's traditional and cultural affiliation, which may extend across multiple watersheds, ecological zones, or regions. Any administrative notification system must defer to tribally provided areas of cultural responsibility to ensure appropriate and timely consultation.
- Tribes must retain exclusive discretion to determine when and how cultural information is updated, as cultural landscapes evolve through new discoveries, research, survey, environmental changes, oral history, and ongoing cultural responsibilities.
- These regulations, as written, contravene current laws, including SB-18, Executive Order B-10-11, and Assembly Bill 275. (four tribes)
- The draft Contact List regulations will conflict with the goals of the State and several State agencies including the Office of Land Use and Climate Innovation and the California Natural Resources Agency. (two tribes)
- The California Natural Resources Agency should disband the NAHC.
- The NAHC should not allow non-profit 501(c)(3)'s on the Contact List.
- The State can have relationships with unrecognized tribes that differ from its relationship with federal tribes. The NAHC should highlight the differences but not erase tribal sovereignty of unrecognized tribes. (two tribes)
- The NAHC should play a larger role in helping tribes build capacity to make arrangements for preservation and protection.
- The NAHC should allow tribes to use its website to create meetings and bring Indigenous folks together to work on the current draft.
- The NAHC should add a code of conduct into the regulations. If a tribe cannot meet the code of conduct, they should not be allowed to remain on the Contact List.

- There are many places in the regulations where it says “NAHC staff”, but it should be “the NAHC”.
- The NAHC should study, historically, the relationships California tribes had with the federal government and the reasons why those tribes are not currently federally recognized.
- The NAHC needs additional funding for this process to work. (three tribes)
- It appears the Commission does not have the time to undertake this work and get into the nitty-gritty that is required to assess all these applications.
- Regarding NAHC staffing and ability/qualifications to review information and documentation submitted under these regulations:
 - How will the NAHC handle the influx of work? Will additional NAHC staff be hired to review this information, especially if all tribes need to submit new information?
 - How will the NAHC handle the massive influx of documentation that these new regulations will require? Where will everything be stored?
 - Who will review the narrative information and consultation maps required to be submitted and determine their accuracy?
 - Are NAHC staff qualified to review and make determinations on genealogical documents? Will the NAHC hire a genealogist to review treaty signatory data?
 - Is there a realistic timeline to review the submitted data?
- The Commission has not provided a fiscal impact statement, staffing plan, or implementation timeline. Without these, the regulations are not feasible and risk creating administrative backlogs that delay or obstruct statutory consultation.
- The Commission should consider whether there are any other ways that it could reduce the volume and types of evidence that Requesters would be required to submit to the Commission.
- The NAHC, in the next draft, should use footnotes that reflect which specific comments it implemented and incorporated. That would help tribes feel included in this process.
- The proposed draft Contact List regulations run counter to international standards set by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). (ten tribes)
- The proposed draft Contact List regulations violate international standards of Free, Prior, Informed Consent (FPIC). (seven tribes)

- The proposed draft would require the Digital Atlas to be updated. This would render years of work with California Native American Tribes destabilized and jeopardize cultural resource protections statewide. Tribal Nations have invested enormous labor into this tool, and these regulations threaten to invalidate or diminish that work.
- The NAHC must include safeguards to prevent misuse of the Contact List by other agencies.
- The regulations should require that federally recognized tribes be notified and allowed to comment whenever the NAHC receives a request to add a new tribe or group to the Contact List for a particular area. . . Without a mechanism for tribal input before additions are finalized, the Contact List risks repeating the over-inclusiveness that has caused confusion for local governments and led to misdirected consultation notices.
- The NAHC should include deference to Federally Recognized Tribes throughout the regulations, and particularly in Sections 31035, 31036, 31037, 31038, 31039, and 31040 as these Sections pertain to Requesters.
- The NAHC should consider requiring that any evidence submitted to support a request for inclusion or designation of a new area of cultural affiliation be verified under penalty of perjury and accompanied by citations to the sources relied upon.
- At a minimum, the NAHC should implement the following non-substantive list-integrity steps:
 - Authorized-submitter confirmation: confirm that the person submitting changes is an identified representative with authority to speak for the tribe/tribal community for Contact List purposes (name, role/title, and a short explanation of authority).
 - Accuracy certification: require a signed certification (including under penalty of perjury where appropriate) that the submission is true and correct and that attached documents are authentic copies or accurate extracts with citations.
 - Basic contact verification: use a consistent method to confirm contact information before adding or materially changing an entry (e.g., confirmation email/phone step).
 - Red-flag follow-up only: request additional verification only when there is a specific, articulable indication of misrepresentation (e.g., conflicting claims to represent the same entity, facially altered documents, or credible objections supported by specific evidence), with notice and an opportunity to cure.

- The NAHC can implement narrow, non-substantive list-integrity measures under existing administrative practice, focused on authorization, authenticity, and red-flag verification, without changing who is eligible for consultation under statutes that rely on the Contact List.
- The Commission should take affirmative steps to avoid even the appearance that the rulemaking is being used as a tool to confer competitive/political advantage to some tribes at the expense of other California tribal communities. (three tribes)
- State civil rights protections applicable to programs and activities of state agencies prohibit discrimination and also reach policies that create unjustified disparate impacts. A regulatory framework whose design and foreseeable effect is to strip consultation eligibility from non-federally recognized California tribal communities - particularly given California's unique history of dispossession and barriers to federal recognition - creates substantial litigation risk under state nondiscrimination law. (two tribes)
- The NAHC should provide clarity throughout the regulations to avoid ambiguity, including clarifying to whom each section specifically applies throughout the amended regulations. For example, the applicability of certain sections remains unclear, including whether they apply only to Federally Recognized Tribes, only to Requestors, or otherwise.
- Federally Recognized Tribes must be given notice, an opportunity to meaningfully voice our concerns, and deference in the decisions of the NAHC, as well as the CNRA and other state agencies.
- The Contact List is not merely an internal directory; it is used as a statutory gateway for consultation and related protections. Regulations that narrow who qualifies for those benefits risk contravening statutes that already rely on the Contact List. (two tribes)
- The NAHC already has been maintaining the Contact List based on internal policy guidance. While that policy guidance has shifted somewhat over time, the process works as long as the NAHC continues to process requests. The NAHC has no reason to change the process that it has followed up to this point, in fact, continuing as it has is in every tribe's interest.
- To ensure the Contact List is used to promote communication between tribes and lead agencies and not de facto State recognition, the list process must defer to tribal knowledge and tradition as much as possible.

- The NAHC should consider including sub-headers within the Sections to break up the Subdivisions and make it easier for the reader to locate the applicable regulations.

Section 31030

- The preamble should be filled out with more. It is currently too slim.
- The NAHC should cite to the origin of the Contact List, and the NAHC's authority, under Government Code 65352.
- The preamble narrows the NAHC's authority too much. The preamble should include the other statutes where the Contact List is mentioned.
- The NAHC needs to include the basis for and purpose of these regulations, rather than simply citing SB 18, which is not the full background and basis of the Contact List.
- The NAHC should include historic data to explain what federal recognition is, where it came from, and how it was bestowed on each individual tribe. This should be in the Preamble.

Section 31030(b)

- It is important to note that the Contact List is no longer simply intended for use by the Commission. There are at least three statutory sections that mention the Commission and the use of the list by entities outside of the Commission.
- There are three places in AB 52 that mention the Commission and this List. To say that the Contact List is intended for use by the NAHC to facilitate consultation is limiting. It is there for local governments to know which tribes it must consult with.
- Any description of "scope" must acknowledge that cultural landscapes cannot be administratively circumscribed and must remain informed by tribal knowledge and traditional stewardship responsibilities.
- The NAHC is not empowered to address the use of the Contact List by other agencies through regulation. Instead, it could focus on tracking legislation and weighing in when the Contact List citation is used to ensure that practice is ended.
- The NAHC need not try to anticipate what other purposes the list might be used for but only maintains the Contact List to share information regarding SB 18 consultation.

Section 31030(c)

- The preamble is overprotective of federal tribes.
- We do not oppose the statement regarding federally recognized tribes, but it needs to include state-acknowledged, non-federally recognized tribes.
- The NAHC should include a section in the preamble about the unique history of tribal exclusion. It should state the NAHC's intent to include all tribes, including non-federally recognized tribes. (six tribes)
- The NAHC needs to include non-federally recognized tribes as sovereign in the preamble. (thirteen tribes)
- We strongly support the NAHC's express intention to protect the political status and sovereignty of Federally Recognized Tribes. This section should be revised as follows: "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, and to emphasize the government-to-government relationship between the State and Federally Recognized Tribes."
- The discussion of the intent of the regulations in this section should include both non-federally recognized tribes and federally recognized tribes because both will appear on the Contact List. It is also unclear what it means to "protect the political status" of these tribes or how these regulations would accomplish that intention. This section should thus be revised as follows: "It is the intent of these Regulations to support, protect, and uplift the inherent tribal sovereignty of Federally Recognized Tribes and Non-Federally Recognized Tribes and in doing so, protect the political status of Federally Recognized Tribes."
- This section should be amended to read: "It is the intent of these Regulations to support, protect, and uplift the inherent sovereignty of California Native American Tribes."
- The NAHC should include the following language in this sub-section: "It is the intent of these regulations to support, protect, and uplift the inherent tribal sovereignty of California Native American tribes while also respecting the political status of federally recognized tribes."

- This section should be edited to read: “It is the intent of these regulations to support, protect and uplift the inherent tribal sovereignty of Federally Recognized Tribes and All California Indigenous communities, and in doing so, to protect their relevant voices within these State regulations.”
- This language elevates federally recognized tribes above non-federally recognized tribes in a context where such elevation is legally and practically unjustified. (two tribes)
- The preamble’s singular focus on federally recognized tribes: contradicts the NAHC’s stated purpose to serve all California Tribes; signals to reviewing agencies that only federally recognized tribes merit consideration, creates a two-tiered system where non-federally recognized tribes are treated as second-class, mischaracterizes the NAHC’s role as protecting federal political status rather than facilitating consultation, and is arbitrary and capricious. (four tribes)
- The NAHC is erring in distinguishing federal and non-federal tribes. It should not separate them into two categories. This sentence could be changed to reflect understanding of federal status, while also respecting the tribal sovereignty and the human rights of all California Native American tribes.
- The draft Contact List regulations are an attack on tribal sovereignty. (eight tribes)
- The way this document is written implies that federally recognized tribes have a special status. (two tribes)
- The preamble reads not as highlighting federal tribes, but rather as excluding non-federally recognized tribes. (nine tribes)
- These regulations place non-federally recognized tribes below federally recognized tribes regarding their experiences and their expertise in consulting about cultural resources. It is a civil rights violation. (four tribes)
- The NAHC is weaponizing the term “federally recognized”.
- The NAHC should maintain the distinguishment between federally recognized tribes and culturally affiliated groups. Still, potential constitutional and jurisdictional issues could arise. . .The most significant of these concerns is the potential for equal protection challenges it the regulations blur the fundamental legal distinction between federally recognized tribes, which are sovereign political entities, and culturally affiliated groups, which are not.

- It is essential that the regulations clearly state that the sovereignty and political status of federally recognized tribes are not diminished or altered in any way by their inclusion on or relationship to the Contact List.
- The NAHC should identify that every tribe within California is important and has the right to government-to-government relationship when they've identified their sacred spaces and lands.
- The statement "uplifting the sovereignty of federally recognized tribes" subjects non-federally recognized tribes to the influence of decisions by federally recognizes tribes, which may be capricious in nature.
- This section ignores the historical circumstances of unrecognized tribes in California, removing them from the Contact List without due process. And they do so with the intent of advancing the sovereignty of Federally recognized tribes at the expense of unrecognized tribes in the State, which have faced the most discrimination by virtue of their status. This prejudicial language in the Proposed Regulations should be struck. (three tribes)
- It is paternalistic of the NAHC to suggest it "protects" the status of federally recognized tribes. That is a federal role, not the NAHC's. (two tribes)
- The legal and policy reasons for one sovereign, the State of California, to "protect" the sovereignty of federally recognized tribes is questionable.
- Our objections to this section include: ultra vires; conflicts with statutory scheme; confirms discriminatory intent.

Section 31030(d)

- Currently, no state agency is tasked with creating a list of California tribes. The NAHC should make some decisions, otherwise this loop will continue for a long time. (two tribes)
- The NAHC is creating state tribal recognition by creating this List. The State is eventually going to base its recognition the NAHC's regulations. (two tribes)
- This is a de facto tribal recognition. (seven tribes)
- The SB 18 Contact List is not state recognition. (two tribes)
- This is a path to de-recognize tribes.

- The NAHC is asking for excessive information if this is not state recognition.
- The Contact List’s requirements deny any pathway to state recognition.
- The draft regulations explicitly state that inclusion on the Contact List does not constitute state recognition for non-federally recognized tribes, effectively rescinding decades of prior recognition.
- The regulations are in fact similar to the federal acknowledgement process and are thus likely to result in outcomes that duplicate the federal government’s failures.
- The NAHC should recognize and ensure that the Contact List is not a state recognition process. The Contact List has very limited applicability in California. A Contact List determination is not a final determination of rights, land ownership, or cultural authority — it is a procedural gateway to consultation.
- The NAHC should keep the current confirmation and clarification that the regulations do not establish a state recognition process for any culturally affiliated groups within the state that are not recognized by the federal government. (four tribes)
- When Non-Federal Tribes apply, comply with process, and are accepted for inclusion on the “Revised” Contact List, the NAHC must consider issuing an acknowledgment. Perhaps it could issue a brief statement to the tribe, stating “We, the NAHC, have acknowledged the (Non-Federal Tribe name) are within compliance and accepted for inclusions within the Tribal Contact List.” In the past, some tribes have fallen through the cracks and have been excluded. This statement would give non-federal tribes confirmation of acknowledgment from the NAHC.
- This section should be either eliminated or modified to indicate that listing on the Tribal Contact list defines the terms “State Recognized Native American Tribe” and “California Native American tribe” for the purpose of the relevant California State laws, rules, and regulations. Under no circumstances should Proposed Section 31030(d) remain as written. The Commission should not turn a blind eye to what the California State legislature has specified by law and California State agencies have determined by regulation. (three tribes)
- This section states that it is not intended to create state tribal recognition. This statement directly conflicts with how other statutes use the Contact List. For example, 14 California Code of Regulations Section 4970.01 subsection (P) and (Q)(Q), and Public Resource Code Section 21073 define California tribes as those on the Contact List.

- The NAHC need not try to anticipate what other purposes the list might be used for but only maintains the Contact List to share information regarding SB 18 consultation.

Section 31031

- There is inconsistent terminology across governing authorities. Some Executive Orders use “California Indian tribes”, others use “California Native American tribes”, and these proposed regulations use “cultural affiliated groups”. These inconsistencies create ambiguity regarding the scope of entities entitled to consultation rights and raise serious concerns regarding compliance with existing executive orders and statutory mandates. . . . The regulations introduce ambiguous and overlapping terminology, including “California Native American Tribe” and “Culturally Affiliated Group,” without clearly defining their legal status or relationship to one another. In particular, it is unclear whether inclusion on the Contact List confers recognition as a “California Native American Tribe” for purposes of state law. If so, that term must be clearly defined. As drafted, the regulations create unnecessary confusion and legal uncertainty with potentially significant consequences.
- There is no definition for “consultation map”. (two tribes)
- The NAHC should add more clarity on language and key terms used within the regulations to ensure they align with the intended meaning of the sections. For example, the Commission’s October 13, 2025, cover letter requesting tribal comment and consultation states that section 31034(d) requires a Requester to demonstrate its capacity to engage in consultation. However, the term “capacity” does not appear in section 31034(d) and is also not defined in section 31031.
- “Non-Federally Recognized Tribe” should be added to the definitions in this section so that this term can be used elsewhere in the regulations. This term should be defined as follows: “Non-Federally Recognized Tribe” means an Indian band, nation, pueblo, village, or community that is not a Federally Recognized Tribe.
- This new classification process is deeply disheartening and disrespectful.
- The language of the proposed regulations under section 31031 ‘Definitions’ (g) and (j) strips the title of “Tribe” from any tribal nation that is not currently or previously federally recognized, replacing it with the titles of “Requester” and “Culturally Affiliated group.” This change fundamentally undermines the sovereignty and self-identification of California Tribal people.

Section 31031(c)

- The NAHC should replace “Cultural Affiliation” with “Traditional and Cultural Affiliation,” consistent with Public Resources Code section 21080.3.1(c). This terminology more accurately reflects longstanding cultural relationships to place and avoids narrowing tribal cultural affiliations.
- The terms need to be consistent, and consistently capitalized, throughout this document. The NAHC needs to add more definitions. Some of the language does not seem to match precedent and statutes. For instance, this draft uses the phrase “culturally affiliated” – but AB 52 includes the phrase “traditional and culturally affiliated”.
- The NAHC should not use the phrase “cultural affiliation” for the following reasons:
 - Too Broad and Vague: “Cultural Affiliation” could describe neighboring Tribes or even non-Native individuals with cultural interests.
 - Imported from Wrong Legal Context: “Cultural Affiliation” is a NAGPRA term designed for repatriation of cultural items, not for establishing Tribal identity or consultation rights.
 - Lacks Precision Required for Regulatory Standard. The term “cultural affiliation” is way too loose.
- The NAHC should not use of the term “cultural affiliation”, which does not accurately describe any quality that is relevant for determining eligibility on the Contact List. . . Similarly troubling, the Draft Regulations use the phrase “cultural affiliated group” to refer to non-federally recognized tribes. But non-federally recognized tribes are sovereign governmental entities that pre-date the United States; they are not mere “groups” that have a “cultural affiliation” to some other tribe or entity. It is entirely inappropriate for the Commission to describe them as such. The Commission should therefore eliminate the use of the term “Cultural Affiliation” in the Draft Regulations.
- The NAHC should broaden the definition of Cultural Affiliation in Sec. 31031(c) to account for both affiliation between groups over time, as well as affiliation to a geographic area. (three tribes)
- Specifically: “‘Cultural Affiliation’ means 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. This shared group identity is rooted in traditional and cultural affiliation to a specific geographic area.”

- The NAHC should clarify the term “traditionally and culturally affiliated.” It should not be interpreted to encompass entire ethnolinguistic or regionally related groups whose general territories may extend across large portions of the state. . . Inclusion on the Contact List should reference those individual tribes’ traditional areas rather than broad ethnically related groups. This clarification would ensure that consultation remains focused, accurate, and consistent with the statutory purpose of identifying the tribes traditionally and culturally affiliated with the specific geographic area at issue.
- The definition of “Cultural Affiliation” is difficult to follow, and the terminology used in this definition is vague and ambiguous. . . The meaning of this term must therefore be clearly defined. As currently drafted, however, it is ambiguous what is meant by “an identifiable earlier tribe or group”.
- The Commission should make sure that the definition of Cultural Affiliation is consistent with the evidentiary showings that are required to establish Cultural Affiliation under Section 31034. (three tribes)
- The draft regulations do not provide for inclusion on the List of both federally recognized tribes and non-federally recognized tribes. The draft regulations eliminate non-federally recognized tribes, change the long-established definition of California Native American Tribe, and reduce non-federally recognized tribes to “culturally affiliated groups.” (seven tribes)
- Rather than “cultural affiliation,” the appropriate standard is lineal descendancy to specific ancestral territories. This standard is precise and verifiable, prevents encroachment by unconnected tribes, excludes pretendian organizations, aligns with how tribes actually establish membership and territorial connection, is consistent with federal standards.
- The NAHC should replace “Cultural Affiliation” throughout the regulations with “Lineal Descendancy,” defined as: “Direct genealogical descent from Native American ancestors documented to have resided in or been indigenous to a specific geographic area, as evidenced by mission records, historical census records, genealogical documentation, oral tradition, and other primary source materials.”

Section 31031(e)

- The definition for “Notice of Incomplete Submission” includes too much detail about process. The final sentence stating that this notice does not constitute a denial should be removed because it involves too much of the process and is more appropriate for inclusion in Section 31036.

Section 31031(f)

- The NAHC should not use the term “listed entities” for only non-federally recognized tribes. The implications of its use, as opposed to the term “tribe” or “non-federally recognized tribe” are of the utmost importance for the following reasons:
 - The use of the term “listed entities” instead of “tribes” is inconsistent with both SB 18 and AB 52 and de facto excludes non-federally recognized tribes from their provisions. Both SB 18 and AB provide for consultation with “tribes,” not “listed entities” on the Contact List.
 - The use of the term “listed entities” instead of “tribes” effectively excludes non-federally recognized tribes from acquiring and holding conservation easements (Civil Code Section 815.3) and greenway easements (Civil Code Section 816.56), as both refer to “tribes,” not “listed entities” on the Contact List.
 - The Contact List as defined for purposes of SB 18 (Government Code Title 7, Division 1, commencing with Section 65352.3) refers to “non-federally recognized tribes,” and there is no mention of “non-federally recognized tribes” anywhere in these regulations
- The NAHC should use “Tribal Entity,” which is more appropriate than “Listed Entity”.

Section 31031(h)

- Section 31031(h), defining a “Notice of Incomplete Submission,” underscores the need for clarity. Although such a notice is not a denial, the absence of clear standards governing completeness, combined with undefined substantive terms, creates a risk of arbitrary or inconsistent determinations.

Section 31031(i)

- The NAHC should not use the “preponderance” standard. Given the importance of cultural resource protection to the vitality of tribal identity and culture, a more rigorous standard is warranted, such as “substantial evidence” or “clear and convincing evidence.”
- The revised draft inappropriately uses the preponderance standard. That is the lowest civil evidentiary bar. It's wholly inadequate for a gatekeeping decision. The NAHC should replace it with the clear and convincing evidence standard.
- The preponderance of evidence standard is insufficient. The NAHC should use the substantial evidence standard.

Section 31031(j)

- “Requester” is: demeaning to sovereign tribal governments, inconsistent with the terminology used by other government agencies (the federal government uses “Indian entity” even in federal acknowledgement petitions), signals a subordinate status.
- The NAHC should replace “requester” with “petitioning tribe” or “tribal applicant” throughout the regulations. (two tribes)
- The NAHC should use the following text: “Requester means a California Native American tribe or tribal community seeking inclusion on the Contact List that is not federally recognized. Use of the terms ‘tribe’ or ‘tribal community’ in these regulations is for Contact List administration and consultation purposes only and does not confer federal or state recognition.”
- The Commission should refer to each Requester by its asserted tribal name in Commission materials and communications unless and until a final determination states otherwise.
- “Requester” is a secondary status. (three tribes)
- The “Requester” category is defined solely by lack of federal recognition (14 CCR § 31031(j)) and then subjected to heightened proof burdens, discretionary review, hearing delays, and long exclusion periods (14 CCR §§ 31033–31037, 31036(d)(3), 31037(h)).
- The phrase “requester” is offensive. Nonn-federally recognized tribes should be referred to as such.
- “Requester” needs to be eliminated or reworded. This currently reads as biased towards federal tribes. It should be changed to “petitioning party.”
- The phrase “group” is not appropriate here. We are a Tribe. We operate as Tribes. (two tribes)
- The word “group” could refer to a nonprofit or tribe. This is problematic.
- Rather than “group”, the NAHC should use “group of people” or “a self-identified tribe with evidence showing their cultural affiliation and genealogical connections to the aboriginal territories in which they are claiming”.

- The NAHC should expand the definition section. . . for example, it would be helpful to include a separate definition for the term “request” as it appears that a “request” would logically originate from a “Requester”, yet the meaning of “request” itself is not described. This could lead to confusion.

Section 31032(a)

- Federal tribes do have special status, no argument there, but they should not have special status in the context of the Contact List.
- Federally recognized tribes should be defaulted onto the List. (two tribes)
- Federally recognized tribes should not be defaulted onto the List. (three tribes)
- Non-federally recognized tribes would be forced to undergo a narrow and onerous application process, while federally recognized tribes are automatically included. This distinction is unjust, as federal recognition is a flawed process and the divide between recognized and unrecognized tribes in California stems from historical injustices.
- The term “culturally affiliated groups” is not defined in the regulations and accordingly that term should not be used in this provision. This paragraph should instead reference “Non-Federally Recognized Tribes,” which should be defined in Section 31031. This section would thus read as follows: “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 and Non-Federally Recognized Tribes within the geographic boundaries of California that have been approved for inclusion on the Contact List. The Contact List will clearly identify which Listed Entities are Federally Recognized Tribes.”
- This paragraph is acceptable with one recommendation, changing “culturally affiliated groups” to California Indigenous Communities.
- The Draft Regulations should be revised to state that non-federally recognized tribes that have been included on the Contact List for at least thirty years will be automatically included on the new Contact List. This change would treat non-federally recognized tribes that have been on the Contact List for three decades similarly to federally recognized tribes, who are also automatically included on the new Contact List.

Section 31032(d)

- “The Commission shall provide a copy of the Contact List to any listed entity” should be changed to “. . .to any California Native American tribe”.
- There is no need to provide the Contact List in its entirety to any of the parties listed in this section. The NAHC should only put it on the website and a public place. The NAHC is currently safeguarding the list and determining who gets a copy. It’s outside the scope of this regulation and it's outside of the authority given by statute for the NAHC to do so.
- The NAHC should post the Contact List on its website. (two tribes)
- The NAHC should send an updated Contact List to agencies within a certain territory when tribes ask.
- The NAHC should require agencies to request an updated version of the Contact List any time they are required to consult.
- The Contact List should additionally be made available to anyone upon request.
- The regulations should also allow Federally Recognized Tribes to request any lists generated within that Federally Recognized Tribe’s traditional and cultural geographic area.
- Can the NAHC please clarify if the Lead Agencies & CRMs will be contacted by the NAHC of Contact List changes? How will the distribution of the new quarterly list be applied to these agencies? A more detailed process should be considered. . .
- Cultural resource managers should not be the decision maker within the homelands nor what tribal entity they wish to work with. The importance of an alert mechanism should be in place. This will be crucial, to ensure Regulations are upheld.

Section 31032(e)

- The appropriate place for the NAHC to send notifications is to the tribal chair and the THPO through the tribal post office box.
- There needs to be a simpler way to communicate with the NAHC and have the Contact List updated in a timely way.

Section 31032(f)

- The NAHC cannot void the Contact List prior to the new list being created.
- This section inappropriately uses “best efforts.” Instead, the NAHC should say: “we will use genealogical data which identifies the modern descendants of aboriginal sites.”
- The phrase, “. . . However, the first edition shall not be created until the Commission has completed reviewing all requests submitted pursuant to these regulations,” is confusing. Does this mean that the NAHC has reviewed them for completeness only, or it has reviewed applications and accepted or rejected tribes? This needs to be clarified in the draft.
- This section should specify that the Commission will continue to use and maintain its existing Contact List prior to its completion of the “first edition” of the contact list, which will ensure that consultations will continue uninterrupted before the first edition is created. The sentence stating: “Any list created prior to the establishment of the first edition of the Contact List shall be void,” should also be revised to make clear that the current Contact List is not void until the first edition has been officially adopted by the Commission. As currently drafted, this sentence could be interpreted to mean that all prior versions of the Contact List are void as of the date the regulations are promulgated.
- This section is confusing. It does not state when such a list will be void, or what list will be used in the interim while the post-regulation Contact List is being created. The current Contact List be kept in effect until the effective date of the post-regulation Contact List.
- The Proposed Regulations should make clear that a currently Listed Entity shall not have its status disturbed by these Regulations, and that it will have an opportunity to correct any listing criteria deficiency before the Commission initiates proceedings to involuntarily remove the Listed Tribe. . . Nowhere do the Proposed Regulations address the financial burden associated with requesting inclusion under the proposed criteria from which Federally acknowledged tribes are exempt. Thus, removal from the Contact List will be involuntary and serve to erase the history of California’s unrecognized tribes. . . Inexplicably, the Proposed Regulations short-circuit the Commission’s own proposed process for involuntary removal. This process should be used for currently Listed Entities if the Commission determines that they do not meet the proposed criteria for listing. The final regulations should not disturb a Tribe’s Contact List status and specify that the Commission will engage in its own proposed process. (three tribes)

- If there is a gap between when the NAHC resets the Contact List and when the tribes must reapply, our tribal cultural resources will be at risk of development without our participation. (two tribes)
- Our objections to this section include unlawful suspension of consultation gateway; triggers CEQA. The NAHC should refrain from voiding or resetting the existing Contact List.

Section 31033

- The criteria to add tribes to the Contact List are unprecedented, and the experts we've talked to suggest it would be almost impossible to meet them.
- It is not entirely clear to us what "capacity" means within Section 31033 or elsewhere within the regulations. The use of the term "capacity" in Section 31034(e) does not add clarity, the term is ambiguous and should be defined. . . The availability of information and the capacity to protect ancestral lands are not static realities for tribes. Just because a Requestor does not have the resources to advocate for their lands does not mean they are not culturally affiliated with them. As such, if "capacity" is to be considered, it should only be supplemental and optional information, not required as a condition for inclusion on the list. (two tribes)
- The NAHC should add a grandfather clause. The new regulations should only apply to new applicants on the list. (four tribes)
- Individuals alone, without a showing of a representative group, should not be included on this List.
- The language around including non-federally recognized tribes is confusing. It reads as though only federal tribes are on the List. The NAHC should change that wording.
- This draft reads as though the consultation requirements are different for the federally recognized and non-federally recognized tribes.
- Any submission of cultural information must remain entirely at the discretion of the Tribe. Cultural knowledge, oral histories, and sensitive materials cannot be made mandatory components of an administrative process and must remain tribally controlled. Mandating the submission of such materials constitutes an unlawful encroachment on tribal sovereignty.

- This section presumes that no other exceptions to the Public Records Act may apply and that the NAHC will not seek to determine if other exceptions apply. Our tribe is concerned that sensitive material needed for purposes of requesting inclusion on the Contact List may also implicate the privacy of its members and may be subject to other exceptions. The NAHC should vigorously protect the privacy of such documents.
- The NAHC refuses to protect, or even acknowledge, that this information includes confidential cultural information about the tribe, and potentially protected genetic or ancestry information about the tribe’s members. . . The NAHC’s process impliedly requires, or at least encourages, Unacknowledged Tribes to submit such information to ensure their inclusion on the Contact List, and to ensure that the NAHC does not exclude them from consulting in geographic areas that are connected to the tribes’ culture, TCR, and Ancestors. (two tribes)
- The current regulations place Unacknowledged Tribes in an untenable position—either they choose to reveal confidential information about tribal culture, TCR, Ancestors, and genealogy in a public forum, or their ability to advocate for their consultation rights is severely impaired. The public procedures are non-functional. The NAHC decision makers and Unacknowledged Tribes cannot have candid and complete discussions that lead to an informed decision in a public meeting, while maintaining confidentiality. (two tribes)
- Our objections to this section include: unauthorized two-tiered system; due process/equal protection issues; predictable loss of consultation.
- The NAHC should provide tribes with a full check list of the types of documentation required. Examples would be appreciated.

Section 31034

- The NAHC should add a new subsection: “(e) Requests for supplementation. If a submission relying on mission-era evidence does not provide sufficient information to permit evaluation under this section, Commission staff may request reasonable supplementation identifying the specific deficiencies and allowing the requester a reasonable opportunity to cure before a recommendation is made.” (two tribes)
- This section sends a message that unless a tribe is federally recognized, was a signatory to an unratified treaty, was formerly federally recognized, or was federally recognized but terminated in the 20th century, it isn’t a tribe.

Section 31034(a)

- The definition of “cultural affiliation” reads very differently than the first sentence of this sub-section. The NAHC either needs to revise the definition or provide clarification on what evidentiary pieces will be weighed.
- In addition to the listed criteria, the NAHC should consider acknowledgement of a tribe by local jurisdictions or government agencies.
- Consideration should be given to tribes who interacted with the NAHC and/or their local jurisdictions within the first five years of implementation of SB 18.
- Tribes shouldn’t have to prove that they have historically engaged in consultation to be a part of the Contact List.
- We object to the idea of being culturally affiliated. (four tribes)
- “Cultural affiliation” is legally problematic. The NAHC should use the precise standard of lineal descendancy instead. (two tribes)
- The language of “cultural affiliation” is problematic because it is borrowed from NAGPRA. In AB 52 in particular, cultural affiliation can’t be determined the way it is in CALNAGPRA or NAGPRA. (two tribes)
- Cultural affiliation is not the proper way of looking at this. Current tribes are not culturally affiliated with a prior group; they are the prior group.
- The NAHC should accept broad displays of cultural affiliation, with the focus on tribal connection to the land.
- Our tribe believes that historical engagement on preservation efforts should not be used as a criterion to determine a Requestor’s historical and cultural affiliation with a geographic area. . .Reversing this relationship improperly equates evidence of advocacy with evidence of ancestral presence. While the effort may be commendable, even decades of advocacy cannot simulate or substitute for a tribe’s ancestral presence in an area since time immemorial.

- The Proposed Rules impermissibly suggest that sovereignty is derived from federal recognition, which contradicts longstanding principals under Native American law. . . . Being a “culturally affiliated group” does not imply a political status. Non-federally recognized tribes are sovereign political entities, and to reduce their status as such means stripping these tribes of the sovereign recognition to which they are entitled. . . . Additionally, the Proposed Rules improperly conflate federal recognition with cultural affiliation. To qualify as a “culturally affiliated group” under the Proposed Rules, a tribe must provide evidence relating to past federal recognition; however, “cultural affiliation” should be defined as a present-day tribe’s connection to an earlier historic tribe, not federal status.
- The NAHC does not have the authority or capacity to make determinations regarding cultural connections or affiliation under either AB 52 or SB 18. (two tribes)
- The NAHC’s sole responsibility under SB 18 is to maintain a current Contact List, so that a city or county can be provided with contact information for tribes who may want to preserve or mitigate impacts to cultural places, features and objects in their traditional territory. The NAHC is not required to make a determination regarding which tribes have a traditional and cultural tie to specific lands, rather, the local government is required to provide notice to all of the contacts provided by the NAHC and then each Tribe has the ability to determine on its own, based on its concerns for tribal cultural resource protection, whether it wants to request consultation. (two tribes)
- The NAHC should improve reliability of submitted information by recognizing a small set of transparent, administrable evaluation methods that are widely used in California tribal affiliation work. At a minimum, the regulations should recognize the following non-exclusive methods as reliable ways to evaluate cultural affiliation and consultation standing: Triangulation / corroboration across independent sources; place-based affiliation (start with places, then show ties over time); community continuity indicators appropriate to California history; documented oral tradition / tribal knowledge, when method is clear and corroborated; “show your work” documentation standards (method-based reliability requirements); overlap approach (layered consultation geographies).
- The attestation requirement in this section is duplicative of Section 31033(a) and should be removed.
- The term “cultural affiliation” creates a grey area. It is too vague. (six tribes)

- The wording “Cultural Affiliation” must be removed and added accordingly, based off SB18 and AB52. The narrative within these two Assembly Bills do not refer to “Cultural Affiliation,” however they do uphold “California Native American Tribes” and “Non-Federally CA Native American Tribes.” These potential titles should be considered to add within these regulations, to align within the primary narratives of SB18 and AB52.
- We fear that in the future we won’t be seen as our tribe, because we were stricken down to a “culturally affiliated party” instead of a tribe.
- Instead of “cultural affiliation,” the NAHC should use: “ancestral territory”; “aboriginal territory,” “aboriginal landscape,” or “tribal landscape”; “ancestral affiliation”; “California state-recognized non-federal tribe”.
- “Cultural sovereignty” is a better way of looking at what the NAHC is currently referring to as “cultural affiliation.”
- The regulations are directly in conflict with current law because they refer to us a “culturally affiliated group,” and because they would not recognize us as a sovereign entity.
- True cultural affiliation must be rooted in prehistoric connection to the land supported by archaeological, ethnographic, and oral documentation that align with pre-contact territories. The NAHC can honor the original intent of the Contact List by requiring a demonstrated prehistoric connection supported by documented evidence and traditional occupancy and continuity. This ensures that Cultural Authority rests with those whose ancestors have always been here.
- The Proposed Rules are outside of this Legislative scope and intent by introducing criteria outside of traditional geographic and culturally affiliated considerations that reflect a tribe’s inherent sovereignty.
- The NAHC should provide more information. How far back does historical documentation need to be? How many examples do tribes need to submit for historical perspective and current consultation projects within the homelands?
- Tribes should be able to establish cultural affiliation and capacity through submitting tribal meeting minutes.
- The NAHC is changing the definition of “tribe” in these regulations. Governor Newsom acknowledges our tribe, and the NAHC represents the State of California. The NAHC should not consider us just “culturally affiliated”.

- AB 52 says that those who consult on specific areas must be traditionally and culturally affiliated.
- Cultural, educational, and preservation work, especially done with the NAHC, should be considered an eligibility category for the Contact List. This is a way tribes can prove their membership without mission rolls. (four tribes)
- The NAHC should consider Woodrow Wilson's 1924 federal land petition and allotment program as proof of continued cultural affiliation.
- The NAHC should consider the ethnographic works conducted in the early 1820's by the Catholic Church. In Southern California, one father recorded our languages, customs, calendar, and more. He listed multiple village sites in what is now Orange County, Los Angeles, Riverside, and San Diego counties.
- The NAHC needs to fact check documents submitted under this section for accuracy.
- The NAHC should keep documents, particularly spiritual and ceremonial places, confidential from the public. This subsection needs to explicitly say they will be kept confidential. (three tribes)
- The regulations violate confidentiality of tribal cultural information. For the NAHC to establish regulations that expose that same information to disclosure directly conflicts with AB 52, and other state and federal laws. The map may, and the narrative presumably does, contain confidential information about tribal history and culture, tribal cultural resources, and the locations of our Ancestors. This is protected by state and federal law.
- In response to a California Public Records Act request, the NAHC should prevent the disclosure of certain confidential information.
- The NAHC should not require tribes to submit confidential information about our spiritual and ceremonial sites to qualify for the Contact List. (three tribes)
- Nothing in California law authorizes the NAHC to evaluate whether a tribal government's lineage, membership rules, or governance satisfy any state-imposed criteria, nor to use such criteria to determine which tribal governments may participate in statutory consultation processes.

- The NAHC should set a reasonable and equitable date in which an Indian group must show prior existence. The proposed regulations under 31034(a)(2) would allow for groups that were subject to termination in the 20th century to meet standards for Cultural Affiliation. The NAHC should pick the date for identifying a “... connect(ion) to an earlier group...” as before August 24, 1978, which represents the beginning of the present-day federal acknowledgement process.
- The NAHC should keep “capacity” as a requirement. The NAHC should put an online training certification process put into place as well, much like many of the online training certifications that must be renewed every year. In time, The NAHC should establish a process for licensing as well.
- Under 31034(a)(3), “Evidence that the present-day group was at one time recognized as a tribe by the federal government.” It is limiting for the NAHC to consider only evidence of groups recognized by the federal government. This does not consider the history of California, its dealings with California Indians, and the tremendous volume of research that is readily used by the Office of Federal Acknowledgment. Simply put, we are concerned that the Commission will only identify tribal groups if they are on a federal document. (two tribes.)

Section 31034(b)

- The meaning of the first paragraph of this section is unclear and difficult to follow. Among other things, it is unclear what is meant by a “California Native American linguistic group” which is not defined or explained in the Draft Regulations. It is also not evident what it means to be “connected to” such a group and what types of connection would be sufficient. This Paragraph should additionally be revised to be consistent with the definition of “Cultural Affiliation” in Section 31031(c).
- The Tribe is opposed to the current structure in this section, which allows inclusion on the Contact List by meeting only one of the three criteria.
- 31034(b) eliminates all possibility of non-federally recognized tribes to protect their sacred places and culturally significant sites.
- “Linguistic group” needs to be defined. Particularly, the NAHC should distinguish between language versus linguistics.
- The Commission should define what constitutes sufficient “evidence” for the determination of proposed Section 31034(b)(1), (b)(2), and (b)(3).

- The evidentiary standard for this entire section is unclear. . . The regulations need to include more specificity on the evidentiary standards and measurements for inclusion on the Contact List in Section 31034. How specifically will (b)(1)-(3) be validated, weighed and determined to meet the evidentiary standard.
- It is difficult to interpret whether subsections (1) through (3) only attach to the final type of evidence in the list (“historical federal documentation of past recognition”) or whether all types of evidence are to be used for the purpose of determining whether the Requester had a dealing with the federal government in the ways described in subsections (1)-(3). If the NAHC intends the latter, it should amend Subsection (b) to say: “In order to demonstrate its Cultural Affiliation, a Requestor 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 California Native American linguistic group that shares its cultural identity, and historical federal documentation of its past recognition. This information must support one or more of the following: . . .” Then delete “Evidence that . . .” from the beginning of each subsection that follows.
- The inclusion of linguistic group affiliation as evidence of cultural affiliation is particularly problematic. Linguistic categories were largely developed by non-Native researchers and do not necessarily reflect tribal self-identification. Additionally, the regulations fail to specify the relevant time period from which evidence must derive, whether contemporary, historical, or pre-contact, creating a substantial risk of inconsistent and arbitrary application.
- The evidentiary pathways set forth in this section are so narrow that it is likely that only federally recognized tribes would meet them. This effectively creates a de facto prior federal recognition requirement. . . The State should not be placed in the position of interpreting, evaluating, or influencing federal acknowledgment determinations, which are properly within federal jurisdiction. Additionally, while a Tribe may assert that it possesses evidence of prior federal recognition, the regulations do not clarify whether such an assertion alone is sufficient or who within the State would have authority to make that determination. This lack of clarity raises serious concerns regarding fairness, consistency, and due process.
- There is a risk of tribes going outside the scope of their ancestral lands by using linguistics. (two tribes)
- The NAHC should provide more examples of what “demonstrating capacity” means. The NAHC should define what “capacity” and “connection” mean.

- The fundamental legal issue with the proposed guidelines is their apparent reliance on federal recognition as the primary—or exclusive—criterion for Contact List inclusion. This approach is legally problematic because it ignores the NAHC's status as a state-created agency deriving its authority entirely from the California Legislature.
- The Commission cannot substitute narrow federal recognition standards—designed for different purposes under federal law—for the criteria contemplated by the California Legislature when it created the Commission and charged it with protecting Native American cultural resources. (three tribes)
- Historically, our tribe's name came with the Spanish colonizers. Tribes might struggle if they need to go back and prove our group existed before the colonizers.
- Mission rolls and genealogy are some of our strongest evidence. They are one of our best primary sources. (eighteen tribes)
- Affiliation with the land and culture should hold much greater significance than bureaucratic documentation. (two tribes)
- It is unclear whether Mexican-era government documentation would be considered as part of this analysis.
- The proposed regulations, if adopted without modification, will create a framework that:
 - Excludes aboriginal tribes from protecting their own ancestral lands and ancestors' remains;
 - Privileges federal determinations over California legislative intent;
 - Embraces federal recognition standards while rejecting the genealogical evidence those standards require;
 - Dismisses the primary documentary evidence of California Mission Indian genealogy based on historically ignorant arguments about spelling variations;
 - Creates an impossible Catch-22 that effectively excludes all non-federally recognized California Mission Indian tribes regardless of the strength of their evidence.

- The Proposed Rules would prevent certain non-federally recognized tribes from being included on the Contact List despite clear cultural and historical ties to California lands. The NAHC focuses on three comments for eliminating the California Mission Records from consideration for inclusion, but none of its concerns constitutes substantial evidence for disqualification of the Mission Records as fair, reasonable, or necessary. . . the Commissioners note that many Mission Records list race rather than tribal affiliation. While this may raise constitutional implications, the mere complexity of legal issues is not a valid basis for exclusion.
- The concern that mission rolls create race-based classifications is based on confusion between “mission rolls” (simple lists of baptisms) and “mission records” (which include information such as Native and Christian names, pre-contact indigenous populations, genealogical relationships across multiple generations, baptismal, marriage, and death records that document familial relationships, Rancheria/Mission/ Indigenous village origins, cultural and tribal affiliations, and territorial connections that spanned from pre-contact times through the mission period). (eight tribes)
- The NAHC should include non-exclusive examples of evidence types that tend to be reliable indicators of cultural affiliation and consultation standing, including: SB 18 / AB 52 consultation history, Sacred Lands File participation and related NAHC correspondence; Indian Claims / ICC / claims-era federal records used for claims administration (Claims-era enrollment lists/applications, distribution/payment lists, agency correspondence, and other administrative materials that identify families/communities for federal claims purposes and can be correlated to later records.); peer-reviewed scholarship and expert ethnohistory with transparent methods; mission-era records as supporting evidence, evaluated with reliability methods; linguistic affiliation documentation tied to place and community; place-based documentation (maps and site/place records, with details protected).
- If treaty signatory status is accepted as proof of cultural affiliation, then other historically significant documentation, such as U.S. land patents, Mexican land grants, and rancharía records, must also be recognized. Excluding these sources disregards the actual history of many California Tribes and imposes an unnecessarily restrictive evidentiary standard. Moreover, the proposed criteria privilege federal documentation in a manner inconsistent with federal tribal acknowledgment regulations, which expressly permit reliance on oral histories, ethnographies, community records, mission archives, and other non-federal sources. California should not impose a more restrictive evidentiary burden than the federal government itself.

- Removing the mission rolls as evidence particularly punishes the mission tribes. (five tribes)
- Prioritizing the treaties over the mission records is problematic.
- Tribal sovereignty does not originate from federal acknowledgment alone. It arises from the inherent political existence of Indigenous peoples, our continuous relationship with the land, and our enduring systems of governance.
- To throw out the entirety of mission records just because of some potentially faulty records or one-off name misspellings is improper. (five tribes)
- The 1928 Census should be considered by the NAHC, but it interlocks with mission rolls. (two tribes)
- Our inability to show presence in the community was a reality of colonization. It feels like tribes are being punished because they cannot show our presence separate from colonization documents, such as mission rolls. (three tribes)
- It is arbitrary and indefensible to remove the mission records from criteria for inclusion on the Contact List. Administrative difficulty is not a legal basis to discard foundational primary sources. The proper fix would be methodology and authentication standards, not erasure. (five tribes)
- The fact that there may be difficulty in identifying qualified genealogists or questions around the genealogy scientific process is not sufficient legal justification for eliminating the Mission Records from consideration of inclusion on the Contact List. At the very least, the NAHC should consider conducting a thorough analysis on both the value and shortcomings of the Mission Records, rather than excluding them based on feedback from a handful of stakeholders.
- The NAHC cannot embrace federal standards while rejecting their core requirement: genealogy.
- The NAHC's belief there are "no legitimate genealogists" in all of California is offensive. (three tribes)
- Professional genealogical standards are well-established and rigorous. The Board of Certification of Genealogists, the Genealogical Proof Standard, and peer-reviewed genealogical journals all provide clear frameworks for legitimate genealogical work.

- The organizations that certify genealogists include the Board for Certification of Genealogists and the International Commission for the Accreditation of Professional Genealogists. There are professional associations such as the National Genealogical Society, Association of Professional Genealogists, and International Commission for the Accreditation of Professional Genealogists. The NAHC should also consider academic programs for genealogy as valid training. Many universities offer graduate programs in genealogy, archival studies, and historical research methods.
- The NAHC should familiarize itself with the Genealogical Proof Standard. The field has established the "Genealogical Proof Standard" requiring: (1) reasonably exhaustive research, (2) complete and accurate source citations, (3) thorough analysis and correlation, (4) resolution of conflicting evidence, and (5) soundly written conclusion.
- Genealogy serves as a critical tool for tribes to protect repatriation rights, support federal recognition efforts, inform membership decisions, and defend against fraudulent claims.
- Choosing to remove genealogical records from the regulations is not a methodological decision. This is a policy decision to exclude California Mission Indian tribes from consultation processes unless they have achieved federal recognition—which itself requires the very genealogical evidence the Commission now rejects.
- The Federal Government's Office of Federal Acknowledgement and State of California's departments involved in reparations research already rely on genealogy. It is ridiculous for a state agency to say they cannot use genealogy. (five tribes)
- The NAHC does not have enough knowledge to review mission records without hiring an expert. (seven tribes)
- The NAHC should familiarize itself with modern genealogical advances.
- The NAHC is already going to have to use genealogy to review signatories to the 18 unratified treaties. How is use of genealogy anywhere else less legitimate? (two tribes)
- In order to protect our resources under statute, the NAHC is going to have to review genealogical records.
- Tribes should have to submit affidavits about which of their members are lineal descendants of California Indian tribes and which are not.

- Our Tribe does not think that the mission records alone should qualify tribes. While the records can show ancestors, this does not mean any living descendants are tribal affiliated or knowledgeable enough to provide meaningful insight.
- The NAHC should add a new section to require it to contract with appropriate genealogists and historians to evaluate mission records and genealogical submissions.
- The section on required capacity sets a standard of risks. Capacity, as a metric, is troublesome.
- This section in particular confounds and confuses the current law set in place for California Indigenous advocacy and protections of sacred sites.
- The current proposed regulations appear to prioritize federal recognition status over probable family ties. It potentially allows federally recognized tribes with no ancestral connection to specific burial sites to claim authority over remains which they have no genealogical tie.
- The Commission should adopt requirements similar to those used by the Office of Federal Acknowledgment:
 - Require documented genealogical evidence connecting the MLD claimant to the geographic area and tribal community associated with the burial site.
 - Establish clear standards for acceptable documentation, such as: mission records (baptismal, marriage, burial registers), federal census records identifying tribal affiliation and location, historical records documenting presence in the specific geographic area, contemporary records establishing continuity of descent.
 - Apply the legal principle of proximity of kinship: when multiple claimants exist, preference should be given to those who can demonstrate the closest genealogical connection to the deceased and the strongest ties to the specific geographic location.
 - Recognize that federal recognition status alone should not supersede demonstrated genealogical descent from ancestors buried in specific locations.

- At a minimum, the regulations should require that any mission-era linkage showing include:
 - Complete citations to each source relied on, with repository/location information, and copies where reasonably available.
 - A linkage narrative that explains each generational connection step-by-step, including how name variants and spelling differences were handled.
 - Correlation of evidence across sources, with identification and reasoned resolution of conflicts (including an explanation of why competing evidence was accepted or rejected).
 - A primary-source hierarchy (primary sources prioritized; secondary sources used only with explanation and corroboration).
 - Triangulation through independent primary sources where reasonably available (e.g., cross-checking mission registers against other contemporaneous records).
 - Clear authority for staff to request reasonable supplementation when a submission does not provide enough information to evaluate the showing under these standards, with an opportunity to cure identified gaps.

- This section excludes tribes that were never contacted by the federal government, rewards historical injustices, defers entirely to federal determinations, and ignores California's unique history.

- The NAHC should expand Section 31034(b) to include mission records and genealogical evidence as standalone criteria, not merely supplemental to federal recognition.

- Given the proposed burden placed on unrecognized tribes to petition for Listing, the Commission must define what constitutes the range of evidence that will be considered. Since the intent is to establish "past recognition," then such evidence might include documentation that the Requestor:
 - Has been treated by the Federal Government as having collective rights in tribal lands or funds;
 - Has had land held for it or its collective ancestors by the United States, including the allotment of public domain or national forest lands to its individual members;
 - Had been accepted before the Indian Claims Commission as a Tribe or Band;
 - Has been eligible for the special programs and services provided by the United States to Indian tribes because of an historical relationship with the Federal Government; or
 - Has been 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.

- The Commission should consider: mission records, Certificates of Indian Blood, tribal ethnography, proof of descent from a historic rancheria, and family trees. . . The criteria for the California Judgement Fund Rolls especially should remain. . .The process for being included on the rolls was already a lengthy process that involved establishing affiliation, so those results should be given great deference. . .Where formal documentation does not exist, the NAHC can look to tribal oral history, ethnography, literature, historical articles, and more. This would be a more acceptable form of providing documentation as it defers more to Tribal culture. . . In addition, ancestry to a common tribal ancestor, through genealogy and Indian census records should be afforded great deference because today one can often trace lineal descendancy to California Indians on census records and the California Indian Rolls. Volume 8 of the Handbook of North American Indians is also an important reference that should be included. (three tribes)
- Tribal nations had, and continue to enjoy, complex governmental, social, and cultural relationships. The NAHC determining, based on some inexperienced and culturally untethered opinion, whether an Unacknowledged Tribe is “Culturally Affiliated” with a particular geographic area ignores history, disrespects tribal culture, undermines SB 18 and AB 52, and perpetuates the damage California has done to California Native American tribes. (two tribes)
- This section should be changed to read: “(b) In order to demonstrate its Lineal Descendancy, a Petitioning Tribe shall submit information that may include, but is not limited to: (1) Mission records, including baptismal, marriage, and death records documenting ancestral connection to specific villages and territories; (2) Genealogical documentation prepared by appropriate genealogists demonstrating direct descent from Native American ancestors indigenous to the claimed territory; (3) Oral tradition evidence; (4) Documentation of tribal traditional knowledge; (5) Connection to a California Native American linguistic group that shares its cultural identity; (6) Historical federal documentation of past recognition; (7) Evidence that the group was a signatory to one of the eighteen unratified treaties; (8) Evidence that the present-day group was at one time recognized as a tribe by the federal government.”

Section 31034(b)(1)

- It will be difficult for groups to establish validity via this subsection.
- The treaty documents are not accurate and are historically problematic. For instance, many of the tribes in the center of California inappropriately claimed coastal territories.

- The NAHC knows that asking tribes to prove that they are connected to the 18 unratified treaties is out of the reach of many communities.
- Multiple different bands, or tribes, will be able to claim the same signatory to a treaty, and thus ties to the same area. (two tribes)
- Sometimes, multiple tribes were on the same treaty. Sometimes the chiefs only put the mission they lived at. It is more complex than just signing the treaty.
- This section seems too cut and dry. It fails to acknowledge how tribes splinter and form in real time. Tribal politics is an active thing.
- There was no detail on a treaty about where someone came from. Sometimes it was just a person's name, their village, and signed with an "X". During the mission period, some tribes were moved throughout the system to different locations. So, it is inaccurate to say that a place where someone signed is where they were from.
- In the Central Coast region between San Francisco Bay and San Luis Obispo, none of the culturally affiliated historic tribes are federally recognized. Under these draft regulations, entire regions would be left without tribal consultation, undermining decades of collaborative work between tribes, local governments, land trusts, archaeologists, and environmental organizations. (three tribes)
- There should be additional criteria for evidence that a Requestor was at one time recognized as a tribe by the federal government; however, the current language is overly broad.
- The NAHC ignores that not all California Native American tribes were present when those treaties were negotiated, and not all tribes agreed to sign those treaties. . . As a basis for determining whether an Unacknowledged Tribe is "legitimate" and may be included on the Contact List, the 18 unratified treaties are wholly inappropriate.
- This language presumes that one and only one Requestor is connected to an earlier tribe that was a signatory to one of the eighteen unratified treaties. The NAHC should change the language to address the possibility that more than one tribe may be connected to an earlier tribe that was a signatory to one of the eighteen unratified treaties.

- There is good evidence that some signatories do not represent the cultural affiliations they claim to. . . how will the NAHC staff know if the signatories are actually representing the people who are claiming them? This would involve archival, historic, and genealogical research. Using the 1928 rolls and Claims cases is not reliable to tracking relatives to treaty signatures. By utilizing the treaty signatory evidence, the NAHC staff will need a qualified genealogist to review all submittals for the Contact List.
- The NAHC should require a Requestor to demonstrate the present-day group was at one time a federally recognized tribe by one of the following means: an act of Congress recognizing the tribe, evidence that the tribe resided on federal land held in trust for their benefit, a showing that the government is located within the State of California and appeared on a list of Federally Recognized Tribes published by the United States, or other concrete factors that otherwise demonstrated the existence of a government-to-government relationship with the United States, consistent with federal acknowledgment criteria set forth in federal regulations

Section 31034(b)(2)

- The NAHC should keep with federal pre-1900 requirement, or at least, before the Indian Reorganization Act of 1934. There should be some time requirement, even if it is more expansive than the federal requirements.
- The phrase “terminated” is undefined in this section. It should cite properly the California Rancheria Act and its 1964 amendment, which both served to diminish the sovereignty of California State Native American tribes. Additionally, in a decision on “termination” by the National Indian Gaming Commission, the Karuk Tribe also argued successfully that non-legislative action served to “terminate” California tribes (Decision of April 9, 2012). Section 31034(b)(2) should also be rewritten to incorporate the established Karuk precedent fulsomely. (three tribes)

Section 31034(b)(3)

- The NAHC’s reliance on prior federal recognition makes us feel uneasy and scared.
- “Recognize” is a term of art, such as “Federal Office of Recognition”. It is used incorrectly here. A better word is “acknowledged” or “identified.”
- This section is too vague. (three tribes)

- The NAHC might get into a loophole re: standard (b)(3). Specifically, the 1972 BIA paperwork listed tribes that were noted by the federal government in 1970s. This might create a loophole if people can point to these papers as proof of former federal recognition.
- It appears the NAHC is using language similar to the federal acknowledgement statutes. This is inappropriate. (three tribes)
- The NAHC should not defer to federal recognition as criteria, as it is a state agency.
- The NAHC should consult with the OFA's Federal Precedent guide.
- The NAHC should consider using the Darrington Report.
- Evidence that the NAHC should consider include: BIA cards, mission rolls, maps by the U.S. Department of Interior, historical societies, state and federally funded projects, California Indian judgment rolls, the 1871 census, the Census of Non-Reservation California Indians: 1905-1906, Theodore Haas' records regarding the Indian Reorganization Act, joint resolutions passed by the California State Legislature, any state or federal document that shows our territories of language and tribal land, national and state park literature and signage acknowledging the traditional homelands of indigenous people.
- The NAHC should give the Census of Non-Reservation California Indians: 1905-1906, the same level of credibility as given to those who meet the NAHC's criteria under 31034(a)(1) and 31034(a)(2) with its own subsection. This Census was the direct result of the 18 Unratified California Indian Treaties.
- The NAHC should consider joint resolutions passed by the California State Legislature as state acknowledgement. These documents are formal expressions of legislative opinion requiring majority votes in both houses. They constitute official acts of the Legislature that reflect considered judgment after legislative investigation. To exclude evidence of California legislative acknowledgment—or to treat federal recognition as the sole criterion—would be inconsistent with: (1) the Legislature's demonstrated intent to include non-federally recognized tribes in state processes; (2) the NAHC's duty to faithfully implement legislative mandates; and (3) California's policy of protecting Native American cultural resources through inclusive consultation.

- When a state agency is charged with making factual determinations within its area of expertise, such as identifying tribes for consultation purposes, California law requires the agency to consider all relevant and probative evidence. For the NAHC, relevant evidence must include: historical evidence of tribal continuity and cultural affiliation with the geographic area; genealogical evidence connecting living persons to historical tribal communities; documentary evidence of tribal organization and governance; and recognition by other governmental entities, including the California Legislature.
- California administrative law is governed by a foundational principle: state agencies must faithfully implement the intent and requirements established by the Legislature. The NAHC must consider legislative intent and legislative records in drafting these regulations. (two tribes)
- The NAHC should adopt a multi-factor framework for Contact List determinations that considers:
 - Federal recognition status (when applicable);
 - California legislative acknowledgments through resolutions or other official acts;
 - Professional genealogical evidence from mission records or other historical documents;
 - Historical documentation of tribal continuity and cultural affiliation;
 - Recognition by other tribes and tribal organizations;
 - Archaeological and anthropological evidence of aboriginal occupation;
 - Current tribal governance and organizational structure; and
 - Geographic and cultural affiliation with consultation areas.
- The NAHC should review the Treaty of Guadalupe-Hidalgo, which provided human rights to Indigenous tribes. (two tribes)
- The Treaty of Guadalupe-Hidalgo itself should be considered a broken treaty and/or federal acknowledgement. (two tribes)
- The NAHC should consider Smithsonian records from 19th and 20th century ethnographers as federal acknowledgement documents, as the Smithsonian is a federal entity.
- Some tribes can go back to 1880's and early 1900's, there are over half dozen academics, linguists, ethnographers, archeologists, and animal scientists that came through the homelands to gather tribal knowledge from our ancestors. These academics worked for the US Government. In addition, many linguists within the UC systems that were contracted by the US Government also were part of collecting valuable traditional language from the ancestors. Could this type of information-evidence be acceptable?

- With regard to the substantive showings required of Requesters under the Draft Regulations, there is no reason that the scope of evidence Requesters may use to establish “Cultural Affiliation” should be narrowly limited to evidence that the tribe was a party to an unratified treaty or was previously recognized by the federal government. Other types of evidence — including evidence of past recognition by state, local, and tribal governmental entities — is likely to be equally informative as to whether a non-federally recognized tribe is an appropriate entity to participate in consultations under state law. . . In other words, the only evidence that can be used to show Cultural Page Affiliation is evidence concerning past actions by the federal government. Nothing in the state consultation laws supports this highly restrictive evidentiary requirement.
- The NAHC should consider Office of Federal Acknowledgement notation of a tribe as historic, regardless of its current status, to count as federal acknowledgement.
- The NAHC should include language that says it is not going to exclude tribal groups based on lapsed federal recognition status.
- Historically many of the tribal communities within California were always referred to as “The People... of a geographic area or a primary natural resource name. “Tribe” was derived by the US government terminology.
- Tribes need more information on the specific criteria and how this will be weighed. It is also important to note there are, and will be, groups or entities seeking to be included on the Contact List that have been denied federal recognition. Would those groups fail the current process set forth in the Regulations? Moreover, the State has not shown any legal justification for a group that has been denied a government-to-government relationship with the United States to be granted a government-to-government relationship with State and local governments within the State of California without a legislative mandate. Regarding the evidentiary test for a group to be added to the Contact List, the Regulations are silent as to what qualifies as expert opinion and who qualifies as the source of tribal traditional knowledge. A group could simply make statements to the NAHC pertaining to alleged affiliation and call it tribal traditional knowledge. Given the purpose of the Contact List is to protect cultural resources and sites, evidence submitted to the NAHC for inclusion on the list, as well as for documenting aboriginal territory, must be submitted under penalty of perjury and well screened for fraudulent submissions.

Section 31034(c)

- Outside tribes, if brought in to consult on another’s homeland, will fail to preserve our sacred sites, our villages, and our areas appropriately.
- The “geographic areas” that Requesters may demonstrate under this section are far too limited. The applicable geographic area should include all ancestral or aboriginal territories of the Requester because it is possible that sacred sites, objects, or remains connected to that tribe could be found throughout those areas. Defining the geographic area too narrowly will unduly constrain the consultation process and provide inadequate protection for cultural resources in particular geographic regions in the state.
- All tribes in California have ancestral ties to areas larger than the historic extents of their reservation lands. Indeed, prior to the termination era, the United States settled tribal groups on small tracts of lands within their larger (sometimes vast) ancestral territories. These tracts were selected by federal agents and often involved the less desirable lands. Given this unjust remnant of U.S. history, it is fundamentally inappropriate and unfair for the NAHC to suggest that Requestors may only engage in consultation in areas immediately surrounding their reservation or areas that were actively occupied by the Requestors’ people at the time of termination or recognition. The NAHC regulations should not impede a Requestor’s ability to consult on lands within areas to which it is culturally affiliated.
- The NAHC should expand this section to allow Requesters to provide other forms of evidence to establish Cultural Affiliation, including evidence of past recognition by state, local, and tribal governmental entities. This could be accomplished by adding a fourth provision to Section 31034(c) that states: “(4) Other evidence establishing Cultural Affiliation, including but not limited to evidence that the Requester has been recognized as an Indian tribe by state governmental entities, local governmental entities, or other Indian tribes.”
- This section inappropriately privileges treaty-based evidence to establish geographic connection while excluding other historically significant land tenure documents.

Section 31034(d)

- People should be knowledgeable of historical context if they are on the Contact List. There should be qualifications to engage in consultation.
- “Backgrounds and persons who will be consulting,” as written in this section, will someday include our children who have not been born yet. There needs to be a discussion about how future generations will be considered for this purpose.
- Asking about our educational background makes this look like a job application.
- The NAHC should create an established standard in 31034(d)(1). To be included on the List, a tribe must establish continuity and long-term involvement in protection.
- The NAHC should make capacity requirements optional supplemental information, not mandatory criteria.
- Section 31034(d) is unduly burdensome, especially on those California Native American Tribes with already limited resources. Additionally, as the state agency charged with supporting the protection of these cultural resources, the NAHC should have sufficient record-keeping to establish a Tribe’s record of sites included on the Sacred Lands File. (eight tribes)
- If a tribe has previously been involved in consultations with the Commission, it should be exempted from the requirement to provide information regarding its “capacity” to participate in the consultation process under Section 31034(d).
- The requirement that a Requester provide “background information” regarding persons who will be consulting on behalf of the group should be eliminated. It is up to tribes to make their own determinations as to who is suitable and qualified to engage in consultations on the tribe’s behalf. It is paternalistic and an infringement on tribal sovereignty for the Commission to review those decisions and purport to vet the qualifications of those individuals. (two tribes)

- A tribe is less likely to have engaged in historical consultation if it was unacknowledged or kept off the list. It may also have been reasonably selective in its consultation commitments according to the priorities of the tribe. In either case, a tribe may have been reasonably stewarding its resources and commitments but would appear as not having engaged in historical consultation under this language. To prevent “historical consultation” from acting as a proxy of “unrecognized,” references to historical consultation should be removed as a matter of equity. Current engagement offers the only proper measurement of commitment and capacity. (four tribes)

Section 31034(e)

- The reliance on approval/support from federal tribes is inappropriate. (four tribes)
- This type of letter will be difficult for us to get from federally recognized tribes.
- Even if labeled “may,” this provision pressures non-federally recognized tribes to obtain approvals from entities with competing political and territorial interests. It is inconsistent with neutral administration, invites arbitrary outcomes, and is incompatible with the Commission’s statutory role as a facilitator rather than an adjudicator of political status.
- Our objections to this section include: gatekeeping; bias; conflict of interest risk.
- This subsection imposes impossibly narrow and discriminatory standards and creates an adversarial process where federally recognized tribes are given power over non-federally recognized tribes to decide who has capacity to protect ancestral sites.
- Although not required, granting federally recognized tribe’s power over inclusion through a “resolution of support” can be problematic by creating a structure that undermines non-federally recognized tribes’ inherent sovereignty.
- It is unclear why the NAHC should consider a resolution of support from Federally Recognized Tribes affirming that the Requestor has “capacity” when the Requestor can attest to their own capacity. . . Moreover, evaluating a Requestor’s capacity based on support from Federally Recognized Tribes suggests that those tribes are viewed as better positioned to determine the Requestor’s capacity and that their endorsement would carry more weight than the Requestor’s own attestation.

- It is unclear what is meant by the phrase “Federally Recognized Tribes of the same Cultural Affiliation,” or why those entities are the only ones that can provide resolutions under this provision. This provision should be modified to allow resolutions of support from any Federally Recognized Tribe or Non-Federally Recognized Tribe.
- Capacity to protect and preserve cultural resources is not determined by endorsement from other Tribes. This requirement improperly delegates state authority to third parties, risks political gatekeeping, and creates the potential for unequal treatment among Tribes.

Section 31035

- This section should be renamed “Description of Geographic Area Traditionally and Culturally Affiliated for Consultation” because that better reflects the statutory requirement of traditional and cultural affiliation.
- “Consultation map” needs to be defined. “Consultation map” and “consultation area” seem to be used inconsistently throughout the document. (two tribes)
- It is good that the NAHC has called them “consultation maps” instead of territorial maps.
- A Sovereign Nation’s territory cannot be defined by a Commission of an agency of a third-party State. (two tribes)
- The NAHC should select one term, like “consultation area” or “geographic consultation area,” as this seems most consistent with statutory language, and define this term as “the geographic area to which a California Native American tribe can demonstrate by a preponderance of the evidence that it is traditionally and culturally affiliated.”
- The NAHC should not make a determination on a tribe’s traditional territory, nor make a broad, sweeping determination that could cut into tribal sovereignty.
- It would be contradictory for the NAHC to serve as an adjudicator utilizing this information, as it has acknowledged it is not prepared to review such materials
- It is unclear whether this is an exclusive list, or a recommended list of places to include in the map and narrative. (two tribes)
- The NAHC should coordinate regional GIS-based training to help tribes with their maps.

- This section implies that two tribes cannot be listed for consultation in the same area. This is inaccurate. A tribe's cultural resources can be found outside the area where the tribe had influence at the time of European contact, or California's admission as a state, or any other temporal limitation. (nine tribes)
- The NAHC needs to include more information about what type of evidence will be considered if a map dispute arises. (two tribes)
- The procedures set forth in Sections 31035, 31038, 31039 governing disputes must be cleaned up so that it is clear which type of parties are being referenced and how disputes between Federally Recognized Tribes and Requesters will be addressed. Further, there must be express deference to the evidence submitted by a Federally Recognized Tribe(s) in disputes with Requesters.
- This draft is not meant for deciding territory, it is meant for creating a Contact List.
- The NAHC should look to the Native American Graves Protection and Repatriation Act for the map section. It should include items such as ethnographic studies, elder testimony, and linguistic data.
- It would be very helpful to see how the maps were created by those applying to be on the Contact List.
- It might be useful for tribes to utilize maps that have already been created, such as the NAHC Digital Atlas. This might prevent people who are rewriting maps with what they wish the record showed. Requesters should only be required to submit additional information or evidence to the Commission if they seek to modify or adjust that geographic area. (two tribes)
- Language such as "areas the tribes wish to consult on" is inaccurate. The NAHC should not allow folks to consult on areas if they are not traditionally affiliated with those areas.
- Under the current Regulations, federal tribes would be allowed to consult on areas around missions. But they should be federal tribes with ancestors who were brought to that particular mission, and consultation should be limited to the original mission lands where their ancestors could have been buried. Anything else would be an inappropriate territorial overreach.
- The NAHC must allow tribes to describe traditional and cultural territories according to their own histories, oral traditions, and cultural responsibilities.

- The NAHC lacks statutory authority to adjudicate, assign, or restrict the territories of sovereign tribal nations (five tribes)
- The first draft of the NAHC Contact List regulations required tribes to provide documentation of “California Aboriginal Territory.” If the NAHC will resolve disputes about the geographic area for consultation based on a determination of the tribe’s territory or connection to the land, the distinction has no meaningful difference.
- The NAHC should make sure that decisions regarding the area for consultation will not be conflated with Ancestral territory.
- In the past, as a matter of tribal sovereignty, the Commission accepted every tribe’s assertion of its own traditional territory without question or mediation. The Commission should continue to do the same to respect tribal sovereignty.
- The NAHC should provide voluntary mediator services in areas where multiple tribes claim traditional territory or where tribal territories may overlap.
- This section lacks information about dispute resolution over areas of consultation between federally recognized tribes and non-federally recognized tribes.
- More clarification is needed concerning the evidence for determining cultural affiliation to geographic areas, especially the type of analysis and scrutiny given to submitted information if there is an overlap in geographic area claims or contradictory group affiliation claims. There is also no process to determine the veracity of submissions.
- The failure of the Regulations to include specific process steps, baseline standards, acceptable forms of proof, and a clear transparent evaluation process is troubling. The process must also include clear and verifiable criteria and requirements to ensure the veracity and reliability of the information submitted, including a requirement that the assertions of Aboriginal territory be submitted under penalty of perjury.

Section 31035 (a)(1)

- It is inappropriate for the Commission to determine a federally recognized tribe’s area of consultation. Instead, if there is a dispute between tribes that cannot be resolved amongst themselves, the Commission may be asked to weigh in, but that process should be voluntary and agreed upon by all involved tribes. (two tribes)

- The NAHC should not serve as mediator for disputes among Federally Recognized Tribes concerning the geographic area in which consultation is sought and believes such designation exceeds the Commission’s scope of authority. (three tribes)
- The NAHC is prioritizing “Federally Recognized Tribes” within these narratives. Please consider adding additional wording to include, “Non-Federal California Native American Tribes” within the narrative. Please provide the type of mapping your agency would prefer to review. Please consider changing “Requester” to “Tribal Applicant.”

Section 31035(b)(1)

- This subsection about non-federally recognized tribes refers back to 31038, which only discusses federally recognized tribes. This is confusing.
- This structure seems to inadvertently reduce the geographical ancestral lands of requesters, totally disregarding the proved authenticity of shared ancestral lands.

Section 31036

- Any review of tribal cultural information must recognize that tribal knowledge systems are not subject to external validation or evaluation. The NAHC should not determine the adequacy, completeness, or sufficiency of a Tribe’s cultural information. Such a process exceeds the informational and cataloging authority granted to the NAHC under Public Resources Code section 5097.94.

Section 31037

- Commission decisions pursuant to Sections 31037 and 31038 should be reviewed by the Secretary of the Natural Resources Agency. These proposed regulations do not mention an avenue of judicial or other review of the Commission’s decision and whether the Commission’s decisions under them are a final agency action for purposes of judicial review. . .Many tribes do not have the resources to hire lawyers for administrative writs of mandate. An additional layer of review by the Secretary of the Natural Resources agency may help resolve conflicts without judicial involvement.
- Commissioners who share a cultural affiliation with parties whose conflicts they are ruling on should recuse themselves from consideration of those conflicts. This has been the informal practice of the Commission in the past.

- Please rephrase paragraph, to allow fairness among all tribal communities within the State of California. Presently it presents a negative perspective towards “culturally affiliated groups,” which should be re-worded appropriately
- The Commission should eliminate the requirement in Section 31037 that every Requester must go through a public hearing process before being approved for inclusion on the Contact List. Requiring individual hearings for each Requester is not only burdensome for the Requesters but also a waste of time and resources for the Commission and Commission staff. Instead, separate hearings should only be held for individual Requesters if the Commission staff has recommended that the Requester be excluded from the Contact List.
- It makes sense that public hearings are required; however, this can lead to many emotions and contempt within the tribal communities trying to defend their ancestral homelands.
- Public hearings should not be used to determine whether or not a Tribe will be allowed to engage in efforts to protect sacred places and culturally significant areas. (seven tribes)
- While the Commission must make decisions publicly, it might become a spectacle. Is there a way to make a determination privately, and have any potential appeals go public?
- The NAHC should consult with historians, ethnographers, anthropologists, and other academic experts as well as tribal experts on California Native American History to ensure that the criteria for inclusion on the Contact List are robust enough to capture tribes that have continually existed and conducted themselves as governments without federal recognition.

Section 31038

- It is unclear how potential consultation map disputes between federally recognized and non-federally recognized tribes will be resolved. (eleven tribes)
- Section 31038 should be revised to address all disputes concerning the area of consultation, whether between Federally Recognized Tribes, between Requesters, or between a Federally Recognized Tribe and a Requester.
- Section 31038 should incorporate deference or greater weight be provided to the evidence submitted by the Federally Recognized Tribe concerning disputes with a Requester.

- This section is problematic, as such disputes may take a significant and undetermined period of time, and the NAHC's refusal to provide Contact List information would conflict with statutory mandates requiring the NAHC to assist agencies in the identification of culturally affiliated tribes.
- Any participation by federally recognized tribes must be entirely voluntary and requires express, written consent. No hearing concerning cultural landscapes or ancestral territories may occur without the express consent of the tribal governments involved. This ensures consistency with the principles of tribal sovereignty. If a tribe elects to participate voluntarily, any expert testimony must come from cultural experts identified or agreed upon by the participating tribes, including Tribal Historic Preservation Officers, elders, or qualified historians.
- This process exposes non-federally recognized tribes to displacement. Even with mediation provisions, non-federally recognized tribes enter this process with a structural disadvantage, economic and otherwise.
- The NAHC must insert a section regarding disputes between non-federally recognized tribal splinter groups originating from the same tribe.
- Last time, the NAHC got lots of feedback for separating out public hearing language between the sections. This is duplicative and should be aggregated at the end again.
- The NAHC should elicit tribal input and consultation when geographic areas overlap.
- The NAHC's dispute resolution process could expose for public review the very confidential information that AB 52 intends to protect. The NAHC should establish a presumption that the records are exempt from disclosure, and work with California Native American tribes to seek protective orders—not presume that the records must be disclosed and place the burden on tribes to litigate for their protection. In addition, the NAHC's dispute resolution process occurs during a public hearing. This puts California Native American tribes in an untenable position—either they choose to reveal confidential information about tribal culture, tribal cultural resources, and Ancestors in a public forum, or their ability to advocate for their consultation rights is severely impaired. Even if all of the confidential information a California Native American tribe submits can be protected from public disclosure, the public dispute resolution process remains non-functional. The Commissioners and California Native American tribes cannot have candid and complete discussions that lead to an informed decision in a public meeting while maintaining confidentiality.

- The Regulations will create or exacerbate unnecessary inter-tribal conflicts over consultation areas. It is not appropriate or respectful for the NAHC to create conflict by sharing confidential tribal maps. Pitting California Native American tribes against each other, and against third parties, in a contest for consultation areas is not a respectful approach to State-tribal relations. Public hearings should be a matter of last resort, rather than the first step in the process. (five tribes)
- Without access to a proposed consultation map in the internal process, it forces a Tribe to contest a submission in public. For example, if a non-recognized tribal group applies for inclusion on the Contact List, the application should be provided to federally recognized Tribes who also requested consultation in the same geographic area. This allows federally recognized Tribes to provide relevant information regarding the requesting party to Commission staff to consider in assessing their request. There is no need for this piece of the process to be vetted in the public so long as the federally recognized tribes do not contest a requesting party's right to inclusion on the Contact List or their proposed area for consultation. If the Commission denies a party's request for inclusion, or includes a party over a recognized tribe's objection, those decisions could be appealed in a public forum before the Commission. This allows both federally recognized tribes and non-recognized tribal groups an equal opportunity to participate in the process while reducing unnecessary, divisive spectacles before the public on matters of deep importance to both.
- The Regulations treat federally recognized Indian tribes differently than California Native American tribes without federal recognition ("Unacknowledged Tribes"). This disparate treatment is not expressed in California law, and is therefore unique to the Regulations.
- The NAHC should consider approaching the problem of encroachment on tribal sovereignty through traditional means.
- The placement of this section, which appears to address matters specific to federally recognized tribes, seems somewhat out of sequence among the provisions describing the inclusion and application processes. Relocating this section or clarifying its purpose and relationship to the other inclusion procedures could make the regulations' structure more straightforward to follow for both tribes and agencies.

Section 31038(a)

- A state agency should absolutely not have the authority to demand that a federally recognized tribe submit justification or proof regarding its ancestral boundaries. A state agency cannot determine the boundaries of a federally recognized tribe. (six tribes)

- It is a tribe’s sovereign right to establish their own boundaries for the purpose of consultation. . . however, if the NAHC is empowered to decide boundary conflicts and to draw permanent boundaries for the purpose of SB 18 and CEQA consultation, then tribes may be legally prevented from protecting their own ancestors and cultural sites based on the decisions of the NAHC.
- It scares us that the NAHC will be the final decision-maker regarding territory.
- The Regulations would force all these tribes to formalize these consultation relationships and, if not, the Commission will act as arbiter under §31038. That is simply not tenable for our Tribe.
- The NAHC does not have express or implied statutory authority to resolve a dispute between a federally recognized Indian tribe and any other tribe over the area(s) in which a federally- recognized Indian tribe may request consultation for the purposes of SB 18 or AB 52.
- Any NAHC claim of implied regulatory authority to include or exclude federally recognized Indian tribes for any purpose, arising from its duty to maintain the list of tribes, is an unconstitutional assumption of legislative power.
- The NAHC’s purported authority to resolve disputes over the area in which tribes may request consultation for SB 18 and AB 52 purposes is exclusive—it could exclude tribes from providing a Lead Agency with relevant information about tribal cultural resources, including their identification, protection, and culturally appropriate treatment. Such authority directly conflicts with the legislative intent and language of SB 18 and AB 52. Without express authority to exclude tribes from consulting based on mediated or determined tribal territories (or any other criteria), such authority cannot be implied from the statutes that require the NAHC to maintain the Contact List. Excluding tribes from consulting with Lead Agencies is contrary to SB 18 and AB 52. (two tribes)
- Please consider adding additional wording to include, “Non-Federal California Native American Tribes” within the narrative.
- All of the dispute resolution provisions in the Draft Regulations should be eliminated, including in this section. But if these provisions are included in some form, several changes should be made to them. Section 31038(a) should reference disputes between “Requesters” in addition to “Federally Recognized Tribes” because Section 31035(b)(1) specifically states that disputes between Requesters shall be resolved in accordance with Section 31038. The reference to “Federally Recognized Tribes” should thus be removed in this section.

Section 31038(c)

- Please rephrase paragraph, to allow fairness among all tribal communities within the State of California. Presently it presents a negative perspective towards “culturally affiliated groups,” which should be re-worded appropriately.
- The phrase “Culturally Affiliated Groups that are not recognized as tribes by the federal government” is not defined in the regulations and thus should not be used in this section. This phrase should instead be replaced with “Non-Federally Recognized Tribes”

Section 31038

- Section 31038 provides no standard for the Commission to apply when resolving disputes over the area of consultation. . . traditional and cultural affiliation is the standard and that standard must be clear in the public hearing procedures for map disputes. Subsection 31038(e) should be revised to say: “The commission will consider the evidence presented at the public hearing to reach a decision and must find that the evidence supports a finding of traditional and cultural affiliation to an asserted consultation map area.”

Section 31039

- On a structural note, the NAHC should consider moving the mediation section (Section 31039) before the section on public hearing procedures since, in practice, mediation would occur before arriving at dispute resolution through a public hearing.
- This section should be restructured so it is clear which subparts apply to which types of conflicts: conflicts between Federally Recognized Tribes, conflicts between Requesters, or conflicts between Federally Recognized Tribes and Requesters. The addition of subheadings would help to clearly demarcate each context.
- The NAHC should establish a dedicated dispute-resolution mechanism facilitated by the Native American Heritage Commission. This mechanism could involve establishing a mediation board composed of tribal representatives, along with the Commission, to oversee discussions and mediate disputes.
- The Commission could facilitate workshops and stakeholder meetings to promote transparent communication and foster mutual respect. These measures would support fair and respectful processes, enhancing inter-tribal and agency-tribal relationships.

- Participation by federally recognized tribes must be entirely voluntary. Mediation must respect the unique historical, cultural, and kinship relationships that shape overlapping territories.
- The Commission's initial role be limited to providing notice to the parties of the dispute so that the parties may seek to resolve the dispute among themselves. The Commission may request a tentative timeline, agreed upon by the parties involved in the disputed area, indicating when the parties aim to reach resolution, and may offer support to help facilitate discussions among the parties. . . as such, references to the Commission's authority to determine the appropriate geographic areas over which Federally Recognized Tribes will engage in consultation should be removed.
- The Commission lacks both the statutory authority and the technical expertise to make such determinations. It is neither appropriate nor necessary for the Commission to arrogate itself the authority to resolve disputes over tribal identity.
- The first and most significant problem with these provisions is that it is neither appropriate nor necessary for the Commission to adjudicate what may be longstanding disputes over tribal identity or tribal boundaries. There are numerous tribes and groups in California that claim ancestry from the same historic Indian tribes, and there are also numerous tribes and groups that have disagreements about their respective geographic boundaries. These disputes are often highly contentious, and any attempt to resolve them would require complex and technical analyses of historical, anthropological, genealogical, and archaeological evidence. Simply put, this is far outside the Commission's lane. . . This is not an appropriate or desirable role for the Commission, which has not been given such authority under state law, nor does it have the necessary resources or technical expertise to make these determinations.
- It is unnecessary for the Commission to resolve these disputes in order to create the Contact List, as evident from the Commission's creation and maintenance of the existing Contact List over the past fifty years.

- These dispute resolution provisions are counterproductive because they would increase the amount of conflict between tribes. The dispute resolution process, as currently drafted, pits tribes against each other and creates a forum in which one tribe can compel other tribes to defend their identity and their geography. Tribes that have been working with the Commission for decades could potentially be forced into dispute resolution by any newly formed group that claims the same identity or the same geographic boundaries. It is entirely inappropriate for the Commission to make itself a forum for inter-tribal disputes and, further, to require tribes to resolve such disputes before they can be added to the Contact List. Instead, the Commission’s role should be fostering cooperation among tribes in service of improving the consultation process and the protection of cultural resources.
- The regulations should simply identify what requirements a tribe must meet to be included on the Contact List and identify the geographic area for which it seeks consultation. Any tribe that meets those requirements should be included on the Contact List. If multiple tribes that claim the same identity or the same geographic area can meet these requirements, then they should all be included on the list. Instead of an inter-tribal dispute resolution process, the Draft Regulations should include a process for Requesters to challenge decisions of the Commission, including decisions to exclude the tribe from the Contact List. Tribes that disagree with a decision of the Commission should be afforded an opportunity to contest that decision and present arguments and evidence for why the Commission’s decision was incorrect. Importantly, this dispute resolution process would solely apply to disputes between a tribe and the Commission and not disputes between tribes.
- There should be language that allows the requesters to mediate between themselves if there is a dispute about their traditional areas. It would make this draft less heavy-handed.
- “Participation” is not defined and should be.
- There is no clear standard for the Commission to resolve disputes.

Section 31039(e)

- The phrase “among Federally Recognized Tribes” should be removed from this section because the mediation process can also apply to disputes among Requesters, who are not federally recognized.

Section 31039(h)

- This section references the possibility of a dispute among Requesters being resolved through an “agreement on developing a plan to work cooperatively when engaging in consultation.” Is the intent of this statement to allow for two entities that both claim connection to a treaty signatory or a previously federally recognized but terminated entity to agree to both be included on the Contact List? If so, the permissibility of such agreements should be more clearly stated in the draft regulations. It is also unclear why such agreements would only be permitted to arise during mediation.

Section 31039(i)

- This section incorrectly references disputes over “geographic area,” which are already addressed in Section 31039(e). It should instead reference the types of disputes identified in Section 31039(f).

Section 31040

- When legitimate Tribes are removed from the Contact List, their ancestral sites will be destroyed by development with no Tribal input. This directly contradicts the NAHC’s mission.
- Entities might try to fight to remove each other from the List using the involuntary removal section, with neighboring tribes competing for monitoring rights. (two tribes)
- Pitting California Native American tribes against each other, and against third parties, in a contest for being included on the contact list is not a respectful approach to State-tribal relations. Rather, it perpetuates the State’s historic “divide and conquer” approach to stifling tribal autonomy and sovereignty and destroying tribal culture. (two tribes)
- There will be infighting between the tribes about getting on the Contact List. There might need to be more clarity about what the Commission is going to consider when looking at these disputes and how they’re going to weigh that evidence.
- The issue of splinter groups will come up because of these regulations. There will need to be someone “neutral”, but who has knowledge and understanding of California history and tribal communities, to make the determinations listed in this section.
- Our objections to this section include: chilling effect; weaponization risk; immediate loss of consultation causes foreseeable environmental harm.

- For many years the NAHC has not had a proper process in place to remove imposter tribes/affiliation groups within the contact list. Therefore, it has created much harm to the ancestors and the homelands. These types of groups have made a lot of money off the bones of our ancestors; it is time for recognizing the true California Indigenous Communities that have been watching over the homelands since time immemorial. This criterion is welcome within the Contact List regulations.
- Any such investigation should only be initiated only upon good cause to believe that a tribe no longer meets the criteria or has submitted materially false or misleading information and/or documentation.
- This section should make clear that Listed Entities will remain on the Contact List unless a compelling showing is made for their removal. For example, this provision could state: “A Listed Entity shall remain on the contact list unless another entity provides clear and convincing evidence that the Listed Entity is ineligible for listing and should be removed.” This change will help protect Listed Entities from frivolous or vexatious efforts to remove them from the list. (three tribes)
- The NAHC should penalize lead agencies and cultural resource monitors who utilize tribal entities that were removed from the Contact List.

Section 31040(b)

- This section should state that when the Commission staff have received information that a Listed Entity may no longer be eligible for inclusion on the Contact List the staff will provide written notice and all relevant information to the Listed Entity. The Listed Entity should also be given an opportunity to respond to that information before the Commission staff determines whether the allegations are sufficient to bring to the Commission.

Section 31040(d)

- This section should provide that if there is an investigation, the Commission staff will give the Listed Entity written notice and an opportunity to submit its own position prior to the Commission staff preparing an evaluation and recommendation regarding removal of the Listed Entity. The Listed Entity should additionally have an opportunity to provide a second response if the Commission staff subsequently recommends the removal of the Listed Entity.

Section 31040(g)

- The term “Culturally Affiliated Groups that are not recognized as tribes by the federal government” is not defined in the regulations and thus should not be used in this section. This phrase should be replaced with “Non-Federally Recognized Tribes.”