

## Proposed Draft Contact List Regulations

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

#### CHAPTER ~~1: Native American Heritage Commission~~3: Contact List Regulations

#### SECTIONS:

##### 31030. PreambleIntent

- (a) These ~~rules and~~ regulations are intended to interpret and make specific the term “Contact List” along with establishing the procedures for inclusion and removal from the “Contact List,”<sup>2</sup> established pursuant to Title 7, Division 1 (commencing with Section 65352) of Chapter 3, Article 6 of the Government Code.
- (b) The ~~contact list~~Contact List is intended for the use of the ~~Native American Heritage Commission to facilitate assist local jurisdictions and lead agencies in identifying tribes for~~ consultation under Chapter 905 of the Statutes of 2004 (SB 18) and Chapter 532 of the Statutes of 2014 (AB 52)~~.) for the purposes of cultural preservation and the protection of sacred sites.~~ Any other use of the Contact List is outside the scope of these regulations.
- ~~(e)~~ It is the Commission’s intent of, through these Regulations to ~~support, protect, and uplift the inherent tribal sovereignty of acknowledge that~~ Federally Recognized Tribes ~~and in doing so, protect the are co-equal sovereigns to the State of California that have a unique political status of Federally Recognized Tribes.~~
- ~~(c)~~ These~~which is reflected in these~~ regulations ~~do not establish.~~
- ~~(d)~~ It is the Commission’s intent, through these Regulations, to ~~acknowledge that the history of harms and depredations against California Native Americans resulted in many tribes who may lack federal recognition and that the California State Legislature through SB 18 and AB 52 provided a way for tribes to continue to protect and preserve their archaeological, historical, cultural, and sacred sites.~~
- ~~(d)~~(e) The intent of these regulations is to create the Contact List for purposes of assisting in identifying tribes for consultation under SB 18 and AB 52. Nothing within these regulations shall be construed as establishing a State of California recognition process for any culturally affiliated groups Non-Federally Recognized Tribe within the state that are not recognized by the federal government.

Note: Authority cited: ~~Sections 65092, Section 65352, and 65352.3 of the~~ Government Code.  
Reference: Sections 21073 and 21080.3.1, Public Resources Code.

**31031 Delegation**

The Commission retains all of its duties and responsibilities under Public Resources Code Section 5097.9 et seq. and through these regulations delegates specified enumerated duties and responsibilities to Commission staff.

**31032. Definitions**

- (a) “Area for Consultation” means a geographic area a Federally Recognized Tribe or Non-Federally Recognized Tribe informs the Commission they wish to engage in consultation under these regulations and includes all or part of a geographic area the Federally Recognized Tribe or Non-Federally Recognized Tribe is traditionally and culturally affiliated.
- (b) “Commission” means the Native American Heritage Commission established pursuant to Section 5097.91 of the Public Resources Code.
- (c) “Contact List” means the list maintained by the Native American Heritage Commission for the purposes of Title 7, Division 1 (commencing with Section 65352) of Chapter 3, Article 6 of the Government Code.
- ~~(e) “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.~~
- (d) “Federally Recognized Tribe” means any Indian band, nation, pueblo, village, or community recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians by its inclusion on the list of recognized Indian Tribes published by the Secretary of the Interior under the Act of November 2, 1994 (25 U.S.C. 5131).
- (e) “Final Notice of Incomplete Submission” means the final written notice to a Requester who has either:
- (1) Failed to timely respond to the Notice of Incomplete Submission; or
  - (2) Responded to the Notice of Incomplete Submission with insufficient information and/or documentation to complete the submission.
- (f) “Listed Entity” means an entity that is listed on the Contact List.
- (g) “Non-Federally Recognized Tribe” means, for the purpose of these regulations, a self-identified tribe that is not currently recognized as a tribe by the federal government.

(h) “Notice of Complete Submission” means the written notice to the ~~Requestor~~Requester that its submission is complete and contains the information and documentation required under sections ~~31033-31035~~31034-31036.

(i) “Notice of Incomplete Submission” means the written notice to the ~~Requestor~~Requester that its submission is incomplete because it failed to submit all the information and documentation specified in Sections ~~31033-31055~~. ~~The Notice of Incomplete Submission is not a denial of the request for inclusion on the Contact List.~~31034-31036.

(j) “Preponderance” means more likely to be true than not true.

(k) “Requester” means a ~~group~~Non-Federally Recognized Tribe seeking inclusion on the Contact List ~~that is not recognized as a tribe by the federal government.~~\_\_\_\_\_.

Note: Authority cited: ~~Sections 65092, Section 65352, and 65352.3 of the Government Code; and Sections 21073, 21080.3.1 of the Public Resources Code.~~

### **3103231033. Contact List**

- (a) The Contact List shall include all Federally Recognized Tribes currently located within the geographic boundaries of California, as reflected on the list of recognized Indian Tribes published by the Secretary of the Interior under the Act of November 2, 1994 (25 U.S.C. 5131) and ~~culturally affiliated groups that are not recognized by the federal government as tribes~~Non-Federally Recognized Tribes within the geographic boundaries of the State 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 ~~and which are Non-Federally Recognized Tribes.~~
- (b) The Commission shall maintain a Contact List to ~~facilitate~~assist local jurisdictions in identifying the appropriate tribes for consultation on general and specific plans pursuant to the purposes of Chapter 905 of the Statutes of 2004 (SB 18).
- (c) The Contact List will also be used by the Commission to ~~facilitate~~assist a lead agency in identifying tribes that are traditionally and culturally affiliated with the project area for purposes of consultation pursuant to Chapter 532 of the Statutes of 2014 (AB 52).
- (d) Upon request, the Commission shall provide a copy of the Contact List to any Listed Entity and to cities, counties, lead agencies, and any other entity as permitted by law.
- (e) Contact information for each Listed Entity on the Contact List will be updated quarterly. It is the responsibility of each Listed Entity to update its contact information with Commission staff to ensure the provision of accurate information in support of consultation. ~~In the event an entity~~When a Listed Entity is added to or removed from the Contact List, ~~the~~ Commission staff shall update the Contact List upon the effective date of the addition or removal.

- (f) Within one year of the effective date of these regulations, the Commission shall use its best efforts to create the first edition of the Contact List, ~~which shall include a link to each Listed Entity's consultation map.~~ However, the first edition shall not be created until after the Commission has completed reviewing all requests submitted pursuant to these regulations. ~~Any list created prior to the establishment of~~ Once the first edition of the Contact List ~~is created, any previously created list~~ shall be void. Each time the Contact List is updated, it shall include a general statement identifying additions and removals from the last version. The first edition and all following updates shall include a link to each Listed Entity's consultation map.

Note: Authority cited: ~~Sections~~ Section 65352, ~~and 65352.3 of the~~ Government Code; ~~and~~ Reference: Section 65352.3, Government Code, and Sections 21073 and 21080.3. ~~of the~~ 1, Public Resources Code.

### **3103331034. Request for Inclusion on the Contact List**

- (a) All documents submitted ~~pursuant to this section~~ must be accompanied by an attestation that the documents are true and correct copies, are available for inspection by Commission staff, and that all information contained within the records is accurate. The Commission shall provide a sample form with this language for use.
- (b) A request for inclusion on the Contact List must include the name of the ~~Requestor~~ Requester and contact person, electronic and U.S. mail addresses, and information and documentation concerning the following:
- (1) Information ~~establishing cultural affiliation, connection, required under Section 31035; and capacity as specified in Section 31034; and~~
  - (2) Description of Area for Consultation as specified in Section ~~31035~~ 31036.
- (c) Other than records exempt from disclosure under the law, which include records of Native American graves, cemeteries, and sacred places, all documents submitted to the Commission are subject to the California Public Records Act and are required to be disclosed upon receipt of a request for records.

Note: ~~Authority cited: Sections 7920—7931,~~ Section 65352, ~~and 65352.3 of the~~ Government Code.

### **31034. ——— Establishing Cultural Affiliation, Connection, and Capacity 31035. Criteria for Inclusion on the Contact List**

- (a) A Requester must establish ~~its Cultural Affiliation~~ that it has previously been acknowledged as a tribe by the federal government or was notified of the opportunity to participate in consultation as a tribe under SB 18 from 2005 to within one year prior to the effective date

~~of these regulations~~ and that it is traditionally and culturally affiliated with the ~~geographic area where it seeks consultation.~~Area for Consultation. Additionally, a ~~Requestor~~Requester must demonstrate that it has historically and currently engages in consultations and implemented efforts to preserve and protect archaeological, historical, cultural, and sacred sites that are located within the ~~geographic area where it seeks consultation.~~DocumentsArea for Consultation. For all ~~documentation~~ submitted pursuant to this section must be accompanied by an attestation that they are true and correct copies that are available for inspection by ~~under subsections (b) (1) – (3), if more than one Requester has the same name, Commission staff~~ onshall request and that all information contained about each Requester’s historic use of the name which shall be included in the documents is accurate.evaluation and recommendation prepared for the Commission.

~~(b) In order to demonstrate its Cultural Affiliation, a Requester shall submit information that may include, but is not limited to oral tradition evidence; documentation of tribal traditional knowledge; that the group is connected to a California Native American linguistic group that shares its cultural identity, and historical federal documentation of its past recognition in support of one or more of the following:~~

~~(1) Evidence that the group was a signatory to one of the eighteen unratified treaties with the United States drafted between April 29, 1851, and August 22, 1852. If more than one Requestor asserts that it is connected to an earlier group that was a signatory to one of the eighteen unratified treaties, then none of the Requestors will be considered for inclusion on the Contact List until the Commission makes a determination of which Requestor is the appropriate entity. This determination shall be made prior to the creation of the first edition of the contact list. If this situation arises, Commission staff shall inform each Requestor that the Commission will make a determination of the appropriate entity. if a Requestor chooses, it may submit the dispute as to which is the correct group for resolution in accordance with section 31039.~~

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

~~Evidence that the present day group was at one time recognized~~(b) In order to demonstrate that it has previously been acknowledged as a tribe by the federal government

or was notified of the opportunity to participate in consultation as a tribe under SB 18 from 2005 to within one year prior to the effective date of these regulations, a Requester shall demonstrate one of the following:

(1) The Requester was at one time acknowledged as a tribe by the federal government but was subject to termination in the 20<sup>th</sup> century. In support, the Requester shall submit a copy of the act of Congress listing the Requester as among those tribes terminated by that act. The Requester's name must be the same as the terminated tribe listed in the act.

~~(3) The Requester has been acknowledged as a tribe by the federal government.~~

~~(4)(2) (c) In support, the Requester shall provide copies of the documents listed in subsections (A) - (C). The Requester's connection to name must be the geographic area where it seeks consultation shall be determined same as in the following manner: submitted documents.~~

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

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

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

~~(A) Federal land patents issued in the name of the Requester.~~

~~(B) The Requester is included in "Ten Years of Tribal Government under the I.R.A., United States Indian Service, 1947", by Theodore Hass.~~

~~(C) The Requester is listed in Congressional reports of the Federal Central Office of the Indian Service or the Bureau of Indian Affairs.~~

(3) The Requester was notified of the opportunity to participate in consultation as a tribe under SB 18 from 2005 to within one year prior to the effective date of these regulations. In support, the Requester shall provide copies of the documents listed in subsections (A) – (B). The Requester's name must be the same as in the submitted documents.

(A) General or specific plan adoptions or amendments that list the Requester as among those tribes that were notified of the opportunity to participate in consultation on the plan.

(B) Environmental documents created as part of a general or specific plan adoption or amendment in which the Requester is noted as among those tribes who were notified of the opportunity to consult on the plan.

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

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

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

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

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

(4) Documentation concerning conservation easements, restrictive covenants, and similar deed restrictions held by the Requester for purposes of archaeological, historical, cultural, and sacred sites preservation and protection.

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

~~31035.~~ ~~—————~~ ~~Description~~31036. Map of Area for Consultation

(a) In order for the Commission to effectively ~~facilitate~~assist local jurisdictions and lead agencies in identifying the appropriate tribes for consultation conducted pursuant to Chapter 905 of the Statutes of 2004 (SB 18) and Chapter 532 of the Statutes of 2014 (AB 52), a Requester and a Federally Recognized Tribe shall provide the Commission with ~~information regarding the geographic area over which it seeks consultation. This information shall be conveyed via a map and narrative and may include identification of counties, cities, unincorporated communities, national parks or forests, and state and local parks that are located within the area.~~its Area for Consultation. ~~If this information is requested, Commission staff will assist in creating a digital map. If a Federally Recognized Tribe does not provided~~provide a map, the Commission will use the best information available, to meet its statutory requirements.

~~(1) When maps and narratives are submitted or updated, Commission staff shall review its records to determine whether another Requester or Federally Recognized Tribe is seeking consultation in the same area. If there is more than one Requester or Federally Recognized Tribe seeking consultation in an area, the Commission staff shall provide copies to the submitting party a copy of each tribe's all submitted maps with an overlapping Area of Consultation. After reviewing the maps, a submitting party may either confirm or revise their submitted map and narrative to the others, requesting confirmation of or revision to the map.~~

~~(1)(2) If there is a dispute between Federally Recognized Tribes, concerning the geographic area in which consultation is sought, it shall be resolved. Listed Entities have conflicts regarding their respective Area of Consultation and want the Commission to provide assistance in resolving the conflict they may request mediation in accordance with section 31038.~~

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

~~(b) In order for the Commission to effectively facilitate consultation conducted pursuant to Chapter 905 of the Statutes of 2004 (SB 18) and Chapter 532 of the Statutes of 2014 (AB 52), a Requestor shall provide the Commission with information regarding the geographic area over which it seeks consultation. This information shall be conveyed via a map and a narrative and may include identification of counties, cities, unincorporated communities, national parks or forests, and state and local parks that are located within the area.~~

~~(1) When new maps and narratives are submitted, Commission staff shall review its records to determine whether another Requestor is seeking consultation in the same area. If there is more than one Requestor seeking consultation in an area, the Commission staff shall provide copies of each Requestor's submitted map and narrative to the others, requesting confirmation of or revisions to the map. If there~~

~~is a dispute between Requestors concerning the geographic area in which consultation is sought, it shall be resolved in accordance with section 31038.~~

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

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

Note: Authority cited: Section 65352.3 ~~of the~~, Government Code.

~~31036.~~ 31037.      **Review Process**

(a) ~~For a~~ request for inclusion on the Contact List ~~to be deemed complete, it~~ must contain the following:

(1) Information and documentation described in section ~~31033~~31034;

(2) Information and documentation ~~establishing cultural affiliation~~ described in section ~~31034~~31035; and

(3) Area for Consultation described in section ~~31035~~31036.

(b) If the submission is determined to be complete, the ~~Requestor~~Requester will be sent a Notice of Complete Submission ~~via regular USPS mail and, if provided, electronic mail.~~ If the submission is determined to be incomplete, the ~~Requestor~~Requester will be sent a Notice of Incomplete Submission that identifies the information and/or documentation needed for the submission to be considered complete.

(c) Upon determining that the submission is complete, Commission staff shall:

(1) Review the submission and develop any recommendations to the Commission. The evaluation and recommendation shall include a reference to the evidence supporting the criteria set forth in these regulations. During this review, Commission staff may request and receive additional information from the ~~Requestor~~Requester.

(2) Provide the ~~Requestor~~Requester with a copy of the evaluation and recommendation along with the procedures for the public hearing.

- ~~(3) Provide the Requester with at least 30 days to file a response to the Commission staff's evaluation and recommendation.~~
- ~~(3)(4)~~ (4) Schedule a public hearing, in accordance with section ~~3-103731039~~ where the Commission will make a final determination on the submission.
- ~~(4) Provide the Requester with at least 30 days to file a response to the Commission staff's evaluation and recommendation.~~
- (5) Provide public notice at least 30 days prior to the scheduled public hearing ~~so as to allow for review of the submission and to provide information to the Commission about the submission.~~ Any information submitted ~~to~~by the ~~Commission~~public must be done ~~so~~ no later than 10 days before the public hearing and, unless exempt under the Public Records Act, shall be included in the materials made available to the public.
- (d) If a submission is determined to be incomplete, a ~~Requestor~~Requester who receives a Notice of Incomplete Submission will have 60 days from the date of the notice to submit the additional information requested. The ~~Requestor~~Requester may submit a request for an additional 60 days to comply with this deadline. A Notice of Incomplete Submission is not a denial of the request for inclusion on the Contact List.
- (1) If the ~~Requestor~~Requester timely responds to the Notice of Incomplete Submission with the information and/or documents requested, Commission staff will send a Notice of Complete Submission.
- (2) If the ~~Requestor~~Requester fails to timely respond to the Notice of Incomplete Submission or fails to provide the documentation requested, the submission will be deemed incomplete, and Commission staff will send a Final Notice of Incomplete Submission.
- (3) A ~~Requestor~~Requester who fails to timely respond to a Final Notice of Incomplete Submission will not be eligible to request inclusion on the Contact List for a minimum of 6 months from the date of the Final Notice of Incomplete Submission.
- (e) A ~~Requestor~~Requester may seek review of a Final Notice of Incomplete Submission within 30-days from the date of the Final Notice of Incomplete Submission. Upon receipt of a timely request for review, the Commission staff shall:
- (1) Prepare an evaluation explaining the reasons the submission was determined to be incomplete, which shall include citations to information provided by the ~~Requestor~~Requester and any applicable sections of these regulations.
- (2) Provide the ~~Requestor~~Requester with a copy of the evaluation.

- (3) Provide those ~~Commissioners who are~~ members of the ~~Commission who oversee the staff's work on the contact list~~ Contact List subcommittee with a complete copy of the ~~Requestor's~~Requester's submission along with a copy of the evaluation.
- (4) Provide the ~~Requestor~~Requester with at least 30 days to file a response to the Commission staff's evaluation which shall be provided to the reviewing Commission members.
  - (a) If after reviewing the submission and the staff evaluation, the reviewing Commission members determine that the submission is incomplete, they shall inform the ~~Requestor~~Requester of the decision and indicate what materials are needed for the submission to be complete.
  - (b) If after reviewing the submission and the staff evaluation, the reviewing Commission members determine that the submission is complete, they shall inform the Commission staff of the decision and direct that a Notice of Complete Submission be sent to the ~~Requestor~~Requester.

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

~~31037. Public Hearing Procedures Requests 31038. Mediation for Inclusion~~

- ~~(a) All requests for inclusion on the Contact List will be decided by majority vote of the Commission after a public hearing.~~
- ~~(b)(a) Prior to a public hearing, Commission staff shall:~~
  - ~~(1) Provide the Requestor with at least 30 days written notice.~~
  - ~~(2) Provide the Requestor with a copy of the Commission staff's evaluation and recommendation on the submission.~~
  - ~~(3) Provide the Requestor with at least 15 days to file a response to the Commission staff's evaluation and recommendation.~~
  - ~~(4) Provide the Requestor with a copy of the public hearing procedures.~~
  - ~~(5) Provide members of the public with the opportunity to provide comment on the submission, consistent with the requirements set forth in the Bagley-Keene Open Meeting Act.~~

~~During the public hearing, the Commission will consider the following:~~

~~(1) The Commission staff's evaluation and recommendation(s).~~

~~(2) Any timely filed written responses to the Commission staff's evaluation and recommendation(s).~~

~~(3) Any timely submitted information submitted by Federally Recognized Tribes and Culturally Affiliated groups that are not recognized as tribes by the federal government.~~

~~(4) Testimony by the Requestor.~~

~~(5) Comments from members of the public that are received by the Commission pursuant to the requirements in the Bagley Keene Open Meeting Act.~~

~~(6) Any additional evidence provided by the Requestor that could not have been previously submitted.~~

~~(7) Any other evidence that was not reasonably available at the time the Commission staff made their recommendation on the submission.~~

~~During the public hearing, the Commission may request additional information from the Commission staff and the Requestor, or their designee, related to the criteria under Section 31034. The Commission, at its discretion, may continue a public hearing to consider any additional evidence or arguments.~~

~~(e) The Commission will consider the evidence presented at the public hearing to reach a decision and must find that a Preponderance of the evidence supports the action on the submission.~~

~~(f) Within 60 days of its determination, the Commission will provide the Requestor with a written determination explaining the basis for its decision.~~

~~(g) If the Commission approves a request for inclusion on the Contact List, the Requestor will be added to the Contact List.~~

~~If the Commission denies a request for inclusion on the Contact List the Requestor may submit a new request any time after a minimum of one year from the date of the written determination. Any subsequent request must contain new evidence not previously submitted in conjunction with any prior request.~~

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

(a) When Listed Entities have an unresolved dispute regarding their respective Area for Consultation, they may mutually agree in writing to engage in mediation through the Commission.

(b) To request mediation all parties to the dispute must independently or via a joint letter signed by all parties submit a written request to the Commission via electronic mail to [nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov). The written request for mediation shall contain the following information. (1) The Listed Entities involved in the dispute.

(2) A brief description of the nature of the dispute.

(3) An overview of attempts to resolve the dispute amongst the Listed Entities.

(c) Upon receipt of a written request for meditation, Commission staff shall have 30 days to do the following:

(1) Confirm in writing via electronic mail that all Listed Entities involved in the dispute agree to engage in mediation through the Commission.

(2) Request dates that each party to the dispute is available for mediation.

(3) Request that each party provide any information in addition to that provided pursuant to subsection (b) that is relevant to the dispute.

(d) No later than 15 days after confirming each party to the dispute's availability ~~31038.~~ **Public Hearing Procedures — Consultation Map Disputes**

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

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

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

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

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

- ~~(4) Provide the parties with at least 30 days' written notice of the public hearing.~~
- ~~(5) Provide the parties with a copy of the public hearing procedures.~~
- ~~(6) Provide public notice at least 30 days prior to the scheduled public hearing to allow for review of the maps and narratives and to provide information to the Commission. Any information submitted to the Commission must be done so no later than 10 days before the public hearing and, unless exempt under the Public Records Act, shall be included in the materials made available to the public.~~
- ~~(c) During the public hearing, the Commission will consider the following:~~
  - ~~(1) The Commission staff's evaluation and recommendation.~~
  - ~~(2) Any timely filed written responses to the Commission staff's evaluation and recommendation(s).~~
  - ~~(3) Any timely submitted information submitted by Federally Recognized Tribes and Culturally Affiliated groups that are not recognized as tribes by the federal government.~~
  - ~~(4) Testimony by the parties.~~
  - ~~(5) Comments from members of the public that are received by the Commission.~~
  - ~~(6) Any additional evidence provided by the parties that could not have been previously submitted.~~
  - ~~(7) Any other evidence that was not reasonably available at the time the Commission staff made their recommendation.~~
- ~~(d) The Commission may request additional information from the Commission staff and a party, or their designee. The Commission, at its discretion, may continue a public hearing to consider any additional evidence or arguments.~~
- ~~(e) The Commission will consider the evidence presented at the public hearing to reach a decision and must find that a Preponderance of the evidence supports its decision on the parties' consultation maps.~~
- ~~(f) Within 60 days of its determination, the Commission will provide the parties with a written determination explaining the basis for its decision.~~

### ~~31039. ————~~ ~~Mediation and Dispute Resolution~~

- ~~(a) When there is a dispute regarding the geographic area over which consultation is sought, Commission staff shall schedule individual consultation with each party to the dispute to determine whether the conflict may be resolved. Prior to consultation, Commission staff shall do the following:~~
- ~~(1) Inquire as to whether participation by a member or members of the Commission is requested.~~
  - ~~(2) Review the information provided under section 31035 and if it would assist in clarifying the area in which consultation is requested, request additional documents in support of the submitted map and narrative.~~
- ~~(b) If after consultation, one or more party to the dispute revises its map of the geographic area over which it seeks consultation, the result of which is that there is no longer more than one party seeking consultation in that area, Commission staff shall inform any other party to the dispute that the matter is resolved.~~
- ~~(c) If individual consultation fails to resolve the dispute, the parties will engage in non-binding mediation conducted by a member of the Commission or Commission staff, Commission staff shall schedule mediation which shall be conducted no later than 30 days after the date of scheduling.~~
- ~~(e) Mediation will be conducted by a Commission staff member that has received training as a mediator. The mediator will assist the parties in reaching agreement on either revising their maps Area for Consultation so that there is not more than one party Listed Entity seeking consultation in the same geographic area or in developing a plan to work cooperatively when engaging in consultation in the shared area. All agreements reached between the parties shall be written, signed by all parties, placed in Commission files, and copies provided to each party.~~
- ~~(d) If mediation fails to result in agreement among Requestors, the Commission shall determine, based on a Preponderance of the evidence, the appropriate geographic area over which the parties will engage in consultation as part of the public hearing conducted under section 31038. If a Commission member served as mediator, then they shall recuse themselves from participating in the final Commission determination.~~
- ~~(e) If mediation fails to result in agreement among Federally Recognized Tribes, the Commission shall make a determination as to the appropriate area over which the parties will engage in consultation after a public hearing held in accordance with section 31038.~~
- ~~(f) When there is a dispute as to which present-day group is connected to an earlier group that was a signatory to one of the eighteen unratified treaties, or a group that was at one time recognized as a tribe by the federal government, Commission staff shall schedule~~

~~individual consultation with each party to the dispute to determine whether the conflict may be resolved. Prior to consultation, Commission staff shall do the following:~~

- ~~(1) Inquire as to whether participation by a member or members of the Commission is requested.~~
- ~~(2) Review the information provided under section 31034 and if it would assist in clarifying the Requestor's connection to a treaty signatory or formerly recognized tribe, request additional documents.~~
- ~~(g) If after consultation, one or more party to the dispute withdraws its request for inclusion on the Contact List, the result of which is that there is no longer more than one present day group asserting that it is connected to an earlier group that was a signatory to one of the eighteen unratified treaties, or a group that was at one time recognized as a tribe by the federal government, Commission staff shall inform any other party to the dispute that the matter is resolved.~~
- ~~(h) If individual consultation fails to resolve the dispute, the parties will engage in non-binding mediation conducted by a member of the Commission or Commission staff that has received training as a mediator. The mediator will assist the parties in reaching agreement on developing a plan to work cooperatively when engaging in consultation.~~
- ~~(i) If mediation fails to result in agreement among Requestors, the Commission shall make a determination as to the appropriate geographic area over which the parties will engage in consultation as part of the public hearing conducted under section 31038.~~

### **3104031039. Involuntary Removals**

- (a) The Commission may initiate an investigation into whether a Listed Entity should be removed from the Contact List because it ~~no longer meets the criteria for inclusion on the Contact List or that it~~ submitted materially false or misleading information and/or documentation in connection with its request for inclusion on the Contact List.
- (b) Upon receipt by Commission staff of written information indicating a Listed Entity may no longer be eligible for inclusion on the Contact List, it shall review the information to determine whether the allegations are sufficient to bring to the Commission at a public meeting.
- (c) If Commission staff determines that the written allegations may support removal of a Listed Entity from the Contact List, it shall present the Commission with the information in a public meeting who may direct Commission staff to conduct an investigation.
- (d) If after an investigation, it is determined that there are grounds for removal of the Listed Entity from the Contact List, the Commission staff shall prepare an evaluation and recommendation(s) regarding removal of the Listed Entity.

- (1) The recommendation(s) shall include the basis for the recommendation(s) and the evidence relied upon in making the evaluation and recommendation(s).
  - (2) Commission staff shall mail and, if available, email a copy of the evaluation and recommendation(s) to the Listed Entity at the address provided to the Commission.
  - (3) The Listed Entity shall have 60 days from the date of mailing to respond in writing explaining the Listed Entity's support or opposition to the evaluation and recommendations.
  - (4) Upon receipt of the Listed Entity's response, a public hearing shall be scheduled and conducted in accordance with section 31039.
- ~~(e) All decisions as to whether to remove a Listed Entity will be decided by majority vote of the Commission after a public hearing.~~
- ~~—(f) Prior to a public hearing, Commission staff shall:~~
- ~~(1) Provide the Listed Entity with at least 30 days' written notice.~~
  - ~~(2) Provide the Listed Entity with a copy of the public hearing procedures.~~
  - ~~(3) Provide public notice and an opportunity for members of the public to provide comment on the submission, consistent with the requirements set forth in the Bagley-Keene Open Meeting Act.~~
- ~~(g) During the public hearing, the Commission will consider the following:~~
- ~~(1) The Commission staff's evaluation and recommendation(s).~~
  - ~~(2) Any timely filed written responses to the Commission staff's evaluation and recommendation(s).~~
  - ~~(3) Any timely submitted information submitted by Federally Recognized Tribes and Culturally Affiliated groups that are not recognized as tribes by the federal government.~~
  - ~~(4) Testimony by the Listed Entity.~~
  - ~~(5) Comments from members of the public that are received by the Commission pursuant to the requirements in the Bagley-Keene Open Meeting Act.~~
  - ~~(6) Any additional evidence provided by the Listed Entity that could not have been previously submitted.~~

- ~~(7) Any other evidence that was not reasonably available at the time the Commission staff made their recommendation.~~
- ~~(h) During the public hearing, the Commission may request additional information from Commission staff and the Listed Entity, or their designee. The Commission, at its discretion, may continue a public hearing to consider any additional evidence or arguments.~~
- ~~(i) The Commission will consider the evidence presented at the public hearing to reach a decision and must find that a Preponderance of the evidence supports removal of the Listed Entity from the Contact List.~~
- ~~(j) Within 60 days of its determination, the Commission will provide the Listed Entity with a written determination explaining the basis for its decision.~~
- ~~(k)(e) Upon the issuance of a written determination issued after a public hearing that the Listed Entity is removed from the Contact List, they shall be removed immediately and the Contact List updated in accordance with section 3103231033.~~
- ~~(f) A Listed Entity removed from the Contact List may not request to be included on the Contact List until at least two years from the date of the written determination removing the Listed Entity.~~

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

### **3104131040. Voluntary Removals**

At any time, a Listed Entity may request in writing to be removed from the Contact List. The Contact List will be updated in accordance with section 3103231033. A Listed Entity voluntarily removed may request to be included on the Contact List at any time in accordance with sections ~~31033-3103531034 - 31036~~.

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

### **31041. Public Hearing Procedures**

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

(1) Provide the Requester or Listed Entity with at least 30 days written notice via USPS regular mail or, if available, electronic mail, which shall contain the following:

(A) A copy of the Commission staff's evaluation and recommendation.

(B) A copy of the Commission's public hearing procedures.

(C) A statement that any response to the Commission staff's evaluation and recommendation shall be submitted in writing no later than 10 days before the public hearing via electronic mail at [nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov).

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

(1) The Commission staff's evaluation and recommendation(s).

(2) Any timely filed written responses to the Commission staff's evaluation and recommendation(s).

(3) Any information about the Requester submitted no later than 10 days before the scheduled hearing.

(4) Testimony by the Requester or Listed Entity.

(5) In the case of a Requester, any resolutions or letters of support from Federally Recognized Tribes sharing the Requester's cultural affiliation.

(6) Comments from members of the public made during public comment prior to a Commission vote.

(7) Any additional evidence provided by the Requester or Listed Entity at the hearing that was not available at the time Commission staff made their recommendation.

(c) During the public hearing, the Commission may request additional information from the Commission staff and the Requester or Listed Entity or their designee. The Commission, at its discretion, may continue a public hearing to consider any additional evidence or arguments.

(d) The Commission will consider the evidence presented at the public hearing to reach a decision and must find by a majority vote of Commissioners that a Preponderance of the evidence supports the inclusion of the Requester on the Contact List or the removal of a Listed Entity.

(e) Within 60 days of its determination, the Commission will provide the Requester or Listed Entity with a written determination explaining the basis for its decision.

(f) If the Commission approves a request for inclusion on the Contact List, the Requester will be added to the Contact List.

(g) If the Commission denies a request for inclusion on the Contact List the Requester may submit a new request any time after a minimum of one year from the date of the written determination. Any subsequent request must contain new evidence not previously submitted in conjunction with any prior request.

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