

## **Proposed Draft Contact List Regulations**

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

#### **CHAPTER 3: Contact List Regulations**

##### **31030. Intent**

- (a) These 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, established pursuant to Title 7, Division 1 (commencing with Section 65352) of Chapter 3, Article 6 of the Government Code.
- (b) The Contact List is intended for the use of the Commission to 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.
- (c) It is the Commission's intent, through these Regulations to acknowledge that Federally Recognized Tribes are co-equal sovereigns to the State of California that have a unique political status which is reflected in these regulations.
- (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.
- (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 Non-Federally Recognized Tribe within the state.

Note: Authority cited: Section 65352 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.
- (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 Requester that its submission is complete and contains the information and documentation required under sections 31034-31036.
- (i) “Notice of Incomplete Submission” means the written notice to the Requester that its submission is incomplete because it failed to submit all the information and documentation specified in Sections 31034-31036.
- (j) “Preponderance” means more likely to be true than not true.

(k) “Requester” means a Non-Federally Recognized Tribe seeking inclusion on the Contact List.

Note: Authority cited: Section 65352, Government Code.

### **31033. 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 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 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 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. When a Listed Entity is added to or removed from the Contact List, 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. However, the first edition shall not be created until after the Commission has completed reviewing all requests submitted pursuant to these regulations. 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: Section 65352, Government Code. Reference: Section 65352.3, Government Code, and Sections 21073 and 21080.3.1, Public Resources Code.

**31034. Request for Inclusion on the Contact List**

- (a) All documents submitted 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 Requester and contact person, electronic and U.S. mail addresses, and information and documentation concerning the following:
  - (1) Information required under Section 31035; and
  - (2) Description of Area for Consultation as specified in Section 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: Section 65352, Government Code.

**31035. Criteria for Inclusion on the Contact List**

- (a) A Requester must establish 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 Area for Consultation. Additionally, a 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 Area for Consultation. For all documentation submitted under subsections (b) (1) – (3), if more than one Requester has the same name, Commission staff shall request information about each Requester’s historic use of the name which shall be included in the evaluation and recommendation prepared for the Commission.
- (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.

- (2) The Requester has been acknowledged as a tribe by the federal government. In support, the Requester shall provide copies of the documents listed in subsections (A) - (C). The Requester's name must be the same as in the submitted documents.
  - (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 in the Area for Consultation, it shall provide the following:
  - (1) Names and backgrounds of 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 Requester has placed on the Commission's sacred lands file, including approximate date(s) of the request(s).

- (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: Section 65352, Government Code.

**31036. Map of Area for Consultation**

(a) In order for the Commission to effectively 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 a map of its Area for Consultation. If requested, Commission staff will assist in creating a digital map. If a Federally Recognized Tribe does not provide a map, the Commission will use the best information available to meet its statutory requirements.

- (1) When maps are submitted, 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 the submitting party a copy of all submitted maps with an overlapping Area of Consultation. After reviewing the maps, a submitting party may either confirm or revise their submitted map.

- (2) If 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.

Note: Authority cited: Section 65352.3, Government Code.

**31037. Review Process**

(a) A request for inclusion on the Contact List must contain the following:

- (1) Information and documentation described in section 31034;

- (2) Information and documentation described in section 31035; and

- (3) Area for Consultation described in section 31036.

(b) If the submission is determined to be complete, the 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 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 Requester.
- (2) Provide the 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.
- (4) Schedule a public hearing, in accordance with section 31039 where the Commission will make a final determination on the submission.
- (5) Provide public notice at least 30 days prior to the scheduled public hearing. Any information submitted by the public must be done 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 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 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 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 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 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 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 Requester and any applicable sections of these regulations.
- (2) Provide the Requester with a copy of the evaluation.
- (3) Provide those Commissioners who are members of the Contact List subcommittee with a complete copy of the Requester's submission along with a copy of the evaluation.
- (4) Provide the 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 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 Requester.

Note: Authority cited: Section 65352, Government Code.

**31038.        Mediation**

- (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 mediation, 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, 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 Area for Consultation so that there is not more than one Listed Entity seeking consultation in the same geographic area or in developing a plan to work cooperatively when engaging in consultation in the area. All agreements reached between the parties shall be written, signed by all parties, placed in Commission files, and copies provided to each party.

**31039. Involuntary Removals**

- (a) The Commission may initiate an investigation into whether a Listed Entity should be removed from the Contact List because 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) 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 31033.
- (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: Section 65352, Government Code.

#### **31040. 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 31033. A Listed Entity voluntarily removed may request to be included on the Contact List at any time in accordance with sections 31034 - 31036.

Note: Authority cited: Section 65352, 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.