

# Language for Goal 1 Subcommittee Review

## 1. Tribal Stewardship and Land Return

California Tribal Nations have specific histories and relationships to the State of California, resulting in a unique set of challenges and opportunities for advancing agricultural land equity. To address this, Goal 1 focuses on the specific needs of California Tribal Nations; however, Goals 2 through 4 are also relevant for Tribal Nations, who should be explicitly included in any action to advance fair access for priority producers and land stewards.

Throughout this report, the term California Tribal Nations is used in reference to both federally recognized and non-federally recognized California Native American Tribes. This term was selected to denote the inherent sovereignty of Native communities and their relations of care since time immemorial with the land that is now called California.

However, there are important legal distinctions between federally recognized and non-federally recognized Tribal Nations that impact barriers to land access and strategies to overcome them. These differences are noted where relevant.

The State of California was founded on the violent removal, coercion, murder, intimidation, and attempted extermination of California Native Americans. Governor Newsom's apology, issued in 2019 (Executive Order N-15-19), recognizes that the State of California "sanctioned over a century of depredations and prejudicial policies against California Native Americans." This order, along with institutional commitments such as the Truth and Healing Council, are the early steps of a much longer and broader process to address historical injustices that persist today.

One such injustice was the active exclusion and prohibition of Traditional Ecological Knowledge and stewardship practices, to the detriment of cultural, societal, and ecological health. The work of the Task Force and this report considers the meaning of "agriculture" to include living in relation with the land, water, air, and life in all forms. These relationships of care are the foundation for many culturally and regionally diverse First Foods, fibers, and medicines, from acorns and elderberries to sedge basket material, that play a critical role in California's ecosystem overall.

Today, many Tribal Nations have little to no access to their ancestral lands. Those who do maintain access often have small or non-contiguous parcels. This often limits or removes access to essential ecosystems and cultural and spiritual practices, as in the case of Tribal Nations whose recognized lands are inland but for whom coastal lands are core to their cultural knowledge, practice, and belonging.

[ADD: Description of the history of the statehood of California and how state and federal government fail to honor inherent sovereignty and rights; acreage lost by Tribes at the hands of the Spanish, Mexican and U.S. governments; acreage lost to state, county, and city governments.]

One historical injustice that continues to impact Tribal Nations today is the loss of Tribal land through allotment. The General Allotment Act (Dawes Act), passed by Congress in 1887, authorized the division of Tribal land into allotments for private ownership by Tribal individuals and families. Often, the most productive land was deemed “excess” and could be sold to non-Tribal individuals.<sup>38</sup>

Overall, allotment in the United States resulted in the loss of 90 million acres of Tribal land, and numerous other challenges persist today as a result of allotment, including checkerboard-like ownership of land, lost access to sacred sites, fractionation through transfer to multiple heirs, and lack of access to land that is “landlocked,” meaning surrounded by privately held land.<sup>39</sup>

There are 110 federally recognized Tribal Nations in California and more than 55 non-federally recognized Tribal Nations which are partially tracked by the Native American Heritage Commission (NAHC). Federally recognized Tribal Nations in California currently hold 635,739 acres, less than 1% of the state, in reservation lands.<sup>40</sup> An additional approximately 12,635 total acres of land have been returned to Native American Tribes in California since 1995.<sup>41</sup> In 2024, the California Natural Resources Agency’s (CNRA) Tribal Nature Based Solutions Program awarded grants to 33 Tribal Nations to support the return of roughly 38,950 acres of land.<sup>42</sup> While this work is a valuable step in the right direction, many California Tribal Nations are landless or on very small parcels.<sup>43</sup>

These persistent land access challenges arising from intentional exclusion and land theft since the colonization of California by Europeans require a cohesive response from the state. The recommendations that follow are intended to complement CNRA’s Tribal Stewardship Strategy and the Truth and Healing Council’s Report and further the commitments in Governor Newsom’s Statement of Administration Policy on Native American Ancestral Lands.<sup>44</sup>

## **1.1 Return publicly held lands to Tribal Nations without restrictions and encumbrances**

- a) Transfer ancestral lands to Tribal Nations free from restrictions and encumbrances.
- b) Establish and fund a Tribal Lands Return Commission comprised of regionally diverse delegates of federally recognized and non-federally recognized California Tribal Nations.
  - i) The Commission will oversee the development and implementation of a new state program designed to purchase and return ancestral lands.

- ii) The Commission will advise and oversee the creation of a statewide goal for acres of land returned to California Tribal Nations.
  - iii) In collaboration with local and state agencies, the Commission will identify surplus land and establish pathways for land return.
- c) Reduce burdens on Tribal Nations seeking to restore access to their ancestral lands.
  - i) Identify and update current policies and regulations that prohibit direct land transfer, that require the creation of a non-profit, and/or incur burdensome fees.
  - ii) If collaboration with a third party is required, prioritize partnerships with Tribal-led and Tribal-serving organizations and community-based organizations that practice cultural humility.
- d) Implement a right of first refusal process across all state agencies that provides Tribal Nations the access and opportunity to accept publicly held ancestral lands at zero or minimal cost when agencies sell or get rid of land.
- e) Coordinate with federal agencies to support the return of federally owned lands to Tribal Nations.
- f) Update the California Surplus Land Act to
  - i) Add Tribal uses to the existing list of approved uses of excess land, including affordable housing, recreation, open space, and schools;
  - ii) Ensure Tribal Nations are included in the government-to-government land transfer exemption, including those from the NAHC list, as it relates to Government code section 54221 (f)(1)(D). When a local government transfers land to a Tribal Nation on the NAHC list by establishing a co-management agreement and/or Land Back agreement, this transfer should be exempt from the Surplus Land Act.

## 1.2 Facilitate the return of privately held land to California Tribal Nations

- a) Increase funding to existing programs that support traditional ecological knowledge, ancestral land return, acquisition, and co-management projects, such as the California Natural Resources Agency's Tribal Nature Based Solutions program.
- b) Incentivize land trusts and private individuals to transfer land to Tribal Nations. See recommendations on land trusts and tax incentives in Goal 2 for specific pathways to achieve this objective.
- c) Offer or fund specialized and unique real estate agent services to reduce the burden and up-front costs of private land return for Tribal Nations.
- d) Provide financial and technical assistance and legal aid to federally recognized Tribal Nations working to convert fee land to trust land. Exempt Tribal Nations from property taxes in the interim.

- e) To assist with expediency and reduce costs associated with private land return, require a public entity to serve as a temporary intermediary to purchase and hold land until it can be returned to Tribal Nations in accordance with specific processes and timelines.
- f) Resolve access challenges that resulted from the allotment of Tribal lands by providing funding for the following:
  - i) Developing access roads and rights of way to landlocked parcels, and
  - ii) Resolving fractionated ownership on lands owned by Tribal Nations.

### **1.3 Enable and promote the implementation of Traditional Ecological Knowledge and cultural practices**

- a) Encourage and remove barriers to Tribal Nations' use of Traditional Ecological Knowledge, including cultural fire, which has been prohibited through state policy for centuries.
  - i) Through funding and policy mechanisms, support place-based Tribal stewardship practices that cultivate a wide variety of First Foods, fibers, medicines, and cultural resources.
  - ii) Fund efforts to share and advance Traditional Ecological Knowledge in culturally meaningful ways including the intergenerational transfer of land-based knowledge.
  - iii) Consult California Tribal Nations and empower Tribal stewardship when developing conservation policies and programs.
- b) In state programs and policies, define agriculture in a way that is inclusive of Traditional Ecological Knowledge and allow flexibility for diverse Tribal stewardship practices.
  - i) Revise existing guidelines that are misaligned with Tribal stewardship, such as the requirement that buffalo be kept in an enclosure.
- c) Guide and incentivize local governments to implement zoning ordinances that enable Tribal stewardship
  - i) Direct the Governor's Office of Land Use and Climate Innovation to work with Tribal Nations to develop model zoning ordinances that address the specific needs of non-federally recognized and federally recognized Tribal Nations. Include mechanisms to support stewardship on Tribal land, including traditional Tribal housing.
  - ii) Provide guidance on establishing Cultural Conservation Zoning Overlays, like Cultural Conservation Easements, to give non-federally recognized Tribal Nations land use authority over returned lands (see Appendix XX for model language).

- iii) Incentivize local governments to adopt these ordinances and modify their zoning codes to allow for traditional Tribal uses and cultural land management.
- d) Protect California Tribal practices and cultural landscapes, like traditional food groves, watersheds, and ceremonial sites by enforcing existing laws such as the California Native American Graves Protection and Repatriation Act (CalNAGPRA).

## New Appendix Definitions

**Federally recognized California Tribal Nation:** An American Indian Tribal entity which has ancestral lands within the geographic boundaries of present-day California and is recognized by the federal United States government as having a government-to-government relationship with the United States. Federally recognized California Tribal Nations possess certain inherent rights of self-government.

**Non-federally recognized California Tribal Nation:** An organization that identifies as a Native American group whose ancestors lived within the present-day boundaries of California prior to European contact, but which is not recognized by the federal government as having a government-to-government relationship with the United States due to California's unique history. The State of California has a formal process for state recognition of non-federally recognized California Tribal Nations.

**Tribal sovereignty:** Tribal Nations' possession of all powers of self government, except those relinquished under treaty with the United States, those that Congress has expressly extinguished, and those that the federal courts have ruled are subject to existing federal law or are inconsistent with overriding national policies. Tribal sovereignty includes the right to form governments, make and enforce civil and criminal law, establish and determine membership, license and regulate activities, zone, and exclude persons from Tribal lands.