

The public can join the meeting to provide public comment. Please notify Jessica Vigorito at [Jessica.Vigorito@flagstaffaz.gov](mailto:Jessica.Vigorito@flagstaffaz.gov) if you need any assistance joining the meeting.

ATTENTION  
IN-PERSON AUDIENCES AT COMMISSION MEETINGS HAVE BEEN SUSPENDED UNTIL FURTHER NOTICE

[Click here to participate in the online meeting](#)

## **NOTICE AND AGENDA**

**COMMISSION ON DIVERSITY AWARENESS**  
**Tuesday**  
**May 17, 2022**

**VIRTUAL TEAMS MEETING**  
**1:30 P.M.**

1. **Call to Order**

2. **Roll Call**

*NOTE: One or more Commission Members may be in attendance telephonically or by other technological means.*

DeAnn Wegwert, Chair  
Robert "Dan" Duke  
Claire Hardi  
Mandy Martinez Gebler

Marcela Pino  
Jean Toner, Vice Chair  
Christine Tucci

3. **Mission Statement and Land Acknowledgment**

### **MISSION STATEMENT**

*A commission to foster support, respect, awareness and appreciation of diversity among all citizens of Flagstaff.*

### **LAND ACKNOWLEDGEMENT**

*The Commission on Diversity Awareness humbly acknowledges the ancestral homelands of this area's Indigenous nations and original stewards. These lands, still inhabited by Native descendants, border mountains sacred to Indigenous peoples. We honor them, their legacies, their traditions, and their continued contributions. We celebrate their past, present, and future generations who will forever know this place as home.*

4. **Upcoming Opportunities and Announcements**

- Asian American and Pacific Islander Proclamation read by the Mayor at the May 3rd Council meeting.
- Update on the Alternative Response Model from Shannon Anderson
- Coconino County Stronger as One  
website: <https://www.coconino.az.gov/2265/Stronger-As-One>
- The Leadership group would like to know if members are interested in participating in a CODA Social Event.

5. **Public Comment**

*The Commission cannot act upon items presented during the Public Participation portion of the Agenda. Individual Commission members may ask questions of the public but are prohibited by the Open Meeting Law from discussion or considering the item among themselves until the item is officially placed on the Agenda. Each public comment or presentation will be limited to five (5) minutes.*

6. **Approval of Minutes**

A. **Consideration and Approval of Minutes:** Commission on Diversity Awareness Meeting of March 15, 2022.

Approve the minutes of the Commission on Diversity Awareness Meeting of March 15, 2022.

7. **Date of Next Meeting** - June 21st, Time TBD

8. **Action Items**

A. **Working Group for the Indigenous Representation Project at Sawmill Multicultural Art and Nature County Park**

Discuss who will represent the Commission on Diversity Awareness for this working group.

B. **Proclamations Work Group Update**

Review and approve draft Pride Proclamation to be sent to the Mayor's Office for consideration.

Discuss who will be present to accept the Proclamation, virtually or in person on May 31st.

9. **Reports/Discussion Items**

A. **Introduction** from Lisa Renee Keita, City of Flagstaff Human Resource Analyst; Employee Relations, Compliance & Training

B. **Regional Plan**

Jordan Hollinger - Associate Planner, Comprehensive Planning, City of Flagstaff

The [new website](#) provides background information about what the plan is and the process for updating it.

C. **Flagstaff Public Libraries Anti-racism Committee**

Felicia Fiedler - Discuss collaborating with the Diversity Commission and the Flagstaff Public Libraries Anti racism committee to talk about how we can better collaborate and talk about the best practices that they have come up with.

D. **Transition of the Commission Leadership roles**

The Commission will discuss the appointment process, timeline, and appointment term for the anticipated Leadership vacancy.

E. **CODA Regular Meeting**

Review the results of the email survey and discuss and vote on the new CODA Regular meeting start time, week of the month and day of the week.  
Review current [Boards and Commission meeting calendar](#).  
Discuss transition to a hybrid format.  
Ensure all members are on board for the new meeting information and confirm commitment to attendance.

10. **Agenda for Future Meeting(s)**

A. **Equitable Restroom Recommendation**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

B. **Municipal Equity Index**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

C. **Renaming of the Peaks Workgroup Update**

Pending follow up from the High School group on when to send the Commission's recommendation to Council.

D. **Future Priorities**

Criminal Justice conversation with Flagstaff Police Department  
Conversation with Downtown Business Alliance including literature to distribute  
Civil Rights

11. **Adjournment**

**CERTIFICATE OF POSTING OF NOTICE**

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. This notice has been posted on the City's website and can be downloaded at [www.flagstaff.az.gov](http://www.flagstaff.az.gov).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jessica Vigorito, Human Resources Analyst



## **Commission on Diversity Awareness**

**6. A.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 05/17/2022

**SUBJECT: Consideration and Approval of Minutes:** Commission on Diversity Awareness Meeting of March 15, 2022.

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### **STAFF RECOMMENDED ACTION:**

Approve the minutes of the Commission on Diversity Awareness Meeting of March 15, 2022.

### **Executive Summary:**

Minutes of the Commission meetings of the Commission on Diversity Awareness are a requirement of Arizona Revised Statutes and, additionally, provide a method of informing the public of discussions and actions being taken by the Commission.

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### **Attachments**

March 2022 draft minutes

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# **DRAFT MINUTES**

## **COMMISSION ON DIVERSITY AWARENESS**

**Tuesday  
March 15, 2022**

## **VIRTUAL TEAMS MEETING**

**1:30 P.M.**

### **1. Call to Order**

Chair Wegwert called the meeting to order at 1:32 PM.

### **2. Roll Call**

<b>PRESENT</b>	<b>ABSENT</b>
DeAnn Wegwert, Chair	Mandy Martinez Gebler
Robert "Dan" Duke	Jean Toner, Vice Chair
Claire Hardi	Christine Tucci
Marcela Pino	

### **3. Mission Statement and Land Acknowledgment**

#### **MISSION STATEMENT**

*A commission to foster support, respect, awareness and appreciation of diversity among all citizens of Flagstaff.*

#### **LAND ACKNOWLEDGEMENT**

*The Commission on Diversity Awareness humbly acknowledges the ancestral homelands of this area's Indigenous nations and original stewards. These lands, still inhabited by Native descendants, border mountains sacred to Indigenous peoples. We honor them, their legacies, their traditions, and their continued contributions. We celebrate their past, present, and future generations who will forever know this place as home.*

The Mission Statement was read by Commissioner Pino and the Land Acknowledgment was read by Commissioner Duke.

### **4. Upcoming Opportunities and Announcements**

- Chair Wegwert explained this new section of the agenda and clarified that these items are not meant for back and forth discussion but rather important information to share with the Commission.
- Staff Liaison provided the following announcements:
  - Vice Chair Toner and Commissioner Pino's reappointments.
  - The Diversity Survey has been posted on the Commission of Diversity Awareness webpage.
  - Community Asset Map has been posted on the Community Resources Webpage and the Commission on Diversity Awareness webpage. Other updates on the

Community Asset Map?

- The Indigenous Commission meetings: first Wednesday of each month at 11am – 1pm
- Commission Pino added that the Chief Diversity Officer recruitment for NAU will take place next fiscal year.

**5. Public Comment**

City Staff Jana Weldon (Beautification, Arts and Sciences Administrator) presented information on a Working Group for the Indigenous Representation Project at Sawmill Multicultural Art and Nature County Park. The request is to have the Commission discuss who to represent the Commission on the Diversity Commission and send out Jana's contact information. Chair Wegwert asked the Staff Liaison to add this topic to the April agenda for discussion.

**6. Approval of Minutes**

**A. Consideration and Approval of Minutes:** Commission on Diversity Awareness Meeting of February 15, 2022.

- Commissioner Duke motioned for the February 15, 2022 minutes to be approved as written.
- Commissioner Pino seconded the motion.
- Motion approved unanimously.

**7. Date of Next Meeting - April 19, 2022 at 1:30 pm**

No conflicts stated in the meeting.

**8. Action Items**

**A. Regular Meetings**

- Chair Wegwert talked about the history of the meeting length and expressed a concern limiting the time to one hour.
- Mayor Deasy explained the Executive sessions for Council which limits the availability of attending.
- Chair Wegwert asked what days/times work for the Mayor.
- Mayor Deasy explained that 12-8pm on Tuesdays are difficult but Wednesdays are very open.
- Staff Liaison will send out a survey to all Commissioner members and bring the results to the next meeting.

**B. Proclamations Work Group Update**

- Asian American and Pacific Islander (May) – Chair Wegwert read the proclamation to the Commissions.
- Commissioner Pino requested to remove "Beginning" in the third paragraph.
- Chair Wegwert drafted a new sentence for the sentence.
- Chair Wegwert motioned to approve the amended Proclamation.
- Commissioner Hardi seconded the motion.
- All approved unanimously.

9. **Reports/Discussion Items**

A. **Climate Advisory Groups**

Jenna Ortega Climate Engagement Coordinator

- City Staff Ortega provided information on Climate Advisory groups and explained that currently there are three groups (Youth, Business, and Equity).
- City Staff Ortega asked for participation and to spread the word about the Advisory groups and shared the [website](#) where more information.
- Commissioner Hardi and Commissioner Pino asked follow up questions.

B. ***MetroPlan: Stride Forward Regional Transportation Plan update***

David Wessel, MetroPlan Planning Manager

MetroPlan Manager Wessel gave a presentation on Stride Forward, the organization, work completed to date and the next steps in the plan.

C. Recommendations to Council (updates and future items)

i. **Equitable Restroom Recommendation**

Staff Liaison provided an update that this recommendation is in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again. The commission can provide an amended recommendation if they wish.

D. Current Commission Priorities

i. **Municipal Equity Index**

- Staff member Chris Rhode stated there was no update on this item.
- Staff liaison reminded that commission can provide recommendations in the meantime.

10. **Agenda for Future Meeting(s)**

A. **Renaming of the Peaks Workgroup Update**

Pending follow up from the High School group on when to send the Commissions recommendation to Council.

B. **Future Priorities**

- Criminal Justice conversation with Flagstaff Police Department
- Conversation with Downtown Business Alliance including literature to distribute
- Civil Rights

C. **Regional Plan (April)**

Jordan Hollinger - Associate Planner, Comprehensive Planning, City of Flagstaff  
The new [website](#) provides background information about what the plan is and the process for updating it.

D. **Flagstaff Public Libraries Anti-racism Committee (April)**

Felicia Fiedler - Discuss collaborating with the Diversity Commission and the Flagstaff Public Libraries Anti racism committee to talk about how we can better collaborate and talk about the best practices that they have come up with.

11. **Adjournment**

Chair Wegwert adjourned the meeting at 3:07 PM.





## Commission on Diversity Awareness

8. A.

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 05/17/2022

**SUBJECT: Working Group for the Indigenous Representation Project at Sawmill Multicultural Art and Nature County Park**

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### STAFF RECOMMENDED ACTION:

Discuss who will represent the Commission on Diversity Awareness for this working group.

### Executive Summary:

Beautification, Arts & Sciences program (Jana Weldon, Project Administrator) is forming a working group for the **Indigenous Representation** project at **Sawmill Multicultural Art and Nature County Park**. The working group will help **shape the scope** of the project with staff. The working group wants to include two members from City of Flagstaff **Beautification and Public Art Commission**, two members from City of Flagstaff **Indigenous Commission**, one member from City of Flagstaff **Commission on Diversity Awareness**, 1 member from Coconino County **Parks and Rec Commission**, one member from Coconino County **Indigenous Peoples Advisory Council**, one member from Coconino County **Coconino Hispanic Advisory Council**, and one member from Coconino County **African Diaspora Advisory Council**. Ms. Weldon will present the parameters of the project, and seeks to know who from Commission on Diversity Awareness is interested in serving on this working group. There will be on-site in-person kick off meeting probably June with one to two follow-up meetings as necessary during the summer.

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### Attachments

Working Group for the Indigenous Representation Project

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# WORKING GROUP

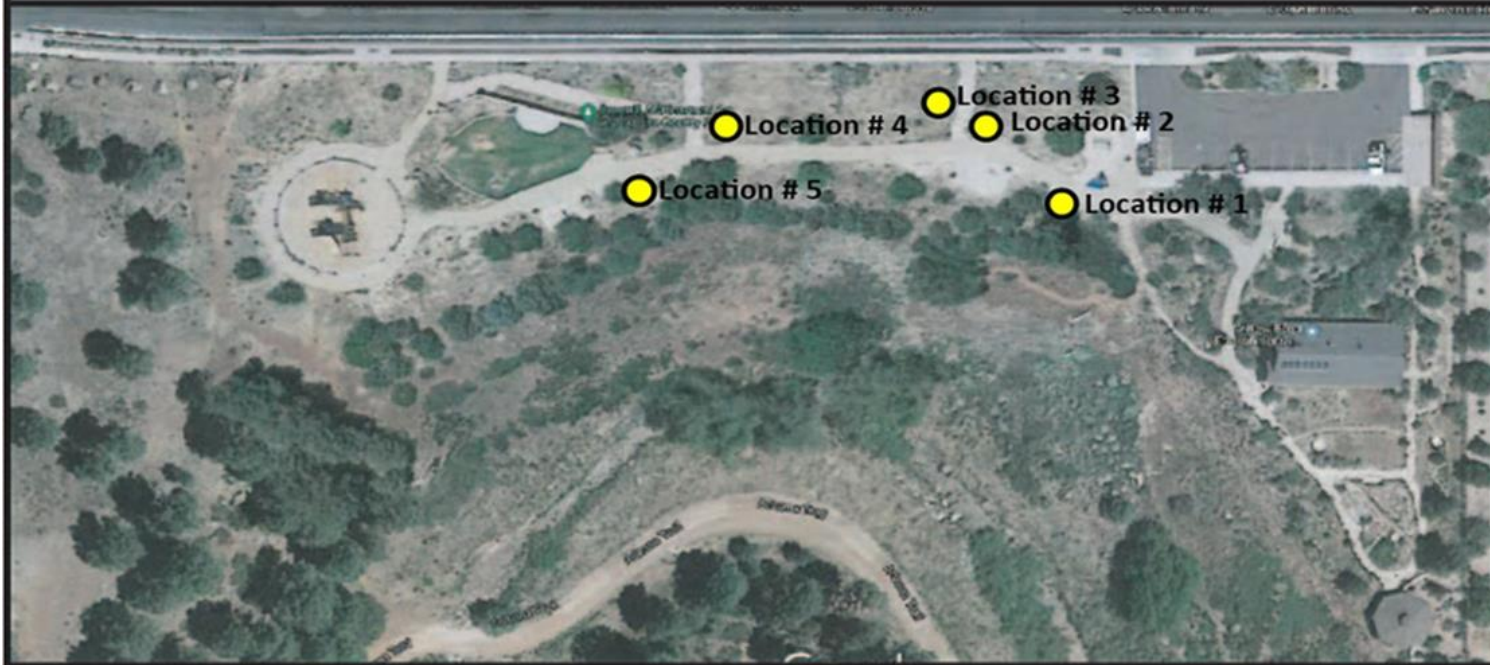
Indigenous Representation Project at Sawmill Multicultural Art and Nature County Park

# Indigenous Representation Project at Sawmill Multicultural Art and Nature County Park

## Background

- City of Flagstaff Beautification, Arts & Sciences Program through input from The Beautification and Public Art Commission and City staff and Council has **dedicated funding for Indigenous Representation cultural project(s)**
- Beautification, Arts & Sciences staff held **a series of investigatory meetings** with Rose Toehe, the City's Coordinator for Indigenous Initiatives to explore potential projects
- **Coconino County Parks and Recreation initiated rotating art projects** at Sawmill Multicultural Art and Nature County Park and has welcomed the City's invitation to continue and expand the potential of the site
- This project was prioritized to **initiate in 2022 and install in 2023**

## Sculpture installation locations at Sawmill County Park



Art Location



COCONINO  
COUNTY ARIZONA  
PARKS & RECREATION

Working Group Role:  
Determine scope of rotating temporary art at Sawmill Multicultural Art and Nature County Park. There are five pedestals for sculpture which will be the core of the project.



# Considerations the working group will explore to create a call for artwork:

- **How often should the art be rotated?** Every year? Every two years? Every three years? The longer it is out the more durable it would need to be, but shorter periods will require more cost and staff time.
- **What fee should be offered to the artist?** Should the art be a loan that the artist could sell after the display is finished?
- **Determine if a platform is needed** on one or two of the pedestals to make two-dimensional art an option as many indigenous artists work in that form.
- **Is performative art a potential as well?** at the Willow Bend Environmental Education gazebo? Or at the stage by the mural? Or along the pathway? Where else in the park?
- Funding is from the City's **Indigenous Representation** project. How will that be captured and **what other diverse cultural representation** should be explored? What will be guiding principals?
- What kind of **selection process** should be used? Could be qualifications or proposals.
- What is the **criteria for selection?** Who should be on the selection panel?



# Commissions and Councils

- 2 Commissioners from City of Flagstaff **Beautification and Public Art Commission** (BPAC)
- 2 Commissioners from City of Flagstaff **Indigenous Commission**
- 1 Commissioner from City of Flagstaff **Commission on Diversity Awareness**
- 1 Commissioner from Coconino County **Parks and Recreation Commission**
- 1 Council Member from Coconino County **Indigenous Peoples Advisory Council** (IPAC)
- 1 Council Member from Coconino County **Coconino Hispanic Advisory Council** (CHAC)
- 1 Council Member from Coconino County **African Diaspora Advisory Council** (ADAC)

# MISC:

- City Liaison: Jana Weldon, Beautification, Arts and Sciences Project Administrator, [jana.Weldon@FlagstaffAZ.gov](mailto:jana.Weldon@FlagstaffAZ.gov)
- County Liaison: Cynthia Nemeth, Coconino County Parks and Recreation Director, [cnemeth@coconino.az.gov](mailto:cnemeth@coconino.az.gov)
- Kick off meeting on-site in June
- One to three follow-up meetings as necessary



## **Commission on Diversity Awareness**

**8. B.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 05/17/2022

**SUBJECT:** Proclamations Work Group Update

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### **STAFF RECOMMENDED ACTION:**

Review and approve draft Pride Proclamation to be sent to the Mayor's Office for consideration.  
Discuss who will be present to accept the Proclamation, virtually or in person on May 31st.

### **Executive Summary:**

Proclamations are made by the Mayor of Flagstaff. The Commission on Diversity Awareness is drafting proclamations to suggest to the Mayor to further promote diversity in the City of Flagstaff.

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### **Attachments**

June 2022 Pride Proclamation draft

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# City of Flagstaff – Office of the Mayor

## Proclamation

The mission of the City of Flagstaff is to enhance quality of life and preserve the values of our community, an important part of which is embracing, respecting, and celebrating diversity; and We take pride in recognizing that civil rights and human rights construct a stronger foundation for Flagstaff as an inclusive community by promoting an environment that is welcoming and accepting and respectful of the dignity of all people; and

Flagstaff is committed to supporting visibility, dignity, and equality for LGBTQIA2S+ people in our diverse community; and

We observe Pride Month with the raising of the Rainbow Flag to honor the history of the LGBTQIA2S+ liberation movement and to support the rights of all citizens to experience equality and freedom from discrimination; and

We note with alarm that across this nation, LGBTQIA2S+ persons, especially transgender women of color, have been targeted by acts of violence, and state-level laws are being enacted denying Transgender youth, athletes' health care and basic civil human rights; and

It is essential to acknowledge that the need for education and awareness remains vital to end discrimination and prejudice; and

Celebrating Pride month influences awareness and provides support and advocacy for the Flagstaff community, and is an opportunity to take action and engage in dialogue to strengthen alliances, build acceptance and advance equal rights; and

Hand in hand, we commit to continuing our efforts to make Flagstaff a community inclusive of its lesbian, gay, bisexual, transgender, and queer and questioning population, two spirit +; and the Northern Arizona Pride Association is celebrating the annual “Pride Month” in June 2022, the goal of which is to create a consistent effort in supporting and fostering acceptance for the LGBTQIAS+ community and persons, and

In partnership, the City of Flagstaff Commission on Diversity Awareness and Northern Arizona Pride Association recommend the designation of June 2022 as Lesbian, Gay, Bisexual, Transgender and Queer or Questioning, Two Spirit + Month, in unison with national and statewide observances;

NOW, THEREFORE, I, PAUL DEASEY, MAYOR OF THE CITY OF FLAGSTAFF do hereby proclaim June 2022 as Lesbian, Gay, Bisexual, Transgender and Queer or Questioning, Two Spirit + month in the City of Flagstaff in recognition of celebrating and embracing equality with compassion and respect.

**DATED** this 7<sup>th</sup> day of June 2022.

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**MAYOR**

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**ATTEST:**

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**CITY CLERK**



## **Commission on Diversity Awareness**

**9. D.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 05/17/2022

**SUBJECT:** Transition of the Commission Leadership roles

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### **STAFF RECOMMENDED ACTION:**

The Commission will discuss the appointment process, timeline, and appointment term for the anticipated Leadership vacancy.

### **Executive Summary:**

March 2021 Meeting Minutes Summary on the Leadership roles:

- Nominations and voting occur in the same meeting in July and terms would start in October.
  - Chair and Vice Chair term of one year with the Vice Chair progressing to Chair after the one year as Vice Chair unless the Vice Chair has termed out.
  - There is no formalized position eligibility at this time.
- 

### **Attachments**

CODA Helpful Notes

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### **Commission on Diversity Awareness**

- The CODA website is: <https://www.flagstaff.az.gov/2783/Commission-on-Diversity-Awareness> which includes the meeting information, current projects and announcements, member's names and the Enacting Authority.
- The Boards and Commissions website is: <https://www.flagstaff.az.gov/994/Boards-Commissions> which includes information on Open Meeting Law, the Rules and Operations Manual and Member training.
- Duties of the Chair include:
  - The chair is the presiding officer in all commission proceedings. During the absence of the chair, the vice-chair acts as chair.
- Important reminder:
  - As a general rule, a commission may recommend to the City Council the dismissal of any member who is absent for more than two consecutive regular meetings without prior notification. This same rule applies if a member is absent for more than thirty percent (30%) of all meetings during a twelve-month period.
  - March 2021 Meeting Minutes Summary on the Leadership roles:
    - Nominations and voting occur in the same meeting in July and terms would start in October.
    - Chair and Vice Chair term of one year with the Vice Chair progressing to Chair after the one year as Vice Chair unless the Vice Chair has termed out.
    - There is no formalized position eligibility at this time.
    - Leadership Team is composed of the Chair and Vice-Chair and meets with City Liaison prior to each monthly meeting to finalize the agenda for the upcoming monthly meeting.



## **Commission on Diversity Awareness**

**9. E.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 05/17/2022

**SUBJECT:** CODA Regular Meeting

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### **STAFF RECOMMENDED ACTION:**

Review the results of the email survey and discuss and vote on the new CODA Regular meeting start time, week of the month and day of the week.

Review current [Boards and Commission meeting calendar](#).

Discuss transition to a hybrid format.

Ensure all members are on board for the new meeting information and confirm commitment to attendance.

### **Executive Summary:**

#### **Previous Council Decision on This:**

Transition to re-entry plan stage 4 April 11th.

All meetings need to stay hybrid in nature or virtual and must allow the public to access the meeting via electronic means moving forward.

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## **Commission on Diversity Awareness**

**10. A.**

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 05/17/2022

**SUBJECT:** **Equitable Restroom Recommendation**

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### **STAFF RECOMMENDED ACTION:**

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

### **Executive Summary:**

Commission recommendations are important to the City Council and they are taken under consideration for possible action. The City Council has several options and may:

- Accept the recommendation and give further direction.
- Change the provisions of a recommendation before giving further direction.
- Send a matter back for further consideration.
- Not accept the recommendation.

### **Previous Council Decision on This:**

FAIR item for September 7th Council meeting

Chair Wegwert presented the CODA recommendation to City Council on January 11, 2022.

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### **Attachments**

Equitable Restroom Recommendation

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## Recommendation to the Flagstaff City Council for a city ordinance regarding equitable restroom availability

The Commission on Diversity Awareness for the City of Flagstaff recommends the creation and passage of a city ordinance requiring that all single occupancy public restrooms be available for use for everyone regardless of gender. It is our recommendation that the ordinance include the following elements:

1. Restrooms affected by this ordinance would be those intended for use by one person at a time, or for family or assisted use, and located in buildings owned by the City of Flagstaff.
2. Signage on such restrooms would include words such as “gender neutral,” “all gender,” or simply the word “restroom” without reference to the gender of the occupant.
3. Responsibility for ensuring that signage is updated to meet these requirements would be determined by the City Council.
4. The ordinance would affect all existing and future single occupancy restrooms.
5. The ordinance would include an effective date determined by the City Council.

Furthermore, the Commission on Diversity Awareness requests that the Flagstaff City Council recommend the practice of using nongendered signage for single-occupancy restrooms used by the public but not owned by the city (such as restrooms in educational facilities, healthcare facilities, and businesses that are open to the public).

Reasons for consideration of this ordinance include:

1. Promoting the safety of gender non-conforming persons
2. Creating a welcoming environment for gender non-conforming persons
3. Increasing restroom availability for all



## Commission on Diversity Awareness

10. B.

**From:** Jessica Foos, Human Resources Analyst

**DATE:** 05/17/2022

**SUBJECT:** Municipal Equity Index

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### STAFF RECOMMENDED ACTION:

The item is currently in the Staff Future Agenda Items queue which means it is waiting for some research and staff work before it moves forward again.

### Executive Summary:

The Human Rights Campaign uses the Municipal Equality Index (MEI) to examine how inclusive municipal laws, policies, and services are of LGBTQ people who live and work in Flagstaff. Cities are rated based on non-discrimination laws, the municipality as an employer, municipal services, law enforcement, and the city leadership's public position on equality.

Flagstaff is one of 506 cities that have been rated on 49 different criteria. [View city's scorecards](#)

### Previous Council Decision on This:

January 11, 2022 Council meeting - Chris Rhode presented the Municipal Equity Index to City Council.

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### Attachments

November 2021 MEI presentation to CODA

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# Municipal Equality Index

Recommendations to improve services  
to services to LGBTQ+ community







# Summary

## What is the Municipal Equality Index?

- Evaluation of inclusivity of municipal laws, policies & services
  - Sexual Orientation
  - Gender Identity
- Published by the Human Rights Campaign
- 506 municipalities
  - 11 in Arizona



# Summary



## Contents of Scorecard

- 100 points is max score
  - Additional 22 “Flex Points”
- 5 Categories
  - Non-discrimination Laws
  - Municipality as Employer
  - Municipal Services
  - Law Enforcement
  - Leadership on LGBTQ Equality



# Flagstaff 2020 Scorecard

## Overall Score

- 88/100
- Same score since 2018

CATEGORY	SCORE	FLEX PTS
Non-discrimination Laws	20/30	+0
Municipality as Employer	22/28	+1
Municipal Services	10/12	+4
Law Enforcement	22/22	N/A
Leadership on LGBTQ Equality	7/8	+2
TOTALS	81/100	+7

# Where we lose points

- Housing NDO
- Transgender-inclusive healthcare benefits
- Enforcement of NDO
- Leadership's pro-equality policy efforts
- All-gender facilities
- Conversion Therapy
- Youth bullying prevention policy
- Services to unhoused LGBTQ people
- Services to LGBTQ older adults
- Services to the transgender community
- Testing limits of restrictive state law(s)







# Flagstaff 2020 Scorecard

## Housing Non-Discrimination Laws

- Points Received: 0/10
- City NDO covers “Public Accommodations” but not “Housing”
- Only Phoenix, Tucson, Tempe received full points in AZ
- Possible preemption from adding housing to NDO ([A.R.S. § 9-500.09](#))
  - Allows municipalities over 350k to adopt fair housing ordinance
- City stance: LGBTQ is included as federally protected class (sex)

### Recommendation:

Research legality of including housing in NDO and if legal pass amendment to city’s NDO to include Housing



# Flagstaff 2020 Scorecard

## City provides Transgender-Inclusive Healthcare Benefits

- Points Received: 0/6
- Benefits set in coordination with healthcare provider
- Working with BCBS to include coverage options inclusive to transgender employees

### Recommendation:

Continue working with provider to include transgender-inclusive coverage to City employees



# Flagstaff 2020 Scorecard

## Non-Discrimination Ordinance is enforced by CODA

- Points Received: 0/2
- NDO is enforced by City Manager's Office
- Existence of CODA satisfies separate area of scorecard
  - Commissions are primarily advisory and educational

### Recommendation 1:

Revise mission of the CODA to include enforcing the NDO

### Recommendation 2:

Actively seek points from HRC for current procedures





# Flagstaff 2020 Scorecard

## Leadership's Pro-Equality Legislative or Policy Efforts

- Points Received: 2/3
- Based on policy efforts and public stances of elected officials
- Subjective criteria

### Recommendation:

None



# Flagstaff 2020 Scorecard

## Single-Occupancy All-Gender Facilities

- Points Received: 0/2
- CODA work to make city-owned facilities gender-neutral
- 2 Points for ordinance requiring all gender facilities citywide
- Gender-neutral restrooms added to 2019 update of IBC

### Recommendation 1:

Adopt updated version of IBC

### Recommendation 2:

Ordinance requiring gender-neutral facilities in all buildings in city



# Flagstaff 2020 Scorecard

## City Protects Youth from Conversion Therapy

- Points Received: 0/2
- Conversion therapy not banned at State level
  - No pre-emption on localities passing ban
  - Pima County is only jurisdiction to ban Conversion Therapy

### Recommendation:

Ordinance banning conversion therapy for individuals under the age of 18.



# Flagstaff 2020 Scorecard

## Youth Bullying Prevention Policy for City Services

- Points Received: 0/2
- 1 point each for sexual orientation and gender identity
- Anti-bullying provisions currently done by each program
  - Language likely to vary

### Recommendation 1:

Collect and evaluate anti-bullying rules of individual programs

### Recommendation 2:

Ordinance prohibiting bullying in its youth programs on the basis of sexual orientation and gender identity



# Flagstaff 2020 Scorecard

## City Provides Services to LGBTQ People Experiencing Homelessness

- Points Received: 0/2
- Services provided through Northland Family Help Center
  - 24-hour crisis line, Domestic Violence and Sexual Assault shelter
  - Respectful of self-identified gender and sexual orientation
  - Assigns transgender youth to rooms within self-identified gender.
  - Provides transportation for LGBTQ youth to attend the one-on-one

### Recommendation:

Document services provided by Northland Family Help Center





# Flagstaff 2020 Scorecard

## City Provides Services to LGBTQ Older Adults

- Points Received: 0/2
- Must be programs that target LGBTQ community directly
- No city programs identified that specifically target adult LGBTQ community

### Recommendation 1:

Evaluate non-city programs to ensure community needs being met

### Recommendation 2:

Begin offering city programs for the adult LGBTQA community



# Flagstaff 2020 Scorecard

## City Provides Services to the Transgender Community

- Points Received: 0/2
- Programs must target transgender community directly
- No city programs identified that specifically target transgender community

### Recommendation 1:

Evaluate non-city programs to ensure community needs being met

### Recommendation 2:

Begin offering city programs for the transgender community



# Flagstaff 2020 Scorecard

## City Tests Limits of Restrictive State Law

- Points Received: 0/3
- Designed as incentive for municipalities to push back on state laws that hinder LGBTQ inclusivity

### Recommendation:

N/A





## **Commission on Diversity Awareness**

**10. C.**

**From:** Jessica Foos, Human Resources Analyst  
**DATE:** 05/17/2022  
**SUBJECT:** Renaming of the Peaks Workgroup Update

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### **STAFF RECOMMENDED ACTION:**

Pending follow up from the High School group on when to send the Commission's recommendation to Council.

### **Executive Summary:**

#### **Informal Working Groups**

Informal working groups may be created to research, gather information, and provide recommendations back to the commission on various matters. No official appointments are made to a working group by the commission. Working groups may consist of members of the public and/or less than a quorum of commission members. Unlike subcommittees, working groups are not required to have formal agendas or minutes.

All information and recommendations from the work group must be provided and presented to the commission in an open meeting for public discussion. Informal working groups do not have any powers, duties, or responsibilities of the parent commission. No actions, statements, or recommendations can be made or provided by the working group on behalf of the commission

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### **Attachments**

Dr. Silver Report  
Presentation from students  
Land Acknowledgment Recommendation  
Flagstaff Water Resources information email

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# **CITY OF FLAGSTAFF “DENIES” HOPI RELIGIOUS BELIEFS in SNOWBOWL LEGAL FILINGS**

**City compares harm to Hopi religion by use of City’s reclaimed wastewater on sacred area as similar to recreational boat owners being “deprived of no more than their occasional Sunday piscatorial [fishing] pleasure.”**

Excerpted quotations from the City of Flagstaff’s legal filings in *The Hopi Tribe v. Flagstaff* (with **Emphasis Added**) follow.

From the **City of Flagstaff’s October 10, 2014, VERIFIED ANSWER AND THIRD-PARTY COMPLAINT** in *The Hopi Tribe, Plaintiff, vs. The City of Flagstaff, Defendant.*; NO. CV2011-00701; in the Superior Court of the State of Arizona in and for the County of Coconino:

“...Without any evidence to support its [the Hopi’s lawsuit Complaint’s] inflammatory claims, Plaintiff [the Hopi Tribe] asks this Court to grant it relief that has broad-reaching, and, frankly, disastrous, implications upon Arizona’s comprehensive statutory scheme of water use. There is no public nuisance here [by the City’s reclaimed wastewater contaminating of Hopi sacred sites on the San Francisco Peaks].”...

115. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 115 of the complaint [that “The Peaks have played a central and essential role in Hopi culture, traditions, and way of life for centuries. The Peaks, known as Nuvatukya’ovi to the Hopi, are the single most important sacred place the Hopi have. Every month Tribe members go to the Peaks for prayers, and during some months tribe members collect water, greens, and herbs for the ceremonies.”], and therefore [the City of Flagstaff] denies the same [that “The Peaks have played a central and essential role in Hopi culture, traditions, and way of life for centuries. The Peaks, known as Nuvatukya’ovi to the Hopi, are the single most important sacred place the Hopi have...”].

116. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 116 of the complaint [that “The Hopi have been making regular pilgrimages and trips to the Peaks since before recorded history as a central part of their culture and the Hopi way of life. The various Hopi ceremonies conducted during the year, particularly Powamuya in the winter and Niman in the summer, require visits and offerings to specific shrines on the Peaks.”], and therefore [the City of Flagstaff] denies the same” [that “The Hopi have been making regular pilgrimages and

trips to the Peaks since before recorded history as a central part of their culture and the Hopi way of life...”]...

122. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 122 of the complaint [that “There are Hopi sacred areas, including shrines, in the immediate vicinity of the Snowbowl Resort Area.”], and therefore [the City of Flagstaff] denies the same [that “There are Hopi sacred areas, including shrines, in the immediate vicinity of the Snowbowl Resort Area.”]...

125. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 125 of the complaint [“The Hopi collect water from springs on the Peaks and use the water for a variety of ceremonial activities. Several of the springs on the Peaks are associated with specific ceremonies and religious societies.”], and therefore [the City of Flagstaff] denies the same [that “The Hopi collect water from springs on the Peaks and use the water for a variety of ceremonial activities. Several of the springs on the Peaks are associated with specific ceremonies and religious societies”]...

135. Defendant [the City of Flagstaff] lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in paragraph 135 of the complaint [“Artificial snow made with reclaimed wastewater will introduce numerous chemicals that are not degraded or removed in the wastewater treatment process to the San Francisco Peaks, in particular to the areas in the Snowbowl Resort Area and its vicinity that have been a part of Hopi use for ceremonial pilgrimages and hunting and gathering trips for centuries.”], and therefore denies the same [that “Artificial snow made with reclaimed wastewater will introduce numerous chemicals that are not degraded or removed in the wastewater treatment process to the San Francisco Peaks, in particular to the areas in the Snowbowl Resort Area and its vicinity that have been a part of Hopi use for ceremonial pilgrimages and hunting and gathering trips for centuries”], except [the City of Flagstaff] avers [asserts as fact]...upon information and belief, that the ceremonial significance of the San Francisco Peaks to the Hopi Tribe (among others [Navajo, Havasupai, Hualapai, Yavapai Apache, and White Mountain Apache]) was fully litigated in the eleven-day Religious Freedom Restoration Act Trial conducted in *Navajo Nation v. US Forest Serv.*, 408 F. Supp. 2d 866 (D. Ariz. 2006), *aff’d*, 535 F.3d 1058 (9th Cir. 2008).”<sup>1</sup>

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<sup>1</sup> *Navajo Nation v. US Forest Serv.* directly resulted from the City of Flagstaff’s decision to defer and refer to the Forest Service the decision to respect Tribal cultural and religious concerns regarding use of reclaimed wastewater on the Peaks. The City made this decision to defer and refer in spite of the fact that the Forest Service decision would inevitably be preordained to reject Tribal concerns. In *Navajo Nation v. US Forest Serv.*, the Navajo, Hopi, Havasupai, Hualapai, Yavapai Apache, and White Mountain Apache challenged in federal court the Forest Service decision to reject Tribal concerns regarding the use of reclaimed wastewater on the Peaks.

Excerpts from *Navajo Nation v. US Forest Serv.* that the City of Flagstaff “avers” or asserts as factual include:

...5. The Ninth Circuit has clearly articulated the proper legal standard to be applied in this case: an action “burdens the free exercise of religion if it puts substantial pressure on an adherent to

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modify his behavior and violate his beliefs, including \*904 when . . . it results in the choice of an individual of either abandoning his religious principle or facing criminal prosecution." *Guam*, 290 F.3d at 1222. . .

7. The government's land management decision will not be a "substantial burden" absent a showing that it coerces someone into violating his or her religious beliefs or penalizes his or her religious activity. *Lyng*, 485 U.S. at 449-53, 108 S. Ct. 1319...see *Wilson*, 708 F.2d at 741 ("Many government actions may offend religious believers, and may cast doubt upon the veracity of religious beliefs, but unless such actions penalize faith, they do not burden religion."); see also *Havasupai Tribe*, 752 F.Supp. at 1484-1486 (finding Forest Service approval of plan for operations of uranium mine does not substantially burden exercise of religion because, although Havasupai Tribe's religious and cultural belief systems are "intimately bound up" in the site, "Plaintiffs are not penalized for their beliefs, nor are they prevented from practicing their religion."); *Means*, 858 F.2d at 406-07 (finding no substantial burden where "[t]he Forest Service has performed no act of compulsion to interfere with appellees' ceremonies or practices nor has it denied them access to [the Forest lands] for religious purposes").

8. Indeed, "Courts consistently have refused to disturb governmental land management decisions that have been challenged by Native Americans on free exercise grounds." *Means*, 858 F.2d at 407 (providing citations to numerous cases). . .

10. The evaluation of when the government's land management decisions cross the line from legitimate conduct to unconstitutional prohibitions on the free exercise of religion "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." *Lyng*, 485 U.S. at 451, 108 S. Ct. 1319. . .

13. Here, Plaintiffs have failed to demonstrate that the Snowbowl decision coerces them into violating their religious beliefs or penalizes their religious activity. *Cf. Lyng*, 485 U.S. at 449, 108 S. Ct. 1319. In fact, the Forest Service has guaranteed that religious practitioners would still have access to the Snowbowl and the approximately 74,000 acres of the CNF that comprise the Peaks for religious purposes. . .

15. Plaintiffs' assertions of perceived religious impact are near identical to those voiced by the Hopi Tribe and the Navajo Nation in *Wilson v. Block*. In that case, the plaintiffs [Navajo Nation] similarly asserted that "development of the Peaks would be a profane act, and an affront to the deities, and that, in consequence, the Peaks would lose their healing power and otherwise cease to benefit the tribes." 708 F.2d at 740. They [Navajo Nation] contended "that development would seriously impair their ability to pray and conduct ceremonies upon the Peaks." *Id.* Considering this information, the D.C. Circuit found the agency's decision did not substantially burden the tribes' exercise of religion. *Id.* at 745. The same decision is warranted here. The subjective views and beliefs presented at trial, although sincerely held, are not sufficient for the proposed project to constitute a substantial burden under RFRA [Religious Freedom Restoration Act] on the practice of religion by any Plaintiff or any members of any Plaintiff tribe or nation. . .

18. The Snowbowl decision does not bar Plaintiffs' access, use, or ritual practice on any part of the Peaks. The decision does not coerce individuals into acting contrary to their religious beliefs nor does it penalize anyone for practicing his or her religion. . .

28. ...*Lyng*, 485 U.S. at 453, 108 S. Ct. 1319 ("Whatever \*907 rights the Indians may have to the use of the area . . ., those rights do not divest the Government of its right to use what is, after all, its land.")...

... \*908 III. Conclusion

The Forest Service properly observed all of the procedural requirements during the various stages of approving the Snowbowl project, including preparation of an extensive EIS [Environmental Impact Statement]..."

This case, *Navajo Nation v. US Forest Serv.*, now cited by the City of Flagstaff, directly resulted from the City of Flagstaff's March 19, 2002, refusal to evaluate, on its own, Tribal concerns regarding the effects of the City's clearance to use its reclaimed wastewater on the Peaks. Instead of respecting Tribal concerns, the City of Flagstaff chose to defer and refer to the Forest Service the evaluation and the ultimate decision. This decision essentially guaranteed that Tribal concerns would be rejected based on (1) the Forest Service's history of consistently denying protection of sacred sites, and (2) the Forest Service's history of success in defending its consistent denials of sacred site protection in court.

Snowbowl's "future depends on artificial snow making."<sup>2</sup> On February 21, 2002, the Snowbowl formally asked the City of Flagstaff for a commitment to sell the City's reclaimed wastewater for use on the Peaks.<sup>3</sup> By March 19, 2002, the City of Flagstaff swiftly agreed to sell its reclaimed wastewater to the Snowbowl contingent on the Forest Service's ultimate "decision" regarding its use.<sup>4</sup>

Predictably, the Forest Service would go through the motions to produce an outcome-preordained environmental study rejecting Tribal concerns. Ultimately and predictably, the Forest Service would then defend its "decision" in *Navajo Nation v. US Forest Serv.* **The outcome in *Navajo Nation v. US Forest Serv.* was completely predictable owing to the April 19, 1988, U.S. Supreme Court ruling, *Lyng v. Northwest Indian Cemetery Prot. Assn.*, 485 U.S. 439 (1988) ["*Lyng*"]. In *Lyng*, the U.S. Supreme Court ruled, that the Forest Service may destroy the sacred nature of its land as long as the government does not "coerce" one to violate their religious belief.**

Specifically, in *Lyng*, the U.S. Supreme Court rules,

**"...Incidental effects of government programs, which may interfere with the practice of certain religions, but which have no tendency to coerce individuals into acting contrary to their religious beliefs, do not require government to bring forward a compelling justification for its otherwise lawful actions...Even assuming that the Government's actions here will virtually destroy the Indians' ability to practice their religion, the Constitution simply does not provide a principle that could justify upholding respondents' [Native American's] legal claims."**

Since 1988, *Lyng* and its following legal rulings unfortunately have become the defining legal authority in obstructing protection of sacred sites on public lands. **Simply stated, *Lyng* summarily declares that (1) the Forest Service's right to use its land as it wishes overrides the claim of Native American religious practitioners, because the government is not**

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<sup>2</sup> "Court rejects ski resort's snow plan for wastewater," Bruce Geiselman, Waste News, March 19, 2007 ("The operators of the Arizona Snowbowl said...the resort's future depends on artificial snow making."); See also: Draft Environmental Impact Statement for Arizona Snowbowl Facilities Improvements, Coconino National Forest, Coconino County, Arizona, February 2004.; and Final Environmental Impact Statement for Arizona Snowbowl Facilities, Volume 1, Coconino National Forest, Coconino County, Arizona, February 2005.

<sup>3</sup> "Snowbowl files reclaimed water plan," Jeff Tucker, Arizona Daily Sun, February 19, 2002.

<sup>4</sup> City of Flagstaff City Council Minutes, March 19, 2002.

**literally outlawing Native American religion, and (2) the First Amendment protects belief, but not the ability to practice religion for Native Americans.**

***Lyng* and its following legal rulings have been the controlling legal authorities governing non-protection of Native American sacred sites since 1988. In 2002, the City of Flagstaff would have certainly known of *Lyng* and of the pain and suffering *Lyng* has been causing in Indian Country.**

Nonetheless, on March 19, 2002, the Flagstaff City Council unanimously passed a motion to “enter into an agreement to sell reclaimed wastewater” to Arizona Snowbowl saying “that the purpose of the NEPA [National Environmental Policy Act Forest Service] process is to take all cultural, social, religious, and environmental issues into account as part of the body of information used to make a decision at the next level...”<sup>5</sup>

**The City of Flagstaff’s ignoring the 1988, U.S. Supreme Court *Lyng* decision is obviously a lie by omission. Forest Service’ NEPA evaluations and decisions, subsequent to the 1988, *Lyng* decision, do not protect Native American sacred sites and religious practices on federal lands. The cultural and religious concerns of the Navajo, Hopi, Hualapai, Havasupai, Yavapai Apache and White Mountain Apache would not influence, would not affect, nor would these concerns change the predetermined Forest Service NEPA approval of the use of reclaimed wastewater on the Peaks resulting from the City’s deferral and referral to the Forest Service.**

**From the City of Flagstaff’s June 21, 2017, City of Flagstaff’s Answering [Appellate] Brief in 2017 WL 3198131, Court of Appeals of Arizona, Division 1.; The Hopi Tribe, v. The City of Flagstaff, Defendant/Appellee., and Arizona Snowbowl Resort Limited Partnership, Third-Party Defendant/Appellee.:**

**“While the Hopi may enjoy the Peaks in different manner than hikers, photographers, bird watchers, hunters, or other uses, the use and enjoyment of the Peaks which they claim is no different than that of any other group or the public at large.”...**

**“The City of Flagstaff submits that this Court should affirm the trial court and, in doing so, should award it fees and costs for this appeal.”**

**From the Appellate Court’s February 8, 2018, OPINION in the City of Flagstaff’s Appeal from the Superior Court in Coconino County in the Arizona Court of Appeals, Division One; The Hopi Tribe, Plaintiff/Appellant, v. ARIZONA SNOWBOWL RESORT LIMITED PARTNERSHIP, et al. [City of Flagstaff], Defendants/Appellees.; No. 1 CA-CV 16-0521, FILED 2-8-2018; Appeal from the Superior Court in Coconino County, No. S0300CV201100701:**

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<sup>5</sup> These quotations come from the March 19, 2002, City Council minutes. City officials at the time included, Mayor Joseph Donaldson; Council Members Vice Mayor Karen Cooper, Allen Edgar, Bill Jeffery, Libby Silva, Penny Tovillion, and Al White, City Manager Dave Wilcox, and City Attorney Joe Bertoldo.

**“Because we find the Tribe sufficiently alleged the use of reclaimed wastewater causes its members a special injury, different in kind than that suffered by the general public, by interfering with places of special cultural and religious significance to the Tribe, we reverse the trial court’s dismissal...**

This emphasis on the emotional, cultural, and religious significance of the cemetery in *Beatty* supports the Tribe’s argument here that interference with a place of special importance can cause special injury to those personally affected, even when that place of special importance is upon public land.

¶13 Adopting this position, we find that within its complaint, the Tribe sufficiently alleges special injury. ... the Tribe alleges:

131. The purity of the ceremonial objects collected by members of the Hopi Tribe during pilgrimages is of particular importance. These objects cannot be used for ceremonial purposes if they become tainted or impure. ...

138. ... Natural resources that the Hopi collect, as well as shrines, sacred areas, and springs on the Peaks will come into contact with the blown reclaimed wastewater ... This negatively impacts the Hopi’s use of the Snowbowl Resort Area, the Wilderness Area, and surrounding areas, and causes Hopi practitioners to stop using the areas they have traditionally used. ...

201. The Hopi Tribe suffers specific injury ... because the prevailing winds will blow the artificial snow outside the boundaries of the application area thus negatively impacting Hopi’s use of these areas, including for ceremonial practices. ...

202. The Hopi Tribe will suffer specific injury ... because the artificial snow will blow towards, and melting snow will runoff into, springs and water bodies the Hopi Tribe uses for ceremonial and utilitarian purposes. ...

¶14 We are not persuaded by the City’s reliance upon *Oppen v. Aetna Insurance Co.*, 485 F.2d 252 (9th Cir. 1973). There, the Ninth Circuit held that boat owners seeking to recover damages following an oil spill were not specially injured when “deprived of no more than their occasional Sunday piscatorial pleasure.” *Id.* at 253, 260 (internal quotations omitted). Unlike *Oppen*, where the boat owners’ loss of navigation rights was no different in kind from that suffered by the public generally, *see id.* at 260, here, the Tribe distinguishes its cultural and religious interest in the Peaks from the recreational interests of the public at large. ...

#### **CONCLUSION**

¶19 The trial court’s order dismissing the Tribe’s complaint is reversed...”

The City of Flagstaff appealed the appellate court ruling to the Arizona Supreme Court. From the City of Flagstaff’s March 12, 2018, PETITION FOR REVIEW IN THE SUPREME COURT STATE OF ARIZONA; The Hopi Tribe, Plaintiff/Appellant, v. The City

of Flagstaff, Arizona, Defendant/Appellee, and Arizona Snowbowl Resort Limited Partnership, Third-Party Defendant/Appellee.; Arizona Supreme Court No. CV-18-0057-PR:

“The City of Flagstaff, Arizona hereby petitions that this Court review the decision rendered by the Court of Appeals, Division One, dated February 8, 2018 in the above-captioned matter. ...

**The “injury” alleged by the Complaint is the environmental damage of using reclaimed water for snowmaking. That injury is common to all of the public who frequent or utilize the area for many different purposes. ...”**

From the **City of Flagstaff’s May 29, 2018, SUPPLEMENTAL MEMORANDUM in the State of Arizona Supreme Court; The Hopi Tribe, Plaintiff/Appellant, v. The City of Flagstaff, Arizona, Defendant/Appellee.; and Arizona Snowbowl Resort Limited Partnership, Third-Party Defendant/Appellee; No. CV-18-0057-PR.:**

**“The Hopi Tribe lacks standing to bring a public nuisance claim because it has no “special injury” different than the environmental injury suffered by the public who use the Peaks.”...**

**“...The Hopi cite to no case which supports their position that environmental damage to religious objects is a “special injury...The injury that is alleged as public nuisance is environmental damage common to all who use the San Francisco Peaks” ...”**

The City of Flagstaff’s appeal to the Arizona Supreme Court to reverse the appellate court’s ruling in favor of the Hopi was successful. The Arizona Supreme Court ruled in favor of the City of Flagstaff against the Hopi. From HOPI TRIBE, *Plaintiff/Appellant*, v. ARIZONA SNOWBOWL RESORT LIMITED PARTNERSHIP, ET AL [City of Flagstaff]., *Defendants/Appellees.*; No. CV-18-0057-PR, Filed November 29, 2018, in the Supreme Court of the State of Arizona; Appeal from the Superior Court in Coconino County, **AFFIRMED;** Opinion of the Court of Appeals, Division One, 244 Ariz. 259 (App. 2018), **VACATED AND REMANDED:**

“...opinion of the Court:

**¶1 Private parties may bring public nuisance claims in Arizona if the alleged nuisance caused the plaintiff special injury, meaning “damage [that is] different in kind or quality from that suffered by the public in common.” *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz. 1, 5 (1985). Today we hold, as a matter of law, that environmental damage to public land with religious, cultural, or emotional significance to the plaintiff is not special injury for public nuisance purposes.” ...**



¶14 Primarily relying on *In re Exxon Valdez*, 104 F.3d 1196 (9th Cir. 1997), Snowbowl contends that the alleged injury here is to the Tribe's "desire to enjoy 'pristine natural surroundings,'" *see id.* at 1198, which "is a right shared by the public generally." Snowbowl argues that injury is not transformed into "special harm" "[j]ust because [the Tribe's] members . . . wish to access the Peaks for religious reasons" when "others' motivations are environmental or recreational." The Tribe counters that "the reclaimed wastewater has directly and significantly impeded [its] use and enjoyment of a place of special importance to the Tribe by thwarting [its] religious practices" on the Peaks. According to the Tribe, such "significant interference with its use of sacred places that have formed a central component of its cultural and religious life since before recorded history" constitutes "injury [that] is clearly different in kind [from] that suffered by the public." The Tribe maintains that recognizing its injury as "special" "fits squarely within long-established Arizona and other applicable precedent," including *Armory Park* and *Beatty*, and supports its public nuisance claim...

¶15 We [the Arizona Supreme Court justices] agree with Snowbowl. Contrary to the Tribe's assertion that the place-of-special-importance form of special injury is consistent with Arizona law, the only public nuisance cases in which we have recognized special injury involved property or pecuniary [monetary] interests not present here." ...

¶19 *Lyng* illustrates this well. There, various parties, including "an Indian organization, individual Indians, nature organizations and individual members of those organizations, and the State of California," brought a religious-freedom-based challenge to a proposed road upgrade and timber harvesting in California's Chimney Rock area. 485 U.S. at 443. The plaintiffs claimed that those projects violated their rights under the First Amendment's Free Exercise Clause and various federal statutes. *Id.*

¶20 The United States Supreme Court rejected the challenge, *id.* at 453 [*Lyng*], despite recognizing that "the logging and road-building projects at issue in th[e] case could have devastating effects on traditional Indian religious practices" that are "intimately and inextricably bound up with the unique features of the Chimney Rock area," *id.* at 451.

¶21 As the Court in *Lyng* observed, "[w]hatever rights the Indians may have to the use of the area, . . . those rights do not divest the Government of its right to use what is, after all, *its* land." ... Although this case does not involve First Amendment or federal statutory claims, it similarly illustrates how the place-of-special-importance category the Tribe urges (and the court of appeals embraced) would essentially empower a lone plaintiff to interfere with decisions by public officials (made here after extensive input from interested parties, including the Tribe) concerning the best use of public lands...

¶22 The reclaimed water contract at issue here went through a nearly decade long review process in which the Tribe participated and actively voiced its opposition. That process included a series of public hearings at which the City considered alternatives to reclaimed water. And after approving the contract

**with Snowbowl, the City considered, held public comment on, and ultimately denied a motion to reconsider its decision. ...”**

For the reasons stated above, we affirm the trial court’s judgment in favor of Snowbowl and the City on the Tribe’s public nuisance claim, vacate the court of appeals’ opinion, and remand the case to the court of appeals to determine whether the trial court’s fee award is supportable and appropriate...”

Quotations from media coverage of the Arizona Supreme Court ruling are instructive. From the November 29, 2018, Arizona Republic, in “Hopi lose arguments on Snowbowl snowmaking in state Supreme Court ruling,”:

“‘A sad comment on our law’

In their dissent, Chief Justice Bales and Justice Bolick argued that the majority’s ruling “largely ignores the distinctive harms alleged by the Hopi” and undermined the very purpose of the public nuisance law.

“The majority fails to appreciate that the wastewater will affect the Hopi’s use and enjoyment of ancestral lands that have played a central role in Hopi culture and religion since before the Coconino National Forest was of concern to the broader public,” the dissenters wrote...

“We may live in a material world,” they wrote, “but it is a sad comment on our law to suggest that other interests — such as religious traditions and practices manifest through millennia and recognized by federal law — cannot support a claim of special injury for purposes of the public nuisance doctrine.”<sup>6</sup>

From the November 30, 2018, Arizona Daily Sun and the Associated Press, in “High court rules against Hopi Tribe in snowmaking challenge,”:

**“The city of Flagstaff declined comment on the ruling. ...**

In a dissenting opinion, Chief Justice Scott Bales said the court has long recognized that special injury can extend beyond property and monetary rights. He said it’s ironic that if the Hopi sold pine boughs or pinon nuts gathered from the mountain, the majority would allow a special injury claim.

“The general public does not have millennia of religious practice in the area that will be covered in a fine film of reclaim sewage,” Bales wrote. “Nor does the general

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<sup>6</sup> “Hopi lose arguments on Snowbowl snowmaking in state Supreme Court ruling, Arizona Republic, November 29, 2018, <https://www.azcentral.com/story/news/local/arizona/2018/11/29/hopi-lose-arguments-snowbowlsnowmaking-state-supreme-court-ruling/1997219002/> .

public have rights of access and use, rooted in Hopi tradition and cultural practices, recognized by federal statutes."

"I'm disappointed and I'm frustrated," said Leigh Kuwanwisiwma, who retired as the Hopi's longtime cultural preservation director last year and was heavily involved in the case. "But I think indigenous people like Hopi people are always going to be at a legal disadvantage when they put something like that in a white man's court."<sup>7</sup>

For more information:

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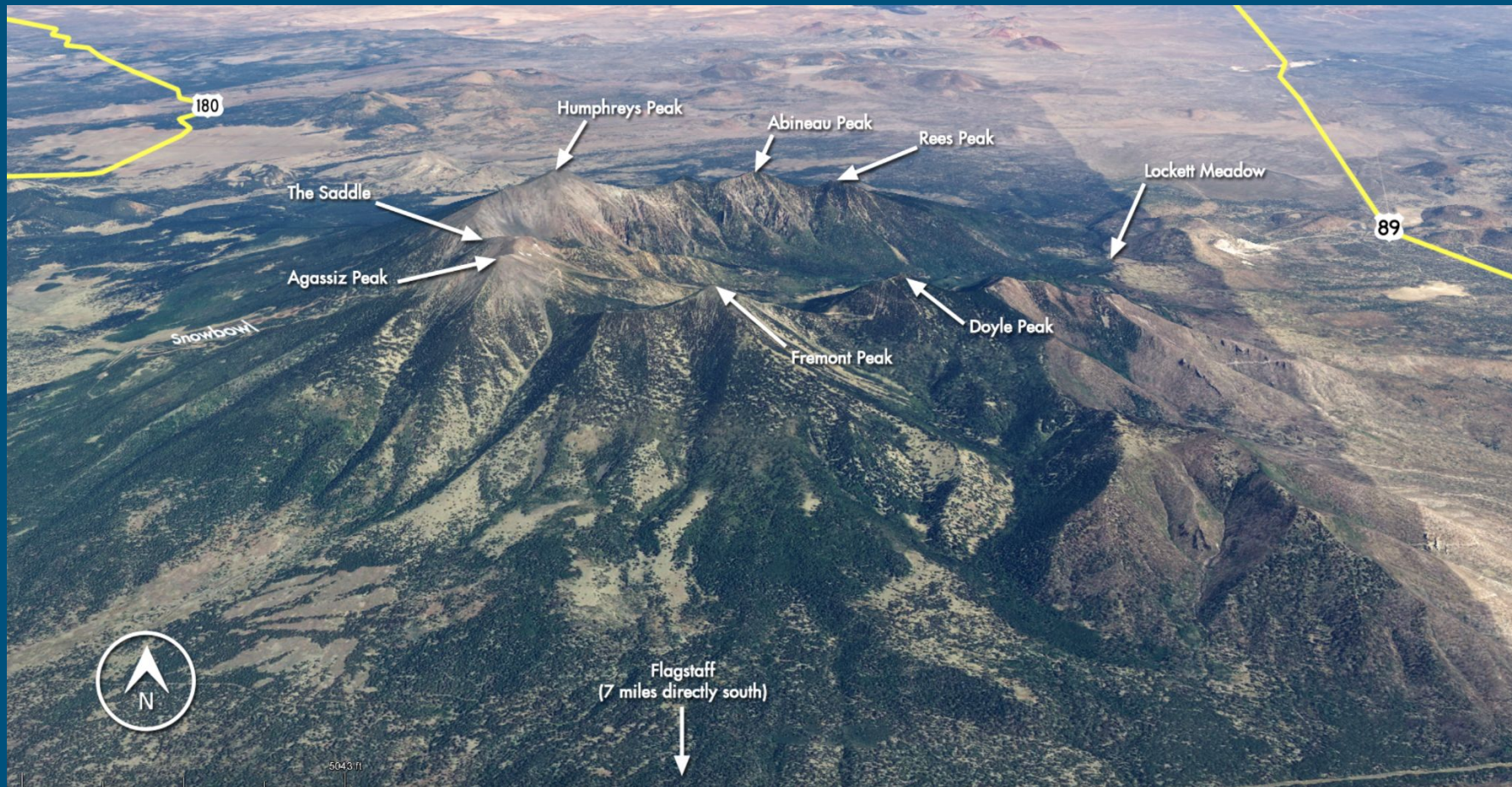
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<sup>7</sup> "High court rules against Hopi Tribe in snowmaking challenge," Felicia Fonseca, Associated Press, Arizona Daily Sun, November 30, 2018, [https://azdailysun.com/news/local/high-court-rules-against-hopi-tribe-in-snowmakingchallenge/article\\_1cad9758-a74e-539a-872a-5fb3b939aaaa.html#tracking-source=home-top-story-1](https://azdailysun.com/news/local/high-court-rules-against-hopi-tribe-in-snowmakingchallenge/article_1cad9758-a74e-539a-872a-5fb3b939aaaa.html#tracking-source=home-top-story-1).



# Renaming Agassiz Peak

By: Indigenous Youth Leaders

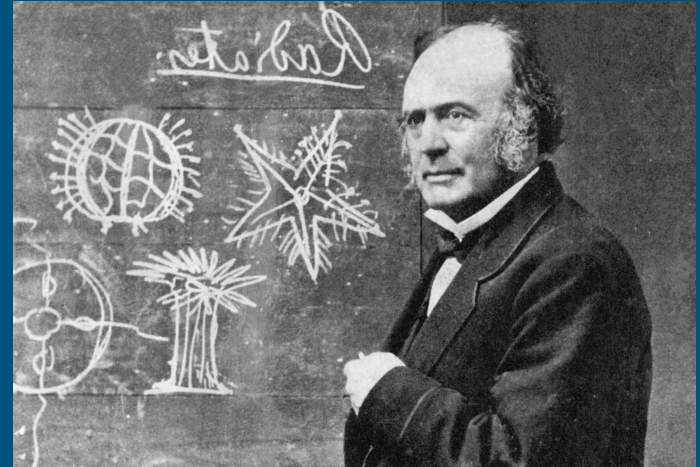




# History of Jean Louis Rodolphe Agassiz

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- Jean Louis Rodolphe Agassiz was a Swiss- born American biologist/ geologist.
- Agassiz was also an opponent of miscegenation. At a lecture at the Charleston Literary Club in South Carolina in 1847, **Agassiz announced that blacks constituted a separate species**. In a letter to American abolitionist Samuel Gridley Howe in 1863, **Agassiz stated that sexual relations between blacks and whites were “immoral” and “destructive to the social equality.”**
- Agassiz peak, is named after a biologist who used his studies to legitimize racist beliefs of white superiority. So, keeping the name the same deeply affects the indigenous as the meanings behind each of their names are important to us. This also creates a culture of racism colonization that should be deemed unacceptable.



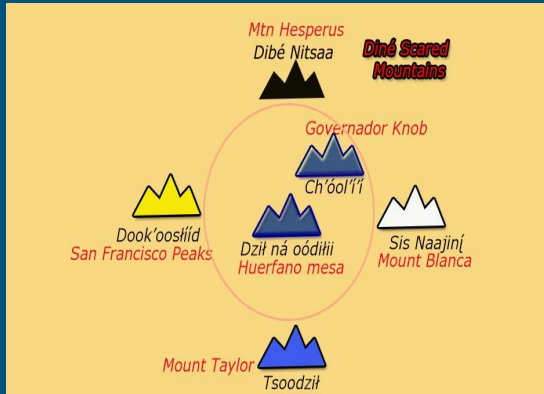
# Why is this is an important issue to indigenous people?

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- The peaks is considered sacred to 13 indigenous nations which sadly, some have been pushed out of Arizona. **13 Tribal Nations which include; Pueblo, Mohave, Havasupai, Yavapai, Hualapai, Navajo, Hopi, Apache, Zuni, Salt, Gila, Paiute, and Ute**
- The peaks still remain sacred and holy to many Indigenous nations therefore, the **current names of the peaks is viewed as inappropriate and misrepresenting.**

# Cultural significance to local Native tribes

The peaks are associated with 13 indigenous nations. The Peaks is associated with spiritual deities, ancestors, emergence, ceremonies, climate conduit, and is still integral to indigenous daily practices.





# Native names for Agassiz Peak

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- Dook'o'oosłíid (Navajo) (Abalone Shell Mountain) (The Mountain that reflects)
- Pavoyoykyasi (rain tablet) Nuva'tukya'ovi —(Hopi)
- Dził Tso—Dilzhe'e—(Apache) (Big Mountain)
- Tsii Bina—Aa'ku—(Acoma)
- Nuvaxatuh—Nuwuvi—(Southern Paiute)
- Hvehasahpatch or Huassapatch—Havasu 'Baaja—(Havasupai)
- Wik'hanbaja—Hwal'bay—(Hualapai)
- Wi:mun Kwa—(Yavapai)
- Sunha K'hbchu Yalanne—A:shiwi (Zuni)
- 'Amat 'Tikwe Nyava—Hamakhav—(Mojave)
- Sierra sin Agua—(Spanish) ( The mountain without water)

# Quotes from Native Elders

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- “Dook’oosliid has been a part of our sacred circle of life since the beginning of life for the Diné people. We as Diné utilize sacred plants, water, & minerals from this sacred mountain. Our medicine men go to the mountains to gather ceremony bundles & give offerings to the Diyin Dine’e & give their offerings/ thanks for protectings us. The mountain have the power to cure our ailments. That’s why the mountain are sacred to us. We must not abuse the mountains”- **Navajo Elder**
- “[The peaks are one of the] sacred places where the earth brushes up against the unseen world,” said **Yavapai-Apache Chairman Vincent Randall**.
- “To us Hopis, the Peaks is a sacred home and resting place for our spiritual beings, kachina spirits. The kachina spirits serve as guides to the Hopi people.” - **Hopi Elder**



# Press Release continued..

Daily Sun

Flagstaff High School students advocate for renaming the Peaks


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ALERT TOP STORY

Flagstaff High School students advocate for renaming the Peaks

Kaitlin Olson Apr 14, 2020 Updated Sep 24, 2020 37

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1 of 2

Members of Flagstaff High School's Native American Club stand with Flagstaff City Councilmember Jamie Whelan, right, in this March photo. The students are seeking support from local jurisdictions in renaming the San Francisco Peaks to better represent their indigenous history.

Kaitlin Olson

[f](#) [t](#) [e](#) [p](#) [c](#)

Kaitlin Olson

**E**arly last month, rather than being distracted by their upcoming spring break, a group of Flagstaff High School students decided to add a higher issue to their list of spring semester to-dos: advocating for the renaming of the San Francisco Peaks.

In a press conference March 11, representatives from Flag High's Native American Club explained these mountains have long been sacred to 13 tribal nations, so names like Agassiz Peak, in particular, are out-of-line.

Although Louis Agassiz was recognized for his

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# Personal Statements from Students

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We will be hearing from the following students:

Mashayla Tso, Makaius Marks, Danell Lipscomb, etc.

# Closing Statement

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Agassiz's science was used to try to legitimize racist beliefs of white racial superiority. Therefore, naming a peak after him is not appropriate and antagonizes the beliefs and acknowledgments of the indigenous nations and other communities of color. **This creates a culture of Racism and colonization that we deem as unacceptable.**

- **Keeping the name, Agassiz Peak, deeply affects Indigenous people as the cultural names of the peaks describe the spiritual healing and power that the mountain withholds.. This also creates a culture of racism and colonization that should be deemed unacceptable.**





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# Land Acknowledgement Recommendation for Flagstaff City Council

By the Commission on Diversity Awareness

September 21, 2021

Out of respect for the ancestral lands occupied by multiple Indigenous tribes and with respect for current residents of the Flagstaff community who are tribal members and/or descendants of Indigenous peoples, the Commission on Diversity Awareness strongly supports the proposal presented to City Council to incorporate a land acknowledgement on the City website. We also recommend that the land acknowledgement be read at the opening of City Council meetings.

## Jessica Vigorito

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**From:** Jessica Vigorito  
**Sent:** Monday, October 4, 2021 2:58 PM  
**To:** DD; Jean Toner; J and D Wegwert; Marcela Pino; Mandy Gebler; CTucci127@gmail.com; hardi.claire@gmail.com  
**Subject:** Flagstaff Water Resources information  
**Attachments:** IPD2021\_Final.pdf

Hello All,

I am passing along some Flagstaff Water Resources and Reclamation information that I have been able to find since the last conversation on this topic. Attached you will find a flyer for Indigenous Peoples Day which includes a section on Water that I thought might be helpful to the Workgroup discussion. I also copied links below to case studies and information available on the City website. Erin Young, Water Resources Manager, did offer to attend a Commission meeting to present or answer questions.

<https://www.flagstaff.az.gov/2328/Reclaimed-Water-Is-It-Safe>  
<https://www.flagstaff.az.gov/21/Reclaimed-Water>  
<https://www.flagstaff.az.gov/4522/Case-Studies>

To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other board members and board members should not reply all to this message.

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