



NAHC Most Likely Descendant Rulemaking and Tribal Consultation Process

Purpose of this Meeting

- This is a “Pre-Notice” hearing and workshop regarding the beginning of the process for adopting Most Likely Descendant (MLD) regulations.
- It is being held before the Commission gives formal “notice” that it will begin the process for adopting regulations, called “rulemaking.”
- The purpose of this meeting is to get input from the public about what works and doesn’t work with the MLD process BEFORE drafting any proposed regulations.
- The initial draft of proposed regulations will reflect input from the public from this meeting , from comments submitted in writing and by email, and from tribal consultation.

Topics for Today's Meeting

- Why is the Commission considering adopting Most Likely Descendant regulations?
- What is “rulemaking” and how can I participate?
- What role does tribal consultation play in this rulemaking process?
- Public Discussion: What is and isn't working with the MLD process?

Why Adopt Most Likely Descendant Regulations?

- Transparency: Everyone will know how Most Likely Descendants (MLDs) are designated and what they must do.
- Public Input: The process of adopting regulations, or “rulemaking,” is a public process. The public can participate by providing comments on proposed regulations in writing or at a public hearing. Regulations cannot be adopted in secret or without public participation.
- Force of law: Regulations, when adopted, have the force of law.

What Is “Rulemaking”?

- “Rulemaking” is the public process that a state agency must follow to adopt regulations.
- If the Administrative Procedure Act procedural requirements of rulemaking are not followed, the State Office of Administrative Law (OAL) can reject the regulations and make the agency start the process again.

Steps in the Rulemaking Process

- Pre-Notice Involvement: If an agency proposes to adopt complex proposals or a large number of proposals, it may involve the public in workshops or preliminary activities BEFORE the start of the formal rulemaking process (Govt. Code section 11346.45).

Steps in the Rulemaking Process

- Step One: Notice of Proposed Rulemaking
 - NAHC submits a Notice of Proposed Rulemaking to the OAL stating that it intends to begin the rulemaking process , along with the text of proposed regulations and statement of reasons (January 20, 2015).
 - The OAL publishes the Notice of Proposed Rulemaking in the California Regulatory Notice Register (January 30, 2015).
 - NAHC posts Notice of Proposed Rulemaking and Proposed Text on its website and sends them by fax, mail and email to interested parties and potentially affected businesses (January 30, 2015).

Steps in the Rulemaking Process

- Step Two: Comment Period Begins
- State law requires a 45 day comment period starting from the publication of the Notice of Proposed Rulemaking to provide comments on the proposed regulations (January 30 to March 16, 2015).
- Our proposed comment period is 76 days – January 30 to April 16, 2015.
- Comments may be provided by mail, email or fax.

Steps in the Rulemaking Process

- Step Three: Public Hearing and End of Comment Period
 - The public can request a public hearing on the proposed regulations if one has not been scheduled.
 - The NAHC would hold a public hearing on April 16, 2015.
 - The comment period would also end on April 16, 2015.

Steps in the Rulemaking Process

- Step Four: Substantial Changes Made and Additional Comment Period
 - If the agency makes substantial changes to the proposed regulations, it must publish the changes and allow an additional 15 day comment period.
 - We are assuming that there will be substantial changes, which will be published on May 8, 2015, and there will be a 36 day comment period from May 8 to June 12, 2015.

Steps in the Rulemaking Process

- Step Five: Adoption of Regulations and Review by OAL
 - The NAHC would take up adoption of the regulations at its regularly scheduled meeting on July 17, 2015.
 - The proposed regulations will be available ten days prior to the meeting, posted to the NAHC website, and sent by email and mail to interested parties.
 - If adopted, the regulations would be submitted to the OAL by July 31, 2015 with the rulemaking record.
 - OAL has 30 days to review and approve or reject the regulations.

Steps in the Rulemaking Process

- Step Six: OAL files regulations with Secretary of State
 - Usually take effect within 30 days of filing.
 - EARLIEST ANY REGULATIONS WOULD PROBABLY GO INTO EFFECT: SEPTEMBER 30, 2015.

How Can I Participate?

- Ask to be put on our list to receive mailings about the proposed regulations – we have a list here today.
- Check our website for updates (<http://www.nahc.ca.gov>)
- Send your comments on the proposed regulations
 - By mail: NAHC, 1550 Harbor Blvd, Suite 100, West Sacramento, CA 95691
 - By email: MLDRegComments@nahc.ca.gov
 - By fax: (916) 373-5471

How Can I Participate?

- Attend the public hearing on April 16, 2015
- Talk to the Commissioners. The Commissioners adopt the regulations, not the staff.

What Role Does Tribal Consultation Play?

- Tribal consultation on the proposed regulations is a parallel process that allows tribes to provide input on the proposed regulations.
- Because any MLD regulations would apply to federally recognized tribes and non-federally recognized tribes, the NAHC will conduct consultation with any California tribe if requested.

MLD Tribal Consultation Process

- Step One: Consultation Period Begins
 - Consultation period begins October 20, 2014 and ends June 12, 2015. Notices will be mailed to all California tribes on October 20, 2014.
 - Tribes can request consultation with NAHC staff at any time during this period.
 - Tribes should notify the NAHC of who will represent them in consultation; if representatives are not members of the tribal council, they must have permission to speak for the tribe.
 - Tribes can request consultation or provide comments by mail, fax, or email at MLDTribalConsultation@nahc.ca.gov.

MLD Tribal Consultation Process

- Step Two: Second tribal consultation notices mailed to all California tribes on January 30, 2015
- Publication of Notice of Proposed Regulatory Action on January 30, 2015 will include text of proposed regulations

MLD Tribal Consultation Process

- Step Three: Tribal Consultation Session on April 16, 2015
 - A tribal consultation session open to all California tribes will be held on April 16, 2015 separately from the public hearing scheduled for the same day.
 - Any substantial changes to the proposed regulations will be published on May 8, 2015. Additional consultation on any substantial changes must occur between May 8 and June 12, 2015

MLD Tribal Consultation Process

- Step Four: Tribal Consultation Period Ends June 12, 2015

What Is Or Isn't Working With The MLD Process?

- We would like to hear comments from you today on what is or isn't working with the MLD process BEFORE PROPOSED REGULATIONS ARE DRAFTED.
- You can provide comments today in two ways:
 - Speak (each speaker will have three minutes – please fill out a speaker card).
 - Fill out comment cards and return them to any NAHC staff member.

What Is Or Isn't Working With The MLD Process?

- We would like to hear comments in six broad categories:
 - How should MLDs be chosen? (30 minutes)
 - How and when should MLDs be removed? (30 minutes)
 - What should MLDs be required to do? (15 minutes)
 - What definitions should be included in the regulations? (15 minutes)
 - What should a MLD mediation process include? (15 minutes)
 - What should a model pre-burial agreement include? (15 minutes)

What Is Or Isn't Working With The MLD Process?

- How Should MLDs Be Chosen? (30 Minutes)
 - Should only tribes be chosen as MLDs?
 - What data should be used to determine tribal territories?
 - How should the NAHC chose an MLD when tribal territories overlap?
 - How should the NAHC chose a second MLD when an MLD cannot serve, will not serve, or is removed from a project?
 - Should an MLD serve for a entire project, even if the project includes another tribe's cultural area?

What Is Or Isn't Working With The MLD Process?

- How and When Should MLDs Be Removed? (30 Minutes)
 - What process and grounds should be used for removing an MLD from a project?
 - What process and grounds should be used for removing an MLD from the MLD list?
 - How should an MLD be put back on the MLD list?

What Is Or Isn't Working With The MLD Process?

- What Should An MLD Be Required To Do? (15 Minutes)
 - File a final report?
 - Record the burial in the NAHC Sacred Lands File?
 - Ensure the landowner's compliance with Public Resources Code section 5097.98 (e) when remains are reinterred?
 - Should there be an MLD Code of Ethics?
 - Should the MLD be responsible for maintaining the confidentiality of the location of the burial?

What Is Or Isn't Working With The MLD Process?

- What definitions should be included in the regulations? (15 minutes)
 - Should there be a definition of “appropriate dignity”?
 - Should there be a definition of “placed or buried with” for purposes of determining what are associated grave goods?

What Is Or Isn't Working With The MLD Process?

- What should an MLD mediation process include?
(15 minutes)
 - Should it be formal (trained mediator) or informal (NAHC staff)?

What Is Or Isn't Working With The MLD Process?

- What should a model pre-burial (or pre-excavation) agreement include?

THANK YOU!

- If you didn't get to speak, please leave your comment cards with any NAHC Staff member.
- Please feel free to send us your comments and suggestions by mail, email, or fax.
 - By mail: NAHC, 1550 Harbor Blvd, Suite 100, West Sacramento, CA 95691
 - By email: MLDRegComments@nahc.ca.gov or MLDTribalConsultation@nahc.ca.gov.
 - By fax: (916) 373-5471
- Please add your name and contact information on the list to receive updates and notices about this rulemaking process.