



**NATIVE AMERICAN HERITAGE COMMISSION
M E M O R A N D U M**

July 15, 2022

Re: **CalNAGPRA STATUTORY MEDIATION PROCESS**

On July 15, 2022, the Native American Heritage Commission (the Commission) reaffirmed the California Native American Graves Protection and Repatriation Act's (CalNAGPRA) Statutory Mediation Process for disputes that arise under the law (AB 275).

Under CalNAGPRA, repatriation disputes may arise in a number of contexts, including:

1. If there is more than one request for repatriation for the same item;
2. If there is a dispute between the requesting party and the agency or museum;
3. If there is a dispute as to the contents of an inventory or summary; or
4. If a dispute arises in relation to the repatriation process.

(Health & Safety. Code, § 8016, subdivision. (d).)

Once informed of such a dispute, "the commission shall notify the affected parties of this fact" while providing mediations using the following statutory process:

1. The disputing parties shall submit documentation describing the nature of the dispute to the commission, which shall, in turn, forward the documentation to the opposing party or parties. The disputing parties shall meet within 30 days of the date of the mailing of the documentation with the goal of settling the dispute.
2. If, after meeting, the parties are unable to settle the dispute, the commission, or a certified mediator who has the qualifications and experience appropriate to the dispute's circumstances and has been designated by the commission, shall mediate the dispute. If the museum or agency is subject to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), any party also may request the assistance of the federal Native American Graves Protection and Repatriation Review Committee in resolving the dispute.
3. Each disputing party shall submit complaints and supporting evidence to the commission or designated mediator and the other opposing parties detailing their positions on the disputed issues. Each party shall have 20 days from the date the complaint and supporting evidence were mailed to respond to the

complaints. All responses shall be submitted to the opposing party or parties and the commission or designated mediator.

4. The commission or designated mediator shall review all complaints, responses, and supporting evidence submitted. Within 20 days after the date of submission of responses (if any), the commission or designated mediator shall hold a mediation session and the parties shall come to a resolution or the mediator shall render a written decision within 7 days of the mediation session.
5. When the disposition of human remains or cultural items is disputed, the party in possession of the human remains or cultural items shall retain possession until the mediation process is completed. Transfer or loan of human remains or cultural items shall not occur until the dispute is resolved.
6. Deference shall be provided to tribal traditional knowledge, oral histories, documentation, and testimonies relative to other relevant categories of evidence.

(Health & Safety. Code, § 8016, subdivisions. (d)(1)-(6).)