



STATE OF CALIFORNIA
**NATIVE AMERICAN
HERITAGE COMMISSION**

**Action Item #3, Commission Sub-Committee Update
October 10, 2023**

To assist Commission Staff with crucial drafting of Policy & Regulations, Commissioner Sub-Committees were created to give feedback and perspective as these drafts are developed and considered. The Sub-Committee or Advisory Body created by a majority of the Commission Body consists of (2) Commissioners only. It is not covered by Bagley-Keene and the Sub-Committee can do its business without worrying about the notice and open meeting requirements of the Act. This allows Staff & Sub-Committee Members to have open dialogue, meetings, exchange of ideas, edits, redlines, and give direction to NAHC Staff on policy decisions with each other at any time without having to post any Agenda or have public feedback and participation. If these Sub-Committee Meetings include more than (2) Commissioners, Bagley-Keene applies, and the Meeting would need to be noticed and include the public. This helps guide the creation and direction of policy & Regulations. These Sub-Committees can give reports or recommendations to the entire Commission Body during a Public Meeting when these Drafts need to become public for more robust comments and input from all Commissioners and the Public.

Currently there are (6) active Sub-Committees. These are as follows:

**Contact List Process Regulations
(Commissioner McQuillen, Commissioner Nelson)**

These Regulations outline the Process of how California Native American Tribes (both federally recognized and non-federally recognized) can be included or removed from the current NAHC Contact List for the purposes of Tribal Cultural Resource Protection and Repatriation. Several iterations have occurred over the past (2) years. These Draft Regulations are just about ready for the Sub-Committee to recommend to the entire Commission for the release of the Draft to the Public for Tribal Comment & Consultation, In-Person & Virtual Listening Sessions for a minimum of 90-days.

**CalNAGPRA Dispute Resolution/Mediation Process Regulations
(Commissioner Dutschke, Commissioner Pagaling)**

These Regulations outline the process of how California Native American Tribes ("Tribes"), Museums, State Agencies, and/or Higher Learning Institutions (Institutions") enter into Dispute Resolution and Mediation when disputes occur with the Repatriation of Ancestors and associated Items during the CalNAGPRA Process outlined in AB 275. These Draft Regulations have gone through (2) rounds of Tribal Consultation and are about to be ready for the Sub-Committee to recommend to the entire Commission for the release of the Draft to the Public to start the Formal Rulemaking Process to become actual Regulations. This Process must be completed within a year, otherwise it will need to be repeated.



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**CalNAGPRA Process Regulations
(Commissioner Dutschke, Commissioner Pagaling)**

These Draft Regulations are in the first phase of Drafting. They outline a step-by-step process for how Institutions report and return Ancestral Collections, and how Tribes can submit a Claim to get their Ancestors back home and repatriated. Currently a Flowchart outlining Best Practices and how Dispute Resolution can be triggered throughout the entire process are being developed to share with Tribes & Institutions in the coming months. These are also a roadmap to the NAHC CalNAGPRA Website in existence and being currently upgraded to track every Collection from Submission to Repatriation. This will be the precursor to the next iteration of the Draft Regulations which need to be developed to get out for tribal Consultation before entering the Formal APA Rulemaking Process.

**UC / (CSU) Systemwide / Campus Committee Nominations
(Commissioner Rodriguez, Commissioner Pagaling)**

This Committee reviews NAHC Staff and Institution recommendations for vacancies on the UC Systemwide & Campus Committees. There are certain criteria and guidelines that need to be met as outlined in AB 2836. Commissioners Nominate potential candidates and the UC approve the nomination. We added (CSU) to this Sub-Committee for the moment. After the Audit of the CSU System was released in June of 2023, and the passing of AB 389, Ramos, (awaiting Governor signature by October 14, 2023) the CSU will need to create an entire Systemwide and Campus Committees (23 Institutions). All of these vacancies will need to be filled which will be reviewed and nominated by the Commissioners.

**Most Likely Descendants' Process Regulations
(Commissioner Bojorquez, Vacant)**

These Draft Regulations were first introduced in 2017. They outline the Process how the NAHC makes MLD Determinations, who can be an MLD, what are the rights of Tribes and landowners, how mediation can occur, and what are the statutory powers of the Commission to uphold these critical laws among other aspects. Subsequent Drafts resurfaced over the past several years. As of April of 2022, a revised Draft began to be reviewed. A small portion of the MLD Regulations outlining who would be contacted when an inadvertent discovery occurred were removed and thus created the Contact List Process Regulations discussed above. Due to the importance of those Regulations, the MLD Process was paused to concentrate on those Regulations. Efforts to restart these regulations occurred in January of 2023, and a few Sub-Committee meetings occurred since that time. In May, a vacancy occurred. It is imperative to keep moving on the drafting of these Regulations as the continued lack of transparency of the MLD Process has plagued the NAHC for years. At the very least, a review of the current Internal MLD Process would frame the conversation on how the best process for determining a MLD would be developed. We would like to see this vacancy be added to the next Commission Meeting to be filled as we continue to develop these Regulations.



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**Action Item #3 (a)(i), UC /(CSU) NAGPRA Policy
(Commissioner Rodriguez, Commissioner Pagaling “temporary”)**

This Sub-Committee reviewed and commented on the UC CalNAGPRA Policy they created in 2021. The UC did not take the NAHC recommendations and to this day continues to violate and misinterpret AB 275 which still causes emotional trauma with Tribes. With the recent Audit of the CSU and subsequent Senate Hearing it became clear the CSU was going to adopt many of the UC NAGPRA Policies already created and, we made it clear to CSU leadership we want them reconsider and take a fresh approach. This committee will be instrumental in sharing NAHC and Tribal perspective on CSU Policy drafting.

**Action Item #3 (b), Commissioners to consider the creation of (2) New Sub-Committees
and Appointments of Commissioners to Vacancies.**

The Staff have started the initial phase drafting (2) new sets of Regulations as required by statute and need Sub-Committees to help with the process and policy decisions. These (2) new Sub-Committees are as follows:

**Action Item #3 (b)(i), Sacred Lands Inventory & Fee Regulations
(Vacant, Vacant)**

In the 2018-2022 Strategic Plan a Goal & Objective was for the NAHC to charge for Sacred Lands Files Searches and related Tribal Cultural Resources Searches to generate revenue for the NAHC. In 2019 a Trailer Bill was introduced and passed allowing the Commission to charge a small fee for these searches. On a yearly basis, the Commission averages about 6,000 searches and list creations from requests by lead agencies and landowners. The only way to charge a fee is to have formal SLI&F regulations in place. In 2020, the NAHC was given a budget increase for staff positions that would be funded by these charges. Since then, every year the Commission has been asked how progress is coming and what our projected income will be. Until regulations are in place, no charges or revenue can be generated. Another aspect of the Sacred Lands Files Process Regulations is how information of Sacred Sites and Village sites have been uploaded to our internal system, who submitted them, who should be consulted for positive SLF hits, how does the information get reviewed and approved. To date there are over 3,600 sites that have been submitted to the Commission since 1976. They are separate from Confidential Tribal Files submitted to the NAHC housed in a separate system called NALIS, (Native American Lands Information System). These are important regulations to be drafted and reviewed by Tribes.

**Action Item #3 (b) (ii) Cal NAGPRA Enforcement Regulations
(Vacant, Vacant)**

AB 275, Cal NAGPRA Statute, gave the NAHC powers to monitor the Repatriation Process from start to finish and provide Dispute Resolution & Mediation when disputes



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**Action Item #3 (b) (ii) Cal NAGPRA Enforcement Regulations (Con't)
(Vacant, Vacant)**

arise. It also created the ability for the NAHC to levee fines on a daily basis for bad actors who continue to violate CalNAGPRA or use the current system to keep from releasing Ancestors and associated items back to Tribes. The only way the Commission can levee any fines is to have Enforcement Regulations formally in place to have the ability fine Institutions up to \$5,000 a day for major infractions. The Audits of both the UC & CSU Systems, and their lack of compliance over the past 30 years, shows that they must be held accountable to get our Ancestors back. Enforcement Regulations will be a powerful tool for the NAHC to force compliance once and for all.