

**Draft CalNAGPRA Dispute Resolution/Mediation Regulations**  
**Summary of Tribal Comments**

General

Mediation procedures should not be formalized as regulations, as formality may discourage tribes from participating due to lack of resources and the draft regulations do not provide detailed information about what assistance, if any, NAHC will provide tribes.

It is unclear as to whether these regulations apply only to dispute resolution/mediation conducted under CalNAGPRA or whether these will also govern the Most Likely Descendant mediation process.

The regulations should cover all NAHC mediations.

The regulations should address disputes between non-federally recognized tribes and federally recognized tribes.

It should be emphasized that this process is also for disputes involving multiple tribes.

The regulations place the burden of documentation on tribes and should be revised to make the process more accessible.

NAHC should provide data on the number of mediations each year, including the participating parties and resolution.

The regulations should be subject to a two-year recurring review process.

Mediator Selection

Tribes should have the ability to recommend/provide input as to a mediator.

Tribes should have the ability to hire outside mediators, but because of affordability, no assumption of non-cooperation should be made by a refusal to do so.

Mediator Qualifications

NAHC should maintain a pool of qualified mediators.

Mediator qualifications and experience should include the ability to understand historical trauma and not perpetuate bias; familiarity with California Indian communities; sensitivity to traditional knowledge and confidentiality.

## Mediation Process

The requirement that the parties meet before mediation is an additional “hoop” that should be eliminated.

NAHC staff should assist with initiating mediation, service, and forms.

The following language should be considered for inclusion: “Mediation. In the event a dispute arises out of or relates to this Agreement, or the breach thereof, the parties shall first attempt to settle the dispute through good faith negotiation. If the parties fail to settle the dispute through negotiation, then the parties may proceed with mediation with a mediator agreed by both parties. Costs related to mediation shall be mutually shared between or among the parties.”

In defining mediation, the regulations should include “removal, storage, alienation, separation, handling, testing, and studying” and “benefits of their return to tribes and tribal communities in a culturally appropriate manner.”

The service of process requirement should be eliminated.

Tribes should be allowed to choose whether state or federal law is applicable.

Consider making mediation briefs confidential.

The regulations should provide better clarity as to what evidence is provided deference.

The use of AB 52 maps should not be permitted as evidence in cases involving inter-tribal disputes and ancestral territories.

Any outcome should insure that items are being treated and returned safely.

Mediators should help parties achieve written agreement where possible, not issue a decision.

## Restorative Justice

Restorative justice should be further detailed and include the following: voluntary participation in mediation; truthful speaking; a safe and respectful environment for discussion; positive commitment to resolution; set-aside of land managed by tribes for reburial purposes; financial support for reburials; restitution for lost, missing or stolen cultural items; acknowledgement of the unpaid labor of tribes; restitution for the loss of intellectual property related to information taken without consent; culturally appropriate actions to address contamination to facilitate repatriation without harm to tribal members and the environment; museums working with tribes to find culturally appropriate exhibits; and donating to a Native American studies program or to an organization that helps tribes sustain culture.

Restorative justice should address the “hidden” costs of repatriation - the costs to tribes to get to a repatriation outcome, including costs of tribes or others to prepare items for reburial or other treatment and places to repatriate the items such as tribal facilities or appropriate reburial locations.