

**STATE OF CALIFORNIA
NATIVE AMERICAN HERITAGE COMMISSION
1550 HARBOR BOULEVARD, SUITE 100
WEST SACRAMENTO, CA 95691**

TITLE 14, CALIFORNIA CODE OF REGULATIONS
CalNAGPRA Mediation and Dispute Resolution: Adoption of Sections 29001 - 29015

NOTICE OF PROPOSED RULEMAKING

The Native American Heritage Commission (“Commission”) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Commission will hold a public hearing starting at 11:00 a.m. on April 25, 2025, at 525 Algodones Road in Winterhaven, CA. During the hearing, any person may present statements or arguments, either orally or in writing, that are relevant to the proposed action described in the Informative Digest. There will also be an opportunity to participate via webinar or teleconference. The Commission requests but does not require, that those who make oral comments also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to:

NATIVE AMERICAN HERITAGE COMMISSION
ATTENTION: CHAIRMAN REGGIE PAGALING
1550 HARBOR BOULEVARD, SUITE 100
WEST SACRAMENTO, CA 95691

Comments may also be submitted by email to: tribal.consultation@nahc.ca.gov.

The written comment period closes on May 2, 2025. The Commission will consider only timely received comments. When commenting, please indicate the proposed rulemaking action to which your comment refers.

AUTHORITY AND REFERENCE

Health and Safety Code section 8016(d)(8) authorizes the Commission to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific section 8016(d) of the Health and Safety Code.

INFORMATIVE DIGEST

Summary of Existing Laws and Effect of the Proposed Action

This rulemaking action clarifies and makes specific the mediation and dispute resolution process contained within section 8016(d) of the Health and Safety Code.

Health & Safety Code section 8016(d) provides for mediation and resolution of disputes that arise between tribes and institutions that are subject solely to the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”). Health & Safety Code section 8016(d)(8) requires the Commission to adopt mediation procedures, and these draft regulations will bring the Commission in compliance with statute.

The regulations proposed in this rulemaking action would create a process for conducting the mediation of disputes arising solely under CalNAGPRA. Additionally, the proposed regulations would establish mediator qualifications, set forth the process by which mediation is conducted, and provide for the integration of restorative justice principles in both mediation and agreed upon outcomes. The proposed regulations would also establish procedures for Commission resolution of disputes that remain resolved after mediation.

Objectives and Anticipated Benefits of the Proposed Regulation

The broad objective of these regulations is to ensure that when an institution is subject only to CalNAGPRA and not federal law, that there is an avenue for the resolution of disputes concerning the repatriation of human remains and associated cultural items. An anticipated benefit of these regulations is a shift in the adversarial dynamic that has long existed in California’s history of repatriation. These regulations will allow for dispute resolution in the form of mutually beneficial solutions as opposed to factually challenging enforcement and civil litigation. Simply put, these regulations will empower Tribes and Institutions to collaboratively navigate conflict that historically have prolonged repatriation outcomes. As a result, the proposed regulation will enhance the prevention of discrimination and promote fairness and social equity.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

The Commission determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Commission has concluded that these are the only regulations that concern the mediation and resolution of disputes arising solely under the California Native American Graves Protection and Repatriation Act.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The Commission may incur nominal costs that may be absorbed within its existing resources.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: None. The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Small Business Determination: None. This rulemaking seeks to clarify the mediation and dispute resolution process in section 8016(d) of the Health and Safety Code. It aims to establish a structured mediation process for CalNAGPRA disputes, define mediator qualifications, and incorporate restorative justice principles. The regulations will also outline procedures for the Commission to address unresolved disputes.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Commission concludes that the proposed regulation provides statutory implementation language and makes specific existing statute but does not include any required fiscal impacts.

The Commission concludes that it is (1) unlikely that the proposal will eliminate any jobs for mediators, (2) likely that the proposal will create an unknown number of jobs for mediators, (3) unlikely that the proposal will create an unknown number of new businesses providing mediation (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state.

Benefits of the Proposed Action: The proposed regulation will not directly enhance the health and welfare of California residents, worker safety, and the state's environment.

The anticipated benefit of these regulations is a shift in the adversarial dynamic that has long existed in California's history of repatriation. These regulations will allow for dispute resolution in the form of mutually beneficial solutions as opposed to factually challenging enforcement and civil litigation. Simply put, these regulations will empower Tribes and Institutions to navigate conflict that historically has prolonged repatriation outcomes

collaboratively. As a result, the proposed regulation will enhance the prevention of discrimination and promote fairness and social equity.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed action may be directed to:

Michelle Carr, Chief Counsel
Native American Heritage Commission
1550 Harbor Boulevard, Suite 100
West Sacramento, CA 95691
TELEPHONE: (916) 268 - 1439
EMAIL: michelle.carr@nahc.ca.gov

The backup contact person for this proposed action is:

Mario Pallari, Staff Counsel
Native American Heritage Commission
1550 Harbor Boulevard, Suite 100
West Sacramento, CA 95691
TELEPHONE: (916) – 710-0901
EMAIL: mario.pallari@nahc.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Michelle Carr using the contact information above.

AVAILABILITY OF DOCUMENTS

Availability of Statement of Reasons, Text of Proposed Regulations, and Rulemaking File

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, and the documents relied upon. Copies may be obtained by contacting Michelle Carr using the contact information above.

Availability of Changed or Modified Text

After holding the hearing and considering all timely and relevant comments received, the Commission may adopt the proposed regulations substantially as described in this Notice. If the Commission makes modifications which are sufficiently related to the originally proposed text it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Commission adopts the regulations as revised. Please send requests for copies of any modified text to the attention of Michelle Carr using the contact information above. The Commission will accept written comments on the modified text for 15 days after the date on which it is made available.

Availability of the Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Michelle Carr using the contact information above.

Availability of Documents on the Internet

Copies of this Notice, the proposed text of the regulation, and the Initial Statement of Reasons can be accessed on the Commission's website at www.nahc.ca.gov.