

## **Description of Specific Edits to the Regulatory Text**

**Title:** Strike “NATIVE AMERICAN HERITAGE COMMISSION” and replace with “NATURAL RESOURCES” which is the subject of Title 14.

**Title:** Add “Division 18. Native American Heritage Commission” and “Chapter 1. CalNAGPRA Mediation and Dispute Resolution Procedures” because this is the correct location of the regulations in the California Code of Regulations.

**Section 31001:** Clarified regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016,” and struck “section 8016(d)”.

**Section 31002:** Add regulatory authority and referenced statutes. “Note: Authority cited: Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016, Health and Safety Code.”

**Section 31003:** Strike “unless the context clearly requires otherwise” to remove any ambiguity as to the meaning of defined terms in the regulation.

**Section 31003:** Strike “either completed a course offered through or approved by the Commission or a person with” from the definition of Certified Mediator because the definition does not list specific approved courses, it is not clear what is sufficient to meet the qualifications.

**Section 31003:** Strike “routinely” as this term is vague.

**Section 31003:** Add regulatory authority and referenced statutes. “Note: Authority cited: Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016, Health and Safety Code.”

**Section 31004:** Strike “and Evidence Code sections 703.5, 1119-1126, and 1152” because the regulations cannot pre-determine the admissibility of evidence in any subsequent judicial proceeding.

**Section 31004:** Strike subsection (c) because the objection to being called to testify in a subsequent judicial proceeding is that of a party or the mediator and the regulations cannot preempt a judge’s ability to rule on such an objection.

**Section 31004:** Renumbered subsection “(d)” to “(c)”.

**Section 31004:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code and Reference: Section 8016, Health and Safety Code.”

**Section 31005(a):** Change “affected parties” to “agency or museum and the tribe(s) involved in the dispute” to clarify who Commission staff will notify of a dispute.

**Section 31005(a):** Add “via regular USPS mail, and if provided, via electronic mail,” to clarify how the written notice will be provided.

**Section 31005(a):** Renumber subsections “(i)”, “(ii)”, “(iii)”, and “(iv)” to “(1)”, “(2)”, “(3)” and “(4)” respectively to conform to Office of Administrative Law numbering conventions.

**Section 31005(a):** Add “The notification to the agency or museum and the tribe(s) shall include a copy of these regulations and will explain the process moving forward as set out in regulation” to specify what will be included in the notice provided by Commission staff.

**Section 31005(b):** Strike original language and replace with language clarifying what is required to be included in the notice of dispute provided to the parties by the Commission.

**Section 31005(c):** Add subsection to specify what information must be contained in a written notice of dispute sent to the Commission.

**Section 31005(d):** Add subsection to clarify the manner in which a written notice of dispute is to be sent to the Commission and to provide an address to send the notice.

**Section 31005:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016,” and struck “section 8016”.

**Section 31006:** Add “a Commission notification in response to” so as to clarify that the notification sent is by the Commission.

**Section 31006:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016,” and struck “section 8016”.

**Section 31007(a):** Renumber subsections “(i)” and “(ii)” to “(1)” and “(2)” respectively to conform to Office of Administrative Law numbering conventions.

**Section 31007(b):** Renumber subsections “(i)” and “(ii)” to “(1)” and “(2)” respectively to conform to Office of Administrative Law numbering conventions.

**Section 31007:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016,” and struck “section 8016”.

**Section 31008:** Add regulatory authority and referenced statutes. “Note: Authority cited: Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016, Health and Safety Code.”

**Section 31009(a):** Strike “associated with any” and add “of the” to clarify that unless the parties choose otherwise, the intent of the Commission is to pay for the cost of mediation.

**Section 31009(a):** Add “by either providing the parties with a mediator that the Commission has under contract or a trained Commission staff member, excluding Commissioners” to clarify that unless the parties choose otherwise, the intent of the Commission is to pay for the cost of mediation.

**Section 31009(a):** Strike “under contract with the Commission, if funding is available. If funding is not available, the parties will bear the costs of mediation. The Commission may, at its discretion, use the following options for the designation of a mediator:” as this language was vague in that it did not identify the source of potential funding or in what circumstances funding for mediators may be available.

**Section 31009(a):** Strike subsections “(i)”, “(ii)”, and “(iii)” because clarifying language about when and how the Commission will supply a mediator renders the language in these subsections unnecessary.

**Section 31009(a):** Renumber subsection “(iv)” to “(1)” to both reflect the deletion of subsections “(i)”, “(ii)”, and “(iii)” and to conform to Office of Administrative Law numbering conventions.

**Section 31009(a)(1):** Strike “Allow” and “to” and replace with “In the alternative” and “may” clarifying that parties to mediation may choose to procure the services of a mediator.

**Section 31009(a)(1):** Strike “a” and “not currently under contract with the Commission” to clarify that the ability for the parties to select and pay for a specific mediator is not exclusive to a situation where the Commission may have a mediator on contract.

**Section 31009(b):** Renumber subsections “(i)”, “(ii)”, “(iii)”, “(iv)”, “(v)”, and “(vi)” to “(1)”, “(2)”, “(3)”, “(4)”, “(5)”, and “(6)” respectively to conform to Office of Administrative Law numbering conventions.

**Section 31009(d):** Renumber subsection “(d)” to “(c)” as that is the correct alphabetical order.

**Section 31009(d):** Renumber subsections “(i)” and “(ii)” to “(1)” and “(2)” respectively to conform to Office of Administrative Law numbering conventions.

**Section 31009(e):** Renumber subsection "(e)" to "(d)" as that is the correct alphabetical order.

**Section 31009(e):** Strike "believes that a mediator designated by Commission staff should be disqualified, the party must notify the Commission of the grounds for disqualification" to clarify that a belief of disqualification does not create a mandatory duty to inform Commission staff. Add "has information that disqualifies the mediator, the party may inform Commission staff of this fact and provide the grounds for disqualification. Such notice shall be made in writing and submitted within 21 days of being notified of the mediator's designation. Along with the notice, the party seeking to disqualify a mediator shall submit any evidence it has demonstrating that the mediator is disqualified under any of the grounds listed in subsection (b) (1) – (5)." to clarify the process and information necessary for a party to submit to Commission staff when there is evidence that a mediator may be disqualified.

**Section 31009(e):** Strike "if at any time after designation of a mediator, a party learns information that disqualifies the mediator, the party may inform the Commission of this fact and provide the grounds for disqualification" to conform to other changes, clarifying timing and process for informing Commission staff that a mediator is possibly disqualified.

**Section 31009(e):** Add "review the notice and evidence submitted and shall contact the mediator and inform them that a request has been made to disqualify the mediator and under what grounds. The mediator may then either withdraw from the matter or submit evidence to Commission staff demonstrating why they are not disqualified under the grounds stated by the party. If Commission staff determines that the evidence supports the disqualification of the mediator on the alleged grounds, they shall ... If Commission staff determines that the evidence does not support the disqualification of the mediator on the alleged grounds, they shall ... and the mediator" to clarify that the mediator will be made aware of the request for disqualification and be provided an opportunity to either withdraw or give information evidencing that they are not disqualified and to clarify what process will be used by Commission staff to determine whether a mediator is disqualified. Strike "either" and "or" to conform to revised language.

**Section 31009:** Clarify regulatory authority and referenced statutes adding "Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016," and struck "section 8016".

**Section 31010(d):** Strike "Within 20 days of receipt of responses from all parties, or 45 days of receipt of the last submitted opening statement brief if no responses were submitted, the mediator shall contact the parties to schedule an initial mediation session." To clarify that

the mediator cannot schedule and notify the parties on the 19<sup>th</sup> or 44<sup>th</sup> day after the receipt of responses or opening statement briefs.

**Section 31010:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016,” and struck “section 8016”.

**Section 31011:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016,” and struck “section 8016”.

**Section 31012:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016,” and struck “section 8016”.

**Section 31013(b):** Renumber subsections “(i)”, “(ii)”, “(iii)”, “(iv)”, “(v)”, “(vi)”, “(vii)”, “(viii)”, “(ix)”, “(x)”, and “(xi)” to “(1)”, “(2)”, “(3)”, “(4)”, “(5)”, “(6)”, “(7)”, “(8)”, “(9)”, “(10)” and “(11)” respectively to conform to Office of Administrative Law numbering conventions.

**Section 31013(b)(xi):** Renumber subsections “(1)”, “(2)”, “(3)”, “(4)”, “(5)”, and “(6)” to “(A)”, “(B)”, “(C)”, “(D)”, “(E)”, and “(F)” respectively to conform to Office of Administrative Law numbering conventions.

**Section 31013:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016,” and struck “section 8016 (d)(8)”.

**Section 31014 (c):** Strike “quorum” and add “majority of Commissioners” to clarify what constitutes the proper number of Commissioners required to conduct a hearing.

**Section 31014 (d):** Strike “Such hearings will be closed to the public, and” to conform to the law, requiring meetings of the Commission, including public hearings where a majority of members are present, to be open to the public.

**Section 31014:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016; and”, struck “Government Code section 11126”, and struck and replaced “5” with “4” in “Section 11500, et seq., Government Code.”

**Section 31015:** Clarify regulatory authority and referenced statutes adding “Section 8016, Health and Safety Code and Section 5097.94, Public Resources Code. Reference: Section 8016, Health and Safety Code and Section 11425.60, Government Code” and struck “section 11425.60”.