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Draft CalNAGPRA Enforcement Regulations Summary of Tribal Comments and Responses

On May 9, 2025, the Native American Heritage Commission (NAHC) released draft CalNAGPRA enforcement regulations for a 90-day tribal comment and consultation period. During that time, the NAHC conducted two virtual listening sessions and engaged in individual consultation with one tribe. Comments received during these listening sessions and consultations as well as written comments provided by three tribes were compiled and reviewed. Based on the comments received, the Commission revised the draft regulations and on October 10, 2025, voted to send the revised draft regulations out for an additional 30-day tribal comment and consultation period.

The NAHC received comments from three tribes during the 30-day period and has provided 16 summaries of comments and our direct responses below, combining similar comments where appropriate.

After consideration of all comments received, the draft regulations were revised to define “preponderance;” explicitly state that unpaid civil penalties will be pursued by the Attorney General; specify the manner in which complaints are submitted; provide clarification as to how Commission staff will confirm whether an Institution is subject to and in compliance with NAGPRA; incorporate consultation with tribes as part of the evaluation of factors used to determine the amount of civil penalty; and require quarterly reports to indicate whether an Institution paid the civil penalty imposed by the Commission.

General Comments

1. **Comment:** One submission requested that enforcement procedures explicitly include tribes that were forcibly removed from California but maintain ancestral, cultural, and spiritual ties to the region.

NAHC Response: The draft regulations do not limit who may file a complaint for violations of CalNAGPRA. Instead, section 31024 provides that any person may initiate a complaint. As such, there is no need to make this change to the draft regulations.

2. **Comment:** It was suggested that when a complaint is filed, affected tribes should have access to clear information on the status of investigations and enforcement actions. Updates should be shared with all potentially affiliated tribes, not solely those with federal recognition within California.

NAHC Response: Both the institution and complaining party will be notified of the status of a complaint. Additionally, if an institution requests a public hearing to appeal the Commission's determination, advance notice and an opportunity to comment either before or during the hearing will be provided in conformance with California's open public meetings law, Bagley Keene.

3. **Comment:** One comment encouraged the Commission to establish a formal protocol for coordination with the Federal NAGPRA Program and intertribal working groups. This would ensure consistent enforcement, prevent duplicative reviews, and promote tribal unity across jurisdictions.

NAHC Response: The Commission currently coordinates with the Federal NAGPRA program on a case-by-case basis, furthermore these regulations set forth that Commission staff must contact the Federal NAGPRA program to determine if an institution is in violation of Federal Law. The regulations do not limit who is a complaining party so an intertribal working group may submit an allegation of noncompliance.

4. **Comment:** One commenter recommended that the Commission develop a tribal support mechanism—such as technical assistance or capacity-building grants—to help smaller or out-of-state tribes meaningfully engage in the CalNAGPRA enforcement process.

NAHC Response: The Commission does not currently have the resources to conduct a grant program. However, Commission staff are always available to provide guidance to Tribes as they navigate repatriation or consultation under CalNAGPRA.

Section 31022 – Definitions

5. **Comment:** One comment noted that the definition of “complaining party” applies to “any person,” which may inadvertently diminish the sovereign role of tribes in protecting their cultural items and suggests that the regulations should prioritize and separately identify tribal complaints.

NAHC Response: As drafted the regulations provide for the equal treatment of complaints of violations of CalNAGPRA, regardless of the party making a complaint and we decline to develop a two-tier system for the review and disposition of complaints. However, because information about the complaining party is public, it will be clear which complaints are from tribes, and which are from individuals or non-tribal entities.

Section 31023 – Violations of the Act

6. **Comment:** One comment stated that the draft regulations fail to include any enforcement provisions or follow-up mechanisms to ensure that an Institution pays the fine imposed and/or repatriates the stolen cultural items and/or remains.

NAHC Response: In response to this comment, we revised subsection (a) to explicitly include Attorney General enforcement as provided in statute. However, because the statute only concerns civil penalties and does not reference repatriation, we are unable to make that suggested change to the draft regulation.

7. **Comment:** We received a concern that the exemption from penalties for actions taken “in good faith” to comply with federal NAGPRA would permit an institution to avoid any accountability for their actions. Additionally, this commentor suggested that the determination of good faith should include consultation with the affected tribe and a review of the institution’s documented compliance efforts.

NAHC Response: Because the good faith exemption is found in Health and Safety Code section 8029(d), the Commission is bound by statutory language to include this in the regulations. Additionally, because it is the federal NAGPRA program, not the NAHC, that determines whether an institution is complying with that law, we decline to make any changes to the review process.

Section 31024 – Penalties and Enforcement Procedures

8. **Comment:** One commenter expressed concern that by not providing for confidentiality in raising an initial complaint of NAGPRA/CalNAGPRA noncompliance, as drafted, the regulations may create hesitancy to step forward with allegations of violations.

NAHC Response: Although we understand this concern, because the NAHC is subject to California’s Public Records Act, unless there is an exemption to disclosure, all documents submitted to the Commission, including complaints made under these regulations, are required by law to be made publicly available. Consequently, the draft regulations cannot exempt from disclosure information that is required to be made available to the public.

9. **Comment:** We received two comments that subsection (a) should contain additional language to safeguard traditional knowledge, sacred site locations, and cultural resource data shared during complaint reviews and hearings utilizing both state law and tribal data sovereignty principles.

NAHC Response: The Commission has provided for the most stringent level of confidentiality of information submitted that is available under current law. Because we are a state Commission we must adhere to laws related to open meetings and public records and are unable to withhold or restrict documents that are otherwise subject to public disclosure.

10. **Comment:** One commenter noted that in addition to consultation with federal NAGPRA staff to determine compliance, sub section (b) should include consultation with the affected tribe(s).

NAHC Response: The NAHC considered this comment but because it is the federal NAGPRA program, not the NAHC, that determines whether an institution is complying with that law, we have declined to make any changes to this process.

11. **Comment:** We received a comment that when assessing civil penalties, in addition to monetary damages, the Commission should consider the cultural harm and emotional trauma experienced by descendant communities. Additionally, the commentor stated that tribes should be consulted before final penalties or remedies are issued to ensure that outcomes align with tribal values and restorative justice principles.

NAHC Response: These regulations set forth that in determining a penalty the Commission will evaluate the cultural and spiritual significance of the item involved, as well as the damages suffered both economic and noneconomic, by the aggrieved party. The draft regulations have been revised to require Commission staff to consult with tribes prior to making a recommendation as to the amount of the civil penalty.

12. **Comment:** One comment noted that while section 31024(d) includes “cultural and spiritual significance” as a factor in assessing penalties, the process for evaluating such significance should be explicitly informed by tribal testimony and that the regulations should specify that the affected tribe’s own statements or declarations serve as the authoritative measure of cultural harm and value.

NAHC Response: Because the statute tasks the Commission with determining the appropriate civil penalty, which may include consideration of tribal testimony, we are unable to provide in regulation that a tribal determination of these factors is definitive.

Section 31025 – Public Hearing Procedures

13. **Comment:** A comment received is that the hearing procedures in Section 31025 should ensure that tribes have full and meaningful participation when their cultural materials are implicated, even if they are not the formal complaining party and that the regulations should provide notice, standing, and an opportunity to present testimony or evidence at any hearing concerning a tribe’s ancestors or cultural items.

NAHC Response: Because the draft regulations provide for a public hearing tribes will have advanced notice and an opportunity to comment either before or during the hearing in conformance with California’s open public meetings law, Bagley Keene. As such, we decline to make this change.

14. **Comment:** A concern was raised that the draft regulations do not allow Tribes to confidentially submit written comments/public testimony during the public hearing process and that this could have a chilling effect on Tribes' willingness to step forward and call out CalNAGRPA violations.

NAHC Response: While we understand the concern raised by this comment, because the NAHC is a state Commission, it is subject to California’s Public Records Act and Bagley Keene, the open public meetings act. As such, unless there is an exemption to disclosure, all documents submitted to or produced by the Commission are publicly available and all meetings of the NAHC must be conducted in public. We are unable to create new exemptions through these regulations.

Section 31026 – Precedent Decisions

15. **Comment:** We received two comments that tribes should be notified and invited to comment before any Commission determination is designated as a “precedent decision” to ensure that tribal perspectives and cultural implications are reflected in decisions that may affect future enforcement actions.

NAHC Response: Subsection (d) provides that a notice of intent to designate or withdraw the designation of a precedent decision shall be given with the notice of a Commission meeting. Additionally, anyone may submit written or oral comments for or against the proposed action.

Section 31027 – Quarterly Reporting

16. **Comment:** Two comments requested that public reports summarizing enforcement outcomes omit tribal names and sensitive case details unless the affiliated tribes provide written consent.

NAHC Response: Because the NAHC is subject to California’s Public Records Act, unless there is an exemption to disclosure, all documents submitted to or produced by the Commission are publicly available. Because the names of tribes and non-exempt case details are not shielded from disclosure, the NAHC is unable to make this requested change to the draft regulations.