

## Executive Board

### (Systemwide Senate Review) Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

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Mary Gauvain  
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Email: mary.gauvain@ucop.edu

Chair of the Assembly of the Academic Senate  
Faculty Representative to the Regents  
University of California  
1111 Franklin Street, 12th Floor  
Oakland, California 94607-5200

May 28, 2021

**SUSAN CARLSON, VICE PROVOST  
ACADEMIC PERSONNEL**

**Re: Proposed Presidential Policy on Native American Cultural Affiliation and  
Repatriation**

Dear Susan,

As requested, I distributed for systemwide Senate review a set of proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation (NACAR). Nine Academic Senate divisions and one systemwide committee (UCFW) submitted comments. These comments were discussed at Academic Council's May 26 meeting and are attached for your reference.

We understand that the Policy is intended to update UC's compliance with the federal and state versions of the Native American Graves Protection and Repatriation Act (NAGPRA), and to strengthen UC policy and practices related to the curation, repatriation, and disposition of Native American remains and cultural items in the University's custody.

The Academic Senate commented on prior versions of the NACAR policy in November 2019 and June 2020. We understand that in July 2020, the University paused the concluding review of the final interim policy to incorporate elements of Assembly Bill 275, which made additional changes to CalNAGPRA. The updated policy just reviewed by the Senate adds several provisions of AB 275, including a requirement that UC campuses prepare preliminary inventories and summaries of all items in their custody by January 1, 2022, and defer to tribal traditional knowledge, oral histories, documentation, and testimonies in their analyses and decisions about cultural affiliation and repatriation. The revised policy also includes new procedures for tribes to submit claims and disputes.

The Senate strongly supports the goals of the policy to prioritize repatriation, better incorporate tribal input into UC processes, and increase the promptness and consistency of UC's responses to repatriation requests. Senate reviewers find the new revisions appropriately responsive to comments from previous systemwide reviews and of AB 275 requirements.

Senate groups at the campuses emphasize that campuses with NAGPRA-eligible remains and cultural items or collections will require additional resources and staffing to meet the compliance requirements, and that even if resources are provided immediately, it will be difficult for some campuses to meet the January 2022 compliance deadline, especially given pandemic-related disruptions. Campuses will need additional systemwide and/or state funding to support this work, as well as flexibility around the deadline, if possible. We also recommend that the policy clarify the membership of the campus repatriation committee and its relationship to the systemwide committee.

The Senate is concerned that a small group of faculty will end up doing much of the work to carry out this policy. Also, many of these faculty are in small departments, often from underrepresented groups, and are heavily engaged in teaching and mentoring. The fact that the work will be demanding, closely scrutinized, and under a strict timeline, will only compound the demands on these faculty. They will need to be provided with resources and support to implement the policy. Also, the University needs to ensure that their work on the policy is appropriately considered in the academic review process, especially for junior scholars when they are reviewed for tenure.

Finally, we draw your attention to some comments in the reviews that seem helpful in developing the policy. Some reviewers pointed to the need for clearer definitions of what remains and cultural objects are covered in the policy and step-by-step guidelines about how to handle specific objects and types of remains. Several comments pertain to research, specifically if there will be any interim agreements regarding ongoing research projects using such materials, especially for projects that involve the type of collaboration with tribal members and tribal knowledge that is envisioned in the policy. There are also questions about if and how future requests that involve potential use of such objects will be carried out. There are also questions about whether the proposed policy has been reviewed and vetted by the California Native American Tribes, which is essential for transparency and the ultimate success of the policy. Lastly, there was a request to replace the term “cultural patrimony” with an appropriate legal term to avoid sexist connotations, especially given that many native tribes are matriarchal and/or matrilineal.

We appreciate the opportunity to comment. Please do not hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Mary Gauvain". The ink is dark and the signature is fluid, with the first and last names clearly legible.

Mary Gauvain, Chair  
Academic Council

cc: Provost Brown  
Academic Council  
Senate Directors  
Executive Director Baxter

Encl.



320 STEPHENS HALL  
UNIVERSITY OF CALIFORNIA

May 18, 2021

MARY GAUVAIN  
Chair, Academic Council

*Subject: Systemwide Review of Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation*

Dear Chair Gauvain:

On May 10, 2021, the Council of the Berkeley Division (DIVCO) discussed the proposed *Presidential Policy on Native American Cultural Affiliation and Repatriation*, informed by written comments from the Committee on Research (COR); and the Committee on Diversity, Equity, and Campus Climate (DECC). DIVCO endorses the proposed policy and the enclosed committee comments. I wish particularly to draw your attention to a point made in both committee letters: this is the right thing to do, we strongly support it, and it will require additional resources. As a System, we must provide adequate resource the offices doing the important work of repatriation.

Please see attached.

Sincerely,

A handwritten signature in blue ink, reading 'Jennifer Johnson-Hanks'.

Jennifer Johnson-Hanks  
Professor of Demography and Sociology  
Chair, Berkeley Division of the Academic Senate

Enclosures

cc: Ronald Cohen, Vice Chair, Berkeley Division of the Academic Senate  
Dennis Levi, Chair, Committee on Research  
Lok Siu, Chair, Committee on Diversity, Equity, and Campus Climate  
Jocelyn Surla Banaria, Executive Director, Berkeley Division of the Academic Senate  
Deborah Dobin, Senate Analyst, Committee on Research  
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate



April 28, 2021

PROFESSOR JENNIFER JOHNSON-HANKS  
Chair, Berkeley Division of the Academic Senate

*Re: COR comments on proposed Presidential Policy on Native American Cultural  
Affiliation and Repatriation*

At its April 21<sup>st</sup> meeting, COR reviewed the proposed Presidential Policy on Native American Cultural Affiliation and Repatriation. This is the latest revision of the policy, written in response to the state's CalNAGPRA law, which extends the provisions of the federal NAGPRA to California tribes. The committee understands the need for a revised policy and endorses the revision.

COR notes that the UC Berkeley campus has a very large number of Native American remains and cultural objects, so this policy will have a major impact on the campus. In an area as complex as this and with as many stakeholders, implementation of the policy will be critical to its success. To support its implementation, COR recommends the following:

- That the systemwide policy or Berkeley's guidelines include clear definitions of what remains and cultural objects are covered, perhaps in a decision-tree format
- That there be step-by-step guidelines for faculty and staff regarding how to handle specific types of remains and objects
- That a clear process for conflict resolution be developed and supported
- That the report of the VCRO's task force on NAGPRA, written a few years ago, be refined and serve as a basis for implementation
- That the campus develop and implement a comprehensive and detailed plan for communicating about the policy, so that it's understood and adopted in practice by everyone working with these remains and objects

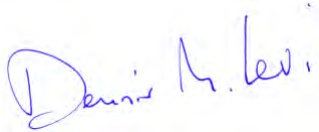
COR notes that UCOP policy is already going with the broader scope of the California regulations, since it does refer to UNDRIP; however, we invite UCOP to consider a broader scope for future policy revisions.

In addition, COR notes that there are ongoing research projects on the Berkeley campus that integrate tribal knowledge with scholarly work. The committee believes that encouraging and further developing projects such as these could help create positive and collegial relationships between tribes and the campus that would help enable the successful implementation of the policy.

Lastly, given the size of UC Berkeley's collections of Native American remains and cultural objects and the importance of implementing this policy in a timely and thorough manner, COR asks that UCOP support the campus' request for additional funding for more staff to work on the repatriation effort.

Thank you for the opportunity to comment.

With best regards,

A handwritten signature in blue ink that reads "Dennis M. Levi". The signature is written in a cursive, flowing style.

Dennis Levi, Chair  
Committee on Research



May 3, 2021

PROFESSOR JENNIFER JOHNSON-HANKS  
Chair, 2020-2021 Berkeley Division of the Academic Senate

*Re: DECC's Comments on the Proposed Presidential Policy on Native American  
Cultural Affiliation and Repatriation*

The Committee on Diversity, Equity, and Campus Climate (DECC) reviewed the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation on April 15, 2021. We also took this opportunity to invite Professor Sabrina Agarwal, Chair of UC Berkeley's NAGPRA Advisory Committee, to speak on the work of the committee and to learn more about the implementation process. DECC supports the proposed revisions and affirms the critical importance of policy implementation.

The Phoebe A. Hearst Museum of Anthropology at UC Berkeley has one of the country's largest collections of Native American remains and cultural artefacts. Given the size and complexity of the collection, Berkeley has been slower than other UC campuses in the work of repatriation and disposition. Because the implementation of this policy is absolutely necessary, DECC underscores the need to ensure that sufficient resources are provided. Of critical concern is the adequate hiring and training of staff to properly perform the requirements outlined in the policy. It is also crucial that space, such as lab and ceremonial space, be made available so that the work of documentation, analysis, consultation, disposition, and repatriation is carried out with cultural sensitivity and respect.

The proper implementation of this policy will improve the general campus climate by creating a less hostile and more inclusive environment, especially for our Native American campus and community members. It can also facilitate better relations between UC Berkeley and Native Americans; and in doing so, it will broaden awareness of Native American issues and concerns, support indigenous language revitalization programs, and enhance the recruitment and retention of Native American students, staff, and faculty.

Thank you for the opportunity to comment on these revisions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lok Siu', written in a cursive style.

Lok Siu

Chair, Committee on Diversity, Equity, and Campus Climate

LS/lc





DAVIS DIVISION OF THE ACADEMIC SENATE  
ONE SHIELDS AVENUE  
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academicsenate.ucdavis.edu

May 19, 2021

**Mary Gauvain**  
Chair, Academic Council

**RE:** Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Mary,

The proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation were forwarded to all standing committees of the Davis Division of the Academic Senate. The Committee on Affirmative Action and Diversity (AA&D) responded.

Though AA&D has concerns with NAGPRA itself (which this policy follows), AA&D does think that this updated policy version takes into account comments from previous consultations on the draft policy. AA&D notes that the policy contains "important language that recognizes context and the importance of Indigenous evidence of relatedness to support repatriations as well as establishing requirements for consent before teaching or research."

The Davis Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Tucker".

Richard P. Tucker, Ph.D.  
Chair, Davis Division of the Academic Senate  
University of California, Davis

Enclosed: Davis Division Committee Responses

c: Hilary Baxter, Executive Director, Systemwide Academic Senate  
Michael LaBriola, Assistant Director, Systemwide Academic Senate  
Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate

May 10, 2021

**Richard Tucker**

Chair, Davis Division of the Academic Senate

**RE:** Request for Consultation – Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Richard:

The Committee on Affirmative Action and Diversity has reviewed the RFC – Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation and support the proposed policy. The policy keeps in line with NAGPRA, which the committee feels is a flawed law that does not go far enough to provide redress and efficient repatriation. However, this updated version does take into consideration previous comments made about prior proposed policy versions. This policy contains important language that recognizes context and the importance of Indigenous evidence of relatedness to support repatriation as well as establishing the requirements for consent before teaching or research.

Sincerely,

A handwritten signature in dark ink, appearing to read "JV Torres", is positioned above the printed name and title.

Jose V. Torres

Chair, Committee on Affirmative Action and Diversity

c: Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate

March 5, 2021

Mary Gauvain, Chair  
Academic Council

**Re: Third Systemwide Review of the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair Gauvain,

The Irvine Division has no further comments on the proposed policy beyond those shared during the previous two rounds of systemwide review, and respectfully declines to opine. Our campus has no materials that would be affected by this policy.

Sincerely,



Jeffrey Barrett, Chair  
Academic Senate, Irvine Division

Cc: Joanna Ho, Chair Elect-Secretary  
Kate Brigman, Executive Director  
Gina Anzivino, Associate Director



May 14, 2021

Mary Gauvain  
Chair, UC Academic Senate

**Re: (Systemwide Senate Review) Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair Gauvain,

The Divisional Executive Board, councils, and committees appreciated the opportunity to review the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation. The Executive Board reviewed the proposal and divisional committee feedback at its meeting on May 13, 2021. Members appreciated the importance of the proposal as a step forward for the university. The Executive Board unanimously and enthusiastically endorsed the proposal as written.

Sincerely,



Shane White  
Chair  
UCLA Academic Senate

Encl.

Cc: Jody Kreiman, Vice Chair/Chair Elect, UCLA Academic Senate  
Michael Meranze, Immediate Past Chair, UCLA Academic Senate  
April de Stefano, Executive Director, UCLA Academic Senate

May 7, 2021

To: Shane White, Chair, UCLA Academic Senate

From: Megan McEvoy, Chair, Undergraduate Council

**Re: Systemwide Senate Review: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

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The revisions to the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation were circulated to members of the Undergraduate Council for independent review and comment.

The Council appreciates that this policy and its revisions were developed in collaboration with the Cultural Affiliation and Repatriation Policy Advisory Workgroup, which includes four members nominated by the Native American Advisory Council; and in close consultation with California Native American tribes and the Native American Heritage Commission (NAHC).

Thank you for the opportunity to opine. If you have any questions, please contact us via the Undergraduate Council's analyst, Aileen Liu, at [aliu@senate.ucla.edu](mailto:aliu@senate.ucla.edu).

cc: April de Stefano, Executive Director, Academic Senate  
Jody Kreiman, Vice Chair/Chair Elect, Academic Senate  
Aileen Liu, Committee Analyst, Undergraduate Council  
Michael Meranze, Immediate Past Chair, Academic Senate

April 28, 2021

Shane White, Chair  
Academic Senate

**Re: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair White,

At its meeting on April 28, 2021 the Faculty Welfare Committee reviewed the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation.

Members declined to opine.

If you have any questions, please contact us via the Faculty Welfare Committee's interim analyst, Elizabeth Feller, at [efeller@senate.ucla.edu](mailto:efeller@senate.ucla.edu).

Sincerely,

Huiying Li, Chair  
Faculty Welfare Committee

cc: Jody Kreiman, Vice Chair/Chair Elect, Academic Senate  
Michael Meranze, Immediate Past Chair, Academic Senate  
April de Stefano, Executive Director, Academic Senate  
Elizabeth Feller, Interim Analyst, Faculty Welfare Committee  
Members of the Faculty Welfare Committee

April 28, 2021

Shane White, Chair  
Academic Senate

**Re: Systemwide Review: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair White,

At its meeting on April 7, 2021, the Council on Research (COR) had an opportunity to assess the revisions to the Proposed Presidential Policy on Native American Cultural Affiliation.

Members are in support of the revisions and wish to reaffirm the Council's previous statement on the issue, dated September 30, 2019.

Thank you for the opportunity to review and comment. If you have any questions for us, please do not hesitate to contact me at [julianmartinez@mednet.ucla.edu](mailto:julianmartinez@mednet.ucla.edu) or via the Council's analyst, Elizabeth Feller, at [efeller@senate.ucla.edu](mailto:efeller@senate.ucla.edu).

Sincerely,

Julian Martinez, Chair  
Council on Research

cc: Jody Kreiman, Vice Chair/Chair-Elect, Academic Senate  
Michael Meranze, Immediate Past Chair, Academic Senate  
April de Stefano, Executive Director, Academic Senate  
Elizabeth Feller, Principal Policy Analyst, Council on Research  
Members of the Council on Research

April 20, 2021

To: Shane White, Chair  
Academic Senate

Re: **Systemwide Review: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair White,

The Committee on Diversity, Equity and Inclusion has reviewed the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation and find it to be carefully thought-out, fair, and timely.

We appreciate being given the opportunity to comment and we look forward to the University's ongoing engagement with the issues that this policy addresses. If you have any questions, please do not hesitate to contact me at [yarborou@humnet.ucla.edu](mailto:yarborou@humnet.ucla.edu) or the Interim Committee on Diversity, Equity and Inclusion Analyst, Taylor Lane Daymude at [tlanedaymude@senate.ucla.edu](mailto:tlanedaymude@senate.ucla.edu).

Sincerely,



Professor Richard Yarborough, Chair  
Committee on Diversity, Equity and Inclusion





OFFICE OF THE ACADEMIC SENATE  
ROBIN DELUGAN, CHAIR, ACADEMIC SENATE  
[senatechair@ucmerced.edu](mailto:senatechair@ucmerced.edu)

UNIVERSITY OF CALIFORNIA, MERCED  
5200 NORTH LAKE ROAD  
MERCED, CA 95343

**May 12, 2021**

**To: Mary Gauvain, Chair, Academic Council**

**Re: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

The proposed Presidential Policy on Native American Cultural Affiliation and Repatriation was distributed for comment to the Merced Division Senate Committees and the School Executive Committees. The following committees offered several comments for consideration. Their comments are appended to this memo.

- [Committee on Research \(CoR\)](#)
- [Committee for Diversity and Equity \(D&E\)](#)
- [Committee on Faculty Welfare and Academic Freedom \(FWAF\)](#)
- [Committee on Library and Scholarly Communication \(LASC\)](#)
- [School of Engineering Executive Committee Chair](#)

CoR was unclear as to whether Repatriation Coordinator is a new position, at what level or category it will be hired, or if these repatriation duties will be assigned to existing staff or faculty. If this position is mandated for each campus, CoR suggests it be funded by UCOP. CoR also pointed out that considerations, language, or acknowledgement for researchers currently working with cultural items falling under this policy are potentially lacking. Can interim agreements be made for researchers who identify objects that are currently the focus of their research? Can they become "authorized individuals" as referenced in Footnote 37? Specifically, in Part VI. REPATRIATION IMPLEMENTATION PLAN, one of the numbered points of the plan could be to address any ongoing research with associated cultural items and a process for researchers to apply for potential authorization if applicable.

D&E and FWAF endorsed the proposed policy, noting that it fully incorporates AB 275 requirements.

LASC also endorsed the proposed policy and found it to be carefully written and sensitively delineates important policies to resolve this crucial problem.

The School of Engineering Executive Committee solicited comments from faculty and received none. However, the Chair of the Executive Committee made two suggestions. First, though the term "cultural patrimony" (page 5) is a legal definition, it would be appreciated if the UC would consult a legal (or other) scholar who can identify an appropriate synonym that is less embedded in sexism. Second, the

Chair inquires whether this proposed policy has been vetted by the California Native American Indian Tribes. They were not listed in Provost Brown's transmittal letter as stakeholders who opined. Presenting Tribal feedback provides better transparency and context for Senate review.

Divisional Council reviewed the committees comments via email and supports their various points and suggestions.

The Merced Division thanks you for the opportunity to comment on this proposed policy.

Sincerely,

A handwritten signature in cursive script, reading "Robin M. DeLugan".

Robin DeLugan  
Chair, Divisional Council  
UC Merced

CC: Divisional Council  
Hilary Baxter, Executive Director, Systemwide Academic Senate  
Michael LaBriola, Assistant Director, Systemwide Academic Senate  
SOE EC Chair Keske  
LASC Chair DePrano  
Senate Office

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SANTA BARBARA • SANTA CRUZ

ACADEMIC SENATE, MERCED DIVISION  
COMMITTEE ON RESEARCH  
KARA MCCLOSKEY, CHAIR  
kmcloskey@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED  
5200 NORTH LAKE ROAD  
MERCED, CA 95343

**April 5, 2021**

**To:** Robin DeLugan, Chair, Division Council

**From:** Kara McCloskey, Chair, Committee on Research (COR)

A handwritten signature in black ink, appearing to read "Kara McCloskey".

**Re:** Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

At its April 1 meeting, CoR reviewed the proposed Presidential Policy on Native American Cultural Affiliation and Repatriation. We offer the below comments.

With regard to the Repatriation Coordinator for each campus, it was not clear if this is a new position, nor at what level or category that it will be hired at, or if these repatriation duties will be assigned to existing staff or faculty. If the latter, it does not seem feasible that existing staff or faculty can handle these duties, which are important and carry a large workload. CoR suggests that if this position is mandated for each campus, then it needs to be funded by systemwide.

Considerations, language, or acknowledgement for researchers currently working with cultural items falling under this policy are potentially lacking. Can interim agreements be made for researchers who identify objects that are currently the focus of their research? Can they become "authorized individuals" as referenced in Footnote 37? Specifically, in Part VI. REPATRIATION IMPLEMENTATION PLAN, one of the numbered points of the plan could be to address any ongoing research with associated cultural items and a process for researchers to apply for potential authorization if applicable.

We appreciate the opportunity to opine.

cc: Senate Office

# UNIVERSITY OF CALIFORNIA, MERCED

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ACADEMIC SENATE, MERCED DIVISION  
COMMITTEE FOR DIVERSITY AND EQUITY

UNIVERSITY OF CALIFORNIA, MERCED  
5200 NORTH LAKE ROAD  
MERCED, CA 95343  
(209) 228-7930

**April 12, 2021**

**To: Robin DeLugan, Senate Chair**

**From: Committee for Diversity and Equity (D&E)**

**Re: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

The Committee for Diversity and Equity (D&E) reviewed [the proposed Presidential Policy on Native American Cultural Affiliation and Repatriation](#), which has undergone substantial revisions since D&E first reviewed the Interim Policy in September 2019. D&E is pleased to endorse the proposed Policy which has been revised to fully incorporate AB 275 requirements.

The Committee for Diversity and Equity appreciates the opportunity to opine.

cc: D&E Members  
Fatima Paul, Executive Director, Senate Office  
Senate Office

# UNIVERSITY OF CALIFORNIA, MERCED

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ACADEMIC SENATE, MERCED DIVISION  
COMMITTEE ON FACULTY WELFARE AND ACADEMIC FREEDOM  
CAROLIN FRANK, CHAIR  
cfrank3@ucmerced.edu

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5200 NORTH LAKE ROAD  
MERCED, CA 95343  
(209) 228-4369

**MARCH 31, 2021**

**To:** Robin DeLugan, Chair, Divisional Council

**From:** Carolin Frank, Chair, Committee on Faculty Welfare and Academic Freedom (FWAF)

**Re:** Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

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At its March 31 meeting, FWAF reviewed [the proposed Presidential Policy on Native American Cultural Affiliation and Repatriation](#). FWAF is cognizant that the proposed policy has been revised to ensure that the policy fully incorporates the requirements of the California Bill, AB 275, which was signed into law, effective January 1, 2021, and made substantial changes to the California Native American Graves Protection and Repatriation Act.

FWAF's review found the revisions that were introduced to be appropriate for addressing the concerns about the policy's alignment with the AB 275 requirements, and is pleased to endorse the proposed policy.

FWAF appreciates the opportunity to opine.

cc: Senate office

# UNIVERSITY OF CALIFORNIA, MERCED

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ACADEMIC SENATE, MERCED DIVISION  
COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATIONS  
MARIA DEPRANO, CHAIR  
mdeprano@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED  
5200 NORTH LAKE ROAD  
MERCED, CA 95343

**Monday, April 5, 2021**

**To:** Robin DeLugan, Senate Chair

**From:** Maria DePrano, Chair, Committee on Library & Scholarly Communications (LASC) & LASC Committee Membership

**Re:** Proposal for Presidential Policy on Native American Cultural Affiliation and Repatriation

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LASC has reviewed the Proposal for Presidential Policy on Native American Cultural Affiliation and Repatriation. The committee finds that the proposed policy is carefully written and sensitively delineates important policies to resolve this crucial problem.

LASC supports the implementation of the policy and appreciates the opportunity to opine.

**Cc:** Senate Office



## SCHOOL OF ENGINEERING

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PHONE: 209-228-4411  
FAX: 209-228-4047

April 5, 2021

To: UC-M Academic Senate  
From: Catherine Keske (Chair), School of Engineering Executive Committee  
Re: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Senate Chair DeLugan:

SoE ExComm appreciates the opportunity to opine. Our Committee solicited but did not receive comments from our colleagues. However, I wish to offer one suggestion and one comment for consideration.

- 1) Suggestion re: use of term “cultural patrimony” (page 5): Though this is a legal definition, it would be appreciated if the UC would consult a legal (or other) scholar who can identify an appropriate synonym that is less embedded in sexism.
- 2) Comment: Has this document been vetted by the California Native American Indian Tribes? They weren’t listed as partaking in the System Review, according to Provost Brown’s transmittal letter. Presenting Tribal feedback provides better transparency and context for Senate review.



CHAIR, ACADEMIC SENATE  
RIVERSIDE DIVISION  
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May 12, 2021

Mary Gauvain, Chair, Academic Council  
1111 Franklin Street, 12th Floor  
Oakland, CA 94607-5200

**RE: (Systemwide Senate Review) Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Mary,

Executive Council strongly supports the subject proposal. Members expressed gladness regarding the *Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation* and voiced accolades and gratitude for the scholars involved in drafting a “cutting edge and important policy for the University to have” and appreciation for the level of consultation and collaboration that went into its drafting.

Finally, I also include the positive consultative feedback provided by Riverside’s Committee on Diversity, Equity, & Inclusion, Committee on Library and Information Technology, and the Committee on Research. Also included are supportive comments from the faculty executive committees of the College of Engineering, College of Humanities, Arts, and Social Sciences, College of Natural and Agricultural Sciences, and the School of Medicine.

Sincerely yours,

*Jason Stajich*

Professor of Bioinformatics and Chair of the Riverside Division

CC: Hilary Baxter, Executive Director of the Academic Senate  
Cherysa Cortez, Executive Director of UCR Academic Senate Office



April 23, 2021

TO: Jason Stajich, Chair  
Riverside Division of the Academic Senate

FROM: Lucille Chia, Chair *Lucille Chia*  
CHASS Executive Committee

RE: Review of Proposed Presidential Policy on Native American Cultural  
Affiliation and Repatriation

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The CHASS Executive Committee is in full and enthusiastic support of this policy, especially after listening to the comments of Professors Clifford Trafzer and Rebecca (Monte) Kugel, both experts in Native American history and culture, whom we invited to our meeting on April 7, 2021. In particular, we appreciated Professor Trafzer's remarks concerning the UC President's Native American Advisory Council that proposed the new policy 2-3 years ago. He is currently on the NAGPRA Faculty Committee and the Working Group making final changes to the document we reviewed and noted that Working Group will continue to fine tune and change the policy as needed, even after adoption.

17 April 2021

To: Jason Stajich, Chair  
Riverside Division

From: Theodore Garland, Jr., Chair, Executive Committee  
College of Natural and Agricultural Science

Re: Systemwide Proposed Pres Policy/Nat Amer Cultural Affiliation &  
Repatriation

The CNAS Executive Committee reviewed this proposal and has no  
comments.

Sincerely,





**COMMITTEE ON DIVERSITY, EQUITY, & INCLUSION**

March 11, 2021

To: Jason Stajich, Chair  
Riverside Division Academic Senate

From: Xuan Liu, Chair  
Committee on Diversity, Equity, & Inclusion

Re: Proposed Presidential Policy on Native American Cultural Affiliation and  
Repatriation

The Committee on Diversity, Equity, and Inclusion reviewed the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation and unanimously supports the policy.



## *Academic Senate*

April 7, 2021

To: Jason Stajich, Chair  
Riverside Division

From: Hai Che, Chair  
Committee on Research

Re: 20-21. SR. **Proposed Presidential Policy on Classification of Gifts and Sponsored Awards**

The committee reviewed the proposed policy on Native American Cultural Affiliation and Repatriation and had no comments



## *Academic Senate*

April 29, 2021

To: Jason Stajich, Chair  
Riverside Division


From: Alejandra Dubcovsky, Chair  
Committee on Library and Information Technology

RE: Systemwide Review: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

The committee discussed this proposed policy and had no additional comments.

March 10, 2021

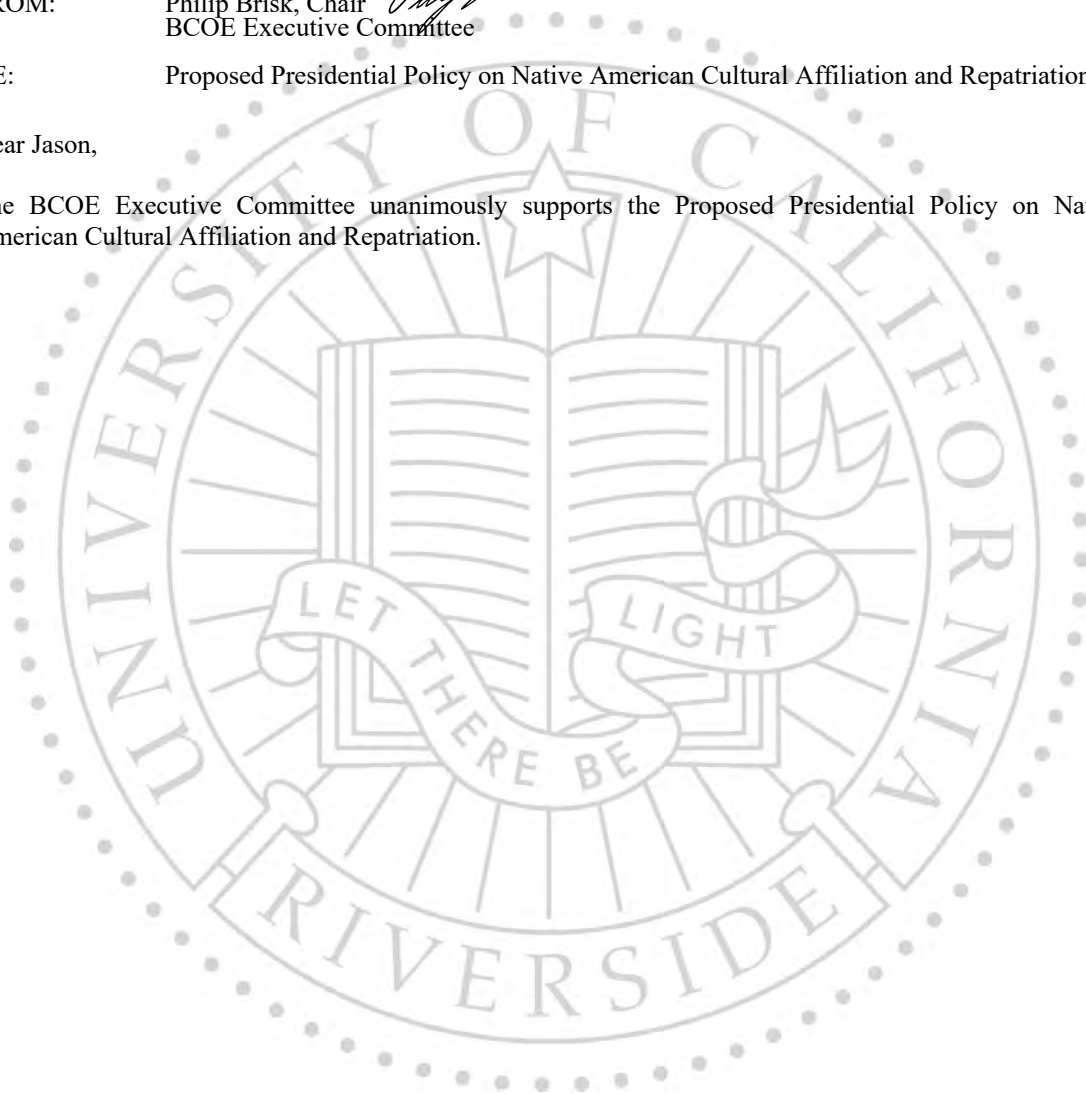
TO: Jason Stajich, Chair  
Academic Senate

FROM: Philip Brisk, Chair   
BCOE Executive Committee

RE: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Jason,

The BCOE Executive Committee unanimously supports the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation.



April 16, 2021

**To:** Jason Stajich, Ph.D., Chair, Academic Senate, UCR Division

**From:** Declan McCole, Ph.D., Chair, Faculty Executive Committee, and UCR School of Medicine

**Subject:** SOM FEC Response to Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

The SOM Executive Committee reviewed *Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation* at the regular meeting on April 15, 2021. SOM FEC is in agreement with the response to the community, historic, and tribal culture. SoM FEC approves the recommended changes.

Yours sincerely,

A handwritten signature in black ink that reads "Declan McCole".

Declan F. McCole, Ph.D.  
Chair, Faculty Executive Committee  
School of Medicine



May 19, 2020

To: Mary Gauvain, Chair  
Academic Senate

From: Susannah Scott, Chair  
Santa Barbara Division 

Re: Systemwide Review of Proposed Revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation

The Santa Barbara Division distributed the proposed Revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation to the Committee on Diversity and Equity (CDE) and the Committee on Library, Information, and Instructional Resources (CLIIR). Both responses are attached for your consideration.

CDE found that the lack of background information made it very difficult to provide relevant comments on the proposed revisions. The documentation did not include information on which tribes were asked for input, or the process for repatriating human remains. These details would have been helpful to the committee's consideration of the proposed revisions, in addition to specifics about the campus implementation plan. With respect to the latter, CDE wanted to know more about the objects housed at UC Santa Barbara and how faculty will be involved. The committee plans to reach out to the UCSB NAGPRA Chancellor's Designee and Repatriation Coordinator in an effort to learn more.

CLIIR members recognized the need to update the policy for legal compliance. However, they are concerned that it may not be possible for the campus to meet the posted deadlines (beginning with January 1, 2022) for the preliminary Inventory and Summary of materials (described in C.5) given the limited access to campus during the pandemic. In addition, they note the substantial amount of additional work required to implement the policy, without corresponding funding.

A member of the committee recommends that Prof. Douglas Kennett, Curator of UCSB's Repository of Archaeological and Ethnographic Collections, be consulted about the impact of the policy on UCSB. Prof. Kennett has confirmed that the records of the campus Repository of Human Remains and Cultural Items will need to be updated and re-inventoried. Moreover, the process of repatriating the Human Remains and Cultural Items will require negotiation, time, protected land (for reburials), and funds. Although the required Repatriation Coordinator has



been appointed for the campus, funding will need to be allocated for the requirements to be completed.

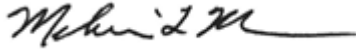
We thank you for the opportunity to comment.

**Academic Senate  
Santa Barbara Division**

May 11, 2021

To: Susannah Scott, Divisional Chair  
Academic Senate

From: Melissa L. Morgan, Chair  
Committee on Diversity and Equity




**Re: Systemwide Review of Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

The Committee on Diversity and Equity (CDE) discussed the systemwide review of proposed Presidential Policy on Native American Cultural Affiliation and Repatriation. The Committee saw a prior version of this policy last year. CDE found that the lack of background information made it very difficult to provide relevant comments. The Committee wanted to know about which tribes have been asked for input and what the process for repatriating human remains will be. CDE also wanted to know more specifics about the campus implementation plan, such as what objects and remains UCSB has and how faculty will be involved. CDE is reaching out to the UCSB NAGPRA Chancellor's Designee and Repatriation Coordinator in an effort to learn more about local efforts.

CC: Shasta Delp, Executive Director, Academic Senate

May 5, 2021

To: Susannah Scott, Divisional Chair  
Academic Senate

From: Karen Lunsford, Chair   
Committee on Library, Information, and Instructional Resources

**Re: Comments on proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation**

The Committee on Library, Information, and Instructional Resources reviewed the proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation at its meeting on April 16, 2021. These revisions are intended to bring the policy into compliance with the federal Native American Graves Protection and Repatriation Act (NAGPRA) and with the California Native American Graves and Repatriation Act (CalNAGPRA). In particular, the revisions respond to changes to CalNAGPRA required by AB 275, which became effective January 1, 2021.

Committee members recognized the need for the policy to align with legal imperatives. However, they expressed concerns that meeting the deadlines (beginning with January 1, 2022) for the preliminary Inventory and Summary of materials (described in C.5) may no longer be possible given the pandemic given the limited access to campus. In addition, they noted the substantial amount of additional work that the policy will require, but apparently with no additional funding granted by UCOP. A committee member recommended that Prof. Douglas Kennett, Curator of UCSB's Repository of Archaeological and Ethnographic Collections, be consulted about the impact of the policy on UCSB.

Chair Lunsford contacted Prof. Kennett, who confirmed that UCSB and the Chumash community together curate an extensive Repository of Human Remains and Cultural Items. Although the Repository already keeps excellent records, they will need to be updated to align with the revised--and expanded--definitions of Cultural Items included in AB 275 and the proposed policy. The entire Repository will need to be re-inventoried. Moreover, the process of repatriating the Human Remains and Cultural Items will require negotiation, time, protected land (for reburials), and funds. Prof. Kennett confirmed that meeting the various policy deadlines under pandemic conditions will be difficult. In addition, each campus's Chancellor is responsible for funding the implementation of the policy, as there were no funds allocated by UCOP. Although the required Repatriation Coordinator has been appointed, funds still need to be allocated for the requirements to be completed.

CC: Shasta Delp, Executive Director, Academic Senate



OFFICE OF THE ACADEMIC SENATE

9500 GILMAN DRIVE  
LA JOLLA, CALIFORNIA 92093-0002  
TELEPHONE: (858) 534-3640  
FAX: (858) 534-4528

May 14, 2021

Professor Mary Gauvain  
Chair, Academic Senate  
University of California  
VIA EMAIL

Re: Divisional Review of UC Policy on Native American Cultural Affiliation and Repatriation

Dear Professor Gauvain,

The UC Policy on Native American Cultural Affiliation and Repatriation (NACAR) proposal was distributed to San Diego Divisional Senate standing committees and discussed at the May 10, 2021 Divisional Senate Council meeting. Senate Council endorsed the proposal.

Council did, however, provide some comments for consideration. The membership language for the Campus Committees and the parallel relationship with the Systemwide Committee needs further clarification. The policy does not clearly describe the role of the Chancellor's Designee in relationship to the Systemwide Committee: in what capacity they serve and whether or not they are an ex officio member of the Systemwide Committees. It is also unclear what the membership should be for the Campus Committee, whether the campus' Repatriation Coordinator is an ex officio member of that committee, and if staff will be supporting it. There is concern that the labor-intensive work required by the policy would fall disproportionately on the small number of Native American faculty in the UC System, many of them junior faculty. In this case, it is important for the policy to detail how this specific service to the University will be appropriately considered during their academic review process, particularly if someone is being reviewed for tenure.

The responses from the Divisional Committee on Research and an *ad hoc* committee of faculty subject matter experts are attached.

Sincerely,

A handwritten signature in black ink that reads "Steven Constable". The signature is fluid and cursive, with the first name "Steven" and last name "Constable" clearly legible.

Steven Constable  
Chair  
San Diego Divisional Academic Senate

Attachments

cc: Tara Javidi, Vice Chair, San Diego Divisional Academic Senate  
Ray Rodriguez, Director, San Diego Divisional Academic Senate  
Hilary Baxter, Executive Director, UC Systemwide Academic Senate

March 24, 2021

**STEVEN CONSTABLE, Chair**  
**Academic Senate, San Diego Division**

SUBJECT: Review of Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

The Committee on Research (COR) discussed the proposed Presidential Policy on Native American Cultural Affiliation and Repatriation at their March 15, 2021 meeting. The Committee endorses the plan to increase the institutional commitment to responsibly and respectfully manage the items that the Native American Cultural Affiliation and Repatriation Policy discusses. Committee members were grateful for the comprehensive and careful approach described in the policy.

Sincerely yours,

Victor Ferreira, Chair  
Committee on Research

cc: G. Cauwenberghs  
T. Javidi  
J. Lucius  
R. Rodriguez

**STEVEN CONSTABLE**

**Chair, San Diego Divisional Academic Senate**

April 30, 2021

SUBJECT: Ad Hoc Committee Review of the UC Policy on Native American Cultural Affiliation and Repatriation

Dear Chair Constable,

An ad hoc committee comprised of faculty from the Departments of Ethnic Studies (Ross Frank), Anthropology (Isabel Rivera-Collazo and Paul Goldstein), Scripps Institution of Oceanography (Isabel Rivera-Collazo), and Literature (Gloria Chacon) discussed the proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation ("NACAR"). Additional faculty who attended a prior meeting, and others who have needed expertise pertaining to these issues, were unable to attend and will be/have been consulted for additional input.

The ad hoc committee endorsed the proposed amendments under the condition that all appendix, flow charts, and previous documents in the Interim NACAR Policy be accessible to all committee members before finalization since the flowcharts are not available yet on UCOP's NAGPRA website. Additionally, the language involving membership for the Campus Committees and the parallel relationship with the Systemwide Committee needs further clarification. The policy does not clearly describe the role of the Chancellor's Designee in relationship to the Systemwide Committee; in what capacity they serve and whether or not they are an ex officio member of the Systemwide Committees (section V.A.1.a). It is unclear the number and composition of members that should be included in the Campus Committee (section V.A.2.a), whether the campus' Repatriation Coordinator is an ex officio member of that committee, and if staff will be supporting it.

The committee is also concerned that on some campuses, UC San Diego for instance, the expertise and effort for advancing the NACAR policy during the initial approval and implementation process has burdened disproportionately junior faculty who have the appropriate experience and expertise in these issues. Once approved, especially on some campuses with little previous NACAR activity, a heavy workload associated with the compliance requirements of the policy will be added. The new policy should explicitly recognize the likelihood that campus and systemwide service may have a disproportionate effect on the small number of Native American faculty in the UC system, often earlier in their academic careers, and detail how this specific service to the University will be appropriately considered during their academic review process, particularly as they are being reviewed for tenure.

The inventory/summaries required by the policy are time and labor intensive. The deadline to submit a report is January 1, 2022 and the committee is concerned that UCSD has not done enough of this work in order to comply. There is no transparency on what has been done on campus already and what still needs to be done. Departments that have cultural artifacts should be identified as it would be helpful to know which ones have been accounted for already. This committee is suggesting that the Senate should investigate the status of the inventory activities and take the appropriate steps to meet the deadline.

cc: Tara Javidi, Vice Chair  
Ray Rodriguez, Director

**Office of the Academic Senate**

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San Francisco, CA 94143-0764  
Campus Box 0764  
tel: 415/514-2696

[academic.senate@ucsf.edu](mailto:academic.senate@ucsf.edu)  
<https://senate.ucsf.edu>

Sharmila Majumdar, PhD, Chair  
Steven Cheung, MD, Vice Chair  
Pamela Ling, MD, Secretary  
Jae Woo Lee, MD, Parliamentarian

May 19, 2021

Mary Gauvain, PhD  
Chair, Academic Council  
Systemwide Academic Senate  
University of California Office of the President  
1111 Franklin St., 12<sup>th</sup> Floor  
Oakland, CA 94607-5200

Re: Systemwide Review of Proposed Presidential Policy on Native  
American Cultural Affiliation and Repatriation

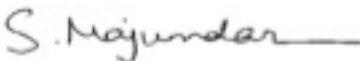
Dear Mary:

The San Francisco Division has reviewed Proposed Presidential Policy  
on Native American Cultural Affiliation and Repatriation.

We recognize that the current draft of this proposed policy has  
undergone iterative reviews and revisions to ensure that it incorporates  
recent changes to the California Native American Graves Protection and  
Repatriation Act.

In support of this policy, our Senate's Sustainability Committee reviewed  
it, noting that "decolonizing medicine and higher education is an integral  
component of sustainability."

Sincerely,



Sharmila Majumdar, PhD, 2019-21 Chair  
UCSF Academic Senate

Enclosures (1)

Cc: Chelsea Landolin, RN, MS, NP, Chair, UCSF Sustainability  
Committee





UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)  
Shelley Halpain, Chair  
[Shalpain@ucsd.edu](mailto:Shalpain@ucsd.edu)

Assembly of the Academic Senate  
1111 Franklin Street, 12<sup>th</sup>  
Oakland, CA 94607-5200

May 19, 2021

**MARY GAUVAIN, CHAIR  
ACADEMIC COUNCIL**

**RE: Presidential Policy on Native American Cultural Affiliation and Repatriation (v. 3)**

Dear Mary,

The University Committee on Faculty Welfare (UCFW) has reviewed the proposed Presidential Policy on Native American Cultural Affiliation and Repatriation (v. 3), and we have several comments. We applaud the goals of repatriating Native American items and remains and of working to build stronger bonds with California's Native American population. As a logistical matter, however, we wonder if UC has the capacity to fulfill this request by January 1, 2022. The size and condition of holdings in UC archives are unknown, and specialty training will be needed to effect repatriation in a sensitive and timely manner. How UC will recruit and train this specialist workforce is unclear. UC should also lobby the state to share more of the cost of repatriation and stewardship.

Thank you for your support.

Sincerely,

Shelley Halpain, UCFW Chair

Copy: UCFW  
Hilary Baxter, Executive Director, Academic Senate  
Robert Horwitz, Academic Council Vice Chair

May 14, 2021

Mary Gauvain  
Chair, UC Academic Senate

**Re: (Systemwide Senate Review) Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair Gauvain,

The Divisional Executive Board, councils, and committees appreciated the opportunity to review the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation. The Executive Board reviewed the proposal and divisional committee feedback at its meeting on May 13, 2021. Members appreciated the importance of the proposal as a step forward for the university. The Executive Board unanimously and enthusiastically endorsed the proposal as written.

Sincerely,



Shane White  
Chair  
UCLA Academic Senate

Encl.

Cc: Jody Kreiman, Vice Chair/Chair Elect, UCLA Academic Senate  
Michael Meranze, Immediate Past Chair, UCLA Academic Senate  
April de Stefano, Executive Director, UCLA Academic Senate

May 7, 2021

To: Shane White, Chair, UCLA Academic Senate

From: Megan McEvoy, Chair, Undergraduate Council

**Re: Systemwide Senate Review: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

---

The revisions to the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation were circulated to members of the Undergraduate Council for independent review and comment.

The Council appreciates that this policy and its revisions were developed in collaboration with the Cultural Affiliation and Repatriation Policy Advisory Workgroup, which includes four members nominated by the Native American Advisory Council; and in close consultation with California Native American tribes and the Native American Heritage Commission (NAHC).

Thank you for the opportunity to opine. If you have any questions, please contact us via the Undergraduate Council's analyst, Aileen Liu, at [aliu@senate.ucla.edu](mailto:aliu@senate.ucla.edu).

cc: April de Stefano, Executive Director, Academic Senate  
Jody Kreiman, Vice Chair/Chair Elect, Academic Senate  
Aileen Liu, Committee Analyst, Undergraduate Council  
Michael Meranze, Immediate Past Chair, Academic Senate

April 28, 2021

Shane White, Chair  
Academic Senate

**Re: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair White,

At its meeting on April 28, 2021 the Faculty Welfare Committee reviewed the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation.

Members declined to opine.

If you have any questions, please contact us via the Faculty Welfare Committee's interim analyst, Elizabeth Feller, at [efeller@senate.ucla.edu](mailto:efeller@senate.ucla.edu).

Sincerely,

Huiying Li, Chair  
Faculty Welfare Committee

cc: Jody Kreiman, Vice Chair/Chair Elect, Academic Senate  
Michael Meranze, Immediate Past Chair, Academic Senate  
April de Stefano, Executive Director, Academic Senate  
Elizabeth Feller, Interim Analyst, Faculty Welfare Committee  
Members of the Faculty Welfare Committee

April 28, 2021

Shane White, Chair  
Academic Senate

**Re: Systemwide Review: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair White,

At its meeting on April 7, 2021, the Council on Research (COR) had an opportunity to assess the revisions to the Proposed Presidential Policy on Native American Cultural Affiliation.

Members are in support of the revisions and wish to reaffirm the Council's previous statement on the issue, dated September 30, 2019.

Thank you for the opportunity to review and comment. If you have any questions for us, please do not hesitate to contact me at [julianmartinez@mednet.ucla.edu](mailto:julianmartinez@mednet.ucla.edu) or via the Council's analyst, Elizabeth Feller, at [efeller@senate.ucla.edu](mailto:efeller@senate.ucla.edu).

Sincerely,

Julian Martinez, Chair  
Council on Research

cc: Jody Kreiman, Vice Chair/Chair-Elect, Academic Senate  
Michael Meranze, Immediate Past Chair, Academic Senate  
April de Stefano, Executive Director, Academic Senate  
Elizabeth Feller, Principal Policy Analyst, Council on Research  
Members of the Council on Research

April 20, 2021

To: Shane White, Chair  
Academic Senate

Re: **Systemwide Review: Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Chair White,

The Committee on Diversity, Equity and Inclusion has reviewed the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation and find it to be carefully thought-out, fair, and timely.

We appreciate being given the opportunity to comment and we look forward to the University's ongoing engagement with the issues that this policy addresses. If you have any questions, please do not hesitate to contact me at [yarborou@humnet.ucla.edu](mailto:yarborou@humnet.ucla.edu) or the Interim Committee on Diversity, Equity and Inclusion Analyst, Taylor Lane Daymude at [tlanedaymude@senate.ucla.edu](mailto:tlanedaymude@senate.ucla.edu).

Sincerely,



Professor Richard Yarborough, Chair  
Committee on Diversity, Equity and Inclusion

## **MODEL COMMUNICATION**

The University of California Office of the President invites comments on a proposed Presidential Policy on Native American Cultural Affiliation and Repatriation. The proposed Policy substantively revises the existing Native American Cultural Affiliation and Repatriation Interim Policy (“Current Policy”). The Policy pertains to the treatment and repatriation of Native American and Native Hawaiian human remains and cultural items under the University’s possession or control and the University’s compliance with the federal Native American Graves Protection and Repatriation Act (“NAGPRA”), its accompanying regulations, and the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”). This effort began in 2018 in response to AB 2836, a California bill that required the University to revise its previous Policy.

On July 24, 2020, President Napolitano issued the Policy as interim in order to allow tribes additional time for review due to the COVID-19 pandemic. At that time, the comment period was extended through November 15, 2020, with the intention that UC would issue a final updated Policy by December 31, 2020. On September 29, 2020, AB 275 which made substantial changes to the CalNAGPRA was signed into law, effective January 1, 2021. The prevailing concern communicated by the responding tribes and the California Native American Heritage Commission (NAHC) during the extended comment period was that the Interim Policy did not reflect these new requirements. Respondents urged UC not to implement a final Policy by December 31, 2020, but rather to delay issuance and allocate additional time to ensure that AB 275 could be fully incorporated into the Policy. This revised Policy now incorporates AB 275 requirements.

Below is a list of the significant changes present in the proposed Policy from the Interim Policy:

1. Definitions (§ II) have been added and revised where needed to align with CalNAGPRA.
2. As required by CalNAGPRA, deference to tribal traditional knowledge, oral histories, documentation, and testimonies is now indicated when determining state cultural affiliation, identifying cultural items under CalNAGPRA, and making decisions related to the CalNAGPRA repatriation process (§§ V.C.1 and V.J.1).
3. In consultation with California Native American tribes, Campuses must prepare preliminary inventories/summaries by January 1, 2022 for submission to the NAHC (§§ V.B.1.k, V.C.1, and V.C.5).
4. The CalNAGPRA dispute procedures available to California Indian tribes have been added (§ V.I).
5. The AB 275 procedures for submissions of claims under CalNAGPRA have been incorporated (§ V.D.3).

6. The flowcharts and narrative previously described in Appendices A, A-1, and B of the Interim Policy have been removed. These documents were intended as visual aids in understanding the consultation, claims, repatriation, and appeals processes described in the Interim Policy rather than as a means of separately conveying policy requirements not described in the Interim Policy. However, as stated in the revised Policy (§§ III.C, V.B.1.i, V.B.2, V.D.1, V.D.3, V.I, V.J.3, and VI.1), UC will maintain these flowcharts on UCOP's NAGPRA website. This will allow UC to make more responsive ongoing updates to the flowcharts to clarify these processes as they are more fully implemented, based on feedback from tribes, committee members, and UC repatriation staff.

Please visit <http://ucal.us/nagpra> for the complete revision history.

If you have any questions or if you wish to comment, please contact \_\_\_\_\_ at \_\_\_\_\_, no later than \_\_\_\_\_, 2021.





# Native American Cultural Affiliation and Repatriation – ~~INTERIM~~ Policy

<b>Responsible Officer:</b>	VP - Research & Innovation
<b>Responsible Office:</b>	Research & Innovation
<b>Issuance Date:</b>	<del>7/24/2020</del> <u>tbd</u>
<b>Effective Date:</b>	<del>7/24/2020</del> <u>tbd</u>
<b>Last Review Date:</b>	<del>04/15/2020</del> <u>07/24/2020</u>
<b>Scope:</b>	This policy applies to <u>all</u> campuses, laboratories, medical centers and health systems, as well as satellite offices, affiliates, and other units controlled by the Regents of the University of California.

<b>Contact:</b>	Lourdes DeMattos
<b>Title:</b>	Associate Director
<b>Email:</b>	Lourdes.DeMattos@ucop.edu
<b>Phone:</b>	(510) 987-9850

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## I. POLICY SUMMARY

The purpose of this policy is to increase and achieve Repatriation of Native American and Native Hawaiian ancestral Human Remains and Cultural Items to Tribes, Native Hawaiian Organizations and Lineal Descendants. The University of California (UC) is committed to fully implementing the spirit as well as the legal requirements of both the federal Native American Graves Protection and Repatriation Act at 25 U.S.C. §§ 3001-13 and its accompanying regulations at 43 C.F.R. §§ 10.1-17 (jointly referred to in this policy as “NAGPRA”), and the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”), California Health & Safety Code (CHSC) §§ 8010-30,<sup>1</sup> which were enacted to acknowledge the fundamental human right of Native Americans and Native Hawaiians to their ancestral Human Remains and Cultural Items. Therefore, the University of California (UC) adopts as a fundamental value the Repatriation of Native American and Native Hawaiian Human Remains and Cultural Items<sup>2</sup> (Associated and Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony), in accordance with state and federal law. This policy describes how UC will pursue this value and ensure both adherence to the general principles and compliance with NAGPRA and CalNAGPRA. ~~the federal Native American Graves Protection and Repatriation Act at 25 U.S.C. §§ 3001-13 and its accompanying regulations at 43 C.F.R. §§ 10.1-17 (jointly referred to in this policy as “NAGPRA”), and the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”), California Health & Safety Code (CHSC) §§ 8010-30.~~ The procedures set out in this policy are intended to increase Repatriation, accountability, and transparency. Where processes or definitions

**Commented [A1]:** Moved this footnote from Section III.C.

<sup>1</sup> Citations to CalNAGPRA refer to California Health & Safety Code §§ 8010-30.

<sup>2</sup> Note that this policy covers **NAGPRA/CalNAGPRA-eligible** Human Remains and Cultural Items (all as defined in this policy). As such, this policy is not intended to cover the procedures that apply to inadvertent discovery of Native American remains during ground disturbing land development activity governed by California Public Resources Code § 5097.8 and Health and Safety Code § 7050.5, or notification and consultation requirements related to Tribal Cultural Resources pursuant to the California Environmental Quality Act. (See [UC CEQA Compliance](#).) -In addition, this policy does not apply to voluntary and consented donations through the University's Anatomical Donation Program. (See [UC Policy on Anatomical Donation/Materials Programs](#)).

vary between NAGPRA and CalNAGPRA, both are provided, with indications regarding the origin of the requirements.

**Commented [A2]:** Added to clarify how distinctions between NAGPRA and CalNAGPRA have been described.

## II. DEFINITIONS

This policy adopts the definitions of NAGPRA ([25 U.S.C. §§ 3001 and 43 C.F.R. § 10.2](#)) and CalNAGPRA ([Cal. Health & Safety Code § 8012](#)),<sup>3</sup> as applicable. For convenience, the definitions of some NAGPRA/CalNAGPRA terms are repeated below (with citations), along with ~~a few~~ other UC defined terms. *Terms capitalized in this policy (including within the definitions below) are defined in this policy and/or defined under NAGPRA/CalNAGPRA. Where CalNAGPRA and NAGPRA definitions vary, both are provided, with an indication about whether these definitions apply under NAGPRA or CalNAGPRA.* (Quoted text retains original source formatting with regard to the use of lower case/capitalization of terms.)

**Commented [A3]:** Added additional clarifications regarding terms used in the policy.

**Accession:** The state or act of adding an item to University collections.

**California Indian tribe:** ~~A tribe located in California as defined by~~ Under CalNAGPRA, a tribe located in California to which either of the following applies:

**Commented [A4]:** Updated per AB 275.

1. It meets the definition of Indian tribe under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).
2. It is not recognized by the federal government, but is a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to Section 65352.3 of the Government Code.

CalNAGPRA § 8012(jc).

**Campus Committees:** See Section V.A.2.

**Chancellor or Chancellor's Designee:** See Section IV.B.1.

**Confidential Information:** Any information ~~submitted~~ shared by a Tribe during the Consultation process regarding ~~Tribal Traditional Knowledge and~~ places that have traditional tribal cultural significance, including the locations of Native American graves, cemeteries, and sacred places, and specific information identified as "confidential" by a consulting Tribe. (See Sections ~~V.B.1.i.(5); and~~ V.B.2 and ~~Appendices A and A-4~~ Flowcharts on UC's NAGPRA website.)

**Commented [A5]:** Modified as information can be oral.

**Commented [A6]:** Added to incorporate this concept from CalNAGPRA (AB 275).

**Commented [A7]:** Added a reference to the consultation process where the tribes help us identify confidential information.

**Conflict of Interest:** Financial, professional, or personal interests that may prejudice a committee member's decision. Such interests may include investments, real estate interests, sources of personal income (including gifts, loans, or travel payments),

**Commented [A8]:** The flowchart and flowchart narrative will still exist, but we are moving these from appendices in the policy to the website linked here. This will allow for easier updating as necessary.

<sup>3</sup> Under CalNAGPRA, terms have the same meaning as in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), as interpreted by federal regulations, except as noted in CalNAGPRA § 8012.

positions of management or employment, unpaid board/commission membership, or other personal interest, such that a decision-maker or person voting on an issue could potentially personally benefit from the decision being made by that person or the committee or organization on which they participate, or otherwise have an interest that could significantly impair or appear to significantly impair the individual's objectivity. (See also Sections V.A.1.c and V.A.2.ed.)

**Consultation:** ~~"The meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking achieving agreement. Consultation between government agencies and Native American Tribes must be conducted in a way that is mutually respectful of each party's sovereignty. Consultation must also recognize the Tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance Tribal Traditional Knowledge and all tribal information shared during consultation."~~ California Government Code 65352.4. The meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, achieving agreement. Consultation will be conducted in a manner that is respectful of tribal sovereignty, and will recognize the tribes' potential need for Confidentiality with respect to Tribal Traditional Knowledge and all tribal information shared during the consultation. See CalNAGPRA § 8012(e) and Section V.B.1.}

Commented [A9]: Updated per AB 275.

**Control:**

Under NAGPRA, Control means having a legal interest in Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony sufficient to lawfully permit the Museum or federal agency to treat the objects as part of its collection for purposes of NAGPRA whether or not the Human Remains, Funerary Objects, Sacred Objects or Objects of Cultural Patrimony are in the physical custody of the Museum or federal agency. Generally, a Museum or federal agency that has loaned Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony to another individual, Museum, or federal agency is considered to retain Control of those Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony for purposes of NAGPRA. 43 C.F.R. § 10.2(a)(3)(ii).

Commented [A10]: Added definition of Control per NAHC comments.

Under CalNAGPRA, Control means having ownership of Native American Human Remains and Cultural Items sufficient to lawfully permit an agency or Museum to treat the object as part of its collection for purposes of CalNAGPRA, whether or not the Human Remains and Cultural Items are in the physical custody of the agency or Museum. Human Remains and Cultural Items on loan to an agency or Museum from another person, agency, or Museum will be deemed to be in the Control of the lender. CalNAGPRA § 8012(f).

**Cultural Affiliation [Culturally Affiliated]:** Cultural Affiliation means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of a present-day Indian Tribe or Native Hawaiian Organization and an identifiable earlier group. Cultural Affiliation is established when the

Preponderance of the Evidence -- based on geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion. 43 C.F.R. § 10.2(e). (See also Preponderance of Evidence [and State Cultural Affiliation](#) definitions below.)

**Cultural Items:** Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and objects of Cultural Patrimony, all as defined by 43 C.F.R. § 10.2 and 25 U.S.C. § 3001.

~~Under~~ For the purposes of CalNAGPRA ~~§ 8012(d)~~, Cultural ~~items~~ Items has the same meaning as found in 25 U.S.C. § 3001 ~~as it read on January 1, 2020~~, except that it means only those items that originated in California ~~and are subject to the definition of Reasonable, as defined in CalNAGPRA § 8012(l). An item is not precluded from being a Cultural Item solely because of its age. CalNAGPRA § 8012(g).~~ (See also Section III.A, Statement on Language.)

The following is the definition of Cultural Items in 25 U.S.C. § 3001, as of January 1, 2020, and which remains current as of the date of issuance of this policy. Cultural Items means Human Remains and --

“(A) ‘associated funerary objects’ which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain Human Remains shall be considered as associated funerary objects.

“(B) ‘unassociated funerary objects’ which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual Human Remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known Human Remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe.

“(C) ‘sacred objects’ which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

“(D) ‘cultural patrimony’ which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.”

**Commented [A11]:** Updated in accordance with CalNAGPRA updates.

Also, because the definition is tied to “as it read” on 1/1/2020, we have added the definition of “Cultural Items” as of 1/1/20.

**Commented [A12]:** Also added definition of Human Remains below.

**Culturally Unidentifiable (CUI):** Human Remains and Cultural Items for which no Lineal Descendant or Culturally Affiliated present-day Federally Recognized Tribe can be determined. 43 C.F.R. § 10.2(e)(2).

**Deaccession:** The act of permanently removing an accessioned item from a permanent collection. In this policy, deaccessioning from UC collections may occur through the Repatriation or Disposition process as described in NAGPRA or CalNAGPRA, or through a voluntary transfer that is not ~~legally~~ required under NAGPRA or CalNAGPRA as described in Section V.G.

**Disposition:** Generally, the transfer of Control<sup>4</sup> of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (43 C.F.R. § 10.2(g)(5)). Specifically, as used in this policy, Disposition means the transfer of Culturally Unidentifiable Human Remains, with or without Associated Funerary Objects (as distinguished from “Repatriation,” which applies only to transfer of Culturally Affiliated Human Remains and Cultural Items) (43 C.F.R. § 10.2(g)(5)(iii)).

**Commented [A13]:** Deleted footnote since the definition for Control was added.

**Federally Recognized Tribe:** An Indian Tribe or Native Hawaiian Organization as defined by NAGPRA (See 25 U.S.C. § 3001(7) & (11)).

**Commented [A14]:** Uncapitalized “tribe” here, since “Tribe” is used in the policy to refer to both Federally Recognized and non-Federally Recognized tribes.

**Human Remains:** The physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining Cultural Affiliation, Human Remains incorporated into a Funerary Object, Sacred Object, or Object of Cultural Patrimony must be considered as part of that item (43 C.F.R. § 10.2(d)(1)).

#### **Museum:**

UC falls under the definition of a Museum under both NAGPRA and CalNAGPRA.

Under NAGPRA, Museum means any institution or state or local government agency (including any institution of higher learning) that has Possession of, or Control over, Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony and receives federal funds (43 C.F.R. § 10.2(a)(3)).

Under CalNAGPRA, Museum means an agency, museum, person, or entity, including a higher educational institution, that receives state funds. For purposes of this subdivision, “receives states funds” means that the Museum has received funds after January 1, 2002, from a state agency through a grant, loan, or contract, other than a procurement contract, or other arrangement by which a state agency makes available aid in the form of funds. State funds provided for any purpose to a larger entity of which the museum is a part of are considered as the museum receiving those funds for the purposes of this subdivision (CalNAGPRA § 8012(i)).

Instances of ‘museum’ appearing in lower case (and outside of quotes) are not meant to adopt the significance of this term as described in this NAGPRA/CalNAGPRA definition.

<sup>4</sup>“Control” is defined by NAGPRA, 43 C.F.R. § 10.2(a)(3)(i).



**NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items or NAGPRA/CalNAGPRA-eligible Collection:**

Human Remains or Cultural Items that are required to be ~~captured~~reported in a NAGPRA/CalNAGPRA Inventory or Summary.

**Possession:**

Under NAGPRA § 10.2(a)(3)(i), having physical custody of Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of the Federal NAGPRA regulations. Generally, a Museum or federal agency would not be considered to have Possession of Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony on loan from another individual, museum, or federal agency.

Under CalNAGPRA § 8012(j), having physical custody of Native American Human Remains and Cultural Items with a sufficient legal interest to lawfully treat the Human Remains and Cultural Items as part of a collection. "Possession" does not include Human Remains and Cultural Items over which the agency has Control but that are currently on loan to another person or entity.

**Preponderance of Evidence:** ~~"Preponderance of Evidence" is t~~The evidentiary standard where the evidence as a whole shows that the fact sought to be proved is more likely than not.

~~Under~~For the purposes of CalNAGPRA, "Preponderance of Evidence" means that the party's evidence on a fact indicates that it is more likely than not that the fact is true. Tribal Traditional Knowledge alone may be sufficient to satisfy this standard. Furthermore for the purposes of CalNAGPRA, if there is conflicting evidence, Tribal Traditional Knowledge must be provided deference. CalNAGPRA § 8012(~~h~~k).

**President or President's Designee:** See Section IV.A.1.

**Reasonable:** Under CalNAGPRA: "Reasonable" means fair, proper, rational, and suitable under the circumstances. Tribal Traditional Knowledge can and should be used to establish reasonable conclusions with respect to determining State Cultural Affiliation and identifying Cultural Items. CalNAGPRA § 8012(l).

**Repatriation Coordinator:** See Section IV.B.4.

**Repatriation Point of Contact:** See Section IV.B.5.

**Request:** A Request as used in this policy is a claim by a Lineal Descendant or Tribe for Cultural Affiliation or State Cultural Affiliation to Human Remains or Cultural Items, or a Request for the transfer of Human Remains or Cultural Items, under either a Repatriation Request or a Disposition Request. A Requestor is a person or Tribe making such Request.

**Review Packet:** The collection of information needed for the Campus Committee to make a determination regarding Cultural Affiliation/State Cultural Affiliation, Repatriation or Disposition. See also #9 in Appendix A-4 of the Flowchart Narrative on UC's NAGPRA website.

**Commented [A15]:** Added definition of Possession per NAHC comments.

**Commented [A16]:** Added this key concept and revised definition per AB 275.

**Commented [A17]:** This is a new definition added in CalNAGPRA by AB 275.

**State Aboriginal Territory:** Under CalNAGPRA § 8012(m), lands identified as aboriginally occupied by one or more California Indian tribes. State Aboriginal Territory may be recognized by any of the following: Consultation with California Indian tribes, treaties, including those agreed to but not ratified, a final judgment of the federal Indian Claims Commission or the United States Court of Claims, an act of the United States Congress, or an executive order.

**Commented [A18]:** This is a new definition added in CalNAGPRA by AB 275.

Under NAGPRA § 10.11(b)(2)(ii), "Aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order."

**State Cultural Affiliation** ~~[State Culturally Affiliated]~~: Under CalNAGPRA § 8012(n), State Cultural Affiliation means that there is a Reasonable, as defined in CalNAGPRA § 8012(l), relationship of shared group identity that can reasonably be traced historically or ~~prehistorically-precontact~~ between members of a present-day California Indian ~~T~~tribe, as defined in CalNAGPRA § 8012(jc), and an identifiable earlier Tribe or group. State Cultural Affiliation ~~is must be established when the preponderance of the evidence,~~ based on one or more of the following: geography, kinship, biology, archaeology, linguistics, folklore, oral tradition, historical evidence, Tribal Traditional Knowledge, or other information or expert opinion, that reasonably leads to such a that conclusion. CalNAGPRA § 8012(fn).

**Commented [A19]:** Updated per AB 275.

**Stewardship:** The care of Human Remains and Cultural Items. See Section V.J.1 regarding incorporation of traditional care.

**Systemwide Committee:** See Section V.A.1.

**Tribal Representative:** The principal leaders of a Tribe or the individuals officially designated by the governing body of a Tribe or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to NAGPRA and/or CalNAGPRA under this policy.

**Tribal Traditional Knowledge:** Under CalNAGPRA § 8012(p), knowledge systems embedded and often safeguarded in the traditional culture of California Indian tribes and lineal descendants, including, but not limited to, knowledge about ancestral territories, cultural affiliation, traditional cultural properties and landscapes, culturescapes, traditional ceremonial and funerary practices, lifeways, customs and traditions, climate, material culture, and subsistence. Tribal Traditional Knowledge is expert opinion. CalNAGPRA § 8012(p).

**Tribe:** An Indian Tribe or Native Hawaiian Organization as defined by NAGPRA (25 USC § 3001 (7) & (11)), or a California Indian ~~T~~tribe as defined by CalNAGPRA § 8012(jc).

**Tribal Representative:** ~~The principal leader of a Tribe or the individual officially designated by the governing body of a Tribe or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to NAGPRA and/or CalNAGPRA under this policy.~~

### III. POLICY TEXT

#### A. STATEMENT ON LANGUAGE



UC recognizes that while the federal Native American Graves Protection and Repatriation Act<sup>5</sup> (NAGPRA) and the California NAGPRA<sup>6</sup> (CalNAGPRA) use terms such as “Human Remains,” “Unassociated and Associated Funerary Objects,” “Sacred Objects,” “Objects of Cultural Patrimony,” and “Cultural Items,” in fact, these laws and regulations are referring to ancestors of many present-day Native Americans and Native Hawaiians and their culture and heritage. For the sake of legal precision and clarity, this policy may use terms employed in applicable laws and regulations, but UC does not intend any disrespect in their usage. In addition, although NAGPRA and CalNAGPRA group together Human Remains, Unassociated and Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony as “Cultural Items,” out of respect, this policy will generally refer to Human Remains separately.

## B. PURPOSE AND GUIDING PRINCIPLES

*The guiding principles below undergird this policy. Ambiguities in the interpretation of this policy should be resolved in light of UC’s fundamental value of Repatriation and the principles below.*

1. Repatriation or Disposition of all Native American and Native Hawaiian Human Remains and Cultural Items is a fundamental objective and value of UC that must be accomplished as expeditiously and respectfully as possible. This policy is designed to govern how UC implements its responsibilities under NAGPRA and CalNAGPRA to improve the Repatriation process so that Human Remains and Cultural Items may be brought home to Tribes, Native Hawaiian Organizations and Lineal Descendants.
2. UC supports Executive Order N-15-19 of the State of California, and recognizes and commits to implementing the rights of Indigenous peoples articulated in Article 12 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as follows: “the right to the use and control of their ceremonial objects; and the right to the ~~Re~~ repatriation of their ancestral ~~H~~human ~~R~~emains.”<sup>7</sup> UC ~~also~~ and commits to providing access to and Repatriation of Native American ~~of~~and Native Hawaiian Human Remains and their Cultural Items “through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples.”<sup>8</sup> UC acknowledges its role in the acquisition of Human Remains and Cultural Items that were obtained in violation of spiritual and cultural beliefs, without the free, prior and informed consent of Tribes and Native Hawaiian Organizations. UC further acknowledges that ~~the federal Native American Graves Protection and Repatriation Act (NAGPRA) and California NAGPRA (CalNAGPRA)~~ were enacted to restore Native American and Native Hawaiian rights to Human Remains and Cultural Items.

**Commented [A20]:** Corrected as capitalization was not used in this quote from the United Nations Declaration.

<sup>5</sup> 25 U.S.C. §§ 3001-13; 43 C.F.R. §§ 10.1-17.

<sup>6</sup> California Health & Safety Code (CHSC) §§ 8010-30.

<sup>7</sup> [United Nations Declaration on the Rights of Indigenous Peoples](#), G.A. Res. 61/295, Article 12, 1, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

<sup>8</sup> [United Nations Declaration on the Rights of Indigenous Peoples](#), G.A. Res. 61/295, Article 12, 2, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

3. UC acknowledges that the injustices perpetrated on ~~Native Americans and Native Hawaiians~~ Native Americans and Native Hawaiians are reflected even to the present, and that as long as Human Remains and Cultural Items remain in the University's ~~e~~Control, healing and reparation will be incomplete.
4. UC will comply with NAGPRA, CalNAGPRA, and this policy. This policy establishes uniform standards and practices that are binding across the UC system.
5. This policy is intended to promote consistency and applies across the UC system, including at campuses, laboratories, medical centers and health systems, as well as satellite offices, affiliates, and other units controlled by ~~The~~ Regents of the University of California<sup>9</sup>. UC campuses must ensure compliance with this policy at all UC locations over which they have management responsibilities. Pursuant ~~to~~ CalNAGPRA § 8025(a)(5), campuses need not develop additional local policies, but if they wish to do so, such local policies must be consistent with this policy and be in place within one year after ~~release~~ adoption of this policy.
6. UC is committed to ethical and respectful care and culturally appropriate treatment of Human Remains and Cultural Items while they are in UC's Possession or Control.<sup>10</sup> UC recognizes that culturally appropriate treatment must derive from Consultation with Lineal Descendants and Tribal Representatives.
7. It is the policy of UC to achieve the Repatriation or Disposition of Human Remains and Cultural Items to Federally Recognized ~~T~~ribes and non-Federally Recognized tribes in accordance with NAGPRA and CalNAGPRA.
8. UC recognizes that Consultation with Native Americans and Native Hawaiians contributes a distinct and essential perspective and furthers UC's teaching, research, and public service mission. UC fully supports the right of all Native American Tribes, including Federally Recognized ~~T~~ribes and non-Federally Recognized tribes, and Native Hawaiian Organizations to visit their Human Remains and Cultural Items, and request and receive copies of all associated documentation, pursuant to NAGPRA and CalNAGPRA.
9. This policy requires formation of a Systemwide Native American Repatriation Implementation and Oversight Committee ("Systemwide Committee") to review campus compliance with this policy and to review appeals after campus procedures have been exhausted.

**Commented [A21]:** Reversed order only for consistency.

**Commented [A22]:** Updated to include AB 275 updates.

**Commented [A23]:** Modified footnote for consistency with CalNAGPRA §8025.

**Commented [A24]:** This footnote is no longer necessary since we have included the definitions for Possession and Control in section II of the policy.

### C. STATEMENT ON COMPLIANCE WITH CALNAGPRA

<sup>9</sup> NAGPRA applies to ~~F~~ederal agencies and ~~to~~ any institution, or ~~S~~tate or local government agency (including any institution of higher learning) that has ~~p~~ossession of, or ~~e~~Control over, Human Remains, Funerary Objects, Sacred Objects, or ~~e~~Objects of Cultural Patrimony and receives ~~F~~ederal funds. 43 C.F.R. § 10.13(c)(1)  
 CalNAGPRA applies to any "Agency" (defined in CalNAGPRA 8012(a) as a division, department, bureau, commission, board, council, city, county, city and county, district, or other political subdivision of the state of California) and any "Museum" (defined in CalNAGPRA 8012(i)). See also definition of Museum in § II of this policy.  
<sup>10</sup> "Possession" and "Control" are defined by NAGPRA. ~~43 C.F.R. § 10.2(a)(3)(i); 43 C.F.R. § 10.2(a)(3)(ii).~~

UC is committed to complying with CalNAGPRA, which among other things, facilitates Repatriation and/or Disposition of California Indian Tribes' Human Remains and Cultural Items to California Indian Tribes, defined in CalNAGPRA § 8012(jc).<sup>14</sup> UC campuses with Possession or Control of Native American Human Remains and/or Cultural Items ~~are required to~~must consult with California Indian Tribes and update their ~~inventories and~~Summaries as required by CalNAGPRA. This includes reviewing and revising or supplementing existing Inventories and Summaries for collections previously classified as Culturally Unidentifiable and consulting with California Indian Tribes as required by CalNAGPRA (see Section VI). Further, UC ~~is required to~~must transfer<sup>12</sup> Human Remains and Cultural Items that are State Culturally Affiliated ~~with to~~ California Indian Tribes as required by CalNAGPRA, consistent with NAGPRA<sup>13</sup>. (See also Section V.D and Flowcharts on UC's NAGPRA website Appendices A and A-1.)

Commented [A25]: Moved footnote to page 1.

Commented [A26]: Moved placement of footnote.

California Indian Tribes may avail themselves of their rights under either NAGPRA or CalNAGPRA, or both, as they wish.

#### D. REVISIONS TO THIS POLICY

This policy will be reviewed: 1) when there are changes to NAGPRA or CalNAGPRA that would affect this policy, 2) when internal or external auditors suggest changes, 3) when the Systemwide Committee recommends changes to this policy, 4) as deemed appropriate by the President, and 5) at least every five (5) years. Tribes may submit for consideration proposed changes to the Systemwide Committee, which can then recommend changes to the President.

Prior to instituting changes to this policy, UC will provide an advance copy of proposed changes to the Systemwide Committee (see also Section V.A.1) and the California Native American Heritage Commission (NAHC) for their review and comment. If the Systemwide Committee recommends consultation with California Indian tribes, UC will notify tribes and post the proposed changes on a UC public facing website for a minimum of forty-five (45) days so that tribes have an opportunity to comment.

#### IV. COMPLIANCE/RESPONSIBILITIES

The University will provide all persons responsible for carrying out the requirements set forth in this policy with training developed in consultation with tribal and other subject matter experts and UC personnel who have demonstrated successful Repatriation to enhance sensitivity to tribal values, issues and culture, obligations to maintain

<sup>14</sup> Citations to CalNAGPRA refer to California Health & Safety Code § 8010-30.

<sup>12</sup> Note that under NAGPRA, non-Federally Recognized tribes can currently Request Disposition of Human Remains under NAGPRA 43 C.F.R. § 10.11, and Federally Recognized Tribes can Request Repatriation under § 10.10 or Disposition under 43 C.F.R. § 10.11.

<sup>13</sup> Note that under NAGPRA, non-Federally Recognized tribes can Request Disposition of Human Remains under NAGPRA 43 C.F.R. § 10.11, and Federally Recognized Tribes can Request Repatriation under § 10.10 or Disposition under 43 C.F.R. § 10.11.

confidentiality of Tribal information, appropriate communications, and understanding of the purpose and guiding principles of this policy. (See Subsection A.1 below.)

#### **A. SYSTEMWIDE**

1. President or President's Designee: The President of the University of California is UC's chief executive, as designated by the Regents of the University of California, and has full authority and responsibility for the administration of all affairs and operations of UC (excluding only those activities that are the responsibility of the Principal Officers of The Regents). For the purpose of this policy, the President is responsible for systemwide oversight and compliance with this policy, NAGPRA, CalNAGPRA, and other related applicable laws and regulations. The President is responsible for the review and approval/disapproval of Systemwide Committee recommendations and appeals requests as described in this policy. The President may designate a "President's Designee" for these purposes. (For simplicity, this policy uses the term "President" rather than "President or President's Designee" throughout this policy.)

The President is responsible for allocating sufficient resources to fulfill the obligations of the President's office and Systemwide Committee, as described under this policy. The President will also designate the unit responsible for providing training to persons responsible for carrying out the requirements set forth in this policy.

Contact information for the President or President's Designee will be posted on a public-facing campus web ~~pagesite~~.

2. Systemwide Committee: See Section V.A.1 below.

#### **B. CAMPUS**

1. Chancellor or Chancellor's Designee: The Chancellor of a UC campus is delegated broad powers as the executive head of all campus activities. For the purpose of this policy, the Chancellor is responsible for oversight and compliance with this policy, NAGPRA, CalNAGPRA, and applicable laws and regulations at the campus level. The Chancellor is responsible for the approval/disapproval of Requests described in this policy. The Chancellor may designate a "Chancellor's Designee" for these purposes. (Except for the separation of roles noted in Section V.I.2, for simplicity, this policy uses the term "Chancellor" rather than "Chancellor or Chancellor's Designee" throughout this policy.)

The Chancellor is responsible for allocating sufficient resources to fulfill the obligations of the campus and Campus Committee, as described under this policy.

Contact information for the Chancellor or Chancellor's Designee will be posted on a public-facing campus web page.

1. Campus Committees: See Section V.A.2 below.
2. Faculty and Other Academic Appointees, Staff, and Students at locations and departments impacted by this policy must cooperate with the Repatriation

Coordinator/Repatriation Point of Contact, and are responsible for adhering to and complying with this policy.

3. Repatriation Coordinator: Repatriation Coordinators are individuals designated by the Chancellor at each campus with known NAGPRA/CalNAGPRA-eligible Collections to carry primary responsibility for working with Tribes to accomplish compliance with this policy, including Consultation, Repatriation, Disposition, and tribal access to Human Remains and Cultural Items.

The Repatriation Coordinator must have an in-depth, demonstrated understanding of and direct experience with: (a) Consultation practices and processes, building and maintaining positive working relationships with Tribes; and (b) NAGPRA and CalNAGPRA.

The Repatriation Coordinator must coordinate with staff at campus museums and all other departments bearing compliance responsibilities with this policy, maintain proper documentation (regarding correspondence, Consultations, loans, transfers, federal and state notices, Inventories, Summaries, and determinations regarding Cultural Affiliation, Repatriation, or Disposition, etc.), and provide reports, notices, and documents as required by this policy (See Section V.H).

The ~~Chancellor Repatriation Coordinator~~ must ~~be issued an~~ appropriate delegation of authority to the Repatriation Coordinator to support effectively implementation of this policy.

The Repatriation Coordinator will report to the Chancellor.

Name and contact information for the Repatriation Coordinator will be posted on a public-facing campus web page and provided to the NAHC.

4. Repatriation Point of Contact: Campuses without known Possession or Control of Native American Human Remains or potentially eligible Cultural Items must appoint a Repatriation Point of Contact. This person must be knowledgeable about NAGPRA and CalNAGPRA, and will serve as the campus point of contact to receive any NAGPRA/CalNAGPRA related inquiries or reports from Tribes, the UC campus community or others. The Repatriation Point of Contact is also responsible for the reviews and reports required in Sections V.E and V.H.

Name and contact information for the Repatriation Point of Contact will be posted on a public-facing campus web ~~pagesite~~ and provided to the NAHC.

Commented [A27]: Added reference to the biannual reports.

## V. PROCEDURES

### A. COMMITTEES

#### 1. Systemwide Committee

##### a. Composition

The President must establish a Systemwide Native American Repatriation Implementation and Oversight Committee (hereinafter called the "Systemwide

Committee”)<sup>14</sup> in accordance with the requirements of [CalNAGPRA §8026\(a\)](#).

All Systemwide Committee members must have demonstrated understanding of tribal cultural concerns. Per CalNAGPRA §8026(d)(2), “Preference shall be given to members who have demonstrated, through their professional experience, the ability to work in collaboration with Native American tribes successfully on issues related to repatriation or museum collection management.” In selecting members, the President will seek a diversity of expertise and may make exceptions to the composition requirements set forth in CalNAGPRA, provided that such exceptions promote Repatriation and amplify the Purpose and Guiding Principles contained in this policy, and that equal UC / Tribal representation is maintained. In making such exceptions, the President will consider the individual’s prior experience and knowledge in NAGPRA/CalNAGPRA, seek the advice of Tribal Representatives, and communicate the justification for the exception to the Systemwide Committee.

The President will stagger the terms of the voting members to the extent possible in order to ensure continuity and a balance of experienced and new members. For example, membership terms can vary between one, two, and three years. Terms are renewable, but should not generally exceed six years.

In addition to the voting members, one non-voting member from each UC campus that is known to have Possession or Control of Native American Human Remains or potentially eligible Cultural Items may participate in meetings. Each of these non-voting members must also meet the requirements set forth in CalNAGPRA for UC voting members unless ~~an exception has been approved by~~ the President has approved an exception, as ~~also~~ described above.

The President may observe committee meetings.

#### **b. Purpose and Responsibilities of the Systemwide Committee**

The Systemwide Committee will be charged with providing compliance oversight and review, advising the UC President on matters related to the University’s implementation of NAGPRA and CalNAGPRA, and promoting the implementation of this policy across the UC system.

The Systemwide Committee may do any of the following as needed to assist in the compliance of this policy:

- 1) Make recommendations to the President for revisions to this policy (see Section III.D);
- 2) Make recommendations to the President for the issuance of guidance, best practices, and template forms for the successful implementation of

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<sup>14</sup> CalNAGPRA §8026(a)(1) states that the systemwide Native American Graves Protection and Repatriation Act Implementation and Oversight Committee shall be known as the “U.C. NAGPRA Committee.”. We refer to this committee as the “Systemwide Committee” in this policy because it more clearly distinguishes this committee from the Campus Committees.

this policy across the UC system, including compliance with NAGPRA and CalNAGPRA;

- 3) Assess campus implementation, timeliness, adequacy of resources (e.g., through benchmarking), and compliance with this policy through the review of campus Repatriation Implementation Plans (see Section VI), campus biannual reports (see Section V.H), and through audits or site visits, as necessary;
- 4) Make recommendations for corrective action or systemwide or campus audits to the President to ensure compliance with this policy, and applicable laws and regulations;
- 5) Make recommendations for the advancement of greater systemwide consistency, including for the elements or formats of reports collected from all campuses and in general approaches to compliance with this policy;
- 6) When requested by a Tribe, and in accordance with Section V.I.2-~~of this policy~~, review appeals of campus decisions concerning the identification of Cultural Items, Requests for Cultural Affiliation, Repatriation or Disposition of Human Remains and Cultural Items, including a review of campus decisions for consistency with this policy and applicable legal requirements, and make recommendations for resolution to the President;
- 7) When requested by a Tribe, and in accordance with Section V.I.1 of this policy, review complaints concerning violations of this policy, and make recommendations for resolution to the President; and
- 8) Serve as a resource to promote Repatriation.

#### c. Systemwide Committee Procedures

**Quorum and Voting.** A quorum will consist of at least 50% of members. Recommendations to the President will be determined by a vote of at least half of the members in attendance. Systemwide Committee recommendations will include the background documentation and a report of majority/minority opinions, including alternate recommendations.

**Virtual Presence.** While in-person attendance is encouraged, committee members, tribal members, presenters, staff, and others invited to committee meetings may attend via a telecommunications system in which efforts will be made to ensure all present can see and hear each other (e.g., using conference rooms that have video capability and adequate speakerphones).

**Tribal Presence.** The President will invite a Tribe that appeals a campus decision regarding identification of Cultural Items, Cultural Affiliation, Repatriation or Disposition to provide oral or written evidence, statements, or other information to the Systemwide Committee and/or attend the Systemwide Committee meeting (in person or via a telecommunication system) where the appeal will be deliberated.

**Record Keeping.** The ~~Chair of the~~ Systemwide Committee ~~Chair~~ will maintain a record of all Systemwide Committee votes, including both the



majority and minority opinions, as well as all evidence and documents presented (including those submitted by Tribes) and meeting minutes. Except to the extent required by law, portions of meeting minutes that ~~capture~~contain tribal Confidential Information shall be treated as Confidential Information. A Tribe whose request or appeal is being determined may request and receive copies of any documents or minutes that relate to an appeal they have made, provided Confidential Information pertaining to other Tribes is redacted.

**Conflicts of Interest.** All Systemwide Committee members must abide by basic principles of ethical conduct and Regents Policy 1111, Policy on Statement of Ethical Values and Standards of Ethical Conduct. The Systemwide Committee will identify and manage Conflicts of Interest (COI), as defined in Section II, taking into consideration the following:

- 1) Tribes making a Request must be provided with a roster of all Systemwide Committee members and subject matter experts consulted or invited to the Systemwide Committee meetings. If the Tribe(s) believes that one or more of these persons may have a COI with regard to their case, they may present information to explain their opinion and request that such persons be removed as subject matter experts or abstain from voting on their case, as applicable. The President will consider and make a decision on the Tribe's request. The decision must be communicated to the Tribe(s) in advance of meeting, with an explanation if the request is denied.
- 2) Systemwide Committee members must recuse themselves from participating in a decision on any matter before the Systemwide Committee in which they have a financial, professional, or personal interest that would significantly impair or appear to significantly impair their objectivity in making a decision. If there is any question about whether a committee member's interest would significantly impair or appear to significantly impair their objectivity, the member must recuse themselves or disclose the interest to the other committee members and the President. The President may require such members recuse themselves, or with the concurrence of the remaining Systemwide Committee members, and as permitted by law, allow such members to vote.

The President may replace a member who has been recused; however, the balance between tribal and UC membership in the composition of the Systemwide Committee membership considering the case will nonetheless be maintained.

**Chair.** The Systemwide Committee will nominate a Chair from amongst the members, who, upon approval of the President, will serve for two (2) consecutive years. The Systemwide Committee may renew a chairperson upon approval of the President. The duties and responsibilities of the Chair include, but are not limited to, the following:

- 1) In consultation with the Systemwide Committee membership, staff of the President, and campus NAGPRA/CalNAGPRA Repatriation Coordinator,

**Commented [A28]:** Added UC's statement on ethical values, which also applies to volunteers.



schedule dates, times and locations for meetings; ensure meetings are called and held in accordance with this policy;

- 2) In consultation with Systemwide Committee membership, establish and confirm an agenda for each meeting, and ensure the meeting agenda and relevant documents are circulated to Systemwide Committee members in advance of the meeting to ensure sufficient time for the members to review the materials and arrange logistics, travel or telecommunication capability;
- 3) Officiate and conduct meetings;
- 4) Ensure there is sufficient time during the meeting to fully discuss agenda items; and
- 5) Ensure meeting minutes are complete and accurate, retained, and reviewed at the next meeting.

**Frequency of Meetings.** The Systemwide Committee will meet no less frequently than three (3) times per academic year.

**Subject Matter Experts.** In Consultation with Tribes, the Systemwide Committee may seek, as needed, the advice of external or internal subject matter experts.

## 2. Campus Committees

### a. Composition

Except as described in Section V.A.2.b below, ~~f~~For each UC campus that has Possession or Control of a NAGPRA/CalNAGPRA-eligible Collection, the Chancellor must establish a Campus Native American Graves Protection and Repatriation Act Implementation Committee (hereinafter called the "Campus Committee")<sup>15</sup> in accordance with the requirements of CalNAGPRA.

All Campus Committee members must have demonstrated understanding of tribal cultural concerns. Per CalNAGPRA §8026(d)(2), "Preference shall be given to members who have demonstrated, through their professional experience, the ability to work in collaboration with Native American tribes successfully on issues related to repatriation or museum collection management." In selecting members, the Chancellor will seek a diversity of expertise and may make exceptions to the composition requirements set forth in CalNAGPRA, provided that such exceptions promote Repatriation and amplify the Purpose and Guiding Principles contained in this policy, and that equal UC / tribal representation is maintained. In making such exceptions, the Chancellor will consider the individual's prior experience and knowledge in NAGPRA/CalNAGPRA, seek the advice of Tribal Representatives, and communicate the justification for the exception to the Campus Committee.

**Commented [A29]:** Added for clarity since this requirement applies not only to a campus that physically "has" a collection on campus, but also to a campus that has possession or control of items that have been loaned to another entity.

<sup>15</sup> CalNAGPRA §8026(b)(1) states that the Campus Native American Graves Protection and Repatriation Act Implementation Committee shall be known as the "NAGPRA Committee" for that campus. We refer to this committee (for each campus) as the "Campus Committee" in this policy because it more clearly distinguishes campus committees from the Systemwide Committee.

The Chancellor will stagger the terms of the voting members to the extent possible in order to ensure continuity and a balance of experienced and new members. For example, membership terms can vary between one, two, and three years. Terms are renewable, but should not generally exceed six years.

The Chancellor may observe committee meetings.

**b. Exceptions to the Requirement to Establish Campus Committees**

If a campus does not have an active Campus Committee and does not otherwise anticipate needing a full committee, the campus may rely on another campus' committee and Repatriation Coordinator to carry out its duties under this policy if the Chancellors of both campuses agree.

**Commented [A30]:** Added to allow for flexibility between campuses.

**b.c. Purpose and Responsibilities of the Campus Committee**

The Campus Committee will be charged with providing compliance oversight and review, advising the campus Chancellor on matters related to the Campus' implementation of NAGPRA and CalNAGPRA, and promoting campus implementation of this policy.

The Campus Committee may do any of the following as needed to assist in the compliance of this policy:

- 1) Assess campus implementation, timeliness, adequacy of resources (e.g., through benchmarking), and compliance with this policy through consultation and review of the campus Repatriation Implementation Plan (see Section VI), campus biannual reports (see Section V.H), and audits, as necessary;
- 2) Make corrective action recommendations to the Chancellor;
- 3) Make recommendations to the Chancellor for revisions to local campus policies and practices consistent with this policy;
- 4) Make recommendations to the Chancellor for the issuance of guidance, best practices, and a Repatriation Implementation Plan for the successful campus implementation of this policy, including compliance with NAGPRA and CalNAGPRA;
- 5) Make determinations regarding the identification of Cultural Items, Requests for Cultural Affiliation and/or State Cultural Affiliation and Requests for Repatriation / Disposition of Human Remains and Cultural Items, and review Notices of Inventory Completion and/or Notices of Intent to Repatriate to ensure compliance with NAGPRA and CalNAGPRA, including appropriate Consultation, and make recommendations regarding such determinations to the Chancellor. The Chancellor will review the recommendations and make the final campus decision;
- 6) Review claims of any violation of the policies and procedures adopted pursuant to CalNAGPRA § 8025, and make recommendations to the Chancellor for corrective actions as necessary;

- 7) Review campus practices for consistency with this policy and legally applicable requirements and, when requested by a Tribe, assist in the resolution of complaints made in accordance with Section V.I.1 and/or make recommendations for resolution to the Chancellor; and
- 8) Serve as a resource to promote Repatriation.

#### **e.d. Campus Committee Procedures**

**Quorum and Voting.** A quorum will consist of at least 50% of members. Recommendations to the Chancellor will be determined by a vote of at least half of the members in attendance. Campus Committee recommendations will include the background documentation and a report of majority/minority opinions, including alternate recommendations.

**Virtual Presence.** While in-person attendance is encouraged, committee members, tribal members, presenters, staff, and others invited to committee meetings may attend via a telecommunications system, in which efforts will be made to ensure all present can see and hear each other (e.g., using conference rooms that have video capability and adequate speakerphones).

**Tribal Presence.** The Repatriation Coordinator will invite the Tribe(s) whose Request is being reviewed by the Campus Committee, or who are potentially Culturally Affiliated / State Culturally Affiliated to a collection under review by the Campus Committee, to provide oral or written evidence, statements, video or other information to the Campus Committee and/or attend (in person or via a telecommunication system) the Campus Committee meeting where the case will be considered. Reviews under this provision may include reviews for determinations for the identification of Cultural Items, Cultural Affiliation, Repatriation or Disposition, draft Inventory or Summary documents, final Inventory or Summary documents, or Notices.

**Record Keeping.** The Repatriation Coordinator will maintain a record of all Campus Committee votes, including both the majority and minority opinions, as well as all evidence and documents presented (including those submitted by Tribes) and meeting minutes. Except to the extent required by law, portions of meeting minutes that ~~capture-contain~~ tribal Confidential Information ~~shall~~ must be treated as Confidential Information. A Tribe whose Request or appeal is being determined may request and receive copies of any documents or minutes that relate to an appeal they have made, provided Confidential Information pertaining to other Tribes is redacted.

**Conflicts of Interest.** All Campus Committee members must abide by basic principles of ethical conduct and Regents Policy 1111, Policy on Statement of Ethical Values and Standards of Ethical Conduct. The Campus Committee will identify and manage Conflicts of Interest (COI), as defined in Section II, taking into consideration the following.

- Tribes making a Request must be provided with a roster of all Campus Committee members and subject matter experts consulted or invited to the Campus Committee meetings. If the Tribe(s) believes that one or more of these persons may have a COI with regard to their case, they

**Commented [A31]:** Added UC's statement on ethical values, which also applies to volunteers.

may present information to explain their opinion and request that such persons be removed as subject matter experts or abstain from voting on their case, as applicable. The Chancellor will consider and make a decision on the Tribe's request. The decision must be communicated to the Tribe(s), in advance of the meeting, with an explanation if the request is denied.

- Campus Committee members must recuse themselves from participating in a decision on any matter before the Campus Committee in which they have a financial, professional, or personal interest that would significantly impair or appear to significantly impair their objectivity in making a decision. If there is any question about whether a committee member's interest would significantly impair or appear to significantly impair their objectivity, the member must recuse themselves or disclose the interest to the other committee members and the Chancellor. The Chancellor may require such members recuse themselves, or with the concurrence of the remaining Campus Committee members, and as permitted by law, allow such members to vote.

The Chancellor may replace a member who has been recused; however, the balance between tribal and UC membership in the composition of the Campus Committee membership considering the case will nonetheless be maintained.

**Chair.** The Campus Committee will nominate a rotating Chair from amongst the members, who, upon approval by the Chancellor, will serve for two (2) consecutive years. The Campus Committee may renew a chairperson, upon approval by the Chancellor. The duties and responsibilities of the Chair include, but are not limited to, the following:

- 1) Confer and Coordinate with the Repatriation Coordinator on a regular basis for the mutual exchange of information;
- 2) Schedule dates, times and locations for meetings in consultation with the Campus Committee membership and Repatriation Coordinator; ensure meetings are called and held in accordance with this policy;
- 3) Establish and confirm an agenda for each meeting in consultation with Campus Committee membership and Repatriation Coordinator, and ensure the meeting agenda and relevant documents are circulated to Committee members in advance of the meeting to ensure sufficient time for the members to review the materials and arrange logistics, travel or telecommunications capability;
- 4) Officiate and conduct meetings;
- 5) Ensure there is sufficient time during the meeting to fully discuss agenda items; and
- 6) Ensure meeting minutes are complete and accurate, retained, and reviewed at the next meeting.

**Frequency of Meetings.** Meetings will be held as frequently as needed to meet deadlines provided in NAGPRA and CalNAGPRA as well as this policy.

Commented [A32]: Added for clarity.

For campuses having Possession or Control of Human Remains, where the number of individuals or sets of Human Remains exceeds 100, the Campus Committee will meet no less frequently than three (3) times per academic year. All other campuses having Possession or Control of Human Remains will meet no less frequently than two (2) times per academic year.

**Subject Matter Experts.** In Consultation with the Tribes, the Campus Committee may seek, as needed, the advice of external or internal subject matter experts.

## B. CONSULTATION

### 1. Consultation Process and Guidance

Consultation (as defined in Section II) is a critical element required by NAGPRA, CalNAGPRA, and this policy at various stages (i.e., Inventory, Summary, Repatriation, and Disposition).

All successful Consultations involve relationship building and respect.

Repatriation Coordinators must seek out and foster these relationships with the designated Tribal Representatives, such as Tribal Historic Preservation Officers (THPOs), Cultural Directors, Elders Councils, and/or other representatives.

Repatriation Coordinators must engage in Consultation that reflects the principles and characteristics outlined below.

- Relationships that acknowledge and respect a Tribe's sovereignty, cultural protocols, and cultural and religious practices and knowledge;
- Multiple repeated contacts using a variety of methods;
- Accommodations for tribal needs in facilitating respectful Consultation;
- Invitations to all Tribes that have an interest;
- Identify and address tribal concerns in this process;
- Full access to consulting Tribes of relevant information throughout this process, including information known to the University about Human Remains or Cultural Items that are the subject of the Consultation and upon request, information about other collections containing Native American objects from the Tribe's area of interest;
- Flexible meeting agendas and schedules, with opportunity for tribal input on the agendas or schedules themselves; and
- Actions demonstrating meaningful engagement with tribes, which exemplify trust and relationship building.

Consultation includes ongoing meaningful dialog regarding Cultural Affiliation and the identification of Cultural Items throughout the Inventory and Summary processes, with the goal of Repatriation. Consultation may be in the form of in-person meetings, phone calls, video/remote conferencing, and written correspondence. UC campuses should work collaboratively with each other when

engaging in Consultation with Tribes that may have Human Remains or Cultural Items in collections across multiple campuses.

The importance of building collaborative relationships is a core value of this policy. To fulfill this value, Repatriation Coordinators should work with other campus departments to foster UC/Native American relationships. Some examples of this approach are:

- Facilitating a meeting with a student recruiter focused on Native American communities when a Tribe visits the campus for a NAGPRA Consultation;
- Informing a Tribe of, and connecting them with, UC archives that may be of interest to the Tribe;
- Supporting efforts to build relationships with Native American students on campus; and
- Developing a holistic campus wide approach to relationship building with full acknowledgment that diversity is valued and supported.

The Repatriation Coordinator will consult individually with each Tribe. UC recognizes that multiple Tribes may request to consult jointly as appropriate. If all Tribes agree, UC will consult jointly with the Tribes for that meeting or Repatriation effort.

When engaging in Consultation, Repatriation Coordinators will take the steps below.

**a. Initiation.** The Repatriation Coordinator will initiate Consultation as required by this policy, as early as possible when:

1) New information or Human Remains or potential NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items are identified; and

2) Conducting pro-active re-evaluations of previous CUI determinations, in order to meet CalNAGPRA requirements, as described in Section VI.

~~new information or Human Remains or potential NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items are identified, or in conducting reevaluations as described in Section VI.~~ Initiation of Consultation ~~shall~~ will include the opportunity for the Tribe(s) to meet with the Campus Committee for brief introductions at the next scheduled meeting, provided the Campus Committee has time to accommodate such meeting without significant impact to its planned agenda.

When a Repatriation Coordinator initiates Consultation, an initial communication (e.g., letter or email) with sufficient information will be provided to Tribal Representatives to determine if they have an interest in participating in the Consultation process, believe they are Culturally Affiliated with Native American Human Remains and/or Cultural Items, and if they know of other Tribes that may have an interest. If no response is received, the Repatriation Coordinator will attempt additional notifications using alternative means, such as by U.S. mail or phone.

**Commented [A33]:** Revised for clarity and to more explicitly call out that one of the circumstances that requires Initiation is the CalNAGPRA requirement to review previous determinations.

**Commented [A34]:** Moved from paragraph d below since this is more about the initiation of Consultation.

- b. **Response to Consultation Request.** If a Tribe has requested Consultation ~~has been requested by a Tribe~~, the campus Repatriation Coordinator will acknowledge receipt of the request within five (5) business days.
- c. **Response to Information Request.** Requests for information must be acknowledged within five (5) days. Within sixty (60) days from the receipt of the request and no less than monthly thereafter, the campus Repatriation Coordinator will provide the requested information or the status of the work being done on the request.
- d. **Preparation.** The campus Repatriation Coordinator will review all known information about the Human Remains or Cultural Items, and identify potentially Culturally Affiliated Tribes or State Culturally Affiliated Tribes and traditional Aboriginal lands or tribal lands from where the Human Remains and/or Cultural Items were removed, regardless of whether the Tribes are currently physically present in the area. Sources of information that may be useful in researching potentially relevant tribes include National NAGPRA and NAHC resources, previous NAGPRA Federal Register notices, and federal land claims. ~~When a Repatriation Coordinator initiates consultation, an initial communication (e.g., letter or email) with sufficient information will be provided to Tribal Representatives to determine if they have an interest in participating in the Consultation process, believe they are Culturally Affiliated with Native American Human Remains and/or Cultural Items, and if they know of other Tribes that may have an interest. If no response is received, the Repatriation Coordinator will attempt additional notifications using alternative means, such as by U.S. mail or phone.~~
- e. **Participants.** Consultation will be conducted with Tribal Representatives authorized by their tribal government to consult on the Tribe's behalf concerning Repatriation. ~~If the campus Repatriation Coordinator is unclear whether the representative is the authorized representative, they may contact the Tribal Historic Preservation Officer (THPO) or tribal administration and request an official tribal letter providing this information.~~
- f. **Records.** Campuses should maintain a record of all communications in a communication log. Communication may be through posted letter, email, phone, and in-person as the occasion warrants. When using non-written forms of communication, a follow-up email or letter should be sent within a day to ensure that agreed to decisions and next steps are accurate. Any formal notes should be offered and reviewed by the ~~C~~onsulting parties to ensure accuracy before they are accepted into the formal record. Consistent and repeated contact best assures progress.
- g. **Meetings.** For meetings, campuses should work with Tribal Representatives to find a mutually agreeable time, place, format, agenda, and arrangements for special requests (such as smudging space, parking, meals, and documentation). The Repatriation Coordinator should inquire about whether there are barriers to tribal participation. To the extent possible, the Repatriation Coordinator should attempt to alleviate any barriers. This may also include travel support through grants or allocation of funding.

**Commented [A35]:** Deleted to allow for flexibility as to how this happens.



- h. Materials.** The campus Repatriation Coordinator should work with the ~~G~~consulting Tribes to provide any needed documentation related to collections and Human Remains prior to Consultation meetings. Documentation may include catalogs, reports, maps, field notes, accession registers, summaries of NAGPRA related information, notices, tribal information in UC's possession (such as tribal histories, linguistics, recordings, and folklore), and other relevant documents.

The Repatriation Coordinator will also provide a list of Tribes that are, or have been, consulted regarding particular Human Remains and Associated Funerary Objects. (NAGPRA § 10.9(b)3.i)

**Commented [A36]:** Added per NAGPRA § 10.9 (b)3. i.

- i. Consultation Meetings.** During Consultation meetings, the campus Repatriation Coordinator will listen and engage respectfully. The Repatriation Coordinator will endeavor to make meetings as comfortable, respectful, and productive as possible. This may include:

~~i.-1)~~ Making cultural arrangements, such as beginning meetings with a traditional land acknowledgment, providing an opportunity for a traditional opening if requested, or traditional offerings as relevant.

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~~ii.-2)~~ Providing access to associated records and requested Human Remains, Cultural Items, and other requested materials. (See also Section V.J.3 and Flowcharts on UC's NAGPRA Website~~Appendices A & A-4.~~)

~~iii.-3)~~ Providing a written description of the Repatriation/Disposition decision-making, dispute resolution, and complaint processes.

~~iv.-4)~~ As soon as possible, but no later than ten (10) days after the meeting, providing draft written meeting notes and a list of action items to Tribal Representatives to ensure accuracy and understanding by all participants. Such notes and other information shared by the Tribe during Consultation should be maintained as part of the Consultation record. For any major action items or decision points, it should be noted whether the Tribes concurred with these action items or decision points. If the Tribe does not concur, the Repatriation Coordinator and the Tribe will endeavor to reestablish an understanding. The Tribe can also file a complaint in accordance with Section V.I.1 in order to pursue resolution.

~~v.-5)~~ Together with Tribes, identifying all documentation and information shared that will have restricted access and the extent of such restriction. recognizing the Tribes' potential need for confidentiality with respect to Tribal Traditional Knowledge and tribal information shared during the Consultation.

**Commented [A37]:** Added for emphasis.

~~vi.-6)~~ Working with Tribes to identify and facilitate any requests for traditional care and restrictions for Human Remains and objects in the care of the campus. (See also Section V.J.1 for more details.)

**Commented [A38]:** Added cross reference.



7) Informing non-Federally Recognized Tribes that the option exists to partner with a Federally Recognized Tribe that can sponsor their Request and offering to assist in this process at the request of the non-Federally Recognized Tribe.

vii.8) Collecting identifications of Cultural Items made by Tribal Representatives, which the campus must record in accordance with CalNAGPRA § 8013(b)(1)(c)(ii). Tribal identifications may include broad categorical identifications, including, but not limited to, the identification of Associated Funerary Objects.

**Commented [A39]:** Added this requirement from AB 275.

j. **Updates.** The campus Repatriation Coordinator must keep affected Tribes promptly informed of all UC and campus decisions, relevant news and information about affiliated or otherwise relevant collections, and publication of notices by National NAGPRA and the NAHC. The Repatriation Coordinator will also provide quarterly updates to Tribes with whom they are consulting.

k. **Potential Disagreement.** In the event that Cultural Affiliation is unclear or there is potential disagreement about the identification of Cultural Items, the Repatriation Coordinator will transmit a detailed explanation to the consulting Tribe(s) and information on possible paths to change the outcome, and how and to whom to file a complaint or appeal. Under CalNAGPRA § 8013, if a consulting California Indian tribe disagrees with the contents of a preliminary Inventory or Summary that has been submitted to the NAHC, the preliminary Inventory or Summary must either be revised to correct the disputed information or the NAHC will offer to initiate dispute resolution as described in CalNAGPRA § 8016. (See also Sections V.C and V.I.)

**Commented [A40]:** Added this section to incorporate avenues available through CalNAGPRA, as revised by AB 275.

l. **Resources.** To the extent permitted by UC or third party resources and at the request of Tribe(s):

i.1) The Repatriation Coordinator may partner with and assist Tribe(s) in seeking state/federal grants or other available UC or third-party resources to facilitate Consultation and Repatriation; and

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ii.2) UC will provide for necessary costs incurred by the Tribes, including stipends for tribal and other experts, travel, meals, and overnight accommodations.

m. **Repatriation Logistics.** The campus Repatriation Coordinator will offer to assist, as needed or requested, with transfer/Repatriation logistics, which may include stewardship agreements, coordinating reburial lands, coordinating with Tribes to identify alternate sources of funding for reburial preparation costs, and applying for NAGPRA Repatriation grants.

## 2. Confidentiality

UC is committed to ~~upholding the confidentiality of protecting~~ Confidential Information. All "Confidential Information" (as defined in Section ~~Error!~~ Reference source not found.) may only be made available to those with a need to know for compliance with this policy and may not be further re-disclosed

unless otherwise required by law or with the prior consent of the Tribe that provided the information. The Repatriation Coordinator will provide consulting Tribes the opportunity to review ~~documents~~ the Review Packet that will be shared with the Campus Committee or published in the Federal Register or by NAHC. ~~(See V.B.1.i.(5) above and Flowcharts on UC's NAGPRA website.~~ Appendices A and A-1).

**Commented [A41]:** Added a reference to consultations.

Campus and Systemwide Committee members and UC employees with a need to know must be trained and advised of their obligations to maintain confidentiality for all such information conveyed to them in the course of their duties under this policy or during Consultation. (See Section IV.)-

The Repatriation Coordinator must keep any hard copies of Confidential Information in locked file cabinets. Electronic copies of Confidential Information must be maintained in accordance with UC Policy BFB-IS-3: Electronic Information Security.

**Commented [A42]:** Added "any" to avoid the implication that there is an affirmative obligation for the Repatriation Coordinator to print out a hard copy of any Confidential Info they may have received orally or electronically.

## C. CULTURAL AFFILIATION AND/OR STATE CULTURAL AFFILIATION, INVENTORIES, AND SUMMARIES

### 1. General

In accordance with the requirements set forth in NAGPRA and CalNAGPRA, and the guiding principles of this policy, campuses must create and/or supplement Inventories and Summaries (including preliminary Inventories and Summaries in accordance with CalNAGPRA) in Consultation with Tribal Representatives. As part of this process, campuses must assess 1) whether they have items in their Possession or Control that meet the definitions for Human Remains and Associated Funerary Objects, or may meet the definitions for Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony ("Cultural Items"); and 2) whether Cultural Affiliation and/or State Cultural Affiliation can be established for Human Remains or Cultural Items listed or described in Inventories or Summaries.

**Commented [A43]:** Added to clarify, since a federally recognized California Indian tribe can use both processes.

**Commented [A44]:** Added to reflect the new concept of preliminary Inventories and Summaries in AB 275.

**Commented [A45]:** Italicized for emphasis.

UC recognizes that "California Indian tribes have expertise with regard to their tribal history and practices that concern the Native American human remains, cultural items, and tribal cultural resources with which they are traditionally and culturally affiliated."<sup>16</sup> In performing their analysis to determine State Cultural Affiliation, the identification of Cultural Items under CalNAGPRA, and in all decisions related to the CalNAGPRA repatriation process, campuses must include consideration of Tribal Traditional Knowledge provided by Tribes during Consultation. "Deference shall be provided to tribal traditional knowledge, oral histories, documentation, and testimonies relative to other relevant categories of evidence." (CalNAGPRA § 8016(d)(6).)

**Commented [A46]:** Added to incorporate deference to Tribal Traditional Knowledge as required by AB 275.

(Note: The ~~detailed processes~~ flowchart detailing the processes for developing Inventories and Summaries (or Inventory and Summary updates) in Consultation with Tribes ~~in Appendices A and A-1~~ will be posted on UC's NAGPRA website.)

<sup>16</sup> AB 275 Declarations Section 1(k)(5).

It is the responsibility of the Campus Committee to make determinations under this Section, and recommendations regarding such determinations to the Chancellor, based on information provided by Tribes and the Repatriation Coordinator. The Chancellor will review the determinations and make the final campus decision.

#### **4.2. Content of Inventories and Summaries**

The required elements with respect to the content of Inventories and Summaries are largely the same under NAGPRA and CalNAGPRA (though CalNAGPRA pertains only to that subset of a campus's collections that are from California). Key elements and processes specific to CalNAGPRA are called out here and/or in Section V.C.5 below.

**Commented [A47]:** Added this preface for greater clarity.

**a. Inventories.** Campus Inventories must include list the Human Remains and Associated Funerary Objects in the Possession or Control of the campus and include a synopsis of the evidence used, including evidence obtained through Consultation, to determine whether the objects are Native American Human Remains or Associated Funerary Objects the following information, to the extent available:<sup>17</sup>

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**Commented [A48]:** Deleted Redundancy.

**Commented [A49]:** Added for clarity, as the regulations require these elements only to the extent available. See NAGPRA 10.9(c) and 10.8(e) and CalNAGPRA 8013.

- 1) Accession and catalogue entries, including the accession/catalogue entries of Human Remains with which Funerary Objects were associated;
- 2) Information and circumstances related to the acquisition of each object, including:
  - (i) The name of the person or organization from whom the object was obtained, if known;
  - (ii) The date of acquisition;
  - (iii) The place / geographic location where each object was acquired, i.e., name or number of site, county, and State, and Federal agency administrative unit, if applicable;
  - (iv) For Inventories prepared under CalNAGPRA, the State Aboriginal Territory from which the Human Remains and Associated Funerary Objects were removed;<sup>18</sup> and
  - (iii) and
  - (iv)(v) The means of acquisition, i.e., gift, purchase, or excavation;

**Commented [A50]:** Deleted as this is inapplicable to UC.

**Commented [A51]:** Added per CalNAGPRA (AB 275).

<sup>17</sup> For more information, see NAGPRA § 10.9(c), and CalNAGPRA § 8013(ab).

<sup>18</sup> Under CalNAGPRA, Inventories must include not only Human Remains and Associated Funerary Objects that are clearly identifiable by State Cultural Affiliation, but also those that, given the totality of the circumstances, including the unique circumstances of California history, are determined by a Reasonable belief to have been removed from an area identified as the State Aboriginal Territory of one or more California Indian tribes. CalNAGPRA §8013(b)(1)(D).

3) A description of each set of Human Remains or Associated Funerary Object, ~~including dimensions, materials, and, if appropriate, photographic documentation, and the antiquity of such Human Remains or Associated Funerary Objects, if known;~~ and

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**Commented [A52]:** Simplified at higher level.

~~(4)4) A description indicating Cultural Affiliation (under NAGPRA); and/or State Cultural Affiliation (under CalNAGPRA), as applicable, of the Human Remains and Associated Funerary Objects and A~~ summary of the evidence, including the results of consultation, used to ~~make such determinations the Cultural Affiliation and State Cultural Affiliation of the Human Remains and Associated Funerary Objects.~~

b. **Summaries.** Campus Summaries must describe the collections in the Possession or Control of the campus that may contain Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony for the purpose of providing information to Tribes that may wish to submit Requests regarding these items. Summaries must include:<sup>19</sup>

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1) ~~a~~An estimate of the number of objects in the collection or portion of the collection;

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2) ~~a~~A description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and

3) ~~i~~Information relevant to identifying Lineal Descendants, if available, and Cultural Affiliation and State Cultural Affiliation.

4) ~~Under CalNAGPRA, Summaries must also include the State Aboriginal Territory from which the items were removed, where reasonably ascertainable.~~

**Commented [A53]:** Added CalNAGPRA requirement.

In general, any non-contemporary Native American ethnographic object or artifact may be a Cultural Item, and campuses should consult with potentially ~~e~~Culturally ~~a~~Affiliated/~~State Culturally Affiliated~~ Tribes regarding any ~~accessions~~collections that contain such Native American objects.<sup>20</sup>

**Commented [A54]:** Added footnote to include text from CalNAGPRA.

### 2.3. **Determining Whether Objects are Native American Cultural Items and Cultural Affiliation / State Cultural Affiliation**

In evaluating items to establish whether they meet the definitions of Cultural Items and their Cultural Affiliation or State Cultural Affiliation, campuses will ~~c~~Consult with Tribal Representatives and utilize the types of evidence and standards of proof stipulated in NAGPRA and CalNAGPRA (~~i.e.~~, geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral

<sup>19</sup> For more information, see NAGPRA 43 C.F.R. § 10.8(b) and CalNAGPRA § 8013(b).

<sup>20</sup> Note that Cal NAGPRA § 8013(c) states, "Because it may not be clear whether Native American objects are Cultural Items, all museum collections of Native American ethnographic or archaeological objects shall be included in the preliminary summary."

tradition, historical evidence, ~~or~~ other information or expert opinion, and Tribal Traditional Knowledge).

**a. Determining Whether Objects are Native American Cultural Items**

1) Inventories. In Consultation with Tribes, the Repatriation Coordinator will prepare a preliminary and final Inventory ~~gather information~~ for review by the Campus Committee to determine whether items meet the NAGPRA/CalNAGPRA definitions of Human Remains and Associated Funerary Objects (and whether any Tribes are Culturally Affiliated and/or State Culturally Affiliated). ~~Note that dD~~ Determinations of whether the items are Native American must not be precluded based solely on their age.

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2) Summaries. For Requests under Summaries, upon receiving a Tribal Representative's identification and Request for Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony, the Repatriation Coordinator, in Consultation with Tribes, will ~~gather information~~ prepare a preliminary and final sSummary for review by the Campus Committee to determine whether the requested items meet the NAGPRA/CalNAGPRA definitions of Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony (and whether any Tribes are Culturally Affiliated or State Culturally Affiliated). Determinations of whether items are Native American must not be precluded based solely on their age.

**b. Determining Cultural Affiliation / State Cultural Affiliation**

The campus must consider the totality of circumstances (including the unique circumstances of California history) and evidence,<sup>21</sup> and make determinations of Cultural Affiliation / State Cultural Affiliation based on the Preponderance of the Evidence, including Tribal Traditional Knowledge and oral histories, regarding whether there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of the requesting Tribe(s) and an identifiable earlier group with respect to the Human Remains and Cultural Items being requested.<sup>22</sup>

~~Per CalNAGPRA 8016 (i), "Tribal oral histories, documentation, and testimonies shall not be afforded less evidentiary weight than other relevant categories of evidence on account of being in those categories."~~ UC respects and values tribal oral histories and tribal sources of evidence in making determinations under this policy, and understands that in some cases, such evidence may be the only evidence available. Decisions must be made in consideration of the line(s) of evidence that are available without prejudice owing to the absence of other lines of evidence. For example, anthropological evidence need not be present if tribal oral historical evidence is available to evaluate cultural affiliation.

**Commented [A55]:** Updated language from CalNAGPRA and moved it to the general section (V.C.1) above, as it is applicable more broadly.

In deliberations concerning California Indian ~~T~~ribes, the campus will take into account unique California history that might have created gaps in records.

<sup>21</sup> NAGPRA 43 C.F.R. § 10.14(d) and CalNAGPRA § 8013(a)(3).

<sup>22</sup> NAGPRA 43 C.F.R. § 10.14(c).

Cultural Affiliation and/or State Cultural Affiliation will not be precluded solely because of some gaps<sup>23</sup> in the record. Further, Requestors do not have to establish Cultural Affiliation and/or State Cultural Affiliation with scientific certainty.<sup>24</sup> ~~As described above, a single line of evidence may be sufficient to establish cultural affiliation.~~

Commented [A56]: Deleted redundancy.

A campus may establish Cultural Affiliation or State Cultural Affiliation of Human Remains and Cultural Items to more than one Tribe. In all such cases, evidence will be evaluated separately with respect to each Tribe, and the requirements for Cultural Affiliation or State Cultural Affiliation must be established for each Tribe.

#### **3-4. Updates and Supplements to Inventories and Summaries**

~~UC campuses with knowledge of existing NAGPRA/CalNAGPRA-eligible collections of Human Remains in their Possession or Control have already submitted Inventories (for Human Remains and Associated Funerary Objects) and Summaries (for Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony). Campuses have a continuing responsibility to update and supplement their previously submitted Inventories and Summaries. However, these must be updated/supplemented,~~ in consultation with Tribal

Commented [A57]: Simplified text.

Representatives, as required by NAGPRA and CalNAGPRA, including if there are new items to report, or if there are changes to previously submitted Inventories or Summaries. (See NAGPRA, 43 C.F.R. § 10.13, CalNAGPRA §§ 8013(c), (i) and (j).)<sup>25</sup> For example, Inventories and Summaries may need to be updated or supplemented as a result of changes prompted by the reevaluations of previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, as required under this policy in Section VI.

~~Campuses must supplement Inventories and Summaries as provided for in CalNAGPRA §8013(c) and (g) within one year of the date the NAHC issues the list of California Indian Tribes provided for under CalNAGPRA §8012 and comply with all other applicable CalNAGPRA requirements. Consistent with CalNAGPRA, if after Consultation with California Indian Tribes, State Cultural Affiliation is established with a non-Federally Recognized California Indian Tribe, the campus Repatriation Coordinator must include that information in the Inventory or Inventory supplement that it prepares pursuant to CalNAGPRA § 8013. If a Request is submitted based on this determination, all NAGPRA/CalNAGPRA requirements will be followed.~~

Commented [A58]: Deleted and moved updated text under new section V.C.5 pertaining to CalNAGPRA specific processes.

If the campus is aware that items described in an Inventory or Summary are no longer in UC's possession for any reason, including because they have been lost, the campus will make note of that on any Inventory or Summary Supplements or updates completed after the effective date of this policy.

<sup>23</sup> NAGPRA 43 C.F.R. § 10.14(d).

<sup>24</sup> NAGPRA 43 C.F.R. § 10.14(f).

<sup>25</sup> Notice (including providing a copy of the Inventory) must be given to Tribes and to federal and state officials as required by NAGPRA (25 USC 3003(d), 43 CFR 10.9 (e), 43 CFR 10.11 (d), and 43 CFR 10.13) and CalNAGPRA (§ 8013(ed) and (gf)).



## 5. Additional CalNAGPRA Specific Processes<sup>26</sup>

**Commented [A59]:** Added this new section to incorporate new CalNAGPRA processes / requirements.

In accordance with CalNAGPRA § 8025(a)(2)(D), this policy requires campuses to review and update previous determinations of Culturally Unidentifiable Human Remains and Cultural Items to determine whether Cultural Affiliation/State Cultural Affiliation can be determined or to confirm such status. In conducting such reviews, the Repatriation Coordinator will work with Tribes to determine whether there are Cultural Items that may not have been identified in the original Inventories or Summaries because Tribal Traditional Knowledge was not incorporated into the identification process.

On or before January 1, 2022:

- a. Each UC campus that has Possession or Control of California Native American Human Remains and Associated Funerary Objects must complete a preliminary Inventory, of these remains and funerary objects, that meets the requirements of CalNAGPRA Section 8013(b).
- b. Each UC campus that has Possession or Control of collections that may contain Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony of a California Indian tribe must prepare a written preliminary Summary, based on available information held by the campus, that meets the requirements of CalNAGPRA § 8013(c).

Campuses should request that the NAHC provide a list of California Indian tribes and their respective State Aboriginal Territories, and must contact and consult with those Tribes whose State Aboriginal Territory includes the area from which the Human Remains and/or potential Cultural Items were removed.

Under CalNAGPRA § 8013(d), within ninety (90) days of completing preliminary Inventories and Summaries as specified by CalNAGPRA § 8013(b) and (c), campuses must provide copies to NAHC. That section specifies that NAHC shall, in turn, publish notices of completion of preliminary Inventories and Summaries on its internet website for thirty (30) days, and make the preliminary Inventories and Summaries available to any requesting potentially Culturally Affiliated California Indian Tribe.

**Commented [A60]:** These NAHC steps are included so that tribes know what happens once UC submits Inventories/Summaries.

In accordance with CalNAGPRA § 8013(j), the process must include all of the following:

“(1) Preliminary inventories and summaries shall be reviewed by culturally affiliated and potentially culturally affiliated California Indian tribes, who shall have the ability to concur or disagree with the information in the preliminary inventory or summary. Tribal concurrence, disagreement, or nonresponse shall be noted on the preliminary inventory or summary by the commission at the end

<sup>26</sup> References in CalNAGPRA to the “commission” refer to the NAHC. UC falls under the definition of a Museum.

of the 30-day review period. If a consulting California Indian tribe disagrees with the contents of the preliminary inventory or summary, the agency or museum shall either revise the preliminary inventory or summary to correct the disputed information or the commission shall offer to initiate dispute resolution as described in [CalNAGPRA] Section 8016.

“(2) The status of the inventory or summary shall be changed from preliminary to final by the commission once all responding California Indian tribes listed in the inventory or summary concur with the information in the inventory or summary.

“(3) An inventory or summary that has been finalized may be moved back to preliminary status at the request of a consulting California Indian tribe if inaccuracies are found in the finalized inventory or summary prior to repatriation.

“(4) The designation of an inventory or summary as preliminary or final is intended to reflect whether consulting California Indian tribes agree with the decisions and identifications of the agencies and museums who are preparing these documents. An inventory or summary does not need to be marked as final for a California Indian tribe to place a claim. Nothing in this section shall be construed to mean that an agency or museum may delay the repatriation of items in a final inventory or summary.

“(5) Commission staff shall note a summary of all claims and the claim status on the commission’s internet website. The claim status may be pending, disputed, or accepted.

“(6) Commission staff shall note the repatriation status on the commission’s internet website. The repatriation status may be in process or completed.

“(7) A claim may be submitted at any time and does not need to be resubmitted.

“(8) A claim may be withdrawn at any time prior to transfer of control.”

**Commented [A61]:** These are NAHC steps we chose to include so that tribes know what happens once UC submits Inventories/Summaries.

## **D. REQUESTS FOR REPATRIATION AND DISPOSITION**

### **1. Flowchart: Repatriation and/or Disposition Process**

The Repatriation/Disposition Flowchart and accompanying Narrative ~~in on~~ **Appendix A and A-1** UC’s NAGPRA website describe the process campuses are required to follow when responding to tribal Requests for Cultural Affiliation, Repatriation or Disposition, or when campuses initiate the Inventory/Summary update and Consultation process. ~~If at any point in this process, a Tribe believes that the Repatriation Coordinator is not acting in good faith or is otherwise unsatisfied with the process, Tribal Representatives may submit a complaint to the Chancellor as described in Section V.I.1.~~

**Commented [A62]:** Deleted redundancy with Section V.I.



2. **Requests under NAGPRA for Repatriation of Human Remains and/or Cultural Items that are Culturally Affiliated with a Federally Recognized Tribe**<sup>27</sup>

For Repatriation Requests under NAGPRA, when all the criteria for Cultural Affiliation and Repatriation set forth in NAGPRA (43 C.F.R. ~~§ 10.9 or~~ § 10.10) are met<sup>28</sup>, and at least thirty (30) days have passed since the publication of any required notices in the Federal Register, UC must work with the requesting Tribe to expeditiously repatriate Human Remains and Cultural Items within ninety (90) days of receipt of a written Request for Repatriation from the Culturally Affiliated Federally Recognized ~~T~~Tribe. If the Tribe is not ready to receive a physical transfer, then UC may offer or a Tribe may request that a stewardship agreement be established between UC and the Tribe to outline the conditions under which UC will maintain physical custody. Such agreements will be reviewed each year as needed.

3. **Requests under CalNAGPRA for Human Remains and Cultural Items that are State Culturally Affiliated with a California Indian Tribe**

California Indian ~~T~~tribes ~~that wish to~~ may file Requests under CalNAGPRA for return of Human Remains and Cultural items with which they have State Cultural Affiliation ~~must file a claim with the NAHC and with the UC campus, as specified by CalNAGPRA §8014(b).~~<sup>29</sup>

~~Tribes claiming State Cultural Affiliation and requesting return of human remains and cultural items under CalNAGPRA must do the following:~~

- ~~1) File a written Request with the NAHC and the UC; and~~
- ~~2) Provide evidence of State Cultural Affiliation, unless Cultural Affiliation is already established by UC as published in the Federal Register in compliance with NAGPRA.~~<sup>30</sup>

In accordance with CalNAGPRA § 8014<sup>31</sup>:

“(a) A lineal descendent claiming a relationship with, and requesting return of, Native American human remains or cultural items listed in the inventory or summary of an agency or museum, or that requests the return of human remains or cultural items that are not listed in the inventory or summary but that are believed to be in the possession or control of the agency or museum, shall do both of the following:

**Commented [A63]:** Revised title for clarity.

**Commented [A64]:** Added a reference to lineal descendants to acknowledge that in addition to Tribes, lineal descendants may make Repatriation requests, and that UC will repatriate to Lineal Descendants in accordance with the requirements of NAGPRA and CalNAGPRA.

**Commented [A65]:** Deleted incorrect citation.

**Commented [A66]:** Corrected footnote for accuracy.

**Commented [A67]:** This entire section was updated per AB 275.

**Commented [A68]:** Clarified this is a requirement per CalNAGPRA.

<sup>27</sup> In addition to Tribes, Lineal Descendants may make Repatriation requests. UC will repatriate to Lineal Descendants in accordance with the requirements of NAGPRA and CalNAGPRA.

<sup>28</sup> UC will waive the requirement at NAGPRA 43 C.F.R. § 10.10(a)(iii), which would normally require that a Tribe present evidence supporting a finding that UC does not have the “Right of Possession.”

<sup>29</sup> To be clear, a California Indian Tribe can choose to file a Request under either CalNAGPRA (if claiming State Cultural Affiliation) or NAGPRA (if requesting Disposition under NAGPRA or if the Tribe is a Federally Recognized ~~T~~Tribe claiming Cultural Affiliation under NAGPRA), or both.

<sup>30</sup> ~~CalNAGPRA § 8014(a) & (b).~~

<sup>31</sup> References in CalNAGPRA to the “commission” refer to the NAHC. UC falls under the definition of a “Museum.”

“(1) File a claim for the human remains and cultural items with the commission and with the agency or museum believed to have possession or control.

“(2) Demonstrate that the claimant can trace their ancestry directly and without interruption by means of the traditional kinship or village system of the appropriate California Indian tribe, or by the common law system of descendency, to a known individual whose human remains or cultural items are being claimed.

“(b) A California Indian tribe claiming a relationship, state cultural affiliation, or state aboriginal territory with, and requesting return of, human remains or cultural items listed in the inventory or summary of an agency or museum, or that requests the return of human remains or cultural items that are not listed in the inventory or summary of an agency or museum but that are believed to be in the possession or control of the agency or museum, shall do both of the following:

“(1) File a claim for the human remains and cultural items with the commission and with the agency or museum believed to have possession or control.

“(2) Demonstrate one or both of the following:

“(A) There is a relationship of shared group identity that can be reasonably traced historically or precontact with an earlier identifiable group from which the human remains or cultural items originated and the claiming California Indian tribe. Evidence of state cultural affiliation need not be provided when reasonably established by a finding published in the Federal Register, in compliance with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

“(B) The human remains or cultural items were removed from the state aboriginal territory of the claiming California Indian tribe.”

When all the criteria set forth in CalNAGPRA §§ 801~~64~~ and 801~~5~~<sup>32</sup>, and if there are no other requests for particular Human Remains or Cultural Items and there is no unresolved objection pursuant to § 8016(d)(2), UC will expeditiously transfer the requested Human Remains and Cultural Items to the requesting Tribe, ~~within 30 days after the last day of the 90-day period, or on a date agreed upon by all parties, after the following conditions have occurred:~~ within ninety (90) days after the posting of the request for repatriation on NAHC's internet website, unless a Notice of Inventory Completion or Notice of Intent to Repatriate is also required under federal NAGPRA. If the federal notice period extends beyond the ninety (90)-day period, the campus must repatriate the requested Human Remains or Cultural Items to the requesting California Indian tribe within thirty (30) days following the completion of the federal notice period.

**Commented [A69]:** Added footnote to indicate UC's decision to waive the requirement that a Tribe present evidence that UC does not have the "Right of Possession."

<sup>32</sup> UC will waive the requirement at 43 C.F.R. § 10.10(a)(iii), which would normally require that a Tribe present evidence supporting a finding that UC does not have the "Right of Possession."

- a. ~~At least 30 days have passed since the NAHC has published the Request on its website, in accordance with CalNAGPRA § 8015, and~~
- b. ~~There are no other Requests for the particular items and no unresolved objections pursuant to subdivision (c) of CalNAGPRA § 8016 within 90 days from the date of distribution and publication of the Inventory or Summary and completion of any federal NAGPRA repatriation processes related to the item.~~

In accordance with CalNAGPRA § 8016(d), if there is more than one request made under CalNAGPRA for Repatriation for the same item, if there is a dispute between the requesting party and the campus, if there is a dispute as to the contents of an Inventory or Summary, or if a dispute arises in relation to the Repatriation process, the NAHC will notify the affected parties of this fact and the State Cultural Affiliation or State Aboriginal Territory of the item in question will be determined in accordance with CalNAGPRA § 8016.

For more information, see also:

- Section V.C.1 (which provides general instructions regarding State Cultural Affiliation, Inventories, and Summaries).
  - Section V.D.2 (which will be relevant in cases where a CalNAGPRA Request is made by a Culturally Affiliated Federally Recognized California Indian ~~T~~Tribe).
  - Sections V.D.4 and V.D.5 (which will be relevant in cases where a CalNAGPRA Request is made by a California Indian ~~T~~Tribe that does not have federal recognition).
  - Section V.C.5 (which provides additional CalNAGPRA specific processes).
  - Appendices A and A-1 Flowcharts on the UC NAGPRA website for additional information on the general Repatriation/Disposition process.
4. **Requests by Non-Federally Recognized Tribes Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects under NAGPRA**

~~Any Federally Recognized Tribe or non-Federally Recognized tribe may submit a Request for Disposition under the process described in Section V.D.5 and outlined in NAGPRA (43 C.F.R. § 10.11).~~ Both Federally Recognized tribes and non-Federally Recognized tribes may make requests for Human Remains and Associated Funerary Objects<sup>33</sup> that are classified as “Culturally Unidentifiable” under NAGPRA<sup>34</sup> under a mechanism known as a “Disposition.” Although NAGPRA distinguishes Federally Recognized ~~T~~tribes from non-Federally

**Commented [A70]:** This section has been retitled and combined section 5 to eliminate redundancy since both deal with Disposition of CUI.

<sup>33</sup> 43 C.F.R. § 10.11 applies only to Human Remains, but Museums and federal agencies are encouraged to also transfer Control of Funerary Objects that are associated with culturally unidentifiable Human Remains. Accordingly, UC will also include Associated Funerary Objects in any transfer of Human Remains made under NAGPRA.

<sup>34</sup> Note that under NAGPRA, Human Remains and Cultural Items that are not found by a ~~p~~Preponderance of the ~~e~~Evidence to be Culturally Affiliated with a Federally-~~r~~ Recognized ~~T~~Tribe are classified as “Culturally Unidentifiable,” regardless of whether those Human Remains and ~~Remains~~Cultural Items may have been found to have State Cultural Affiliation with a non-Federally-~~r~~ Recognized California Indian ~~T~~Tribe.

Recognized tribes. ~~NAGPRA and~~ does not give standing to non-Federally Recognized tribes to request Cultural Affiliation, ~~but does provide a mechanism for making a it does allow for a~~ Disposition ~~to them~~ under certain circumstances. In addition, ~~since NAGPRA provides an order of precedence that gives priority to a Federally Recognized tribe,~~ a non-Federally Recognized tribe may partner with a Federally Recognized ~~T~~tribe, or request a Federally Recognized ~~T~~tribe sponsor their Request. The Repatriation Coordinator will inform the non-Federally Recognized tribes of this strategy and at the request of the non-Federally Recognized tribe, the Repatriation Coordinator may assist with the process.

~~California Indian Tribes (including both those that are Federally Recognized Tribes and non-Federally Recognized Tribes) may also submit Requests under CalNAGPRA §8014. (See Section V.D.3 above.)~~

**Commented [A71]:** Added to clarify why a non-Federally Recognized tribe may want to partner with a Federally Recognized tribe.

**Commented [A72]:** Moved to end of this section.

#### **5. Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects**

~~In order to facilitate Disposition under NAGPRA (43 C.F.R. §10.11) and in order to comply with CalNAGPRA, this policy requires campuses to initiate Consultation (i.e., regardless of whether they receive a Tribal Request) with Tribes regarding Human Remains and Associated Funerary Objects classified as "Culturally Unidentifiable" under NAGPRA<sup>35</sup>. (See also Section VI).~~

**Commented [A73]:** Deleted redundancy with Section V.C.5.

~~A Request for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects may be submitted by a Federally Recognized Tribe or non-Federally Recognized tribe. NAGPRA (43 C.F.R. § 10.11)<sup>36</sup> outlines the process that a campus must follow to complete a return of Human Remains that are not Culturally Affiliated with a Federally Recognized Tribe (such a transfer is considered to be a "Disposition" of "Culturally Unidentifiable" Human Remains under NAGPRA). UC will also include Associated Funerary Objects in any transfer of Human Remains made under NAGPRA (43 C.F.R. § 10.11).~~

In accordance with NAGPRA (43 C.F.R. § 10.11), UC must initiate Consultation regarding the Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects:

- a. Within ninety (90) days of receiving a Request from a Federally Recognized ~~T~~tribe to transfer Control of Culturally Unidentifiable Human Remains and Associated Funerary Objects; or
- b. If no Request for Consultation is received, before any offer to transfer Control of Culturally Unidentifiable Human Remains and Associated Funerary Objects.

<sup>35</sup> See Section VI of this policy, requiring campuses to develop and submit to the Campus and Systemwide Committees Repatriation Implementation Plans that include provisions and a timeline for conducting this required proactive review.

<sup>36</sup> The requirements of NAGPRA 43 C.F.R. § 10.11 apply to all Dispositions of CUI Human Remains and AFOs, including those that have been determined to be State Culturally Affiliated to a California Indian Tribe under CalNAGPRA. Campuses must comply with requirements of both CalNAGPRA and NAGPRA.

~~In addition, pursuant to CalNAGPRA § 8013(c) and (g), UC campuses must consult with California Indian Tribes to update or supplement their Inventories and Summaries for those portions of their collections previously identified as Culturally Identifiable, which supplements must be completed within one year from the date the NAHC issues the list of California Indian Tribes provided for under CalNAGPRA §8012.~~

Commented [A74]: Deleted redundancy with V.C.5.

In order to avoid delay of a Disposition to a requesting ~~T~~Tribe, after making a good faith effort to consult with all Tribes from whose tribal lands, at the time of the removal, the Human Remains and Associated Funerary Objects were removed and with all Tribes from whose Aboriginal Lands the Human Remains and Associated Funerary Objects were removed,<sup>37</sup> and after an appropriate response period (~~sixty~~ 60) days),<sup>38</sup> the Repatriation Coordinator will proceed with carrying out the Disposition ~~Request~~.

In accordance with NAGPRA (43 C.F.R. § 10.11(c)), a campus that has completed Consultation pursuant to 43 C.F.R. § 10.11(b) must offer to transfer Control of the Culturally Unidentifiable Human Remains (and, per this policy, Associated Funerary Objects) in the following priority order:

- a. ~~The~~ Federally Recognized ~~T~~Tribe(s) or Native Hawaiian Organization(s) from whose tribal land, at the time of the removal, the Human Remains and Associated Funerary Objects were removed.
- b. ~~The~~ Federally Recognized ~~T~~Tribe(s) or Native Hawaiian Organization(s) ~~Tribes~~ that are recognized as aboriginal to the area from which the Human Remains and Associated Funerary Objects were removed. Aboriginal land may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.
- c. If none of the Tribes identified above agrees to accept Control, the campus may offer to transfer Control of Culturally Unidentifiable Human Remains (and per this policy, Associated Funerary Objects) to any other Federally Recognized ~~T~~Tribe or to a non-Federally Recognized tribe. Under NAGPRA, Disposition to a non-Federally Recognized tribe may only take place after receiving a recommendation from the Secretary of the Interior or authorized representative (43 C.F.R. § 10.11(c)(2)(ii))<sup>39</sup>.

In order to advance the goal of expeditious Disposition, unless advised otherwise by the National NAGPRA Program, including pursuant to NAGPRA (43 C.F.R. § 10.11(c)(3)), campuses are not required to obtain written signature of support from all Tribes described herein prior to proceeding with transfer of Control. In accordance with 43 C.F.R. § 10.11(d), Disposition may not occur until at least 30

<sup>37</sup> See NAGPRA, 43 C.F.R. § 10.11(b)(2)

<sup>38</sup> Although NAGPRA does not address the length of a response period, sixty (60) days provides Tribes with a reasonable period to voice an interest without unduly delaying next steps.

<sup>39</sup> Note that approval from the Secretary of the Interior or authorized representative is not required if a Federally Recognized ~~T~~Tribe sponsors a non-Federally Recognized tribe as described in Section V.D.4, and the Federally Recognized ~~T~~Tribe submits the Request.

days after publication of a Notice of Inventory Completion in the Federal Register.

California Indian tribes (including both those that are Federally Recognized tribes and non-Federally Recognized tribes) may also submit Requests under CalNAGPRA §8014. (See Section V.D.3.)

Commented [A75]: Moved from above.

#### **6-5. Joint Requests for Cultural Affiliation or State Cultural Affiliation**

A coalition of Tribes may jointly submit a Request for Repatriation. In such cases, Cultural Affiliation or State Cultural Affiliation must be established for each Tribe requesting Repatriation via the joint Request, but joint Requests will not be interpreted as competing Requests. (See Section V.C.23.b.)

#### **7-6. Competing Requests for Repatriation or Disposition**

After UC has published a Notice of Inventory Completion (NIC) or Notice of Intent to Repatriate (NIR), listing multiple Tribes as Culturally Affiliated or eligible to submit a Request for Disposition, UC/NAHC may receive competing Requests for Repatriation or Disposition from such multiple Tribes that are listed as Culturally Affiliated, State Culturally Affiliated, and/or that are otherwise eligible to submit a Request for Disposition.

With respect to competing Requests made under NAGPRA, if the law does not specify an order of precedence that gives one Tribe priority over another, UC will notify the Tribes of the competing Requests. The Repatriation Coordinator will attempt to facilitate a solution, and/or convene the Tribes to discuss and defer to their joint recommendations. If the Tribes cannot come to agreement, and the campus will retain the Human Remains or Cultural Items until the requesting parties reach agreement regarding the competing Requests or until the dispute is resolved. Note that competing Requests are distinct from joint or coalition Requests described above in Section V.D.6.

Commented [A76]: Simplified language.

Commented [A77]: Added proactive steps UC should take to facilitate solutions.

With respect to competing Requests made under CalNAGPRA, if there is more than one Request for Repatriation for the same item, NAHC will notify the affected parties of this fact in accordance with CalNAGPRA § 8016. In such cases, the disputing parties must submit documentation to NAHC describing the nature of the dispute, in accordance with standard mediation practices and NAHC's procedures, and meet within thirty (30) days of the date of the mailing of the documentation. If the dispute is not settled then, the parties will enter mediation. If not settled via mediation, NAHC will resolve the dispute. See CalNAGPRA § 8016 for greater detail.

Commented [A78]: Added CalNAGPRA process.

For assistance in resolving a dispute, the parties may choose mediation by a third party mutually agreeable to the Tribes with conflicting Requests, or other appropriate means. Tribal Representatives may also seek resolution with the Federal Advisory Review Committee per NAGPRA (43 C.F.R. § 10.17), or for Requests that fall under CalNAGPRA, with the NAHC, per CalNAGPRA § 8016.



Once the competing Requests are resolved (through an agreement among the requesting Tribes, a mediated or assisted arrangement as described above, or by a court of competent jurisdiction), UC will repatriate or complete a Disposition to the Tribe(s) specified in such an agreement, arrangement or decree, provided that the Tribe(s) have been determined by the UC to be entitled to Repatriation or Disposition under this policy.

## E. PREVIOUSLY UNREPORTED HOLDINGS

Compliance with NAGPRA, CalNAGPRA, and this policy is a UC-wide responsibility. Proactive efforts are required across UC to ensure that all Human Remains and Cultural Items are reported and provided appropriate treatment while in the UC's care. Every UC campus will follow the procedures described below.

### 1. Raising Awareness

The Chancellor must annually communicate with all relevant faculty, researchers, students, staff, and UC retirees from fields most likely to have used Human Remains and Cultural Items, to raise awareness about the requirements of this policy and related laws and regulations.

### 2. Locating Previously Unreported Holdings

Even after submission of Inventories and Summaries to federal or state officials and to Tribes, UC may locate previously unreported Human Remains and/or Cultural Items. These may be found in disparate academic units of the UC or inadvertently included among fauna or other materials.

Within one year from implementation of this policy and every three to five (3-5) years thereafter, the Repatriation Coordinator/Point of Contact must review whether the campus is in Possession or Control of previously un-reported Human Remains or Cultural Items. In performing their review, the Repatriation Coordinator/Point of Contact will send a communication to all campus ~~department deans, or department chairs, and unit heads,~~ providing the definitions of Human Remains and Cultural Items under NAGPRA and CalNAGPRA and instructions on what to look for so that ~~the deans, department deans or chairs, and unit heads~~ can make an informed initial assessment about whether their departments/units potentially hold Human Remains or Cultural Items. Deans, department chairs, and unit heads must confirm that they have conducted the search and report whether their departments or units hold Human Remains and Cultural Items under UC's Possession or Control as well as the current location of such items. The Chancellor will set appropriate reporting timelines. Campus department deans or chairs, must return their assessments to the Repatriation Coordinator/Point of Contact, confirming that they have conducted the search and reporting the findings. Engaging as necessary the assistance of appropriate subject matter experts (e.g., Tribal Representatives, ~~T~~tribal leaders, osteologists, anthropologists, etc.), the Repatriation Coordinator/Point of Contact will review the items in all high-risk departments historically engaged in studies with Human Remains or Cultural Items (e.g., archaeology, anthropology, biology, geology, oceanography, physical sciences, dentistry, etc.) and all departments identified by ~~deans, department deans, or chairs, or unit heads~~ as potentially holding

**Commented [A79]:** Clarified which departments should have a higher level review.

Human Remains or Cultural Items. University faculty, researchers, students, staff who use ~~human remains~~Human Remains that are thought *not* to be Native American or Native Hawaiian for research or teaching should identify the provenance of the remains.

Anyone who suspects that Native American items are not properly maintained or reported as required by this policy should contact the campus Repatriation Coordinator/Point of Contact. Alternatively, they can file a report using the [UC Whistleblower Hotline](#).

### 3. Reporting to Campus and Systemwide Committees

As part of the campus biannual report (see Section V.H), the campus Repatriation Coordinator/Point of Contact will provide to the Campus Committee (if it exists) and Systemwide Committee: a list of locations reviewed (if any) and reports received of previously unreported Human Remains or Cultural Items; a description of the items found and identifications made, where they were located, the status of updated Inventory/Summaries, and whether Consultation has been initiated. Tribes may review this list upon request.

### 4. Protecting Previously Unreported Items Potentially Subject to NAGPRA or CalNAGPRA

All newly identified items that are under the Control of the University and are thought to be potentially subject to NAGPRA or CalNAGPRA must immediately be ~~placed in a secure area managed and preserved~~ in accordance with the requirements of Section V.J.2 ~~of this policy~~. In addition, ongoing research and handling (other than, as determined by the campus Chancellor, research and handling<sup>40</sup> that is conducted only in furtherance of the campus' responsibilities to make determinations as required by NAGPRA/CalNAGPRA) must cease until a determination has been made about whether the items meet the definitions under NAGPRA or CalNAGPRA (see Section V.C.23) and whether the University has Control of the items. If Human Remains and Cultural Items subject to NAGPRA or CalNAGPRA are found, the University will comply with all applicable portions of this policy (e.g., Consultation, Inventory/Summary completion, and respectful treatment), NAGPRA (including 43 C.F.R. § 10.13), CalNAGPRA, and campus policies and procedures. If the items are found not to be subject to NAGPRA or CalNAGPRA, ~~they will be returned to the department from which they came and the findings will be recorded~~ (including a description of the items and why these were determined not to be subject to NAGPRA or CalNAGPRA) in the campus biannual report described in Section V.H.

NAGPRA and CalNAGPRA require institutions to update their Inventories and Summaries when they obtain or discover that they have Possession or Control over previously unreported collections. (See NAGPRA 43 C.F.R. § 10.13, CalNAGPRA § 8013(i), and Sections V.C.23 and V.C.34 of this policy.) In accordance with NAGPRA 43 C.F.R. § 10.13, Summaries must be completed

**Commented [A80]:** Section V.J.2 contains all requirements for the management and preservation of items, including security.

**Commented [A81]:** Deleted since the placement of the items might remain where found while decisions are being made.

<sup>40</sup> Any handling should be necessary, reasonable, and should not conflict with respectful stewardship as identified in Section V.J.



within six (6) months and Inventories within two (2) years of locating a previously unreported holding or collection, absent an extension obtained under 43 C.F.R. § 10.9(f). If Human Remains or Cultural Items are found on UC premises for which a non-UC entity retains Control (e.g., items borrowed from a federal or state agency or ~~mm~~Museum ~~which-that~~ have not been returned), these must either be returned to the controlling entity, or ~~captured in~~ a loan agreement must be entered into with the controlling entity as provided in Section V.K.1.

#### F. RECEIPT OF HUMAN REMAINS OR CULTURAL ITEMS

UC will not accept Possession or Control of Human Remains and Cultural Items, except upon a Tribe's request or upon approval by the Chancellor, and in all cases, provided the primary reason for acceptance of the Human Remains is to facilitate the Repatriation process in accordance with the Purpose and Guiding Principles of this policy. As part of the campus biannual report (see Section V.H), the Repatriation Coordinator/Point of Contact must report to the Campus and Systemwide Committees any newly accepted Human Remains and Cultural Items.

UC faculty, researchers, students, and staff who have Human Remains or Cultural Items in their private collections on private property are encouraged to transfer Possession and Control to UC so that UC can pursue Repatriation or Disposition as described in this policy. (See also Section V.K.1 prohibiting the presence of private collections of Human Remains and Cultural Items on campus, and Section V.~~E.2J.1~~, requiring University employees or retirees/emeriti that have removed Human Remains or Cultural Items from UC premises to ~~return~~s these to the University.)

#### G. VOLUNTARY DEACCESSIONING OF ITEMS WHICH ARE NOT NAGPRA/CALNAGPRA-ELIGIBLE

Section V.D. of this policy covers the required Deaccessioning of NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items from UC locations through the Repatriation or Disposition processes. In addition, if a Tribe has requested items that have been determined *not* to be Human Remains or Cultural Items as defined by NAGPRA and CalNAGPRA, in recognition of the principles articulated in Section III.B. ~~of this policy~~, campuses ~~may be encouraged to consider~~ voluntarily Deaccessioning such items to the requesting Tribe. In making these decisions, campuses should consider the Tribe's relationship to such items, whether the items are related to other items subject to NAGPRA/CalNAGPRA, in accordance with campus deaccessioning practices, and as allowable by law applicable laws.

**Commented [A82]:** Added for clarity since through the process of Repatriations and Dispositions under NAGPRA and CalNAGPRA, we are "Deaccessioning" those items. This section addresses items NOT subject to NAGPRA/CalNAGPRA that a campus may additionally wish to provide to a Tribe.

#### H. REPORTING AND OVERSIGHT

The Systemwide Committee and Campus Committees will promote the implementation of this policy consistent with the Purpose and Guiding Principles contained herein, and provide oversight of compliance with this policy, and with state and federal laws and regulations, in accordance with Section ~~AV-A~~ of this policy. The Systemwide Committee and Campus Committees may request reports from the campus Chancellor as needed to fulfill their oversight functions.

The Chancellors ~~of each campus that has a NAGPRA/CalNAGPRA-eligible Collection~~ must ensure compliance with this policy and applicable laws and regulations (See Section ~~Error! Reference source not found.~~IV.B).

A campus Chancellor may initiate an internal audit to evaluate campus compliance with this policy and applicable laws and regulations, and/or reviews to benchmark the campus' performance or assess the need for improvements.

The President may initiate an internal audit to evaluate systemwide compliance with this policy, and applicable laws and regulations, and/or reviews to benchmark UC's performance or assess the need for improvements.

In order to assist the President, the Chancellor, and Campus and Systemwide Committees in their oversight duties, the campus Repatriation Coordinator/Point of Contact must submit ~~a~~ biannual reports to all of the above. ~~The~~ If possible, the biannual reports should be submitted ~~at least~~ 2 days prior to a Campus Committee meeting so that the Repatriation Coordinator can answer any questions the Committee may have regarding the report at their meeting. The biannual report must include a listing of:

- 1) All pending Requests, date received, and status, including relevant dates;
- 2) Status of Federal and CalNAGPRA Notices;
- 3) Tribes consulted, including the content and statues of the consultation.
- 4) Repatriations or Dispositions completed, including:
  - (i) Requesting ~~t~~Tribe(s)
  - (ii) Whether the ~~t~~Tribe submitted their Request using the NAGPRA or CalNAGPRA process, or both
  - (iii) Whether Human Remains or Cultural Items have been physically transferred, ~~or not~~
- 5) All loan agreements (see Section V.K);
- 6) Materials found as a result of the reviews required under Section V.E: (see Section V.E.3 for reporting requirements); and
- 7) Newly accepted Human Remains and Cultural Items (see Section V.F.).

## I. ~~COMPLAINTS AND~~ COMPLAINTS, APPEALS, AND DISPUTES

### 1. Complaints

Complaints about violations of this policy may be directed to the campus Chancellor, who will promptly confirm receipt of the complaint, and will provide a response to the complainant within forty-five (45) days from receipt of the complaint. If the Tribe has elevated its concern to the campus Chancellor and is still dissatisfied with the response, the Tribe can additionally file a complaint to any of the following: the Campus Committee, the Systemwide Committee, or the UC President (at [President@ucop.edu](mailto:President@ucop.edu)), or seek mediation/resolution as described in the subsections 3 below. Contact information for filing a complaint must be posted on the campus' website.

### 2. Appeal of Disputed Requests for Cultural Affiliation / State Cultural Affiliation, Repatriation, or Disposition

**Commented [A83]:** Added Point of Contact here. Since all campuses must raise awareness and conduct searches under Section E, we are requiring that all campuses submit reports, whether or not they currently have a collection.

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Tribal Representatives who believe UC decisions (including but not limited to those related to Cultural Affiliation / State Cultural Affiliation, identification of Cultural Items, Repatriation, Disposition, Summaries, or Inventories) were not supported by the Preponderance of Evidence, did not accord proper consideration of tribal evidence, or were based on an incorrect interpretation of law, may initiate an appeal through either of the following options:

- 1) If the decision was ~~not~~ made by the Chancellor's Designee, the Tribe(s) may appeal to the Chancellor; or
- 2) The Tribe(s) may appeal a campus decision to the President by submitting a request for appeal to [President@ucop.edu](mailto:President@ucop.edu).

After the Chancellor has made a decision, the campus will wait at least thirty (30) days (with provision of extension for good cause) before submitting Notices of Inventory Completion and/or Notices of Intent to Repatriate to National NAGPRA to allow affected Tribe(s) to request an appeal.<sup>41</sup>

See also Appeals Flowchart [on UC's NAGPRA website in Appendix B](#).

Information about how to file an appeal must be posted on a public-facing campus web ~~pagesite~~. The appeal will be reviewed, based on the existing record and the evidence previously submitted (i.e., new evidence will not be considered as part of an appeal, but may be the basis of a new Request).

For an appeal to the Chancellor: Within thirty (30) days of receipt of the Tribe(s)' request for an appeal, the Chancellor will make the decision to uphold, reverse, or modify the determination of the Chancellor's Designee, provided that all applicable legal and policy requirements are met, and provide the appealing Tribe(s) with a written explanation and basis for approving or denying the appeal.

For an appeal to the President: The Systemwide Committee will meet as soon as possible (but no later than ninety (90) days from the President's receipt of the request for an appeal) to review the appeal and provide a recommendation to the President. Within thirty (30) days of receipt of the Systemwide Committee's recommendation, the President will make the decision to uphold, reverse, or modify the campus determination, provided that such a decision must be based on a determination that all applicable legal and policy requirements are met, and provide the appealing Tribe(s) with a written explanation and basis for approving or denying the appeal.

### 3. Additional Tribal Rights under the Complaints and Appeal Processes

Through both the complaint and/or appeal process, ~~Tribal Representatives:~~

- 4)a. ~~Tribal Representatives w~~Will be invited to present their views orally or in writing to Campus or Systemwide Committees and/or UC decision-makers.

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<sup>41</sup> If all affected Tribes agree to shorten or waive the 30-day waiting period, UC may proceed with the submission of the Notice to National NAGPRA.

b. Tribal Representatives ~~M~~ay request third-party mediation to assist in efforts to reach agreement. Such mediation may include any means mutually agreed to by all parties and approved by the Chancellor.

2)c. Tribal Representatives ~~M~~ay file a request with the Federal Advisory Review Committee per NAGPRA 43 C.F.R. § 10.17, for assistance in resolving a dispute. To the extent permitted by UC resources, UC will make a good faith effort to participate in the Federal Advisory Review Committee dispute resolution/mediation process.

d. Tribal Representatives from California Indian tribes ~~m~~ay file a request with the NAHC for assistance in resolving a dispute ~~for Requests falling under the process outlined in~~ CalNAGPRA § 8016 ~~(CalNAGPRA § 8015 and § 8016)~~. To the extent that there is no direct conflict between the federal process referenced ~~in 31)~~ above and the CalNAGPRA process referenced herein, UC will ~~make a good faith effort to~~ participate in the NAHC dispute resolution/mediation process.

Under CalNAGPRA § 8013(j)(1), if a consulting California Indian tribe disagrees with the contents of a preliminary Inventory or Summary, UC must either revise the preliminary Inventory or Summary to correct the disputed information or the NAHC must offer to initiate dispute resolution as described in CalNAGPRA § 8016, and preliminary Inventories or Summaries will not become final until disputes are resolved.

Under CalNAGPRA § 8016, if there is more than one Request for Repatriation for the same item (see also Section V.D.7), if there is a dispute between the requesting party and UC, if there is a dispute as to the contents of an Inventory or Summary, or if a dispute arises in relation to the Repatriation process, NAHC will notify the affected parties of this fact. The disputing parties will submit documentation to NAHC describing the nature of the dispute, in accordance with standard mediation practices and NAHC's procedures, and meet within 30 days of the date of the mailing of the documentation. If the dispute is not settled then, the parties will enter mediation. If not settled via mediation, NAHC will resolve the dispute. See CalNAGPRA § 8016 for greater detail.

3)e. Tribal Representatives may ~~f~~ile a claim in a court of competent jurisdiction.

#### Notes on Section I:

- ~~All~~ To the extent permissible by law, timelines here may be modified by mutual agreement between the Tribes and UC officials.
- The process described in this Section may be impacted by UC's legal responsibilities under NAGPRA/CalNAGPRA, and in some cases, UC may have to proceed with NAGPRA/CalNAGPRA required steps, even while seeking resolution. The Repatriation Coordinator will inform affected Tribes of any such developments.

## J. RESPECTFUL STEWARDSHIP

**Commented [A84]:** Incorporated CalNAGPRA dispute resolution processes.

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Campuses with Possession or Control of Human Remains or Cultural Items must adopt procedures consistent with this section, to ensure respectful treatment of such Human Remains and Cultural Items and compliance with all applicable laws and regulations.

## 1. Treatment

All Human Remains and Cultural Items must be treated in a respectful manner.

Consultation with Tribal Representatives is imperative for providing care and treatment in accordance with tribal traditions. Tribes may have their own traditional perspectives on care, storage, and handling. Each campus with a NAGPRA/CalNAGPRA-eligible collection must post on their website how to make traditional care requests.

In addition, as part of the Consultation process, UC will seek information from consulting Tribes regarding traditional care, and will collaborate with the affiliated Tribal Representatives to develop and incorporate traditional care practices to the extent possible. In cases where traditional care requests cannot be strictly accommodated, the campus will collaboratively explore alternative arrangements with the Tribes in order to implement culturally sensitive care while upholding the safety and security of all collections.

The Repatriation Coordinator will also engage in Consultation with California Indian tribes as part of the completion of Inventories and Summaries (including preliminary Inventories and preliminary Summaries) and defer to tribal recommendations for appropriate handling and treatment.<sup>42</sup>

If there are competing tribal recommendations/requests for appropriate handling and treatment or traditional care, the Repatriation Coordinator will attempt to facilitate a solution, and/or convene the Tribes to discuss and defer to their joint recommendations. If the Tribes cannot come to agreement, the Repatriation Coordinator may seek a recommendation from the Campus Committee. The Chancellor will make the final decision within thirty (30) days of receiving the recommendation.

Only authorized individuals<sup>43</sup> will have access to Human Remains and Cultural Items, which must be stored in dedicated spaces that are not accessed by the public.

Human Remains should be handled as little as possible, and only for essential functions (e.g., safety issues and functions essential to Repatriation or curation).

To the maximum extent possible, Human Remains and Funerary Objects from the same Burial Site and from the same general geographic location should be kept together. In addition, the campus will retain all packaging materials (boxes, bags, jars, acid-free tissue paper, etc.) that previously held Human Remains ~~will be retained by the campus~~ so that they can be offered to Lineal Descendants or

**Commented [A85]:** AB 275 requires deference to Tribes on appropriate treatment.

**Commented [A86]:** We added language to address potential conflicting recommendations from different tribes.

<sup>42</sup> CalNAGPRA § 8013(c)(2).

<sup>43</sup> The Repatriation Coordinator shall maintain a list of authorized individuals or positions (e.g. custodians), and the list shall be accessible to Tribes, upon request.

Tribal Representatives at the time of transfer. Campuses should not remove any soil adhering to Human Remains or Cultural Items unless necessary for compliance with NAGPRA/CalNAGPRA, and if soil is loosened, it will be collected and offered at the time of transfer as well.

Human Remains and Cultural Items in UC's Possession or Control must not be removed from UC premises except as permitted under Section V.K.2. University employees or retirees/emeriti that have removed Human Remains or Cultural Items from UC premises must immediately return these to the University. Individuals will be granted a reasonable opportunity to return these items voluntarily, after which UC may pursue legal action for items taken without authorization.

## 2. Management and Preservation

Campuses must ensure that all Human Remains and Associated Funerary Objects are managed and preserved in accordance with definitions, standards, procedures, and guidelines set out by [36 C.F.R. § 79.9\(b\)\(3\)](#)<sup>44</sup>, except as approved by the Chancellor or to accommodate a request for traditional care from a Culturally Affiliated Tribe. Consistent with those standards, campuses must keep Human Remains and Associated Funerary Objects under physically secure conditions by:

- a. Having the physical plant meet local electrical, fire, building, health and safety codes;
- b. Having an appropriate and operational fire detection and suppression system;
- c. Having an appropriate and operational intrusion detection and deterrent system;
- d. Having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;
- e. Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;
- f. Limiting and controlling access to keys, the collection and the physical plant; and
- g. Inspecting the physical plant in accordance with 36 C.F.R. § 79.11 for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection.

**Commented [A87]:** Even though these are in the CFR section linked above, we have included them here for ease.

<sup>44</sup> Though these regulations only directly apply to UC in limited circumstances (e.g., where UC has possession of federal collections), UC is adopting these standards for all Human Remains and Associated Funerary Objects in its Control or Possession.

All exceptions must be reviewed by the Campus Committee, which will make a recommendation to the Chancellor.

### **3. Access by Lineal Descendants and Tribes for Consultation and Cultural or Spiritual Care**

Lineal Descendants and Tribal Representatives must be permitted access to the Human Remains, Cultural Items, and associated collections and records during the Inventory/Summary, Cultural Affiliation, and Repatriation and Disposition processes for the purpose of cultural or spiritual care (see Section V.B.1 and [Flowcharts on UC's NAGPRA website Appendices A and A-1](#)). Arrangements are to be established in advance of the visit with the campus Repatriation Coordinator. These requests should normally be made at least two weeks in advance of the visit to allow for adequate preparation and staffing, but the Repatriation Coordinator should be sensitive to tribal needs.

### **4. Restriction of Access to Human Remains and Cultural Items for Research, Instruction or Other Purposes**

UC [campuses](#) may not authorize research (including destructive analysis such as absolute dating, radiocarbon dating, DNA analysis including mitochondrial DNA analysis, stable isotope analysis, or other biomolecular analysis), classroom use, or other use of [any identified or potential](#) Human Remains and Cultural Items, except in the limited circumstances outlined below. Under **no** circumstances will UC authorize the exhibition of Human Remains.

Commented [A88]: Revised per 8025(a)(2)(A)

- 1) If the Human Remains and/or Cultural Items have been Culturally Affiliated or State Culturally Affiliated, the Culturally Affiliated and State Culturally Affiliated Tribal Representatives from those Tribes must provide explicit written authorization.

In addition, if a Federally Recognized ~~T~~Tribe sponsored or partnered with a non-Federally Recognized tribe, then the Tribal Representative from the non-Federally Recognized tribe must also provide explicit written authorization.

- 2) If the Human Remains and/or Cultural Items are Culturally Unidentifiable, Tribal Representatives from all Tribes whose Aboriginal lands or tribal lands (as outlined in NAGPRA 43 C.F.R. § 10.11) overlap with the location where the Human Remains and/or Cultural Items originate must provide explicit written authorization.

Requests for ~~T~~tribal authorization must include a clear and easily understood explanation of the duration, type, nature, and extent of research being requested, and the potential impacts on the Human Remains and Cultural Items.

Compliance with the requirements of 1) and 2) above notwithstanding, once a campus receives a Request for Cultural Affiliation / State Cultural Affiliation, Repatriation or Disposition of Human Remains, the campus will impose a moratorium on all access for research, instruction, or other purposes (unrelated to making determinations in compliance with NAGPRA, CalNAGPRA, and/or this policy) until the Request is resolved.



Whether internal or external to UC, *all persons seeking access to Human Remains and/or Cultural Items for research, instruction, or other purposes must provide to the Repatriation Coordinator documentation demonstrating explicit tribal written authorization as described above.* The Repatriation Coordinator must check the records to ensure that no pending appeals or complaints have been filed related to the Human Remains or Cultural Items requested before forwarding the request and all compliance documents referenced above to the Chancellor for approval.

In reviewing access requests for research, instruction, or other purposes unrelated to making determinations needed for compliance with NAGPRA or CalNAGPRA, the Chancellor will consider (i) evidence of tribal Consultation and authorizations as required above, (ii) tribal input, and (iii) efforts to maintain high standards of care and respect for all Human Remains and/or Cultural Items.

Once the Tribes and the Chancellor have authorized the request, the campus will make the loan for such use as described in Section V.K.2.

## **K. NEW REQUESTS FOR SHORT-TERM CARE AND LOANS**

### **1. Loans to UC**

Except as permitted herein, Human Remains or Cultural Items from private collections or other institutions are not permitted on campus. However, under certain circumstances and provided the conditions below are satisfied, campuses may accept loan agreements for UC's care of Human Remains and Cultural Items.

**Examples of acceptable circumstances under which UC may receive loans include:**

- a) A request that UC perform an analysis of the Human Remains or Cultural Items at the behest of a Culturally Affiliated or State Culturally Affiliated Tribe.
- b) A request that UC perform an examination of the Human Remains or Cultural Items to aid the loaning institution in carrying out its NAGPRA or CalNAGPRA responsibilities. However, unless Culturally Affiliated Tribes have given explicit written authorization for testing, in carrying out such examinations, the campus may only use minimally invasive procedures and may not use destructive analysis (such as absolute dating, radiocarbon dating, DNA analysis including mitochondrial DNA analysis, stable isotope analysis, or other biomolecular analysis).
- c) A request from an entity that recently discovered Human Remains or Cultural Items that is unable to provide immediate and appropriate care.
- d) Other research or care approved by or performed in Consultation with the Culturally Affiliated Tribe(s).

### **Conditions for Loans to UC**

For all requests for loans *to UC*, the following conditions apply:

- a) Unless the loan is from a Tribe, before accepting the loan the Campus Committee must review and may advise on which tribes must be consulted.



- b) The controlling agent has requested that the UC maintain such short-term care.
- c) UC and the controlling agent have entered into an agreement in writing, delineating the terms of the loan, including, if appropriate, applicable terms relating to NAGPRA or CalNAGPRA compliance responsibilities.
- d) Loans may not exceed two (2) years unless extensions are approved by the Chancellor.
- e) UC maintains the Human Remains and Cultural Items in accordance with the standards described in Section V.J.2 above unless otherwise described in the agreement between the controlling agent and UC and approved by the Chancellor after consultation with the Campus Committee.
- f) Records of all loan agreements under this section must be maintained by the Repatriation Coordinator or a designated museum official. The Repatriation Coordinator will and included a summary of Human Remains and Cultural Items loaned to UC in the campus biannual report described in Section V.H.

## 2. Loans from UC

Provided the conditions below are satisfied, UC may make short-term loans of Human Remains and Cultural Items that are in UC's Control.

### Conditions for Loans from UC

For all requests for loans *from UC*, the following conditions apply:

- a) Loans may be made only upon documented Tribal written authorization and Chancellor approval as described in Section V.J.4.
- b) The Repatriation Coordinator must ensure that there are no related pending appeals or complaints as described Section V.J.4.
- c) Loans may not exceed two (2) years unless extensions are approved by the Chancellor.
- d) Prior to transporting items, UC and the party accepting the loan will enter into a written loan agreement which details the terms of the loan, including:
  - 1) The precise items loaned;
  - 2) The start and end date of the loan, and a provision for termination of the loan for any reason;
  - 3) The expectations for respectful ~~s~~Stewardship and other applicable conditions in accordance with this policy and any applicable campus museum/repository policies;
  - 4) If applicable, the precise type, nature, and extent of testing permitted, including any restrictions on the research that have been placed by Tribes;
  - 5) A specification that loaned items must be returned in the same condition in which they were loaned (unless otherwise specified in the loan agreement);

**Commented [A89]:** At some campuses this function is carried out by a museum official, but we also clarified that the Repatriation Coordinator must include information on items loaned to UC in the campus biannual reports.

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•6) The method of transport and other logistics for the transfer to the loan recipient and the return of the loaned materials; and

•7) A requirement that researchers disseminate their research results to all Tribes that authorized the research use.

- e) Culturally Affiliated / State Culturally Affiliated Tribes will be provided the opportunity to inspect the location where loaned items will be stored, observe the packaging associated with the loan request, coordinate transportation, and observe any unpacking and handling at the destination site.
- f) The Repatriation Coordinator or a designated museum official will review and note the condition of loaned materials at the time the loan is made and upon its return (i.e., have the items been shellacked, treated with pesticide, repaired, etc.), and any apparent violation of the terms of research condition.
- g) The Repatriation Coordinator or a designated museum official will create a method to track all loans, maintaining a list that minimally includes the name of the entity or person to whom the loan is made, the purpose of the loan, Tribes that approved the loan, a general description and condition of the materials loaned, date loaned, and date returned. As part of the campus biannual report (see Section V.H), the Repatriation Coordinator must provide such list to the Campus and Systemwide Committees.
- h) The Repatriation Coordinator will biannually review the list and follow up to ensure the return of loaned items.
- i) ~~The Repatriation Coordinator will keep d~~ Documentation of all items required under this Section V.K.2- will be maintained by the UC official that carried out these duties (i.e., the Repatriation Coordinator or a designated museum official).

**Commented [A90]:** At some campuses, these functions are carried out by museum staff.

**Commented [A91]:** At some campuses, these functions are carried out by museum staff.

## VI. REPATRIATION IMPLEMENTATION PLAN

Each campus with NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items will develop a Repatriation Implementation Plan in coordination with the Campus Committee ~~within six twelve months of the Chancellor's appointment of the Campus Committee, and no later than October 1, 2021~~ December 31, 2021. The Repatriation Coordinator must provide a copy of the campus Repatriation Implementation Plan to the Systemwide Committee within 5 days from finalization of the Plan. Nothing in this Section VI shall preclude initiating repatriation and dispositions prior to the deadlines imposed in this Section VI. Further, nothing in this Section VI shall delay any ongoing repatriation and dispositions.

At a minimum, the Repatriation Implementation Plan will contain the following components.

### 1. Proactive Review of CUI Determinations.

The Campus Repatriation Implementation Plan must describe the process to be undertaken to proactively (i.e., regardless of whether a tribal Request has been received):

**Commented [A92]:** Revised to reflect current realities. With the pandemic, delays in securing NAHC nominees, and (re)constituting our committees, we need to make sure adequate time is provided to ensure newly appointed committees can meaningfully contribute to the formation of campus Repatriation Implementation Plans. UC Office of the President will establish a reasonable due date for completion of the Plans once we have further information.

- a. Inform Tribes of UC collections that may include Cultural Items and invite Tribes for Consultation, and
- b. Review and update previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, as described in Section V.C.5.

In performing these reevaluations, campuses will consult with Tribal Representatives, reevaluate originally considered evidence, and consider: any newly available evidence or information, Tribal Traditional Knowledge, changes in applicable law, the addition of new California Indian Tribes under CalNAGPRA and new Federally Recognized Tribes under NAGPRA, or other Tribes that should be consulted. Reevaluation may provide the basis for revising a decision for Cultural Affiliation/State Cultural Affiliation, or about the number or nature of Cultural Items listed in a previously submitted Summary, Inventory, Notice of Intent to Repatriate or Notice of Inventory Completion. (See also Sections V.B.1, V.C., and Flowcharts on UC's NAGPRA website Appendices A and A-1 for more details on the process.)

The reevaluations will be for the limited purpose of advancing Repatriation or Disposition. This section will not be construed to authorize the completion or initiation of any scientific study or destructive analysis (such as absolute dating, radiocarbon dating, DNA analysis including mitochondrial DNA analysis, stable isotope analysis, or other biomolecular analysis) of Human Remains or Cultural Items.

Campuses must proactively review and update previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, and initiate or re-initiate consultation with:

- a. Tribes that are likely to be Culturally Affiliated or State Culturally Affiliated;
- b. Tribes from whose tribal lands, at the time of the removal, the Human Remains and Associated Funerary Objects were removed; and
- c. Tribes from whose Aboriginal lands the Human Remains and Associated Funerary Objects were removed.

Campuses are encouraged to reevaluate first those portions of their collections for which information is readily available or about which Tribes have expressed special interest. If Tribal Representatives request a reevaluation of a previous determination that specific Human Remains or Cultural Items are Culturally Unidentifiable, such Requests will be prioritized.

## 2. Outreach to Culturally/State Culturally Affiliated Tribes

Campus Repatriation Implementation Plans must describe campus strategies for reaching out to Culturally Affiliated/State Culturally Affiliated Tribes that have not yet requested or taken possession of the affiliated Human Remains and Cultural Items to see how the campus can support them in these efforts and discuss a sStewardship agreement if the Tribe is not able to physically accept the transfer. Such Tribes must be contacted at least annually.

## 3. Outreach to Controlling Agencies

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Campus Repatriation Implementation Plans will include a schedule for reaching out to agencies that have Control of Human Remains and Cultural Items currently held by UC to prompt and encourage those agencies' Repatriation efforts. Such agencies must be contacted at least annually. In addition, the campus Repatriation Coordinators will post a list of such collections by county and controlling agency on a UC public facing website.

#### 4. Budget Estimate

Campuses must estimate the costs necessary to carry out their responsibilities under this policy and include a detailed budget in their Repatriation Implementation Plans. Campuses may benchmark against institutions with similarly sized collections to estimate the costs. Campus budgets should also ~~budget~~ contain a line item to specify the amount of available funds set aside for financial assistance to ~~consulting~~ Tribes, such as stipends, travel assistance, or reburial assistance.

#### 5. Campus Repatriation Plan Timeline

Campuses must include a timeline for full Repatriation of all campus held Human Remains and Cultural Items, with estimated target dates. See ~~Sample timeline in~~ Appendix C on UC's NAGPRA website.

Campuses may include cost estimates for full Repatriation within various timelines (e.g., within ten (10) years if \$x amount is available, and within five (5) years if \$y is available).

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### VII. RELATED INFORMATION

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- a. [Native American Graves Protection and Repatriation Act](#), 25 U.S.C. §§ 3001-13.
- b. [Native American Graves Protection and Repatriation Regulations](#), 43 C.F.R. §§ 10.1-.17.
- c. [California Native American Graves Protection and Repatriation Act](#), Cal. Health & Safety Code §§ 8010-30.
- d. [United Nations Declaration on the Rights of Indigenous Peoples](#), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).
- e. [California Executive Order No. N-15-19](#) (June 18, 2019).
- f. [Curation of Federally-Owned and Administered Archaeological Collections](#), 36 C.F.R. § 79.9(b)(3).
- g. [UC Facilities Manual, Volume 2, Chapter 5: Environmental Issues and CEQA Compliance](#)
- h. [UC Policy on Anatomical Donation and Materials Programs](#)
- i. [Regents Policy 1111, Policy on Statement of Ethical Values and Standards of Ethical Conduct](#)
- j. [UC Policy BFB-IS-3: Electronic Information Security](#)

k. [UC Whistleblower Policy](#)

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## VIII. FREQUENTLY ASKED QUESTION

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Not applicable.

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## IX. REVISION HISTORY

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**(Date TBD):** This Policy replaces the Interim Policy issued on July 24, 2020, and includes updates to incorporate changes to CalNAGPRA under AB 275 (effective January 1, 2021).

**July 24, 2020:** ~~This~~ An interim policy ~~replaces~~ ~~was issued to replace~~ the Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items (eff. May 1, 2001; reformatted July 2012; technical edits March 2013).

This Policy was also remediated to meet Web Content Accessibility Guidelines (WCAG) 2.0.

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## X. APPENDIX

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Not applicable.

Appendix A — [Repatriation/Disposition Process Flowchart](#)

Appendix A-1 — [Repatriation/Disposition Process Flowchart Narrative](#)

Appendix B — [Appeals Flowchart](#)

Appendix C — [Sample Campus Repatriation Plan Timeline](#)



# Native American Cultural Affiliation and Repatriation

<b>Responsible Officer:</b>	VP - Research & Innovation
<b>Responsible Office:</b>	Research & Innovation
<b>Issuance Date:</b>	tbd
<b>Effective Date:</b>	tbd
<b>Last Review Date:</b>	07/24/2020
<b>Scope:</b>	This policy applies to all campuses, laboratories, medical centers and health systems, as well as satellite offices, affiliates, and other units controlled by the Regents of the University of California.

<b>Contact:</b>	Lourdes DeMattos
<b>Title:</b>	Associate Director
<b>Email:</b>	Lourdes.DeMattos@ucop.edu
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## I. POLICY SUMMARY

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The purpose of this policy is to increase and achieve Repatriation of Native American and Native Hawaiian ancestral Human Remains and Cultural Items to Tribes, Native Hawaiian Organizations and Lineal Descendants. The University of California (UC) is committed to fully implementing the spirit as well as the legal requirements of both the federal Native American Graves Protection and Repatriation Act at [25 U.S.C. §§ 3001-13](#) and its accompanying regulations at [43 C.F.R. §§ 10.1-17](#) (jointly referred to in this policy as “NAGPRA”), and the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”), [California Health & Safety Code \(CHSC\) §§ 8010-30](#),<sup>1</sup> which were enacted to acknowledge the fundamental human right of Native Americans and Native Hawaiians to their ancestral Human Remains and Cultural Items. Therefore, the UC adopts as a fundamental value the Repatriation of Native American and Native Hawaiian Human Remains and Cultural Items<sup>2</sup> (Associated and Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony), in accordance with state and federal law. This policy describes how UC will pursue this value and ensure both adherence to the general principles and compliance with NAGPRA and CalNAGPRA. The procedures set out in this policy are intended to increase Repatriation, accountability, and transparency. Where processes or definitions vary between NAGPRA and CalNAGPRA, both are provided, with indications regarding the origin of the requirements.

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## II. DEFINITIONS

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<sup>1</sup> Citations to CalNAGPRA refer to California Health & Safety Code §§ 8010-30.

<sup>2</sup> Note that this policy covers **NAGPRA/CalNAGPRA-eligible** Human Remains and Cultural Items (all as defined in this policy). As such, this policy is not intended to cover the procedures that apply to inadvertent discovery of Native American remains during ground disturbing land development activity governed by California Public Resources Code § 5097.8 and Health and Safety Code § 7050.5, or notification and consultation requirements related to Tribal Cultural Resources pursuant to the California Environmental Quality Act. (See [UC CEQA Compliance](#).) In addition, this policy does not apply to voluntary and consented donations through the University’s Anatomical Donation Program. (See [UC Policy on Anatomical Donation/Materials Programs](#)).



This policy adopts the definitions of NAGPRA ([25 U.S.C. §§ 3001 and 43 C.F.R. § 10.2](#)) and CalNAGPRA ([Cal. Health & Safety Code § 8012](#)),<sup>3</sup> as applicable. For convenience, the definitions of some NAGPRA/CalNAGPRA terms are repeated below (with citations), along with other UC defined terms. *Terms capitalized in this policy (including within the definitions below) are defined in this policy and/or defined under NAGPRA/CalNAGPRA.* Where CalNAGPRA and NAGPRA definitions vary, both are provided, with an indication about whether these definitions apply under NAGPRA or CalNAGPRA. (Quoted text retains original source formatting with regard to the use of lower case/capitalization of terms.)

**Accession:** The state or act of adding an item to University collections.

**California Indian tribe:** Under CalNAGPRA, a tribe located in California to which either of the following applies:

1. It meets the definition of Indian tribe under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).
2. It is not recognized by the federal government, but is a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to Section 65352.3 of the Government Code.

CalNAGPRA § 8012(c).

**Campus Committees:** See Section V.A.2.

**Chancellor or Chancellor's Designee:** See Section IV.B.1.

**Confidential Information:** Any information shared by a Tribe during the Consultation process regarding Tribal Traditional Knowledge and places that have traditional tribal cultural significance, including the locations of Native American graves, cemeteries, and sacred places, and specific information identified as “confidential” by a consulting Tribe. (See Sections V.B.1.i.(5) and V.B.2 and Flowcharts on UC’s NAGPRA website.)

**Conflict of Interest:** Financial, professional, or personal interests that may prejudice a committee member’s decision. Such interests may include investments, real estate interests, sources of personal income (including gifts, loans, or travel payments), positions of management or employment, unpaid board/commission membership, or other personal interest, such that a decision-maker or person voting on an issue could potentially personally benefit from the decision being made by that person or the committee or organization on which they participate, or otherwise have an interest that could significantly impair or appear to significantly impair the individual's objectivity. (See also Sections V.A.1.c and V.A.2.d.)

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<sup>3</sup> Under CalNAGPRA, terms have the same meaning as in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), as interpreted by federal regulations, except as noted in CalNAGPRA § 8012.



**Consultation:** The meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, achieving agreement. Consultation will be conducted in a manner that is respectful of tribal sovereignty, and will recognize the tribes' potential need for Confidentiality with respect to Tribal Traditional Knowledge and all tribal information shared during the consultation. See CalNAGPRA § 8012(e) and Section V.B.1.

**Control:**

Under NAGPRA, Control means having a legal interest in Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony sufficient to lawfully permit the Museum or federal agency to treat the objects as part of its collection for purposes of NAGPRA whether or not the Human Remains, Funerary Objects, Sacred Objects or Objects of Cultural Patrimony are in the physical custody of the Museum or federal agency. Generally, a Museum or federal agency that has loaned Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony to another individual, Museum, or federal agency is considered to retain Control of those Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony for purposes of NAGPRA. 43 C.F.R. § 10.2(a)(3)(ii).

Under CalNAGPRA, Control means having ownership of Native American Human Remains and Cultural Items sufficient to lawfully permit an agency or Museum to treat the object as part of its collection for purposes of CalNAGPRA, whether or not the Human Remains and Cultural Items are in the physical custody of the agency or Museum. Human Remains and Cultural Items on loan to an agency or Museum from another person, agency, or Museum will be deemed to be in the Control of the lender. CalNAGPRA § 8012(f).

**Cultural Affiliation [Culturally Affiliated]:** Cultural Affiliation means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of a present-day Indian Tribe or Native Hawaiian Organization and an identifiable earlier group. Cultural Affiliation is established when the Preponderance of the Evidence -- based on geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion. 43 C.F.R. § 10.2(e). (See also Preponderance of Evidence and State Cultural Affiliation definitions below.)

**Cultural Items:** Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and objects of Cultural Patrimony, all as defined by 43 C.F.R. § 10.2 and 25 U.S.C. § 3001.

For the purposes of CalNAGPRA, Cultural Items has the same meaning as found in 25 U.S.C. § 3001 as it read on January 1, 2020, except that it means only those items that originated in California and are subject to the definition of Reasonable, as defined in CalNAGPRA § 8012(l). An item is not precluded from being a Cultural Item solely because of its age. CalNAGPRA § 8012(g). (See also Section III.A, Statement on Language.)

The following is the definition of Cultural Items in 25 U.S.C. § 3001, as of January 1, 2020, and which remains current as of the date of issuance of this policy. Cultural Items means Human Remains and --

“(A) ‘associated funerary objects’ which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain Human Remains shall be considered as associated funerary objects.

“(B) ‘unassociated funerary objects’ which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual Human Remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known Human Remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

“(C) ‘sacred objects’ which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

“(D) ‘cultural patrimony’ which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.”

**Culturally Unidentifiable (CUI):** Human Remains and Cultural Items for which no Lineal Descendant or Culturally Affiliated present-day Federally Recognized tribe can be determined. 43 C.F.R. § 10.2(e)(2).

**Deaccession:** The act of permanently removing an accessioned item from a permanent collection. In this policy, deaccessioning from UC collections may occur through the Repatriation or Disposition process as described in NAGPRA or CalNAGPRA, or through a voluntary transfer that is not required under NAGPRA or CalNAGPRA as described in Section V.G.

**Disposition:** Generally, the transfer of Control of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (43 C.F.R. § 10.2(g)(5)). Specifically, as used in this policy, Disposition means the transfer of Culturally Unidentifiable Human Remains, with or without Associated Funerary Objects (as distinguished from “Repatriation,” which applies only to transfer of Culturally Affiliated Human Remains and Cultural Items) (43 C.F.R. § 10.2(g)(5)(iii)).

**Federally Recognized tribe:** An Indian Tribe or Native Hawaiian Organization as defined by NAGPRA (See 25 U.S.C. § 3001(7) & (11)).

**Human Remains:** The physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining Cultural Affiliation, Human Remains incorporated into a Funerary Object, Sacred Object, or Object of Cultural Patrimony must be considered as part of that item (43 C.F.R. § 10.2(d)(1)).

**Museum:**

UC falls under the definition of a Museum under both NAGPRA and CalNAGPRA.

Under NAGPRA, Museum means any institution or state or local government agency (including any institution of higher learning) that has Possession of, or Control over, Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony and receives federal funds (43 C.F.R. § 10.2(a)(3)).

Under CalNAGPRA, Museum means an agency, museum, person, or entity, including a higher educational institution, that receives state funds. For purposes of this subdivision, “receives states funds” means that the Museum has received funds after January 1, 2002, from a state agency through a grant, loan, or contract, other than a procurement contract, or other arrangement by which a state agency makes available aid in the form of funds. State funds provided for any purpose to a larger entity of which the museum is a part of are considered as the museum receiving those funds for the purposes of this subdivision (CalNAGPRA § 8012(i)).

Instances of ‘museum’ appearing in lower case (and outside of quotes) are not meant to adopt the significance of this term as described in this NAGPRA/CalNAGPRA definition.

**NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items or  
NAGPRA/CalNAGPRA-eligible Collection:**

Human Remains or Cultural Items that are required to be reported in a NAGPRA/CalNAGPRA Inventory or Summary.

**Possession:**

Under NAGPRA § 10.2(a)(3)(i), having physical custody of Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of the Federal NAGPRA regulations. Generally, a Museum or federal agency would not be considered to have Possession of Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony on loan from another individual, museum, or federal agency.

Under CalNAGPRA § 8012(j), having physical custody of Native American Human Remains and Cultural Items with a sufficient legal interest to lawfully treat the Human Remains and Cultural Items as part of a collection. “Possession” does not include Human Remains and Cultural Items over which the agency has Control but that are currently on loan to another person or entity.

**Preponderance of Evidence:** The evidentiary standard where the evidence as a whole shows that the fact sought to be proved is more likely than not.

For the purposes of CalNAGPRA, “Preponderance of Evidence” means that the party’s evidence on a fact indicates that it is more likely than not that the fact is true. Tribal Traditional Knowledge alone may be sufficient to satisfy this standard. Furthermore for the purposes of CalNAGPRA, if there is conflicting evidence, Tribal Traditional Knowledge must be provided deference. CalNAGPRA § 8012(k).

**President or President’s Designee:** See Section IV.A.1.

**Reasonable:** Under CalNAGPRA: “Reasonable” means fair, proper, rational, and suitable under the circumstances. Tribal Traditional Knowledge can and should be used to establish reasonable conclusions with respect to determining State Cultural Affiliation and identifying Cultural Items. CalNAGPRA § 8012(l).

**Repatriation Coordinator:** See Section IV.B.4.

**Repatriation Point of Contact:** See Section IV.B.5.

**Request:** A Request as used in this policy is a claim by a Lineal Descendant or Tribe for Cultural Affiliation or State Cultural Affiliation to Human Remains or Cultural Items, or a Request for the transfer of Human Remains or Cultural Items, under either a Repatriation Request or a Disposition Request. A Requestor is a person or Tribe making such Request.

**Review Packet:** The collection of information needed for the Campus Committee to make a determination regarding Cultural Affiliation/State Cultural Affiliation, Repatriation or Disposition. See also #9 of the Flowchart Narrative on UC’s NAGPRA website.

**State Aboriginal Territory:** Under CalNAGPRA § 8012(m), lands identified as aboriginally occupied by one or more California Indian tribes. State Aboriginal Territory may be recognized by any of the following: Consultation with California Indian tribes, treaties, including those agreed to but not ratified, a final judgment of the federal Indian Claims Commission or the United States Court of Claims, an act of the United States Congress, or an executive order.

Under NAGPRA § 10.11(b)(2)(ii), “Aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order.”

**State Cultural Affiliation [State Culturally Affiliated]:** Under CalNAGPRA § 8012(n), State Cultural Affiliation means that there is a Reasonable, as defined in CalNAGPRA § 8012(l), relationship of shared group identity that can reasonably be traced historically or precontact between members of a present-day California Indian tribe, as defined in CalNAGPRA § 8012(c), and an identifiable earlier Tribe or group. State Cultural Affiliation must be based on one or more of the following: geography, kinship, biology, archaeology, linguistics, folklore, oral tradition, historical evidence, Tribal Traditional Knowledge, or other information or expert opinion, that reasonably leads to that conclusion. CalNAGPRA § 8012(n).

**Stewardship:** The care of Human Remains and Cultural Items. See Section V.J.1 regarding incorporation of traditional care.

**Systemwide Committee:** See Section V.A.1.

**Tribal Representative:** The principal leaders of a Tribe or the individuals officially designated by the governing body of a Tribe or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to NAGPRA and/or CalNAGPRA under this policy.

**Tribal Traditional Knowledge:** Under CalNAGPRA § 8012(p), knowledge systems embedded and often safeguarded in the traditional culture of California Indian tribes and lineal descendants, including, but not limited to, knowledge about ancestral territories, cultural affiliation, traditional cultural properties and landscapes, culturescapes, traditional ceremonial and funerary practices, lifeways, customs and traditions, climate, material culture, and subsistence. Tribal Traditional Knowledge is expert opinion.

**Tribe:** An Indian Tribe or Native Hawaiian Organization as defined by NAGPRA (25 USC § 3001 (7) & (11)), or a California Indian tribe as defined by CalNAGPRA § 8012(c).

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### III. POLICY TEXT

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#### A. STATEMENT ON LANGUAGE

UC recognizes that while the federal Native American Graves Protection and Repatriation Act<sup>4</sup> (NAGPRA) and the California NAGPRA<sup>5</sup> (CalNAGPRA) use terms such as “Human Remains,” “Unassociated and Associated Funerary Objects,” “Sacred Objects,” “Objects of Cultural Patrimony,” and “Cultural Items,” in fact, these laws and regulations are referring to ancestors of many present-day Native Americans and Native Hawaiians and their culture and heritage. For the sake of legal precision and clarity, this policy may use terms employed in applicable laws and regulations, but UC does not intend any disrespect in their usage. In addition, although NAGPRA and CalNAGPRA group together Human Remains, Unassociated and Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony as “Cultural Items,” out of respect, this policy will generally refer to Human Remains separately.

#### B. PURPOSE AND GUIDING PRINCIPLES

*The guiding principles below undergird this policy. Ambiguities in the interpretation of this policy should be resolved in light of UC’s fundamental value of Repatriation and the principles below.*

1. Repatriation or Disposition of all Native American and Native Hawaiian Human Remains and Cultural Items is a fundamental objective and value of UC that must be accomplished as expeditiously and respectfully as possible. This policy is designed to govern how UC implements its responsibilities under NAGPRA and CalNAGPRA to improve the Repatriation process so that Human Remains and Cultural Items may be brought home to Tribes, Native Hawaiian Organizations and Lineal Descendants.

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<sup>4</sup> 25 U.S.C. §§ 3001-13; 43 C.F.R. §§ 10.1-17.

<sup>5</sup> California Health & Safety Code (CHSC) §§ 8010-30.

2. UC supports Executive Order N-15-19 of the State of California, and recognizes and commits to implementing the rights of Indigenous peoples articulated in Article 12 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as follows: “the right to the use and control of their ceremonial objects; and the right to the repatriation of their ancestral human remains.”<sup>6</sup> UC commits to providing access to and Repatriation of Native American and Native Hawaiian Human Remains and their Cultural Items “through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples.”<sup>7</sup> UC acknowledges its role in the acquisition of Human Remains and Cultural Items that were obtained in violation of spiritual and cultural beliefs, without the free, prior and informed consent of Tribes and Native Hawaiian Organizations. UC further acknowledges that NAGPRA and CalNAGPRA were enacted to restore Native American and Native Hawaiian rights to Human Remains and Cultural Items.
3. UC acknowledges that the injustices perpetrated on Native Americans and Native Hawaiians are reflected even to the present, and that as long as Human Remains and Cultural Items remain in the University’s Control, healing and reparation will be incomplete.
4. UC will comply with NAGPRA, CalNAGPRA, and this policy. This policy establishes uniform standards and practices that are binding across the UC system.
5. This policy is intended to promote consistency and applies across the UC system, including at campuses, laboratories, medical centers and health systems, as well as satellite offices, affiliates, and other units controlled by The Regents of the University of California<sup>8</sup>. UC campuses must ensure compliance with this policy at all UC locations over which they have management responsibilities. Pursuant to CalNAGPRA § 8025(a)(5), campuses need not develop additional local policies, but if they wish to do so, such local policies must be consistent with this policy and be in place within one year after adoption of this policy.
6. UC is committed to ethical and respectful care and culturally appropriate treatment of Human Remains and Cultural Items while they are in UC’s Possession or Control. UC recognizes that culturally appropriate treatment must derive from Consultation with Lineal Descendants and Tribal Representatives.

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<sup>6</sup> [United Nations Declaration on the Rights of Indigenous Peoples](#), G.A. Res. 61/295, Article 12, 1, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

<sup>7</sup> [United Nations Declaration on the Rights of Indigenous Peoples](#), G.A. Res. 61/295, Article 12, 2, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

<sup>8</sup> NAGPRA applies to federal agencies and to any institution, or state or local government agency (including any institution of higher learning) that has Possession of, or Control over, Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony and receives federal funds. 43 C.F.R. § 10.13(c)(1) CalNAGPRA applies to any “Agency” (defined in CalNAGPRA 8012(a) as a division, department, bureau, commission, board, council, city, county, city and county, district, or other political subdivision of the state of California) and any “Museum” (defined in CalNAGPRA 8012(i)). See also definition of Museum in § II of this policy.

7. It is the policy of UC to achieve the Repatriation or Disposition of Human Remains and Cultural Items to Federally Recognized tribes and non-Federally Recognized tribes in accordance with NAGPRA and CalNAGPRA.
8. UC recognizes that Consultation with Native Americans and Native Hawaiians contributes a distinct and essential perspective and furthers UC's teaching, research, and public service mission. UC fully supports the right of all Native American Tribes, including Federally Recognized tribes and non-Federally Recognized tribes, and Native Hawaiian Organizations to visit their Human Remains and Cultural Items, and request and receive copies of all associated documentation, pursuant to NAGPRA and CalNAGPRA.
9. This policy requires formation of a Systemwide Native American Repatriation Implementation and Oversight Committee ("Systemwide Committee") to review campus compliance with this policy and to review appeals after campus procedures have been exhausted.

### **C. STATEMENT ON COMPLIANCE WITH CALNAGPRA**

UC is committed to complying with CalNAGPRA, which among other things, facilitates Repatriation and/or Disposition of California Indian tribes' Human Remains and Cultural Items to California Indian tribes, defined in CalNAGPRA § 8012(c). UC campuses with Possession or Control of Native American Human Remains and/or Cultural Items must consult with California Indian tribes and update their Inventories and Summaries as required by CalNAGPRA. This includes reviewing and revising or supplementing existing Inventories and Summaries for collections previously classified as Culturally Unidentifiable and consulting with California Indian tribes as required by CalNAGPRA (see Section VI). Further, UC must transfer<sup>9</sup> Human Remains and Cultural Items that are State Culturally Affiliated to California Indian tribes as required by CalNAGPRA, consistent with NAGPRA<sup>10</sup>. (See also Section V.D and Flowcharts on UC's NAGPRA website.)

California Indian tribes may avail themselves of their rights under either NAGPRA or CalNAGPRA, or both, as they wish.

### **D. REVISIONS TO THIS POLICY**

This policy will be reviewed: 1) when there are changes to NAGPRA or CalNAGPRA that would affect this policy, 2) when internal or external auditors suggest changes, 3) when the Systemwide Committee recommends changes to this policy, 4) as deemed appropriate by the President, and 5) at least every five (5) years. Tribes may submit for consideration proposed changes to the Systemwide Committee, which can then recommend changes to the President.

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<sup>10</sup> Note that under NAGPRA, non-Federally Recognized tribes can Request Disposition of Human Remains under NAGPRA 43 C.F.R. § 10.11, and Federally Recognized tribes can Request Repatriation under § 10.10 or Disposition under 43 C.F.R. § 10.11.

Prior to instituting changes to this policy, UC will provide an advance copy of proposed changes to the Systemwide Committee (see also Section V.A.1) and the California Native American Heritage Commission (NAHC) for their review and comment. If the Systemwide Committee recommends consultation with California Indian tribes, UC will notify tribes and post the proposed changes on a UC public facing website for a minimum of forty-five (45) days so that tribes have an opportunity to comment.

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## **IV. COMPLIANCE/RESPONSIBILITIES**

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The University will provide all persons responsible for carrying out the requirements set forth in this policy with training developed in consultation with tribal and other subject matter experts and UC personnel who have demonstrated successful Repatriation to enhance sensitivity to tribal values, issues and culture, obligations to maintain confidentiality of tribal information, appropriate communications, and understanding of the purpose and guiding principles of this policy. (See Subsection A.1 below.)

### **A. SYSTEMWIDE**

1. **President or President's Designee:** The President of the University of California is UC's chief executive, as designated by the Regents of the University of California, and has full authority and responsibility for the administration of all affairs and operations of UC (excluding only those activities that are the responsibility of the Principal Officers of The Regents). For the purpose of this policy, the President is responsible for systemwide oversight and compliance with this policy, NAGPRA, CalNAGPRA, and other related applicable laws and regulations. The President is responsible for the review and approval/disapproval of Systemwide Committee recommendations and appeals requests as described in this policy. The President may designate a "President's Designee" for these purposes. (For simplicity, this policy uses the term "President" rather than "President or President's Designee" throughout this policy.)

The President is responsible for allocating sufficient resources to fulfill the obligations of the President's office and Systemwide Committee, as described under this policy. The President will also designate the unit responsible for providing training to persons responsible for carrying out the requirements set forth in this policy.

Contact information for the President or President's Designee will be posted on a public-facing campus website.

2. **Systemwide Committee:** See Section V.A.1 below.

### **B. CAMPUS**

1. **Chancellor or Chancellor's Designee:** The Chancellor of a UC campus is delegated broad powers as the executive head of all campus activities. For the purpose of this policy, the Chancellor is responsible for oversight and compliance with this policy, NAGPRA, CalNAGPRA, and applicable laws and regulations at the campus level. The Chancellor is responsible for the approval/disapproval of Requests described in this policy. The Chancellor may designate a "Chancellor's



Designee” for these purposes. (Except for the separation of roles noted in Section V.I.2, for simplicity, this policy uses the term “Chancellor” rather than “Chancellor or Chancellor’s Designee” throughout this policy.)

The Chancellor is responsible for allocating sufficient resources to fulfill the obligations of the campus and Campus Committee, as described under this policy.

Contact information for the Chancellor or Chancellor’s Designee will be posted on a public-facing campus web page.

1. Campus Committees: See Section V.A.2 below.
2. Faculty and Other Academic Appointees, Staff, and Students at locations and departments impacted by this policy must cooperate with the Repatriation Coordinator/Repatriation Point of Contact, and are responsible for adhering to and complying with this policy.
3. Repatriation Coordinator: Repatriation Coordinators are individuals designated by the Chancellor at each campus with known NAGPRA/CalNAGPRA-eligible Collections to carry primary responsibility for working with Tribes to accomplish compliance with this policy, including Consultation, Repatriation, Disposition, and tribal access to Human Remains and Cultural Items.

The Repatriation Coordinator must have an in-depth, demonstrated understanding of and direct experience with: (a) Consultation practices and processes, building and maintaining positive working relationships with Tribes; and (b) NAGPRA and CalNAGPRA.

The Repatriation Coordinator must coordinate with staff at campus museums and all other departments bearing compliance responsibilities with this policy, maintain proper documentation (regarding correspondence, Consultations, loans, transfers, federal and state notices, Inventories, Summaries, and determinations regarding Cultural Affiliation, Repatriation, or Disposition, etc.), and provide reports, notices, and documents as required by this policy (See Section V.H).

The Chancellor must issue an appropriate delegation of authority to the Repatriation Coordinator to support effective implementation of this policy.

The Repatriation Coordinator will report to the Chancellor.

Name and contact information for the Repatriation Coordinator will be posted on a public-facing campus web page and provided to the NAHC.

4. Repatriation Point of Contact: Campuses without known Possession or Control of Native American Human Remains or potentially eligible Cultural Items must appoint a Repatriation Point of Contact. This person must be knowledgeable about NAGPRA and CalNAGPRA, and will serve as the campus point of contact to receive any NAGPRA/CalNAGPRA related inquiries or reports from Tribes, the UC campus community or others. The Repatriation Point of Contact is also responsible for the reviews and reports required in Sections V.E and V.H.

Name and contact information for the Repatriation Point of Contact will be posted on a public-facing campus website and provided to the NAHC.

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## V. PROCEDURES

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### A. COMMITTEES

#### 1. Systemwide Committee

##### a. Composition

The President must establish a Systemwide Native American Repatriation Implementation and Oversight Committee (hereinafter called the “Systemwide Committee”)<sup>11</sup> in accordance with the requirements of [CalNAGPRA §8026\(a\)](#).

All Systemwide Committee members must have demonstrated understanding of tribal cultural concerns. Per CalNAGPRA §8026(d)(2), “Preference shall be given to members who have demonstrated, through their professional experience, the ability to work in collaboration with Native American tribes successfully on issues related to repatriation or museum collection management.” In selecting members, the President will seek a diversity of expertise and may make exceptions to the composition requirements set forth in CalNAGPRA, provided that such exceptions promote Repatriation and amplify the Purpose and Guiding Principles contained in this policy, and that equal UC / tribal representation is maintained. In making such exceptions, the President will consider the individual’s prior experience and knowledge in NAGPRA/CalNAGPRA, seek the advice of Tribal Representatives, and communicate the justification for the exception to the Systemwide Committee.

The President will stagger the terms of the voting members to the extent possible in order to ensure continuity and a balance of experienced and new members. For example, membership terms can vary between one, two, and three years. Terms are renewable, but should not generally exceed six years.

In addition to the voting members, one non-voting member from each UC campus that is known to have Possession or Control of Native American Human Remains or potentially eligible Cultural Items may participate in meetings. Each of these non-voting members must also meet the requirements set forth in CalNAGPRA for UC voting members unless the President has approved an exception, as described above.

The President may observe committee meetings.

##### b. Purpose and Responsibilities of the Systemwide Committee

The Systemwide Committee will be charged with providing compliance oversight and review, advising the UC President on matters related to the University’s implementation of NAGPRA and CalNAGPRA, and promoting the implementation of this policy across the UC system.

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<sup>11</sup> CalNAGPRA §8026(a)(1) states that the systemwide Native American Graves Protection and Repatriation Act Implementation and Oversight Committee shall be known as the “U.C. NAGPRA Committee.”. We refer to this committee as the “Systemwide Committee” in this policy because it more clearly distinguishes this committee from the Campus Committees.

The Systemwide Committee may do any of the following as needed to assist in the compliance of this policy:

- 1) Make recommendations to the President for revisions to this policy (see Section III.D);
- 2) Make recommendations to the President for the issuance of guidance, best practices, and template forms for the successful implementation of this policy across the UC system, including compliance with NAGPRA and CalNAGPRA;
- 3) Assess campus implementation, timeliness, adequacy of resources (e.g., through benchmarking), and compliance with this policy through the review of campus Repatriation Implementation Plans (see Section VI), campus biannual reports (see Section V.H), and through audits or site visits, as necessary;
- 4) Make recommendations for corrective action or systemwide or campus audits to the President to ensure compliance with this policy, and applicable laws and regulations;
- 5) Make recommendations for the advancement of greater systemwide consistency, including for the elements or formats of reports collected from all campuses and in general approaches to compliance with this policy;
- 6) When requested by a Tribe, and in accordance with Section V.I.2, review appeals of campus decisions concerning the identification of Cultural Items, Requests for Cultural Affiliation, Repatriation or Disposition of Human Remains and Cultural Items, including a review of campus decisions for consistency with this policy and applicable legal requirements, and make recommendations for resolution to the President;
- 7) When requested by a Tribe, and in accordance with Section V.I.1 of this policy, review complaints concerning violations of this policy, and make recommendations for resolution to the President; and
- 8) Serve as a resource to promote Repatriation.

**c. Systemwide Committee Procedures**

**Quorum and Voting.** A quorum will consist of at least 50% of members. Recommendations to the President will be determined by a vote of at least half of the members in attendance. Systemwide Committee recommendations will include the background documentation and a report of majority/minority opinions, including alternate recommendations.

**Virtual Presence.** While in-person attendance is encouraged, committee members, tribal members, presenters, staff, and others invited to committee meetings may attend via a telecommunications system in which efforts will be made to ensure all present can see and hear each other (e.g., using conference rooms that have video capability and adequate speakerphones).

**Tribal Presence.** The President will invite a Tribe that appeals a campus decision regarding identification of Cultural Items, Cultural Affiliation,

Repatriation or Disposition to provide oral or written evidence, statements, or other information to the Systemwide Committee and/or attend the Systemwide Committee meeting (in person or via a telecommunication system) where the appeal will be deliberated.

**Record Keeping.** The Systemwide Committee Chair will maintain a record of all Systemwide Committee votes, including both the majority and minority opinions, as well as all evidence and documents presented (including those submitted by Tribes) and meeting minutes. Except to the extent required by law, portions of meeting minutes that contain tribal Confidential Information shall be treated as Confidential Information. A Tribe whose request or appeal is being determined may request and receive copies of any documents or minutes that relate to an appeal they have made, provided Confidential Information pertaining to other Tribes is redacted.

**Conflicts of Interest.** All Systemwide Committee members must abide by basic principles of ethical conduct and Regents Policy 1111, Policy on [Statement of Ethical Values and Standards of Ethical Conduct](#). The Systemwide Committee will identify and manage Conflicts of Interest (COI), as defined in Section II, taking into consideration the following:

- 1) Tribes making a Request must be provided with a roster of all Systemwide Committee members and subject matter experts consulted or invited to the Systemwide Committee meetings. If the Tribe(s) believes that one or more of these persons may have a COI with regard to their case, they may present information to explain their opinion and request that such persons be removed as subject matter experts or abstain from voting on their case, as applicable. The President will consider and make a decision on the Tribe's request. The decision must be communicated to the Tribe(s) in advance of meeting, with an explanation if the request is denied.
- 2) Systemwide Committee members must recuse themselves from participating in a decision on any matter before the Systemwide Committee in which they have a financial, professional, or personal interest that would significantly impair or appear to significantly impair their objectivity in making a decision. If there is any question about whether a committee member's interest would significantly impair or appear to significantly impair their objectivity, the member must recuse themselves or disclose the interest to the other committee members and the President. The President may require such members recuse themselves, or with the concurrence of the remaining Systemwide Committee members, and as permitted by law, allow such members to vote.

The President may replace a member who has been recused; however, the balance between tribal and UC membership in the composition of the Systemwide Committee membership considering the case will nonetheless be maintained.

**Chair.** The Systemwide Committee will nominate a Chair from amongst the members, who, upon approval of the President, will serve for two (2) consecutive years. The Systemwide Committee may renew a chairperson upon approval of the President. The duties and responsibilities of the Chair include, but are not limited to, the following:

- 1) In consultation with the Systemwide Committee membership, staff of the President, and campus NAGPRA/CalNAGPRA Repatriation Coordinator, schedule dates, times and locations for meetings; ensure meetings are called and held in accordance with this policy;
- 2) In consultation with Systemwide Committee membership, establish and confirm an agenda for each meeting, and ensure the meeting agenda and relevant documents are circulated to Systemwide Committee members in advance of the meeting to ensure sufficient time for the members to review the materials and arrange logistics, travel or telecommunication capability;
- 3) Officiate and conduct meetings;
- 4) Ensure there is sufficient time during the meeting to fully discuss agenda items; and
- 5) Ensure meeting minutes are complete and accurate, retained, and reviewed at the next meeting.

**Frequency of Meetings.** The Systemwide Committee will meet no less frequently than three (3) times per academic year.

**Subject Matter Experts.** In Consultation with Tribes, the Systemwide Committee may seek, as needed, the advice of external or internal subject matter experts.

## **2. Campus Committees**

### **a. Composition**

Except as described in Section V.A.2.b below, for each UC campus that has Possession or Control of a NAGPRA/CalNAGPRA-eligible Collection, the Chancellor must establish a Campus Native American Graves Protection and Repatriation Act Implementation Committee (hereinafter called the "Campus Committee")<sup>12</sup> in accordance with the requirements of CalNAGPRA.

All Campus Committee members must have demonstrated understanding of tribal cultural concerns. Per CalNAGPRA §8026(d)(2), "Preference shall be given to members who have demonstrated, through their professional experience, the ability to work in collaboration with Native American tribes successfully on issues related to repatriation or museum collection management." In selecting members, the Chancellor will seek a diversity of

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<sup>12</sup> CalNAGPRA §8026(b)(1) states that the Campus Native American Graves Protection and Repatriation Act Implementation Committee shall be known as the "NAGPRA Committee" for that campus. We refer to this committee (for each campus) as the "Campus Committee" in this policy because it more clearly distinguishes campus committees from the Systemwide Committee.

expertise and may make exceptions to the composition requirements set forth in CalNAGPRA, provided that such exceptions promote Repatriation and amplify the Purpose and Guiding Principles contained in this policy, and that equal UC / tribal representation is maintained. In making such exceptions, the Chancellor will consider the individual's prior experience and knowledge in NAGPRA/CalNAGPRA, seek the advice of Tribal Representatives, and communicate the justification for the exception to the Campus Committee.

The Chancellor will stagger the terms of the voting members to the extent possible in order to ensure continuity and a balance of experienced and new members. For example, membership terms can vary between one, two, and three years. Terms are renewable, but should not generally exceed six years.

The Chancellor may observe committee meetings.

**b. Exceptions to the Requirement to Establish Campus Committees**

If a campus does not have an active Campus Committee and does not otherwise anticipate needing a full committee, the campus may rely on another campus' committee and Repatriation Coordinator to carry out its duties under this policy if the Chancellors of both campuses agree.

**c. Purpose and Responsibilities of the Campus Committee**

The Campus Committee will be charged with providing compliance oversight and review, advising the campus Chancellor on matters related to the Campus' implementation of NAGPRA and CalNAGPRA, and promoting campus implementation of this policy.

The Campus Committee may do any of the following as needed to assist in the compliance of this policy:

- 1) Assess campus implementation, timeliness, adequacy of resources (e.g., through benchmarking), and compliance with this policy through consultation and review of the campus Repatriation Implementation Plan (see Section VI), campus biannual reports (see Section V.H), and audits, as necessary;
- 2) Make corrective action recommendations to the Chancellor;
- 3) Make recommendations to the Chancellor for revisions to local campus policies and practices consistent with this policy;
- 4) Make recommendations to the Chancellor for the issuance of guidance, best practices, and a Repatriation Implementation Plan for the successful campus implementation of this policy, including compliance with NAGPRA and CalNAGPRA;
- 5) Make determinations regarding the identification of Cultural Items, Requests for Cultural Affiliation and/or State Cultural Affiliation and Requests for Repatriation / Disposition of Human Remains and Cultural Items, and review Notices of Inventory Completion and/or Notices of Intent to Repatriate to ensure compliance with NAGPRA and CalNAGPRA, including appropriate Consultation, and make recommendations regarding

such determinations to the Chancellor. The Chancellor will review the recommendations and make the final campus decision;

- 6) Review claims of any violation of the policies and procedures adopted pursuant to CalNAGPRA § 8025, and make recommendations to the Chancellor for corrective actions as necessary;
- 7) Review campus practices for consistency with this policy and legally applicable requirements and, when requested by a Tribe, assist in the resolution of complaints made in accordance with Section V.I.1 and/or make recommendations for resolution to the Chancellor; and
- 8) Serve as a resource to promote Repatriation.

#### **d. Campus Committee Procedures**

**Quorum and Voting.** A quorum will consist of at least 50% of members. Recommendations to the Chancellor will be determined by a vote of at least half of the members in attendance. Campus Committee recommendations will include the background documentation and a report of majority/minority opinions, including alternate recommendations.

**Virtual Presence.** While in-person attendance is encouraged, committee members, tribal members, presenters, staff, and others invited to committee meetings may attend via a telecommunications system, in which efforts will be made to ensure all present can see and hear each other (e.g., using conference rooms that have video capability and adequate speakerphones).

**Tribal Presence.** The Repatriation Coordinator will invite the Tribe(s) whose Request is being reviewed by the Campus Committee, or who are potentially Culturally Affiliated / State Culturally Affiliated to a collection under review by the Campus Committee, to provide oral or written evidence, statements, video or other information to the Campus Committee and/or attend (in person or via a telecommunication system) the Campus Committee meeting where the case will be considered. Reviews under this provision may include reviews for determinations for the identification of Cultural Items, Cultural Affiliation, Repatriation or Disposition, draft Inventory or Summary documents, final Inventory or Summary documents, or Notices.

**Record Keeping.** The Repatriation Coordinator will maintain a record of all Campus Committee votes, including both the majority and minority opinions, as well as all evidence and documents presented (including those submitted by Tribes) and meeting minutes. Except to the extent required by law, portions of meeting minutes that contain tribal Confidential Information must be treated as Confidential Information. A Tribe whose Request or appeal is being determined may request and receive copies of any documents or minutes that relate to an appeal they have made, provided Confidential Information pertaining to other Tribes is redacted.

**Conflicts of Interest.** All Campus Committee members must abide by basic principles of ethical conduct and Regents Policy 1111, Policy on [Statement of Ethical Values and Standards of Ethical Conduct](#). The Campus Committee

will identify and manage Conflicts of Interest (COI), as defined in Section II, taking into consideration the following.

- Tribes making a Request must be provided with a roster of all Campus Committee members and subject matter experts consulted or invited to the Campus Committee meetings. If the Tribe(s) believes that one or more of these persons may have a COI with regard to their case, they may present information to explain their opinion and request that such persons be removed as subject matter experts or abstain from voting on their case, as applicable. The Chancellor will consider and make a decision on the Tribe's request. The decision must be communicated to the Tribe(s), in advance of the meeting, with an explanation if the request is denied.
- Campus Committee members must recuse themselves from participating in a decision on any matter before the Campus Committee in which they have a financial, professional, or personal interest that would significantly impair or appear to significantly impair their objectivity in making a decision. If there is any question about whether a committee member's interest would significantly impair or appear to significantly impair their objectivity, the member must recuse themselves or disclose the interest to the other committee members and the Chancellor. The Chancellor may require such members recuse themselves, or with the concurrence of the remaining Campus Committee members, and as permitted by law, allow such members to vote.

The Chancellor may replace a member who has been recused; however, the balance between tribal and UC membership in the composition of the Campus Committee membership considering the case will nonetheless be maintained.

**Chair.** The Campus Committee will nominate a rotating Chair from amongst the members, who, upon approval by the Chancellor, will serve for two (2) consecutive years. The Campus Committee may renew a chairperson, upon approval by the Chancellor. The duties and responsibilities of the Chair include, but are not limited to, the following:

- 1) Confer and Coordinate with the Repatriation Coordinator on a regular basis for the mutual exchange of information;
- 2) Schedule dates, times and locations for meetings in consultation with the Campus Committee membership and Repatriation Coordinator; ensure meetings are called and held in accordance with this policy;
- 3) Establish and confirm an agenda for each meeting in consultation with Campus Committee membership and Repatriation Coordinator, and ensure the meeting agenda and relevant documents are circulated to Committee members in advance of the meeting to ensure sufficient time for the members to review the materials and arrange logistics, travel or telecommunications capability;
- 4) Officiate and conduct meetings;



- 5) Ensure there is sufficient time during the meeting to fully discuss agenda items; and
- 6) Ensure meeting minutes are complete and accurate, retained, and reviewed at the next meeting.

**Frequency of Meetings.** Meetings will be held as frequently as needed to meet deadlines provided in NAGPRA and CalNAGPRA as well as this policy. For campuses having Possession or Control of Human Remains, where the number of individuals or sets of Human Remains exceeds 100, the Campus Committee will meet no less frequently than three (3) times per academic year. All other campuses having Possession or Control of Human Remains will meet no less frequently than two (2) times per academic year.

**Subject Matter Experts.** In Consultation with the Tribes, the Campus Committee may seek, as needed, the advice of external or internal subject matter experts.

## **B. CONSULTATION**

### **1. Consultation Process and Guidance**

Consultation (as defined in Section II) is a critical element required by NAGPRA, CalNAGPRA, and this policy at various stages (i.e., Inventory, Summary, Repatriation, and Disposition).

All successful Consultations involve relationship building and respect. Repatriation Coordinators must seek out and foster these relationships with the designated Tribal Representatives, such as Tribal Historic Preservation Officers (THPOs), Cultural Directors, Elders Councils, and/or other representatives. Repatriation Coordinators must engage in Consultation that reflects the principles and characteristics outlined below.

- Relationships that acknowledge and respect a Tribe's sovereignty, cultural protocols, and cultural and religious practices and knowledge;
- Multiple repeated contacts using a variety of methods;
- Accommodations for tribal needs in facilitating respectful Consultation;
- Invitations to all Tribes that have an interest;
- Identify and address tribal concerns in this process;
- Full access to consulting Tribes of relevant information throughout this process, including information known to the University about Human Remains or Cultural Items that are the subject of the Consultation and upon request, information about other collections containing Native American objects from the Tribe's area of interest;
- Flexible meeting agendas and schedules, with opportunity for tribal input on the agendas or schedules itself; and
- Actions demonstrating meaningful engagement with tribes, which exemplify trust and relationship building.

Consultation includes ongoing meaningful dialog regarding Cultural Affiliation and the identification of Cultural Items throughout the Inventory and Summary processes, with the goal of Repatriation. Consultation may be in the form of in-person meetings, phone calls, video/remote conferencing, and written correspondence. UC campuses should work collaboratively with each other when engaging in Consultation with Tribes that may have Human Remains or Cultural Items in collections across multiple campuses.

The importance of building collaborative relationships is a core value of this policy. To fulfill this value, Repatriation Coordinators should work with other campus departments to foster UC/Native American relationships. Some examples of this approach are:

- Facilitating a meeting with a student recruiter focused on Native American communities when a Tribe visits the campus for a NAGPRA Consultation;
- Informing a Tribe of, and connecting them with, UC archives that may be of interest to the Tribe;
- Supporting efforts to build relationships with Native American students on campus; and
- Developing a holistic campus wide approach to relationship building with full acknowledgment that diversity is valued and supported.

The Repatriation Coordinator will consult individually with each Tribe. UC recognizes that multiple Tribes may request to consult jointly as appropriate. If all Tribes agree, UC will consult jointly with the Tribes for that meeting or Repatriation effort.

When engaging in Consultation, Repatriation Coordinators will take the steps below.

**a. Initiation.** The Repatriation Coordinator will initiate Consultation as required by this policy, as early as possible when:

- 1) New information or Human Remains or potential NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items are identified; and
- 2) Conducting proactive re-evaluations of previous CUI determinations, in order to meet CalNAGPRA requirements, as described in Section VI.

Initiation of Consultation will include the opportunity for the Tribe(s) to meet with the Campus Committee for brief introductions at the next scheduled meeting, provided the Campus Committee has time to accommodate such meeting without significant impact to its planned agenda.

When a Repatriation Coordinator initiates Consultation, an initial communication (e.g., letter or email) with sufficient information will be provided to Tribal Representatives to determine if they have an interest in participating in the Consultation process, believe they are Culturally Affiliated with Native American Human Remains and/or Cultural Items, and if they know of other Tribes that may have an interest. If no response is received, the

Repatriation Coordinator will attempt additional notifications using alternative means, such as by U.S. mail or phone.

- b. Response to Consultation Request.** If a Tribe has requested Consultation, the campus Repatriation Coordinator will acknowledge receipt of the request within five (5) business days.
- c. Response to Information Request.** Requests for information must be acknowledged within five (5) days. Within sixty (60) days from the receipt of the request and no less than monthly thereafter, the campus Repatriation Coordinator will provide the requested information or the status of the work being done on the request.
- d. Preparation.** The campus Repatriation Coordinator will review all known information about the Human Remains or Cultural Items, and identify potentially Culturally Affiliated Tribes or State Culturally Affiliated Tribes and traditional Aboriginal lands or tribal lands from where the Human Remains and/or Cultural Items were removed, regardless of whether the Tribes are currently physically present in the area. Sources of information that may be useful in researching potentially relevant tribes include National NAGPRA and NAHC resources, previous NAGPRA Federal Register notices, and federal land claims.
- e. Participants.** Consultation will be conducted with Tribal Representatives authorized by their tribal government to consult on the Tribe's behalf concerning Repatriation..
- f. Records.** Campuses should maintain a record of all communications in a communication log. Communication may be through posted letter, email, phone, and in-person as the occasion warrants. When using non-written forms of communication, a follow-up email or letter should be sent within a day to ensure that agreed to decisions and next steps are accurate. Any formal notes should be offered and reviewed by the consulting parties to ensure accuracy before they are accepted into the formal record. Consistent and repeated contact best assures progress.
- g. Meetings.** For meetings, campuses should work with Tribal Representatives to find a mutually agreeable time, place, format, agenda, and arrangements for special requests (such as smudging space, parking, meals, and documentation). The Repatriation Coordinator should inquire about whether there are barriers to tribal participation. To the extent possible, the Repatriation Coordinator should attempt to alleviate any barriers. This may also include travel support through grants or allocation of funding.
- h. Materials.** The campus Repatriation Coordinator should work with the consulting Tribes to provide any needed documentation related to collections and Human Remains prior to Consultation meetings. Documentation may include catalogs, reports, maps, field notes, accession registers, summaries of NAGPRA related information, notices, tribal information in UC's possession (such as tribal histories, linguistics, recordings, and folklore), and other relevant documents.

The Repatriation Coordinator will also provide a list of Tribes that are, or have been, consulted regarding particular Human Remains and Associated Funerary Objects. (NAGPRA § 10.9(b)3.i)

- i. **Consultation Meetings.** During Consultation meetings, the campus Repatriation Coordinator will listen and engage respectfully. The Repatriation Coordinator will endeavor to make meetings as comfortable, respectful, and productive as possible. This may include:
- 1) Making cultural arrangements, such as beginning meetings with a traditional land acknowledgment, providing an opportunity for a traditional opening if requested, or traditional offerings as relevant.
  - 2) Providing access to associated records and requested Human Remains, Cultural Items, and other requested materials. (See also Section V.J.3 and Flowcharts on UC's NAGPRA Website.)
  - 3) Providing a written description of the Repatriation/Disposition decision-making, dispute resolution, and complaint processes.
  - 4) As soon as possible, but no later than ten (10) days after the meeting, providing draft written meeting notes and a list of action items to Tribal Representatives to ensure accuracy and understanding by all participants. Such notes and other information shared by the Tribe during Consultation should be maintained as part of the Consultation record. For any major action items or decision points, it should be noted whether the Tribes concurred with these action items or decision points. If the Tribe does not concur, the Repatriation Coordinator and the Tribe will endeavor to reestablish an understanding. The Tribe can also file a complaint in accordance with Section V.I.1 in order to pursue resolution.
  - 5) Together with Tribes, identifying all documentation and information shared that will have restricted access and the extent of such restriction, recognizing the Tribes' potential need for confidentiality with respect to Tribal Traditional Knowledge and tribal information shared during the Consultation.
  - 6) Working with Tribes to identify and facilitate any requests for traditional care and restrictions for Human Remains and objects in the care of the campus. (See also Section V.J.1 for more details.)
  - 7) Informing non-Federally Recognized tribes that the option exists to partner with a Federally Recognized tribe that can sponsor their Request and offering to assist in this process at the request of the non-Federally Recognized tribe.
  - 8) Collecting identifications of Cultural Items made by Tribal Representatives, which the campus must record in accordance with CalNAGPRA § 8013(b)(1)(c)(ii). Tribal identifications may include broad categorical

identifications, including, but not limited to, the identification of Associated Funerary Objects.

- j. Updates.** The campus Repatriation Coordinator must keep affected Tribes promptly informed of all UC and campus decisions, relevant news and information about affiliated or otherwise relevant collections, and publication of notices by National NAGPRA and the NAHC. The Repatriation Coordinator will also provide quarterly updates to Tribes with whom they are consulting.
- k. Potential Disagreement.** In the event that Cultural Affiliation is unclear or there is potential disagreement about the identification of Cultural Items, the Repatriation Coordinator will transmit a detailed explanation to the consulting Tribe(s) and information on possible paths to change the outcome, and how and to whom to file a complaint or appeal. Under CalNAGPRA § 8013, if a consulting California Indian tribe disagrees with the contents of a preliminary Inventory or Summary that has been submitted to the NAHC, the preliminary Inventory or Summary must either be revised to correct the disputed information or the NAHC will offer to initiate dispute resolution as described in CalNAGPRA § 8016. (See also Sections V.C and V.I.)
- l. Resources.** To the extent permitted by UC or third party resources and at the request of Tribe(s):

  - 1) The Repatriation Coordinator may partner with and assist Tribe(s) in seeking state/federal grants or other available UC or third-party resources to facilitate Consultation and Repatriation; and
  - 2) UC will provide for necessary costs incurred by the Tribes, including stipends for tribal and other experts, travel, meals, and overnight accommodations.
- m. Repatriation Logistics.** The campus Repatriation Coordinator will offer to assist, as needed or requested, with transfer/Repatriation logistics, which may include stewardship agreements, coordinating reburial lands, coordinating with Tribes to identify alternate sources of funding for reburial preparation costs, and applying for NAGPRA Repatriation grants.

## **2. Confidentiality**

UC is committed to protecting Confidential Information. All “Confidential Information” (as defined in Section **Error! Reference source not found.**) may only be made available to those with a need to know for compliance with this policy and may not be further re-disclosed unless otherwise required by law or with the prior consent of the Tribe that provided the information. The Repatriation Coordinator will provide consulting Tribes the opportunity to review the Review Packet that will be shared with the Campus Committee or published in the Federal Register or by NAHC. (See V.B.1.i.(5) above and Flowcharts on UC’s NAGPRA website).

Campus and Systemwide Committee members and UC employees with a need to know must be trained and advised of their obligations to maintain

confidentiality for all such information conveyed to them in the course of their duties under this policy or during Consultation. (See Section IV.)

The Repatriation Coordinator must keep any hard copies of Confidential Information in locked file cabinets. Electronic copies of Confidential Information must be maintained in accordance with [UC Policy BFB-IS-3: Electronic Information Security](#).

## **C. CULTURAL AFFILIATION AND/OR STATE CULTURAL AFFILIATION, INVENTORIES, AND SUMMARIES**

### **1. General**

In accordance with the requirements set forth in NAGPRA and CalNAGPRA, and the guiding principles of this policy, campuses must create and/or supplement Inventories and Summaries (including preliminary Inventories and Summaries in accordance with CalNAGPRA) *in Consultation with Tribal Representatives*. As part of this process, campuses must assess 1) whether they have items in their Possession or Control that meet the definitions for Human Remains and Associated Funerary Objects, or may meet the definitions for Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony (“Cultural Items”); and 2) whether Cultural Affiliation and/or State Cultural Affiliation can be established for Human Remains or Cultural Items listed or described in Inventories or Summaries.

UC recognizes that “California Indian tribes have expertise with regard to their tribal history and practices that concern the Native American human remains, cultural items, and tribal cultural resources with which they are traditionally and culturally affiliated.”<sup>13</sup> In performing their analysis to determine State Cultural Affiliation, the identification of Cultural Items under CalNAGPRA, and in all decisions related to the CalNAGPRA repatriation process, campuses must include consideration of Tribal Traditional Knowledge provided by Tribes during Consultation. “Deference shall be provided to tribal traditional knowledge, oral histories, documentation, and testimonies relative to other relevant categories of evidence.” (CalNAGPRA § 8016(d)(6).)

(Note: The flowchart detailing the processes for developing Inventories and Summaries (or Inventory and Summary updates) in Consultation with Tribes will be posted on UC’s NAGPRA website.)

It is the responsibility of the Campus Committee to make determinations under this Section, and recommendations regarding such determinations to the Chancellor, based on information provided by Tribes and the Repatriation Coordinator. The Chancellor will review the determinations and make the final campus decision.

### **2. Content of Inventories and Summaries**

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<sup>13</sup> [AB 275](#) Declarations Section 1(k)(5).

The required elements with respect to the content of Inventories and Summaries are largely the same under NAGPRA and CalNAGPRA (though CalNAGPRA pertains only to that subset of a campus's collections that are from California). Key elements and processes specific to CalNAGPRA are called out here and/or in Section V.C.5 below.

- a. **Inventories.** Campus Inventories must include the following information, to the extent available:<sup>14</sup>
  - 1) Accession and catalogue entries, including the accession/catalogue entries of Human Remains with which Funerary Objects were associated;
  - 2) Information and circumstances related to the acquisition of each object, including:
    - (i) The name of the person or organization from whom the object was obtained, if known;
    - (ii) The date of acquisition;
    - (iii) The place / geographic location where each object was acquired, i.e., name or number of site, county, and state;
    - (iv) For Inventories prepared under CalNAGPRA, the State Aboriginal Territory from which the Human Remains and Associated Funerary Objects were removed;<sup>15</sup> and
    - (v) The means of acquisition, i.e., gift, purchase, or excavation;
  - 3) A description of each set of Human Remains or Associated Funerary Object; and
  - 4) A description indicating Cultural Affiliation (under NAGPRA) and/or State Cultural Affiliation (under CalNAGPRA), as applicable, of the Human Remains and Associated Funerary Objects and a summary of the evidence, including the results of consultation, used to make such determinations.
- b. **Summaries.** Campus Summaries must describe the collections in the Possession or Control of the campus that may contain Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony for the purpose of providing information to Tribes that may wish to submit Requests regarding these items. Summaries must include:<sup>16</sup>

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<sup>14</sup> For more information, see NAGPRA § 10.9(c), and CalNAGPRA § 8013(b).

<sup>15</sup> Under CalNAGPRA, Inventories must include not only Human Remains and Associated Funerary Objects that are clearly identifiable by State Cultural Affiliation, but also those that, given the totality of the circumstances, including the unique circumstances of California history, are determined by a Reasonable belief to have been removed from an area identified as the State Aboriginal Territory of one or more California Indian tribes. CalNAGPRA §8013(b)(1)(D).

<sup>16</sup> For more information, see NAGPRA 43 C.F.R. § 10.8(b) and CalNAGPRA § 8013(b).

- 1) An estimate of the number of objects in the collection or portion of the collection;
- 2) A description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and
- 3) Information relevant to identifying Lineal Descendants, if available, and Cultural Affiliation and State Cultural Affiliation.
- 4) Under CalNAGPRA, Summaries must also include the State Aboriginal Territory from which the items were removed, where reasonably ascertainable.

In general, any non-contemporary Native American ethnographic object or artifact may be a Cultural Item, and campuses should consult with potentially Culturally Affiliated/State Culturally Affiliated Tribes regarding any collections that contain such Native American objects.<sup>17</sup>

### **3. Determining Whether Objects are Native American Cultural Items and Cultural Affiliation / State Cultural Affiliation**

In evaluating items to establish whether they meet the definitions of Cultural Items and their Cultural Affiliation or State Cultural Affiliation, campuses will consult with Tribal Representatives and utilize the types of evidence and standards of proof stipulated in NAGPRA and CalNAGPRA (i.e., geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical evidence, other information or expert opinion, and Tribal Traditional Knowledge).

#### **a. Determining Whether Objects are Native American Cultural Items**

- 1) **Inventories.** In Consultation with Tribes, the Repatriation Coordinator will prepare a preliminary and final Inventory for review by the Campus Committee to determine whether items meet the NAGPRA/CalNAGPRA definitions of Human Remains and Associated Funerary Objects (and whether any Tribes are Culturally Affiliated and/or State Culturally Affiliated). Determinations of whether the items are Native American must not be precluded based solely on their age.
- 2) **Summaries.** For Requests under Summaries, upon receiving a Tribal Representative's identification and Request for Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony, the Repatriation Coordinator, in Consultation with Tribes, will prepare a preliminary and final Summary for review by the Campus Committee to determine whether the requested items meet the NAGPRA/CalNAGPRA definitions of Unassociated Funerary Objects, Sacred Objects, or Objects

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<sup>17</sup> Note that Cal NAGPRA § 8013(c) states, "Because it may not be clear whether Native American objects are Cultural Items, all museum collections of Native American ethnographic or archaeological objects shall be included in the preliminary summary."



of Cultural Patrimony (and whether any Tribes are Culturally Affiliated or State Culturally Affiliated). Determinations of whether items are Native American must not be precluded based solely on their age.

**b. Determining Cultural Affiliation / State Cultural Affiliation**

The campus must consider the totality of circumstances (including the unique circumstances of California history) and evidence,<sup>18</sup> and make determinations of Cultural Affiliation / State Cultural Affiliation based on the Preponderance of the Evidence, including Tribal Traditional Knowledge and oral histories, regarding whether there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of the requesting Tribe(s) and an identifiable earlier group with respect to the Human Remains and Cultural Items being requested.<sup>19</sup>

UC respects and values tribal oral histories and tribal sources of evidence in making determinations under this policy, and understands that in some cases, such evidence may be the only evidence available. Decisions must be made in consideration of the line(s) of evidence that are available without prejudice owing to the absence of other lines of evidence. For example, anthropological evidence need not be present if tribal oral historical evidence is available to evaluate cultural affiliation.

In deliberations concerning California Indian tribes, the campus will take into account unique California history that might have created gaps in records. Cultural Affiliation and/or State Cultural Affiliation will not be precluded solely because of some gaps<sup>20</sup> in the record. Further, Requestors do not have to establish Cultural Affiliation and/or State Cultural Affiliation with scientific certainty.<sup>21</sup>

A campus may establish Cultural Affiliation or State Cultural Affiliation of Human Remains and Cultural Items to more than one Tribe. In all such cases, evidence will be evaluated separately with respect to each Tribe, and the requirements for Cultural Affiliation or State Cultural Affiliation must be established for each Tribe.

**4. Updates and Supplements to Inventories and Summaries**

Campuses have a continuing responsibility to update and supplement their previously submitted Inventories and Summaries in consultation with Tribal Representatives, as required by NAGPRA and CalNAGPRA, including if there are new items to report, or if there are changes to previously submitted Inventories or Summaries. (See NAGPRA, 43 C.F.R. § 10.13, CalNAGPRA §§ 8013(c), (i) and (j).)<sup>22</sup> For example, Inventories and Summaries may need to be updated or supplemented as a result of changes prompted by the reevaluations

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<sup>18</sup> NAGPRA 43 C.F.R. § 10.14(d) and CalNAGPRA § 8013(a)(3).

<sup>19</sup> NAGPRA 43 C.F.R. § 10.14(c).

<sup>20</sup> NAGPRA 43 C.F.R. § 10.14(d).

<sup>21</sup> NAGPRA 43 C.F.R. § 10.14(f).

<sup>22</sup> Notice (including providing a copy of the Inventory) must be given to Tribes and to federal and state officials as required by NAGPRA (25 USC 3003(d), 43 CFR 10.9 (e), 43 CFR 10.11 (d), and 43 CFR 10.13) and CalNAGPRA (§ 8013(d) and (f)).

of previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, as required under this policy in Section VI.

If the campus is aware that items described in an Inventory or Summary are no longer in UC's possession for any reason, including because they have been lost, the campus will make note of that on any Inventory or Summary Supplements or updates completed after the effective date of this policy.

## **5. Additional CalNAGPRA Specific Processes<sup>23</sup>**

In accordance with CalNAGPRA § 8025(a)(2)(D), this policy requires campuses to review and update previous determinations of Culturally Unidentifiable Human Remains and Cultural Items to determine whether Cultural Affiliation/State Cultural Affiliation can be determined or to confirm such status. In conducting such reviews, the Repatriation Coordinator will work with Tribes to determine whether there are Cultural Items that may not have been identified in the original Inventories or Summaries because Tribal Traditional Knowledge was not incorporated into the identification process.

On or before January 1, 2022:

- a. Each UC campus that has Possession or Control of California Native American Human Remains and Associated Funerary Objects must complete a preliminary Inventory, of these remains and funerary objects, that meets the requirements of CalNAGPRA Section 8013(b).
- b. Each UC campus that has Possession or Control of collections that may contain Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony of a California Indian tribe must prepare a written preliminary Summary, based on available information held by the campus, that meets the requirements of CalNAGPRA § 8013(c).

Campuses should request that the NAHC provide a list of California Indian tribes and their respective State Aboriginal Territories, and must contact and consult with those Tribes whose State Aboriginal Territory includes the area from which the Human Remains and/or potential Cultural Items were removed.

Under CalNAGPRA § 8013(d), within ninety (90) days of completing preliminary Inventories and Summaries as specified by CalNAGPRA § 8013(b) and (c), campuses must provide copies to NAHC. That section specifies that NAHC shall, in turn, publish notices of completion of preliminary Inventories and Summaries on its internet website for thirty (30) days, and make the preliminary Inventories and Summaries available to any requesting potentially Culturally Affiliated California Indian tribe.

In accordance with CalNAGPRA § 8013(j), the process must include all of the following:

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<sup>23</sup> References in CalNAGPRA to the "commission" refer to the NAHC. UC falls under the definition of a Museum.

“(1) Preliminary inventories and summaries shall be reviewed by culturally affiliated and potentially culturally affiliated California Indian tribes, who shall have the ability to concur or disagree with the information in the preliminary inventory or summary. Tribal concurrence, disagreement, or nonresponse shall be noted on the preliminary inventory or summary by the commission at the end of the 30-day review period. If a consulting California Indian tribe disagrees with the contents of the preliminary inventory or summary, the agency or museum shall either revise the preliminary inventory or summary to correct the disputed information or the commission shall offer to initiate dispute resolution as described in [CalNAGPRA] Section 8016.

“(2) The status of the inventory or summary shall be changed from preliminary to final by the commission once all responding California Indian tribes listed in the inventory or summary concur with the information in the inventory or summary.

“(3) An inventory or summary that has been finalized may be moved back to preliminary status at the request of a consulting California Indian tribe if inaccuracies are found in the finalized inventory or summary prior to repatriation.

“(4) The designation of an inventory or summary as preliminary or final is intended to reflect whether consulting California Indian tribes agree with the decisions and identifications of the agencies and museums who are preparing these documents. An inventory or summary does not need to be marked as final for a California Indian tribe to place a claim. Nothing in this section shall be construed to mean that an agency or museum may delay the repatriation of items in a final inventory or summary.

“(5) Commission staff shall note a summary of all claims and the claim status on the commission’s internet website. The claim status may be pending, disputed, or accepted.

“(6) Commission staff shall note the repatriation status on the commission’s internet website. The repatriation status may be in process or completed.

“(7) A claim may be submitted at any time and does not need to be resubmitted.

“(8) A claim may be withdrawn at any time prior to transfer of control.”

## **D. REQUESTS FOR REPATRIATION AND DISPOSITION**

### **1. Flowchart: Repatriation and/or Disposition Process**

The Repatriation/Disposition Flowchart and accompanying Narrative on UC’s NAGPRA website describe the process campuses are required to follow when responding to tribal Requests for Cultural Affiliation, Repatriation or Disposition, or when campuses initiate the Inventory/Summary update and Consultation process..

## **2. Requests under NAGPRA for Repatriation of Human Remains and/or Cultural Items that are Culturally Affiliated with a Federally Recognized Tribe<sup>24</sup>**

For Repatriation Requests under NAGPRA, when all the criteria for Cultural Affiliation and Repatriation set forth in NAGPRA (43 C.F.R. § 10.10) are met<sup>25</sup>, and at least thirty (30) days have passed since the publication of any required notices in the Federal Register, UC must work with the requesting Tribe to expeditiously repatriate Human Remains and Cultural Items within ninety (90) days of receipt of a written Request for Repatriation from the Culturally Affiliated Federally Recognized tribe. If the Tribe is not ready to receive a physical transfer, then UC may offer or a Tribe may request that a stewardship agreement be established between UC and the Tribe to outline the conditions under which UC will maintain physical custody. Such agreements will be reviewed each year as needed.

## **3. Requests under CalNAGPRA for Human Remains and Cultural Items that are State Culturally Affiliated with a California Indian Tribe**

California Indian tribes that wish to file Requests under CalNAGPRA for return of Human Remains and Cultural items with which they have State Cultural Affiliation must file a claim with the NAHC and with the UC campus, as specified by CalNAGPRA §8014(b).<sup>26</sup>

In accordance with CalNAGPRA § 8014<sup>27</sup>:

“(a) A lineal descendent claiming a relationship with, and requesting return of, Native American human remains or cultural items listed in the inventory or summary of an agency or museum, or that requests the return of human remains or cultural items that are not listed in the inventory or summary but that are believed to be in the possession or control of the agency or museum, shall do both of the following:

“(1) File a claim for the human remains and cultural items with the commission and with the agency or museum believed to have possession or control.

“(2) Demonstrate that the claimant can trace their ancestry directly and without interruption by means of the traditional kinship or village system of the appropriate California Indian tribe, or by the common law system of descendency, to a known individual whose human remains or cultural items are being claimed.

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<sup>24</sup> In addition to Tribes, Lineal Descendents may make Repatriation requests. UC will repatriate to Lineal Descendents in accordance with the requirements of NAGPRA and CalNAGPRA.

<sup>25</sup> UC will waive the requirement at NAGPRA 43 C.F.R. § 10.10(a)(iii), which would normally require that a Tribe present evidence supporting a finding that UC does not have the “Right of Possession.”

<sup>26</sup> To be clear, a California Indian Tribe can choose to file a Request under either CalNAGPRA (if claiming State Cultural Affiliation) or NAGPRA (if requesting Disposition under NAGPRA or if the Tribe is a Federally Recognized tribe claiming Cultural Affiliation under NAGPRA), or both.

<sup>27</sup> References in CalNAGPRA to the “commission” refer to the NAHC. UC falls under the definition of a “Museum.”

“(b) A California Indian tribe claiming a relationship, state cultural affiliation, or state aboriginal territory with, and requesting return of, human remains or cultural items listed in the inventory or summary of an agency or museum, or that requests the return of human remains or cultural items that are not listed in the inventory or summary of an agency or museum but that are believed to be in the possession or control of the agency or museum, shall do both of the following:

“(1) File a claim for the human remains and cultural items with the commission and with the agency or museum believed to have possession or control.

“(2) Demonstrate one or both of the following:

“(A) There is a relationship of shared group identity that can be reasonably traced historically or precontact with an earlier identifiable group from which the human remains or cultural items originated and the claiming California Indian tribe. Evidence of state cultural affiliation need not be provided when reasonably established by a finding published in the Federal Register, in compliance with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

“(B) The human remains or cultural items were removed from the state aboriginal territory of the claiming California Indian tribe.”

When all the criteria set forth in CalNAGPRA § 8016, are met<sup>28</sup>, and if there are no other requests for particular Human Remains or Cultural Items and there is no unresolved objection pursuant to § 8016(d)(2), UC will expeditiously transfer the requested Human Remains and Cultural Items to the requesting Tribe, within ninety (90) days after the posting of the request for repatriation on NAHC's internet website, unless a Notice of Inventory Completion or Notice of Intent to Repatriate is also required under federal NAGPRA. If the federal notice period extends beyond the ninety (90)-day period, the campus must repatriate the requested Human Remains or Cultural Items to the requesting California Indian tribe within thirty (30) days following the completion of the federal notice period.

In accordance with CalNAGPRA § 8016(d), if there is more than one request made under CalNAGPRA for Repatriation for the same item, if there is a dispute between the requesting party and the campus, if there is a dispute as to the contents of an Inventory or Summary, or if a dispute arises in relation to the Repatriation process, the NAHC will notify the affected parties of this fact and the State Cultural Affiliation or State Aboriginal Territory of the item in question will be determined in accordance with CalNAGPRA § 8016.

For more information, see also:

- Section V.C.1 (which provides general instructions regarding State Cultural Affiliation, Inventories, and Summaries).

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<sup>28</sup> UC will waive the requirement at 43 C.F.R. § 10.10(a)(iii), which would normally require that a Tribe present evidence supporting a finding that UC does not have the “Right of Possession.”

- Section V.D.2 (which will be relevant in cases where a CalNAGPRA Request is made by a Culturally Affiliated Federally Recognized California Indian tribe).
- Sections V.D.4 and V.D.5 (which will be relevant in cases where a CalNAGPRA Request is made by a California Indian tribe that does not have federal recognition).
- Section V.C.5 (which provides additional CalNAGPRA specific processes).
- Flowcharts on the UC NAGPRA website for additional information on the general Repatriation/Disposition process.

#### **4. Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects under NAGPRA**

Both Federally Recognized tribes and non-Federally Recognized tribes may make requests for Human Remains and Associated Funerary Objects<sup>29</sup> that are classified as “Culturally Unidentifiable” under NAGPRA<sup>30</sup> under a mechanism known as a “Disposition.” Although NAGPRA distinguishes Federally Recognized tribes from non-Federally Recognized tribes and does not give standing to non-Federally Recognized tribes to request Cultural Affiliation, it does allow for a Disposition under certain circumstances. In addition, since NAGPRA provides an order of precedence that gives priority to a Federally Recognized tribe, a non-Federally Recognized tribe may partner with a Federally Recognized tribe, or request a Federally Recognized tribe sponsor their Request. The Repatriation Coordinator will inform the non-Federally Recognized tribes of this strategy and at the request of the non-Federally Recognized tribe, the Repatriation Coordinator may assist with the process.

In accordance with NAGPRA (43 C.F.R. § 10.11), UC must initiate Consultation regarding the Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects:

- a. Within ninety (90) days of receiving a Request from a Federally Recognized tribe to transfer Control of Culturally Unidentifiable Human Remains and Associated Funerary Objects; or
- b. If no Request for Consultation is received, before any offer to transfer Control of Culturally Unidentifiable Human Remains and Associated Funerary Objects.

In order to avoid delay of a Disposition to a requesting Tribe, after making a good faith effort to consult with all Tribes from whose tribal lands, at the time of the

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<sup>29</sup> 43 C.F.R. § 10.11 applies only to Human Remains, but Museums and federal agencies are encouraged to also transfer Control of Funerary Objects that are associated with culturally unidentifiable Human Remains. Accordingly, UC will also include Associated Funerary Objects in any transfer of Human Remains made under NAGPRA.

<sup>30</sup> Note that under NAGPRA, Human Remains and Cultural Items that are not found by a Preponderance of the Evidence to be Culturally Affiliated with a Federally Recognized tribe are classified as “Culturally Unidentifiable,” regardless of whether those Human Remains and Cultural Items may have been found to have State Cultural Affiliation with a non-Federally Recognized California Indian tribe.

removal, the Human Remains and Associated Funerary Objects were removed and with all Tribes from whose Aboriginal Lands the Human Remains and Associated Funerary Objects were removed,<sup>31</sup> and after an appropriate response period (sixty (60) days),<sup>32</sup> the Repatriation Coordinator will proceed with carrying out the Disposition.

In accordance with NAGPRA (43 C.F.R. § 10.11(c)), a campus that has completed Consultation pursuant to 43 C.F.R. § 10.11(b) must offer to transfer Control of the Culturally Unidentifiable Human Remains (and, per this policy, Associated Funerary Objects) in the following priority order:

- a. Federally Recognized tribe(s) or Native Hawaiian Organization(s) from whose tribal land, at the time of the removal, the Human Remains and Associated Funerary Objects were removed.
- b. Federally Recognized tribe(s) or Native Hawaiian Organization(s) that are recognized as aboriginal to the area from which the Human Remains and Associated Funerary Objects were removed. Aboriginal land may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.
- c. If none of the Tribes identified above agrees to accept Control, the campus may offer to transfer Control of Culturally Unidentifiable Human Remains (and per this policy, Associated Funerary Objects) to any other Federally Recognized tribe or to a non-Federally Recognized tribe. Under NAGPRA, Disposition to a non-Federally Recognized tribe may only take place after receiving a recommendation from the Secretary of the Interior or authorized representative (43 C.F.R. § 10.11(c)(2)(ii))<sup>33</sup>.

In order to advance the goal of expeditious Disposition, unless advised otherwise by the National NAGPRA Program, including pursuant to NAGPRA (43 C.F.R. § 10.11(c)(3)), campuses are not required to obtain written signature of support from all Tribes described herein prior to proceeding with transfer of Control. In accordance with 43 C.F.R. § 10.11(d), Disposition may not occur until at least 30 days after publication of a Notice of Inventory Completion in the Federal Register.

California Indian tribes (including both those that are Federally Recognized tribes and non-Federally Recognized tribes) may also submit Requests under CalNAGPRA §8014. (See Section V.D.3.)

## **5. Joint Requests for Cultural Affiliation or State Cultural Affiliation**

A coalition of Tribes may jointly submit a Request for Repatriation. In such cases, Cultural Affiliation or State Cultural Affiliation must be established for each Tribe

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<sup>31</sup> See NAGPRA, 43 C.F.R. § 10.11(b)(2)

<sup>32</sup> Although NAGPRA does not address the length of a response period, sixty (60) days provides Tribes with a reasonable period to voice an interest without unduly delaying next steps.

<sup>33</sup> Note that approval from the Secretary of the Interior or authorized representative is not required if a Federally Recognized tribe sponsors a non-Federally Recognized tribe as described in Section V.D.4, and the Federally Recognized tribe submits the Request.

requesting Repatriation via the joint Request, but joint Requests will not be interpreted as competing Requests. (See Section V.C.3.b.)

## **6. Competing Requests for Repatriation or Disposition**

UC/NAHC may receive competing Requests for Repatriation or Disposition from multiple Tribes that are listed as Culturally Affiliated, State Culturally Affiliated, and/or that are otherwise eligible to submit a Request for Disposition.

With respect to competing Requests made under NAGPRA, if the law does not specify an order of precedence that gives one Tribe priority over another, UC will notify the Tribes of the competing Requests. The Repatriation Coordinator will attempt to facilitate a solution, and/or convene the Tribes to discuss and defer to their joint recommendations. If the Tribes cannot come to agreement, the campus will retain the Human Remains or Cultural Items until the requesting parties reach agreement regarding the competing Requests or until the dispute is resolved. Note that competing Requests are distinct from joint or coalition Requests described above in Section V.D.6.

With respect to competing Requests made under CalNAGPRA, if there is more than one Request for Repatriation for the same item, NAHC will notify the affected parties of this fact in accordance with CalNAGPRA § 8016. In such cases, the disputing parties must submit documentation to NAHC describing the nature of the dispute, in accordance with standard mediation practices and NAHC's procedures, and meet within thirty (30) days of the date of the mailing of the documentation. If the dispute is not settled then, the parties will enter mediation. If not settled via mediation, NAHC will resolve the dispute. See CalNAGPRA § 8016 for greater detail.

For assistance in resolving a dispute, the parties may choose mediation by a third party mutually agreeable to the Tribes with conflicting Requests, or other appropriate means. Tribal Representatives may also seek resolution with the Federal Advisory Review Committee per NAGPRA (43 C.F.R. § 10.17), or for Requests that fall under CalNAGPRA, with the NAHC, per CalNAGPRA § 8016.

Once the competing Requests are resolved (through an agreement among the requesting Tribes, a mediated or assisted arrangement as described above, or by a court of competent jurisdiction), UC will repatriate or complete a Disposition to the Tribe(s) specified in such an agreement, arrangement or decree, provided that the Tribe(s) have been determined by the UC to be entitled to Repatriation or Disposition under this policy.

## **E. PREVIOUSLY UNREPORTED HOLDINGS**

Compliance with NAGPRA, CalNAGPRA, and this policy is a UC-wide responsibility. Proactive efforts are required across UC to ensure that all Human Remains and Cultural Items are reported and provided appropriate treatment while in the UC's care. Every UC campus will follow the procedures described below.

### **1. Raising Awareness**

The Chancellor must annually communicate with all relevant faculty, researchers, students, staff, and UC retirees from fields most likely to have used Human



Remains and Cultural Items, to raise awareness about the requirements of this policy and related laws and regulations.

## **2. Locating Previously Unreported Holdings**

Even after submission of Inventories and Summaries to federal or state officials and to Tribes, UC may locate previously unreported Human Remains and/or Cultural Items. These may be found in disparate academic units of the UC or inadvertently included among fauna or other materials.

Within one year from implementation of this policy and every three to five (3-5) years thereafter, the Repatriation Coordinator/Point of Contact must review whether the campus is in Possession or Control of previously un-reported Human Remains or Cultural Items. In performing their review, the Repatriation Coordinator/Point of Contact will send a communication to all campus deans, department chairs, and unit heads, providing the definitions of Human Remains and Cultural Items under NAGPRA and CalNAGPRA and instructions on what to look for so that deans, department chairs, and unit heads can make an informed initial assessment about whether their departments/units potentially hold Human Remains or Cultural Items. Deans, department chairs, and unit heads must confirm that they have conducted the search and report whether their departments or units hold Human Remains and Cultural Items under UC's Possession or Control as well as the current location of such items. The Chancellor will set appropriate reporting timelines. Engaging as necessary the assistance of appropriate subject matter experts (e.g., Tribal Representatives, tribal leaders, osteologists, anthropologists, etc.), the Repatriation Coordinator/Point of Contact will review the items in all departments historically engaged in studies with Human Remains or Cultural Items (e.g., archaeology, anthropology, biology, geology, oceanography, physical sciences, dentistry, etc.) and all departments identified by deans, department chairs, or unit heads as potentially holding Human Remains or Cultural Items. University faculty, researchers, students, staff who use Human Remains that are thought *not* to be Native American or Native Hawaiian for research or teaching should identify the provenance of the remains.

Anyone who suspects that Native American items are not properly maintained or reported as required by this policy should contact the campus Repatriation Coordinator/Point of Contact. Alternatively, they can file a report using the [UC Whistleblower Hotline](#).

## **3. Reporting to Campus and Systemwide Committees**

As part of the campus biannual report (see Section V.H), the campus Repatriation Coordinator/Point of Contact will provide to the Campus Committee (if it exists) and Systemwide Committee: a list of locations reviewed (if any) and reports received of previously unreported Human Remains or Cultural Items; a description of the items found and identifications made, where they were located, the status of updated Inventory/Summaries, and whether Consultation has been initiated. Tribes may review this list upon request.

#### **4. Protecting Previously Unreported Items Potentially Subject to NAGPRA or CalNAGPRA**

All newly identified items that are under the Control of the University and are thought to be potentially subject to NAGPRA or CalNAGPRA must immediately be managed and preserved in accordance with the requirements of Section V.J.2. In addition, ongoing research and handling (other than, as determined by the campus Chancellor, research and handling<sup>34</sup> that is conducted only in furtherance of the campus' responsibilities to make determinations as required by NAGPRA/CalNAGPRA) must cease until a determination has been made about whether the items meet the definitions under NAGPRA or CalNAGPRA (see Section V.C.3) and whether the University has Control of the items. If Human Remains and Cultural Items subject to NAGPRA or CalNAGPRA are found, the University will comply with all applicable portions of this policy (e.g., Consultation, Inventory/Summary completion, and respectful treatment), NAGPRA (including 43 C.F.R. § 10.13), CalNAGPRA, and campus policies and procedures. If the items are found not to be subject to NAGPRA or CalNAGPRA, the findings will be recorded (including a description of the items and why these were determined not to be subject to NAGPRA or CalNAGPRA) in the campus biannual report described in Section V.H.

NAGPRA and CalNAGPRA require institutions to update their Inventories and Summaries when they obtain or discover that they have Possession or Control over previously unreported collections. (See NAGPRA 43 C.F.R. § 10.13, CalNAGPRA § 8013(i), and Sections V.C.3 and V.C.4 of this policy.) In accordance with NAGPRA 43 C.F.R. § 10.13, Summaries must be completed within six (6) months and Inventories within two (2) years of locating a previously unreported holding or collection, absent an extension obtained under 43 C.F.R. § 10.9(f). If Human Remains or Cultural Items are found on UC premises for which a non-UC entity retains Control (e.g., items borrowed from a federal or state agency or Museum that have not been returned), these must either be returned to the controlling entity, or a loan agreement must be entered into with the controlling entity as provided in Section V.K.1.

#### **F. RECEIPT OF HUMAN REMAINS OR CULTURAL ITEMS**

UC will not accept Possession or Control of Human Remains and Cultural Items, except upon a Tribe's request or upon approval by the Chancellor, and in all cases, provided the primary reason for acceptance of the Human Remains is to facilitate the Repatriation process in accordance with the Purpose and Guiding Principles of this policy. As part of the campus biannual report (see Section V.H), the Repatriation Coordinator/Point of Contact must report to the Campus and Systemwide Committees any newly accepted Human Remains and Cultural Items.

UC faculty, researchers, students, and staff who have Human Remains or Cultural Items in their private collections on private property are encouraged to transfer Possession and Control to UC so that UC can pursue Repatriation or Disposition as

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<sup>34</sup> Any handling should be necessary, reasonable, and should not conflict with respectful stewardship as identified in Section V.J.

described in this policy. (See also Section V.K.1 prohibiting the presence of private collections of Human Remains and Cultural Items on campus, and Section V.J.1, requiring University employees or retirees/emeriti that have removed Human Remains or Cultural Items from UC premises to return these to the University.)

#### **G. VOLUNTARY DEACCESSIONING OF ITEMS WHICH ARE NOT NAGPRA/CALNAGPRA-ELIGIBLE**

Section V.D. covers the required Deaccessioning of NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items from UC locations through the Repatriation or Disposition processes. In addition, if a Tribe has requested items that have been determined *not* to be Human Remains or Cultural Items as defined by NAGPRA and CalNAGPRA in recognition of the principles articulated in Section III.B, campuses are encouraged to consider voluntarily Deaccessioning such items to the requesting Tribe. In making these decisions, campuses should consider the Tribe's relationship to such items, whether the items are related to other items subject to NAGPRA/CalNAGPRA, campus deaccessioning practices, and applicable laws.

#### **H. REPORTING AND OVERSIGHT**

The Systemwide Committee and Campus Committees will promote the implementation of this policy consistent with the Purpose and Guiding Principles contained herein, and provide oversight of compliance with this policy, and with state and federal laws and regulations, in accordance with Section A of this policy. The Systemwide Committee and Campus Committees may request reports from the campus Chancellor as needed to fulfill their oversight functions.

The Chancellors must ensure compliance with this policy and applicable laws and regulations (See Section **Error! Reference source not found..B**).

A campus Chancellor may initiate an internal audit to evaluate campus compliance with this policy and applicable laws and regulations, and/or reviews to benchmark the campus' performance or assess the need for improvements.

The President may initiate an internal audit to evaluate systemwide compliance with this policy, and applicable laws and regulations, and/or reviews to benchmark UC's performance or assess the need for improvements.

In order to assist the President, the Chancellor, and Campus and Systemwide Committees in their oversight duties, the campus Repatriation Coordinator/Point of Contact must submit biannual reports to all of the above. If possible, the biannual reports should be submitted 2 days prior to a Campus Committee meeting so that the Repatriation Coordinator can answer any questions the Committee may have regarding the report at their meeting. The biannual report must include a listing of:

- 1) All pending Requests, date received, and status, including relevant dates;
- 2) Status of Federal and CalNAGPRA Notices;
- 3) Tribes consulted, including the content and status of the consultation.
- 4) Repatriations or Dispositions completed, including:
  - (i) Requesting Tribe(s)

- (ii) Whether the Tribe submitted their Request using the NAGPRA or CalNAGPRA process, or both
  - (iii) Whether Human Remains or Cultural Items have been physically transferred
- 5) All loan agreements (see Section V.K);
  - 6) Materials found as a result of the reviews required under Section V.E (see Section V.E.3 for reporting requirements); and
  - 7) Newly accepted Human Remains and Cultural Items (see Section V.F).

## **I. COMPLAINTS, APPEALS, AND DISPUTES**

### **1. Complaints**

Complaints about violations of this policy may be directed to the campus Chancellor, who will promptly confirm receipt of the complaint, and will provide a response to the complainant within forty-five (45) days from receipt of the complaint. If the Tribe has elevated its concern to the campus Chancellor and is still dissatisfied with the response, the Tribe can additionally file a complaint to any of the following: the Campus Committee, the Systemwide Committee, or the UC President (at [President@ucop.edu](mailto:President@ucop.edu)), or seek mediation/resolution as described in the subsections below. Contact information for filing a complaint must be posted on the campus' website.

### **2. Appeal of Disputed Requests for Cultural Affiliation / State Cultural Affiliation, Repatriation, or Disposition**

Tribal Representatives who believe UC decisions (including but not limited to those related to Cultural Affiliation / State Cultural Affiliation, identification of Cultural Items, Repatriation, Disposition, Summaries, or Inventories) were not supported by the Preponderance of Evidence, did not accord proper consideration of tribal evidence, or were based on an incorrect interpretation of law, may initiate an appeal through either of the following options:

- 1) If the decision was made by the Chancellor's Designee, the Tribe(s) may appeal to the Chancellor; or
- 2) The Tribe(s) may appeal a campus decision to the President by submitting a request for appeal to [President@ucop.edu](mailto:President@ucop.edu).

After the Chancellor has made a decision, the campus will wait at least thirty (30) days (with provision of extension for good cause) before submitting Notices of Inventory Completion and/or Notices of Intent to Repatriate to National NAGPRA to allow affected Tribe(s) to request an appeal.<sup>35</sup>

See also Appeals Flowchart on UC's NAGPRA website.

Information about how to file an appeal must be posted on a public-facing campus website. The appeal will be reviewed, based on the existing record and

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<sup>35</sup> If all affected Tribes agree to shorten or waive the 30-day waiting period, UC may proceed with the submission of the Notice to National NAGPRA.

the evidence previously submitted (i.e., new evidence will not be considered as part of an appeal, but may be the basis of a new Request).

For an appeal to the Chancellor: Within thirty (30) days of receipt of the Tribe(s)' request for an appeal, the Chancellor will make the decision to uphold, reverse, or modify the determination of the Chancellor's Designee, provided that all applicable legal and policy requirements are met, and provide the appealing Tribe(s) with a written explanation and basis for approving or denying the appeal.

For an appeal to the President: The Systemwide Committee will meet as soon as possible (but no later than ninety (90) days from the President's receipt of the request for an appeal) to review the appeal and provide a recommendation to the President. Within thirty (30) days of receipt of the Systemwide Committee's recommendation, the President will make the decision to uphold, reverse, or modify the campus determination, provided that such a decision must be based on a determination that all applicable legal and policy requirements are met, and provide the appealing Tribe(s) with a written explanation and basis for approving or denying the appeal.

### **3. Additional Tribal Rights under the Complaints and Appeal Processes**

Through both the complaint and/or appeal process:

- a. Tribal Representatives will be invited to present their views orally or in writing to Campus or Systemwide Committees and/or UC decision-makers.
- b. Tribal Representatives may request third-party mediation to assist in efforts to reach agreement. Such mediation may include any means mutually agreed to by all parties and approved by the Chancellor.
- c. Tribal Representatives may file a request with the Federal Advisory Review Committee per NAGPRA 43 C.F.R. § 10.17, for assistance in resolving a dispute. To the extent permitted by UC resources, UC will make a good faith effort to participate in the Federal Advisory Review Committee dispute resolution/mediation process.
- d. Tribal Representatives from California Indian tribes may file a request with the NAHC for assistance in resolving a dispute under the process outlined in CalNAGPRA § 8016. To the extent that there is no direct conflict between the federal process referenced above and the CalNAGPRA process referenced herein, UC will participate in the NAHC dispute resolution/mediation process.

Under CalNAGPRA § 8013(j)(1), if a consulting California Indian tribe disagrees with the contents of a preliminary Inventory or Summary, UC must either revise the preliminary Inventory or Summary to correct the disputed information or the NAHC must offer to initiate dispute resolution as described in CalNAGPRA § 8016, and preliminary Inventories or Summaries will not become final until disputes are resolved.

Under CalNAGPRA § 8016, if there is more than one Request for Repatriation for the same item (see also Section V.D.7), if there is a dispute between the requesting party and UC, if there is a dispute as to the contents of an Inventory or Summary, or if a dispute arises in relation to the Repatriation process, NAHC

will notify the affected parties of this fact. The disputing parties will submit documentation to NAHC describing the nature of the dispute, in accordance with standard mediation practices and NAHC's procedures, and meet within 30 days of the date of the mailing of the documentation. If the dispute is not settled then, the parties will enter mediation. If not settled via mediation, NAHC will resolve the dispute. See CalNAGPRA § 8016 for greater detail.

- e. Tribal Representatives may file a claim in a court of competent jurisdiction.

#### Notes on Section I:

- To the extent permissible by law, timelines here may be modified by mutual agreement between the Tribes and UC officials.
- The process described in this Section may be impacted by UC's legal responsibilities under NAGPRA/CalNAGPRA, and in some cases, UC may have to proceed with NAGPRA/CalNAGPRA required steps, even while seeking resolution. The Repatriation Coordinator will inform affected Tribes of any such developments.

## **J. RESPECTFUL STEWARDSHIP**

Campuses with Possession or Control of Human Remains or Cultural Items must adopt procedures consistent with this section, to ensure respectful treatment of such Human Remains and Cultural Items and compliance with all applicable laws and regulations.

### **1. Treatment**

All Human Remains and Cultural Items must be treated in a respectful manner.

Consultation with Tribal Representatives is imperative for providing care and treatment in accordance with tribal traditions. Tribes may have their own traditional perspectives on care, storage, and handling. Each campus with a NAGPRA/CalNAGPRA-eligible collection must post on their website how to make traditional care requests.

In addition, as part of the Consultation process, UC will seek information from consulting Tribes regarding traditional care, and will collaborate with the affiliated Tribal Representatives to develop and incorporate traditional care practices to the extent possible. In cases where traditional care requests cannot be strictly accommodated, the campus will collaboratively explore alternative arrangements with the Tribes in order to implement culturally sensitive care while upholding the safety and security of all collections.

The Repatriation Coordinator will also engage in Consultation with California Indian tribes as part of the completion of Inventories and Summaries (including preliminary Inventories and preliminary Summaries) and defer to tribal recommendations for appropriate handling and treatment.<sup>36</sup>

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<sup>36</sup> CalNAGPRA § 8013(c)(2).

If there are competing tribal recommendations/requests for appropriate handling and treatment or traditional care, the Repatriation Coordinator will attempt to facilitate a solution, and/or convene the Tribes to discuss and defer to their joint recommendations. If the Tribes cannot come to agreement, the Repatriation Coordinator may seek a recommendation from the Campus Committee. The Chancellor will make the final decision within thirty (30) days of receiving the recommendation.

Only authorized individuals<sup>37</sup> will have access to Human Remains and Cultural Items, which must be stored in dedicated spaces that are not accessed by the public.

Human Remains should be handled as little as possible, and only for essential functions (e.g., safety issues and functions essential to Repatriation or curation).

To the maximum extent possible, Human Remains and Funerary Objects from the same Burial Site and from the same general geographic location should be kept together. In addition, the campus will retain all packaging materials (boxes, bags, jars, acid-free tissue paper, etc.) that previously held Human Remains so that they can be offered to Lineal Descendants or Tribal Representatives at the time of transfer. Campuses should not remove any soil adhering to Human Remains or Cultural Items unless necessary for compliance with NAGPRA/CalNAGPRA, and if soil is loosened, it will be collected and offered at the time of transfer as well.

Human Remains and Cultural Items in UC's Possession or Control must not be removed from UC premises except as permitted under Section V.K.2. University employees or retirees/emeriti that have removed Human Remains or Cultural Items from UC premises must immediately return these to the University. Individuals will be granted a reasonable opportunity to return these items voluntarily, after which UC may pursue legal action for items taken without authorization.

## **2. Management and Preservation**

Campuses must ensure that all Human Remains and Associated Funerary Objects are managed and preserved in accordance with definitions, standards, procedures, and guidelines set out by [36 C.F.R. § 79.9\(b\)\(3\)](#)<sup>38</sup>, except as approved by the Chancellor or to accommodate a request for traditional care from a Culturally Affiliated Tribe. Consistent with those standards, campuses must keep Human Remains and Associated Funerary Objects under physically secure conditions by:

- a. Having the physical plant meet local electrical, fire, building, health and safety codes;

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<sup>37</sup> The Repatriation Coordinator shall maintain a list of authorized individuals or positions (e.g. custodians), and the list shall be accessible to Tribes, upon request.

<sup>38</sup> Though these regulations only directly apply to UC in limited circumstances (e.g., where UC has possession of federal collections), UC is adopting these standards for all Human Remains and Associated Funerary Objects in its Control or Possession.

- b. Having an appropriate and operational fire detection and suppression system;
- c. Having an appropriate and operational intrusion detection and deterrent system;
- d. Having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;
- e. Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;
- f. Limiting and controlling access to keys, the collection and the physical plant; and
- g. Inspecting the physical plant in accordance with 36 C.F.R. § 79.11 for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection.

All exceptions must be reviewed by the Campus Committee, which will make a recommendation to the Chancellor.

### **3. Access by Lineal Descendants and Tribes for Consultation and Cultural or Spiritual Care**

Lineal Descendants and Tribal Representatives must be permitted access to the Human Remains, Cultural Items, and associated collections and records during the Inventory/Summary, Cultural Affiliation, and Repatriation and Disposition processes for the purpose of cultural or spiritual care (see Section V.B.1 and Flowcharts on UC's NAGPRA website. Arrangements are to be established in advance of the visit with the campus Repatriation Coordinator. These requests should normally be made at least two weeks in advance of the visit to allow for adequate preparation and staffing, but the Repatriation Coordinator should be sensitive to tribal needs.

### **4. Restriction of Access to Human Remains and Cultural Items for Research, Instruction or Other Purposes**

UC campuses may not authorize research (including destructive analysis such as absolute dating, radiocarbon dating, DNA analysis including mitochondrial DNA analysis, stable isotope analysis, or other biomolecular analysis), classroom use, or other use of any identified or potential Human Remains and Cultural Items, except in the limited circumstances outlined below. Under **no** circumstances will UC authorize the exhibition of Human Remains.

- 1) If the Human Remains and/or Cultural Items have been Culturally Affiliated or State Culturally Affiliated, the Culturally Affiliated and State Culturally Affiliated Tribal Representatives from those Tribes must provide explicit written authorization.



In addition, if a Federally Recognized tribe sponsored or partnered with a non-Federally Recognized tribe, then the Tribal Representative from the non-Federally Recognized tribe must also provide explicit written authorization.

- 2) If the Human Remains and/or Cultural Items are Culturally Unidentifiable, Tribal Representatives from all Tribes whose Aboriginal lands or tribal lands (as outlined in NAGPRA 43 C.F.R. § 10.11) overlap with the location where the Human Remains and/or Cultural Items originate must provide explicit written authorization.

Requests for tribal authorization must include a clear and easily understood explanation of the duration, type, nature, and extent of research being requested, and the potential impacts on the Human Remains and Cultural Items.

Compliance with the requirements of 1) and 2) above notwithstanding, once a campus receives a Request for Cultural Affiliation / State Cultural Affiliation, Repatriation or Disposition of Human Remains, the campus will impose a moratorium on all access for research, instruction, or other purposes (unrelated to making determinations in compliance with NAGPRA, CalNAGPRA, and/or this policy) until the Request is resolved.

Whether internal or external to UC, *all persons seeking access to Human Remains and/or Cultural Items for research, instruction, or other purposes must provide to the Repatriation Coordinator documentation demonstrating explicit tribal written authorization as described above.* The Repatriation Coordinator must check the records to ensure that no pending appeals or complaints have been filed related to the Human Remains or Cultural Items requested before forwarding the request and all compliance documents referenced above to the Chancellor for approval.

In reviewing access requests for research, instruction, or other purposes unrelated to making determinations needed for compliance with NAGPRA or CalNAGPRA, the Chancellor will consider (i) evidence of tribal Consultation and authorizations as required above, (ii) tribal input, and (iii) efforts to maintain high standards of care and respect for all Human Remains and/or Cultural Items.

Once the Tribes and the Chancellor have authorized the request, the campus will make the loan for such use as described in Section V.K.2.

## **K. NEW REQUESTS FOR SHORT-TERM CARE AND LOANS**

### **1. Loans to UC**

Except as permitted herein, Human Remains or Cultural Items from private collections or other institutions are not permitted on campus. However, under certain circumstances and provided the conditions below are satisfied, campuses may accept loan agreements for UC's care of Human Remains and Cultural Items.

**Examples of acceptable circumstances under which UC may receive loans include:**

- a) A request that UC perform an analysis of the Human Remains or Cultural Items at the behest of a Culturally Affiliated or State Culturally Affiliated Tribe.
- b) A request that UC perform an examination of the Human Remains or Cultural Items to aid the loaning institution in carrying out its NAGPRA or CalNAGPRA responsibilities. However, unless Culturally Affiliated Tribes have given explicit written authorization for testing, in carrying out such examinations, the campus may only use minimally invasive procedures and may not use destructive analysis (such as absolute dating, radiocarbon dating, DNA analysis including mitochondrial DNA analysis, stable isotope analysis, or other biomolecular analysis).
- c) A request from an entity that recently discovered Human Remains or Cultural Items that is unable to provide immediate and appropriate care.
- d) Other research or care approved by or performed in Consultation with the Culturally Affiliated Tribe(s).

### **Conditions for Loans to UC**

For all requests for loans *to UC*, the following conditions apply:

- a) Unless the loan is from a Tribe, before accepting the loan the Campus Committee must review and may advise on which tribes must be consulted.
- b) The controlling agent has requested that the UC maintain such short-term care.
- c) UC and the controlling agent have entered into an agreement in writing, delineating the terms of the loan, including, if appropriate, applicable terms relating to NAGPRA or CalNAGPRA compliance responsibilities.
- d) Loans may not exceed two (2) years unless extensions are approved by the Chancellor.
- e) UC maintains the Human Remains and Cultural Items in accordance with the standards described in Section V.J.2 above unless otherwise described in the agreement between the controlling agent and UC and approved by the Chancellor after consultation with the Campus Committee.
- f) Records of all loan agreements under this section must be maintained by the Repatriation Coordinator or a designated museum official. The Repatriation Coordinator will include a summary of Human Remains and Cultural Items loaned to UC in the campus biannual report described in Section V.H.

## **2. Loans from UC**

Provided the conditions below are satisfied, UC may make short-term loans of Human Remains and Cultural Items that are in UC's Control.

### **Conditions for Loans from UC**

For all requests for loans *from UC*, the following conditions apply:

- a) Loans may be made only upon documented tribal written authorization and Chancellor approval as described in Section V.J.4.

- b) The Repatriation Coordinator must ensure that there are no related pending appeals or complaints as described Section V.J.4.
- c) Loans may not exceed two (2) years unless extensions are approved by the Chancellor.
- d) Prior to transporting items, UC and the party accepting the loan will enter into a written loan agreement which details the terms of the loan, including:
  - 1) The precise items loaned;
  - 2) The start and end date of the loan, and a provision for termination of the loan for any reason;
  - 3) The expectations for respectful Stewardship and other applicable conditions in accordance with this policy and any applicable campus museum/repository policies;
  - 4) If applicable, the precise type, nature, and extent of testing permitted, including any restrictions on the research that have been placed by Tribes;
  - 5) A specification that loaned items must be returned in the same condition in which they were loaned (unless otherwise specified in the loan agreement);
  - 6) The method of transport and other logistics for the transfer to the loan recipient and the return of the loaned materials; and
  - 7) A requirement that researchers disseminate their research results to all Tribes that authorized the research use.
- e) Culturally Affiliated / State Culturally Affiliated Tribes will be provided the opportunity to inspect the location where loaned items will be stored, observe the packaging associated with the loan request, coordinate transportation, and observe any unpacking and handling at the destination site.
- f) The Repatriation Coordinator or a designated museum official will review and note the condition of loaned materials at the time the loan is made and upon its return (i.e., have the items been shellacked, treated with pesticide, repaired, etc.), and any apparent violation of the terms of research condition.
- g) The Repatriation Coordinator or a designated museum official will create a method to track all loans, maintaining a list that minimally includes the name of the entity or person to whom the loan is made, the purpose of the loan, Tribes that approved the loan, a general description and condition of the materials loaned, date loaned, and date returned. As part of the campus biannual report (see Section V.H), the Repatriation Coordinator must provide such list to the Campus and Systemwide Committees.
- h) The Repatriation Coordinator will biannually review the list and follow up to ensure the return of loaned items.
- i) Documentation of all items required under this Section V.K.2 will be maintained by the UC official that carried out these duties (i.e., the Repatriation Coordinator or a designated museum official).

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## **VI. REPATRIATION IMPLEMENTATION PLAN**

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Each campus with NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items will develop a Repatriation Implementation Plan in coordination with the Campus Committee . The Repatriation Coordinator must provide a copy of the campus Repatriation Implementation Plan to the Systemwide Committee within 5 days from finalization of the Plan. Nothing in this Section VI shall preclude initiating repatriation and dispositions prior to the deadlines imposed in this Section VI. Further, nothing in this Section VI shall delay any ongoing repatriation and dispositions.

At a minimum, the Repatriation Implementation Plan will contain the following components.

### **1. Proactive Review of CUI Determinations.**

The Campus Repatriation Implementation Plan must describe the process to be undertaken to proactively (i.e., regardless of whether a tribal Request has been received):

- a. Inform Tribes of UC collections that may include Cultural Items and invite Tribes for Consultation, and
- b. Review and update previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, as described in Section V.C.5.

In performing these reevaluations, campuses will consult with Tribal Representatives, reevaluate originally considered evidence, and consider: any newly available evidence or information, Tribal Traditional Knowledge, changes in applicable law, the addition of new California Indian tribes under CalNAGPRA and new Federally Recognized tribes under NAGPRA, or other Tribes that should be consulted. Reevaluation may provide the basis for revising a decision for Cultural Affiliation/State Cultural Affiliation, or about the number or nature of Cultural Items listed in a previously submitted Summary, Inventory, Notice of Intent to Repatriate or Notice of Inventory Completion. (See also Sections V.B.1, V.C., and Flowcharts on UC's NAGPRA website for more details on the process.)

The reevaluations will be for the limited purpose of advancing Repatriation or Disposition. This section will not be construed to authorize the completion or initiation of any scientific study or destructive analysis (such as absolute dating, radiocarbon dating, DNA analysis including mitochondrial DNA analysis, stable isotope analysis, or other biomolecular analysis) of Human Remains or Cultural Items.

Campuses must proactively review and update previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, and initiate or re-initiate consultation with:

- a. Tribes that are likely to be Culturally Affiliated or State Culturally Affiliated;
- b. Tribes from whose tribal lands, at the time of the removal, the Human Remains and Associated Funerary Objects were removed; and

- c. Tribes from whose Aboriginal lands the Human Remains and Associated Funerary Objects were removed.

Campuses are encouraged to reevaluate first those portions of their collections for which information is readily available or about which Tribes have expressed special interest. If Tribal Representatives request a reevaluation of a previous determination that specific Human Remains or Cultural Items are Culturally Unidentifiable, such Requests will be prioritized.

## **2. Outreach to Culturally/State Culturally Affiliated Tribes**

Campus Repatriation Implementation Plans must describe campus strategies for reaching out to Culturally Affiliated/State Culturally Affiliated Tribes that have not yet requested or taken possession of the affiliated Human Remains and Cultural Items to see how the campus can support them in these efforts and discuss a Stewardship agreement if the Tribe is not able to physically accept the transfer. Such Tribes must be contacted at least annually.

## **3. Outreach to Controlling Agencies**

Campus Repatriation Implementation Plans will include a schedule for reaching out to agencies that have Control of Human Remains and Cultural Items currently held by UC to prompt and encourage those agencies' Repatriation efforts. Such agencies must be contacted at least annually. In addition, the campus Repatriation Coordinators will post a list of such collections by county and controlling agency on a UC public facing website.

## **4. Budget Estimate**

Campuses must estimate the costs necessary to carry out their responsibilities under this policy and include a detailed budget in their Repatriation Implementation Plans. Campuses may benchmark against institutions with similarly sized collections to estimate the costs. Campus budgets should also contain a line item to specify the amount of available funds set aside for financial assistance to consulting Tribes, such as stipends, travel assistance, or reburial assistance.

## **5. Campus Repatriation Plan Timeline**

Campuses must include a timeline for full Repatriation of all campus held Human Remains and Cultural Items, with estimated target dates. See sample timeline on UC's NAGPRA website.

Campuses may include cost estimates for full Repatriation within various timelines (e.g., within ten (10) years if \$x amount is available, and within five (5) years if \$y is available).

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## **VII. RELATED INFORMATION**

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- a. [Native American Graves Protection and Repatriation Act](#), 25 U.S.C. §§ 3001-13.
- b. [Native American Graves Protection and Repatriation Regulations](#), 43 C.F.R. §§ 10.1-.17.

- c. [California Native American Graves Protection and Repatriation Act](#), Cal. Health & Safety Code §§ 8010-30.
- d. [United Nations Declaration on the Rights of Indigenous Peoples](#), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).
- e. [California Executive Order No. N-15-19](#) (June 18, 2019).
- f. [Curation of Federally-Owned and Administered Archaeological Collections](#), 36 C.F.R. § 79.9(b)(3).
- g. [UC Facilities Manual, Volume 2, Chapter 5: Environmental Issues and CEQA Compliance](#)
- h. [UC Policy on Anatomical Donation and Materials Programs](#)
- i. Regents Policy 1111, Policy on [Statement of Ethical Values and Standards of Ethical Conduct](#)
- j. [UC Policy BFB-IS-3: Electronic Information Security](#)
- k. [UC Whistleblower Policy](#)

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## VIII. FREQUENTLY ASKED QUESTION

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Not applicable.

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## IX. REVISION HISTORY

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**(Date TBD):** This Policy replaces the Interim Policy issued on July 24, 2020, and includes updates to incorporate changes to CalNAGPRA under AB 275 (effective January 1, 2021).

**July 24, 2020:** An interim policy was issued to replace the Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items (eff. May 1, 2001; reformatted July 2012; technical edits March 2013).

This Policy was also remediated to meet Web Content Accessibility Guidelines (WCAG) 2.0.

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## X. APPENDIX

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Not applicable.



OFFICE OF THE PROVOST AND  
EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT  
1111 Franklin Street, 12<sup>th</sup> Floor  
Oakland, California 94607-5200

March 1, 2021

CHANCELLORS  
ACADEMIC COUNCIL CHAIR MARY GAUVAIN  
LABORATORY DIRECTOR MICHAEL WITHERELL  
ANR VICE PRESIDENT GLENDA HUMISTON

**Re: Systemwide Review of Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation**

Dear Colleagues:

Enclosed for systemwide review are proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation. Once the revised draft Policy has been reviewed and approved (including incorporation of any additional changes adopted in response to comments received), the University will issue a final policy to replace the current Interim Policy.

**Background Context**

This Policy pertains to the treatment and repatriation of Native American and Native Hawaiian human remains and cultural items under the University's possession or control and the University's compliance with the federal Native American Graves Protection and Repatriation Act ("NAGPRA"), its accompanying regulations, and the California Native American Graves Protection and Repatriation Act ("CalNAGPRA"). This effort began in 2018 in response to AB 2836, a California bill that required the University to revise its previous policy.

On July 24, 2020, President Napolitano issued the Policy as interim in order to allow tribes additional time for review due to the COVID-19 pandemic. At that time, the comment period was extended through November 15, 2020, with the intention that UC would issue a final updated Policy by December 31, 2020. On September 29, 2020, AB 275 which made substantial changes to the CalNAGPRA was signed into law, effective January 1, 2021. The prevailing concern communicated by the responding tribes and the California Native American Heritage Commission (NAHC) during the extended comment period was that the Interim Policy did not reflect these new requirements. Respondents urged UC not to implement a final Policy by December 31, 2020, but rather to delay issuance and allocate additional time to ensure that AB 275 could be fully incorporated into the Policy. This revised Policy now incorporates AB 275 requirements.

**Summary of Major Changes**

The key changes in this Policy include:

1. Definitions (§ II) have been added and revised where needed to align with CalNAGPRA.
2. As required by CalNAGPRA, deference to tribal traditional knowledge, oral histories, documentation, and testimonies is now indicated when determining state cultural affiliation,

March 1, 2021

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identifying cultural items under CalNAGPRA, and making decisions related to the CalNAGPRA repatriation process (§§ V.C.1 and V.J.1).

3. In consultation with California Native American tribes, Campuses must prepare preliminary inventories/summaries by January 1, 2022 for submission to the NAHC (§§ V.B.1.k, V.C.1, and V.C.5).
4. The CalNAGPRA dispute procedures available to California Indian tribes have been added (§ V.I).
5. The AB 275 procedures for submissions of claims under CalNAGPRA have been incorporated (§ V.D.3).
6. The flowcharts and narrative previously described in Appendices A, A-1, and B of the Interim Policy have been removed. These documents were intended as visual aids in understanding the consultation, claims, repatriation, and appeals processes described in the Interim Policy rather than as a means of separately conveying policy requirements not described in the Interim Policy. However, as stated in the revised Policy (§§ III.C, V.B.1.i, V.B.2, V.D.1, V.D.3, V.I, V.J.3, and VI.1), UC will maintain these flowcharts on UCOP's NAGPRA website. This will allow UC to make more responsive ongoing updates to the flowcharts to clarify these processes as they are more fully implemented, based on feedback from tribes, committee members, and UC repatriation staff.

### Systemwide Review

Systemwide review is a public review distributed to the Chancellors, the Chair of the Academic Council, the Director of the Lawrence Berkeley National Laboratory, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, especially affected employees, about policy proposals. Systemwide review also includes a mandatory, 90-day full Senate review.

Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

We would appreciate receiving your comments no later than **May 26, 2021**. Please submit your comments to [RPAC@ucop.edu](mailto:RPAC@ucop.edu). If you have any questions, please contact Lourdes DeMattos at [Lourdes.DeMattos@ucop.edu](mailto:Lourdes.DeMattos@ucop.edu) or (510) 987-9850.

Sincerely,



Michael T. Brown, Ph.D.  
Provost and  
Executive Vice President for Academic Affairs



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Enclosures:

- 1) Presidential Policy on Native American Cultural Affiliation and Repatriation (clean copy)
- 2) Presidential Policy on Native American Cultural Affiliation and Repatriation (redline copy)
- 3) Model Communication

cc: President Drake

Executive Vice Chancellors/Provosts

Executive Vice President and Chief Operating Officer Nava

Senior Vice President Bustamante

Vice President and Vice Provost Gullatt

Interim Vice President Lloyd

Vice President Maldonado

Vice Provost Carlson

Vice Provosts/Vice Chancellors of Academic Affairs/Personnel

Deputy General Counsel Woodall

Associate Vice Provost Lee

Assistant Vice Provosts/Assistant Vice Chancellors/Directors – Academic Personnel

Executive Director Baxter

Executive Director and Chief of Staff Henderson

Executive Director Silas

Chief of Staff Kao

Chief of Staff Levintov

Chief of Staff Peterson

Director Grant

Director Sykes

Manager Crosson

Manager Smith

Analyst Durrin

Policy Advisory Committee

Associate Director DeMattos