



NATIVE AMERICAN HERITAGE COMMISSION

WEBINAR: OVERVIEW OF THE INTERIM UC NATIVE AMERICAN CULTURAL AFFILIATION AND REPATRIATION POLICY

November 5, 2020

I. AB 275 COMPATIBILITY WITH UC INTERIM REPATRIATION POLICY

A. Preliminary Inventories and Related Updates

1. AB 275's Requirements

a. Creation of Preliminary Inventories and Updates

By January 1, 2022, the UC must update inventories and preliminary inventories based upon state cultural affiliation, including the cultural affiliation of California non-federally recognized tribes. (Health & Saf. Code, § 8013, subds. (b)(1), (C)(i), as amended.) Prior to conducting any inventorying work, this must include consultation with affiliated California Indian tribes. (Health & Saf. Code, § 8013, subd. (b)(B), as amended.)

b. Preliminary Inventory Publication and Consultation

Within 90 days of completing preliminary inventories and summaries which include state cultural affiliation, state agencies/museums must provide copies to the Commission. (Health & Saf. Code, § 8013, subd. (d), as amended.) The Commission must publish notices of completion on its website for 30 days, as well as make them available to any requesting potentially culturally affiliated California Indian tribe. (*Ibid.*) After providing the preliminary inventory and summary to the Commission, the state agency/museum must consult with California Indian tribes that may be culturally affiliated. The Commission may assist in identifying California Indian tribes for consultation, but the obligation to contact and consult rests with the state agency/museum. (Health & Saf. Code, § 8013, subd. (j)), as amended.)

c. Disagreements over the Contents of a Preliminary Inventory

If a tribe disagrees with the contents of a preliminary inventory, the agency must either revise the preliminary inventory to correct the disputed information or the Commission shall offer to initiate dispute resolution through its mediation process. (Health & Saf. Code, § 8013, subd. (j)(1). The dispute resolution and mediation process is discussed below under Dispute Resolution.

2. UC Interim Policy

a. Inventories and Commission Publication

The UC Interim Policy does not provide for consultation prior to any inventorying work, nor does it even require the creation of preliminary inventories, nor provide for Commission publication of preliminary inventories, nor any broad tribal notification requirement. (Interim UC Policy at pp. 21-25.)

b. Disagreements of a Preliminary Inventory's Contents

The UC Interim Policy does not specifically address disagreements over the contents of inventories, preliminary or otherwise. A tribe could file a complaint or appeal, after-the-fact, but unlike AB 275, the burden would fall on the tribe to establish a mistake and it would be reviewed internally by the UC chancellor. (UC Interim Policy at p. 33.)

3. Comparison and Analysis

a. Preliminary Inventory Creation

The current UC Interim Policy does not provide for the creation of preliminary inventories, nor does it require tribal consultation before beginning this work. The Legislature documented that the UC's "absence of required consultation with California Native American tribes with respect to repatriation has resulted in some University of California campuses excluding or limiting the participation of stakeholders who could bring valuable knowledge to the repatriation process." (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(9).) The UC Interim Policy perpetuates this problem by failing to require the creation of preliminary inventories integrating consultation at the earliest possible time.

b. Commission Publication

AB 275's requirement that the Commission post preliminary inventories is significant because the UC may be unaware of potentially affiliated California Indian tribes (particularly non-federally recognized tribes) resulting from its past documented history of failing to consult with California tribes. The State Auditor documented that through sloppy accounting, including campuses lacking

“controls for keeping track of what they had loaned,” that they had lost remains and items. (June 2020 Audit Report at p. 28.) According to the State Auditor, “only Berkeley could tell us how many items were missing from its NAGPRA collection.” (*Id.* at p. 29.) While “all three campuses identified missing remains and artifacts during the initial inventories they completed in the 1990s to 2000, only Davis and Los Angeles could demonstrate that they informed tribes of what was missing.” (*Ibid.*) Given this history, Commission posting of preliminary inventories, as required under AB 275, is vital to help ensure the proper identification of culturally affiliated tribes.

c. Disagreements

The UC Interim Policy does not provide for consultation with tribes concerning the initial contents or inventorying. Tribes may not even be aware that items were initially excluded from the process. As previously mentioned, this is a legitimate concern after the State Auditor documented the UC’s sloppy accounting and controls for tracking Native American remains and cultural items. (June 2020 Audit Report at p. 28.) Assuming a tribe becomes aware about problems concerning an inventory’s content, it has the burden to bring a complaint or appeal, which is heard by the UC, itself. But AB 275 puts the burden on the UC to fix the problem or mediate the dispute through a neutral party with expertise in repatriation, the Commission.

B. Determining Cultural Affiliation

1. AB 275: The Role of Tribal Knowledge

a. AB 275 Deference to Tribal Knowledge

In assessing state cultural affiliation under the preponderance of the evidence standard (i.e. that something is more likely than not), AB 275 provides that tribal traditional knowledge alone may be sufficient to meet the standard, but if there is conflicting evidence, tribal traditional knowledge shall be provided deference. (Health & Saf. Code, § 8012, subd. (k), as amended.) AB 275 expressly provides that: “Tribal traditional knowledge shall be used to establish state cultural affiliation and identify associated funerary objects.” (Health & Saf. Code, § 8013, subd. (b)(1)(C)(ii), as amended.)

b. Disagreements

AB 275 permits tribes to dispute cultural affiliation and a preliminary inventory may not become final until the dispute is resolved. (Health & Saf. Code, § 8013, subds. (j)(1) and (2), as amended.) Disputes are handled through the Commission’s mediation process. (Health & Saf. Code, § 8016, as amended.)

2. UC Interim Policy

a. No Deference to Tribal Knowledge

The UC does not provide deference to traditional tribal knowledge in applying its preponderance standard in evaluating the evidence. (UC Interim Policy at p. 4.) While the UC will consider tribal knowledge and oral histories in determining state cultural affiliation, it is just one of many factors the UC will consider. (UC Interim Policy at pp. 23-24.) The UC's final policy, must address this issue because its interim policy fails to accord traditional tribal knowledge the deference owed under state law.

b. Disagreements

The UC Interim Policy does not specifically address disagreements over inventories, but puts the burden on a tribe to file a complaint or appeal, after-the-fact, but unlike AB 275, the burden would fall on the tribe to establish a mistake and it would be reviewed internally by the UC chancellor. (UC Interim Policy at p. 33.)

3. Comparison and Analysis

a. Deference to Tribal Knowledge

Nothing is more fundamental to cultural affiliation than tribal knowledge. While the UC Interim Policy makes tribal knowledge a factor, it does not identify it as the primary factor to be used to establish cultural affiliation, nor does it provide deference to it. This is crucial because the UC has historically placed emphasis on academic experts in history, anthropology, archeology, and genealogy, to conclude that historical or genealogical gaps are sufficient to deny tribal affiliation. It is also important the legislature included specific intent language to address this disparity by stating that the application of State's repatriation policy must be interpreted in alignment with the federal Indian policy of the "canons of construction," meaning that ambiguities and interpretations are to be resolved as the Native Americans would have understood the language and in favor of the tribes. Lack of all of the above, has permitted the UC to retain some of the largest collections of Native American remains and cultural items in the nation. (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(3).)

b. Disagreements

AB 275 precludes the UC from finalizing an inventory until tribal disputes over cultural affiliation have been resolved by a neutral third party, the Commission, with expertise in these matters. The UC Interim Policy allows inventories to become final regardless of existing tribal disagreements and puts the burden on

the tribes to appeal through an internal UC process. The UC Interim Policy fails to accord tribes their full rights and improperly burdens tribes.

C. Final Inventories

1. AB 275

a. 30-Days Publication on Commission Website

An inventory is only final after its posting on the Commission's website for 30-days and all responding tribes listed in the inventory concur with the information in it. (Health & Saf. Code, § 8013, subds. (j)(1) and (2), as amended.)

b. Disagreements

As previously mentioned, any disputes over a final inventory are resolved through the Commission's dispute mediation process. (Health & Saf. Code, § 8016, as amended.)

2. The UC Interim Policy

Each campus determines state cultural affiliation and whether an inventory is final. (UC Interim Policy at pp. 22-25.) Tribes have the burden of appealing this determination. (UC Interim Policy at p. 33.)

3. Comparison and Analysis

The UC Policy is incongruent with State law. As discussed above, posting on the Commission's website is essential given the UC's documented history of inadequate tribal consultations and to ensure that all California Indian tribes with potential cultural affiliation know about UC inventories. As the Commission has a role designating the inventories as final, including the ability to remove an inventory from designation of "final" and have it revert back to a designation of "preliminary" if warranted, additional language needs to be included in the UC Policy concerning these options and rights for the tribes and how the campuses shall interface with the Commission on these designations. Under AB 275, an inventory is only final after the tribes agree, rather than the UC imposing finality. This fosters genuine consultation and better dispute resolution.

D. Claims

1. AB 275

a. Lineal Descendants

- (1) Claims filed with both Commission and UC. (Health & Saf. Code, § 8014, subds. (b)(1)-(2), (A) and (B), as amended.)
- (2) *Lineal descendants* must trace 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 descendance to a known individual whose human remains or cultural items are being claimed." (Health & Saf. Code, § 8014, subds. (a)(1) and (2), as amended.)

b. California Indian Tribes

- (1) Claims filed with both Commission and UC. (Health & Saf. Code, § 8014, subds. (b)(1)-(2), (A) and (B), as amended.)
- (2) California Indian tribes must demonstrate one or both of the following:
 - (a) *Shared Group Identity*: Demonstrate a shared group identity that can reasonably be traced historically with an earlier identifiable group from which the remains/cultural items originated. This is conclusively proven by a published finding in the Federal Register under NAGPRA; and/or
 - (b) *State Aboriginal Territory*: Demonstrate that the remains or cultural items were removed from the state aboriginal territory of the claiming tribe. (Health & Saf. Code, § 8014, subds. (b)(1)-(2), (A) and (B), as amended.)

c. Publication and State Agency Ability to Raise Concerns

- (1) Under AB 275, the Commission will publish the request on its website. (Health & Saf. Code, § 8015, subd (a), as amended.) Within 30-day after receiving the Commission's notice, a state agency/museum may object to the proposed repatriation because it believes the items are not culturally related to the requesting tribe, were not removed from its state aboriginal territory or are not subject to repatriation under CalNAGPRA. (Health & Saf. Code, § 8016, subd. (c), as amended.)

2. UC Interim Policy

a. No Process for Assessing State Cultural Affiliation

The UC Interim Policy makes compliance with CalNAGPRA and filing a state claim optional with no requirement to also file claims with the Commission. (UC Interim Policy at p. 25.) Nor does it provide any guidance in assessing CalNAGPRA claims and ignores lineal descendants.

b. No Process for Raising UC Concerns

The UC Interim Policy does not provide a process for the UC to object to the proposed repatriation, including raising concerns about cultural affiliation or NAGPRA's potential application leading to a different result. (UC Interim Policy at pp. 26-29.)

3. Comparison and Analysis

The UC Interim Policy makes compliance with CalNAGPRA and filing a state claim optional when AB 275 makes filing a claim a requirement which runs concurrently with NAGPRA. By allowing both processes to run concurrently, tribes are in a better position to understand other tribe's claims and to resolve disputes through AB 275's mediation process.

E. Agreements and Enforceability

1. **AB 275:** AB 275 permits parties to coordinate concerning repatriation and to reach agreement concerning repatriation. The Commission “shall receive” copies of repatriation agreements and “shall have the power to enforcement these agreements.” (Health & Saf. Code, § 8015, subd. (b), as amended.)
2. **UC Interim Policy:** 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. (UC Interim Policy at p. 29.)
3. **Comparison and Analysis:** The UC Interim Policy permits the UC to abide by tribal agreements only where it has previously determined that the tribe(s) is entitled to repatriation or disposition; authority that is not provided for under AB 275. But there may be many instances where tribes make agreements that are not reflected in the UC's repatriation process. For instance, federally and non-federally recognized tribes may enter into agreements to have the federally recognized tribe sponsor the repatriation claim for NAGPRA purposes, or in certain circumstances where one tribe sponsors another tribe's repatriation claim due to a tribe's need for assistance. Other examples may also include "consultation" and "confidentiality" terms incorporated into repatriation agreements. Under AB 275, the UC and the tribe must provide these agreements to the Commission which can make the appropriate determination over whether, and how, such agreements can be enforced.

F. Dispute Resolution

1. AB 275 Process

a. UC Must Engage Commission Mediation:

If a dispute arises, the Commission notifies the affected parties. The disputing parties have 30-days to meet to resolve the dispute. If the parties are unable to resolve the dispute, then the Commission will mediate the dispute. If the collection is also subject to federal NAGPRA, then the parties may seek the assistance of the Native American Graves Protection and Repatriation Review Committee in resolving the dispute. (Health & Saf. Code, § 8016, as amended.)

b. Resolution/Decision

The parties “shall come to a resolution or the mediator shall render a written decision within 7 days of the mediation session.” (Health & Saf. Code, § 8016, subd. (d)(4), as amended.)

c. Commission Determination:

If a dispute cannot be resolved through mediation, the Commission shall resolve the dispute. The Commission’s determination is a final administrative remedy and parties may file legal actions in Superior Court based upon an independent review as to whether the Commission’s decision is reasonable based upon the evidence already in the record. (Health & Saf. Code, § 8016, subd. (d)(7) as amended.)

2. UC Interim Policy on Disputes

a. NAGPRA Dispute Resolution Only

The UC Interim Policy only provides for resolving disagreements over NAGPRA-related cultural affiliation and the identification of cultural items; a process which excludes state cultural affiliation involving non-federally recognized tribes. (UC Interim Policy at pp. 20-21.)

b. No Required Commission Involvement

AB 275 requires that disputes proceed through Commission mediation (Health & Saf. Code, § 8016, subd. (d), as amended), but the UC Interim Policy requires tribes to file UC appeals which are handled internally through the Chancellor. (UC Interim Policy at p. 33.) Given the UC’s documented “history of inconsistent application of federal and state repatriation laws,” tribes deserve compliance with state law (AB 275) requiring a neutral entity with expertise, like the Commission, resolve disagreements. (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(8).)

3. Comparison and Analysis:

The UC Interim Policy fails to integrate AB 275 dispute resolution, which is not an optional process. The dispute resolution process ensures a fairer process for all California tribes and, unlike NAGPRA’s process, permits federally and non-federally recognized tribes to participate and to understand each other’s concerns and claims. While dispute resolution is an available option under NAGPRA, AB 275 makes its process mandatory. Further, by allowing the parties to have the benefit of the mediator’s and Commission’s decisions, it fosters dispute resolution in more difficult cases by providing them with reasoned analysis.

G. Other Items: Definitions

1. AB 275 Definitions:

AB 275 provides new definitions for significant CalNAGPRA terms to foster repatriation and to provide better guidance, including for the terms: California Indian tribe, consultation, confidential information, museum, possession, preponderance of the evidence, state aboriginal territory, state cultural affiliation, and tribal traditional knowledge. These definitions are distinct from federal NAGPRA and alter existing CalNAGPRA.

2. UC Interim Policy Fails to Incorporate AB 275's Definitions:

In critical areas, the UC Interim Policy either fails to include definitions provided for by AB 275 or it fails to properly incorporate AB 275's language, as follows:

- a. **California Indian tribe:** AB 275 defines a “California Indian tribe” to mean 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.) or (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. (Health & Saf. Code, § 8012, subds. (c), (1), (2), as amended.) The UC Interim Policy contains a conclusory reference to an outdated statutory reference. (UC Interim Policy at p. 3.)
- b. **Confidential information:** AB 275 provides that consultation “shall recognize the tribes’ potential need for confidentiality with respect to tribal traditional knowledge and all tribal information shared during the consultation.” The Public Records Act (PRA) exempts from public disclosure records related to “sacred places,” and “Native American objects,” as well as “records that the agency obtains through a consultation process. . . .” (Health & Saf. Code, § 8012, subd. (e), as amended; Gov. Code, §§ 6254, subd. (r), 6252.10.) While AB 275 references the need to maintain the confidentiality of tribal traditional knowledge, and tribal “information shared” during consultations as confidential, and the PRA exempts from public disclosure records related to sacred “objects,” and records obtained through consultation, the UC Interim Policy generally extends confidentiality only to records related to “places that have traditional tribal cultural significance,” without defining this phrase and information identified by the consulting tribe as confidential. (UC Interim Policy at p. 3.) The UC Interim Policy needs to broaden its definition of the records deemed confidential and the burden should not be on the tribes to identify all of these records for the UC.

- c. **Consultation:** As part of the definition of consultation, AB 275 requires that: "Consultation also shall recognize the tribes' potential need for confidentiality with respect to tribal traditional knowledge and all tribal information shared during the consultation." (Health & Saf. Code, § 8012, subd. (e), as amended.) This is not included in the UC Interim Policy's definition of the term. (UC Interim Policy at p. 3.)
- d. **Museum:** AB 275 defines "museum," in part, as "an agency, museum, person, or entity, including a higher educational institution, that receives state funds." (Health & Saf. Code, § 8012, subd. (i), as amended.) This definition is absent from the UC Interim Policy, but should necessarily be included so that UC museums and departments have a clear and transparent understanding that they are all subject to CalNAGRA. (UC Interim Policy at p. 4.)
- e. **Possession:** AB 275 defines "possession" to mean "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." The UC Interim Policy omits this definition. (UC Interim Policy at p. 4.)
- f. **Preponderance of the Evidence:** AB 275 provides that tribal traditional knowledge satisfies the "preponderance of the evidence" standard. AB 275 states, "Tribal traditional knowledge alone may be sufficient to meet this standard. If there is conflicting evidence, tribal traditional knowledge shall be provided deference." (Health & Saf. Code, § 8012, subd. (k), as amended.) The UC Interim Policy has no definition for this term. (UC Interim Policy at p. 4.)
- g. **State Cultural Affiliation:** AB 275 defines "state cultural affiliation" to specifically include "Tribal traditional knowledge." (Health & Saf. Code, § 8012, subd. (n)(9), as amended.) The UC Interim Policy fails to include Tribal traditional knowledge in its definition. (UC Interim Policy at pp. 4-5.)

II. ONGOING CONCERNS PREVIOUSLY RAISED BY THE COMMISSION

A. Consultations

1. Existing CalNAGRPA Law Under AB 2836

The UC must adopt all systemwide policies and procedures in consultation with California Native American Indians, including for: 1) the respectful and culturally appropriate treatment of remains and cultural items; 2) procedures for submitting claims; 3) deaccessioning; 4) identification of culturally unidentifiable remains and cultural items (CUI), including updates to existing CUI determinations “to identify cultural items that may not have been identified in the original inventories or summaries because traditional tribal knowledge was not incorporated into the identification process.” (Health & Saf. Code § 8025, subd. (3).)

Consultation is defined as “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 agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.” (Gov. Code, § 65352.4)

2. UC Application of Consultation

a. Auditor's Report Documents Inadequate Consultation

In June of 2020, the California State Auditor completed her review of the UC's compliance with repatriation laws. As to consultations, the State Auditor found that “the university failed to adequately incorporate tribal perspectives during the policy's initial development, . . .” (California State Auditor, Native American Graves Protection and Repatriation Act: The University of California is not Adequately Overseeing its Return of Native American Remains and Artifacts (June 2020) Report No. 2019-047, Opening Statement (June 2020 Audit Report).)

b. Auditor's Report Documents Inadequate Consultation Periods

The State Auditor documented that on March 31, 2020, in response to the UC's second draft, the Commission commented that the UC had provided insufficient time for tribes to review and comment on the Policy prior to conducting consultations. (June 2020 Audit Report at p. 21.) For instance, tribes were provided with just eight days to review and comment upon the Policy (a

lengthy and complex document) prior to the UC holding its public-tribal consultation at UC Berkeley, housing one of the largest Native American collections in the country. No consultations were scheduled north of Davis in spite of the Commission's offer of assistance.

c. Tribal Sovereignty Not Respected

The UC only conducted its public meetings at its campuses, rather than locations convenient for tribes, and it made no effort to assist tribes in their travel to UC sites. This is particularly important for many tribes with few resources and was not mutually respectful of tribal sovereignty. (Gov. Code, § 65352.4) Further, limited efforts were made for individual tribal consultations necessary to reach any form of agreement.

3. Comparison and Analysis

The UC's documented failures to engage in appropriate consultation as defined under California law, and as required under CalNAGPRA, deprived tribes of adequate time to review and comment upon the UC Interim Policy. Not only does this process run counter to express Legislative mandate that it comply with consultation laws, but it also fails to respect tribal sovereignty, fails to carefully consider tribal views, and makes little attempt to reach agreement.

Further, the UC Policy is not clear concerning the points during the repatriation process where tribal consultation is required pursuant to AB 275, including in assembling inventories and preliminary inventories. (UC Interim Policy at pp. 22.)

B. Updating and Revaluations of Items Previously Identified as Culturally Unidentifiable

1. Systemwide Policies for Locating Remains and Cultural Items for Updates

Existing CalNAGPRA law requires the UC to adopt systemwide policies and procedures to identify and update existing inventories. (Health & Saf. Code, § 8025, subd. (2)(D).)

2. Systemwide Policies for Determining Cultural Affiliation for Items Previously Labeled CUI

Existing CalNAGPRA law requires the UC to adopt systemwide policies and procedures to determine whether cultural affiliation can be determined, or to confirm that the human remains are still "culturally unidentifiable" under federal NAGPRA. These policies also must include updates to existing inventories or summaries to identify cultural items that may not have been identified in the original inventories or summaries because traditional tribal knowledge was not

incorporated into the identification process. (Health & Saf. Code, § 8025, subd. (2)(D).)

3. Analysis of UC Interim Policy on Systemwide Reevaluations

Existing law, through AB 2836, requires the UC to adopt systemwide policies governing updates and reinventorying Native American remains and cultural items. As the Commission previously documented in its prior comments (submitted on December 4, 2019, March 31 and June 19, 2020), AB 2836's mandate for a systemwide policy is aimed, in large part, at avoiding the problems that arose in the past as a result of the UC's inconsistent application of repatriation laws across the various campuses. (Health & Saf. Code, § 8025, subd. (a)(2)(B) and (D); Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subd. (a)(8).) Without providing enforceable systemwide procedures for identifying and locating remains and associated items, along with deadlines, some campuses may engage in half-hearted attempts to identify remains across disparate campuses and departments, with no sense of urgency. A systemwide UC Policy, with proper tribal consultation, also removes the element of specific agendas of individual campus or UCOP personnel in the implementation of NAGPRA and CalNAGPRA. The requirement for repatriation under NAGPRA occurred more than thirty-years ago, yet only now is the UC making more serious efforts at compliance. Given its documented history of noncompliance, the UC Interim Policy must comply with existing state law calling for systemwide policies for identifying, locating, and updating existing inventories.

C. Systemwide Policies for Deaccessioning

1. UC Refuses to Adopt Systemwide Policy for Deaccessioning

Under existing law, UC must “[a]dopt or amend, in consultation with California Indian tribes, systemwide University of California museum collection management policies to explicitly provide for the deaccession of collections containing Native American human remains and cultural items to effect the timely and respectful return of those items pursuant to valid claims submitted by a California Indian tribe.” (Health & Saf. Code, § 8025, subd. (a)(2)(C).)

Rather than adopt a systemwide policy in consultation with tribes, the UC Interim Policy provides that “[C]ampuses may voluntarily Deaccession items to the requesting Tribe, in accordance with campus practices and as allowable by law.” (UC Interim Policy at p. 31.)

2. Comparison and Analysis

Existing law, through AB 2836, requires the UC to adopt systemwide policies governing deaccession. AB 2836's mandate for a systemwide policy for deaccessioning collections is aimed, in large part, at avoiding the problems that

arose in the past as a result of the UC's inconsistent application of repatriation laws across the various campuses. (Health & Saf. Code, § 8025, subd. (a)(2)(B) and (D); Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subd. (a)(8).) As previously raised by the Commission (in comments submitted on December 4, 2019, March 31 and June 19, 2020), the UC Interim Policy will result in widely divergent deaccessioning policies across campuses, with some refusing to deaccession, or making the process onerous. More significantly, AB 2836 requires systemwide deaccessioning policies created in consultation with tribes, something the UC Interim Policy explicitly fails to do.