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December 9, 2021

Hon. Michael V. Drake
President
University of California
Office of the President
1111 Franklin St., 12th Floor
Oakland, CA 94607
President@ucop.edu

Submitted via Electronic and USPS Mail

Re: Native American Heritage Commission's Review of the University of California's Revised Final Draft Native American Cultural Affiliation and Repatriation Policy (mandated by Health and Safety Code section 8025, subdivision (a)(4)).

Dear President Drake:

On June 3, 2021, the Native American Heritage Commission provided the University of California (UC) with its comments to the UC's March 2021 Draft Repatriation Policy, raising significant concerns regarding its consistency and compliance with California repatriation law. The Commission received an informal revision to that Policy (Revised Policy) dated September 1, 2021. While the Revised Policy addressed some of the Commission's concerns, it did not sufficiently address a number of others; in general, UC has fallen short yet again due to its failure to adequately incorporate California repatriation laws into the Policy.

ANALYSIS

I. THE REVISED POLICY'S GUIDING PRINCIPLES ARE INADEQUATE

The revised Policy's "Guiding Principles"—which should set forth a clear vision for the implementation of the Policy—lack coherency and do not adequately acknowledge the UC's role in the highly problematic history of non-Indian institutions' acquisition of human remains and cultural items, and the ongoing failure to repatriate those remains and items to tribes. For instance, the revised policy fails to acknowledge the UC's history of inadequate consultations and disregard of tribal traditional knowledge, which has stymied repatriation and resulted in vast collections being designated as culturally unidentifiable, problems that persist to this day. (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subds. (a)(9) and (12).)

While the revision to the Guiding Principles including tribal traditional knowledge is a positive development, this critical principle is then diluted by including it in the same sentence with the need for expeditious repatriation. Because of its importance, this principle should be stated in a separate paragraph, for example: "In an aim to improve UC's repatriation process, the UC recognizes the importance of the tribes' expertise in their own heritage and history, and commits to consideration of and deference to Tribal Traditional Knowledge as it carries out this process."

Similarly, paragraph 2 lumps together a discussion of Executive Order N-15-19 of the State of California—which acknowledges and apologizes for the "prejudicial policies . . . violence, maltreatment and neglect" that the State of California historically inflicted on Native Americans—and Article 12 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which recognizes the right of Indigenous peoples to the use and control of their ceremonial objects and the repatriation of their human remains. These important enactments contain distinct principles applicable to the revised Policy, and should be treated in separate paragraphs.

In addition to the above, we are providing proposed revisions to the Guiding Principles consistent with these comments in a separate document (Attachment 1).

II. THE POLICY FAILS TO INTEGRATE IMPORTANT ASPECTS OF CALNAGPRA INTO ITS PROVISIONS

Beyond the problems identified above with the principles underlying UC's repatriation process, the Revised Policy continues to fall short in properly integrating CalNAGPRA into its provisions in several specific respects.

First, the Revised Policy improperly limits CalNAGPRA's scope. Under the Revised Policy, the CalNAGPRA process only applies to reevaluations of "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." (Rev. Policy at p. 31.) But CalNAGPRA is not limited to reevaluations of items previously designated as culturally unidentifiable under NAGPRA, and CalNAGPRA only permits agencies to rely upon existing NAGPRA inventories and summaries where state cultural affiliation has been determined as part of that process. (Health & Saf. Code, § 8013, subds. (b), (c) and (f).)[1] Because the UC did not assess state cultural affiliation as part of its prior NAGPRA inventories, it must perform preliminary inventories assessing state cultural affiliation for all of its collections of California Native American human remains and associated funerary objects, not only for those designated as culturally unidentifiable under federal NAGPRA.

Second, as discussed in our previous letter, the Policy's provision that "when all the criteria for Cultural Affiliation and Repatriation set forth in NAGPRA (43 C.F.R. § 10.10) are met, 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" is problematic in light of its failure to incorporate AB 275's state cultural affiliation and related repatriation processes. (Policy at p. 31.) As we previously suggested, harmonizing these federal and state laws can be accomplished simply by delaying identifying federal cultural affiliation or disposition until the CalNAGPRA process has been completed. The Revised Policy fails to address this concern, leaving the language unchanged. (Rev. Policy at p. 35.) By failing to incorporate this change, the Policy creates the possibility that campuses will ignore CalNAGPRA in this regard and only comply with NAGPRA.

Third, the Revised Policy addresses our previously expressed concern that the Policy set out two confusingly separate NAGPRA and CalNAGPRA claims processes by allowing tribes to choose which process to follow, with a footnote explaining that a request under CalNAGPRA is subject to NAGPRA's priority order for dispositions of culturally unidentified items. (Rev. Policy at p. 33, fn. 28.) However, it is not clear under the Revised Policy that the converse is true, and there should be an explicit clause in the Revised Policy that the UC may not dispose of culturally unidentified items without complying with CalNAGPRA. This is not a purely technical point, as compliance with CalNAGPRA is critical. For instance, before a NAGPRA claim may be granted, notice of a corresponding claim under state law would need to be provided, triggering mediation if other tribes also claim the items. (Health & Saf. Code, § 8016, subd. (d).) Alternatively, before the UC disposes of culturally unidentified items under NAGPRA, it would need to give notice under CalNAGPRA (Health & Saf. Code, § 8013, subd. (b)(1)(D)), allowing California Indian tribes to make claims which the UC could, in many instances, accommodate.

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[1] Specifically, under Health and Safety Code section 8013, subdivision (f), "An agency or museum that has completed an inventory and summary as required by the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) shall be deemed to be in compliance with this section provided that the agency or museum provides the commission with both of the following:
(1) A copy of the inventory and summary.
(2) Preliminary inventories and summaries to comply with subdivisions (b) and (c)."

Subdivision (c) requires preliminary inventories to include "state cultural affiliation, and state aboriginal territory, where reasonably ascertainable." Existing UC NAGPRA inventories do not consider state cultural affiliation and state aboriginal territories and do not qualify for this exception.

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Fourth, as discussed in our prior letter, the Policy fails to properly account for CalNAGPRA's mediation/dispute resolution process. The Revised Policy does not ameliorate these concerns, as it still fails to recognize that UC can (and, indeed, must) comply with CalNAGPRA's process in the event of disputes. (Rev. Policy at pp. 41-43.) Nothing prevents the UC from complying with CalNAGPRA by allowing the dispute resolution process requiring mediation (Health & Saf. Code, § 8016, subd. (d)) to be completed before UC determines the most appropriate tribe to receive the items under federal NAGPRA. As stated in our prior letter, NAGPRA does not specify a dispute resolution process to address disputes where the museum or agency is unable to determine which tribe should receive the items. (43 C.F.R. § 10.10(c)(2).) Indeed, UC is likely to benefit from AB 275's mediation process, which is particularly helpful where the agency is unable to determine the most appropriate recipient tribe under NAGPRA.

III. THE REVISED POLICY FAILS TO ADDRESS CONCERNS ABOUT RESEARCH AND TESTING BEFORE COMPLETION OF FINAL INVENTORIES AND REEVALUATIONS REQUIRED UNDER STATE LAW

We previously raised the concern that the Policy would permit UC research and testing unrelated to either repatriation of items subject to reevaluation under AB 2836 or determination of the preliminary inventory under CalNAGPRA, including items previously identified as culturally unidentifiable (CUI). The Revised Policy makes no substantive changes to address this concern. (Rev. Policy at p. 46.) The following issues remain unaddressed:

- The Revised Policy only includes tribes with federal aboriginal interests as those whose authorization would permit testing on CUI which are subject to reevaluation under AB 2836 to determine cultural affiliation. (Rev. Policy at p. 47.) This fails to take into account that reevaluations may reveal different state/federal culturally affiliated tribes than the tribe with a federal aboriginal interest under the Policy. The concern is exacerbated by the fact that the current federal regulations (incorporated by reference under the Policy) are very restrictive in defining aboriginal interests to only include those "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." (43 C.F.R. § 10.11(c)(1)(ii).)[2] This may result in campuses conducting testing on items without any tribal authorization where the items are later found to be state/federal culturally affiliated.
- The Revised Policy does not expressly require authorization from tribes with state aboriginal interests for items previously identified as CUI which are now subject to the preliminary inventory requirements under CalNAGPRA. (Rev. Policy at p. 46.) The revision to delete a reference only to NAGPRA does not ameliorate this concern, and the Policy should clearly state that it covers state aboriginal territories where permission for testing is being sought before completion of the preliminary inventory process, during which tribes with cultural affiliation under state law could be identified.
- Finally, the Policy does not require the exhaustion of federal and state reevaluation and repatriation processes before UC requests for testing may be made. This is a major flaw in the Policy; the tribe which ultimately obtains repatriation may not be the one with a federal aboriginal interest that agreed to the testing. Perhaps even more likely, given the fact that at some institutions, like UC Berkeley, two-thirds of the human remains in a campus's possession were classified as CUI (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subd. (a)(12)), no permission would be required for testing under the Policy because there was no tribe with a defined federal aboriginal interest. If state/federal cultural affiliation is later ascertained for such remains, that tribe will have been excluded from the critical decision to allow testing. These are very real and troubling possibilities under the Policy.

IV. THE PROPOSED REVISIONS TO THE POLICY FAIL TO ADEQUATELY ADDRESS STAFFING AND FUNDING

Our prior comments raised the concern that the Policy fails to (1) allocate resources from the UC to campuses for repatriation and (2) provide a standard for ensuring the adequacy of resources. Rather, the original and revised Policies simply make the Systemwide and Campus Committees responsible for assessing the adequacy of resources, without defining what this means and without ensuring access to the necessary information to perform these assessments, including an accounting of prior campus repatriation allocations detailing how the funds were spent. (Rev. Policy at pp. 15 and 18.) Nor does the Policy provide any incentive for campuses to allocate adequate resources for this purpose.

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[2] The draft Federal Regulations propose to expand the definition of "aboriginal territory" to include acknowledged aboriginal land, including tribal lands recognized in treaties sent to the Senate for ratification, but these federal regulatory changes are not contemplated by the Policy. (Draft Regs. § 10.2 [defining "geographical affiliation" and "acknowledged aboriginal land."])

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The likely result will be a perpetuation of existing disparities in resource allocation for repatriation between campuses. For instance, the Phoebe Hearst Museum of Anthropology at UC Berkeley, which "contains one of the largest collections of Native American human remains and cultural items within the United States,"[3] with nearly 500,000 Native American remains and cultural items,[4] has one NAGPRA liaison, while UC Davis, which has a collection approximately one-tenth the size, has three staff devoted to repatriation.[5]

Adding to this concern, on September 27, 2021, the Native American Advisory Committee to the Hearst Museum expressed its concern to the UC about "a lack of clear and dedicated funding to support the return of our ancestors."[6] The letter expressed concern not only about the amount of funding, but its allocation to the Hearst, which may use the funds for purposes not directly related to repatriation. The Policy needs to provide concrete allocation standards (benchmarked on institutions which have had successful repatriation processes), and require access to the financial data to assess allocations and spending as well as audits to ensure the funds allocated for repatriation are not used for other purposes.

V. THE PROPOSED REVISIONS TO THE POLICY STILL OFFER NO GUIDANCE FOR DETERMINING POSSESSION OR CONTROL

Our prior comments raised the concern that the Policy offers no practical guidance for campuses to implement its provisions relating to determinations regarding the possession or control of human remains and cultural items. This is a significant concern; campuses face a number of situations in which the possession or control of items is ambiguous, which could lead to campuses failing to repatriate items that they otherwise would have repatriated to a tribe, or to campuses transferring items to other agencies, all with little or no tribal knowledge or involvement. As previously noted, several UC campuses have expressed concern because UC may be in possession or control of items obtained from other agencies by virtue of curation agreements or because the other agencies consider them to be under the UC's possession or control. In other instances, federal agencies such as the Bureau of Land Management have "flip-flopped" on whether the UC has possession or control, adding still more ambiguity and confusion. The Revised Policy continues to offer no guidance in determining possession or control—an essential determination for effective repatriation.

On a positive note, the Revised Policy now requires each campus to create 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 and/or to coordinate the transfer of Human Remains and Cultural Items to the controlling agencies." (Rev. Policy at p. 50.) This appears to be a partial response to the suggestion made by campus repatriation coordinators, as discussed in our prior letter. However, this provision omits the additional recommendation that such items be inventoried. Further, because the Policy is not systemwide, each campus will decide what, if anything, their efforts to "reach out" will entail, and on what timetable they will do so. This does not comport with AB 2836's strong thrust toward a uniform systemwide UC policy.

Likewise, the Revised Policy's provision that "the campus Repatriation Coordinators will post a list of such collections by county and controlling agency on a UC public facing website" (Rev. Policy at p. 51), while positive, is incomplete. Because the Policy fails to create a systemwide process for creating lists of items in this status, or a time frame for campuses to do so, each campus will have its own interpretation of these provisions, again contrary to AB 2836. In short, the Policy must include uniform standards requiring all items to be inventoried, with information concerning which agency has control (if other than the UC), or the status of any pending determinations regarding control. Any decisions concerning possession or control should be transparent, allowing for tribal participation.

VI. THE PROPOSED REVISIONS TO THE POLICY STILL DO NOT CREATE A SYSTEMWIDE DEACCESSIONING POLICY

AB 2836 requires the UC to adopt "systemwide University of California museum deaccessioning policies to explicitly provide for the deaccession of collections containing Native American human remains and cultural items to effect the timely and respectful repatriation of those items pursuant to valid claims submitted by a California Indian tribe."

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[3] Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subd. (a)(3).
[4] 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, at p. 20.
[5] Sage Alexander, *Grave robbing at UC Berkeley: A history of failed repatriation* (Dec. 5, 2020), The Daily Californian, at https://www.dailycal.org/2020/12/05/grave-robbing-at-uc-berkeley-a-history-of-failed-repatriation/.
[6] Attachment 2, Letter from Kesner Flores, Chairperson, Native American Advisory Council to the Phoebe Hearst Museum, to Linda Rugg, Associate Vice Chancellor for Research, UC Berkeley (Sept. 27, 2021).

(Health & Saf. Code, § 8025, subd. (a)(2)(C).) However, the Policy allows each campus to develop its own policy as to such items, explaining that "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." (Policy at p. 38.) The Revised Policy makes no changes to this. (Rev. Policy at p. 40.)

As we previously explained, deaccessioning is an important component of the repatriation process, because "cultural items" under NAGPRA and CalNAGPRA include "sacred objects" consisting of "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." (Health & Saf. Code, § 8012, subd. (g); 25 U.S.C. § 3001(3)(C).) This extends beyond associated and unassociated funerary objects, and includes items which may only be identified by providing tribes access to complete Native American collections through a consultation process. After such a process, items may not necessarily qualify as "sacred," but may, nonetheless, be important to a tribe's history. AB 2836 requires a uniform systemwide policy governing this process, which the Policy lacks.

VII. THE PROPOSED REVISIONS TO THE POLICY DO NOT ADEQUATELY ACCOMMODATE AND FACILITATE TRIBAL ACCESS TO COLLECTIONS

Our prior comments explained that the Policy must ensure full access to collections by tribes. The Revised Policy makes improvements by providing that "Lineal Descendants and Tribal Representatives must be permitted access to NAGPRA/CalNAGPRA-eligible Human Remains [or] Cultural Items . . . ." (Rev. Policy at p. 45.) However, the term "access" is not defined; the Policy should make clear that this access must be unrestricted and sufficient to permit tribes to identify remains and cultural items.

Also problematic are the Policy's provisions relating to tribes' travel costs. The Policy makes covering travel expenses optional "[t]o the extent permitted by UC or third party resources." (Policy at p. 24.) The Revised Policy makes no change to this language. (Rev. Policy at p. 26.) The Policy's language lacks a meaningful standard for campuses to follow, and will be interpreted differently across the UC system. Tribes should not be foreclosed from identifying items simply because the UC does not want to cover expenses for the often time-consuming and expensive endeavor of tribal representatives reviewing campuses' sometimes-vast collections. Absent exceptional circumstances, tribes' travel expenses must be covered under the Policy to help ensure adequate access.

VIII. THE PROPOSED REVISIONS TO THE DRAFT POLICY DO NOT REQUIRE REPATRIATION AGREEMENTS TO BE PROVIDED TO THE COMMISSION

As previously raised by the Commission, the Policy does not require that any agreements reached with tribes relating to repatriation be provided to the Commission. The Commission should be provided with a copy of all agreements under AB 275 for enforcement purposes. (Health & Saf. Code, § 8015, subd. (b).) The Revised Policy does not address this concern. (Rev. Policy at p. 37.)

IX. THE POLICY'S PROVISIONS REGARDING LOCATING PREVIOUSLY UNREPORTED HOLDINGS ARE IMPROVED, BUT NEED BETTER SPECIFICITY

While the Revised Policy reflects marked improvement to the Policy's requirements regarding campuses' obligations to search for previously unreported holdings (Rev. Policy at pp. 38-39), further improvements are needed. Specifically, UC must identify the information that should be provided in communications to department chairs from repatriation coordinators, along with sample communications explaining when searches need to be completed, as well as instructions on how to conduct and document searches. The communication should include examples of Native American ethnographic or archaeological objects such as bone fragments, ashes, broken Native American objects, shards, baskets (or pieces), blankets or woven material (or pieces), and jewelry. The Policy should provide checklists for staff to document searches, and campuses should be required to document their outreach efforts to promote consistency and thoroughness of searches. The goal must be to have a consistent systemwide search process using standardized forms to avoid having disparities across campuses.

X. THE POLICY SHOULD PROVIDE FOR MORE ROBUST AND UNIFORM OUTREACH AND PUBLICITY

The Policy leaves it up to each campus to "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." (Rev. Policy at p.

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50.) UC's failure to set a uniform standard for outreach will lead to disparate outreach efforts by campuses with differing outcomes, something AB 2836 sought to avoid.
Not only must the Policy identify the outreach strategies campuses should use, tribal outreach must begin long before facilitating claims. Outreach should be done systemwide, as well as at the campus level, and include the following:

- Providing all tribes on the UC's outreach list with copies of the final Policy, accompanied by an easy-to-read summary and contact information for UC staff to answer questions.
- Providing a user-friendly UC website with a summary of the process, links to important information and to campus websites, and the assistance available to tribes.
- Informing tribes that the UC will assist in providing access to collections, including covering expenses to travel to identify remains and cultural items.
- Providing tribes with repatriation schedules, summaries, and updates on the status of collections, along with the links where tribes may find more information about these collections.
- Repeatedly contacting tribes which have potential state cultural affiliation using alternative forms of communication such as telephone, e-mail, and U.S. mail and proactively offering assistance to these tribes, including covering travel expenses and accommodating schedules.
- Conducting periodic listening sessions to understand tribal concerns or problems with the Policy.
- Providing in-person training in locations accessible to tribes and webinars on the repatriation process and how tribes may participate.
- Informing tribes of UC assistance available for transferring items, stewardship, and reburial assistance, including UC land available for this purpose.
- Being timely and responsive to tribal inquiries and affirmatively assisting tribes through the process.

CONCLUSION

While the Revised Policy reflects several improvements, it remains flawed in the areas identified above. The Commission has been left frustrated by a process which has repeatedly failed to address our most important concerns, in favor of a proposed Policy which violates both the spirit and the letter of state repatriation laws. This intransigence is emblematic of UC's treatment of Native Americans, stymieing long-overdue repatriation. The Commission remains open to a meaningful discussion about the comments in this letter and how UC can expedite its repatriation efforts.

Thank you for your consideration of our views.

Sincerely,

Laura Miranda
Chair, Native American Heritage Commission

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ATTACHMENT 1

Native American Cultural Affiliation and Repatriation

Responsible Officer:	VP - Research & Innovation
Responsible Office:	Research & Innovation
Issuance Date:	tbd
Effective Date:	tbd
Last Review Date:	07/24/2020
Scope:	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.

Contact:	Lourdes DeMattos
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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, [1] 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[2] (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.

II. DEFINITIONS

[1] Citations to CalNAGPRA refer to California Health & Safety Code §§ 8010-30.
[2] 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).

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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),[3] 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.

Burial Site:

Under NAGPRA § 10.2(d)(2), any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as part of the death rite or ceremony of a culture, individual human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of gravesite.

Under CalNAGPRA § 8012(b), except for cemeteries and graveyards protected or recognized under another state law, a natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were deposited as a part of the death rites or ceremonies of a culture.

Commented [A1]: Added per tribal request.

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

[3] 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.

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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.)

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.)

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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

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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)).

Inventory:

Under NAGPRA, the item-by-item description of human remains and associated funerary objects. (43 C.F.R. § 10.2(g)(2)).

Under CalNAGPRA, an itemized list that summarizes the collection of Native American human remains and associated funerary objects in the possession or control of an agency or museum. This itemized list may include the inventory list required under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

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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)).

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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.

Provenance: The chronology of the ownership, custody or location of an artifact or object.

Provenience: The precise location where an artifact, or object, or sample was recovered archaeologically.

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.

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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.

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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.

Summary:

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Per NAGPRA § 10.2(g)(1), the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by NAGPRA §10.8.

Per CalNAGPRA § 8012(o), a document that summarizes the collection of unassociated funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of an agency or museum. This document may include the summary prepared under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

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.

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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).

III. POLICY TEXT

~~A. STATEMENT ON LANGUAGE~~

~~UC recognizes that while the federal Native American Graves Protection and Repatriation Act[4] (NAGPRA) and the California NAGPRA[5] (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.~~

A. PURPOSE

The guiding document concerning UC's implementation of its responsibilities under NAGPRA and CalNAGPRA. UC will comply with NAGPRA, CalNAGPRA, and this Policy.

It is the intent of UC to complete its Repatriation or Disposition of Human Remains and Cultural Items to Federally Recognized tribes and non-Federally Recognized tribes in accordance with NAGPRA and CalNAGPRA.

UC campuses must ensure compliance with this policy at all UC locations over which they have management responsibilities. Campuses need not develop additional local policies, but if done, they must be consistent with this Policy, and be enacted within one year after adoption of this Policy.

This Policy requires formation of a Systemwide Native American Repatriation Implementation and Oversight Committee ("Systemwide Committee"), which will have a role in aiding the UC in its compliance and implementation of this Policy.

~~[4] 25 U.S.C. §§ 3001-13; 43 C.F.R. §§ 10.1-.17.~~
~~[5] California Health & Safety Code (CHSC) §§ 8010-30.~~

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B. 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 and objective to, rRepatriation of heritage resources to Native American and Native Hawaiian tribes and the principles below.

1. Repatriation or Disposition must be 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.
2. In an aim to improve the UC repatriation process, the UC recognizes the overdue importance of and acceptance of the tribes expertise in their own heritage and history, and commits to This policy is designed to govern how UC implements its responsibilities under NAGPRA and CalNAGPRA to improve the Repatriation process, which includes consideration of and deference to Tribal Traditional Knowledge, so that Human Remains and Cultural Items may be brought home to Tribes, Native Hawaiian Organizations and Lineal Descendants.
3. 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 NAGPRAand CalNAGPRA were enacted to restore Native American and Native Hawaiian control and legal rights to Human Remains and Cultural Items.
4. UC acknowledges that the injustices perpetrated on Native Americans and Native Hawaiians are reflected even toin the present-day society and systems, and that as long as Human Remains and Cultural Items remain in the University's Control, healing and reparation will be incomplete.

1.

5. UC recognizes and supports Executive Order N-15-19 of the State of California, which apologized for the historic wrongs committed by the State towards California California Native Americans.
6. The UC recognizes and supports, 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, in particular Article 12, which states, in part:

   "….Indigenous peoples have …. the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.": "the right to the use

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and control of their ceremonial objects; and the right to the repatriation of their ancestral human remains."[6]

7. UC commits to providing access to and Repatriation of Native American and Native Hawaiian Human Remains and their Cultural Itemsa "thorough, fair, transparent and effective mechanisms [process] developed in conjunction with indigenous peoples." for all stages of this Policy.[7] 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 NAGPRAand CalNAGPRA were enacted to restore Native American and Native Hawaiian rights to Human Remains and Cultural Items.

8. UC will provide, to requating Tribes, copies of all documentation relevant to identified matter, including associated documentation, pursuant to NAGPRA and CalNAGPRA within a reasonable timeframe.

2.

3.1. 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.

4.9. UC will comply with NAGPRA, CalNAGPRA, and this policy. This Ppolicy establishes uniform standards and practices that are binding across the UC system, and is. This policy is intended to promote consistency and applies acrossthroughout 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[8].

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[9]. UC campuses must ensure compliance

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[6] 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).
[7] 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).
[8] 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.
[9] 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.

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.

10. 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.

6.11. UC commits to providing Tribes access to their Human Remains and Cultural Items,

7. UC commits to engage in good faith, respectful, expeditious and meaningful Tribal Consultation. 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.

12. UC further recognizes that Consultation with Native Americans and Native Hawaiians contributes ensures a distinct and essential perspective, and furthers UC's teaching, research, and public service mission.

8. UC fully supports the right commits to providing of all Native American Tribes, including Federally Recognized tribes and non-Federally Recognized tribes, and Native Hawaiian Organizations toaccess to visit their Human Remains and Cultural Items, and upon request, providing and they may 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.

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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[10] Human

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Remains and Cultural Items that are State Culturally Affiliated to California Indian tribes as required by CalNAGPRA, consistent with NAGPRA[11]. (See also Section V.D and Flowcharts on UC's NAGPRA website.)

Nothing in this Policy prohibits California Indian tribes ~~may~~ from availing themselves of their rights under either NAGPRA or CalNAGPRA~~, or both, as they wish~~.

D. STATEMENT ON LANGUAGE

UC recognizes that while the federal Native American Graves Protection and Repatriation Act[12] (NAGPRA) and the California NAGPRA[13] (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~~may be offensive to some. ~~For the sake of legal precision and clarity, this policy may~~Any statuory ~~use~~ terms ~~employed in applicable laws and regulations, but~~used in this policy are purely for referential and consistency with the law purposes. UC does not intend any disrespect in their usage

~~. In addition,~~ A~~a~~lthough 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.

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~~D.~~E. 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

[11] 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.
[12] 25 U.S.C. §§ 3001-13; 43 C.F.R. §§ 10.1-.17.
[13] California Health & Safety Code (CHSC) §§ 8010-30.

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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 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.)

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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: The Repatriation Coordinator~~s~~ is the~~are~~ individual~~s~~ 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 with Tribes, 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.

Commented [Id12]: Edited to clarify the expectation that there be a single Repatriation Coordinator, though there may be others supporting the campus efforts as well.

Commented [A13]: Modified to clarify the Repatriation Coordinator's role.

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V. PROCEDURES

A. COMMITTEES

1. Systemwide Committee

~~1.~~2.

a. Composition

The President must establish a Systemwide Native American Repatriation Implementation and Oversight Committee (hereinafter called the "Systemwide Committee")[14] 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~~the nomination of such person by the NAHC, 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. To be clear, the equal representation between Tribal and UC members must always be maintained.

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

Commented [Id14]: Edited to clarify that members must be nominated by the NAHC. We believe this would simplify the process and ensure there is oversight. Note, Tribes have the right to request a recusal per Section V. A.1.c., below.

Commented [A15]: Added for clarity in response to comments.

[14] 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.

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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~~will ~~do any of the following as needed to assist in the compliance of this policy~~:

1) Where needed, m~~M~~ake recommendations to the President for revisions to this policy (see Section III.D);

2) Where needed, m~~M~~ake 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) Review campus compliance with this Policy

~~3)~~4) Review and a~~A~~ssess campus compliance and implementation, including 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), utilizing ~~and through~~ audits and~~or~~ site visits, as necessary;

~~4)~~5) Where needed, m~~M~~ake recommendations for corrective action or systemwide or campus audits to the President to ensure compliance with this policy, and applicable laws and regulations;

~~5)~~6) Where needed, m~~M~~ake 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)~~7) 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)~~8) 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)~~9) 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.

Commented [A16]: Changed from optional "may" to "will". Added "where needed" to actions that the committee can take when needed.

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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

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Committee members, and as permitted by law, allow such members to vote.

The President may appoint a replacement for a member who has been recused subject to nomination by the NAHC -in accordance with CalNAGPRA §8026(a)(3) and provided~~; however,~~ the balance between tribal and UC membership in the composition of the Systemwide Committee membership considering the case will nonetheless be maintained.

Commented [Id17]: Edited to clarify that substitute members must be nominated by the NAHC.

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.~~3. 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")[15] in accordance with the requirements of CalNAGPRA.

[15] 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

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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~~the nomination of such person by the NAHC~~, 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. To be clear, the equal representation between Tribal and UC members must always be maintained.

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 request that the Systemwide Committee select another campus to perform certain of its NAGPRA/CalNAGPRA ~~rely on another campus' committee and Repatriation Coordinator to carry out its~~ duties under this policy if the Chancellors of both campuses agree. In reviewing such requests, the Systemwide Committee should consider whether the arrangement would facilitate efficient or expeditious review consistent with NAGPRA/CalNAGPRA and this policy, whether the facts and circumstances suggest that the requesting campus is likely to have other matters that would require establishment of a Campus Committee, and whether the reviewing campus will have access to the information and expertise it needs to be able to make informed determinations about items located at another campus.

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.

Commented [Id18]: Edited to clarify that members must be nominated by the NAHC. We believe this would simplify the process and ensure there is oversight. Note, Tribes have the right to request a recusal per Section V. A.2.d, below.

Commented [A19]: Added for clarity in response to comments.

Commented [A20]: Edited to add review by the Systemwide Committee of requests for assistance by one campus to another, and to allow the Systemwide Committee to select the campus that should provide the assistance.

Commented [A21]: Added criteria in response to NAHC comments.

(for each campus) as the "Campus Committee" in this policy because it more clearly distinguishes campus committees from the Systemwide Committee.

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

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) Where needed, mMake corrective action recommendations to the Chancellor;

3) Where needed, mMake recommendations to the Chancellor for revisions to local campus policies and practices consistent with this policy;

4) Where needed, mMake recommendations to the Chancellor for the issuance of guidance, and best practices, and a Repatriation Implementation Plan for the successful campus implementation of this policy, including compliance with NAGPRA and CalNAGPRA;

5) Collaborate and coordinate with campus staff (e.g., Chancellor's Designee and Repatriation Coordinator) for the creation of the campus Repatriation Implementation Plan;.

5)6) 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)7) 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)8) 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)9) 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

Commented [A22]: Changed from optional "may" to "will". Added "where needed" to actions that the committee can take on when needed.

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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~~Campus Committee chair 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, and share a copy with the Repatriation Coordinator. 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.

Commented [Id24]: Edited for consistency with other sections of this policy per comments received.

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

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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 appoint a replacement for a member who has been recused subject to nomination by the NAHC in accordance with CalNAGPRA §8026(a)(3) and provided~~; however,~~ the balance between tribal and UC membership in the composition of the Campus Committee membership considering the case will nonetheless be maintained.

Commented [A25]: Edited to clarify that substitute members must be nominated by the NAHC.

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

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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, Preservation or Culture Committees, and/or other representatives. Repatriation Coordinators must engage in Consultation that reflects the principles and characteristics outlined below.

Commented [A26]: Added per Tribal recommendation.

- 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 a~~n~~ a cultural or geographical 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~~and schedules ~~itself~~; and
- Actions demonstrating meaningful engagement with tribes, which exemplify trust and relationship building.

Commented [A27]: Expanded to include cultural or geographical interests.

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;

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- 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) Drafting new Inventories or Summaries or updating existing Inventories or Summaries, as will occur when new Human Remains or potential NAGPRA/CalNAGPRA-eligible Human Remains or Culural Items are identified, or when new information is identified that may require a change to an existing Inventory or Summary~~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) business 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.

Commented [A28]: Revised per Tribal recommendation to clarify the consultation process begins at the initiation of new/updated inventories and summaries.

Commented [A29]: Adding for consistency with Response to Consultation Request above.

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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~~Consultation ~~may~~ will 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.

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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~~twenty-one (~~10~~21) calendar 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) and 8013(c)(2). These ~~T~~tribal identifications may include broad categorical identifications, including, but not limited to, the identification of ~~Associated Funerary Objects~~ everything from a ~~b~~Burial ~~s~~Site as a Funerary Object, ~~-~~regalia objects as Sacred Objects, or the identification of everything from a specific site as a Sacred Object because that site is a sacred site.

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.

Commented [A30]: Modified to allow more flexibility, especially if someone is on vacation.

Commented [A31]: Edited per tribal request for consistency with CalNAGPRA.

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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 II~~**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

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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~~Human Remains and Associated Funeray Objects in their Possession or Control ~~that meet the definitions for Human Remains and Associated Funerary Objects~~, or items that may ~~meet the definitions for~~be 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 [A32]: Per tribal request for a less confrontational tone, revised to delete language referring to "meeting the definitions" here and throughout policy.

   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."[16] 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**

   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:[17]

[16] AB 275 Declarations Section 1(k)(5).
[17] For more information, see NAGPRA § 10.9(c), and CalNAGPRA § 8013(b).

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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 or updated under CalNAGPRA, the State Aboriginal Territory from which the Human Remains and Associated Funerary Objects were removed. (Under CalNAGPRA §8013(b)(1)(D), 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.);[18] 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:[19]
   1) An estimate of the number of objects in the collection or portion of the collection;

Commented [A33]: Tribes requested we move this up from the footnote.

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[18] Under CalNAGPRA, Inventories must include not only Human Remains and Associated Funerary Objects that are clearly identifible 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).
[19] For more information, see NAGPRA 43 C.F.R. § 10.8(b) and CalNAGPRA § 8013(b).

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 prepared or updated under CalNAGPRA, must also include the State Aboriginal Territory from which the items were removed, where reasonably ascertainable.

In general, any ~~non-contemporary~~ Native American ethnographic or archaeological 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.[20] 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."

Commented [Id34]: Revised for consistency with CalNAGPRA.

Commented [A35]: Per tribal request, moved up from footnote.

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~~are 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~~ that identifies ~~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~~

~~[20] 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."~~

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~~definitions of~~ the identification 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,[21] 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.[22]

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[23] in the record. Further, Requestors do not have to establish Cultural Affiliation and/or State Cultural Affiliation with scientific certainty.[24] As described above, a single line of evidence may be sufficient to establish cultural affiliation.

Commented [A36]: Per tribal request, reinserted this line which was deleted from the prior version as repetitive.

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 §§~~

[21] NAGPRA 43 C.F.R. § 10.14(d) and CalNAGPRA § 8013(a)(3).
[22] NAGPRA 43 C.F.R. § 10.14(c).
[23] NAGPRA 43 C.F.R. § 10.14(d).
[24] NAGPRA 43 C.F.R. § 10.14(f).

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8013(c), (i) and (j).)[25] 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, or when UC locates previously unreported NAGPRA/CalNAGPRA-eligible Human Remains and/or Cultural Items. as required under this policy in (See Sections V.E., and VI of this policy and NAGPRA, 43 C.F.R. § 10.13, CalNAGPRA §§ 8013(c), (i) and (j).)[26])

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.

Commented [A37]: Moved all citations to end of paragraph.

Commented [Id38]: Added second example and citations.

5. **Additional CalNAGPRA Specific Processes**[27]

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),

[25] 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)).

[26] 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)).

[27] References in CalNAGPRA to the "commission" refer to the NAHC. UC falls under the definition of a Museum.

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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:

"(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,

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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 [A39]: This text had been deleted as redundant.Tribes requested we re-insert it.

2. **Requests under NAGPRA for Repatriation of Human Remains and/or Cultural Items that are Culturally Affiliated with a Federally Recognized Tribe[28]**

   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[29], 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 an ~~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.

Commented [A40]: Deleted so as not to confuse with the defined term.

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).[30] [31]

   In accordance with CalNAGPRA § 8014[32]:

   "(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 [A41]: Added a footnote to clarify that if we received a request only through NAGPRA, UC would still notify NAHC.

Commented [A42]: Inserted this footnote because Tribes requested that the order of precedence be made clear.

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[28] 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.

[29] 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."

[30] 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. If UC receives a Request that has only been submitted under NAGPRA, UC will nonetheless inform NAHC of such Request, providing the name of the requesting Tribe and a description of the items requested.

[31] Note that UC is also required to comply with federal NAGPRA requirements, which provide an order of priority to 1) Lineal Descendents, 2) Federally Recognized tribes, and 3) non-Federally Recognized tribes, as described more fully in Section V.D.3 below.

[32] References in CalNAGPRA to the "commission" refer to the NAHC. UC falls under the definition of a "Museum."

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"(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 descendancy, 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 § 8016, are met[33], 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

[33] 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."

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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 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[34] that are classified as "Culturally Unidentifiable" under NAGPRA[35] 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:

[34] 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.

[35] 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.

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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 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,[36] and after an appropriate response period (sixty (60) days),[37] 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))[38].

In order to advance the goal of expeditous 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

[36] See NAGPRA, 43 C.F.R.§ 10.11(b)(2)
[37] 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.
[38] 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.

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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 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 items that may be NAGPRA/CalNAGPRA-eligible 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. Once such items are found, as required under NAGPRA/CalNAGPRA, UC must engage in Consultation with Tribes and prepare or update Inventories and Summaries in accordance with this policy.

Within ~~one~~two years 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~~ report any potentially NAGPRA/CalNAGPRA-eligible ~~hold~~ Human Remains or Cultural Items, including Native American ethnographic or archaeological objects. Deans, department chairs, and unit heads must confirm that they have communicated with their staff and~~,~~ conducted the search, and report whether their departments ~~or~~/ units or employees hold ~~Human Remains and Cultural Items~~ any such items under UC's Possession or Control as well as the current location of the items ~~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~~ that could result in the intentional or unintentional collection of Human Remains or Cultural Items (e.g., archaeology, anthropology, history, 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~~ Department chairs and unit heads should identify the provenance/provenience of ~~H~~human ~~R~~remains that are

Commented [Id43]: Added this description to clarify the intent is to be more inclusive since the status of items may not be immediately clear.

Commented [A44]: Revised to add the expectations for next steps.

Commented [A45]: Extending this timeline because the pandemic related campus closures affected our ability to conduct these searches.

Commented [Id46]: Added to clarify that potentially NAGPRA/CalNAGPRA-eligible items includes Native American ethnographic or archaeological objects.

Commented [A47]: Edited in response to NAHC comments about the ability of dept/unit heads to make "assessments". Clarified they would simply report, not make decisions. (Note, UCOP is issuing more detailed guidance.)

Commented [Id48]: Added per Tribal request.

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.

Commented [Id49]: Edited to clarify the department chairs / unit heads would would report all human remains, whether or not they are actively used, or believed to be other than Native American.

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 or instructional use~~and handling (other than, as determined by the campus Chancellor, research and handling[39] 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~~fall 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.

   Commented [A50]: Edited to remove this carveout. Note that the Stewardship section requires the Repatriation Coordinator to consult with tribes as part of the Inventory/Summary process and to "defer to tribal recommendations for appropriate handling and treatment."

   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. §

[39] ~~Any handling should be necessary, reasonable, and should not conflict with respectful stewardship as identified in Section V.J.~~

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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 written 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.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.**~~IV.B.1).

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.

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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 describe the following~~include a listing of~~:

Commented [A51]: Edited since reports are more descriptive than simple listings.

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), 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

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consideration of tribal evidence, or were based on an incorrect interpretation of law, may initiate an appeal through ~~either~~any or all of the following options:

~~1)~~(i) If the decision was made by the Chancellor's Designee, the Tribe(s) may appeal to the Chancellor; or

~~2)~~(ii) The Tribe(s) may appeal a campus decision to the President by submitting a request for appeal to President@ucop.edu.

(iii) The Tribe(s) may seek resolution via the options described in subsection 3 below.

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.[40]

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 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.

Commented [A52]: Edited to better convey that one option does not preclude another.

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Commented [A53]: Added a reference to the options in 3 below.

[40] 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.

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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~~ have the right to 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

Commented [A54]: Deleted as unnecessary; we expect the timing of the federal process will not conflict with the timing of state processes.

Commented [A55]: Per Tribal feedback, removed the potentially confusing adjective. Stewardship is the defined term used in this policy.

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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~~ guidance 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 updating and completion of Inventories and Summaries (including preliminary Inventories and preliminary Summaries) and defer to tribal recommendations for appropriate handling and treatment.[41]

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[42] 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.

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[41] CalNAGPRA § 8013(c)(2).
[42] 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.

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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.~~

Commented [Id56]: 7.16.2021: UC decided to remove this sentence because each case should be individually evaluated.

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)[43], 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.

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~~ NAGPRA/CalNAGPRA-eligible -Human Remains~~,~~ - Cultural Items, or associated

Commented [Id57]: Added for clarity as the right to access applies to both those already determined to be Human Remains or Cultural Items, and those that are potentially Human Remains or Cultural Items.

[43] 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.

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records for the purpose of tribal cultural or spiritual care or observational study (nondestructive analysis)~~, and associated collections and records during the Inventory/Summary, Cultural Affiliation, Stewardship, 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 or another campus official designated by the Chancellor. 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~~ Restricted Access to/Loans of 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~~instructional use, or other use of any identified or potential Human Remains and Cultural Items, except as permitted under V.J.3. above or 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 ~~A~~aboriginal lands/aboriginal territory 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 or loans 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*~~ *under*

Commented [Id58]: Edited to expand the potential purpose of Tribes' access to include observational study.

Commented [Id59]: Deleted reference to access to related records because this is already covered in Section V.B.

Commented [Id60]: Edited because if the visit is not related to NAGPRA/CalNAGPRA Consultation, another campus official may facilitate the visit.

Commented [Id61]: Re-titled to clarify the restrictions here apply to both access and loans.

Commented [Id62]: Changed "classroom" to "instructional" for consistency within policy.

Commented [Id63]: Added for clarity, as the prior approval requirement in this Section V.J.4 do not apply to access to tribes under Section V.J.3.

Commented [A64]: Deleted NAGPRA reference to avoid mis-impression that we are only seeking approval from fed recognized tribes.

Commented [Id65]: Deleted carveout.

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this Section V.J.4 must provide to the Repatriation Coordinator documentation demonstrating explicit tribal written authorization as described above. These prior approval requirements do not apply to access under Section V.J.3. The Repatriation Coordinator or -another campus official designated by the Chancellor must check the records to ensure that there are no pending Consultations, 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 or loan 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 grant access or make the loan for such use as described in Section V.K.2.

Commented [Id66]: Modified for clarity, as this requirement for prior approval does not apply to access by tribes under Section V.J.3.

Commented [A67]: Added "another campus official designated by the Chancellor" to provide greater flexibility, here in section J, and in Section K. At some campuses thse duties may be performed by someone other than the Repatriation Coordinator.

Commented [Id68]: Modified to include pending consultations in this list.

Commented [Id69]: Since access does not always involve removal of the materials, added to clarify that these conditions apply to access AND loans.

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:

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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 another campus official designated by the Chancellor~~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. Conditions for Access/Loans of NAGPRA/CalNAGPRA-eligible Human Remains and/or Cultural Items from UC~~Loans from UC~~

Provided the conditions below are satisfied, UC may grant access or make short-term loans of NAGPRA/CalNAGPRA-eligible Human Remains and Cultural Items that are in UC's Control.

~~**Conditions for LoansConditions for Loans**~~

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

~~a) loan 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.~~

a) All applicable prior notifications, approvals or other stipulations required by Sections V.J.4 must be observed prior to granting of access/loans.

~~c)~~b) Access and ~~L~~loans may not exceed two (2) years unless extensions are approved by the Chancellor.

~~d)~~c) 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 purpose of the loan;

~~1)~~2) The precise items loaned;

~~2)~~3) The start and end date of the loan, and a provision for termination of the loan for any reason;

Commented [Id70]: Added flexibility here and below for these duties to be perfomed by someone other than the Repatriation Coordinator.

Commented [Id71]: Retitled since the whole of this section is about the conditions for access/loans from UC.

Commented [Id72]: Combined these two conditions by making reference to the requirements in V.J.4.

Commented [Id73]: Deleted duplicative text and simply added a reference to V.J.4.

Commented [Id74]: Added to clarify this limit applies to both access and loans.

Commented [Id75]: Added requirement to provide the purpose of the loan in the loan agreement.

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~~3)~~4) The expectations for respectful Stewardship and other applicable conditions in accordance with this policy and/or any applicable campus museum/repository policies;

~~4)~~5) If applicable, the precise type, nature, and extent of testing permitted, including any restrictions on the research that have been placed by Tribes;

~~5)~~6) 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)~~7) The method of transport and other logistics for the transfer to the loan recipient and the return of the loaned materials; and

~~7)~~8) A requirement that researchers disseminate their research results to all Tribes that authorized the research use.

~~c)~~d) 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~~ confirm transportation, and observe any unpacking and handling at the destination site.

~~f)~~e) The Repatriation Coordinator or ~~a~~ another campus official designated by the Chancellor~~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)~~f) The Repatriation Coordinator or ~~a designated museum official~~ another campus official designated by the Chancellor 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)~~g) The Repatriation Coordinator or ~~designated museum official~~ another campus official designated by the Chancellor will biannually review the list and follow up to ensure the return of loaned items.

~~i)~~h) 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~~another campus official designated by the Chancellor).

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

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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 Consultation and Review ~~of CUI Determinations.~~**

   The Campus Repatriation Implementation Plan must describe the process and estimated timeline 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

Commented [A76]: Revised title of this section to more accurately convey the broader scope described below.

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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~~Collections -Controll~~ing~~ed by other 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 and/or to coordinate the transfer of Human Remains and Cultural Items to the controlling agencies, especially when Tribes have requested the transfer. 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).

Campuses may retain outside consultants to assist in the development of Repatriation Implementation Plans. Such consultants should demonstrate awareness of the unique history of California tribes and familiarity with the requirements of CalNAGPRA.

Commented [A77]: Revised title of this subsection to more accurately convey the broader scope described below.

Commented [Id78]: Added language as a reminder that UC can encourage controlling agencies begin the repatriation process and/or transfer materials back to the controlling agencies.

Commented [A79]: Comments indicated this was too open-ended. Deleted as this was just an example of what Tribes could do.

Commented [A80]: Added per tribal recommendation.

VII. RELATED INFORMATION

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.

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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

VIII. FREQUENTLY ASKED QUESTIONS

Not applicable.

IX. REVISION HISTORY

(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.

X. APPENDIX

Not applicable.

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ATTACHMENT 2

September 27, 2021

UC Berkeley
Office of the Associate Vice Chancellor for Research
Attn: Associate Vice Chancellor Linda Rugg
119 California Hall
Berkeley, CA 94720-1500
Via Email: rugg@berkeley.edu

Dear Linda Rugg,

We, the Native American Advisory Council to the Phoebe Hearst Museum (NAAC), are writing to you because we have concerns about the funding of the Repatriation Implementation Plan scheduled to be completed in the next few months. The funding of the Plan is critical to making any headway in the repatriation of our ancestors. Our fears are partly based on a lack of clear and dedicated funding to support the return of ancestors. In April 2021, the Repatriation Plan was presented to tribes at an outreach and informational meeting hosted by UCB. During this meeting, a poll was conducted where tribal representatives were asked their input on several repatriation issues. Several NAAC members were in attendance and were able to listen to the concerns of the tribal representatives. We are following up with you about these concerns.

The idea of projecting into the future and calculating that it might take as long as 285 years to repatriate our ancestors was unthinkable. It appears that feedback from the tribes and other means of calculations have suggested closer to 12 years as the Repatriation Plan now suggests. This past year staff at UCB have been preparing for this project to get it off the ground. However, it feels like we are in a period of "not knowing" what is going to happen next and this is leaving the NAAC at a loss of how to advocate for the ancestors and the tribal communities. We know that without proper funding and University support, repatriation will be slow and our ancestors will remain at UCB longer than necessary.

We'd like to point out that according to the NATIONAL NAGPRA website (National NAGPRA program) since 2010, there have been 9,449 sets of human remains repatriated according to the Notice of Inventory Completion using the CUI (culturally Unidentifiable Inventories) rule 10.11 of the NAGPRA. This number matches the projected number of repatriations held by UCB, as presented in the April 2021 meeting. Since these numbers are similar, it gives up hope that it should not take long to repatriate.

As Associate Vice Chancellor of Research, you are charged with figuring out how to support the critical needs of the university, and therefore the ongoing and fully supported repatriation process. It is our hope and expectation that the repatriation of our ancestors sits at the top of your priority list. If it helps you to garner funding and institutional support, please pass our

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letter onto anyone, or any organization as a show of support for the repatriation work that needs to be completed.

Sincerely,

Kesner Flores, Chairperson
Native American Advisory Council to the Phoebe Hearst Museum

CC: Hearst Faculty Director Lauren Kroiz (pahma-director@berkeley.edu)
Hearst Executive Director Caroline Fernald (pahma-execdirector@berkeley.edu)
California Attorney General's Office John.Appelbaum@doj.ca.gov
Native American Advisory Council Members (pahma-naac@lists.berkeley.edu)