

**California State University  
Office of Advocacy and State Relations**

**Working Draft Policy for Tribal Consultation Purposes – Systemwide NAGPRA Policy**

The California State University’s Office of Advocacy and State Relations is issuing this 60-day notice to advise California Indian Tribes that the Working Draft Policy for Tribal Consultation Purposes for a Systemwide Policy on Native American Graves Protection and Repatriation Act (NAGPRA) and California Native American Graves Protection and Repatriation Act (CalNAGPRA) has been released.

**Dates:** This notice will be accompanied by a 90-day Tribal consultation period from September 1, 2024 to November 30, 2024. Tribes may request virtual, telephone, or in-person consultations throughout the 90-day consultation period. Additional policy development steps, including an additional Tribal consultation period, will occur through July 1, 2025.

**Information:** Further information and the working draft policy for Tribal consultation purposes is available on the internet at <https://nagpra.calstate.edu> (click on CSU Policy).

**Contact Information:** Tribes may contact Michelle Hansen, CalNAGPRA/NAGPRA Administrative Support Coordinator, 915 L Street, Suite #1160, Sacramento, CA 95814, telephone (562) 951-4115, or email at [nagpra@calstate.edu](mailto:nagpra@calstate.edu) to schedule a consultation session or to discuss the working draft policy for Tribal consultation purposes.

**Working Draft Policy for Tribal Consultation Purposes – Systemwide NAGPRA Policy**

July 2, 2024

## I. Purpose and Scope

This “Policy” establishes the minimum standards and best practices for compliance with the Native American Graves Protection and Repatriation Act (NAGPRA)<sup>1</sup>, and the California Native American Graves Protection and Repatriation Act (CalNAGPRA)<sup>2</sup>, herein “repatriation laws,” and their subsequent regulations and amendments. This policy serves to facilitate the expeditious repatriation and disposition of Native American human remains and cultural items that rightfully belong to lineal descendants, Indian Tribes, and Native Hawaiian organizations.

This policy applies to the California State University (“CSU”) system and its individual campuses. Campuses may adopt supplemental policies within one year after adoption of this policy, but they shall not conflict with this policy.<sup>3</sup> Campuses must demonstrate the necessity for supplemental policies and obtain approval of such policies from the Systemwide NAGPRA Committee and the Chancellor’s Office. In addition, any supplemental policies must be developed in consultation with California Indian Tribes.

## II. Background

Federal NAGPRA was enacted by Congress in 1990 to protect and restore the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations to the human remains, funerary objects, sacred objects, and objects of cultural patrimony in the control, custody, or possession of museums.<sup>4</sup> NAGPRA gives legal primacy to federally recognized Tribes. Current law does not provide a direct path to return or repatriate Native American human remains and associated funerary objects to non-federally recognized Tribes; however, as is the current practice, Tribes without federal recognition can work with federally recognized Tribes as part of a joint claim for disposition or joint request for repatriation.<sup>5</sup>

In 2001, the California Legislature passed CalNAGPRA requiring all state agencies and museums that receive state funding and that have possession or control over collections of Native American human remains or cultural items to provide a process for the identification and repatriation to the appropriate Tribes. The bill also established a Repatriation Oversight Commission<sup>6</sup> with oversight authority. The intent of the legislation was to cover gaps in federal NAGPRA specific to the State of California. In 2019, the Governor of California issued executive order N-15-19 that includes a formal apology to California Indian Tribes acknowledging the atrocities of genocide against California Native Americans.<sup>7</sup> Following this significant action, state legislators implemented laws elevating and enforcing the inherent rights of California Indian Tribes.

In 2022, the Joint Legislative Audit Committee announced the CSU systemwide audit of its compliance with repatriation laws. After an extensive review, the report was released in June 2023.<sup>8</sup> The results showed an extremely low overall percentage of repatriation and disposition across the campuses since

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<sup>1</sup> 25 U.S.C. Sec. 3001 et seq.

<sup>2</sup> California Health & Safety Code (CHSC) §§ 8010-30

<sup>3</sup> CHSC 8028.7 (b).

<sup>4</sup> Federal and state law definition of “museums” includes educational institutions.

<sup>5</sup> <https://www.federalregister.gov/d/2023-27040/p-55>.

<sup>6</sup> Now, the Native American Heritage Commission (“NAHC”).

<sup>7</sup> N-15-19 Executive-Order (Appendix #1).

<sup>8</sup> <https://information.auditor.ca.gov/reports/2022-107/index.html>.

the enactment of repatriation laws, non-compliance with legal processes and timelines, insufficient staffing and funding, and lack of policies and systemwide oversight.

### *Policy History*

In late 2023, a working group consisting of Tribal repatriation practitioners, CSU staff, and state representatives was established by the CSU to draft this policy. This policy was developed in consultation with California Native American Tribes: Ten statewide listening sessions and several consultations with individual Tribes were held prior to drafting the working draft policy for Tribal consultation purposes. Additional rounds of Tribal consultation were held prior to the adoption and implementation of this policy.

### *Acknowledgement of Past Harms*

In addition to this legislative background, the effect of this systematic removal and campus possession of Native American human remains and cultural items from sites and Tribal communities has caused extensive harm to culturally affiliated Tribes and lineal descendants. These harms include the desecration of cemeteries, the prolonged separation of human remains and cultural items from their communities, the financial, logistical and emotional costs of repatriation, the loss of control of sensitive information regarding human remains and cultural items, the trauma to descendant communities of students being in the same building or campus where their ancestors may be present, and the inability to control the information that is published about one's own cultural history.

The repatriation process itself has also had a history of continuing this trauma because Native American human remains were not repatriated or returned in a timely or respectful manner. This includes campuses failing to accept Tribal identifications of cultural items or human remains and failing to follow Tribal protocols for respectful treatment and handling. These failures are and have been part of a systemic privileging of academic and western knowledge over Tribal Traditional Knowledge that has functioned to delay or stop repatriation and has failed to acknowledge Tribal sovereignty over their own culture.

### *Guiding Principles*

The CSU recognizes the harms these actions have caused the Tribes, which is immeasurable. This policy spotlights the call for human rights, which requires accountability and must be measured over time to ensure adherence to repatriation laws and advance repatriation outcomes. The system and campuses will strive in earnest to change harmful legacies and set a new trajectory using the following Guiding Principles to build on the work in progress and move forward:

## **1. Recognize and Honor Tribal Sovereignty**

- a. Tribes are sovereign Nations thus this policy is consistently flexible in accommodating Tribal sovereignty.
- b. Establish and grow government-to-government relationships.
- c. Tribes are the caretakers, owners, and interpreters of their cultural heritage.
- d. Each Tribe is unique and has different priorities.
- e. Understand and prioritize the specific concerns and issues facing California Indian Tribes.
- f. When a policy is unclear, Tribal requests will be given deference and priority,
  - i. When a Tribal request conflicts with a policy, if that request is consistent with federal and state law, then the campus shall honor the Tribal request.

- ii. The campus shall have discretion to honor Tribal requests even when they conflict with a policy if it will result in a more timely and respectful repatriation.

## **2. Build and Nurture Relationships**

- a. Commit to building trust.
- b. Conduct respectful and meaningful engagement.
- c. Build relationships that go above and beyond repatriation laws.

## **3. Commit to Consultation, Repatriation, and Disposition**

- a. Fully and timely comply with legal requirements to return and repatriate all Native American human remains and cultural items.
- b. Give deference to and refer to Tribal Traditional Knowledge as expert opinion.
- c. Ensure disposition and repatriation outcomes benefit the Tribes.
- d. Expediently eliminate barriers that prevent or stall repatriation progress.
- e. Allocate, seek, and provide the necessary funding and resources to support all repatriation activities.
- f. Identify opportunities for reburial lands, access, stewardship, and land-back.
- g. Respect Tribal timelines throughout the repatriation process.

## **4. Protection of Native American Human Remains and Cultural Items**

- a. Enforce the prohibition of use of Native American human remains and cultural items in research or teaching.
- b. Obtain free, prior, and informed consent prior to exhibition, access, analysis, and research.
- c. Ensure all Native American human remains and cultural items are treated with dignity and respect at all times.
- d. Accommodate Tribal cultural protocols for the treatment, handling, and storage of Native American human remains and cultural items to the best of abilities.

## **5. Demonstrate Accountability and Transparency**

- a. Regularly monitor and report repatriation efforts.
- b. Responsibly and timely provide information as requested by lineal descendants, Tribes, and Native Hawaiian organizations for the purpose of advancing disposition and repatriation outcomes while protecting confidentiality of private and sensitive information.
- c. Enforce meaningful consequences for non-compliance with repatriation laws and this policy.

### **iii. Policy Statement**

The CSU system and campuses take responsibility for its actions that have contributed to the disruption of Native American burial, cultural places, and sacred sites and for withholding human remains and cultural items from repatriation and disposition for purposes including research, analysis, study, teaching, display, publication, storage, and curation. The CSU understands that non-compliance with repatriation laws and inconsistent repatriation and disposition efforts made since the enactment of repatriation laws has caused tremendous pain and distrust with the CSU by Tribes. These immoral and unethical practices have caused irreparable harm for which the CSU apologizes. The CSU commits to full compliance with repatriation laws and vows to work towards rebuilding trust with Tribes and their communities.

The CSU system and campuses shall not claim right of possession of Native American human remains. Unless there is a clear and documented transfer of possession from the authorized culturally affiliated Tribe, the CSU system and campuses shall not claim right of possession of cultural items. The CSU recognizes that in most circumstances human remains and cultural items were obtained without the free, prior, and informed consent<sup>9</sup> of lineal descendants, Tribes, and Native Hawaiian organizations and shall be repatriated or returned in a timely manner. Further, the CSU recognizes its legal and moral obligation to comply with repatriation laws, which are rooted in American Indian laws and human rights, not museum practice.

#### IV. **Note on Definitions**

This policy uses terms as defined by federal and state governing bodies in NAGPRA and CalNAGPRA and their subsequent regulations, including definitions for “human remains” and “cultural items.” The CSU recognizes that these legalistic definitions may not adequately reflect the sensitive and spiritual nature of the subject matter of addressing Native American ancestors and their sacred belongings or the cultural heritage survivance of modern-day Native American, Alaskan Natives, and Native Hawaiian peoples.

#### V. **Compliance Oversight**

The CSU system comprises twenty-three campuses throughout the state. The Chancellor oversees the campuses, and the system is governed by the Board of Trustees.

##### **A. System**

###### *Board of Trustees*

The Board of Trustees (“Trustees”) of the CSU is a body of twenty-five individuals charged with oversight. The Trustees adopt rules, regulations, and policies governing the CSU. The Trustees receive routine updates on NAGPRA and CalNAGPRA compliance.

###### *Chancellor’s Office*

In recognition of Tribal sovereignty, primary responsibility for compliance with NAGPRA and CalNAGPRA resides in the Chancellor’s Office Advocacy and State Relations (ASR) department in the division of External Relations and Communications. ASR oversees the system NAGPRA staff including the project manager. Infrastructure growth may lead to changes in the organizational structure to improve systemwide oversight and repatriation outcomes. The Chancellor may designate an administrator to lead systemwide coordination and oversight, which can include, but is not limited to campus support and oversight, policy reviews, repatriation reviews, and support of internal audits.

###### *Systemwide NAGPRA Implementation and Oversight Committee (“Systemwide NAGPRA Committee”)*

The purpose of the Systemwide NAGPRA Committee is to provide the system with expertise and guidance concerning repatriation and disposition of Native American human remains and cultural items in accordance with repatriation laws and make recommendations to the Chancellor on matters of compliance and best practices. The committee shall provide support

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<sup>9</sup> *Free* means voluntary; *prior* means before any action is taken or decision is made; *informed consent* means that the Indian Tribe(s), Native Hawaiian organization(s), and lineal descendant(s) have all relevant information and have provided a written consent.

and counsel for the individual campus' NAGPRA committees as well as review and promote the implementation of this policy. The committee shall provide support to resolve disputes and appeals brought by Tribes when disagreements arise regarding a campus' identification or, repatriation or disposition decision for human remains or cultural items.<sup>10</sup>

The CSU references the requirements as outlined in CalNAGPRA to guide committee member qualification criteria and the nomination process.<sup>11</sup> Committee members shall meet the qualification criteria as outlined in CalNAGPRA, be nominated by the NAHC, and appointed by the Chancellor. A formal committee charter including duties and terms shall be determined upon establishment of the committee. Such a charter shall not conflict nor be inconsistent with this policy.

Committee members may support Tribes with the repatriation process and participate in the development and implementation of the broader repatriation infrastructure within the system, such as campus-wide collection assessments and surveys or contamination policies. Committees may also identify their own goals to create a more respectful and timely repatriation process within the system. Such goals shall not conflict nor be inconsistent with this policy. Further, the committee may review Campus Repatriation Implementation Plans ("Repatriation Plans").

### **Reporting**

The Chancellor's Office shall regularly monitor campus repatriation progress and require all campuses to report their activities and provide updates as determined by the Chancellor.

### *Campus Repatriation Plan*

The Repatriation Plan provides a framework to guide campus repatriation and disposition activities and must include timelines and budgets. All campuses with collections subject to repatriation laws are required to develop a Repatriation Plan. Each Repatriation Plan supports full compliance with state and federal law and the respectful and timely repatriation or disposition of Native American human remains and cultural items. The Repatriation Plan shall be developed by the appropriate and authorized campus staff and incorporate all levels of compliance activities and responsibilities. Repatriation Plans shall be completed in coordination with campus NAGPRA Committees and submitted to the Chancellor's Office annually.

The Repatriation Plan must include the following components, at a minimum:

- Establish CSU & Tribal Point of Contacts
- Conduct Outreach to All Potentially Culturally Affiliated Tribes
- Initiate and Facilitate Meaningful Consultations
- Receive and Process Claims for Repatriation or Disposition
- Identify Curated by Other Agencies
- Prepare Budget Estimates
- Develop Campus Repatriation Plan Timelines

### *Campus Progress Reports*

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<sup>10</sup> 8028.7 (a) (7)

<sup>11</sup> 8028.71 (a) (2)

The Chancellor's Office may require routine campus progress reports to provide a snapshot of where campuses are in the repatriation or disposition process including but not limited to, publication of federal notices, status of consultations, and transfers of control and possession.

#### *Funding*

The CSU is required to ensure that each campus has the funding necessary to comply with CalNAGPRA.<sup>12</sup> Campuses are required to report their estimated repatriation and disposition budgets to the Chancellor's Office in their Repatriation Plan, which are due annually, or as requested. Upon evaluation of the reasonableness of campus estimates, the Chancellor's Office will work with the campuses to identify and provide funding from existing systemwide or campus-based resources or seek additional funding from the State Legislature or other sources, to ensure that campuses have sufficient funding to support their repatriation activities and achieve repatriation outcomes.<sup>13</sup>

Systemwide NAGPRA Committee member travel costs shall be reimbursed by the Chancellor's Office for any in-person committee meetings consistent with the CSU Travel and Business Expense Payments Policy. Optional stipends for Tribal representatives for any additional work that rises to the level of professional services shall be provided. Any cost shall be identified and approved in advance by the Chancellor or the Chancellor's designee.

## **B. Campus**

#### *Office of the President*

The Office of the President must identify one or more authorized individuals who are responsible for carrying out the legal requirements of NAGPRA.<sup>14</sup> Campus presidents shall monitor repatriation and disposition activities and regularly report progress to the Chancellor's Office, including the Repatriation Plan, or as requested. The president may assign a designee with high-level administrative authority to oversee repatriation activities and to procure the appropriate resources to support repatriation and disposition outcomes. Presidents or their designees shall ensure there is continuity of staff and leadership to prevent delays in responses to requests and inquiries pertaining to repatriation and disposition, and to observe legal and repatriation and disposition timelines.

#### *Campus NAGPRA Implementation Committee ("NAGPRA Committee")*

The campus NAGPRA Committee shall advise the campus president on all matters pertaining to the campus's efforts to comply with repatriation laws and provide expert guidance and recommendations to ensure timely repatriation and disposition outcomes. The committee will implement the systemwide policy as well as campus NAGPRA policies and procedures, if applicable. Committee members shall meet the qualification criteria as outlined in CalNAGPRA, be nominated by the NAHC and appointed by the Chancellor.<sup>15</sup> CalNAGPRA requires all claims for repatriation or claims of violation of the policies and procedures to be submitted to the campus committee for determination.<sup>16</sup> Campus committees shall review Repatriation Plans

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<sup>12</sup> 8028.72

<sup>13</sup> 8028.72 (c)

<sup>14</sup> 88 FR 86529

<sup>15</sup> 8028.71 (b) (2).

<sup>16</sup> 8028.71 (b) (4).



prior to their submission to the Chancellor's Office and will provide regular reports of committee activities and decisions to the campus president and the Systemwide NAGPRA Committee. A formal committee charter including duties and terms shall be determined upon establishment of the committee. Such a charter shall not conflict nor be inconsistent with this policy.

Committee members may facilitate repatriations and dispositions and participate in the development and implementation of broader repatriation infrastructure within the campus, such as campus-wide collection assessments and surveys or contamination policies. Committees may also identify their own goals to create a more respectful and timely repatriation process within the campus. Such goals shall not conflict nor be inconsistent with this policy.

#### *Campus NAGPRA Coordinator*

Campuses with Native American human remains and cultural items in their collections or holdings shall have experienced full-time coordinators.<sup>17</sup> A NAGPRA coordinator (herein "coordinator") shall have demonstrated experience working successfully with California Tribal leaders, members, and representatives to conduct repatriation and disposition duties of effectively consulting with Tribes and knowledge and application of repatriation laws. Further, coordinators shall be positioned under an administrative authority with direct access to campus resources, support, and the campus president.

#### *Funding*

Campuses will strive to identify the amount of funding needed to cover costs related to repatriation and disposition and prepare annual budget estimates. Estimates shall include fees and expenses for Tribal representatives to attend consultations, move collections or assist or perform other activities on campus, rehousing materials, reburial, and any other expenses to achieve repatriation outcomes as identified during consultation. To the best of their abilities and as best practice, compensate Tribes for the full repatriation or disposition expenses and provide proper care for collections as directed by the lineal descendants, Tribes, and Native Hawaiian organizations. Campuses shall ensure the safety of collections and holdings while in the stewardship of the campuses.

Repatriation budgets shall be reviewed with the consulting parties<sup>18</sup>, the campus NAGPRA Committee, and the campus president or their designee prior to submission to the Chancellor's Office. Budgets are to be included with the Repatriation Plan, which is to be reviewed at minimum annually, or as requested by the Chancellor's Office.

To the best of their abilities and as best practice, campuses shall provide travel reimbursement for Tribal representatives for in-person NAGPRA Committee meetings, optional stipends for Tribal representatives to attend NAGPRA Committee meetings and stipends for any additional work that rises to the level of professional services such as participating in campus-wide collection assessments and surveys or policy development. Campuses may fund the labor costs of Tribal committee members<sup>19</sup> for time spent working on repatriation or disposition tasks on

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<sup>17</sup> 8028.7 (8).

<sup>18</sup> For the purpose of this document, "consulting parties" are any lineal descendant, any Indian Tribe or Native Hawaiian organization, and any California Indian Tribes as defined in CalNAGPRA with potential cultural affiliation.

<sup>19</sup> Tribal representatives appointed to a campus NAGPRA Committee as defined in 8028.71 (c)(1)

behalf of the campus. Expenses shall be approved in advance by the campus president or their designee.

Reimbursement to Tribes for consultation, repatriation or disposition related costs may be through invoices, stipends, or other mechanisms as recommended during Tribal consultation and allowed under university policies. Every effort will be made to develop and implement a system for reimbursement or advance payment that will timely review and issue payments.

#### *Campus NAGPRA websites*

Each campus shall host a NAGPRA website that includes, at minimum:

- Current contact information for the campus NAGPRA representatives;
- Summary of reported NAGPRA and CalNAGPRA activities with links to publicly available information such as Federal Register notices and the National NAGPRA databases;
- Instructions to submit appeals, disputes, and file complaints or reports of possible violations of federal or state repatriation laws or this policy;
- Instructions to submit Tribal requests for research or testing; and
- A link to the system NAGPRA website.

## vi. **Compliance**

Federal NAGPRA provides a systematic process for determining the rights of lineal descendants, federally recognized Indian Tribes, and Native Hawaiian organizations to all Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are culturally or geographically affiliated.<sup>20</sup> CalNAGPRA compliance must be consistent with federal NAGPRA including completing the required processes and adherence to timelines. CalNAGPRA affords non-federally recognized California Indian Tribes the opportunity to consult and place claims, work with federally recognized Tribes or demonstrate lineal descendancy.

### **A. Consultation**

Consultation is not only a legal requirement, but also a cornerstone of successful implementation. Consultation is also imperative for regaining trust and building lasting positive working relationships between the CSU and California Indian Tribes. Consultation is always the first step and is foundational to all aspects of the repatriation and disposition process and guides the way campuses and consulting parties are to proceed.

Coordinators shall be prepared to provide information pertaining to the relevant collections and holdings prior to, during, and after consultations as requested by the consulting parties. Consultation shall include discussions on the appropriate storage and culturally appropriate treatment and handling of human remains and cultural items. This is critical to minimize unnecessary handling and prevent further disrespectful acts and actions that cause additional spiritual harm and physical damage. It is only through consultation with the consulting parties that cultural protocols are obtained. Coordinators shall maintain a running record of consultations in a Consultation Record, which is a legal requirement and reported in the Repatriation Plan or as requested by the Chancellor's Office.

#### *Timeline*

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<sup>20</sup> <https://www.federalregister.gov/d/2023-27040/p-10>

The campus shall prioritize timely repatriations and dispositions by consulting with Tribes regarding the timelines set forth in both NAGPRA and CalNAGPRA. When there is a range of timelines, the campus shall aim for the shortest possible timeline unless an affiliated Tribe has requested a longer timeline.

Preparation of notices and completion of repatriation or disposition shall be prioritized if there are processes that may seem to delay repatriation or disposition such as consultation with other Tribes, completion of documentation, or other ambiguities; these shall be done in parallel in preparation of the notice, so the notice is not delayed. A good faith effort shall be made to offer the option of a draft notice within five business days of the first meeting.

Campus staff shall discuss what repatriation or disposition costs the Tribe(s) may want or need to have reimbursed so those costs can be considered, budgeted, approved, and advanced or reimbursed in a timely manner.

Consultation occurs early and often and can be an iterative process. Campuses are legally obligated to initiate consultation with lineal descendants, Tribes, and Native Hawaiian organizations. Campuses shall designate and authorize the coordinator(s) to consult on behalf of the campus. Coordinators shall identify all potential consulting parties and establish contact with authorized Tribal representatives. Coordinators shall proactively attempt connection by telephone, paper, electronic communications, and in person opportunities to make the proper arrangements to facilitate consultation. Current California Indian Tribal contact information may be obtained by request to the NAHC and referral to the Consultation Resources provided by National NAGPRA.<sup>21</sup> Campuses shall maintain current and publicly accessible contact information for the coordinator(s) charged with repatriation and disposition duties and responsibilities. Campuses are responsible for contacting the Tribes; therefore, campuses must obtain current contact lists, which are constantly being updated.

#### *Identifying and Reporting Conflicts with Campus Staff*

A Tribe may report a conflict with working with any campus staff for any reason to the Campus NAGPRA Committee. Resolution of conflicts must be considered on a case-by-case basis and tailored to the specific Tribe(s) and staff involved.

#### *Request for assistance of another CSU campus*

A Tribe may request the Chancellor's Office for the involvement of an assisting CSU campus' staff in the repatriation or disposition process for assistance in providing best practices and model process for the campus with control of collections subject to repatriation laws. The assisting campus may support good faith repatriation or disposition for collections not currently in a campus's possession but in the possession of the other CSU campuses. The assisting campus' staff may assist with preparing notices, provide reburial space, provide reburial preparation, provide reburial assistance, and coordinate the transfer of collections. All campuses involved shall defer to Tribal preferences for confidentiality. The campus with control shall retain full compliance responsibilities as well as cover all related costs. The assisting campus may decline to assist for any reason. Requests may be submitted to the Chancellor's Office for review and approval.

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<sup>21</sup> <https://www.nps.gov/subjects/nagpra/consultation-resources.htm>.

Tribes may request joint consultation meetings. Campuses shall defer to the Tribes for preference on joint meetings and such requests shall be timely passed along to the culturally affiliated and potentially affiliated Tribes.

#### *Confidentiality*

Consulting parties have a right to confidentiality of the information shared during consultations. Campuses are required to protect private and sensitive information that is obtained during consultations. Information in any form such as transcribed, reproduced, photographed, and audio or video recorded shall be kept confidential unless the contributing consulting party provides express authorized consent. Information may also be disclosed as required by repatriation laws to support the repatriation or disposition of human remains and cultural items. Campuses should err on the side of caution and consider all information confidential unless otherwise advised by the consulting parties. Hard files containing confidential information shall be kept secured in locked cabinets and electronic files shall be password protected. Access to information shall be restricted to authorized individuals.

One method to address confidentiality concerns is to avoid collecting sensitive cultural information. Campuses can ensure that sensitive information does not become part of the public record by not requesting, collecting, or recording such information in the first place.

Consultation information regarding the details of a Tribe's claim, transfer, or reburial shall be considered confidential unless clearly stated otherwise.

#### *Stewardship*

Federal NAGPRA regulations require consultation with lineal descendants, Indian Tribes, or Native Hawaiian organizations, and Alaskan Villages on the appropriate treatment, handling, and storage of Native American human remains and cultural items in the custody, control, or possession of campuses. Furthermore, the law requires reasonable, good faith efforts to incorporate and accommodate Tribal Traditional Knowledge in the treatment, handling, and storage of the human remains and cultural items.<sup>22</sup> Campuses shall adhere to this legal requirement for all Native American human remains and cultural items. Handling shall be minimized at all times.

Campuses shall restrict access to the spaces occupied by human remains and cultural items to authorized individuals only. Access, handling, or relocating human remains and cultural items without the explicit consent from the authorized Tribal representatives or lineal descendants is strictly prohibited. Authorizations and permissions shall be obtained through consultation and be documented. Campuses shall maintain running records documenting individual access and activities within facilities that contain human remains and cultural items.

Campuses shall provide proper facilities to protect and secure collections and holdings from theft, environmental hazards, climate instabilities, and pest infestation. Facilities shall maintain proper and continuous climate-controlled and surveilled systems.<sup>23</sup> Further, campuses shall utilize the collections management system (CMS), which is provided by the Chancellor's Office,

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<sup>22</sup> 43 CFR 10.1(d)

<sup>23</sup> 36 CFR 79.9

to catalog and track campus NAGPRA collections as well as repatriation and disposition activities.

## **B. Identifying and Reporting Collections**

Both federal and state law require the creation and submission of Inventories and Summaries and require consultation with culturally affiliated and potentially affiliated lineal descendants, Tribes, Native Hawaiian organizations, and Alaskan Villages during the identification of Native American human remains, cultural items, sacred objects, objects of cultural patrimony and development and completion of the Inventories and Summaries. The process of consultation requires proactive and collaborative efforts to determine cultural affiliation for repatriation or disposition. Proactive means consulting with culturally affiliated or potentially affiliated Tribes **prior to** planning or conducting any Inventory or Summary work.

### *Campus assessments and surveys*

Campuses are required to locate and include all collections and items that may be subject to repatriation laws. This requires campus-wide assessments of all units or departments, labs, offices, storage facilities and containers, satellite units, and any other facilities under the management of the campus or its auxiliaries. Campus museums with collections that contain or may contain Native American human remains and/or cultural items must report collections to the campus' coordinator. The success of this effort requires the active participation and cooperation of all involved academic and administrative staff and faculty.

Assessments may be conducted in the form of surveys and shall include timely follow up and physical inspections, especially units or departments that acquired collections or items that may be subject to repatriation laws for study, research, analysis, display, or curation.<sup>24</sup> System and campus directives to conduct campus-wide assessments shall be enforced by the campus president or their designee and implemented and managed by the coordinator. Campus-wide assessments are conducted as needed or as directed by the Office of the President, campus's NAGPRA Committee, or the Chancellor's Office. Purposes of campus-wide assessments include but are not limited to the thorough reporting of collections and holdings to avoid missed collections or items, and avoid partial repatriations or dispositions, which causes further harm, negatively impacts reburial timelines, and results in cost increases.

Campuses are required to assess all human remains including those that do not have clear identification or provenience and those that are not yet identified as Native American. Ethnographic collections, teaching collections, and individual items that are or may be of Native American, Native Hawaiian, or Alaska Native origin shall be assessed for eligibility for repatriation or disposition. Campuses shall not make assumptions about classifications or what is or what is not a Native American human remain or cultural item; determinations are made only through consultation with the culturally affiliated or potentially affiliated lineal descendants, Tribes, Native Hawaiian organization, Alaskan Village representatives in consideration of and in deference to Tribal identifications.

### *Survey completion*

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<sup>24</sup> Tribal requests to acquire or steward new collections is discussed in section VI.F.

Campus surveys shall be completed within one year of adoption of this policy and campuses shall report annually thereafter.<sup>25</sup>

#### *Documentation and reconciliation*

In compliance with repatriation laws, campuses shall make efforts to seek and gather all relevant information and documentation pertaining to Native American human remains and cultural items in their collections and holdings including the circumstances surrounding their acquisition. Information may be obtained from catalogs, maps, archaeological site records, field notes, and other research and investigative efforts including interviewing faculty, principal investigators, students, and any other possible sources.

Irresponsible past practices have created numerous challenges in reconciling provenance and provenience for human remains and cultural items that are subject to repatriation laws. Adding to this are distributions of human remains and cultural items from one cultural site across multiple institutions within and beyond California. Several CSU campuses possess or control partial collections or holdings of human remains and cultural items excavated from the same or proximate archaeological sites, accessions, or collections; therefore, CSU campuses shall actively work together to identify shared or split collections in consultation with the culturally affiliated or potentially affiliated Tribes to streamline repatriation and disposition efforts. Further, campuses shall actively collaborate with external institutions and campuses that may also have split or shared collections and work towards reunification if requested by the Tribe(s).

Campuses shall ensure that all collections and holdings and any associated files or documents are accounted for. Campus administrators, staff and faculty shall conduct due diligence to locate missing collections and items through comprehensive investigative measures until resolution. CSU employees, students, and affiliated parties who refuse to surrender collections subject to repatriation laws are in non-compliance with federal and state laws, regulations, and university policies.

Campuses that do not currently control, possess, or have custody of Native American human remains or cultural items shall submit a formal letter stating such to National NAGPRA and NAHC with a copy to the Chancellor's Office; however, these campuses still have an obligation to periodically reassess collections and holdings as human remains and cultural items may be discovered in the future.

#### *Hazardous substances, contamination histories, and testing*

NAGPRA requires campuses to report known hazardous substances used to treat or preserve human remains and cultural items.<sup>26</sup> Campuses shall compile comprehensive contamination histories as part of the information provided to culturally affiliated or potentially affiliated lineal descendants, Tribes, Native Hawaiian organizations, and Alaskan Villages. Identification of application or exposure to harmful substances may include pesticides (e.g. DDT), mercury, arsenic, and any other preservation substances.

Coordinators shall gather documentation regarding the type, use, dates, purpose or reason for application or exposure, and any previous treatments. Reports shall include exposures to mold

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<sup>25</sup> Outline of minimum requirements for campus collections and holdings assessment and survey (Appendix #2).

<sup>26</sup> <https://www.federalregister.gov/d/2023-27040/p-1042> and <https://www.federalregister.gov/d/2023-27040/p-1147>.

and any other risks to human health through handling or inhalation. Contamination information shall be disclosed early in the consultation process for consulting parties to determine next steps and proper protective, physical and cultural, protocols.

At the request of lineal descendants, Tribes, Native Hawaiian organizations, or Alaskan Villages, campuses shall provide options for testing or removal of contaminants that shall be funded by the campuses and include methods that minimize handling and destructive treatments.

#### *Updates to Inventories and Summaries*

Prior to any handling and conducting new or additional inventory work, campuses shall consult with the culturally affiliated or potentially affiliated Tribes on the protocols to be used in the inventory process including minimizing handling.<sup>27</sup> Campuses shall timely update the Inventories and Summaries submitted to National NAGPRA and NAHC when new information is obtained. Updates shall be determined in consultation with the culturally affiliated or potentially affiliated Tribes. Updates include discoveries of unreported or previously missing collections or items, or supplemental information to add to existing Inventories and Summaries. Further, updates shall include the identification of human remains or cultural items that were previously classified as “culturally unidentified” but have since been determined culturally affiliated through obtained information such as Tribal Traditional Knowledge.

Discoveries of unknown or previously missing human remains or cultural items shall be reported immediately to the campus president or their designee and the campus’s NAGPRA Committee. The coordinator shall immediately notify the culturally affiliated or potentially affiliated Tribe(s), initiate and engage in consultation, and compile and submit federal Inventories or Summaries according to the following designated timelines: Summary updates shall be reported six months after locating unknown or previously missing cultural items or acquiring possession or control of cultural items;<sup>28</sup> Inventory updates shall be reported two years after locating unknown or previously missing human remains or associated funerary objects or acquiring human remains and associated funerary objects.<sup>29</sup> Updates shall be made to NAHC Inventories and Summaries in the Tribal Resources, Preliminary, or Final entries. Campuses shall initiate this process as early as possible.

Campuses shall provide accessible means to report and receive allegations or anonymous tips of collections or items in campus possession or custody. The coordinator shall promptly follow up on any credible allegations or tips, report findings to the campus president or their designee and the NAGPRA Committee and conduct the required steps to report unknown or previously missing human remains or cultural items as outlined in this section.

#### *Steward collections*

Campuses that steward collections or holdings that contain or may contain Native American human remains or cultural items for agencies, institutions, or private individuals shall establish and maintain current communications and have or secure active written agreements with clear duties and responsibilities as it pertains to compliance with repatriation laws. Further, campuses shall include the status of such collections in their Repatriation Plan.

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<sup>27</sup> 8013 (b)(1)(B).

<sup>28</sup> § 10.9 (a)(2) Deadlines for Compiling a Summary.

<sup>29</sup> § 10.10 (d)(2) Deadlines for Completing an Inventory.

Campuses must report federal agency collections or holdings to the National NAGPRA Program Manager no later than January 13, 2025.<sup>30</sup> Campuses shall send similar statements to any other agencies and individuals with legal control or possession of the collections or holdings that are in the possession or custody of the campus. If the campus cannot identify the individual, agency, or institution with legal control, a statement of the collections or holdings shall be submitted to the National NAGPRA Program Manager and the NAHC by the same deadline. Copies of the statements shall be included in the Repatriation Plan's appendix.

Campuses shall not accept new curation collections that contain or may contain Native American human remains or cultural items unless explicitly requested in writing from the culturally affiliated or potentially affiliated Tribe(s). See Section F for Tribal requests.

### **C. Cultural Affiliation, Disposition and Repatriation**

To achieve repatriation or disposition of Native American human remains and cultural items, campuses shall utilize the lines of evidence and standards of proof as stipulated in repatriation laws as follows: geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical evidence, other information or expert opinion, and Tribal Traditional Knowledge. From this information, campuses shall determine cultural affiliation. A single line of evidence may be sufficient to determine cultural affiliation. Cultural affiliation gives deference to Tribal Traditional Knowledge, oral histories, documentation, and testimonies as provided by the consulting California Indian Tribes.<sup>31</sup>

Cultural affiliation does not require exhaustive studies, additional research, or continuity through time. Cultural affiliation is not precluded solely because of reasonable gaps in the information available.<sup>32</sup> Campuses have an obligation to conduct due diligence and make good faith efforts to identify and gather all existing information and documentation to inform determinations of cultural affiliation.

Native American human remains and cultural items that the campuses have deemed as "culturally unidentifiable" shall be re-evaluated through the campus's acquisition histories and geographic origins from which they were removed and by initiating and conducting consultation with all potentially culturally affiliated Tribes. Human remains and associated funerary objects that cannot be culturally affiliated after exhaustive information searches and broad consultations shall follow the legal procedures as outlined in the law.<sup>33</sup> Federal regulations clearly outline the process of cultural affiliation.<sup>34</sup>

#### *Repatriation and disposition*

Coordinators are required to respond to requests for repatriation or disposition in a timely manner and follow the legal processes to repatriate or return culturally affiliated Native American human remains and cultural items. The federal process includes the creation and

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<sup>30</sup> <https://www.federalregister.gov/d/2023-27040/p-1025>.

<sup>31</sup> CaINAGPRA § 8016(d)(6).

<sup>32</sup> <https://www.federalregister.gov/d/2023-27040/p-788>.

<sup>33</sup> 43 CFR 10.10(k).

<sup>34</sup> <https://www.federalregister.gov/d/2023-27040/p-788>.



submission of federal notices and repatriation statements or transfer of control notices. Copies of the notices and statements shall be submitted to the NAHC with reference to the NAHC Inventory or Summary entry.

Achieving the transfer of legal control to lineal descendants or Tribes is a significant goal for which campuses shall strive; physical transfer to lineal descendants or Tribes for reburial or other culturally appropriate treatment completes repatriation and return. Repatriation and disposition timelines are determined in consultation with the lineal descendant, Tribe, or Native Hawaiian organization to which legal control has transferred. The coordinator shall discuss the process and protocols to timely and respectfully complete repatriation or disposition.

#### *Timelines*

For notices, campuses shall follow the timelines for federal and state law. Campuses shall report their progress with publishing notices to the Systemwide NAGPRA Committee on an annual basis, or as needed, including a list of published and unpublished notices. To ensure timeline implementation, unpublished notices including accessions or sites that contain Native American human remains and cultural items that are not in a Notice of Inventory Completion shall be published within two years of adoption of this policy. Campuses requiring additional assistance may seek the support of other CSU campuses that have demonstrated ability to meet timelines or from the Chancellor's Office.

#### *Transfers and reburial preparation*

Transfer of possession shall be offered concurrently as transfer of legal control. Campuses shall track transfers and reburial preparation and report annually on all pending and completed transfers. For any pending transfers that have been pending for greater than one year the Systemwide NAGPRA Committee or campus NAGPRA Committee may make recommendations for options to complete the transfer or assist the Tribe.

#### *Repatriation metrics and completion*

Repatriation completion happens when legal and physical transfer occurs. Campuses shall report on repatriation completion on an annual basis. Campuses shall strive to repatriate or return no less than ten percent of the human remains and cultural items that are in their control each subsequent year after the implementation of this policy. Campuses shall strive to repatriate no less than fifty percent of the human remains and cultural items that are in their control within five years of the implementation of this policy. Repatriation Plans and budget requests should be drafted to meet these goals. Active engagement and best efforts to work towards repatriating or returning items that are controlled by another Agency, but in the campus' possession, must be demonstrated and summarized annually.

If the above metrics are not met, campuses shall provide documentation to the Chancellor's Office explaining the reasons why these metrics were not met and what is required to meet these metrics for the next reporting period.

#### *Held-in-Trust*

At the request of the lineal descendant, Indian Tribe, or Native Hawaiian organization to which legal control has transferred, the campus may retain stewardship of Native American human remains or cultural items until physical transfer can occur. The campus shall generate a written held-in-trust agreement in consultation with the legal owner to determine the terms and

conditions including adjustments in stewardship preferences and access needs. The campus will accommodate requests within reason and to the best of its abilities. If the agreement term is longer than one year, the agreement shall be reviewed annually from the signature date on the agreement.

## **D. Complaints and Appeals**

### *Complaints*

If lineal descendants, Indian Tribes, Alaskan Villages, or Native Hawaiian organizations find that a campus has violated this policy, the Tribe may contact the campus president via US mail, telephone, or email. The campus president will confirm receipt of the complaint within five business days and will provide a complete response within thirty business days from receipt of the complaint. If response from the campus president is unsatisfactory, Tribes can submit a complaint to the CSU Systemwide Committee and/or the CSU Chancellor or obtain mediation/resolution through the NAHC and the Review Committee process. Contact information for filing a complaint must be posted on the campus' website.

### *Appeals*

Lineal descendants, Indian Tribes, Alaskan Villages, or Native Hawaiian organizations may appeal a campus's decision pertaining to but not limited to the contents of Inventories and/or summaries, cultural affiliation, identification of cultural items, repatriation process or disposition by contacting the campus president. Tribe can contact the CSU Systemwide NAGPRA Committee via US mail, telephone, or email. The Chair of the CSU Systemwide NAGPRA Committee will confirm receipt of the appeal within five business days. The Systemwide NAGPRA Committee will meet as soon as possible but no later than thirty business days after receipt of the appeal. The CSU System NAGPRA Committee will review the appeal and provide a recommendation to the CSU Chancellor. The lineal descendants, Indian Tribes, Alaskan Villages, or Native Hawaiian organizations will be invited to the CSU Systemwide NAGPRA Committee meeting to present their appeal in person.

Within thirty days of the review of the appeal by the CSU Systemwide NAGPRA Committee, the Committee will make a recommendation to the campus president. Within five days of the receipt of the recommendation, the president will make the decision to uphold, reverse, or modify the campus determination and provide the appealing lineal descendants, Indian Tribes, Alaskan Villages, or Native Hawaiian organizations with a written explanation and basis for approving or denying the appeal.

In the event a resolution cannot be made at the campus or system level, disputing parties may retain third party mediation services. The NAHC may also initiate the CalNAGPRA statutory mediation process.<sup>35</sup> Federal law allows affected parties (lineal descendants, Tribes, Alaskan Villages, and Native Hawaiian organizations) to request informal negotiations, which may include the assistance of the National NAGPRA Program Manager or the Review Committee for resolution.<sup>36</sup>

## **E. Prohibition on Teaching and Research**

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<sup>35</sup> Health & Safety. Code, § 8016, subdivisions. (d)(1)-(6).

<sup>36</sup> <https://www.federalregister.gov/d/2023-27040/p-1032>.

All campuses in the possession of Native American human remains and cultural items are prohibited from using Native American human remains and cultural items for the purposes of teaching or research.<sup>37</sup> Human remains that do not have clear identification as non-Native American, or provenience information shall not be used for the purposes of teaching or research unless and until it is determined that the human remains are not subject to repatriation laws.<sup>38</sup>

Unless free and prior consent is obtained by the culturally affiliated Tribe(s), information acquired from previous research, analysis, or studies related to Native American human remains and cultural items are also subject to this prohibition.

Prior to allowing any exhibition of, access to, or study, analysis, examination, or other means of acquiring or preserving information about Native American human remains and/or cultural items, campuses must first obtain free, prior, and informed consent from lineal descendants, Indian Tribes, Alaskan Villages, or Native Hawaiian organizations.<sup>39</sup>

As best practice, campuses shall not use, reproduce, or distribute images of Native American human remains and/or cultural items that are or were previously in campus collections or holdings, without explicit permission from the culturally affiliated Tribe.

#### *Institutional Research Board (IRB) and Publications*

Any future publications by CSU staff, faculty, or students that include information obtained from Native American human remains or cultural items must conform to the ethical protocol on file with the IRB for the associated culturally affiliated Tribes. A culturally affiliated Tribe may request the removal or redaction of any information regarding their ancestors or cultural items for any pending or future publications associated with the campus.

Tribes may submit their Tribal policy to the campus IRB regarding the use of Native American human remains and cultural items and/or the information obtained from those human remains and/or cultural items. The Tribe may consult with the campus IRB to identify how that policy shall be interpreted and implemented.

## **F. Tribal Requests**

### *Research, Analysis, Education*

Additional and/or new research could be conducted only if all activities are explicitly initiated by the affiliated Tribe. Best practice is to complete a repatriation and transfer of control, so that a Tribe may consent to research requests.

### *CSU Stewardship of New Collections*

Tribes may request that a campus accept stewardship of new collections that may contain Native American human remains or cultural items from external or internal sources or other CSU campuses for purposes such as reunification of accessions or sites, other temporary custody purposes, and to facilitate future repatriation. External sources include federal or state agencies and private entities. Internal sources refer to other CSU campuses. Tribal requests shall be

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<sup>37</sup> 8028.7 (a) (2) (A).

<sup>38</sup> 8011 (b) - resolve ambiguities of the law in favor of the Tribes.

<sup>39</sup> 88 FR 86518: Duty of Care [10.1.d(3)].

reviewed and considered by the campus' NAGPRA Committee for recommendation to the campus president to accept or deny the request in consultation with the requesting Tribe(s). When a policy is unclear, Tribal requests will be given deference and priority.

Campuses shall consider several factors including the campus' ability to provide proper funding and facilities to secure and care for new collections including but not limited to staffing, ability to provide Tribal access to and use of the collections as requested, and reasonable accommodations for Tribal cultural care protocols. Campuses shall generate clear agreements that outline the respective roles, responsibilities, expectations, terms, and conditions, and if applicable, timelines.

## **G. Deaccessioning**

In line with National NAGPRA regulations, any campus that has Native American human remains and/or cultural items will be considered a museum for the purposes of NAGPRA, and this policy, whether campuses have a previously established museum or not. Campus with previously established museums with Native American human remains and/or cultural items in their collections must update their collection management policy to allow for the deaccessioning of collections, as described in this section, to ensure the timely and respectful repatriation or disposition of Native American human remains and cultural items. If a campus does not have a previously established collections policy, then they will also follow the steps described herein.

Once a culturally affiliated Tribe(s) has made a claim and the notice of repatriation has been published by National NAGPRA and the NAHC, the museum will provide a copy of the final NAGPRA Inventory and/or Summary to the campus president and the campus NAGPRA Committee. Within the Transfer of Custody Agreement<sup>40</sup> between the campus and Tribe(s), the president will confirm that the items have been deaccessioned. The Transfer of Custody Agreement will be signed by the campus president and the culturally affiliated Tribe(s). No other approvals or reviews are needed.

The museum and campus will maintain a permanent record of all deaccessioned Native American human remains and/or cultural items by obtaining a copy of the signed Transfer of Custody Agreement and noting in the museum's inventory lists, programs, and accession records that the Native American human remains and/or cultural items have been deaccessioned.

This policy supersedes any campus museum deaccession policies and procedures regarding compliance with repatriation laws.

## **H. Training**

Compliance with repatriation laws require regular systemwide and campus-wide awareness and education. CSU system and campus staff charged with repatriation oversight, duties, or activities set forth in this policy are required to obtain or update training as repatriation laws are updated and culturally appropriate best practices are developed. Staff shall attend regular training sessions at least once a year. The Repatriation Plan requires proof of campus staff training.

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<sup>40</sup> Pending final National NAGPRA template.

All CSU employees may access the NAGPRA Bundle in the CSU Learn Library, which provides a basic introduction and generates awareness of the CSU's duties and responsibilities to comply with repatriation laws. The Bundle shall be assigned to all new staff with repatriation duties and responsibilities as part of their on-boarding process. The Chancellor's Office may also develop training opportunities in partnership with Tribal experts and campus representatives who are demonstrating successful repatriation outcomes and strong relationship building with Tribal Nations. Campuses shall develop training protocols to address specific circumstances, issues, and concerns within their service areas. Such training protocols shall not conflict nor be inconsistent with this policy.

## **vii. Non-Compliance**

CSU is committed to full and respectful compliance with NAGPRA and CalNAGPRA. Any instances of non-compliance should be reported to the Chancellor's Office, Systemwide NAGPRA Committee, and/or the campus president.

Instances of non-compliance will be addressed in accordance with campus policies, as well as state and federal laws and regulations. Some violations may require the CSU to notify appropriate governmental agencies. Allegations of non-compliance may also be submitted directly to the US Secretary of the Interior<sup>41</sup> or the NAHC.<sup>42</sup>

Violations of federal and state NAGPRA laws can result in civil penalties against institutions.<sup>43</sup> Criminal penalties, punished by imprisonment, a fine, or both, can be imposed against any person who knowingly sells, purchases, uses for profit, or transports for sale or profit the human remains of a Native American or any Native American cultural item obtained in violation of NAGPRA.<sup>44</sup> Any civil or criminal penalties imposed by the US Secretary of the Interior or NAHC for non-compliance are the responsibility of the campus.

## **viii. Updates and Amendments**

One year after adoption of this policy, the Chancellor's Office and the Systemwide NAGPRA Committee shall assess the effectiveness of the policy and identify areas in need of revision including but not limited to incorporating any changes to federal or state law requirements, changes in CSU system infrastructure, or as recommended by the Systemwide NAGPRA Committee.

Regular reviews thereafter shall occur at minimum every three years. The Chancellor's Office shall collaborate and consult with California Indian Tribes and the NAHC on drafted revisions prior to adoption and implementation. Drafted revised policies include reviews by the CSU Academic Senate and Labor Relations.

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<sup>41</sup> <https://www.federalregister.gov/d/2023-27040/p-1288>.

<sup>42</sup> 8029 (a).

<sup>43</sup> 25 U.S.C §3007; Cal. Health & Safety Code § 8029.

<sup>44</sup> 18 U.S.C.A § 1170.

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-15-19**

**WHEREAS**, in the early decades of California's statehood, the relationship between the State of California and California Native Americans was fraught with violence, exploitation, dispossession and the attempted destruction of tribal communities, as summed up by California's first Governor, Peter Burnett, in his 1851 address to the Legislature: "[t]hat a war of extermination will continue to be waged between the two races until the Indian race becomes extinct must be expected"; and

**WHEREAS**, the State of California's laws and policies discriminating against Native Americans and denying the existence of tribal government powers persisted well into the twentieth century; and

**WHEREAS**, despite these wrongs, California Native Americans resisted, survived and carried on cultural and linguistic traditions defying all odds; and

**WHEREAS**, the State of California and California Native Americans have never jointly formally examined or documented their relationship for the express purpose of acknowledging and accounting for historical wrongs committed by the State of California toward California Native Americans; and

**WHEREAS**, the State of California has never formally apologized for historical wrongs tolerated, encouraged, subsidized and committed by State actors against California Native Americans; and

**WHEREAS**, the State of California seeks to more closely explore the historical relationship between the State of California and California Native Americans in the spirit of truth and healing through the establishment of a Truth and Healing Council; and

**WHEREAS**, the State of California intends that the work of the Truth and Healing Council be done respectfully and in collaboration and consultation with California Native American tribes pursuant to this Executive Order and Executive Order B-10-11.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, do hereby issue the following order to become effective immediately.

**IT IS HEREBY ORDERED THAT:**


1. The State of California hereby:
  - a. recognizes that the State historically sanctioned over a century of depredations and prejudicial policies against California Native Americans;
  - b. commends and honors California Native Americans for persisting, carrying on cultural and linguistic traditions, and stewarding and protecting this land that we now share;
  - c. apologizes on behalf of the citizens of the State of California to all California Native Americans for the many instances of violence, maltreatment and neglect California inflicted on tribes; and

- d. reaffirms and incorporates by reference the principles outlined in [Executive Order B-10-11](#), which requires the Governor's Tribal Advisor and the Administration to engage in government-to-government consultation with California Native American tribes regarding policies that may affect tribal communities.
2. The Governor's Tribal Advisor shall establish the Truth and Healing Council to bear witness to, record, examine existing documentation of, and receive California Native American narratives regarding the historical relationship between the State of California and California Native Americans in order to clarify the historical record of this relationship in the spirit of truth and healing. The Truth and Healing Council shall be led and convened by the Governor's Tribal Advisor and shall include representatives or delegates from California Native American tribes, and may include relevant state and local agencies, as well other relevant non-governmental stakeholders.
3. The Truth and Healing Council shall consult with California Native American tribes to shape the overarching focus and develop the work of the Council and shall endeavor to accurately represent the diversity of experience of California Native Americans within the State of California.
4. The Truth and Healing Council shall: (i) report draft findings to the Governor's Tribal Advisor on an annual basis beginning January 1, 2020 and (ii) produce a final written report of findings regarding the historical relationship between the State of California and California Native Americans on or before January 1, 2025.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice shall be given to this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 18th day of June 2019.



GAVIN NEWSOM  
Governor of California

**ATTEST:**

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ALEX PADILLA  
Secretary of State

## Appendix 2: Moratorium Implementation and Survey Process

### 1.0 **Intent:** The intent of this policy is to

- 1.1 Systematically search for all of the Native American human remains and cultural items that are in the possession or control of a campus, but are undocumented or believed to be missing;
- 1.2 Log and report any Native American human remains and cultural items that are found;
- 1.3 Comply with federal and state repatriation laws for reporting any newly discovered Native American human remains or cultural items;
- 1.4 Include Tribes in the planning and reporting process for this search.

### 2.0 **History of Prior Searches and Identification of High Risk Areas**

- 2.1 List a brief history of the prior searches that have been conducted and any outcomes of those searches;
- 2.2 Identify any physical spaces, departments, and programs on campus or off campus (such as extensions) that should be considered in the search process;

Ex. Bone boxes, human remains that do not have a documented history of consent from the originating individual, biological samples from Native Americans that are being used in ways that are inconsistent with the original consent forms (ex. Blood or DNA samples), satellite campuses where Anthropology classes may have been taught, etc.

### 3.0 **Moratorium on Use of Human Remains and Potential Cultural Items**

- 3.1 Institutional Moratorium on the use of Human Remains and Potential Cultural Items pending Response to Surveys and Review (See Reporting and Review Section)

### 4.0 **Survey Questionnaires and Anonymous Reporting**

- 4.1 Develop a standardized survey questionnaire, in consultation with Tribes, that will be circulated to all Faculty and Staff;
- 4.2 Ask about the presence/absence of human remains (in any state of completeness or decomposition) or Native American objects that may be cultural items<sup>1</sup>;
- 4.3 Inquire as to details about the origin of the human remains or Native American objects that may be cultural items;
- 4.4 Provide process for anonymously reporting suspected Native American human remains or potential cultural items;
- 4.5 Positive questionnaires or anonymous reporting will be logged and reviewed, as described in the section on Logging & Review.

### 5.0 **Physical Searches, Literature Searches, and Missing Cultural Item Searches**

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<sup>1</sup> Native American objects will be reviewed to determine if they are cultural items.



## Appendix 2: Moratorium Implementation and Survey Process

**5.1** Identify locations that should be physically searched, such as Anthropology classrooms, labs and offices, dentistry classrooms, biology classrooms, life sciences classrooms, exhibit spaces, etc.;

**5.2** Identify literature that should be reviewed, such as loan records, carbon dating records, obsidian hydration records, publications from accessions that have missing items, field schools (so that students can be sent questionnaires and offered the chance to return cultural items or Native American human remains, since it was often common for students, faculty, and staff to keep some of the items or human remains that were excavated);

**5.3** Review lists of missing cultural items and identify potential locations to look for those cultural items;

**5.4** Log the progress (i.e., what has been checked, what remains to be checked) and results of the physical searches, literature searches, and missing item searches so that it is clear when this process is complete;

**5.5** Positive finds will be logged and reviewed, as described in the section on logging and review;

### **6.0 Logging, Reporting, Review, and Identification of Potential Human Remains or Cultural Items**

**6.1** Identify the individual who is responsible for maintaining the attached Log of discovered or recovered potential Native American Human Remains or Cultural Items and timely notification of affiliated or potentially affiliated Tribes;

**6.2** Identify a secure and respectful space for temporary storage of discovered or recovered potential Native American human remains or cultural items;

**6.3** Develop process for and conduct initial screening of whether human remains are potentially Native American or Native American objects are potentially cultural items, including review & concurrence by affiliated or potentially affiliated Tribes;

**6.4** Process for Tribal Consultation for Review and Concurrence on the Identification of Native American Human Remains or Cultural Items;

**6.5** Documentation of Identification Decisions;

**6.6** Referral of Identified Cultural Items & Human Remains to the Museum for Repatriation;

**6.7** Regular Reporting to Campus Committees and Reporting Made Available to Tribes upon Request.

### **7.0 Timeline and Next Steps**

**7.1** Timeline for completion of Surveys;

**7.2** Timeline for completion of Physical Searches;

**7.3** Timeline for completion of Literature Searches;

**7.4** Next Steps for continued reporting and additional searches and process improvements, once the initial surveys, physical searches, and literature searches are completed.