



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

This Interim Policy was enacted prior to passage of AB 275, which amended the California Native American Graves Protection and Repatriation Act, effective January 1, 2021. This Interim Policy is under review and will be revised to reflect those changes.

<b>Responsible Officer:</b>	VP - Research & Innovation
<b>Responsible Office:</b>	Research & Innovation
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<b>Effective Date:</b>	7/24/2020
<b>Last Review Date:</b>	1/20/2021 extended interim status through July 2021
<b>Scope:</b>	This policy applies to 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.

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## I. POLICY SUMMARY

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The purpose of this policy is to increase and achieve Repatriation of Native American and Native Hawaiian ancestral Human Remains and Cultural Items to Tribes, Native Hawaiian Organizations and Lineal Descendants. The University of California (UC) adopts as a fundamental value the Repatriation of Native American and Native Hawaiian Human Remains and Cultural Items<sup>1</sup> (Associated and Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony), in accordance with state and federal law. This policy describes how UC will pursue this value and ensure both adherence to the general principles and compliance with the federal Native American Graves Protection and Repatriation Act at [25 U.S.C. §§ 3001-13](#) and its accompanying regulations at [43 C.F.R. §§ 10.1-17](#) (jointly referred to in this policy as “NAGPRA”), and the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”), [California Health & Safety Code \(CHSC\) §§ 8010-30](#). The procedures set out in this policy are intended to increase Repatriation, accountability, and transparency.

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## II. DEFINITIONS

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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](#)),<sup>2</sup> as applicable. For convenience, the definitions of some NAGPRA/CalNAGPRA terms are repeated below (with

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<sup>1</sup> Note that this policy covers **NAGPRA/CalNAGPRA-eligible** Human Remains and Cultural Items (all as defined in this policy). As such, this policy is not intended to cover the procedures that apply to inadvertent discovery of Native American remains during ground disturbing land development activity governed by California Public Resources Code § 5097.8 and Health and Safety Code § 7050.5, or notification and consultation requirements related to Tribal Cultural Resources pursuant to the California Environmental Quality Act. (See [UC CEQA Compliance](#).) In addition, this policy does not apply to voluntary and consented donations through the University’s Anatomical Donation Program. (See [UC Policy on Anatomical Donation/Materials Programs](#)).

<sup>2</sup> Under CalNAGPRA, terms have the same meaning as in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), as interpreted by federal regulations, except as noted in CalNAGPRA § 8012.

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citations), along with a few other UC defined terms. *Terms capitalized in this policy (including within the definitions below) are defined in this policy and/or defined under NAGPRA/CalNAGPRA.*

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

**California Indian tribe:** A tribe located in California as defined by CalNAGPRA § 8012(j).

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

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

**Confidential Information:** Any information submitted by a Tribe during the Consultation process regarding places that have traditional tribal cultural significance, including the locations of Native American graves, cemeteries, and sacred places, and specific information identified as “confidential” by a consulting Tribe. (See Section V.B.2 and Appendices A and A-1.)

**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.c.)

**Consultation:** “The meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American Tribes must be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation must also recognize the Tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.” California Government Code 65352.4. (See also Section V.B.1.)

**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 definition below.)

**Cultural Items:** Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and objects of Cultural Patrimony, all as defined by 43 C.F.R. § 10.2 and 25 U.S.C. § 3001. Under CalNAGPRA § 8012(d), Cultural items

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has the same meaning as found in 25 U.S.C. § 3001, except that it means only those items that originated in California. (See also Section III.A, Statement on Language.)

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

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

**Disposition:** Generally, the transfer of Control<sup>3</sup> of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (43 C.F.R. § 10.2(g)(5)). Specifically, as used in this policy, Disposition means the transfer of Culturally Unidentifiable Human Remains, with or without Associated Funerary Objects (as distinguished from “Repatriation,” which applies only to transfer of Culturally Affiliated Human Remains and Cultural Items) (43 C.F.R. § 10.2(g)(5)(iii)).

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

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

**NAGPRA/CalNAGPRA-eligible Collection:** Human Remains or Cultural Items that are required to be captured in a NAGPRA/CalNAGPRA Inventory or Summary.

**Preponderance of Evidence:** “Preponderance of Evidence” is the evidentiary standard where the evidence as a whole shows that the fact sought to be proved is more likely than not. Under 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. CalNAGPRA § 8012(l).

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

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

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

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

**Review Packet:** The collection of information needed for the Campus Committee to make a determination regarding Cultural Affiliation/State Cultural Affiliation, Repatriation or Disposition. See also #9 in Appendix A-1.

**State Cultural Affiliation:** State Cultural Affiliation means that there is a relationship of shared group identity that can reasonably be traced historically or prehistorically

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

between members of a present-day California Indian Tribe, as defined in CalNAGPRA § 8012(j), and an identifiable earlier Tribe or group. State Cultural Affiliation is established when the preponderance of the evidence, based on geography, kinship, biology, archaeology, linguistics, folklore, oral tradition, historical evidence, or other information or expert opinion, reasonably leads to such a conclusion. CalNAGPRA § 8012(f).

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

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

**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(j).

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

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### III. POLICY TEXT

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#### A. STATEMENT ON LANGUAGE

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

#### B. PURPOSE AND GUIDING PRINCIPLES

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

- 1) Repatriation or Disposition of all Native American and Native Hawaiian Human Remains and Cultural Items is a fundamental objective and value of UC that must be accomplished as expeditiously and respectfully as possible. This policy is designed to govern how UC implements its responsibilities under NAGPRA

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

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

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and CalNAGPRA to improve the Repatriation process so that Human Remains and Cultural Items may be brought home to Tribes, Native Hawaiian Organizations and Lineal Descendants.

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

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

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

<sup>8</sup> NAGPRA applies to 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)

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Possession or Control.<sup>9</sup> UC recognizes that culturally appropriate treatment must derive from Consultation with Lineal Descendants and Tribal Representatives.

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

**C. STATEMENT ON COMPLIANCE WITH CALNAGPRA**

UC is committed to complying with CalNAGPRA, which among other things, facilitates Repatriation and/or Disposition of California Indian Tribes' Human Remains and Cultural Items to California Indian Tribes, defined in CalNAGPRA § 8012(j).<sup>10</sup> UC campuses with Possession or Control of Native American Human Remains and/or Cultural Items are required to consult with California Indian Tribes and update their inventories and summaries as required by CalNAGPRA. This includes reviewing and revising or supplementing existing Inventories and Summaries for collections previously classified as Culturally Unidentifiable and consulting with California Indian Tribes as required by CalNAGPRA (see Section VI). Further, UC is required to transfer<sup>11</sup> Human Remains and Cultural Items that are State Culturally Affiliated with California Indian Tribes as required by CalNAGPRA, consistent with NAGPRA. (See also Section V.D and Appendices A and A-1.)

**D. REVISIONS TO THIS POLICY**

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

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<sup>9</sup> "Possession" and "Control" are defined by NAGPRA. [43 C.F.R. § 10.2\(a\)\(3\)\(i\)](#); [43 C.F.R. § 10.2\(a\)\(3\)\(ii\)](#).

<sup>10</sup> Citations to CalNAGPRA refer to California Health & Safety Code § § 8010-30.

<sup>11</sup> Note that under NAGPRA, non-Federally Recognized tribes can currently Request Disposition of Human Remains under NAGPRA 43 C.F.R. § 10.11, and Federally Recognized Tribes can Request Repatriation under § 10.10 or Disposition under 43 C.F.R. § 10.11.

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 tribes, UC will notify tribes and post the proposed changes on a UC public facing website for a minimum of forty-five (45) days so that tribes have an opportunity to comment.

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## **IV. COMPLIANCE/RESPONSIBILITIES**

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

### **A. SYSTEMWIDE**

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

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

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

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

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

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

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

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

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

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

5. 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 Section V.E.

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

## V. PROCEDURES

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### A. COMMITTEES

#### 1. Systemwide Committee

##### a. Composition

The President must establish a Systemwide Native American Repatriation Implementation and Oversight Committee (hereinafter called the “Systemwide Committee”)<sup>12</sup> in accordance with the requirements of [CalNAGPRA §8026\(a\)](#).

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

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

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

The President may observe committee meetings.

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

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

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<sup>12</sup> CalNAGPRA §8026(a)(1) states that the system wide 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 may do any of the following as needed to assist in the compliance of this policy:

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

**c. Systemwide Committee Procedures**

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

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

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

**Record Keeping.** The Chair of the Systemwide Committee will maintain a record of all Systemwide Committee votes, including both the majority and minority opinions, as well as all evidence and documents presented (including those submitted by Tribes) and meeting minutes. Except to the extent required by law, portions of meeting minutes that capture 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. The Systemwide 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 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.
- Systemwide Committee members must recuse themselves from participating in a decision on any matter before the Systemwide Committee in which they have a financial, professional, or personal interest that would significantly impair or appear to significantly impair their objectivity in making a decision. If there is any question about whether a committee member's interest would significantly impair or appear to significantly impair their objectivity, the member must recuse themselves or disclose the interest to the other committee members and the President. The President may require such members recuse themselves, or with the concurrence of the remaining Systemwide Committee members, and as permitted by law, allow such members to vote.

The President may replace a member who has been recused; however, the balance between tribal and UC membership in the composition of the

Systemwide Committee membership considering the case will nonetheless be maintained.

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

- 1) In consultation with the Systemwide Committee membership, staff of the President, and campus NAGPRA/CalNAGPRA Repatriation Coordinator, schedule dates, times and locations for meetings; ensure meetings are called and held in accordance with this policy;
- 2) In consultation with Systemwide Committee membership, establish and confirm an agenda for each meeting, and ensure the meeting agenda and relevant documents are circulated to Systemwide Committee members in advance of the meeting to ensure sufficient time for the members to review the materials and arrange logistics, travel or telecommunication capability;
- 3) Officiate and conduct meetings;
- 4) Ensure there is sufficient time during the meeting to fully discuss agenda items; and
- 5) Ensure meeting minutes are complete and accurate, retained, and reviewed at the next meeting.

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

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

## 2. Campus Committees

### a. Composition

For each UC campus that has a NAGPRA/CalNAGPRA-eligible Collection, the Chancellor must establish a Campus Native American Graves Protection and Repatriation Act Implementation Committee (hereinafter called the "Campus Committee")<sup>13</sup> in accordance with the requirements of CalNAGPRA.

All Campus Committee members must have demonstrated understanding of tribal cultural concerns. Per CalNAGPRA §8026(d)(2), "Preference shall be given to members who have demonstrated, through their professional

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<sup>13</sup> CalNAGPRA §8026(b)(1) states that the Campus Native American Graves Protection and Repatriation Act Implementation Committee shall be known as the "NAGPRA Committee" for that campus. We refer to this committee (for each campus) as the "Campus Committee" in this policy because it more clearly distinguishes campus committees from the Systemwide Committee.

experience, the ability to work in collaboration with Native American Tribes successfully on issues related to Repatriation or museum collection management.” In selecting members, the Chancellor will seek a diversity of expertise and may make exceptions to the composition requirements set forth in CalNAGPRA, provided that such exceptions promote Repatriation and amplify the Purpose and Guiding Principles contained in this policy, and that equal UC / Tribal representation is maintained. In making such exceptions, the Chancellor will consider the individual’s prior experience and knowledge in NAGPRA/CalNAGPRA, seek the advice of Tribal Representatives, and communicate the justification for the exception to the Campus Committee.

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

The Chancellor may observe committee meetings.

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

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

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

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

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- 6) Review claims of any violation of the policies and procedures adopted pursuant to CalNAGPRA § 8025, and make recommendations to the Chancellor for corrective actions as necessary;
- 7) Review campus practices for consistency with this policy and legally applicable requirements and, when requested by a Tribe, assist in the resolution of complaints made in accordance with Section V.I.1 and/or make recommendations for resolution to the Chancellor; and
- 8) Serve as a resource to promote Repatriation.

**c. Campus Committee Procedures**

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

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

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

**Record Keeping.** The Repatriation Coordinator will maintain a record of all Campus Committee votes, including both the majority and minority opinions, as well as all evidence and documents presented (including those submitted by Tribes) and meeting minutes. Except to the extent required by law, portions of meeting minutes that capture 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 Campus Committee members must abide by basic principles of ethical conduct. The Campus Committee will identify and manage Conflicts of Interest (COI), as defined in Section II, taking into consideration the following.

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

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

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

- 1) Confer and Coordinate with the Repatriation Coordinator on a regular basis for the mutual exchange of information;
- 2) Schedule dates, times and locations for meetings in consultation with the Campus Committee membership and Repatriation Coordinator; ensure meetings are called and held in accordance with this policy;
- 3) Establish and confirm an agenda for each meeting in consultation with Campus Committee membership and Repatriation Coordinator, and ensure the meeting agenda and relevant documents are circulated to Committee members in advance of the meeting to ensure sufficient time for the members to review the materials and arrange logistics, travel or telecommunications capability;
- 4) Officiate and conduct meetings;

- 5) Ensure there is sufficient time during the meeting to fully discuss agenda items; and
- 6) Ensure meeting minutes are complete and accurate, retained, and reviewed at the next meeting.

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

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

## **B. CONSULTATION**

### **1. Consultation Process and Guidance**

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

All successful Consultations involve relationship building and respect. Repatriation Coordinators must seek out and foster these relationships with the designated Tribal Representatives, Tribal Historic Preservation Officers, and/or other representatives. Repatriation Coordinators must engage in Consultation that reflects the principles and characteristics outlined below.

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

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

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

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

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

- a. Initiation.** The Repatriation Coordinator will initiate Consultation as required by this policy, as early as possible when new information or Human Remains or potential NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items are identified, or in conducting reevaluations as described in Section VI. Initiation of Consultation shall include the opportunity for the Tribes 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.
- b. Response to Consultation Request.** If Consultation has been requested by a Tribe, the campus Repatriation Coordinator will acknowledge receipt of the request within five business days.
- c. Response to Information Request.** Requests for information must be acknowledged within 5 days. Within 60 days from the receipt of the request and no less than monthly thereafter, the campus Repatriation Coordinator will provide the requested information or the status of the work being done on the request.

- d. Preparation.** The campus Repatriation Coordinator will review all known information about the Human Remains or Cultural Items, and identify potentially Culturally Affiliated Tribes or State Culturally Affiliated Tribes and traditional Aboriginal lands or tribal lands from where the Human Remains and/or Cultural Items were removed, regardless of whether the Tribes are currently physically present in the area. Sources of information that may be useful in researching potentially relevant tribes include National NAGPRA and NAHC resources, previous NAGPRA Federal Register notices, and federal land claims. When a Repatriation Coordinator initiates consultation, an initial communication (e.g., letter or email) with sufficient information will be provided to Tribal Representatives to determine if they have an interest in participating in the Consultation process, believe they are Culturally Affiliated with Native American Human Remains and/or Cultural Items, and if they know of other Tribes that may have an interest. If no response is received, the Repatriation Coordinator will attempt additional notifications using alternative means, such as by U.S. mail or phone.
- e. Participants.** Consultation will be conducted with Tribal Representatives authorized by their tribal government to consult on the Tribe's behalf concerning Repatriation. If the campus Repatriation Coordinator is unclear whether the representative is the authorized representative, they may contact the Tribal Historic Preservation Officer (THPO) or tribal administration and request an official tribal letter providing this information.
- f. Records.** Campuses should maintain a record of all communications in a communication log. Communication may be through posted letter, email, phone, and in-person as the occasion warrants. When using non-written forms of communication, a follow-up email or letter should be sent within a day to ensure that agreed to decisions and next steps are accurate. Any formal notes should be offered and reviewed by the 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.

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- i. **Consultation.** During Consultation meetings, the campus Repatriation Coordinator will listen and engage respectfully. The Repatriation Coordinator will endeavor to make meetings as comfortable, respectful, and productive as possible. This may include:
  - i. 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.
  - ii. Providing access to associated records and requested Human Remains, Cultural Items, and other requested materials. (See also Section V.J.3 and Appendices A & A-1.)
  - iii. Providing a written description of the Repatriation/Disposition decision-making, dispute resolution, and complaint processes.
  - iv. As soon as possible, but no later than ten (10) days after the meeting, providing draft written meeting notes and list of action items to Tribal Representatives to ensure accuracy and understanding by all participants. Such notes and other information shared by the Tribe during Consultation should be maintained as part of the Consultation record. For any major action items or decision points, it should be noted whether the Tribes concurred with these action items or decision points. If the Tribe does not concur, the Repatriation Coordinator and the Tribe will endeavor to reestablish an understanding. The Tribe can also file a complaint in accordance with Section V.I.1 in order to pursue resolution.
  - v. Together with Tribes, identifying all documentation and information shared that will have restricted access and the extent of such restriction.
  - vi. 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.
  - vii. 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.
- j. **Updates.** The campus Repatriation Coordinator must keep affected Tribes promptly informed of all UC and campus decisions, relevant news and information about affiliated or otherwise relevant collections, and publication of notices by National NAGPRA and the NAHC. The Repatriation Coordinator will also provide quarterly updates to Tribes with whom they are consulting.
- k. **Potential Disagreement.** In the event that Cultural Affiliation is unclear or there is potential disagreement about the identification of Cultural Items, the Repatriation Coordinator will transmit a detailed explanation to the consulting

Tribe and information on possible paths to change the outcome, and how and to whom to file a complaint or appeal.

- I. **Resources.** To the extent permitted by UC or third party resources and at the request of Tribe(s):
  - i. 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
  - ii. UC will provide for necessary costs incurred by the Tribes, including stipends for tribal and other experts, travel, meals, and overnight accommodations.
- m. **Repatriation Logistics.** The campus Repatriation Coordinator will offer to assist, as needed or requested, with transfer/Repatriation logistics, which may include stewardship agreements, coordinating reburial lands, coordinating with Tribes to identify alternate sources of funding for reburial preparation costs, and applying for NAGPRA Repatriation grants.

## 2. Confidentiality

UC is committed to upholding the confidentiality of Confidential Information. All “Confidential Information” (as defined in Section II) may only be made available to those with a need to know for compliance with this policy and may not be further re-disclosed unless otherwise required by law or with the prior consent of the Tribe that provided the information. The Repatriation Coordinator will provide consulting Tribes the opportunity to review documents that will be shared with the Campus Committee or published in the Federal Register or by NAHC (see Appendices A and A-1).

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 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 OR STATE CULTURAL AFFILIATION, INVENTORIES, AND SUMMARIES

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 in Consultation with Tribal Representatives. As part of this process, campuses must assess 1) whether they have items in their Possession or Control that meet the definitions for Human Remains and Associated Funerary Objects, or may meet the definitions for Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony (“Cultural Items”); and 2) whether Cultural

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Affiliation and/or State Cultural Affiliation can be established for Human Remains or Cultural Items listed or described in Inventories or Summaries. (Note: The detailed processes for developing Inventories and Summaries (or Inventory and Summary updates) in Consultation with Tribes are captured in Appendices A and A-1.)

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.

## 1. Inventories and Summaries

**Inventories.** Campus Inventories must list the Human Remains and Associated Funerary Objects in the Possession or Control of the campus, and include a synopsis of the evidence used, including evidence obtained through Consultation, to determine whether the objects are Native American Human Remains or Associated Funerary Objects.

Inventories must include:<sup>14</sup>

- (1) Accession and catalogue entries, including the accession/catalogue entries of Human Remains with which Funerary Objects were associated;
- (2) Information 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 each object was acquired, i.e., name or number of site, county, State, and Federal agency administrative unit, if applicable; and
  - (iv) The means of acquisition, i.e., gift, purchase, or excavation;
- (3) A description of each set of Human Remains or Associated Funerary Object, including dimensions, materials, and, if appropriate, photographic documentation, and the antiquity of such Human Remains or Associated Funerary Objects, if known; and
- (4) A summary of the evidence, including the results of consultation, used to determine the Cultural Affiliation and State Cultural Affiliation of the Human Remains and Associated Funerary Objects.

**Summaries.** Campus Summaries must describe the collections in the Possession or Control of the campus that may contain Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony for the purpose of providing information to Tribes that may wish to submit Requests regarding these items. Summaries must include:<sup>15</sup> an estimate of the number of objects in the

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<sup>14</sup> For more information, see NAGPRA §10.9 and CalNAGPRA § 8013(a).

<sup>15</sup> For more information, see NAGPRA 43 C.F.R. § 10.8 and CalNAGPRA § 8013(b).

collection or portion of the collection; 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 information relevant to identifying Lineal Descendants, if available, and Cultural Affiliation and State Cultural Affiliation.

In general, any non-contemporary Native American ethnographic object or artifact may be a Cultural Item, and campuses should consult with potentially culturally affiliated Tribes regarding any accessions that contain such Native American objects.

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

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

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

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

**Summaries.** For Requests under Summaries, upon receiving a Tribal Representative's identification and Request for Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony, the Repatriation Coordinator, in Consultation with Tribes, will gather information for review by the Campus Committee to determine whether the requested items meet the NAGPRA/CalNAGPRA definitions of Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony (and whether any Tribes are Culturally Affiliated or State Cultural 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 and evidence,<sup>16</sup> and make determinations of Cultural Affiliation/ State Cultural Affiliation based on the Preponderance of the Evidence, including tribal 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

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<sup>16</sup> NAGPRA 43 C.F.R. § 10.14(d) and CalNAGPRA § 8013(a)(3).

requesting Tribe(s) and an identifiable earlier group with respect to the Human Remains and Cultural Items being requested.<sup>17</sup>

Per CalNAGPRA 8016 (i), “Tribal oral histories, documentation, and testimonies shall not be afforded less evidentiary weight than other relevant categories of evidence on account of being in those categories.” UC respects and values tribal oral histories and tribal sources of evidence in making determinations under this policy, and understands that in some cases, such evidence may be the only evidence available. Decisions must be made in consideration of the line(s) of evidence that are available without prejudice owing to the absence of other lines of evidence. For example, anthropological evidence need not be present if tribal oral historical evidence is available to evaluate cultural affiliation. In deliberations concerning California Indian Tribes, the campus will take into account unique California history that might have created gaps in records.

Cultural Affiliation and/or State Cultural Affiliation will not be precluded solely because of some gaps<sup>18</sup> in the record. Further, Requestors do not have to establish Cultural Affiliation and/or State Cultural Affiliation with scientific certainty.<sup>19</sup> As described above, a single line of evidence may be sufficient to establish cultural affiliation.

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

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

UC campuses with knowledge of existing NAGPRA/CalNAGPRA-eligible collections of Human Remains in their Possession or Control have already submitted Inventories (for Human Remains and Associated Funerary Objects) and Summaries (for Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony). However, these must be updated/supplemented, in consultation with Tribal Representatives, as required by NAGPRA and CalNAGPRA, including if there are new items to report, or if there are changes to previously submitted Inventories or Summaries. (See NAGPRA, 43 C.F.R. § 10.13, CalNAGPRA § 8013(c) and (i).)<sup>20</sup> For example, Inventories and Summaries may need to be updated or supplemented as a result of changes prompted by the reevaluations of previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, as required under this policy in Section VI.

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<sup>17</sup> NAGPRA 43 C.F.R. § 10.14(c).

<sup>18</sup> NAGPRA 43 C.F.R. § 10.14(d).

<sup>19</sup> NAGPRA 43 C.F.R. 10.14(f).

<sup>20</sup> Notice (including providing a copy of the Inventory) must be given to Tribes and to federal and state officials as required by NAGPRA (25 USC 3003(d), 43 CFR 10.9 (e), 43 CFR 10.11 (d), and 43 CFR 10.13) and CalNAGPRA (§ 8013(e) and (g)).

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

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 any Inventory or Summary Supplements or updates completed after the effective date of this policy.

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

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

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

##### **2. Requests for Repatriation under NAGPRA by Culturally Affiliated Federally Recognized Tribes**

For Repatriation Requests under NAGPRA, when all the criteria for Cultural Affiliation and Repatriation set forth in NAGPRA (43 C.F.R. § 10.9 or § 10.10) are met<sup>21</sup>, and at least thirty (30) days have passed since the publication of any required notices in the Federal Register, UC must work with the requesting Tribe to expeditiously repatriate Human Remains and Cultural Items within ninety (90) days of receipt of a written Request for Repatriation from the Culturally Affiliated Federally Recognized Tribe. If the Tribe is not ready to receive a physical transfer, then UC may offer or a Tribe may request that a stewardship agreement be established between UC and the Tribe to outline the conditions under which UC will maintain physical custody. Such agreements will be reviewed each year as needed.

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<sup>21</sup> UC will waive the requirement at NAGPRA 43 C.F.R. § 10.10(a)(iii), which would normally require that a Tribe present evidence supporting a finding that UC does not have the "Right of Possession."

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

California Indian Tribes may file Requests under CalNAGPRA for return of Human Remains and Cultural items with which they have State Cultural Affiliation.<sup>22</sup> As required by CalNAGPRA, campuses will consult with California Indian Tribes to determine State Cultural Affiliation.

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

- 1) File a written Request with the NAHC and the UC; and
- 2) Provide evidence of State Cultural Affiliation, unless Cultural Affiliation is already established by UC as published in the Federal Register in compliance with NAGPRA.<sup>23</sup>

When all the criteria set forth in CalNAGPRA §§ 8014 and 8015, are met, UC will expeditiously transfer the requested Human Remains and Cultural Items to the requesting Tribe, within 30 days after the last day of the 90-day period, or on a date agreed upon by all parties, after the following conditions have occurred:

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

For more information, see also:

- 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).
- Appendices A and A-1 for information on the Repatriation/Disposition process.

### **4. Requests by Non-Federally Recognized Tribes**

Any Federally Recognized Tribe or non-Federally Recognized tribe may submit a Request for Disposition under the process described in Section V.D.5 and outlined in NAGPRA (43 C.F.R. § 10.11). NAGPRA distinguishes Federally Recognized Tribes from non-Federally Recognized tribes. NAGPRA does not

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<sup>22</sup> To be clear, a California Indian Tribe can choose to file a Request under either CalNAGPRA (if claiming State Cultural Affiliation) or NAGPRA (if requesting Disposition under NAGPRA or if the Tribe is a Federally Recognized Tribe claiming Cultural Affiliation under NAGPRA), or both.

<sup>23</sup> CalNAGPRA § 8014(a) & (b).

give standing to non-Federally Recognized tribes to request Cultural Affiliation, but does provide a mechanism for making a Disposition to them under certain circumstances. In addition, 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.

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

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

In order to facilitate Disposition under NAGPRA (43 C.F.R. §10.11) and in order to comply with CalNAGPRA, this policy requires campuses to initiate Consultation (i.e., regardless of whether they receive a Tribal Request) with Tribes regarding Human Remains and Associated Funerary Objects classified as “Culturally Unidentifiable” under NAGPRA<sup>24</sup>. (See also Section VI).

A Request for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects may be submitted by a Federally Recognized Tribe or non-Federally Recognized tribe. NAGPRA (43 C.F.R § 10.11)<sup>25</sup> outlines the process that a campus must follow to complete a return of Human Remains that are not Culturally Affiliated with a Federally Recognized Tribe (such a transfer is considered to be a “Disposition” of “Culturally Unidentifiable” Human Remains under NAGPRA). UC will also include Associated Funerary Objects in any transfer of Human Remains made under NAGPRA (43 C.F.R. § 10.11).

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

- a. Within 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 addition, pursuant to CalNAGPRA § 8013(c) and (g), UC campuses must consult with California Indian Tribes to update or supplement their Inventories

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<sup>24</sup> See Section VI of this policy, requiring campuses to develop and submit to the Campus and Systemwide Committees Repatriation Implementation Plans that include provisions and a timeline for conducting this required proactive review.

<sup>25</sup> The requirements of NAGPRA 43 C.F.R. § 10.11 apply to all Dispositions of CUI Human Remains and AFOs, including those that have been determined to be State Culturally Affiliated to a California Indian Tribe under CalNAGPRA. Campuses must comply with requirements of both CalNAGPRA and NAGPRA.

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and Summaries for those portions of their collections previously identified as Culturally Identifiable, which supplements must be completed within one year from the date the NAHC issues the list of California Indian Tribes provided for under CalNAGPRA §8012.

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,<sup>26</sup> and after an appropriate response period (60 days),<sup>27</sup> the Repatriation Coordinator will proceed with carrying out the Disposition Request.

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

- a. The Federally Recognized Tribe or Native Hawaiian Organization from whose tribal land, at the time of the removal, the Human Remains and Associated Funerary Objects were removed.
- b. The Federally Recognized Tribe(s) or Tribes that are recognized as aboriginal to the area from which the Human Remains and Associated Funerary Objects were removed. Aboriginal land may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.
- c. If none of the Tribes identified above agrees to accept Control, the campus may offer to transfer Control of Culturally Unidentifiable Human Remains (and per this policy, Associated Funerary Objects) to any other Federally Recognized Tribe or to a non-Federally Recognized tribe. Under NAGPRA, Disposition to a non-Federally Recognized tribe may only take place after receiving a recommendation from the Secretary of the Interior or authorized representative (43 C.F.R. § 10.11(c)2(ii))<sup>28</sup>.

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

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<sup>26</sup> See NAGPRA, 43 C.F.R. § 10.11(b)(2)

<sup>27</sup> Although NAGPRA does not address the length of a response period, sixty (60) days provides Tribes with a reasonable period to voice an interest without unduly delaying next steps.

<sup>28</sup> Note that approval from the Secretary of the Interior or authorized representative is not required if a Federally Recognized Tribe sponsors a non-Federally Recognized tribe as described in Section V.D.4, and the Federally Recognized Tribe submits the Request.

## **6. 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.2.b.)

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

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

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

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

## **E. PREVIOUSLY UNREPORTED HOLDINGS**

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

### **1. Raising Awareness**

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

### **2. Locating Previously Unreported Holdings**

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

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Within one year from implementation of this policy and every 3-5 years thereafter, the Repatriation Coordinator/Point of Contact must review whether the campus is in Possession or Control of previously un-reported Human Remains or Cultural Items. In performing their review, the Repatriation Coordinator/Point of Contact will send a communication to all campus department deans or chairs, providing the definitions of Human Remains and Cultural Items under NAGPRA and CaNAGPRA so that the department deans or chairs can make an informed initial assessment about whether their departments potentially hold Human Remains or Cultural Items. Campus department deans or chairs must return their assessments to the Repatriation Coordinator/Point of Contact, confirming that they have conducted the search and reporting the findings. Engaging as necessary the assistance of appropriate subject matter experts (e.g., Tribal Representatives, Tribal leaders, osteologists, anthropologists, etc.), the Repatriation Coordinator/Point of Contact will review the items in all high risk departments (e.g., archaeology, anthropology, biology, geology, oceanography, physical sciences, dentistry, etc.) and all departments identified by department deans or chairs as potentially holding Human Remains or Cultural Items. University faculty, researchers, students, staff who use human remains that are thought *not* to be Native American or Native Hawaiian for research or teaching should identify the provenance of the remains.

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

### **3. Reporting to Campus and Systemwide Committees**

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

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

All newly identified items that are under the Control of the University and are thought to be potentially subject to NAGPRA or CaNAGPRA must immediately be placed in a secure area in accordance with the requirements of Section V.J.2 of this policy. In addition, ongoing research and handling (other than, as determined by the campus Chancellor, research and handling<sup>29</sup> that is conducted only in furtherance of the campus' responsibilities to make determinations as required by NAGPRA/CaNAGPRA) must cease until a determination has been

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<sup>29</sup> Any handling should be necessary, reasonable, and should not conflict with respectful stewardship as identified in Section V.J.

made about whether the items meet the definitions under NAGPRA or CalNAGPRA (see Section V.C.2) and whether the University has Control of the items. If Human Remains and Cultural Items subject to NAGPRA or CalNAGPRA are found, the University will comply with all applicable portions of this policy (e.g., Consultation, Inventory/Summary completion, and respectful treatment), NAGPRA (including 43 C.F.R. § 10.13), CalNAGPRA, and campus policies and procedures. If the items are found not to be subject to NAGPRA or CalNAGPRA, they will be returned to the department from which they came and the findings recorded (including a description of the items and why these were determined not to be subject to NAGPRA or CalNAGPRA) in the campus biannual report described in Section V.H.

NAGPRA and CalNAGPRA require institutions to update their Inventories and Summaries when they obtain or discover that they have Possession or Control over previously unreported collections. (See NAGPRA 43 C.F.R. § 10.13, CalNAGPRA § 8013(i), and Sections V.C.2 and V.C.3 of this policy.) In accordance with NAGPRA 43 C.F.R. § 10.13, Summaries must be completed within 6 months and Inventories within 2 years of locating a previously unreported holding or collection, absent an extension obtained under 43 C.F.R. § 10.9(f). If Human Remains or Cultural Items are found on UC premises for which a non-UC entity retains Control (e.g., items borrowed from federal or state agency or museum which have not been returned), these must either be returned to the controlling entity, or captured in a loan agreement as provided in Section V.K.1.

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

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

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

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

If a Tribe has requested items that have been determined *not* to be Human Remains or Cultural Items as defined by NAGPRA and CalNAGPRA, in recognition of the principles articulated in Section III.B of this policy, campuses may voluntarily Deaccession items to the requesting Tribe, in accordance with campus practices and as allowable by law.

## 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 V.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 Chancellor of each campus that has a NAGPRA/CalNAGPRA-eligible Collection must ensure compliance with this policy and applicable laws and regulations (See Section IV.B).

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

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

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

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

## I. COMPLAINTS AND APPEALS

### 1. Complaints

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

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

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

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

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

See also Appeals Flowchart in Appendix B.

Information about how to file an appeal must be posted on a public-facing campus web page. 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.

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

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

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

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

- 1) Will be invited to present their views orally or in writing to Campus or Systemwide Committees and/or UC decision-makers.
- 2) 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.
- 3) 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.
- 4) May file a request with the NAHC for assistance in resolving a dispute for Requests falling under CalNAGPRA (CalNAGPRA § 8015 and § 8016). To the extent that there is no direct conflict between the federal process referenced in 3) above and the CalNAGPRA process referenced herein, UC will make a good faith effort to participate in the NAHC dispute resolution/mediation process.
- 5) File a claim in a court of competent jurisdiction.

Notes:

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

## **J. RESPECTFUL STEWARDSHIP**

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

## 1. Treatment

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

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

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

Only authorized individuals<sup>31</sup> will have access to Human Remains and Cultural Items, which must be stored in dedicated spaces that are not accessed by the public.

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

To the maximum extent possible, Human Remains and Funerary Objects from the same Burial Site and from the same general geographic location should be kept together. In addition, all packaging materials (boxes, bags, jars, acid-free tissue paper, etc.) that previously held Human Remains will be retained by the campus so that they can be offered to Lineal Descendants or Tribal Representatives at the time of transfer. Campuses should not remove any soil adhering to Human Remains or Cultural Items unless necessary for compliance with NAGPRA/CalNAGPRA, and if soil is loosened, it will be collected and offered at the time of transfer as well.

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

## 2. Management and Preservation

Campuses must ensure that all Human Remains and Associated Funerary Objects are managed and preserved in accordance with definitions, standards,

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<sup>31</sup> The Repatriation Coordinator shall maintain a list of authorized individuals or positions (e.g. custodians), and the list shall be accessible to Tribes, upon request.

procedures, and guidelines set out by [36 C.F.R. § 79.9\(b\)\(3\)](#)<sup>32</sup>, except as approved by the Chancellor or to accommodate a request for traditional care from a Culturally Affiliated Tribe. All exceptions must be reviewed by the Campus Committee, which will make a recommendation to the Chancellor.

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

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

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

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

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

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

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

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

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<sup>32</sup> Though these regulations only directly apply to UC in limited circumstances (e.g., where UC has possession of federal collections), UC is adopting these standards for all Human Remains and Associated Funerary Objects in its Control or Possession.

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

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

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

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

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

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

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

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

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

- d) Other research or care approved by or performed in Consultation with the Culturally Affiliated Tribe(s).

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

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

- a) Unless the loan is from a Tribe, before accepting the loan the Campus Committee must review and may advise on which tribes must be consulted.
- b) The controlling agent has requested that the UC maintain such short-term care.
- c) UC and the controlling agent have entered into an agreement in writing, delineating the terms of the loan, including, if appropriate, applicable terms relating to NAGPRA or CalNAGPRA compliance responsibilities.
- d) Loans may not exceed two 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 and included in the campus biannual report described in Section V.H.

## **2. Loans from UC**

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

### **Conditions for Loans from UC**

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

- a) Loans may be made only upon documented Tribal written authorization and Chancellor approval as described in Section V.J.4.
- b) The Repatriation Coordinator must ensure that there are no related pending appeals or complaints as described Section V.J.4.
- c) Loans may not exceed two years unless extensions are approved by the Chancellor.
- d) Prior to transporting items, UC and the party accepting the loan will enter into a written loan agreement which details the terms of the loan, including:
  - The precise items loaned;
  - The start and end date of the loan, and a provision for termination of the loan for any reason;

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- The expectations for respectful stewardship and other applicable conditions in accordance with this policy and any applicable campus museum/repository policies;
  - If applicable, the precise type, nature, and extent of testing permitted, including any restrictions on the research that have been placed by Tribes;
  - A specification that loaned items must be returned in the same condition in which they were loaned (unless otherwise specified in the loan agreement);
  - The method of transport and other logistics for the transfer to the loan recipient and the return of the loaned materials; and
  - A requirement that researchers disseminate their research results to all Tribes that authorized the research use.
- e) Culturally Affiliated / State Culturally Affiliated Tribes will be provided the opportunity to inspect the location where loaned items will be stored, observe the packaging associated with the loan request, coordinate transportation, and observe any unpacking and handling at the destination site.
- f) The Repatriation Coordinator will review and note the condition of loaned materials at the time the loan is made and upon its return (i.e., have the items been shellacked, treated with pesticide, repaired, etc.), and any apparent violation of the terms of research condition.
- g) The Repatriation Coordinator will create a method to track all loans, maintaining a list that minimally includes the name of the entity or person to whom the loan is made, the purpose of the loan, Tribes that approved the loan, a general description and condition of the materials loaned, date loaned, and date returned. As part of the campus biannual report (see Section V.H), the Repatriation Coordinator must provide such list to the Campus and Systemwide Committees.
- h) The Repatriation Coordinator will biannually review the list and follow up to ensure the return of loaned items.
- i) The Repatriation Coordinator will keep documentation of all items required under this Section V.K.2.

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## **VI. REPATRIATION IMPLEMENTATION PLAN**

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

Section VI. Further, nothing in this Section VI shall delay any ongoing repatriation and dispositions.

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

### **1. Proactive Review of CUI Determinations.**

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

- 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.

In performing these reevaluations, campuses will consult with Tribal Representatives, reevaluate originally considered evidence, and consider: any newly available evidence or information, 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 Appendices A and A-1 for more details on the process.)

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

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

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

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

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

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

## 3. Outreach to Controlling Agencies

Campus Repatriation Implementation Plans will include a schedule for reaching out to agencies that have Control of Human Remains and Cultural Items currently held by UC to prompt and encourage those agencies' Repatriation efforts. Such agencies must be contacted at least annually.

## 4. Budget Estimate

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

## 5. Campus Repatriation Plan Timeline

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

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

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## VII. RELATED INFORMATION

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- [Native American Graves Protection and Repatriation Act](#), 25 U.S.C. §§ 3001-13.
- [Native American Graves Protection and Repatriation Regulations](#), 43 C.F.R. §§ 10.1-.17.
- [California Native American Graves Protection and Repatriation Act](#), Cal. Health & Safety Code §§ 8010-30.
- [United Nations Declaration on the Rights of Indigenous Peoples](#), G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).
- [California Executive Order No. N-15-19](#) (June 18, 2019).
- [Curation of Federally-Owned and Administered Archaeological Collections](#), 36 C.F.R. § 79.9(b)(3).

## VIII. FREQUENTLY ASKED QUESTION

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Not applicable.

## IX. REVISION HISTORY

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**January 20, 2020:** reviewed and approved extending interim status through July 2021.

**July 24, 2020:** This policy replaces 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

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- Appendix A      [Repatriation/Disposition Process Flowchart](#)
- Appendix A-1    [Repatriation/Disposition Process Flowchart Narrative](#)
- Appendix B      [Appeals Flowchart](#)
- Appendix C      [Sample Campus Repatriation Plan Timeline](#)