



OFFICE OF THE VICE PRESIDENT – RESEARCH AND GRADUATE STUDIES

OFFICE OF THE PRESIDENT  
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August 19, 2019

CHANCELLORS  
ACADEMIC COUNCIL CHAIR MAY  
LABORATORY DIRECTOR WITHERELL  
ANR VICE PRESIDENT HUMISTON

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

Dear Colleagues:

Attached for Systemwide Review is a proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation (“Revised Policy”).

On August 24, 2018, President Napolitano requested Provost Brown to convene a workgroup to substantively revise the existing Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items (“Current Policy”).<sup>1</sup> The policy pertains to the treatment and repatriation of Native American and Native Hawaiian human remains and cultural items under the University’s stewardship and the University’s compliance with the federal Native American Graves Protection and Repatriation Act<sup>2</sup> (“NAGPRA”) and its accompanying regulations.<sup>3</sup> The President emphasized that the policy should be consistent not only with the law but with the values and principles of the University, including the fundamental value of repatriation of Native American and Native Hawaiian human remains and cultural items.

Provost Brown established the Cultural Affiliation and Repatriation Policy Advisory Workgroup to revise the policy. The Policy Advisory Workgroup is comprised of four members nominated by the Academic Senate, and four members nominated by the Native American Advisory Council, a body also established by President Napolitano to advise on a broad range of issues pertaining to Native Americans and Native Hawaiians at the University.

### Significant Revisions

The Revised Policy is substantially different and more detailed than the current policy. As such, we are not attaching a redlined version of the Revised Policy. Instead, we highlight below a list of some of the significant revisions to the Policy:

- Creates a list of principles that emphasizes the repatriation of Native American and Native Hawaiian human remains as a fundamental objective and value of the University. Revised Policy, § III.B.

<sup>1</sup> University of California, Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items (May 1, 2001), <https://policy.ucop.edu/doc/2500489/HumanCulturalRemains>.

<sup>2</sup> 25 U.S.C. §§ 3001-13.

<sup>3</sup> 43 C.F.R. §§ 10.1-.17.

- Reconstitutes the Systemwide Committee and Campus Committees to strengthen Native American representation. Revised Policy, § V.A.
- Shifts final approvals of repatriation to the campus from UCOP to reduce delays in repatriation; the Systemwide Committee and UCOP will provide an oversight role and consider appeals of campus decisions. Revised Policy, § V.E.4.
- Requires campuses to appoint a NAGPRA liaison to work with and assist Native American tribes to facilitate repatriation. Revised Policy, §§ IV.6 & V.B.
- Describes a process for disposition of culturally unidentifiable human remains, which has been enacted in federal regulations since 2010 and was allowable under the Current Policy, but had not been explicitly stated. Revised Policy, § V.E.3.
- Requires campuses to create a Strategic Repatriation Plan. Revised Policy, § V.F.
- Requires campuses to proactively (i) review existing materials that may potentially contain Native American or Native Hawaiian human remains or cultural items; and (ii) reevaluate previous determinations of culturally unidentifiable human remains in consultation with Native American tribes or Native Hawaiian organizations. Revised Policy, § V.C.3.
- Establishes as policy the respectful stewardship of human remains and cultural items when in the University's care. Revised Policy, § V.I.
- Establishes tribal consultation and approval requirements for access to human remains for research, instruction, exhibition, or other purposes. Revised Policy, § V.I.4.
- Provides a more robust mechanism for Native American tribes and Native Hawaiian organizations to appeal campus determinations. Revised Policy, § V.H.

The Current Policy is also attached for your convenience.

#### Concurrent Reviews by Additional Stakeholders

In addition to review by the University community, California State law requires that the University (1) submit the revised policy to the Native American Heritage Commission (NAHC) for its review and comment; and (2) consult with California Native American tribes on the contact list maintained by the NAHC.<sup>4</sup> The Revised Policy has already been submitted to the NAHC for comments. In addition, we will invite comments from the California Native American community via a survey to be distributed to the NAHC's contact list.

#### Systemwide Review

Systemwide review is a public review distributed to the Chancellors, the Director of the Lawrence Berkeley National Laboratory, the Chair of the Academic Council, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, especially affected employees, about policy proposals. Systemwide review also includes a mandatory, 90-day full Senate review.

Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

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<sup>4</sup> Cal. Health & Safety Code §§ 8025(3)-(4).

August 19, 2019

We would appreciate receiving your comments no later than November 15, 2019. Please submit your comments to [RPAC@ucop.edu](mailto:RPAC@ucop.edu). If you have any questions, please contact Lourdes DeMattos at [Lourdes.DeMattos@ucop.edu](mailto:Lourdes.DeMattos@ucop.edu) or (510) 987-9850.

Sincerely,



Arthur B. Ellis, Vice President  
Research and Graduate Studies

- Attachments:
1. Revised Presidential Policy on Native American Cultural Affiliation and Repatriation (“Revised Policy”)
  2. Current Presidential Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items (“Current Policy”)
  3. Model Communication

cc: President Napolitano  
Provost and Executive Vice President Brown  
Executive Vice Chancellors/Provosts  
Interim Executive Vice President and Chief Financial Officer Jenny  
Executive Vice President and Chief Operating Officer and Chief of Staff Nava  
Executive Vice President Stobo  
Senior Vice President and Chief Compliance and Audit Officer Bustamante  
Vice President and General Counsel Robinson  
Vice President and Chief Investment Officer Bachher  
Interim Vice President Leasure  
Acting Vice President Lloyd  
Vice Provost Carlson  
Vice Provost and Interim Vice President Gullatt  
Deputy General Counsel Woodall  
Vice Chancellors/Vice Provosts of Academic Personnel/Academic Affairs Vice  
Chancellors for Research  
Graduate Deans  
Academic Personnel Directors  
Chief Policy Advisor Kao  
Executive Director Baxter  
Executive Director Chester  
Chief of Staff and Executive Director Henderson  
Executive Director and Deputy to the Vice Provost Peterson  
Chief of Staff Levintov  
Principal Counsel Auriti  
Director Grant  
Director Lee  
Associate Director DeMattos  
Manager Crosson  
Manager Donnelly  
Manager Smith  
Analyst Wilson



# Native American Cultural Affiliation and Repatriation

<b>Responsible Officer:</b>	VP - Research & Graduate Studies
<b>Responsible Office:</b>	RG - Research & Graduate Studies
<b>Issuance Date:</b>	TBD
<b>Effective Date:</b>	TBD
<b>Last Review Date:</b>	03/25/2013
<b>Scope:</b>	This policy applies to all Native American and Native Hawaiian human remains and Cultural Items. Cultural Items, as used throughout this policy, refers to associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony, as defined by the federal Native American Graves Protection and Repatriation Act ("NAGPRA"). This policy is intended to ensure both adherence to general principles and compliance with NAGPRA, 25 U.S.C. §§ 3001-13, its accompanying regulations, 43 C.F.R. §§ 10.1-.17, and the California Native American Graves Protection and Repatriation Act ("CalNAGPRA"), Cal. Health & Safety Code §§ 8010-30.

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## **I. POLICY SUMMARY**

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The University of California (UC) adopts as a fundamental value the repatriation of Native American and Native Hawaiian human remains and cultural items (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 comply with the federal Native American Graves Protection and Repatriation Act (“NAGPRA”), 25 U.S.C. §§ 3001-13, its accompanying regulations (“NAGPRA Regulations”), 43 C.F.R. §§ 10.1-17, and the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”), Cal. Health & Safety Code §§ 8010-30.

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## **II. DEFINITIONS**

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- 1) **Aboriginal Lands:** Land that is recognized as the aboriginal land of an Indian tribe. For the purposes of making determinations related to disposition of culturally unidentifiable human remains, aboriginal occupation 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. 43 C.F.R. §§ 10.6(a)(2)(iii), 10.11(b)(2)(ii).
- 2) **Associated funerary objects:** Those funerary objects for which the human remains with which they were placed intentionally are also in the possession or control of a museum or Federal agency. Associated funerary objects also means those funerary objects that were made exclusively for burial purposes or to contain human remains. 43 C.F.R. § 10.2(d)(2)(i).
- 3) **Burial Site:** Any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as part of the death rite or

ceremony of a culture, individual human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of gravesite 43 C.F.R. § 10.2(d)(2).

- 4) California Indian Tribe: Under CalNAGPRA (California Health & Safety Code, Section 8012(j)), a California Indian Tribe is a federally recognized Tribe (as defined below) located in California; or a non-federally recognized Tribe located in California for which the following applies: It is not recognized by the federal government, but is indigenous to the territory that is now known as the State of California, and both of the following apply:
  - a) It is listed in the Bureau of Indian Affairs Branch of Acknowledgement and Research petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of Regulations.
  - b) It is determined by the California Native American Heritage Commission (NAHC) to be a tribe that is eligible to participate in the repatriation process set forth in CalNAGPRA. CalNAGPRA requires the NAHC to publish a document that lists the California tribes meeting these criteria, as well as authorized representatives to act on behalf of the tribe in the consultations required under paragraph (3) of subdivision (a) of Health & Safety Code Section 8013 and in matters pertaining to repatriation under CalNAGPRA. CalNAGPRA specifies that criteria that shall guide the NAHC in making the determination of eligibility shall include, but not be limited to, the following:
    - i) A continuous identity as an autonomous and separate tribal government.
    - ii) Holding itself out as a tribe.
    - iii) The tribe as a whole has demonstrated aboriginal ties to the territory now known as the State of California and its members can demonstrate lineal descent from the identifiable earlier groups that inhabited a particular tribal territory.
    - iv) Recognition by the Indian community and non-Indian entities as a tribe.
    - v) Demonstrated membership criteria.
- 5) Claimant: A lineal descendant, Native American tribe, or Native Hawaiian organization who asserts a claim for human remains or cultural items pursuant to NAGPRA or CalNAGPRA.
- 6) Confidential Information: Information meeting the following conditions: (1) Containing personal identifiable information protected by privacy laws or information that if disclosed could cause irreparable harm to the affected party, and (2) Presented and marked as “confidential” by either party in writing, or if orally disclosed, information reduced to writing and marked as confidential by the disclosing party within fifteen (15) days of oral disclosure.

- 7) Consultation: A process conducted in accordance with 43 C.F.R. §§ 10.5, 10.8(d), 10.9(b), or 10.11(b).
- 8) Control: Having a legal interest in human remains, funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit a museum or Federal agency to treat the objects as part of its collection for purposes of NAGPRA and CalNAGPRA whether or not the human remains, funerary objects, sacred objects or objects of cultural patrimony are in the physical custody of the museum or Federal agency. Generally, the institution, agency, or entity that has loaned human remains, funerary objects, sacred objects, or objects of cultural patrimony (to another institution, agency or entity) is considered to retain control of those human remains, funerary objects, sacred objects, or objects of cultural patrimony for purposes of NAGPRA and CalNAGPRA. 43 C.F.R. § 10.2(a)(3)(ii).
- 9) Controlling Agent: The institution, agency or entity having legal control of human remains, funerary objects, sacred objects, or objects of cultural patrimony.
- 10) Cultural affiliation: 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, 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.
- 11) Cultural Items: Human remains and associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony. 25 U.S.C. § 3001(3); 43 C.F.R. § 10.2. *[Note that out of respect for the human remains of Native American and Native Hawaiian ancestors, UC has elected to call these out in the text of the Policy, even when speaking generally of cultural items.]*
- 12) 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).
- 13) Deaccession: The act of permanently removing an accessioned item from a permanent collection.
- 14) Disposition: Generally, transfer of control of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony by a museum or Federal agency; specifically, as used in this Policy, transfer of culturally unidentifiable human remains, with or without associated funerary objects (as distinguished from “repatriation,” which applies only to transfer of culturally affiliated remains and cultural items). 43 C.F.R. § 10.2(g)(5).

- 15) Federally Recognized Tribe: Any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. § 3001(7).
- 16) Funerary objects: Items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known human remains. 43 C.F.R. § 10.2(d)(2).
- 17) Human remains [of Native American and Native Hawaiian ancestors]: The physical remains of the body of a person of Native American or Native Hawaiian ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item. 43 C.F.R. § 10.2(d)(1).
- 18) Inventory: The item-by-item description of human remains and associated funerary objects in the possession or control of a museum or federal agency, required by NAGPRA. 43 C.F.R. § 10.2(g)(2). The inventory has two parts: 1) a listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian tribes or Native Hawaiian organizations; and 2) a listing of all culturally unidentifiable human remains for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined. 43 C.F.R. § 10.9(d).
- 19) Lineal Descendant: An individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descentance [sic] to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under NAGPRA. 43 C.F.R. § 10.2(b)(1).
- 20) Native American: Of, or relating to, a tribe, people, or culture that is indigenous to the United States. 25 U.S.C. § 3001(9). Of, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii. 43 C.F.R. § 10.2(d).
- 21) Native Hawaiian: Any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. 43 C.F. R. § 10.2(b)(3)(ii).



- 22) Native Hawaiian organization: Any organization that serves and represents the interests of Native Hawaiians, has as a primary and stated purpose the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs. 43 C.F.R. § 10.2(b)(3)(i).
- 23) Notice of Intent to Repatriate: A Notice of Intent to Repatriate is published in the Federal Register when a museum or Federal agency receives, reviews, and accepts a claim by a Native American tribe or Native Hawaiian organization for sacred objects, unassociated funerary objects, or objects of cultural patrimony. Such notification is required pursuant to 43 CFR § 10.8(f). The National NAGPRA program is responsible for publishing Notices of Intent to Repatriate on behalf of museums and Federal agencies. 43 CFR § 10.8(f).
- 24) Notice of Inventory Completion: A Notice of Inventory Completion is published in the Federal Register when a museum or Federal agency has made a determination of cultural affiliation, or a determination of the lack of a reasonable basis for determining cultural affiliation for Native American human remains and associated funerary objects in its possession or control. Such notification is required pursuant to 43 C.F.R. § 10.9(e) and 43 C.F.R. § 10.13. The National NAGPRA program is responsible for publishing Notices of Inventory Completion on behalf of museums and Federal agencies. 43 C.F.R. § 10.9(e)(7).
- 25) Objects of Cultural Patrimony: Items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group. 43 C.F.R. § 10.2(d)(4).
- 26) Possession: Having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of NAGPRA. Generally, a museum or Federal agency would not be considered to have possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony on loan from another individual, museum, or Federal agency. 43 C.F.R. § 10.2(a)(3)(i). See also Control and Physical Custody.
- 27) Preponderance of evidence: The evidentiary standard applicable under NAGPRA, which is met when evidence supporting a claim (e.g., in this context, a claim of cultural affiliation, or a claim that an object meets the definition of a Cultural Item) is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, it is met when evidence which as a whole shows that the fact sought to be proved is more likely than not.

- 28) Repatriation: The transfer of legal interest (usually accompanied by physical transfer) in Native American or Native Hawaiian human remains and cultural items to lineal descendants, culturally affiliated federally recognized Indian tribes and Native Hawaiian organizations. 25 U.S.C. § 3005; 43 C.F.R. § 10.2(g)(5)(ii).
- 29) Requestor: A lineal descendant, Native American tribe, or Native Hawaiian organization who requests the repatriation of culturally affiliated human remains or cultural items, or the disposition of culturally unidentifiable human remains or associated funerary objects, pursuant to NAGPRA or CaINAGPRA.
- 30) Right of possession: Obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object, or object of cultural patrimony from an Indian tribe of Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession to that object. 43 C.F.R. § 10.10(a)(2).
- 31) Sacred objects: Items that are specific ceremonial objects needed by traditional Native American or Native Hawaiian religious leaders for the practice of traditional Native American or Native Hawaiian religions by their present-day adherents. 43 C.F.R. § 10.2(d)(3).
- 32) Stewardship: The care, control, and possession of NAGPRA/CaINAGPRA-eligible human remains and cultural items.
- 33) Summary: The written description of collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony required by NAGPRA. 43 C.F.R. § 10.2(g)(1). The summary serves in lieu of an object-by-object inventory of these collections, although, if an inventory is available, it may be substituted. The summary must include: an estimate of the number of objects in the 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. 43 C.F.R. § 10.8(b).
- 34) Tribe: Any tribe, band, nation, or other organized group or community indigenous to the United States.
- 35) Tribal representative: The principal leader of a Native American tribe or Native Hawaiian organization or the individual designated or authorized by the governing body of a Native American tribe or Native Hawaiian organization or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to NAGPRA and/or CaINAGPRA under this Policy.

- 36) UC Locations: the UC campuses and Health Systems, Lawrence Berkeley National Laboratory (LBNL), and the Division of Agriculture and Natural Resources (ANR).
- 37) Unassociated funerary objects: Those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency. Objects that were displayed with individual human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to living descendants or other individuals are not considered unassociated funerary objects. 43 C.F.R. § 10.2(d)(2)(ii).

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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>1</sup> (NAGPRA) and the California NAGPRA<sup>2</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 to avoid confusion, UC may use terms employed in applicable laws and regulations in this Policy, 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 PRINCIPLES

- 1) UC supports the intent of 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>3</sup> UC also commits to providing access to and repatriation of Native American or Native Hawaiian ancestral human remains and their cultural items “through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples.”<sup>4</sup> In many cases, the human remains of Native American and Native Hawaiian ancestors and their cultural items were obtained in violation of

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<sup>1</sup> 25 U.S.C. §§ 3001-13; 43 C.F.R. §§ 10.1-17.

<sup>2</sup> Cal. Health & Safety Code §§ 8010-30.

<sup>3</sup> United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 12, ¶ 1, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at <https://undocs.org/A/RES/61/295>.

<sup>4</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 12, ¶ 2.

Indigenous communities' spiritual and cultural beliefs, without the free, prior and informed consent of Indigenous communities. 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 ancestral human remains and cultural items.

Repatriation or disposition of all human remains of Native American and Native Hawaiian ancestors and cultural items is a fundamental objective and value of UC that must be accomplished as expeditiously and respectfully as possible.

- 2) UC will comply with NAGPRA, CalNAGPRA, and this Policy.
- 3) This Policy applies to all UC locations. Each UC location shall establish policies and/or procedures consistent with this Policy, and its local scope and circumstances.
- 4) UC is committed to ethical and respectful care and culturally appropriate treatment of the human remains of Native American and Native Hawaiian ancestors and cultural items while they are in UC's stewardship. UC recognizes that such stewardship and culturally appropriate treatment must derive from consultation with lineal descendants and tribal representatives of Native American tribes and Native Hawaiian organizations, in consideration of state and federal law, and UC policy.
- 5) It is the policy of UC to transfer<sup>5</sup> the human remains of Native American and Native Hawaiian ancestors and cultural items to federally recognized and non-federally recognized tribes in accordance with NAGPRA and CalNAGPRA.
- 6) UC recognizes that consultation with present-day Native American tribes and Native Hawaiian organizations contributes a distinct and essential perspective for scholars' present understanding of Native American and Native Hawaiian cultures, and furthers UC's teaching, research, and public service mission. UC supports the right of all Native American tribes, including non-federally recognized tribes and Native Hawaiian organizations, to make inquiries to UC's museums and academic units about possible cultural relationships to the human remains of Native American and Native Hawaiian ancestors and cultural items under UC's stewardship. UC also supports the right of Native Americans and Native Hawaiians to visit the human remains and cultural items, and to study them under normal museum procedures according to this Policy and local procedures.
- 7) This Policy requires formation of a Systemwide Native American Repatriation Implementation and Oversight Committee ("Systemwide Committee") to review

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<sup>5</sup> Repatriation or disposition under NAGPRA and CalNAGPRA,

campus compliance with this Policy and to review appeals after campus procedures have been exhausted.

#### C. STATEMENT ON IMPLEMENTATION OF 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>6</sup> UC will consult and update its inventories and summaries as required by CalNAGPRA when the list of California Indian Tribes is published by the California state Native American Heritage Commission (NAHC) as contemplated by § 8012(j), and will transfer<sup>7</sup> California Indian human remains and cultural items to California Indian Tribes as required by CalNAGPRA. UC will also update this Policy as may be necessary at that time.

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### IV. ROLES / RESPONSIBILITIES

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- 1) **Campus Repatriation Official:** The person at a UC campus assigned compliance and procedural responsibilities with regard to this Policy, and applicable laws and regulations, including NAGPRA and CalNAGPRA. The Campus Repatriation Official shall report directly to the Chancellor or Chancellor's designee for such purposes. The Campus Repatriation Official may also serve as the Chancellor's designee, and in such cases, shall report directly to the Chancellor.
- 2) **Campus Committee:** See Section V.A.2 below of this Policy.
- 3) **Campus Point of Contact:** At campuses without known NAGPRA-eligible collections, the person that Native American tribes, Native Hawaiian organizations, and other UC personnel can contact for matters pertaining to compliance with this Policy.
- 4) **Chancellor:** 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. The Chancellor is responsible for the approval/disapproval of requests described in the Policy. The Chancellor may designate a "Chancellor's designee" for these purposes, and may additionally assign a "Campus Repatriation Official."
- 5) **Chancellor's Designee:** For the purposes of this Policy, the person to whom the Chancellor has delegated oversight, compliance duties, and authorities set forth in this Policy.

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<sup>6</sup> Citations to CalNAGPRA refer to California Health & Safety Code § § 8010-30.

<sup>7</sup> Note that under federal NAGPRA, non-federally recognized tribes can currently request disposition of human remains under NAGPRA § 10.11, and federally recognized tribes can request repatriation under § 10.10 or disposition under § 10.11.

- 6) **Liaison:** The person(s) at a UC campus responsible for assisting tribes in furtherance of the purpose and principles of this Policy, including consultation, repatriation, disposition, and access to the human remains of Native American and Native Hawaiian ancestors. The Liaison shall report to the Campus Repatriation Official.
- 7) **President:** The President of the University of California is UC's chief executive, and has full authority and responsibility over the administration of all affairs and operations of UC (excluding the responsibilities retained by 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 approval/disapproval of requests as described in the Policy. The President may designate a "President's designee" for these purposes.
- 8) **President's Designee:** For the purposes of this Policy, the person to whom the President has delegated oversight, compliance duties, and authorities set forth in this Policy.
- 9) **Systemwide Committee:** See Section V.A.1 below of this Policy.

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## **V. PROCEDURES**

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### **A. COMMITTEES**

1. **Systemwide Committee**
  - a. **Composition**

The President or the President's designee shall establish a Systemwide Native American Repatriation Implementation and Oversight Committee (hereinafter called the "Systemwide Committee"). UC shall solicit nominations for the membership required under subsections 1) and 2) below from the NAHC. The voting membership of the Systemwide Committee shall be as follows:

- 1) Three (3) elders, spiritual leaders, tribal leaders, or tribal members (who have been designated as such by the governing body of the individual's tribe) from a federally recognized tribe, having a minimum of five years' prior experience in any of the following:
  - a) Repatriation of human remains and cultural items pursuant to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).
  - b) Cultural resources protection under tribal, state, and federal law.
  - c) Consultation with state and federal entities and agencies.

If no members of a California Indian tribe (as defined in CalNAGPRA Section 8012(j)) meeting the qualifications above are available, members of other tribes, including tribes outside of California may serve.

- 2) One (1) elder, spiritual leader, tribal leader, or tribal member (who has been designated as such by the governing body of the individual's tribe) from a California Indian tribe under CalNAGPRA Section 8012(j)(2), having a minimum of five years' prior experience in any of the following:
  - a) Repatriation of human remains and cultural items pursuant to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).
  - b) Cultural resources protection under tribal, state, and federal law.
  - c) Consultation with state and federal entities and agencies.

If an elder, spiritual leader, tribal leader, or tribal member from a tribe as described in this section 2) is not available, a member from a federally recognized California Indian tribe as described in section 1) above may meet this requirement. In addition, if no members of a California Indian tribe (as defined in CalNAGPRA Section 8012(j)) meeting the qualifications above are available, members of other tribes outside of California may serve.

- 3) Four (4) members from UC. Not fewer than two of these members shall be affiliated with an American Indian or Native American Studies program and each of these members shall meet the following requirements:
  - a) Have a graduate degree in either Anthropology, Archaeology, Environmental Studies, Ethnic Studies, History, Law, Native American Studies, or Sociology, with a focus in California.
  - b) Have a minimum of five years' experience working in their field.

Preference shall be given to Academic Senate 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 the event that actively employed candidates from UC are not available or do not meet the criteria above, UC positions may be represented by persons retired from UC who meet the above criteria.

In selecting members, the President or the President's designee will seek a diversity of expertise and may make exceptions to the composition requirements set forth in 1), 2), and 3) above, provided that such exceptions promote repatriation and amplify the Purpose and Principles contained in this Policy. In making such exceptions, the President or President's designee will seek the advice of tribal representatives, and communicate the justification for the exception to the Systemwide Committee.

Voting members shall serve for renewable two (2) year terms.

In addition to the voting members, there shall be one (1) non-voting member from each UC campus that has a NAGPRA-eligible collection. Each of these non-voting members shall meet the requirements of 3)a) and 3)b) above, unless an exception has been approved by the President or the President's designee as described above.

Also, the President or President's designee may serve as an ex-officio non-voting member.

b. Purpose and Responsibilities of the Systemwide Committee

The charge of the Systemwide Committee shall be to promote the implementation of this Policy consistent with the Purpose and Principles contained herein, and to provide oversight of compliance with this Policy, and state and federal laws and regulations at all UC campuses and locations, as applicable.

The Systemwide Committee shall:

- 1) Make recommendations to the President or President's designee for revisions to this Policy;
- 2) Make recommendations to the President or President's designee for the issuance of guidance and best practices for the successful implementation of this Policy at all UC locations, as applicable;
- 3) Assess campus implementation, timeliness, and compliance with this Policy through the review of campus strategic plans for repatriation, campus proactive outreach programs and campus reports of their repatriation-related activities, and through audits, or site visits, as necessary;
- 4) Make recommendations for corrective action or audits to the President or President's designee to ensure compliance with this Policy, and applicable laws and regulations;
- 5) Make recommendations for the appropriate level of systemwide consistency in: reports collected from all campuses; required elements and information requested from Native American tribes and Native Hawaiian organizations for claims for cultural affiliation and requests for repatriation or disposition; and in general approaches to compliance with this Policy;
- 6) When requested by a Native American tribe or Native Hawaiian organization, and in accordance with the Appeals section of this Policy (Section V.H below), review disputed campus decisions and/or hear appeals concerning requests for the repatriation or disposition of human remains of Native American and Native Hawaiian ancestors and cultural items, including a review of the campus



decision, judged against this Policy and any legal requirements, and make recommendations for resolution to the President or the President's designee; and

7) Serve as a resource to promote repatriation.

c. Systemwide Committee Procedures

Record Keeping. The Systemwide Committee shall maintain a record of all votes, including both the majority and minority opinions.

Conflicts of Interest. If the Systemwide Committee is considering a case involving the tribe of a Systemwide Committee member, a substitution may be made for the Systemwide Committee member with the conflict; the substitute may be selected from the UC non-voting campus representatives, or from a campus committee. The balance in the composition of the Systemwide Committee membership considering the case will nonetheless be maintained in accordance with the Composition section (Section a above).

Chair. The Systemwide Committee shall nominate a Chair from amongst the four UC members, who, upon approval of the President or President's designee, shall serve for two (2) consecutive years. The Systemwide Committee may renew a chairperson upon approval of the President or President's designee. 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 or President's designee, and campus NAGPRA implementation staff as appropriate, 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;
- 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, included and reviewed at the next meeting.

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

Subject Matter Experts. The Systemwide Committee may seek, as needed, the advice of external or internal subject matter experts, such as from the UC President's Native American Advisory Council, and invite guests to its meetings in order to provide particular expertise to assist the Systemwide Committee in carrying out its duties. General Counsel should provide input on legal matters, and may be invited to regularly attend Systemwide Committee meetings. In addition, the Committee may form a pool of internal or external subject matter experts for campuses needing additional expertise to assist in the implementation of effective programs and/or review specific cases.

## 2. Campus Committees

### a. Composition

For each UC campus that has a NAGPRA-eligible collection, the Chancellor or Chancellor's designee shall establish a Campus Native American Repatriation Implementation and Oversight Committee (hereinafter called the "Campus Committee"). Campus shall solicit nominations for the membership required under subsections 1) and 2) below from the NAHC. The voting membership of the Campus Committee shall be as follows:

- 1) Two (2) elders, spiritual leaders, tribal leaders, or tribal members (who have been designated as such by the governing body of the individual's tribe) from a federally recognized California Indian tribe, having a minimum of five years' prior experience in any of the following:
  - a) Repatriation of human remains and cultural items pursuant to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).
  - b) Cultural resources protection under tribal, state, and federal law.
  - c) Consultation with state and federal entities and agencies.

If no members of a California Indian tribe meeting the qualifications above are available, members of other tribes, including tribes outside of California may serve.
- 2) One (1) elder, spiritual leader, tribal leader, or tribal member (who has been designated as such by the governing body of the individual's tribe) from a California Indian tribe under CalNAGPRA Section 8012(j)(2), having a minimum of five years' prior experience in any of the following:
  - a) Repatriation of human remains and cultural items pursuant to the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).
  - b) Cultural resources protection under tribal, state, and federal law.
  - c) Consultation with state and federal entities and agencies.

If an elder, spiritual leader, tribal leader, or tribal member from a tribe as described in this section 2) is not available, a member from a federally recognized California Indian tribe as described in section 1) above may meet this requirement. In addition, if no members of a California Indian tribe meeting the qualifications above are available, members of other tribes, including tribes outside of California may serve.

- 3) Three (3) members from UC. No fewer than one of these members shall be affiliated with an American Indian or Native American Studies program and each of these members shall meet the following requirements:
  - a) Have a graduate degree in either Anthropology, Archaeology, Environmental Studies, Ethnic Studies, History, Law, Native American Studies, or Sociology, with a focus in California.
  - b) Have a minimum of five years' experience working in their field.

Preference shall be given to Academic Senate 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 the event that candidates from UC are not available or do not meet the criteria above, UC positions may be represented by persons retired from UC who meet the above criteria.

In selecting members, the Chancellor or the Chancellor's designee will seek a diversity of expertise and may make exceptions to the composition requirements set forth in 1), 2), and 3) above, provided that such exceptions promote repatriation and amplify the Purpose and Principles contained in this Policy. In making such exceptions, the Chancellor or Chancellor's designee will seek the concurrence of the Systemwide Committee and communicate the justification for the exception to the Campus Committee.

Voting members shall serve for renewable two (2) year terms.

In addition to the voting members, the Chancellor or Chancellor's designee may serve as an ex-officio non-voting member.

b. Purpose and Responsibilities of the Campus Committee

The charge of the Campus Committee shall be to promote the implementation of this Policy consistent with the Purpose and Principles contained herein, and to provide oversight of its campus compliance with this Policy, and state and federal laws and regulations.

The Campus Committee shall:

- 1) Assess campus implementation, timeliness, and compliance with this Policy through consultation and review of the campus strategic repatriation plan including proactive outreach programs and reports prepared by staff with implementation responsibilities, audits, or site visits, as necessary.
- 2) Make corrective action recommendations to the Chancellor or Chancellor's designee;
- 3) Make recommendations to the Chancellor or Chancellor's designee for revisions to local campus policies and practices consistent with this Policy;
- 4) Make recommendations to the Chancellor or Chancellor's designee for the issuance of guidance, best practices, and a strategic repatriation plan for the successful campus implementation of this Policy;
- 5) Review claims for cultural affiliation and requests for repatriation / disposition of human remains of Native American or Native Hawaiian ancestors and cultural items, and make recommendations to the Chancellor or Chancellor's designee;
- 6) Review campus decisions for consistency with this Policy and any legal applicable requirements and, when requested by a Native American tribe or Native Hawaiian organization, assist in the resolution of disputes concerning requests for the repatriation or disposition of human remains of Native American and Native Hawaiian ancestors and cultural items that have not reached the Campus Committee for consideration, and/or make recommendations for resolution to the Chancellor or Chancellor's designee.
- 7) Make recommendations to the Chancellor or Chancellor's designee to ensure that Native American tribes or Native Hawaiian organizations have publicly available access to a clear and transparent description of the requirements for submitting claims and/or requests, including the minimum information needed, and the legal criteria/thresholds required for repatriation/disposition;
- 8) Review all Notices of Inventory Completion and Notices of Intent to Repatriate to ensure compliance with NAGPRA and CalNAGPRA, including appropriate consultation, and make recommendations to the Chancellor or Chancellor's designee; and
- 9) Serve as a resource to promote repatriation.

c. Campus Committee Procedures

Record Keeping. The Campus Committee shall maintain a record of all votes, including both the majority and minority opinions.

Conflicts of Interest. If the Campus Committee is considering a case involving the tribe of a Campus Committee member, a substitution may be made for the Campus Committee member with the conflict; the substitute may be selected from a pool of alternates or from another campus' corresponding Committee. The balance in the composition of the Campus Committee membership considering the case will nonetheless be maintained in accordance with the Composition section (Section A.2.a above).

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

- 1) In consultation with the Campus Committee membership and campus NAGPRA implementation staff as appropriate, schedule dates, times and locations for meetings; ensure meetings are called and held in accordance with this Policy;
- 2) In consultation with Campus Committee membership, establish and confirm an agenda for each meeting; 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;
- 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, included and reviewed at the next meeting.

Frequency of Meetings. For campuses with museums having stewardship of human remains of Native American and Native Hawaiian ancestors, where the number of individuals or sets of human remains exceeds 100, the Campus NAGPRA Committee shall meet no less frequently than three (3) times per academic year. All other campuses having stewardship of human remains of Native American and Native Hawaiian ancestors shall meet no less frequently than two (2) times per academic year.

Subject Matter Experts. The Campus Committee may seek, as needed, the advice of external or internal subject matter experts, and invite guests to its meetings in order to provide particular expertise to assist the Committee in carrying out its duties, and to assist in the implementation of effective programs and/or review specific cases. Campus Counsel should provide input on legal matters, and may be invited to regularly attend Committee meetings.

B. CONSULTATION

1. General Compliance

Consultation is a critical element of compliance with this Policy and is required by NAGPRA and CalNAGPRA at various stages of the inventory, summary, repatriation and disposition processes. Each campus that has a NAGPRA-eligible collection shall engage in meaningful consultation with tribal representatives. Mutual respect and understanding of concerns is critical to successful consultations. Meaningful consultation shall include the timely process of seeking, discussing, and considering carefully the views presented.

Each campus that has a NAGPRA-eligible collection (either on-campus or at any off-campus locations under that campus' control) shall appoint a Liaison who shall be a person: (a) familiar with NAGPRA, CalNAGPRA, and other relevant laws and regulations; (b) familiar with the repatriation process; and (c) knowledgeable regarding consultation practices and processes with Native American Tribes and Native Hawaiian Organizations. The Liaison shall report to the Campus Repatriation Official with overall responsibility for NAGPRA compliance as described in the Oversight section (Section V.G below). Campuses that do not have a known NAGPRA-eligible collection shall appoint a Point of Contact so that Native American tribes, Native Hawaiian organizations, and UC personnel know whom to contact if human remains of Native American or Native Hawaiian ancestors or cultural items are found at that campus, including any off-campus locations under that campus' control.

The Liaison shall cultivate a positive relationship with Native American and Native Hawaiian communities, as applicable, in order to achieve the Purpose and Principles outlined in this Policy. The Liaison shall also be responsible for assisting Native American Tribes and Native Hawaiian organizations in accessing ancestral human remains and cultural items, and for assisting Native American Tribes and Native Hawaiian organizations in initiating and implementing the repatriation and disposition process, or negotiating other mutually acceptable short-term care agreements.

Lineal descendants, Native American Tribes, and Native Hawaiian organizations shall be permitted reasonable access to the human remains of Native American and Native Hawaiian ancestors, cultural items, and associated collections and records for the purposes of repatriation or disposition, study and research, and cultural or spiritual care.

Each campus that has a NAGPRA-eligible collection shall work collaboratively with tribal representatives to facilitate the cultural affiliation of Native American or Native Hawaiian ancestral remains and cultural items, and provide tribal representatives reasonable opportunity to present information regarding cultural affiliation orally or in writing.

UC is committed to upholding the confidentiality of Native American tribes and Native Hawaiian organizations with regard to confidential information shared or learned in the implementation or undertaking of this Policy, subject to mandatory disclosure

requirements which may be set by state or federal law. When requested by a tribe or organization, all “confidential information” (as defined in Section II. Definitions) provided to the campus shall only be made available to those with a need to know for compliance with this Policy, and shall not be further re-disclosed unless otherwise required by law.

## 2. Beyond Consultation Required by Law

As part of its strategic repatriation plan, each campus that has a NAGPRA-eligible collection will have an outreach program that promotes proactive consultation with Native American and Native Hawaiian tribal representatives regarding the affiliation, repatriation, and disposition of the ancestral remains and cultural items.

To the extent permitted by UC and tribal resources, campuses will invite tribes seeking repatriation or disposition to attend regularly scheduled meetings to discuss repatriation/disposition strategies. Campuses should collaborate with tribes to organize these meetings, which may be regional or by request, in the tribe’s home territory.

To the extent permitted by UC resources, campuses will partner with and assist Native American tribes and Native Hawaiian organizations to seek state and federal grants or other available UC or third-party resources to facilitate consultation and repatriation processes and to provide for necessary costs incurred by the tribes, including compensation for tribal and other experts, travel, meals, and overnight accommodations.

## C. INVENTORIES AND SUMMARIES

UC campuses with knowledge of existing NAGPRA-eligible human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony in their possession have already submitted inventories and summaries.

Notwithstanding the above, as required by law and this Policy:

- 1) If a campus that has not completed an inventory or summary becomes aware of the existence of such human remains or cultural items in its stewardship, it must complete its inventories and summaries; and
- 2) Campuses with existing inventories and summaries must update these when:
  - a) They locate previously unreported holdings or collections that may include the human remains of Native American or Native Hawaiian ancestors or cultural items;
  - b) They have stewardship of human remains or cultural items that are or are likely to be culturally affiliated with a newly federally recognized tribe;
  - c) They obtain new information that provides the basis for revising a decision about the cultural affiliation or about the number of cultural items listed in a

- previously submitted Notice of Intent to Repatriate or Notice of Inventory Completion; or
- d) An update is otherwise required pursuant to NAGPRA, 43 C.F.R. § 10.13,<sup>8</sup> or other applicable law.

## 1. Inventory Process (Human Remains and Associated Funerary Objects)

As required by NAGPRA and all other applicable laws and policies, each campus with the stewardship of Native American or Native Hawaiian human remains and associated funerary objects shall complete inventories of all such remains and associated funerary objects in its collections. In accordance with NAGPRA § 10.9, campuses shall consult with lineal descendants (if known) and with tribal representatives and traditional religious leaders of Native American tribes or Native Hawaiian organizations: a) from whose tribal lands the human remains and associated funerary objects originated; b) that are, or are likely to be, culturally affiliated with human remains and associated funerary objects; and c) from whose aboriginal lands the human remains and associated funerary objects originated, and draw on the best available expertise to determine associated funerary objects and the cultural affiliation of the human remains based on the preponderance of the evidence.

If after consultation with tribal representatives, a campus is unable to determine the cultural affiliation of any human remains and associated funerary objects, then the campus will classify them as culturally unidentifiable in its NAGPRA inventory.

Campus Inventories and Notices of Inventory Completion (NICs) shall be reviewed by the Campus Committee upon completion and must be approved by the Chancellor or Chancellor's designee prior to being finalized for submission. Upon approval by the Chancellor or designee, the campus will make them available to federal agencies, lineal descendants, and Native American Tribes and Native Hawaiian organizations, as required by law. The campus shall provide an annual report of all Notices of Inventory Completion made pursuant to this section to the Systemwide Committee and the UC President or President's designee.

Upon request by appropriate tribal representatives, the campus shall provide all available additional documentation (excluding confidential information provided by another tribe during consultation) to supplement the information contained in the campus Inventories. Existing information fulfills this requirement; however, if feasible and agreed to by the campus, the campus may perform further research in response to tribal requests, consistent with Section V.I below of this Policy.

## 2. Summary Process (Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony)

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<sup>8</sup> Unless otherwise specified, all references in this document to specific sections of NAGPRA refer to sections of the NAGPRA implementing regulations at 43 C.F.R. § 10.1 et seq.



In accordance with NAGPRA and all other applicable laws and policies, each campus that has a NAGPRA-eligible collection shall complete a written summary of Native American and Native Hawaiian collections for the purpose of providing information about the collections to Native American tribes and Native Hawaiian organizations that may wish to request repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony. The summary is an invitation to consult on the identification of unassociated funerary objects, sacred objects and objects of cultural patrimony, and provides a basis for Native American Tribes and Native Hawaiian organizations to request repatriation of these items after additional consultation between them and the campus.

As part of the summary process, the campus shall consult with tribal representatives as required by NAGPRA, and shall provide access to records, catalogues, relevant studies, or other pertinent data for the purpose of determining the geographic origin, cultural affiliation, and provenience and provenance surrounding the acquisition and accession of objects covered by the summary.

Upon receiving a tribal representative's identification and claim of unassociated funerary objects, sacred objects, or objects of cultural patrimony, the campus shall evaluate whether by a preponderance of the evidence, the requested items meet the NAGPRA definitions of unassociated funerary objects, sacred objects, or objects of cultural patrimony, whether the requested cultural items are culturally affiliated with the claimant, and whether all other repatriation conditions of NAGPRA § 10.10 have been satisfied. However, notwithstanding the above, provided all other repatriation conditions of NAGPRA § 10.10 have been satisfied, UC will waive the requirement at § 10.10(a)(iii), which normally requires that a tribe present evidence supporting a finding that a museum does not have the "right of possession."

Claims for unassociated funerary objects, sacred objects, or objects of cultural patrimony and Notices of Intent to Repatriate (NIRs) shall be reviewed by the Campus Committee and must be approved by the Chancellor or Chancellor's designee prior to being finalized for submission. Upon approval by the Chancellor or Chancellor's designee, the campus shall make the NIRs available to federal agencies, lineal descendants, and Native American Tribes and Native Hawaiian organizations, as required by law. The campus shall provide an annual report of all Summaries and NIRs made pursuant to this section to the Systemwide Committee and the President or President's designee.

### 3. Reevaluations and Previously Unreported Holdings

Compliance with NAGPRA, CaINAGPRA, and this Policy is a UC-wide responsibility. Proactive efforts are required across UC to ensure that all human remains and cultural items of Native Americans and Native Hawaiians are reported and provided appropriate treatment while in the UC's care. Each campus will communicate with all relevant faculty, researchers, and staff to raise awareness about the requirements of this Policy

and related laws and regulations, and to provide a method of reporting to the Liaison or Campus Point of Contact potential NAGPRA-covered human remains or cultural items.

Even after submission of inventories and summaries to federal or state officials and to tribes, UC may locate previously unreported Native American or Native Hawaiian human remains and/or cultural items. These may be found in disparate academic units of the UC, e.g., inadvertently included among fauna or other materials. In addition, consultations with tribal representatives or others may yield new information, or changes in law or the addition of new federally recognized tribes under NAGPRA or California Indian tribes under CalNAGPRA may necessitate re-evaluations.

As part of the campus strategic repatriation plan, to update their reported inventories and summaries, campuses shall:

- 1) Devise a plan to review existing materials that may potentially contain Native American or Native Hawaiian human remains or cultural items, and report any previously unreported findings to the Liaison or Campus Point of Contact. Campuses should engage the expertise of an osteologist, an anthropologist, or similar expert to assist in this review.
- 2) Require non-museum academic units to review materials that may potentially contain Native American or Native Hawaiian human remains or cultural items, and report any previously unreported findings to the Liaison or Campus Point of Contact.
- 3) Devise a plan to proactively review previous determinations of culturally unidentifiable human remains in consultation with tribal representatives, re-evaluating originally considered evidence, as well as any newly available evidence or information.

A summary of the results of reviews required under this Section shall be reported to the campus Chancellor or Chancellor's designee, the Campus Committee and the Systemwide Committee.

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 in the aforementioned re-evaluation plan.

All newly identified human remains or cultural items that are thought to be potentially subject to NAGPRA or CalNAGPRA must immediately be placed in a secure area, and ongoing research and handling (other than that conducted in furtherance of the campus's responsibilities to make determinations as required by NAGPRA) must cease until a determination has been made about whether NAGPRA or CalNAGPRA policies apply. In performing its evaluation, the campus will consult with Native American tribes

and Native Hawaiian organizations in accordance with the Consultation section of this Policy. If human remains and cultural items subject to NAGPRA or CalNAGPRA are found, the University will apply all requirements stipulated by law, this Policy, and campus policies and procedures, including those at 43 CFR 10.13.

Reevaluations that result in a revision to campus inventories shall be reviewed by the Campus Committee upon completion and approved by the Chancellor or Chancellor's designee prior to being finalized for submission. Upon approval, the campus will make the inventory available to federal agencies, lineal descendants, and Native American Tribes and Native Hawaiian Organizations, as required by law. The campus shall report to the Systemwide Committee and the President or President's designee all Notices of Inventory Completion made pursuant to this section.

The campus shall annually provide to the Campus Committee an overview of all materials found or reports received of previously unreported Native American or Native Hawaiian human remains or cultural items in accordance with this section, including a description of the items, tribes consulted, outcomes, and status.

#### 4. Receipt of New NAGPRA-eligible Human Remains or Cultural Items

UC will not accept any new stewardship of human remains of Native American or Native Hawaiian ancestors, except upon request of a Native American Tribe or Native Hawaiian organization, or by special approval by the campus Chancellor, and provided that the primary reason for acceptance of the new request is to facilitate the repatriation process in accordance with the Purpose and Principles of this Policy. The campus shall report to the Systemwide Committee and the UC President or President's designee any acceptance of new Native American or Native Hawaiian Human Remains.

A campus may accession Native American or Native Hawaiian cultural items donated by an individual or entity demonstrating the right of possession, provided that UC's care for such items complies with Section V.I.1 Respectful Treatment below of this Policy.

See also Section V.J New Requests for Short-Term Care and Loans Received from other Institutions below.

#### D. CULTURAL AFFILIATION

Campus inventories and summaries shall identify whether there is cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, as defined by law. Under federal NAGPRA, all of the following requirements must be met to determine cultural affiliation between a present-day federally recognized Native American tribe or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony of an identifiable earlier group:

- 1) Existence of an identifiable present-day Native American tribe or Native Hawaiian organization with standing under NAGPRA;

- 2) Existence of an identifiable earlier group; and
- 3) Existence of a shared group identity that can be reasonably traced between the present-day Native American tribe or Native Hawaiian organization and the identifiable earlier group. Evidence to support this requirement must establish that a present-day Native American tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the identifiable earlier group.

A campus may establish cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony to more than one Native American tribe or Native Hawaiian organization. In such a case, the requirements for cultural affiliation must be established for each tribe or organization.

Evaluation of cultural affiliation, whether involving human remains (with associated funerary objects, if any) or cultural items, will utilize the following types of evidence and standards of proof.

#### 1. Types of Evidence

As provided in the federal statute and regulations, evidence of cultural affiliation between a Native American tribe or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established using the following types of evidence: geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion. When considering the totality of evidence, the perspectives of tribal representatives shall be considered with equal weight as other lines of evidence in accordance with state and federal law for the purposes of determining cultural affiliation.

Campuses must ensure that tribes have publicly available access to a clear and transparent description of the requirements for submitting claims or requests, including the minimum information needed, and the legal criteria/thresholds required for repatriation/disposition. During review, the campus may request additional information to clarify or support a claim. The responsibility to provide such evidence in support of a claim rests with the claimant(s).

#### 2. Evidentiary Standard and Burden of Proof

Under federal NAGPRA, determinations must be made by a preponderance of the evidence (see also Preponderance of Evidence in Section II. Definitions).

A finding of cultural affiliation will be based on an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the

human remains and cultural items being claimed. Such a finding will not be ruled out solely because of some gaps in the record.

**Burden of Proof:** The claimant bears the burden of proof with respect to a repatriation request. To meet this burden, the available evidence must be sufficient to establish a reasonable basis for believing the materials in question are Native American remains or cultural items eligible for repatriation under NAGPRA and that the claimant is culturally affiliated with the human remains or cultural items.

#### E. REPATRIATION AND DISPOSITION

In general, campus decisions regarding repatriation and disposition will be the result of multi-stage processes of consultation, communication, evaluation, and review with Native American tribes and Native Hawaiian organizations. Each campus that has a NAGPRA-eligible collection shall establish a clear and transparent process for Native American tribes or Native Hawaiian organizations to submit a request for repatriation or disposition in accordance with federal and state law and this Policy.

##### 1. Claims for Cultural Affiliation and Requests for Repatriation by Federally Recognized Tribes or Native Hawaiian organizations

A federally recognized Native American tribe or Native Hawaiian organization may submit a claim to establish cultural affiliation with human remains or cultural items. A claimant must submit a claim for cultural affiliation in writing. Each campus that has a NAGPRA-eligible collection shall establish a list of minimum necessary information that should be included in a claim to start a review by the Campus Committee. For example, a campus may require a request to include a catalog number(s), description(s), the category or categories under which repatriation is being requested, and pertinent information demonstrating cultural affiliation to support the claim. To facilitate transparency, the campus shall make publicly available the list of minimum necessary information and process for submitting the claim or request. The list of minimum necessary information should not be used as a barrier for repatriation or disposition. Rather, it should be a tool for claimants to know what information is needed by a campus to process their claims.

Once all the criteria for cultural affiliation described above and set out in federal NAGPRA § 10.10 are met, within ninety (90) days of receipt of a written request for repatriation from a Native American tribe or Native Hawaiian organization, UC must expeditiously repatriate human remains and associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony; however, repatriation may not occur until at least thirty (30) days after publication of the Notice of Intent to Repatriate in the Federal Register.

A coalition of Native American tribes or Native Hawaiian organizations may jointly submit requests for repatriation. In such cases, cultural affiliation must be established

for each tribe requesting repatriation via the joint request, but joint requests shall not be interpreted as competing requests.

## 2. Claims for Cultural Affiliation by Non-federally Recognized Tribes

Federal NAGPRA distinguishes federally recognized Native American tribes from non-federally recognized Native American tribes. NAGPRA does not give standing to non-federally recognized Native American tribes to claim cultural affiliation, but does provide a mechanism for making dispositions to non-federally recognized tribes under certain circumstances (see Section V.E.3 below).

UC will make every effort to engage with non-federally recognized Native American tribes in the cultural affiliation process. Non-federally recognized Native American tribes may submit requests for disposition under the process described in Section V.E.3 below and outlined in NAGPRA § 10.11.

## 3. Requests for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects

A request for disposition of culturally unidentifiable human remains and associated funerary objects may be submitted by a non-federally recognized Native American tribe or Native Hawaiian organization or by a federally recognized Native American tribe or Native Hawaiian organization.

In accordance with § 10.11 of the federal NAGPRA regulations, UC must initiate consultation regarding the disposition of culturally unidentifiable human remains and associated funerary objects:

- 1) Within 90 days of receiving a request from a Native American tribe or Native Hawaiian organization to transfer control of culturally unidentifiable human remains and associated funerary objects; or
- 2) If no request is received, before any offer to transfer control of culturally unidentifiable human remains and associated funerary objects.

Federal NAGPRA § 10.11 outlines the process that a campus must follow to complete a disposition of culturally unidentifiable human remains. UC will also transfer culturally unidentifiable associated funerary objects to Native American tribes and Native Hawaiian organizations if requested. Upon receiving a request, the campus must initiate consultation with tribal representatives and traditional religious leaders of Native American tribes and Native Hawaiian organizations:

- 1) From whose tribal lands, at the time of the removal, the human remains and associated funerary objects were removed; and
- 2) From whose aboriginal lands 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.

The campus shall make 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 from whose aboriginal lands the human remains and associated funerary objects were removed (federal NAGPRA § 10.11(b)(2)). After an appropriate response period (60 days),<sup>9</sup> to not delay disposition to a requesting Native American tribe(s) or Native Hawaiian organization(s), the campus shall proceed with the disposition request (but in accordance with § 10.11(d), disposition may not occur until at least 30 days after publication of a Notice of Inventory Completion in the Federal Register). Unless advised otherwise by federal NAGPRA officials, campuses are not required to obtain written signature of support from all tribes described herein prior to proceeding with transfer of control.

In the event of multiple requests, a campus must transfer control of the culturally unidentifiable human remains and associated funerary objects in the following priority order:

- 1) 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.
- 2) The federally recognized tribe 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.

In a case where there is no requestor that meets the criteria of 1) or 2) above, the campus may transfer control of culturally unidentifiable human remains and associated funerary objects to (a) any other federally recognized tribe or Native Hawaiian organization that has submitted a request or (b) a non-federally recognized tribe. Under federal 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 (federal NAGPRA § 10.11(c)2(ii)).

#### 4. Review of Claims and Requests

Each campus that has a NAGPRA-eligible collection shall establish a list of minimum necessary information that should be included in a request to start a review by the Campus Committee. For example, a campus may require a request to include a catalog number(s), description(s), the category or categories under which repatriation is being

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<sup>9</sup> Although NAGPRA does mention the length of a response period, sixty (60) days provides tribes with a reasonable period to voice an interest without unduly delaying next steps.

requested, and pertinent information demonstrating cultural affiliation to support the request. To facilitate transparency, the campus shall make publicly available the list of minimum necessary information and process for submitting the claim or request. The list of minimum necessary information should not be used as a barrier for repatriation or disposition. Rather, it should be a tool for claimants or requestors to know what information is needed by a campus to process their requests.

The Liaison shall assist in obtaining this information for prospective claimants or requestors. If a request is missing information, has incorrect information, or is otherwise incomplete, the campus shall work with and assist the claimant/requestor to gather the necessary information so the request may proceed. To be clear, a claim/request that is incomplete should not terminate the process, but rather provides an opportunity to work with the claimant or requestor to facilitate repatriation or disposition.

A claimant or requestor must submit a request for repatriation or disposition in writing. The campus will send written responses to claimants or requestors regarding the status of all claims/requests within sixty (60) days of receiving the claim or request.

After a claim or request is accepted by a campus, it will undergo an evaluation process by the Campus Committee. Campus review of claims or requests shall reflect consideration of Native American or Native Hawaiian viewpoints, and shall provide for consultation with requesting lineal descendants, Native American tribes, or Native Hawaiian organizations, as required by NAGPRA.

All Campus Committee recommendations (positive and negative) regarding repatriation or disposition requests made pursuant to this Policy shall be reviewed by the Chancellor or Chancellor's designee. Campuses may proceed with repatriation or disposition pursuant to this Policy, after obtaining the written approval for such action from the Chancellor or Chancellor's designee. All packaging materials (boxes, bags, jars, acid-free tissue paper, etc.) that previously held human remains will be offered to lineal descendants or tribal representatives at the time of transfer. The campus shall report to the Systemwide Committee and to the UC President or President's designee all determinations (approved or denied) made pursuant to this section.

UC campuses shall follow guidelines and procedures for implementing repatriation or disposition that are in accordance with accepted professional museum standards and federal and state law and regulations.

## 5. Deaccessioning

Campuses may voluntarily deaccession items that have been determined not to be human remains or cultural items as defined by NAGPRA and CaINAGPRA, in accordance with campus policies and practices.



## F. STRATEGIC REPATRIATION PLAN

Each campus with NAGPRA-eligible human remains or cultural items will develop a strategic repatriation plan in consultation with the Campus Committee within six months of the Chancellor or Chancellor's designee's appointment of the Campus Committee. The strategic repatriation plan should address campus specific concerns and circumstances, in addition to the following components:

- 1) An outreach program that promotes proactive consultation with Native American and Native Hawaiian tribal representatives regarding the affiliation, repatriation, and disposition of the ancestral remains and cultural items, including a reasonable timeline for such activities.
- 2) A timeline and description of the process needed to reevaluate and update campus inventories and summaries as required under Section V.C.3 above of this Policy.
- 3) For human remains and cultural items that have been culturally affiliated, but have not yet been requested, campuses shall develop timetables to continue to send reminder notifications and invite repatriation requests (e.g., of no less than every two years).

The campus will submit the final strategic repatriation plan to the Campus Committee, with a copy to the Systemwide Committee.

## G. OVERSIGHT

The Systemwide Committee and Campus Committees shall promote the implementation of this Policy consistent with the Purpose and 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 campus officials as needed to fulfill its oversight functions.

The Chancellor of each campus that has a NAGPRA-eligible collection shall assign a Campus Repatriation Official with responsibility for compliance with this Policy, and applicable laws and regulations (See Section IV above).

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.

UC shall consult with the Systemwide Committee before making any changes to this Policy. Campuses shall consult with the Campus Committee before making any changes to related campus policies and procedures.

#### H. APPEALS

##### 1. Resolutions of Disputed Claims for Cultural Affiliation, Repatriation, or Disposition

Tribal representatives who disagree with cultural affiliation determinations or with repatriation and disposition decisions, are encouraged to work with the Liaison for assistance in resolving disputes. Disputes remaining unresolved may be brought forth for reconsideration as follows:

- 1) A request for reconsideration may be brought to the Campus Committee, which can support the prior determination or make a new recommendation to the campus Chancellor or Chancellor's designee.
- 2) After the Campus Committee upholds or makes a new recommendation as a result of 1) above, the Chancellor or Chancellor's designee will make the decision to uphold, reverse, or modify an earlier campus determination, provided that such a decision must be based on a determination that the claim(s) meets all applicable legal and Policy requirements.

If after such appeals to the Campus Committee the dispute remains unresolved, the claimant or requestor may appeal to the Systemwide Committee, which will make a recommendation to the President or President's designee, whose decision shall be final.

At all dispute resolution stages, tribal representatives shall be given reasonable opportunity, upon request, to present their views orally or in writing to Campus or Systemwide Committees and UC authorities responsible for making determinations relating to cultural affiliation and repatriation. Third-party mediation is also encouraged to assist in efforts to reach agreement. Such mediation may include any means mutually agreed to by all parties and approved by the Chancellor or Chancellor's designee.

Tribal representatives may also file a request with the National NAGPRA Review Committee per federal NAGPRA § 10.17, for assistance in resolving a dispute; or, for claims that fall under CalNAGPRA, with the Native American Heritage Commission, per CalNAGPRA § 8016.

## 2. Multiple Claims<sup>10</sup> 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 multiple conflicting requests for transfer from different tribes, each of whom UC determined has a valid request for repatriation/disposition under NAGPRA. If UC is unable to determine which requesting party is the most appropriate, UC shall continue to provide stewardship of the human remains of Native American or Native Hawaiian ancestors or cultural items until the requesting parties reach agreement on proper disposition or until the dispute is resolved by mediation, a court of competent jurisdiction, or other appropriate means.

The parties may choose mediation by a third party mutually agreeable to the disputants. For assistance in resolving a dispute, tribal representatives may also file a request with the National NAGPRA Review Committee per federal NAGPRA § 10.17, or for claims that fall under CalNAGPRA, with the Native American Heritage Commission, per CalNAGPRA § 8016.

Once the multiple requestors/claimants agree upon an arrangement, and once UC is provided with assurance of protection against liability (either under the provisions of NAGPRA or under an agreement among the claimants), UC will repatriate to the Native American tribe(s) specified in such an agreement, provided that the tribe or tribes have been determined by the UC to be entitled to repatriation or disposition under this policy.

### I. STEWARDSHIP

Campuses with stewardship of human remains of Native American and Native Hawaiian ancestors or cultural items shall adopt procedures regarding stewardship consistent with this section, to ensure respectful treatment of such human remains and cultural items and compliance with all applicable laws and regulations.

#### 1. Respectful Treatment

All remains of Native American and Native Hawaiian ancestors 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. Native American tribes and Native Hawaiian organizations may have their own traditional perspectives on care, storage, and handling. Each campus with a NAGPRA-eligible collection shall publicly post the means to make a request for traditional care. UC welcomes such requests, and will endeavor to incorporate these into UC's stewardship practices regarding the remains of Native American and Native Hawaiian ancestors and cultural items. In cases where traditional care requests cannot be strictly accommodated, the campus will collaboratively explore

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<sup>10</sup> Note that Multiple Claims are distinct from Joint or Coalition claims discussed in Section V.E of this Policy.

alternative arrangements with Native American tribes and Native American organizations in order to implement culturally sensitive care while upholding the safety and security of all collections.

To the maximum extent possible, human remains and associated 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.

## 2. Management and Preservation Standards

Campuses shall ensure that all remains of Native American and Native Hawaiian ancestors and Associated Funerary Objects are managed and preserved in accordance with the standards set out by 36 C.F.R. § 79.9(b)(3), unless a request for an exception is brought forth before the Campus Committee for review and recommendation to the campus Chancellor or Chancellor's designee, who may approve such exception requests.

## 3. Access by Lineal Descendants, Native American Tribes, and Native Hawaiian organizations for Consultation and Cultural or Spiritual Care

Lineal descendants, Native American Tribes, and Native Hawaiian organizations shall be permitted reasonable access to the human remains of Native American and Native Hawaiian ancestors, cultural items, and associated collections and records for the purposes of consultation toward repatriation or disposition and cultural or spiritual care. Arrangements are to be established in advance of the visit. Tribal representatives shall present evidence indicating approval by their tribal chair to access such ancestral remains and cultural items.

## 4. Access to the Remains of Native American or Native Hawaiian Ancestors for Research, Instruction, Exhibition, or Other Purposes

UC shall not permit research, destructive analysis, classroom use, or exhibition of human remains of Native American or Native Hawaiian ancestors, except as outlined below.

- 1) If the remains of Native American and Native Hawaiian ancestors are pending repatriation or disposition, the campus must obtain explicit written permission from the cognizant Native American tribes or Hawaiian organizations.
- 2) If the remains of Native American and Native Hawaiian ancestors are culturally affiliated, the campus must obtain explicit written permission of the culturally affiliated tribes.

- 3) If the remains of Native American and Native Hawaiian ancestors are culturally unidentifiable only due to the tribe's status as non-federally recognized, the campus must obtain explicit written permission from the non-federally recognized tribe known to have a relationship of shared group identity with the particular human remains and associated funerary objects.
- 4) If the remains of Native American and Native Hawaiian ancestors are culturally unidentifiable and the tribe does not fit the description in 3) above, the campus must obtain approval from all the Indian tribes whose aboriginal lands (as outlined in NAGPRA § 10.11) overlap with the location where the human remains originate.

Whether internal or external to UC, all petitioners seeking access to NAGPRA-eligible human remains for research, instruction, exhibition or other purposes must provide documentation demonstrating compliance with the above requirements. The Liaison should initiate contact with the tribal representative(s) and assist in these efforts as needed.

Compliance with 1)-4) above notwithstanding, once a campus receives a claim of cultural affiliation of human remains or request for repatriation or disposition of human remains, the campus will impose a moratorium on all access for research, instruction, exhibition or other purposes unrelated to making determinations needed for compliance with NAGPRA and with this Policy, until the claim or request is resolved.

The campus shall have a clear and consistent protocol for handling petitions made under this section, including forms and contact information for the office responsible for review and processing of the petition, and identification of the ultimate decision-making authority. The Liaison shall be provided a copy of all petitions, including documentation and approvals received from tribal representatives.

In reviewing petitions for research, instruction, exhibition, or other purposes unrelated to making determinations needed for compliance with NAGPRA, the campus shall consider (i) evidence of tribal consultation and approvals as required above, (ii) tribal input, (iii) efforts to maintain high standards of care and respect for all human remains of Native American or Native Hawaiian ancestors, and (iv) scholarly merit.

The campus shall clearly outline the terms, conditions, and limitations in all access and loan agreements, including the termination date. Researchers will be required to disseminate their research results to all tribes described in 1), 2), 3), or 4) above, as applicable.

The Campus Repatriation Official is responsible for periodic assessments of compliance with this section.

The campus shall semi-annually provide to the Campus Committee a summary of all access and loan agreements executed in accordance with this section, including a listing of the remains of Native American and Native Hawaiian ancestors accessed or loaned, the tribes consulted, approvals obtained, and the terms of use.

J. NEW REQUESTS FOR SHORT-TERM CARE AND LOANS RECEIVED FROM OTHER INSTITUTIONS

1. Care for Native American Tribes or Native Hawaiian Organizations

UC may maintain temporary physical care of human remains of Native American or Native Hawaiian ancestors and cultural items at the request of a Native American tribe or Native Hawaiian organization. In addition, UC may accept the human remains of Native American or Native Hawaiian ancestors and cultural items for temporary purposes at the request of a Native American tribe or Native Hawaiian organization, so as to engage in a collaborative research project between UC researchers and Native American tribes, or research performed by UC in consultation with the respective Native American tribe.

2. Care for Loans from Entities Other Than Native American Tribes or Native Hawaiian Organizations

Under certain circumstances and provided the conditions in section 3 below are satisfied, UC may accept requests for the short-term care of human remains of Native American or Native Hawaiian ancestors from entities who are not Native American tribes or Native Hawaiian organizations for periods not to exceed two years. Extensions beyond two years require approval by the Chancellor or Chancellor's designee.

Examples of such acceptable circumstances include:

- 1) A request that UC perform an analysis of the human remains of Native American or Native Hawaiian ancestors at the behest of an affiliated tribe.
- 2) A request that UC perform an analysis of the human remains of Native American or Native Hawaiian ancestors to aid the requesting institution in carrying out its NAGPRA responsibilities.
- 3) A request from an agency that recently discovered human remains of Native American or Native Hawaiian ancestors that is unable to provide immediate and appropriate care.
- 4) Other research or care approved by or performed in consultation with the respective Native American tribe or Native Hawaiian organization.

3. Conditions for Loans

For all requests described above, the following conditions apply:

- 1) The controlling agent has requested that the UC maintain such short-term care.

- 2) The Campus Repatriation Official (on behalf of 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 compliance responsibilities.
- 3) UC maintains the human remains of Native American or Native Hawaiian ancestors and cultural items in accordance with the standards described in Section V.I.2 above unless otherwise described in the agreement between the controlling agent and UC and approved by the Campus Repatriation Official after consultation with the Campus Committee.
- 4) All such agreements shall be reported to the Campus Committee and the Systemwide Committee.

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## **VI. RELATED INFORMATION**

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- 1) Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-13.
- 2) Native American Graves Protection and Repatriation Regulations, 43 C.F.R. §§ 10.1-.17.
- 3) California Native American Graves Protection and Repatriation Act, Cal. Health & Safety Code §§ 8010-30.
- 4) United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), *available at* <https://undocs.org/A/RES/61/295>.
- 5) Cal. Exec. Order No. N-15-19 (June 18, 2019), <https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf>.

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## **VII. FREQUENTLY ASKED QUESTIONS**

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Not applicable

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## **VIII. REVISION HISTORY**

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This Policy is also reformatted to meet Web Content Accessibility Guidelines (WCAG) 2.0.

This Policy replaces the Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items (eff. May 1, 2001).

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**IX. APPENDIX**

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Not Applicable

DRAFT





## Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items

<b>Responsible Officer:</b>	VP - Research & Graduate Studies
<b>Responsible Office:</b>	RG - Research & Graduate Studies
<b>Issuance Date:</b>	5/1/2001
<b>Effective Date:</b>	5/1/2001
<b>Scope:</b>	The general principles of this policy apply to all human remains in the University's collections. The remainder of this policy pertains specifically to Native American and Native Hawaiian human remains and Cultural Items. Cultural Items, as used throughout this policy, refers to associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony, as defined by the federal Native American Graves Protection and Repatriation Act ("NAGPRA;" P.L. <a href="#">101-601</a> ). This policy is intended to ensure both adherence to the above statement of principles and compliance with NAGPRA.

<b>Contact:</b>	Jeff Hall
<b>Email:</b>	jeff.hall@ucop.edu
<b>Phone #:</b>	(510) 987-0688

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### I. POLICY SUMMARY

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It is the policy of the University of California to assure that the respectful and dignified treatment of human remains and the consideration of living descendants of those deceased. The University recognizes that individuals and communities have cultural and religious concerns that must be considered in determining the treatment and disposition of human remains in its collections.

At the same time, the University's collections of human remains and Cultural Items serve valuable educational and research purposes important to the enhancement of knowledge in various disciplines. The University maintains these collections as a public

trust and is responsible for preserving them according to the highest standards while fulfilling its mission to provide education and understanding about the past and present through continued teaching, research and public service.

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## II. DEFINITIONS

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Cultural Items, as used throughout this policy, refers to associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony, as defined by the federal Native American Graves Protection and Repatriation Act (“NAGPRA;” [P.L. 101-601](#)).

With respect to implementation of the requirements of NAGPRA, Indian Tribes are defined as federally recognized tribes (that is, as any tribe, band, nation or community of Indians “recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians”) [[43 CFR Part 10, Subpart A, §10.2 \(b\) \(2\)](#)].

Cultural Affiliation refers to relationship of shared group identity that can be reasonably traced historically or prehistorically between a present-day Native Hawaiian organization or federally-recognized Indian tribe and an identifiable earlier group.

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## III. POLICY TEXT

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It is the policy of the University of California to assure the respectful and dignified treatment of human remains and the consideration of living descendants of those deceased. The University recognizes that individuals and communities have cultural and religious concerns that must be considered in determining the treatment and disposition of human remains in its collections.

At the same time, the University’s collections of human remains and Cultural Items serve valuable educational and research purposes important to the enhancement of knowledge in various disciplines. The University maintains these collections as a public trust and is responsible for preserving them according to the highest standards while fulfilling its mission to provide education and understanding about the past and present through continued teaching, research and public service.

The general principles of this policy, as stated above, apply to all human remains in the University’s collections. The remainder of this policy pertains to Native American and Native Hawaiian human remains and Cultural Items.” This policy is intended to ensure both adherence to the above statement of principles and compliance with NAGPRA.

It is the policy of the University of California to respect Native American and Native Hawaiian concerns regarding the treatment and disposition of Native American and

Native Hawaiian remains and Cultural Items that are part of the University's collections, and to repatriate such remains and Cultural items to lineal descendants (as defined by NAGPRA), Indian tribes, and Native Hawaiian organizations under specified conditions, in accordance with federal and state law.

NAGPRA does not give standing to non-federally-recognized groups to seek repatriation of human remains or Cultural Items. However, in the event that the State of California develops a process for according official state recognition for repatriation purposes to Native American tribes, bands, nations, rancherias or other entities that is consistent with state and federal law including the California and United States constitutions, the University, in addition to repatriating to federally-recognized tribes under specified conditions, will also repatriate to such state-recognized tribes under specified conditions and to the extent permissible under law.

The University recognizes the right of all native peoples, including non-federally-recognized tribes, to make inquiries to its museums about possible cultural relationships to the human remains and Cultural Items in its collections, to visit the collections, and to study them under normal museum procedures. The University recognizes that the participation of such groups may lend a different and vital perspective to the present understanding of scholars and others studying the collections and also that such participation may allow Native Americans and Native Hawaiians to enrich their own cultural knowledge.

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#### **IV. COMPLIANCE / RESPONSIBILITIES**

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##### **UNIVERSITY ADVISORY ON CULTURAL AFFILIATION AND REPATRIATION OF HUMAN REMAINS AND CULTURAL ITEMS**

**Composition.** The President or the President's designee shall establish a University Advisory Group on Cultural Affiliation and Repatriation of Human Remains and Cultural Items ("Advisory Group"), which shall be composed of one University faculty member delegated principal responsibility for compliance with this policy from each of those campuses that house collections covered by NAGPRA, and two Native American members to be selected by the President or designee from among nominees submitted by each campus. The Vice Provost for Research (or designee) will be the UC Office of the President liaison to the Advisory Group.

**Responsibilities.** The Advisory Group shall:

1. Review and advise the President or designee regarding campus implementation of and compliance with this policy and related applicable law and regulations;
2. Review campus decisions regarding potential cultural affiliation and repatriation of Native American or Native Hawaiian remains and Cultural Items, and report its findings and recommendations to the President or designee;

3. Make recommendations to the President or designee for revisions to this policy and any associated guidelines; and
4. Assist in the resolution of disputes that may arise in connection with this policy.

**Additional input.** Campuses are encouraged to solicit input on significant policy matters, as appropriate, from members of Native American and Native Hawaiian groups and from additional University faculty members drawn from a variety of disciplines in which the study, treatment, curation, and repatriation of human remains is relevant. Campuses are encouraged to forward input received from such consultations to the Office of the President via their Advisory Group representative.

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## V. PROCEDURES

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### REVIEW OF COLLECTIONS: INVENTORIES AND SUMMARIES

#### A. Inventories of Native American and Native Hawaiian human remains and associated objects.

In accordance with NAGPRA, each campus with Native American or Native Hawaiian human remains and associated funerary objects shall complete inventories of all such remains and associated funerary objects in its collections by reviewing existing documentation. Campus inventories shall draw on the best available academic expertise and involve consultation with tribal authorities representing Native American and Native Hawaiian groups. The inventories shall include descriptions of human remains and associated funerary objects and shall, to the extent possible, identify the geographical and cultural affiliation of those human remains and associated Cultural Items, as required by NAGPRA.

Final campus inventories and notices of inventory completion shall be transmitted to the Advisory Group and to the President or designee upon completion. Upon approval, the President or designee shall direct the campus to make them available to federal agencies and to lineal descendants, Native American tribes and Native Hawaiian organizations, as required by law.

Upon request by lineal descendants or appropriate tribal authorities, the campus shall provide additional available documentation to supplement the information provided in the campus inventories. Existing information is sufficient to fulfill this requirement; no additional scientific studies need be undertaken to provide such information.

#### B. Summaries of unassociated funerary objects, sacred objects, and objects or cultural patrimony.

In accordance with NAGPRA, each campus shall complete a written summary of Native American and Native Hawaiian unassociated funerary objects, sacred objects, and objects of cultural patrimony held in its collections. These summaries provide a basis for further consultations with Native American and Native Hawaiian tribal authorities to determine cultural affiliation. Final campus summaries shall be submitted to federal agencies, lineal descendants, Native American tribes and Native Hawaiian organizations, as required by law.

Upon request by lineal descendants or appropriate tribal authorities, the campus shall provide access to records, catalogues, relevant studies, or other pertinent data for the purpose of determining the geographic origin, cultural affiliation and basic facts surrounding the acquisition and accession of objects covered in the summary.

### **C. Updates to inventories and summaries.**

In the course of the review of their collections and of continuing NAGPRA implementation efforts, campuses may determine that their inventories or summaries require additions or revisions. Such revisions to campus inventories shall be transmitted to the Advisory Group and to the President or designee upon completion. Upon approval, the President or designee shall direct the campus to make them available to federal agencies and to the appropriate lineal descendants, Native American tribes and Native Hawaiian organizations.

## **DETERMINATION OF CULTURAL AFFILIATION**

To the extent possible, campus inventories and summaries shall identify the Cultural Affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, as defined by federal law. .

Under NAGPRA, all of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

- a. Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under NAGPRA;
- b. Existence of an identifiable earlier group; and
- c. Existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

Evidence to establish cultural affiliation may include biological, geographical, kinship, archaeological, anthropological, linguistic, folkloric, oral tradition, historical, or other relevant information or expert opinion. All campus determinations of cultural affiliation shall be reviewed by the Advisory Group, which shall make a recommendation to the President or designee regarding final determinations.

In accordance with NAGPRA, remains and Cultural Items that cannot be identified as affiliated with a particular lineal descendent or federally-recognized Indian tribe or Native Hawaiian organization are to be classified on inventories as culturally unidentifiable.

Tribal authorities shall be permitted reasonable access to examine items in the University's collections in order to evaluate the cultural affiliation of items listed in the inventory as culturally unidentifiable. They shall also be given reasonable opportunity, upon request, to present their views orally or in writing to campus officials responsible for NAGPRA implementation regarding the identification of any such human remains, funerary objects, sacred objects, or objects of cultural patrimony. The perspectives of such tribal authorities shall be considered in determining cultural affiliation.

## **REQUESTS FOR REPATRIATION**

### **A. General**

Campus review of repatriation requests shall reflect consideration of academic expertise and Native American or Native Hawaiian viewpoints, and shall provide consultation with requesting individuals or tribes, as required by NAGPRA.

All campus determinations of cultural affiliation and all campus determinations regarding repatriation requests made pursuant to this policy shall be reviewed by the Advisory Group, which shall report its finding and recommendation to the President or designee. The President or designee shall have final authority to approve or disapprove determinations regarding disposition of remains and Cultural Items in University collections. The University shall follow guidelines and procedures for implementing repatriation that are in accordance with accepted professional museum standards and federal and state law and regulations. Campuses may proceed with the deaccession and repatriation of materials in the University's collections, pursuant to this policy, after obtaining the written approval for such action from the President or designee.

### **B. Requests from Lineal Descendants and Federally-recognized Indian Tribes and Native Hawaiian Organizations.**

Upon the written request of a lineal descendant, Indian tribe or Native Hawaiian organization, the University will expeditiously repatriate human remains, funerary objects, sacred objects, and objects of cultural patrimony if lineal descent has been established or if cultural affiliation between the requesting tribe or

organization and the requested remains or Cultural Items has been established in accordance with federal law and if all other requirements for repatriation of such human remains or Cultural Items as set forth in federal law are met.

C. Requests from California-recognized Indian tribes.

In the case of a written request from an Indian tribe, band, nation, rancheria, reservation or other entity that is California-recognized but not federally-recognized, the University will expeditiously repatriate human remains, funerary objects, sacred objects, and objects of cultural patrimony if it is established that all requirements for repatriation under the federal law have been met except the requirement that the requesting tribe or group be federally-recognized.

In order for repatriation to a non-federally-recognized California-recognized tribe to take place, it must be determined that:

1. "Cultural association" exists; i.e., affiliation between the requesting tribe and the requested remains or Cultural Items would have been established in accordance with federal law if the requesting tribe were federally-recognized. In order for this criterion to be met, it must be determined that the requesting tribe is an identifiable present-day tribe, and that there is evidence establishing that the requesting tribe has been identified from prehistoric or historic times to the present as descended from an identifiable earlier group from whom the requested human remains or Cultural Items originated; and
2. The standards for repatriation of such human remains or Cultural Items as set forth in federal law are met.

In addition, in the case of human remains that meet the above criteria and that have been (or should have been) reported on the campus inventory as "culturally unidentifiable," the University will consult with the Secretary of the Interior ("Secretary"), and will proceed with repatriation only upon recommendation of the Secretary, as specified in federal law. The University also will consult with the Secretary prior to repatriating Cultural Items that have been (or that should have been) reported on the campus inventory as "culturally unidentifiable," and will proceed with repatriation only upon recommendation of the Secretary. Prior to any repatriation under this section, the University will seek to notify all other Native American or Native Hawaiian tribes or organizations that have been determined to have a potential interest in the requested remains or Cultural Items. Repatriation will not take place until there has been a reasonable opportunity for other potentially-interested groups to notify the University of any conflicting claims.

## LIAISONS, CONFLICTS AND MEDIATION

### A. Liaison

Each campus with a collection of Native American or Native Hawaiian remains, funerary objects, sacred objects, or objects of cultural patrimony shall designate a liaison to work with native communities considering or requesting repatriation from the University's collections. The liaison shall be a person familiar with NAGPRA and the repatriation process, and shall cultivate a positive relationship with Native American communities. It will be the responsibility of the liaison to make University collections of Native remains and items accessible to all tribes, and to assist tribes in understanding and invoking the repatriation process. The liaison will assist tribes in planning for repatriation of culturally affiliated items. With respect to human remains and Cultural Items in campus collections that are categorized as "culturally unidentifiable," the liaison will facilitate examination of the items by tribal authorities.

### B. Resolutions of Disputed Claims for Cultural Affiliation and Repatriation

Tribal authorities who disagree with determinations regarding cultural affiliation (or cultural association) and repatriation are encouraged to work with campus museum officials at the campus where the remains or Cultural Items at issue are housed and with the campus liaison to resolve disputes. Tribal authorities shall be given reasonable opportunity, upon request, to present their views orally or in writing to campus authorities responsible for making determinations relating to cultural affiliation and repatriation.

Third-party mediation is encouraged to assist in efforts to reach agreement about disputed claims to items in the University's collections. Such mediation may include any means mutually agreed to by all parties to a repatriation discussion and approved by the Chancellor of the campus that houses the disputed items.

Repatriation disputes remaining unresolved following initial dialogue among the parties shall be reviewed and decided by the Chancellor, subject to review by the President or designee. The President or designee may seek a recommendation from the University Advisory Group, and shall have final authority regarding disposition of Native American remains and Cultural Items in University collections, in accordance with this policy and applicable laws and regulations.

### C. Multiple Claims for Repatriation

Where there are multiple requests for repatriation, and where the University is unable to determine which requesting party is the most appropriate claimant, the University shall retain and preserve the human remains or Cultural Items until the requesting parties reach agreement on proper disposition or until the dispute is resolved by mediation, a court of competent jurisdiction, or other appropriate



means. The parties may choose mediation by a third party, which may be the NAGPRA Review Committee established by federal law or other appropriate entity mutually agreeable to the disputants.

In cases involving multiple repatriation claims, the Native American claimants may determine for themselves the proper disposition of the remains or Cultural Items. Once the multiple claimants agree upon a proper disposition, and once the University is provided with assurance of protection against multiple liability (either under the provisions of NAGPRA or under an agreement among the claimants), the University will repatriate to the Native American tribe specified in such an agreement, provided that the tribe is one that has been determined by the University to be entitled to repatriation under this policy. If the conflict is not resolved by this means, then the matter may be resolved by a court of competent jurisdiction through a declaratory or interpleader action, or by other appropriate means.

## **TEACHING AND RESEARCH USE OF REMAINS AND CULTURAL ITEMS IN UNIVERSITY COLLECTIONS**

Campuses are granted the authority to make decisions about the use of Native American or Native Hawaiian human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony in University collections for teaching and research purposes, subject to the following guidelines:

- a. Given the importance of the study of human osteology in archaeology, paleontology, and comparative morphology, and the importance of skeletal material in training students at the lower division, upper division and graduate level, campuses normally retain the discretion to use such items in teaching. Campuses are encouraged to take into consideration the views and concerns of Native American and Native Hawaiian representatives when making decisions regarding the teaching and research use of Native American and Native Hawaiian skeletal materials.
- b. Remains and Cultural Items covered by this policy shall normally remain accessible for research by qualified investigators, subject to approval by the curator of the relevant campus collection.
- c. Once a repatriation request has been granted and actual repatriation is pending, the remains and Cultural Items covered by the request shall not be used in teaching or research unless expressly permitted by the tribal authority that has been granted jurisdiction over the materials, subject to exceptions provided by federal law.
- d. In circumstances in which cultural affiliation (or cultural association) has been established and other repatriation requirements have been met but in which an affiliated (or associated) tribe has chosen not to request repatriation, an

affiliated (or associated) tribe may request that the affiliated (or associated) remains or Cultural Items not be used for teaching or research. The decision of the affiliated (or associated) tribe as to whether the remains and cultural items can be used in teaching or research shall normally be accepted as final by the University, subject to exceptions provided by federal law.

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## **VI. REVISION HISTORY**

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This policy was reformatted into the standard University of California policy template effective July 1, 2012.

Technical edits were made to this policy on March 25, 2013.