

**UC Native American Cultural Affiliation and Repatriation Policy  
All Comments (Native American Tribes, NAHC, & UC) on Policy Ver. 1 and UC Response**

| # | Policy Section | General Comments   | UC Response  |
|---|----------------|--|--|
| 1 | General        | I support any strengthening of policies to repatriate and treatment of Native American and Native Hawaiian human remains and cultural items. I have never agreed with continuing to hold onto these items without the permission of our Native American and Native Hawaiian community. At this point in time, we should look to their communities to instruct us on what research is important to them in maintaining the cultural, creative, emotional, psychological and spiritual health of their communities. We should look to forming a stronger and more collaborative relationship with their communities in the maintenance, preservation and creation of their culture.  | Agreed. We think this policy is a step in that direction.  |
| 2 | General        | We received very positive feedback on the proposed policy. Commenter appreciates the comprehensiveness of the expanded document, noting that the embedded definitions, rather than links to source documents, are very helpful and provide critical clarity, and that the revisions lay out the policy very clearly and in great, but not excessive detail. Commenter also appreciates that it anticipates a fairly exhaustive range of scenarios and outlines the appropriate response. Further, Commenter finds it very informative to see the details of the various committees and their responsibilities. Finally, Commenter was personally pleased to see a strong element of outreach and community partnership in UC asking for such wide commentary on these revisions. Commenter feels it is a critical element to the stewardship of Native American cultural materials in the Harrison collection. | We appreciate the support.   |
| 3 | General        | The policy should extend to facsimile representations (photographic representations and other pictorial images), linguistic evidence, and any other materials that may be known, or yet to be discovered, to be representative of Native American and Native Hawaiian cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony. Campus policies and strategic plans should include protocols and procedures relevant to its local scope and circumstances for this, and in particular, a campus take-down or restricted access policy should be developed and publicized by repositories.  | We appreciate the concerns expressed here, but have not yet resolved this issue. We will discuss with the Workgroup. |

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| 4 | General        | <p>Overall, I believe the entire UC repatriation policy needs to be thrown out and restarted. I find it to be to convoluted with unnecessary quotes from the regulations. I'm hopeful that this document provides a mechanism for better relations to begin between the UC and its campuses and descendant communities.</p> <p>There should be two parts one that is the policy and then one that is the guidance document (could be an attachment and perhaps this should be adapted with specific campus input). This allows for changes with federal and state law to be more easily updated without needing to change the policy. The policy should not be more than 10 pages and not get bogged down in things that are defined in law, but reference the statue and attach (which is done on several occasions). It must be user friendly and understandable by many different people inside and outside the UC. In the policy there should be an acknowledgement that 1990 NAGPRA was enacted and campuses undertook compliance prior to a systemwide committee at the beginning. When the systemwide committee came into place and their charge prior (a preamble). This policy updates the responsibility to repatriation going forward and that the guidance document will provide the process in order to comply with this policy.</p> <p>...</p> <p>UC Repatriation Policy Guidance document first tasks: 1. Preliminary task force should be created to asses each UC controlled location to determine what Native North American collections and ancestral remains exist and if further evaluations are necessary.2. If no collections or ancestral remains exist a Point of Contact will be determined.3. If further work is needed the task force will provide a report on the extent of the collections and what next steps are needed. A budget and timeline should be a apart of this document and given to the appropriate people for consideration and implementation.</p> | <p>We acknowledge we have further work to do, including cleaning up this draft (perhaps making it leaner) and developing procedural guidance. We will consider commenter's suggestions as we proceed.</p> <p>We will consider moving references to legal language to an appendix, where it's still handy, but might make the policy easier to read.</p> <p>In general, the purpose of UC policy is to inform UC employees of UC's principles and mandated practices. However, we appreciate that this policy is also of interest to tribal communities. To that end, we agree that flow charts or procedural guidance could better inform both UC employees and tribes of how to navigate the system.</p> <p>As suggested by the commenter, the Policy Workgroup will undertake a review of all UC locations with NAGPRA-eligible collections prior to finalization of policy.</p> <p>Policy already requires:</p> <ol style="list-style-type: none"> <li>1) Re-evaluation at all UC locations</li> <li>2) Assignment of a Point of Contact if campus has no NAGPRA-eligible materials.</li> <li>3) Inventory updates if new materials are found that have not been reported. In addition, a Repatriation Implementation Plan is also required, where the campus is required to outline a plan for repatriation, and that Plan be submitted to the Campus and Systemwide Committees.</li> </ol> <p>We have added the requirement to include a budget and timeline in the Repatriation Implementation Plans.</p> |

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| 5 | General        | <p>The issue here is repatriation, and for decades it has been the policy of UC to repatriate to culturally affiliated Native American skeletal remains. I know of no case in which this has not happened. Balance and legality of our previous UC policy has served the teaching, research, and public service missions of the University admirably since the time that it was written as a joint Senate/UCOP effort, prior to the federal NAGPRA law's passage. Now, the University proposes to bow to political pressure, and imagines that it must completely rewrite its policy. The effect is imbalance. The proposed policy calls for repatriation, but adopts the regulatory over-reach of DOI/NAGPRA--witness the 10.11 regulatory addition to NAGPRA. That regulation, never tested in court, bestows geography an illegal evidentiary precedence.</p> <p>Adoption of this attempted DOI regulatory overturn of relevant case law (Kennewick) is particularly fraught in California, where Native American tribal and linguistic groups were geographically mobile through thousands of years of time (as established by abundant evidence of the state's prehistory). Because of this fact, adoption of the proposed policy will have the undesirable effect of repatriating UC-held culturally unidentifiable remains to unrelated claimants. Repatriation is not something that the University or the Tribes have a chance to do over. It has to be done correctly the first time.</p> <p>The processes involved therefore constitute a weighty fiduciary and ethical obligations for our institution. Mistaken repatriation will serve neither the institution, the public, nor the Tribes. And we know that repatriation on the basis of geography alone will lead to culturally unidentifiable remains being "repatriated" to unrelated claimants.</p> <p>The policy draft circulated provides inadequate mechanisms for recognizing the validity of affiliation claims, particularly in the case of non-federally recognized Tribes.</p> <p>The new policy will therefore not only predictably compromise the University's missions, but it will also place us in permanent legal and reputational jeopardy, in addition to the obvious and unfunded financial costs that will be involved in compliance. I would recommend that the former policy either be revised to adequately protect all stakeholders, or be rewritten to do so. The newly proposed policy, in its current form, is a poor reflection of the legal, ethical, or scientific scholarship that our University takes pride in.</p> | <p>UC is required by law to re-write our policy, and we are taking this opportunity to write it in alignment with UC's fundamental value of repatriation, and changes in the regulations since the policy was last reviewed. As a matter of policy, UC is embarking on a more proactive path towards repatriation, recognizing and committing to implementation of the rights of Indigenous peoples articulated in Article 12 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP): "the right to the use and control of their ceremonial objects; and the right to the repatriation of their ancestral human remains."</p> <p>Re-reviews of previous designations of CUI must still follow federal and state regulations to establish cultural affiliation, thus we believe the new draft policy is legally compliant.</p> |

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| 6 | General        | <p>The Draft policy, does not give the Non-Federally recognized Tribes much of a voice. This policy is driven more towards Federally Recognized Tribes. Out of the 37 pages of this policy, here's what the Commenter needs to further understand. Can we obtain a list of cultural resources, ancestry remains, based on our ancient tribal lands and boundaries? does the UC systems have a clear understanding of our territories? We also understand the NAHC has some very gray areas within there MLD regs, that have allowed fraudulent tribal affiliations rights to repatriate our ancestors. Some of our precious ancient lands have been given to other central coast tribes, due to academics writings and research that are inaccurate!. Lots of work to be done. All we request for now is further consultation in the future, on what type of inventory these UC system's hold pertaining to the Commenter's ancestors and resources. We would provide a true authentic map of our territory if requested.</p> | <p>We incorporated CalNAGPRA throughout the policy. Section V.E. 2 addresses claims by non-federally recognized tribes. In addition we have also added a section regarding claims by California tribes (V.E.3).</p> <p>Published Inventories and Summaries provide information on what is in UC possession, sortable by county and geographic area.</p> <p>See Comment 77 regarding the determination of aboriginal lands.</p> <p>UC will be developing additional flow charts and instructions, which will include provision of information currently held by UC to the tribes.</p> <p>This Policy already requires consultation, which will be further reinforced by specific guidance/flowcharts.</p> |
| 7 | General        | <p>1. The Commenter's issues the following comments for your consideration in refining and further developing this Policy.</p> <p>Maintain consistency with the new provisions and requirements of federal and state laws.</p> <p>Eliminate areas that could be construed as avenues for the UC system to depart from the core purpose of the legislative changes.</p> <p>Engage in consultation with Tribes about this Policy and conduct workshops for tribal communities to better understand the new process and policy.</p>  | <p>UC is reviewing this policy and endeavors to resolve any inconsistencies, especially those already identified by the NAHC.</p> <p>UC is engaging in further consultations and communications with the tribal communities before final implementation.</p> <p>This is an ongoing process. UC may need to provide further procedural guidance post issuance of the policy.</p>  |
| 8 | General        | <p><i>Funding Commitment.</i> The funding commitment to repatriate seems weak. We believe that a firm commitment of resources from the Office of the President is needed to ensure successful and effective implementation.</p>   | <p>We inserted a requirement for plans to have budget estimates. Campuses will need to find resources for compliance.</p>  |

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| 9 | General        | As a general matter, we urge the University to extend the comment period on the proposed Policy for at least another thirty (30) to sixty (60) days to allow for meaningful participation and input from tribes. The views of California's tribal nations should be heard and considered as tribes are directly impacted. We are concerned that the proposed Policy have not adequately addressed tribal concerns, and involved little outreach and engagement of interested tribes and tribal stakeholders. It is our understanding that the University has not facilitated any meeting with interested tribes on the proposed Policy. Extending the comment period will also serve the University's interest in receiving comments that will identify issues and offer recommendations to support the objective of the proposed Policy. Further, outreach and meetings with interested tribes should be provided. | UC is delaying issuance of this policy so that further work sessions and communications with the tribal communities can occur before final implementation. |

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| 10 | General        | <p>The Policy, as currently written, falls far short of the mandate and intent of AB 2836. In short, the Policy:</p> <ul style="list-style-type: none"> <li>Is overly technical;</li> <li>Provides for a disjointed and unclear repatriation process;</li> <li>Places enormous burdens on tribes seeking repatriation; and</li> <li>Overall underemphasizes the critical importance of tribal consultation regarding repatriation.</li> </ul> <p>AB 2836 requires the University to adopt and implement policies that include a "clear and transparent process" for determining cultural affiliation and effecting repatriation. (See Health &amp; Safety Code § 8025(a)(2)(B)). As drafted, the Policy lacks any clear process for tribes to follow for establishing cultural affiliation and requesting repatriation. The Policy does not flow in a manner that clearly defines the process and includes language that is convoluted and extraordinarily technical in nature.</p> <p>....</p> <p>One final general comment is that the Policy does not address repatriation claims where human remains and cultural items may be housed at one or more University campuses. Tribes should not have to make multiple claims for remains that may be spread amongst other University repositories and the Policy should explicitly provide for the processing of one claim in such instances.</p> <p>In short, the flaws in the Policy identified by the Tribe appear to be related to lack of expertise in drafting a law which accounts for the non-academic and non-research concerns of tribes related to repatriation, as well as a lack of engagement directly with tribal communities. Only one in-person session was conducted with tribal communities on the Policy, which means that the drafters lacked an understanding of the broad issues and concerns faced by tribes. While comments have been solicited via electronic mail and a survey, the value of face-to-face consultation with tribes cannot be replaced.</p> <p>The Tribe strongly recommends the University not only hold meetings with tribes throughout California, but that the Policy be "test-driven" through application of real disputes tribes have encountered to determine whether the document actually addresses those process issues and maintains consistency with the mandates of AB 2836. It is imperative that if this Policy is to work for tribes, it be drafted in a way that reflects its real time and real world application in the cultural affiliation and repatriation process.</p> | <p>As noted in comment 9 above, UC is engaging in work sessions and communications with the tribal communities before final implementation. We seek better understanding of tribal issues and perspectives.</p> <p>We have removed Burden of Proof section. We have modified the definition for Consultation as recommended by the NAHC.<br/>(Per CalNAGPRA § 8025(a)(3), we revised to use the definition at Section 65352.4 of the Government Code.)</p> <p>We also plan to add flow charts/guidance for the consultation and repatriation processes.</p> <p>We will also be reviewing to make the policy leaner/clearer, where possible.</p> <p>We will consider addressing a single claim for multiple campuses, with the input of campus stakeholders regarding feasibility.</p> <p>It is our hope that the additional flow charts to be developed will achieve greater clarity and consistency amongst campuses.</p> <p>We also note that campus and systemwide committees are meant to address any ongoing issues not anticipated by this policy and to make recommendations to address issues.</p> |

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| 11 | General        | <p>We also have three overarching concerns with the process the UC has pursued here. First, is that the current drafters of the policy appear to lack the necessary in-depth knowledge of repatriation laws and tribal concerns and experience in the reparation process to make these revisions; that concerns of the Workgroup are not adequately reflected in the Policy; and that the flawed current UC Davis process may have been used to inform the Policy. Second, we understand there is an ongoing state audit of UC NAGPRA pursuant to AB 2836. We believe that revisions to the Policy could be informed and supported by the results of that audit and that development of any final Policy should be postponed until the results of the audit are understood and addressed in the Policy. Third, we do not see that adequate time has been built into the Policy adoption schedule by UC to accommodate meaningful review, reflection, and integration of tribal and public comment on the proposed Policy or for a revised draft to be sent out for tribal review and consultation offered. These aspects of the process indicate to us that the Policy is not ready for finalization, and we do not understand why a more collaborative approach was not taken by UC regarding revisions to a policy that affects all California Tribes.</p> <p>Given these significant concerns, we believe the approach taken by UC and the revised Policy is not what the legislature had in mind when it enacted CalNAGPRA or AB 2836. We do not believe it will lead to more repatriation and in fact we believe it will create additional barriers to repatriation. We believe the document must be completely rewritten by entities with significant experience in implementing NAGPRA in California, addressing the key barriers to repatriation, honestly acknowledging the role UC has historically played in the current failures to repatriate, simplifying the process, and truly engaging California tribes. Given the timelines for such necessary actions, we believe that the legislative deadline of January 2020 for adoption of a final Policy cannot in good faith be met and that implementation of a further revised Policy be extended in some manner, with close oversight by the legislature and the Native American Heritage Commission, to see that the drafting process has been corrected before reaching a final product.</p> | <p>UC welcomes tribal input and will provide further opportunities for this to occur. We agree that understanding tribal concerns and experiences is imperative. We will also continue to consult with on-the-ground practitioners and Workgroup members with direct repatriation experience.</p> <p>The State audit is expected to be released in May 2020. To the extent that flaws are uncovered that can/should be addressed by the policy (assuming we have time to integrate these before the policy is finalized), UC will endeavor to do that. We note that campus and systemwide committees are also tasked with addressing ongoing issues. Thus, there are various avenues for addressing issues.</p> <p>As noted in comment 9 above, UC is delaying issuance of this policy so that further engagement and communications with the tribal communities can occur before final implementation.</p> |

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| 12 | General        | <p>We respectfully request a cover sheet, roadmap, or flowchart explaining how the proposed framework, language, and policies in the new Policy work and how they may differ from that in the current Policy to help reviewers identify any process improvements or inadequacies made by the Policy.</p> <p>We appreciate the proposed dropping of the word curation from the Policy title. Please also consider adding Respectful Treatment to the title as this is the third leg of the stool for more successful and consistent implementation of NAGPRA and California NAGPRA (CalNAGPRA). It is also another way to help set a more collaborative tone from the outset.</p> <p>Why doesn't the Policy clearly state that it is the policy of the state of California is to repatriate (CA PRC 5097.991). This could be stated in several places in the proposed Policy such as the Policy Summary (page 2), Purpose and Principles (page 8), etc. This should be the fundamental touchstone for UC's implementation of CalNAGPRA.</p> | <p>We are developing flowcharts to incorporate into this policy. We also note that additional guidance can be developed post-issuance of the policy as necessary. However, we will likely not create comparison charts between the old and the new as each campus currently has their own procedures.</p> <p>We appreciate the comment on respectful treatment. Though we do address this in the Consultation section (V.B.1), the guidance/flowchart on the consultation process will further address respectful treatment of the tribes. UC will also discuss with the workgroup adding this to the Principles of the policy.</p> <p>With regard to the treatment of Human Remains and Cultural Items, we note there is an entire section dedicated to respectful treatment and these values are also reflected in the Principles section as well.</p> <p>We will consider adding a reference to CA PRC 5097.991. Note we can and do state that repatriation is a fundamental objective and value of UC that must be accomplished as expeditiously and respectfully as possible.</p> |
| 13 | General        | <p>The sections referencing cultural, spiritual, or traditional care should be more explicit about how such care might manifest itself in these contexts. What might such care or offerings be, their value, and the need for museums to try and accommodate them even if they are not anticipated in 36 CFR 79. The Policy should also acknowledge it is important to try and accommodate such practices as a manifestation of Respectful Treatment, and for the health and well-being of the collections themselves (the Ancestors) as well as tribal staff and members, and even museum staff. Commenter has had issues where the Tribe felt its care requests and manner of offerings (i.e., in sealed jars) were reasonable, but were denied by UC campus museum specialists (i.e., UC Davis).</p>  | <p>Section V.H.2 sets the general base standards for the proper care of Human Remains and Associated Funerary Objects (36 C.F.R. § 79.9(b)(3)). Cultural and spiritual care is specific to each tribe.</p> <p>Section V.H.1., Respectful Treatment has been strengthened to clarify that campuses will collaborate with the affiliated Tribal Representative to develop and incorporate traditional care practices to the extent possible. We agree that consultation is important in these situations to ensure that there is mutual understanding of both the needs and constraints.</p>   |



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| 14 | General        | <p>A. The Policy Lacks Clarity In Purpose – From The Title Of The Policy To The Organization Of The Policy.</p> <p>The title of the Policy is “Native American Cultural Affiliation and Repatriation.” The name does not adequately convey the importance of the policy, nor import to the reader what the policy will be addressing. Commenter recommends a retitling of the name, such as the “UC Systemwide Repatriation Policy for Respectful and Efficient Native American and Native Hawaiian Human Remains and Cultural Items.” The purpose of the Policy is provided through seven (7) “principles” – ranging from supporting the intent of Governor Newsom’s Executive Order N-15-19, Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples, and the UC’s commitment to repatriation “through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples.” It further provides that the repatriation process must be “accomplished as expeditiously and respectfully as possible.” And most importantly, it states specifically that the UC is to repatriate to both federally and non-federally recognized tribes. Yet, when you read the document itself, the reader becomes bogged down in legalese, restatements (sometimes incorrectly) of the federal and state laws requiring repatriation – not recommending repatriation but requiring repatriation. There is not a single flow-chart to provide a campus, Location, or tribal government with any clear guidance of how and at what stages tribal consultation should be occurring. There is not a single flow-chart to provide a campus, Location, or tribal government how to successfully accomplish an inventory process – be it a reevaluation of inventory or inventory of new collections/unreported holdings. There is not a single flow-chart detailing the process a tribe or lineal descendant would need to follow in order to successfully repatriate their ancestors remains, funerary goods or sacred cultural items, or to appeal any decision made against their claim. Fundamentally the document is mired in language that buries these principles of policy to a point of no recognition. Clarity of purpose, intent and systemwide directives were not obtained in the current version of the Policy – all priorities established in the principles of the Policy.</p> <p>...</p> <p>C. Compliance With CalNAGPRA And AB 2836 (Gloria, 2018) Does Not Appear To Have Been Accomplished.</p> <p>When Commenter learned of the passing of AB 2836 and the pronouncement of the State of California’s Executive Order N-15-19 by Governor Gavin Newsom, a renewed sense of hope was formed by our Tribal Council that the UC would do what was honorable and truly take the</p> | <p>We appreciate all comments outlined in this letter. Below we attempt to address them succinctly.</p> <p>Regarding policy title, please see response to comment 12 above. We appreciate the concern and will address it in a future iteration.</p> <p>UC is committed to repatriation as a first order of business, as stated in what is now the first principle (moved up to Principle #1 in version 2 of the policy).</p> <p>We will work with UCLA to add flow charts on the repatriation and consultation processes, we believe this will facilitate the process, add clarity and greater consistency. We will explore how we can streamline the policy.</p> <p>We have added reference to Native American tribes as experts that can help identify Native American items.</p> <p>Regarding treatment, see response to comment 12 above. The policy also requires that tribes be able to submit specific requests for culturally appropriate treatment (see response to comment 13).</p> <p>In response to comments, we have integrated CalNAGPRA throughout. The repatriation flow charts will also address how CalNAGPRA and NAGPRA interact.</p> <p>We have added minimum requirements for the campus Repatriation Implementation Plans, including estimated timelines for complete repatriation.</p> <p>The appeals section has been revised in response to this commenter and other similar comments, to provide a clear pathway to escalation of UC campus decisions to the UC Office of the President and the Systemwide Committee. We have also added a process for tribes to register complaints regarding any other campus processes.</p> |

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|   |                | <p>task bestowed upon them to heart through precise and transparent action given the UC's own role in California's genocidal history of its Native American population. Unfortunately, this Policy does not provide direct guidance to the UC campuses and Locations to (1) commit to a policy of repatriation in compliance with CalNAGPRA and NAGPRA, (2) embrace a mutually beneficial tribal consultation policy, (3) acknowledge the wrongs committed by the UC in not repatriating Native American ancestral remains in compliance with NAGPRA Section 10.11 or CalNAGPRA in terms of Culturally Unidentifiable Inventory – inventory specifically pertaining to non-federally recognized tribes, (4) creating a process whereby California Native American Tribes may become consulting partners in identifying items within the inventorying process and in the repatriation claims process, (5) creating a process whereby tribes would be able to navigate through this complex process through less bureaucracy instead of more or new bureaucracy, or (6) an acknowledgement of the UC's own commitment to assisting California Native American tribes in the practical realities and logistics of reburial of their ancestors given the sad reality that the original burial grounds have probably been lost to development.</p> <p>After reviewing and considering the UC Policy, Commenter does not believe that the intentions espoused in NAGPRA, CalNAGPRA, or AB 2836 have been met, nor do we believe that the policy being presented will achieve successful repatriation by non-federally recognized California Native American Tribes. Most upsetting to the Tribe, however, is the lack of commitment by the UC to both acknowledge California's violent past and the benefits received by the UC through public land grants and research accomplishments from our ancestors deaths.</p> <p>The UC was at a cross roads in developing a policy that could accomplish the commencement of a new relationship between itself and California Native American tribes, instead the policy is a restatement of laws with no direction to tribes or its implementing locations on whether deference will be provided to tribes. And most troubling of all is that there is no clear statement as to when UC must be in complete compliance with the laws of repatriation.</p> <p>...</p> <p>II. SPECIFIC GUIDANCE NEEDS TO BE PROVIDED TO INDIVIDUAL CAMPUSES AND OTHER UC LOCATIONS FOR RESPECTFUL AND DIGNIFIED REPATRIATION EFFORTS</p> <p>A. Lack Of Useable Definition Of Culturally Appropriate Treatment For Successful Implementation Of A Repatriation Policy</p> <p>It remains unclear to the Commenter how the UC intends to provide culturally appropriate treatment of Native American ancestral remains and</p> | <p>In addition, in the section of the policy addressing appeals, complaints, and multiple claims, we have added language explicitly calling out that tribes with complaints can request the assistance of NAHC or the National NAGPRA Review Committee, as applicable, in resolving a dispute. We will consider adding language to further clarify that when tribes choose to invoke their right to lodge a complaint or request for assistance with NAHC or with National NAGPRA, UC campuses must engage with and cooperate with those agencies.</p> <p>UC will comply with subpoenas as required by law.</p> <p>We recognize the need to manage conflicts of interest (COI) in the committee, including potential conflicts for both tribal and UC members, and have added language to the policy specifying that the committees will establish procedures for managing COI.</p> <p>We have added tribal leaders in the list of examples of subject matter experts that can assist in the identification of Native American Human Remains or Cultural Items. In addition, we will identify in the consultation process all points of required interaction with the tribes, and guidance on how to build a relationship based consultation.</p> <p>See also response to comments 204 and 230.</p> |

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|   |                | <p>belongings when the Policy fails to identify “what” “culturally appropriate treatment” is and “how” “culturally appropriate treatment” will be determined and implemented. The methods and means of determining these two very important queries goes to the soul of this Policy. There is a disconnect between what this Policy purports to be and the shameful reality of the UC’s application of the repatriation laws of the State of California and the federal government to date and in the past. Tribes must have a voice on what “culturally appropriate treatment” is and how it is to be implemented. Tribes must actually be consulted on what “culturally appropriate treatment” means in order for there to be any integrity attached to such terminology within this Policy. UCLA has had several major repatriation success stories which, in the Commenter’s opinion, demonstrate the true intent and purpose that was to be evident in this policy. Yet, the proven successful protocols developed by UCLA in direct consultation and partnership with tribal communities and concluding actions taken by the responsible parties within UCLA are not clearly represented in this Policy. In fact, it appears that no effective outreach has been conducted by the UC to establish best practices, identify actual protocols of the individual campuses and locations, or acknowledge shortcomings by individual or collective campuses or locations. The failure to do this represents a lack of sincerity in accomplishing the statutory obligation placed upon the UC by the State of California to remedy the UC’s out of date repatriation policy.</p> <p><b>B. Failure To Provide A Clear Pathway For Repatriation Claims And Disputes For Tribes To Follow</b></p> <p>The current pathway provided by the Policy to guide a tribe on filing a repatriation claim is anything but clear or straight forward. It is convoluted and difficult to follow and/or cite for such purposes as writing this comment letter. At the very least, the Policy should provide a flow-chart depicting how the UC would like tribes to “request” to repatriate their ancestors and their ancestors’ belongings. Although the Policy provides for the law currently reflected in NAGPRA, it gives little credence to CalNAGPRA, or little room for updates to the respective laws. It is not a “living document” but rather a static document given its heavy reliance on including specific language of the respective laws, instead of concentrating on providing strict guidance on implementing the stated principles of the UC policy towards repatriation.</p> <p>The very purpose of CalNAGPRA and Section 10.11 of NAGPRA is for non-federally recognized tribes to be given the power to repatriate their</p> |             |

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|   |                | <p>ancestors. There is very little guidance on how the UC expects its campuses and Locations to reconcile the two (2) statutes. There is little to no guidance on what the UC expects the campuses and Locations to DO when there is a discrepancy between the two (2) statutes. Instead, the Policy dictates that the individual campuses and Locations will be allowed to create their own policies – outside of this systemwide policy, but not in conflict with this policy. Yet, this Policy is void of any guidance on these issues, therefore, leaving individual campuses and Locations to develop their own determinations on how to resolve discrepancies in the two (2) statutes, placing the tribes in the same predicament they have been in - different policies and applications of the laws by individual campuses. This Policy shows a bias towards NAGPRA and a repulsion against meaningful incorporation of CalNAGPRA. If the UC intends to not incorporate CalNAGPRA fully, then it should say so. At least then non-federally recognized California Native American Tribes will know the true hurdles facing them when attempting to repatriate their ancestors from the UC. In regards to the dispute resolution section of the Policy, it is unclear what scenario the UC envisions that will result in a decision by a campus committee or systemwide committee being overturned by that same committee when the situation is not defined by “new information” being provided by the tribe. If a tribe encounters bias – whether it be institutional or tribal – in the determination of its claim for repatriation, what benefit can be found by the tribe being required to appeal to the same committee that rejected its claim. This redundant requirement is costly for the tribe and is creates an unnecessarily frustrating experience for the tribe in their quest to repatriate and rebury their ancestors.</p> <p>This raises the Tribe’s concern regarding the lack of provision and definition for conflicts of interest and/or bias held, or believed to be held, by the respective committee members. If there is an appearance of a conflict, whether it be financial, political, relational, or otherwise, there needs to be a process to identify and resolve such conflict. Currently, the dispute resolution portion of the Policy lacks a fundamental understanding of how disputes are currently used against tribal claims. The UC owes California Native American Tribes to investigate this area of controversy further and provide clear resolution in moving forward. Commenter believes that the California Indian Legal Services can be of great assistance to the UC in this matter. Furthermore, it is unclear to the Commenter what role the dispute remedies under CalNAGPRA will play in this Policy and that of the strategic implementation plans of the campuses and Locations. CalNAGPRA provides California Native American Tribes several different avenues for dispute</p> |             |

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|   |                | <p>resolution – including mediation at any stage of repatriation and a right to an appeal of a repatriation committee’s decision/determination. Will the UC honor the mediation and/or decision-making authority of the Native American Heritage Commission as provided in California law, or will it not provide deference to this other means of conflict resolution? Will the UC honor subpoenas issued by the Native American Heritage Commission? Perhaps the Policy should have a section dealing specifically with the Role and Authority of the Native American Heritage Commission. Without a clear directive being provided in this Policy as to the role and authority of the Native American Heritage Commission, it is unclear what campuses and Locations will do if a California Native American Tribe chooses to avail themselves of the relief provided in CalNAGPRA. Without clear guidance from the UC systemwide policy, California Native American Tribes are left in the same perpetual fog of confusion that was created by the UC.</p> <p>...</p> <p>D. In Order To Conduct A Re-Evaluation Of Current Inventory And Previously Unreported Holdings A Clear And Concise Tribal Consultation Policy Must Be Instituted By The UC From The Top Down.</p> <p>The language supporting compliance with NAGPRA, CalNAGPRA and the systemwide policy requires campuses and Locations to be “proactive” in their repatriation efforts.</p> <p>Unfortunately, proactive is a term that is neither defined in the Policy, nor subject to an objective compliance level – it is a term that is necessary subjective in its application and therefore, can potentially be abused and frustrate the repatriation process. Nor is there a preference in the Policy to correct past failures by the campus NAGPRA committees towards non-federally recognized California Native American descendants and tribal governments. Tribes MUST be consulted by the campuses and Locations AT EVERY STEP of the repatriation process. The items we are discussing are connected to these Tribes and therefore they must be part of every decision in this process. Non-federally recognized California Native American descendants and tribal governments have been unreasonably blocked from the repatriation process – specific protocols must be established for these tribes and descendants. In order to do that the UC must acknowledge its responsibility to these tribes in this Policy and must provide a clear and transparent process for their inclusion.</p> <p>Furthermore, the Policy speaks to the creation of “strategic repatriation plans” to be developed by the individual campuses and Locations. The UC, in essence, has deferred its responsibility to California Native American Tribes, in defiance of AB 2836 (Gloria, 2018), to individual campuses and</p> |             |

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|   |                | <p>Locations. This is unacceptable. At the very least the UC MUST provide strict guidance and minimum standards to be included in these “strategic reparation plans.” These plans should require that the campuses and Locations develop university-tribal relationships with the local tribal communities and the other tribes represented in their collections. These plans should provide for accountability that these tribal relations are being developed and consultations are being conducted in a mutually-respectful manner. These plans should provide for clear guidance on the individuals involved in the repatriation process at the campus and, most importantly, how to achieve a successful repatriation. The UC should provide specific guidance, such as template letters for claims requests, information requests that the UC possesses, and case studies on past successful repatriations. In addition, each plan should clearly state their timeline for 100% compliance with NAGPRA, CalNAGPRA and the systemwide policy.</p> <p>III. UC Must Commit To Assisting Tribes In The Respectful And Dignified Reburial Of Native American Ancestral Remains, Funerary Goods And Any Other Sacred Cultural Items That Require Reburial By The Descendant(s) And/Or Affiliated Tribes – Regardless of Federally Or Non-Federally Recognized Political Status.</p> <p>The UC is currently holding thousands upon thousands of Native American ancestral remains, funerary goods, and other sacred cultural items that need to be repatriated to Native American Tribes – regardless of the tribe’s federal recognition status – and, in all likelihood, will need to be reburied with the culturally appropriate traditions and ceremonies adhered to by the descendants in a location that will protect them from further disturbance for perpetuity.</p> <p>Unfortunately, two (2) real problems exist: (1) the areas in which the ancestors were removed is no longer appropriate for reburial due to the development and/or increased population use of the area, or (2) the descendant or tribal government do not have access to land for the reburial of their ancestors. These two (2) problems were not caused by any actions taken by the tribes, but are the direct and indirect results of the genocidal policies against California Native people and tribes to which the UC has benefited since its inception. For its role in receiving the benefits of these policies, coupled with the UC’s acknowledgment of Executive Order N-15-19, the UC must assist tribes in the identification and acquisition, if necessary, of appropriate land for purposes of respectful and dignified reburial and assist in protecting the ancestors from any future disturbances through perpetuity. This expressed commitment should be clearly stated in this Policy and should be provided as a necessary element in the strategic</p> |             |

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|   |                | <p>implementation plan. It is imperative for the UC to lead not only with compassion, but to act responsibly in ensuring that the tribes are able to rebury their ancestors that have been held by the UC for generations. UCLA successfully accomplished this and now it is time for the entire UC System to accomplish the same.</p> |             |

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| 15 | General        | <p>(1) When is this policy expected to be effective? And will the tribes receive notification?</p> <p>How soon with the UC begin initiating NAGPRA consultation with the tribes?</p> <p>Page 10, Point of Contact: Will the point of contact have a dedicated call line and will the UC staff know how to make the right connection?</p> <p>Page 31, Appeals: Is there a time frame? Time frames are important to keep matters moving.</p> <p>Page 3, National NAGPRA: Having two options is important</p> | <p>This Policy is expected to be implemented by July 31, 2020.</p> <p>UC has consulted with tribes in the preparation of inventories and summaries, and upon request; however, the new draft policy requires a proactive re-review of all prior CUI determinations, regardless of whether a tribal request has been received, and engagement in consultations with potentially affiliated tribes, including California Indian Tribes under CalNAGPRA. The policy also requires that campuses reach out to culturally affiliated tribes and invite them to submit their repatriation request.</p> <p>The policy has been edited to require contact info be posted for the Repatriation Coordinator. We also made more prominent the option for tribes to appeal to NAHC and National NAGPRA. See response to question 14. We will consider adding timeframes by which UC must respond at certain points of the appeal process.</p> |
| 16 | General        | More consultation on policy: "Have you considered requesting feedback from other institutional/professional NAGPRA practitioners?"   | As a result of this comment, we reached out to non-Ca tribes with cultural affiliations to Human Remains and Cultural Items in UC's possession, and others identified by the campuses. We have also sent the policy for comments to THPOs.  |
| 17 | General        | Enforcement: "Audits of campuses are mentioned, but how will compliance problems/concerns be addressed and enforced?"  | UC audit teams monitor the status until recommendations are implemented or the findings are otherwise satisfied.  |
| 18 | General        | Review: "A review needs to occur on sites that have had partial repatriation."   | The California State Auditor is auditing all campuses with NAGPRA/CalNAGPRA-eligible collections.   |
| 19 | General        | Data and Other Research Information. "What about 3D models or photos? Will tribes be able to request a campus return and not use those? Campus should not necessarily get to keep the research without permission. Human consent rights beat and override academic freedom, ALWAYS. If the president of UC supports this, why are you afraid of the Academic Senate?"  | We have not yet resolved this issue. We will discuss with the Workgroup.  |
| 20 | General        | Fire _____. Best advice i can give you.  |   |



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| 21 | General        | Data and Other Research Information. Will associated data, documents, and reports also be covered by this policy? Individual recommendation to adopt policy related to data and recalling data.   | <p>See response to comment 19 above regarding associated data.</p> <p>In response to many concerns received regarding Confidential Information, the definition has been modified to cover any information submitted by a tribe regarding places that have traditional tribal cultural significance, including the locations of Native American graves, cemeteries, and sacred places, and specific information identified as “confidential” by a consulting tribe. In addition, we added a requirement to limit disclosure of Confidential Information only to those with a need to know for compliance with the policy, and required notification of obligations to maintain confidentiality to anyone to whom Confidential Information has been disclosed.</p> |
| 22 | General        | Delays. Several tribal representatives verbally expressed concerns about their overall experiences with: delays in the disposition process, the need to re-evaluate Native American determinations, research access without consultations/permission, unreported culturally unidentifiable ancestors, and other barriers. | <p>We think the new policy will remove at least some delays. For example, campus decisions favorable to the tribe will no longer need systemwide committee approval. Also, campuses will need to proactively review previous CUI determinations. Research access will not be allowed without the explicit approval of tribes.</p>  |
| 23 | General        | Training. Recommendation to add an educational component within UC to require cultural sensitivity training.  | We added expectations and clarifications for the positions in Roles section, and condensed these positions. The new systemwide committee will likely want to discuss sensitivity training and provide recommendations to the President.  |
| 24 | General        | Which of NAGPRA, CalNAGPRA, and the UC Policy prevails if there is a conflict between them?’  | We will add flow charts outlining the repatriation process, including clarifications about how NAGPRA and CalNAGPRA interact.  |
| 25 | General        | Questions were raised regarding how will policy address the conflict between Cal-NAGPRA and Federal NAGPRA? Will Federal NAGPRA override Cal-NAGPRA?  | See above response to comment 24 above.  |

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| 26 | General        | <p>Ca/NAGPRA Compliance. We understand that the proposed Policy is intended to update the University's compliance with the federal Native American Graves Protection and Repatriation Act (NAGPRA) and the California Native American Graves Protection and Repatriation Act (CalNAGPRA), and its implementing regulations to strengthen the University's policy and practices related to the repatriation and disposition of Native American remains and cultural items in the University's custody. However, the proposed Policy fails to provide adequate policy guidance on when and how the CalNAGPRA applies. Particularly, when there is a conflict between the NAGPRA and CalNAGPRA. For instance, in various places of the Policy, there is only references of compliance for "a NAGPRA-eligible collection" which completely ignores the requirement of the CalNAGPRA. Such oversight is problematic as CalNAGPRA differs from the NAGPRA. Thus, we suggest that the Policy be updated for clarification and additional guidance to ensure compliance with the CalNAGPRA.</p>  | <p>We have integrated CalNAGPRA throughout. See also response to comment 24 above.</p>   |
| 27 | General        | <p>The UC Policy is 37 pages in length and for the most part is a regurgitation of the NAGPRA and CalNAGPRA statutes. After reading the Policy how the UC will reconcile the differences between the federal and state regulations regarding the repatriation of "culturally unidentifiable inventory" to California non-federally recognized tribes is inexcusably ambiguous. Will the UC follow CalNAGPRA and allow for repatriation to a California non-federally recognized Native American tribe? Or will the UC require blind compliance with NAGPRA and require that either (1) a federally-recognized tribe "sponsor" a repatriation to the tribe, or (2) require that the Secretary of the Interior (a federal authority) approve the repatriation with no objection from a federally recognized tribe? Will UC consult, without question or deference to a federally recognized tribe, with a non-federally recognized tribe during the identification, inventorying and repatriation process? CalNAGPRA acknowledges the inherent sovereignty of California Native American tribes. A nation's right and duty to repatriate and rebury its people is an act of inherent sovereignty. While providing the language of the statutes may be necessary in some respects, such as in an appendix or reference guide, it is not helpful for the Tribe in understanding the UC's intentions on how they will be implementing the laws in repatriating OUR Native American ancestral remains, funerary goods, and sacred cultural items back to us for respectful and dignified reburial.</p> | <p>UC will add flowcharts on consultation and repatriation processes.<br/>We have integrated CalNAGPRA throughout. See also response to comment 24 above</p> <p>UC must comply with both Federal NAGPRA and CalNAGPRA. Accordingly, for human remains and cultural items that are subject to Federal NAGPRA, the Secretary of Interior must approve any disposition to a non-federally recognized tribe (whether or not they have been determined to be culturally affiliated under CalNAGPRA).</p> <p>[For transparency we note that NAGPRA establishes an order of precedence for these dispositions. UC must first offer to transfer control to a federally recognized tribe from whose tribal land, at the time of the excavation or removal, the human remains were removed; and second, to a federally recognized tribe recognized as aboriginal to the area from which the human remains were removed. If none of the above agrees to accept control, UC may then transfer control to a non-federally recognized tribe, after receiving a recommendation from the Secretary.]</p> |

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|    |                |   | UC will capture the process in a flowchart in Version 3 of the policy.   |
| 28 | General        | Although neither NAGRPRA nor CalNAGPRA may apply, I am concerned about the status of ancestors' remains in the university's possession that may have originated from Indigenous Peoples outside of the United States, particularly from Mexico. These also ought to be spiritually cared for and repatriated with all due haste.  | This policy is meant to address NAGPRA and CalNAGPRA specifically. The broader topic would require much more thought with regard to any applicable regulations and procedural details (e.g., how would consultation take place). |
| 29 | General        | The policy states that the general principles of this policy apply to all human remains in the University's collections. However, most of the policy pertains specifically to Native American and Native Hawaiian human remains and Cultural Items. As UC collections contain human remains and cultural items from around over the world, we urge the system to be proactive (as opposed to reactive) and discuss how to deal with remains and cultural items from outside of the United States. | See response above to comment 28.  |
| 30 | General        | Commenter has questions regarding the repatriation of remains and artifacts across US borders, as such transnational repatriation does not seem to be addressed in the existing policy.   | See response above to comment 28.  |

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| 31 | General        | The draft describes the procedures for handling and repatriation of remains and materials within the national border; however, it does not provide any guidance for cases when such materials have to move ACROSS the border. What is the relationship between the UC and repatriation of remains or material artifacts of indigenous peoples who reside OUTSIDE of the national borders of what is now the United States? Is this question covered by another policy statement?   | See response above to comment 28.  |
| 32 | General        | Page 26: How feasible would it be for campuses to provide photographs of all remains and all objects potentially affected by this policy?  | Tribes could be concerned about releasing access to photographs of remains and sacred items. However, we know some museums share electronic inventories of other items with tribes to facilitate repatriation. While not required by policy, this is something campuses could explore. |
| 33 | General        | American Indians also known as Native Americans, who have direct lineal descentance to the land and tribe they claim are those who administer their ancestors, ancestral and cultural resources, and human remains. (Genealogical model of tribal affiliation augmented continuity of maintenance.) Indigenous Immigrants (in contrast to enrolled members of lineal American Indian Tribes), possess Indigeneity that invokes continuous expression of cultural traditions. Maintenance of traditions is a characteristic of Immigrant Indigeneity. |  |

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| 34 | General        | <p>_____ As far as the policy on cultural affiliation: I did many studies across the country to find out what Native Law was before contact.....or genocide of those nations. I feel the policy has to reflect the reality of the genocide, the broken treaties, and the 1830 TERMINATION LAWS giving the cavalry and status the money and "right" to further genocide of the Native Nations. This reflects on the repatriation policies in many ways. There are many areas where those that became known for those lands, while those Native Nations actually did live on those lands, belonged to other Native Nations for centuries, often thousands of years. I believe the history and repatriation process needs to take this reality into consideration and rather than pit these persons against one another (as happened in the Casino land grubbing which threw many ancient families off the lands by money greedy urban natives who claimed they had paper right to those lands). In ALL Native Nations, the laws gave final say to the oldest of the Elders. In my particular Nation, those under 35 were not allowed to speak at meetings, but were required to attend, to the smallest child. A person under 35 was expected to discuss their thoughts and feelings with one or more Elders before the meeting, or during breaks, and IF those elders decided to bring up their thoughts, they did, if not.....they were not discussed. These traditional ways made it hard to deal with often fast moving, gun toting, genocidal persons who often came in the night, and murdered as many people as possible.....let alone attempting to deal with fast talking government agents that made people put an X on the line, even though the signers had no idea what the "agreement" actually said. There are some areas where the original land persons that were left alive were force marched to other lands and forced on the other nation.....who for three to four hundred years intermarried and created long lasting conflicts of who actually was the "real" Native Nation members. Most Native Nations have a long standing prohibition against incest.....the ancient family totems in front of many long houses or hogans told the family history back to the hundreds of years needed to NOT commit incest. These issues created many Natives with mixed blood in DNA and big problem for people who had to choose one nation to belong to.....it is suggested that each person can designate a VOTING Nation, and also still be on the non-voting and non-financial beneficiary roll of the other nations of their family. BUT, this would allow small nations to increase their members significantly if a person of quarter blood to four Native Nations was allowed to be in the census numbers for each of those four nations, but not allowed to take financial or voting benefits from all four nations. In most nations where I did research, the rule of law was that a man left his Mother's family, and became a voting /financial member of his wife's family nation.....this was</p> | <p>UC is committed to repatriation as a fundamental value to help repair the damage caused by the removal of ancestors from their resting place.</p> |

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|   |                | <p>in effect long before Europeans came to America. It might be suggested that each nation has its own procedure and regulations regarding "long lost" relatives who now want to repatriate. Many of these persons are in families that were terrorized by the stealing of children by the BIA bounty hunters.....they NEED to be in a category to get their family history backs and to be in newly developing programs to help them all heal.</p> |             |

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| 35 | General        | It is historical & well documented that many frauds have successfully fooled those in power, claiming association and membership with a victim tribe. The most vulnerable have been those California tribes who still have not been recognized by the federal government. Cultural appropriation (fraudulent association) is found not only in the USA but also in Canada, Mexico and other countries south of the equator. I have lived in many parts of Indian Country and can show & prove this crime is rampant in many places in the Americas. This act, it's my belief, is equal to the genocide brought by the European invaders. Sadly, this is present in our local Los Angeles / Orange County area. The victims at present are ____, as the Spanish who enslaved them called them. The ____ are referred to in California's mission records as early as the 1700's. All of these impostors could easily be exposed if only a genealogical-historical study by federally certified personnel would be made available. This action, genealogical certification, is well practiced and validated in areas where "Mission-Indians" & their culture are found. The Spanish Mission records that once proved the enslavement of ____ may well be the proof necessary to change the opinion of many who have been duped and refuse to believe the science. | UC is committed to repatriation as a fundamental value to help repair the damage caused by the removal of ancestors from their resting place.      |
| 36 | General        | I feel strongly for the ancestors, they must be respected an our voice is being heard! It is time they are sent home 🙏   | We agree!  |
| 37 | General        | The UC's adoption of a systemwide repatriation policy is an important and long-overdue step in the right direction; however, the Commission has some concerns regarding the most recent Draft Policy provided by the UC. The Commission understands that the UC intends to make further revisions to the Draft Policy before its adoption and is hopeful that those revisions will address the concerns detailed herein.<br>Given that it will be impossible for the UC to address all of the Commission's concerns before the January 1, 2020 deadline for adoption, the Commission urges the UC to commit to shaping the Draft Policy, companion documents, and implementation guidance in collaboration with the Commission and California Native American tribes through July 1, 2020 to achieve compliance with the authorizing statute and current law and allow for meaningful consultation with California Native American tribes. The Commission is committed to assisting and advising the UC throughout this process to resolve these concerns and create an effective UC repatriation policy that takes into account the unique history of California Native Americans.  | UC will delay implementation of policy as requested and will continue to seek tribal input, with the goal of finalizing a policy by July 31, 2020. |

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| 38 | General        | <p>Background</p> <p>The historical context surrounding the collection of Native American remains and associated cultural objects presents fundamental human rights issues for peoples indigenous to the lands that now constitute the United States. Initial collecting efforts in the state of California were directed by colonialist, supremacist, or even genocidal ideologies. The federal and state Native American Graves Protection and Repatriation Acts (NAGPRA—25 U.S.C. sections 3001 et seq.; 43 C.F.R. part 10; Health and Safety Code, sections 8010, et seq.) were enacted as human rights legislation intended to address centuries of exploitation, displacement, and dispossession of Native American peoples. This included academic exploitation which exalted the study of sacred remains and related cultural items, including their public display in museums, over indigenous peoples’ entitlement to cultural and spiritual respect for their ancestors’ burials; a human right afforded to European settlers, but not Native Americans. While the two laws were intended to provide effective redress and repatriation of these remains and items on their own, the reluctance of institutions to repatriate in the decades since their passage has necessitated further efforts to ensure proper enforcement of the laws.</p> <p>In California, the Legislature most recently adopted AB 2836 in response to the UC’s “history of inconsistent application of federal and state repatriation laws by some campuses” of repatriation laws. (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(8).) This has included the absence of required consultation with California Native American tribes which interfered with effective repatriation. (Id., subd. (a)(9).) As a result, some campuses, like UC Berkeley, have designated up to two-thirds of their remains and cultural items as culturally unidentifiable. (Id., subd. (12).) The Legislature further documented the UC’s existing policy’s failure to comply with federal regulations (specifically 43 C.F.R. §§ 10.10 and 10.11) which require agencies to affirmatively offer to repatriate culturally unaffiliated items to non-federally recognized tribes.</p> <p>AB 2836 requires the UC to adopt “clear and transparent” systemwide policies and procedures related to repatriation of Native American remains and cultural items, including for claims submission, tribal notifications, establishing cultural affiliation (including for remains and items previously determined to be culturally unaffiliated), dispute resolution, as well as all other subjects related to repatriation consistent with federal and state NAGPRAs. (Health &amp; Saf. Code, § 8025, subd. (a)(2)(B).) All systemwide policies are required to be adopted in consultation with California tribes (as that term is defined under Government Code section 65352.4). AB 2836</p> | <p>We appreciate all comments outlined in this letter. Below we attempt to address them succinctly.</p> <p>See response to comment 15.</p> <p>UC is committed to repatriation as a fundamental value to help repair the damage caused by the removal of ancestors from their resting place.</p> <p>UC will add flow charts on the repatriation and consultation processes to increase clarity and consistency.</p> <p>We have added minimum requirements for the Repatriation Implement Plans, including estimated timelines.</p> |



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|   |                | <p>also requires the UC to create systemwide and campus committees to advise the UC concerning its implementation of repatriation laws. (Health &amp; Saf. § 8025, subd. (a)(1). The membership makeup of these committees is also governed by statute, balancing UC and tribal membership. (Health &amp; Saf. Code, § 8026.)</p> <p>After performing a thorough review of the Draft Policy, and meeting and conferring with University officials, the Commission concludes that the proposed policy conflicts with both federal and state NAGPRAs, as well as the spirit behind these laws to expedite and facilitate the repatriation of Native American remains and related cultural items. Compounding these legal concerns is the Draft Policy's lack of mandatory timeframes for achieving compliance for long-overdue repatriations. This Draft Policy comes on heels of the Governor's apology recognizing the state's history of discrimination, violence, and maltreatment of California's Native Americans. (Governor's Exec. Order No. N-15-19 (Jun. 18, 2019).)</p> <p>As detailed below, the Commission finds that the UC's Draft Policy fails to incorporate state law repatriation requirements and often is in conflict with state and federal law in key areas including: the consultation process, policy structure, inventories, reevaluation of culturally unidentifiable remains and items, handling repatriation claims and dispute resolution, repatriation process, as well as in the creation of systemwide and campus committees.</p> |             |

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| 39 | General        | <p>INADEQUATE CONSULTATION DURING THE ADOPTION PROCESS, AS WELL AS INCORPORATED INTO IN THE POLICY ITSELF</p> <p>A. Inadequate Consultations During the Drafting of the Policy</p> <p>AB 2836 was enacted to combat the UC’s “history of inconsistent application of federal and state repatriation laws by some campuses within the University of California system.” (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(8).) The Legislature documented the “absence of required consultation with California Native American tribes with respect to repatriation” in the existing UC repatriation policy. (Id. subd. (a)(9).) Fundamental to creating a new repatriation policy is the need for meaningful consultation with California’s tribes which have endured decades of frustration in the failure of the UC to repatriate remains and cultural items.</p> <p>The Legislature specifically required that the UC “[d]evelop all policies and procedures” “in consultation with California Native American tribes on the contact list maintained by [the Commission].” (Health &amp; Saf. Code, § 8025, subd. (a)(3).) California law defines “consultation” to mean “the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement.” (Gov. Code, § 65352.4.) Consultation “shall be conducted in a way that is mutually respectful of each party’s sovereignty.” (Ibid.)</p> | <p>UC will delay implementation of policy as requested and will continue to seek tribal input, with the goal of finalizing a policy by July 31, 2020.</p> |

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| 40 | General        | <p>II. THE DRAFT POLICY LACKS A COHERENT STRUCTURE AND DELEGATES THE MOST CRITICAL ELEMENTS OF UC REPATRIATION TO ITS CAMPUSES IN A MANNER CONTRARY TO STATE LAW</p> <p>A. The Draft Policy Lacks a Coherent Framework and Fails to Provide Meaningful Guidelines to the Campuses</p> <p>Ideally, an effective systemwide policy, as required under AB 2836, should be succinct, include standards, baselines and lay out the goals and process with citations to both federal and California NAGPRA. A separate guidance document should also be included which lays out and explains the process as it would apply to most campuses, including easy to use flow charts and diagrams. This is the approach that federal agencies take to enforce NAGPRA.<sup>1</sup> This approach also better accommodates changes in federal and state law which may be explained in the guidance document.</p> <p>The Draft Policy includes terms that are inconsistently and inaccurately defined. For instance, the term “consultation” (as mentioned above) is defined in one section entitled “Definitions,” but this definition differs from the one later used to describe “consultation” and neither definition completely incorporates the complete definition of “consultation” used under state law. (Health &amp; Saf. Code, § 8025, subd. (a)(2)(D)(3); Gov. Code, § 65352.4.)</p> <p>In another example, the process for handling multiple claims for repatriation for the same items is not incorporated into the repatriation and claims process, but rather is discussed under “Appeals.” (Draft Policy at p. 31.) As to appeals, no mechanism is created for tribes to raise concerns during the inventory and reevaluation processes, which are also not addressed or discussed in the appeals process, which limits appeals to disagreements over cultural affiliation or repatriation/disposition. (Draft Policy at pp. 20-24 and 31.)</p> <p>In still another example, the Draft Policy fails to require consultation with California tribes as defined under state law, including non-federally recognized tribes, in establishing state cultural affiliation. (Draft Policy at pp. 19 and 24.) However, later in the policy concerning the claims process, it states that the “UC will make every effort to engage with non-federally recognized Native American tribes in the cultural affiliation process” without any guidance as to what “every effort” entails. (Draft Policy at p. 27, italics added.)</p> <p>Coupled with its structural concerns, the Draft Policy fails to incorporate policies and procedures that have already been proven to be effective at other campuses. For example, UCLA has one of the more effective</p> | <p>We appreciate all comments outlined in this letter. Below we attempt to address them succinctly.</p> <p>UC will add flow charts on the repatriation and consultation processes to increase clarity and consistency.</p> <p>We have added minimum requirements for the Repatriation Implement Plans, including estimated timelines.</p> <p>We agree that section on joint claims was confusing. We have modified the language under a new section V.E.</p> <p>We revised the Appeals procedure to ensure escalation to the systemwide office and to clarify that tribes may appeal any campus determination or decision. We also added a section to allow tribes to file complaints on campus processes.</p> <p>We revised the definition of consultation as suggested by the NAHC. (Per CalNAGPRA § 8025(a)(3), we revised to use the definition at Section 65352.4 of the Government Code.) We added more explicit references to consultation in the Claims for Cultural Affiliation sections to make it more clear that consultation is required. We will also strengthen Consultation by adding flowcharts/guidance in version 3 of the policy.</p> <p>We added a new section V.D to address State Cultural Affiliation under CalNAGPRA.</p> <p>We have accepted most of UCLA’s suggested edits. We are consulting with them on specific repatriation procedures for the flowchart.</p> |

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|   |                | <p>repatriation programs, which has resulted in the repatriation of the vast majority of its collections, while UC Berkeley still retains much of its collection.</p> <p>1 An excellent example of such a guidance policy comes from the National Park Service which explains and lays out the policy in a manner in which administrators may better apply it. A copy is attached as Exhibit A and was provided by the Commission to the UC at the November 13 and 14 Meet and Confer.</p> |             |

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| 41 | General        | <p>C. The Scope of the Policy is Unclear</p> <p>The Draft Policy states that it applies “to all UC locations. Each UC location shall establish policies and/or procedures consistent with this Policy, and its local scope and circumstances.” (Draft Policy at p. 9.) Federal and State NAGPRA require repatriation of remains and cultural items in the possession or control of an agency, which can include items located off campus, including items sent to third parties. (43 C.F.R. §§ 10.2 (3)(i), 10.10, 10.11; Health &amp; Saf. Code, §§ 8012, subd. (a), 8015; 8025.) The Draft Policy should clarify this fact and emphasize that the repatriation obligation applies to all departments regardless of whether the remains and cultural items are housed in a museum.</p> <p>While the Draft Policy states the UC’s intent to comply with both federal and state repatriation laws, only federal law procedure and citations are utilized throughout the policy, as discussed more fully below. The policy fails to address the need to include California Native American tribes during consultation, or to consider state cultural affiliation during the inventory, reevaluation, claims, or repatriation processes, including failing to include CalNAGPRA claims and dispute resolution procedures, all as required under state law. If the UC is committed to complying with state law, then CalNAGPRA must be integrated into each step of the policy.</p> <p>Moreover, the Draft Policy requires each campus to: 1) “Devise a plan to review existing materials that may potentially contain Native American or Native Hawaiian human remains or cultural items, . . .”; 2) “Require non-museum academic units to review materials that may potentially contain Native American or Native Hawaiian human remains or cultural items, . . .”; and 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.” (Draft Policy at p. 23.) The Draft Policy delegates these critical functions to each campus in spite of the Legislature’s intent that it adopt “clear and transparent policies and procedures on the systemwide requirements” for repatriation, documenting the UC’s history of inconsistent application of repatriation laws across its campuses. (Health &amp; Saf. Code, § 8025, subds. (2)(B), (C), (D); Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(8).)</p> <p>In addition, the Policy fails to include requirements, standards, structure, goals, or timelines for accomplishing these benchmarks. The UC has the unique ability to self-regulate, largely free from outside influence. This can be a source of frustration for tribes seeking meaningful systemwide change, as there are few avenues for tribes to ensure the efficacy their attempts to</p> | <p>We appreciate all comments outlined in this letter. Below we attempt to address them succinctly.</p> <p>We revised the definition of UC Location to provide clarity that this includes premises owned by UC, and also that the campus or other units of the University with management responsibilities of UC owned off-site locations are responsible for ensuring compliance with this Policy at those off-site locations.</p> <p>We integrated CalNAGPRA throughout Policy, and added a new section on State Cultural Affiliation.</p> <p>We revised formatting to make it more clear that tribes can also file a claim with National NAGPRA or with NAHC.</p> <p>Added timelines where possible.<br/>Added requirement that campus Repatriation Implementation Plans include a Timeline and a sample Timeline.</p> <p>UC will add flow charts on the repatriation and consultation processes to increase clarity and consistency.</p> |

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|    |                   | <p>shift policy from the outside. Recognizing this, the UC should view this as an opportunity to demonstrate a real commitment to carrying out the stated policy of repatriation in good faith. For this Policy to be meaningful, a campus's failure to meet any benchmark must be accompanied by substantial consequences from the UC Office of the President, including withholding university funding for related programs.</p>   |   |
| 42 | I. Policy Summary | <p>The Tribe's foremost comment on this section is that it lacks context and a recognition of the rich and diverse Native American history of California. This section is a great opportunity for the University to recognize California Native American tribes and provide context as to the necessity of this Policy. This Policy deals with issues of extreme importance to tribes and lacks a connection to the human aspect of why the Policy exists in the first instance.</p> | <p>We added recognition of California's unique history under Types of Evidence.</p> |

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| #  | Policy Section  | General Comments  | UC Response  |
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| 43 | II. Definitions | The University of CA should follow policies that the State of CA is using for consultation as stated below:<br>California Indian Tribe: Refers to a federally-recognized California Indian Tribe, as listed on the Federal Register. Only in situations involving cultural resources will a non-federally recognized California Native American Tribe that is on the list maintained by the Native American Heritage Commission ("NAHC") be included in this definition. The NAHC will provide a list of non-federally recognized California Native American Tribes for each instance.  | We use the CalNAGPRA definition of California Indian Tribe in order to comply with state law, that definition includes both federally and non-federally-recognized that meet the criteria set forth in CalNAGPRA.<br>When the State revises the definition in CalNAGPRA, UC will revise its policy as well.  |
| 44 | II. Definitions | The Policy Summary (page 2) states that the Policy addresses both Federal and California NAGPRA. However, the Policy document is largely a restatement of Federal NAGPRA only. The Policy should be clearer about what CalNAGPRA contributes, including but not limited to, some definitional differences. For example, CalNAGPRA also defines Agency, Commission, State cultural affiliation, and California Indian Tribe. CalNAGPRA also provides additional clarification to terms defined in Federal NAGPRA. For example, the definition of burial site is clarified to distinguish burial sites from cemeteries or graveyards and the language is broadened to "human remains" rather than the "individual human remains" that are described in Federal NAGPRA. This distinction between Federal NAGPRA and CalNAGPRA could be accomplished in the section on Statement of Implementation of CalNAGPRA, which is but a mere short paragraph in the draft Policy (page 10). Perhaps the Native American Heritage Commission (NAHC), as the subject matter experts for the state, can be actively consulted by the UC to provide additional detail here and elsewhere. | We integrated CalNAGPRA throughout Policy, and added a new section on State Cultural Affiliation.<br><br>We added a notation regarding CalNAGPRA definitions, and more closely followed legal definitions. Where the CalNAGPRA definition is different, we added both definitions.<br><br>Note, in general, only the terms used in the policy are defined in section II of the policy. |
| 45 | II. Definitions | California Indian Tribe definition (page 3): Does this definition, apparently taken from CalNAGPRA, need to be updated in light of changes to Federal NAGPRA after the promulgation of CalNAGPRA?   | California Indian Tribe is only defined in CalNAGPRA. We will use the CalNAGPRA definition in order to comply with state law.  |
| 46 | II. Definitions | As noted above, there are provisions in the CalNAGPRA statute that are more broad and which would more efficiently effect repatriation when coupled with the federal statute's requirements. As a general note, the Policy should be updated to reflect both definitions as applicable. Further, we recommend that each definition taken from federal or state law be the exact language, rather than a summary as that can lead to interpretation issues.  | We integrated CalNAGPRA throughout Policy, including in the definitions. Where the CalNAGPRA definition is different, we added both definitions, and more closely followed language from the regulations.  |

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| 47 | II. Definitions | 20) Native American: Because the PHM and a few other NAGPRA resisting institutions have insisted that congress intended that pre-1776 Natives might be Native American but not Native American as defined by NAGPRA, congressional allies of Native Peoples have attempted (so far unsuccessfully) to have the words "or was" inserted into the definition quoted above. An amended definition would thus read: "Of, or relating to, a tribe, people, or culture that is, or was, indigenous to the United States." We urge you to add "or was" to the definition of Native American contained in the draft policy.  | While the applicable statutory and regulatory definitions control whether human remains are covered by NAGRPA, we have added a clarification to address this concern: "Determinations of whether Human Remains or Cultural Items are Native American shall not be precluded based solely on their age." |
| 48 | II. Definitions | Confidentiality: The definition of confidentiality is inadequate. Tribes may share confidential information with the University and the default should be to keep the information confidential unless the tribe consents to disclosure in writing. Requiring that oral information disclosed be reduced to writing and marked confidential by the disclosing party to maintain confidentiality is unreasonable and would hinder meaningful consultation with tribes. Further, the condition that the information either contain "personal identifiable information protected by privacy law" or "information that if disclosed could cause irreparable harm" is an unreasonable standard. The extent of harm that a tribe would sustain in the event that disclosure of confidential information would be difficult to ascertain. What would constitute irreparable harm under the Policy? To promote communication among the parties and to facilitate resolution of dispute, we suggest that the definition and protection of confidential information under the proposed Policy be modified to include the requirement that communications and exchanges of information of and between tribes and the University not be used or disclosed unless the tribe consents to such disclosure. Further, the definition of confidential information, at a minimum, should include information related to the traditional knowledge of the custom, practices, and sensitive tribal information, whether or not marked as confidential. | The definition for Confidential Information has been modified. See also response to comment 21.   |
| 49 | II. Definitions | Confidential Information (pages 3, 9): Are there provisions of state law that should also be cited relative to protection of sensitive cultural data and site location information? For example, California Government Code Section 6254(r) protects the confidentiality of Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.   | The definition for Confidential Information has been modified. See also response to comment 21.   |



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| 50 | II. Definitions | 6) Confidential Information: this definition is not broad enough and does not protect information shared during consultation. Further, it places a direct burden on tribes to mark information "confidential" rather than assuming such from the beginning. This is a technical requirement that could result in the disclosure of information contrary to a tribe's wishes. The reverse should be included: information should be maintained confidential unless a tribe states in writing that it may be disclosed. Please see, for example, Public Resources Code § 21082.3(c)(2)(A) which addresses confidentiality of tribal information during the California Environmental Quality Act process. This might be helpful in crafting a more well-rounded definition that would protect sensitive tribal information and knowledge. | The definition for Confidential Information has been modified. See also response to comment 21.  |
| 51 | II. Definitions | The committee questions whether there ought to be a thorough review of the matter of confidentiality when considering information that may have originally been provided by Indigenous and Native people under the auspices (or colonialist assumptions) of non-confidentiality. Will tribal representatives and leaders have the opportunity to reclassify certain information as confidential, in light of this policy and the spirit in which it is being considered?   | The definition for Confidential Information has been modified. See also response to comment 21.  |
| 52 | II. Definitions | The draft gives a definition and procedure for handling confidential information (p. 3). However, there is also the need to address long term rights of indigenous communities on the information originally disclosed as NONCONFIDENTIAL. What rights, ultimately, do these communities or their individual members retain to their information? More specifically, are they able to reclassify such materials/information to being CONFIDENTIAL or impose other restrictions, thereby preventing use of that information?  | The definition for Confidential Information has been modified. See also response to comment 21.  |
| 53 | II. Definitions | Regarding the enclosed proposed revised Policy on Native American Cultural Affiliation and Repatriation, we note NAGPRA defines cultural affiliation as a shared group identity between an earlier identifiable group and a modern day tribe, not between modern day tribes and places. In strengthening the University's practices and procedures, the proposed revised policy must be consistent with NAGPRA and its accompanying regulations.   | We have used the legal definitions. We don't see anywhere in the policy a description of relationships between "modern day tribes and places." |

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| 54 | II. Definitions | 24) Notice of Inventory Completion: "is published in the Federal Register....or a determination of the lack of reasonable basis for determining cultural affiliation..." Notices of Inventory Completion for culturally unidentifiable individuals are not generally published in Notices when it has been determined that the remains are CUI, but rather when a decision about the disposition is made (tribal lands, aboriginal lands, non-federally recognized tribe identified and recommended by Secretary of Interior). Here is the definition on National NAGPRA's website: A Notice of Inventory Completion is published in the Federal Register when a museum or Federal agency has made a determination of cultural affiliation for human remains and associated funerary objects, or has determined it will transfer control of culturally unidentified human remains and associated funerary objects. Such notice is required pursuant to 25 USC 3003 (d), 43 CFR 10.9 (e), 43 CFR 10.11 (d), and 43 CFR 10.13. The National NAGPRA program is responsible for publishing notices of inventory completion on behalf of museums and Federal agencies. | We have adopted the suggested definition.   |
| 55 | II. Definitions | 25) Objects of Cultural Patrimony: The final sentence of the definition in the regulations was omitted. "Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance to the Indian tribe or Native Hawaiian organization as a whole." If the regulations are being quoted it may be helpful to include the completed definition.   | Correction made.  |
| 56 | II. Definitions | 31) Sacred objects: Only the first sentence of the definition is referenced. The second sentence reads "While many items, from ancient pottery shards to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony" and may be helpful to include. The definition further defines traditional religious leader as well.   | Correction made.  |
| 57 | II. Definitions | The definitions section (pages 2-8) contains several entries that do not have authority cited (i.e., Controlling Agent, Deaccession, Preponderance of evidence, Requestor, Stewardship, Tribe, Tribal representative, UC Locations). Please explain the basis and rationale for these proposed definitions if they are not defined in statute or regulation.  | Per commenter request, words frequently used in the UC policy have been added to the Definitions section for clarity. |

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| 58 | II. Definitions | <p>We are unsure about the use of the phrase “scholars’ present understanding” here (page 9). This phrase seems somewhat out of context and may appear to still privilege academic or scientific use over cultural value, a major criticism of the current Policy and its implementation across the UC system.</p> <p>This may also relate to the use of “scholarly merit” as a factor to consider when reviewing petitions for research, instruction, exhibition, or other purposes (page 34). The Policy should contain more detail on how to measure such merit in itself and relative to tribal input that may differ. Without thoughtful Policy efforts now, the Tribe foresees this area as a continuing source for conflict and inconsistencies across UC campuses.</p> | <p>Deleted “scholars” to prevent misunderstanding that UC has an academic interest for keeping remains and items.</p> <p>We note that approval by the tribes is first and foremost. Scholarly merit only comes into play once the first threshold is met.</p>   |
| 59 | II. Definitions | 5) and 29): The use of "claimant" and "requestor" is confusing. It is not clear why both definitions are incorporated as both address claims for repatriation.   | This clarification was added.   |
| 60 | II. Definitions | 14) Disposition: the definition distinguishes "disposition" from "repatriation," which is not the language in the federal regulations cited in the Policy. § 10.2(g)(5) includes under "disposition" several situations, including "repatriation." The Policy should accurately reflect the federal law.   | <p>We use Disposition to signify a transfer to a tribe of Culturally Unidentifiable (CUI) Human Remains, with or without Associated Funerary Objects (as distinguished from “Repatriation,” which applies only to transfer of Culturally Affiliated Human Remains and Cultural Items). Though 43 C.F.R. § 10.2(g)(5) does include both types of transfers under the broad umbrella of “dispositions,” the Federal regulations are clear that the term “Repatriation” does not apply to transfers of CUI human remains and cultural items, and uses the term “Disposition” when referencing transfers of CUI under §10.11. It is not uncommon to use “Disposition” to refer to transfer of CUI, and “Repatriation” for transfer of Culturally Affiliated Human Remains, and we have adopted that practice in the policy.</p> |
| 61 | II. Definitions | 27) Preponderance of the Evidence: this definition is highly technical and may not be understandable by all individuals seeking to interpret its meaning. The definition could be revised to simply state "more likely than not."  | We have revised this definition to simplify as requested.   |

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| 62 | II. Definitions | 36) UC Locations: the limited nature of this definition is very concerning. It suggests that only certain lands and facilities in the University system are subject to the Policy. The Tribe is aware that the University controls other lands, such as the Chancellor's House at the University of California, San Diego that would not be subject to NAGPRA under this limited definition. That means the human remains already removed and those that may be found in the future would not be subject to repatriation. That is not the intent of the law. This Policy must apply to all lands under the University's control.            | We revised the definition of UC Location to provide clarity that this includes premises owned by UC, and also that the campus or other units of the University with management responsibilities of UC owned off-site locations are responsible for ensuring compliance with this Policy at those off-site locations.                         |
| 63 | II. Definitions | The term "campus" is used, but it should be specific with who is responsible for the task, generally it should be the Campus NAGPRA Official.   | Though this is standard for UC policies (with the understanding that the campus then assigns its responsibilities to actual positions), we have edited in a number of areas to name the role responsible for certain functions. The Roles and Responsibilities section was also edited for greater clarity. See also response to comment 23. |
| 64 | II. Definitions | The term "stewardship" as defined conflates several terms. Responsibility for NAGPRA is the agency that has "control" period. This is law, so don't use a different term. I provide a definition for stewardship, which is nice and can be used to say what the campuses should do in consultation with appropriate tribes. You later have a section of stewardship, which is great.  | We edited to use the legal terminology ("ownership and control"). Note that intent was simply to show more respect and the transitory nature of our "ownership or control".  |
| 65 | II. Definitions | Commenter noted the terms "UC has", "has taken in", and "stewardship" would benefit from definition. With respect to the first two, Commenter wondered whether these terms are inclusive of collections (or individual artifacts) on loan. Commenter's concern is that ambiguity in policy language will create uncertainty for individual researchers trying to comply with the policy.  | See response to comment 64.  |
| 66 | II. Definitions | Members appreciate the inclusion of more specific and detailed definitions, descriptions of roles and responsibilities, and procedures. The list of specific principles that emphasizes repatriation is helpful. There is a marked improvement over the previous policy, and it resolves potential ambiguity; however, there are instances when, for example, terms could be defined before being used in the body of the document. For example, scattered throughout are references to terms and concepts (e.g. "associated/unassociated object", "accessioned item") that are not defined in the "Definitions" until after they are used. | Associated / unassociated funerary objects are already defined.<br>We added "accession".   |
| 67 | II. Definitions | Comment on Inventory: Tribes need to be involved in the process, assist identification as well as handling remains and determine culturally appropriate storage of such.  | We have added reference to Native American tribes as experts that can help identify Native American items.   |

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|    |                 |  | See also references to Tribal Leaders in several sections of the policy: V.B, C, D, E, and H, for example.   |
| 68 | II. Definitions | General: A paragraph that provides the terms that comports with those provided in federal or state statute is sufficient and allows for them to change without making the policy immediately outdated. Include those that differ or are not included in any statute.   | Included are those that are used in the Policy in order to facilitate reading of the Policy. Any change in the law(s) would need to be evaluated for its effect on the policy in any case. Technical changes are easy to make. |
| 69 | II. Definitions | Re: California Indian Tribe: This is going to change within the year.  | We can do a technical update then.   |
| 70 | II. Definitions | Re: Consultation: State law AB 52 is a more meaningful and better definition for what campuses should be doing.  | Per CalNAGPRA § 8025(a)(3), we revised to use the definition at Section 65352.4 of the Government Code.  |
| 71 | II. Definitions | Re Preponderance of Evidence: Be consistent in referencing federal and or state law. Your definitions seem to ignore the CalNAGPRA statute often. Reference all as appropriate.  | We added CalNAGPRA definitions and citations where these are different from NAGPRA. We also simplified the definition Preponderance of Evidence.   |
| 72 | II. Definitions | Re Stewardship: NOOOOOO! You are conflating several issues. Stewardship: Ethical collections stewardship will manifest in a variety of forms in accordance with the needs, priorities, aspirations, and goals of the material culture and associated descendant communities. We further recognize that stewardship of collections must be conducted in a spirit of consultation and collaboration.   | Per commenters' requests, we have switched to using the terms in NAGPRA and CalNAGPRA, and use "stewardship" to only describe the care of human remains and cultural items. (See also response to comment 64.)                 |
| 73 | II. Definitions | Re UC Location: If UC has a controlling interest in the land and human remains and/or cultural items have been discovered then NAGPRA applies. Therefore, this should include the Nature Reserve System and Lawrence Livermore, essentially all UC land holdings. There is likely federal funding even if joint owned, so it seems more practical to not split hairs. It is better to determine that most of these lands have no NAGPRA eligible items or collections and say so online. | See response to comment 62.  |

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| 74 | II. Definitions | <p>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. <del>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.</del> 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).</p> <p>Commenter noted: Remains or portions of remains are still human remains and need to be treated as such. This needs to include items that incorporated remains (such as hairs/bones) in their making.</p>   | This definition is from NAGPRA.   |
| 75 | II. Definitions | Re: #18 (Inventory): Tribes need to be involved in the process, assist identification as well as handling remains and determine culturally appropriate storage of such .  | This is simply the definition of an Inventory, not a description of process used to make determinations. We have added references to tribal leaders to the Inventory section V.C.3.   |
| 76 | II. Definitions | <p>C. The Draft Policy Fails to Incorporate State Law Confidentiality During Consultations Potentially Undermining the Entire Process</p> <p>Definitions. The policy also fails to define “confidential information” to expressly include records of Native American graves, cemeteries, and sacred places as required under state law. (Gov. Code, § 6254, subd. (r).) Rather, the Draft Policy only includes “personal identifiable information or information that if disclosed could cause irreparable harm to the affected party” and which must be marked as confidential within 15 days of its oral disclosure. (Draft Policy at p. 3.)</p> <p>Not only does the policy not require preserving state law confidentiality during consultations involving the location of sacred places, it places the burden on the tribes to show that its disclosure “could cause irreparable harm” and requires the tribes to actually mark such records as confidential. Concomitantly, it imposes this burden on tribes without requiring the UC to inform tribes about this policy before any consultations, which are at the heart of any effective repatriation process. Nothing could undermine the consultation process more than the UC’s failure to maintain confidences during this process. Sadly, the Draft Policy reflects a failure to treat the tribes “in a manner that is cognizant of all parties’ cultural values,” and “in a way that is mutually respectful of each party’s sovereignty” both of which are required to be part of the consultation process, but were omitted from the Draft Policy. (Health &amp; Saf. Code, § 8025, subd. (a)(2)(D)(3); Gov. Code, § 65352.4.)</p> | <p>Replaced definition of Confidential Information to one that recognizes places that have traditional tribal cultural significance, including the locations of Native American graves, cemeteries, and sacred places.</p> <p>See response to Comment 21.</p> |

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| 77 | II. Definitions | Re: #1 (Aboriginal Lands)<br>Comment: What role will tribes have in establishing aboriginal lands?  | Neither NAGPRA nor CalNAGPRA clearly specify what role tribes have in determinations regarding aboriginal land territories. We recognize that tribal knowledge is important, and plan to give further consideration to this matter.  |
| 78 | II. Definitions | Re: #2 (Associated funerary objects)<br>Comment: How will remains of food and other items left at the site at the time of the burial or during the ceremony, or at the year ceremony, or other ceremonies that tribes may have that are associated with burial of the dead, be identified and placed on the inventory.  | See response to comment 80.  |
| 79 | II. Definitions | 16) Funerary Objects and Affiliation: Included in associated funerary items, should be any soil that was taken from the burial site.  | We have followed the legal definitions. However, we will consider adding a statement about the soil in the Review of Claims and Requests section.  |
| 80 | II. Definitions | <i>16) Funerary Objects and Affiliation.</i> The proposed Policy misses the opportunity to establish a transparent and collaborative approach to determining funerary objects, sacred objects, objects of cultural patrimony and affiliation. For purposes of this comment, our reference to "funerary objects" is generally intended to refer to funerary objects (associated or unassociated), sacred objects and objects of cultural patrimony. In addition to modifications required to provide guidance and compliance with CalNAGPRA, we suggest that the Policy be modified to require meaningful consultation with interested tribes as part of the determination of whether an object is a funerary object and as part of the determination of affiliation. We object to the assignment of an institutional staff or researcher to unilaterally assess the presence of a funerary object and/or its affiliation. Tribes possesses the expertise and information about its sacred resources, its value and religious and cultural significance. Scientific methodologies are frequently used improperly in identifying funerary objects and/or establishing affiliation. Thus, tribal input and participation must be sought and considered early in the decision making process to allow tribes adequate time to provide information, facilitate meaningful consultation and to avoid costly dispute and litigation. | We agree that tribes possess expertise and information about their sacred resources, their value and religious and cultural significance, and that tribal input should be sought in making determinations as to whether items meet the legal definitions of funerary objects, sacred objects and objects of cultural patrimony and in making determinations of cultural affiliations. The policy requires consultation with tribes in making determinations of cultural affiliation, and specifies that in determining if materials meet the definition of Cultural Items, the campus may use kinship, folklore, and oral tradition along with other types of evidence, any the following types of evidence but we will consider adding language more clearly specifying that tribal knowledge is to be considered in making determinations regarding whether an item meets the legal definitions of a cultural item and regarding cultural affiliation. |
| 81 | II. Definitions | 16) Funerary Objects: first, the federal regulation actually conflicts with the statute. The statute states that funerary objects must be "reasonably believed" to have been placed with the human remains (see 25 U.S.C. § 3001(3)(A)), while the regulations state such association must be proven by a "preponderance of the evidence." (25 C.F.R. § 10.2(d)(2)). In such a conflict, the statutory language would control.  | We do not see a conflict. Both the federal NAGPRA statute (25 U.S.C § 3001(3)) and the federal NAGPRA regulations (43 C.F.R § 10.2(d)(2)) define funerary objects as objects 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, and the Federal statutory definition of "unassociated  |

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|    |                             |   | funerary object” (at 25 U.S.C Section 3001(3)(B)) also includes the “preponderance of the evidence” language that is included in the regulation, which suggests there is no conflict. In any event, any challenge to the validity of the federal statute is a matter that should be addressed at the federal level. |
| 82 | II. Definitions             | Definitions: “There needs to be a review of what the institution sees as a funerary object.”  | See response to comment 80.   |
| 83 | II. Definitions             | 1) Aboriginal Lands: Perhaps the citation to 43 C.F.R. 10.6 (a) (2)(iii) should be removed. 10.6 refers to inadvertent discoveries and intentional excavations and recognizes a more limited criteria for determining aboriginal lands. Referencing requirements for federal and tribal lands may cause confusion.  | We have removed the confusing reference.  |
| 84 | II. Definitions             | 7) Consultation: 43 C.F.R. 10.5 is referenced. 10.5 refers to the inadvertent discoveries and intentional excavations instead of Summaries and Inventories and could cause confusion. Referencing requirements for federal and tribal lands may cause confusion.  | Confusing references have been removed.   |
| 85 | II. Definitions             | 7) Consultation: this definition is much too narrow. First, it only applies pursuant to specific sections of the federal NAGPRA regulations: 25 C.F.R. § 10.5 applies only to intentional excavation or inadvertent discoveries, which do not apply in this context; § 10.8(d) applies only to unassociated funerary objects; § 10.9(b) is only for inventories; and § 10.11(b) is for culturally unidentifiable human remains. The requirement for consultation must be broader and more inclusive than these narrow definitions. Further, AB 2836 requires the inclusion of the definition of consultation contained in § 65352.4 of the Government Code, which should at a minimum be included in this definition section. | We have modified the definition for Consultation as recommended by the NAHC.<br>(Per CalNAGPRA § 8025(a)(3), we revised to use the definition at Section 65352.4 of the Government Code.)   |
| 86 | III.B. Purpose & Principles | Re #2: UC will comply with all applicable state and federal laws that reference repatriation procedures, such as (but not limited to) NAGPRA and CalNAGPRA.   | This policy is only about NAGPRA and CalNAGPRA. Compliance with CEQA, for instance, comes under a different policy and/or procedures.   |



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| 87 | III.B. Purpose & Principles  | Re #6:<br>"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 and request copies of all associated documentation for research purposes. This work is required under federal and state law and departments and museums caring for these collections should support this work to the fullest extent possible." | Deleted text per request. Added, "UC fully supports the right of all Native American tribes, including non-federally recognized tribes and Native Hawaiian organizations to visit the human remains and cultural items, and request copies of all associated documentation for research purposes, per NAGPRA and CalNAGPRA." |
| 88 | III.B. Purpose & Principles  | Re: #5 <b>Comment:</b> Language concerning Native Hawaiians needs to be revised to reflect item #22 in the definitions section; there are no Hawaiian tribes, and CalNAGPRA does not apply. Recommend breaking this section into two sentences.   | True. We will edit in Version 3 of the Policy.   |
| 89 | III.B. Purposes & Principles | I applaud the wording in sections 4 (ethical and respectful stewardship) and 5 (policy is transfer of control). Section 6's wording of "under normal museum procedure" is vague and does seem to establish that museum professionals know what is best for tribes.  | We deleted this phrase to avoid misunderstanding of our intent.  |

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| 90 | III.B. Purposes & Principles | <p>I am glad to see that the University of California is committed to supporting the intent of California's Executive Order N-15-19 and Article 12 of the UN Declaration of the Rights of Indigenous Peoples that affirms the right to control "ceremonial objects" and to repatriation of "ancestral human remains" (III, B, 1).</p> <p>The University, however, has neither investigated nor come to terms with its own role in the looting of thousands of cultural artifacts and plundering of thousands of Native gravesites. The language of III, B, 1 reflects this amnesia:<br/>"In many cases, the human remains of Native American and Native Hawaiian ancestors and their cultural items were obtained in violation of Indigenous communities' spiritual and cultural beliefs, without the free, prior and informed consent of Indigenous communities."</p> <p>This statement, expressed in a passive voice, evades responsibility.</p> <p>A similar tendency is evident in the language of the report issued by ____ Provost UCOP, in "Campus Overviews on NAGPRA Activities" (September 10, 2018):<br/>"UC Berkeley is a 150-year-old campus, and for many decades served as California's only major collecting institution. Berkeley's unique position was solidified when its Department of Anthropology established the University of California Archaeological Survey. Operating from 1948 –1961, the UCAS carried out site reconnaissance and excavations across the state—often on contract from federal agencies in advance of major reclamation and infrastructure projects to identify or collect what archaeological resources could be saved... Many of the human remains and associated funerary objects in UC Berkeley's care were collected from the aboriginal territories of federally unrecognized tribes."</p> <p>Note here the euphemistic use of the terms "site reconnaissance," "collecting," "saved," and "collected." Also, the premise that the university started to "collect... archaeological resources" in 1948 with UCAS is incorrect by about seventy-five years.</p> <p>Long before UCB created an anthropology department, it had a collection of Native skeletons that had been excavated from a burial mound in Vallejo in 1872. In the 1900s, Collis Huntington paid Alfred Kroeber to acquire and send cultural artifacts (including deer skin dance regalia) to the American Museum of Natural History in New York. In 1910, Berlin's ethnology</p> | <p>UC is committed to repatriation as a fundamental value to help repair the damage caused by the removal of ancestors from their resting place, and the violation of Indigenous communities' spiritual and cultural beliefs.</p> <p>We also support the intent of Executive Order N-15-19 of the State of California, and recognize and commit 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."</p> |

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|   |                | <p>museum paid Kroeber \$600 to acquire “something from all cultural property of a tribe” and send the shipment to Germany.</p> <p>By the time that UCAS was launched in 1948, Berkeley had accumulated thousands of human remains and cultural artifacts. The university was proud of this accomplishment. On October 25, 1948, Life magazine devoted a large part of an issue to the University of California, which it dubbed “the biggest university in the world” and “a show place for mass education.” Berkeley represented itself in images of coeds lounging around the Hearst pool, world-famous white male faculty, and a student measuring a Native skull in a lab in the anthropology museum. Students “can find anything they need,” boasted the story, “from books and bugs to skulls and sandbags.” The collection of human remains “has more than 10,000 Indian skeletons, many of them complete.... Its bone collection has filled two museums and overflows into the Campanile.”</p> <p>Aside from historical inaccuracy, the language of the 2018 report evades UC’s responsibility and transforms systematic acts of plunder, disrespect, and theft into benevolent salvage. Moreover, both reports fail to acknowledge how this institutionalized practice compounded the horrors of genocide.</p> <p>In 1974, Robert Heizer, one of UCB’s first generation of anthropologists, issued a mea culpa for the role he personally had played in the excavation of some hundred Native sites. “It is time,” he wrote, “to listen to the survivors of the people archaeologists profess to be so interested in.... I believe that we must consider this as a human ethical question.” Forty-five years later, it is time to answer Heizer’s call to action and do justice to Berkeley’s sorrowful history.</p> <p>I suggest the following language to replace III, B, 1 of UC Policy on Native American Cultural Affiliation and Repatriation:<br/>Current text: “In many cases, the human remains of Native American and Native Hawaiian ancestors and their cultural items were obtained in violation of Indigenous communities’ spiritual and cultural beliefs, without the free, prior and informed consent of Indigenous communities.”</p> <p>Proposed text: In thousands of cases, beginning in the early 20th century, professors, employees, and agents of the University of California regularly and persistently robbed Native peoples of cultural artifacts and the remains of their ancestors in violation of Indigenous communities’ spiritual and</p> |             |

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|   |                | <p>cultural beliefs, and without their free, prior and informed consent. This violation of Native people’s human rights compounded the horrors of a genocide that is a living memory for survivors. The University is committed to understanding how and why this happened, to investigating how crimes against humanity were carried out in the name of science and knowledge, and to doing justice to the past.</p> |             |

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| 91 | III.B. Purposes & Principles | <p>We are among many California Indian Tribes who have been ill-treated, disrespected and suffer from UC-California's failure to work in good faith and timely manner to repatriate remains and objects under Federal and State NAGPRA laws. UC-Berkeley is considered the most notorious and corrupt of institutions when it comes to resolving repatriation claims by California Indian tribes.</p> <p>We wholly support [letter submitted by another Commenter] on this subject, namely:</p> <p>UC-Berkeley has neither investigated nor come to terms with its own role in the looting of thousands of cultural artifacts and plundering of thousands of Native gravesites. The language of III, B, 1 reflects this amnesia;</p> <p>UC-Berkeley anthropologists began to amass a collection of archaeological items including human remains by at least 1872 (Vallejo mound), such that the assertion is inaccurate that the University only started to collect such resources in 1948 with its establishment of the UC Archaeological Survey; and</p> <p>Aside from historical inaccuracy, the language of UCOP Provost ____ 9/10/18 report "Campus Overviews on NAGPRA Activities" evades UC's responsibility and transforms systematic acts of plunder, disrespect, and theft into benevolent salvage. Moreover, these reports fail to acknowledge how this institutionalized practice compounded the horrors of genocide.</p> <p>We support [other commenter] by recommending the following language to replace III, B, 1 of UC Policy on Native American Cultural Affiliation and Repatriation:</p> <p>Current text: "In many cases, the human remains of Native American and Native Hawaiian ancestors and their cultural items were obtained in violation of Indigenous communities' spiritual and cultural beliefs, without the free, prior and informed consent of Indigenous communities."</p> <p>Proposed text: In thousands of cases, beginning in the early 20th century, professors, employees, and agents of the University of California regularly and persistently robbed Native peoples of cultural artifacts and the remains of their ancestors in violation of Indigenous communities' spiritual and cultural beliefs, and without their free, prior and informed consent. This violation of Native people's human rights compounded the horrors of a</p> | See response to comment 90 above. |

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|   |                | <p>genocide that is a living memory for survivors. The University is committed to understanding how and why this happened, to investigating how crimes against humanity were carried out in the name of science and knowledge, and to doing justice to the past.</p> |             |

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| 92 | III.B. Purposes & Principles | I suggest the following language to replace III, B, 1 of UC Policy on Native American Cultural Affiliation and Repatriation:<br>Proposed text: In thousands of cases, beginning in the early 20th century, professors, employees, and agents of the University of California regularly and persistently robbed Native peoples of cultural artifacts and the remains of their ancestors in violation of Indigenous communities' spiritual and cultural beliefs, and without their free, prior and informed consent. This violation of Native people's human rights compounded the horrors of a genocide that is a living memory for survivors. The University is committed to understanding how and why this happened, to investigating how crimes against humanity were carried out in the name of science and knowledge, and to doing justice to the past.                            | See response to comment 90 above.  |
| 93 | III.B. Purposes & Principles | The policy recognizes that tribal ancestors were obtained in violation of "indigenous communities' spiritual and cultural beliefs...." It should also acknowledge that many tribal ancestors were taken in violation of the law, federal/state/tribal/common, as well as ethical standards. Not all tribal ancestors were removed from their graves in the distant past, it is our experience that it is not uncommon even today. The final statement in B(1) is excellent. The goal must be repatriation of tribal ancestors removed from their homelands or otherwise transferred as property without consent of family, community or tribe. B(2) should clarify that in the event of a conflict between this policy and the NAGPRA law/regulations, NAGPRA controls.  | See response to comment 90 above.  |
| 94 | III.B. Purposes & Principles | With regard to Section III.B.3. The Tribe is concerned about each UC locations establishing separate policies that are local in scope and circumstance. While there is a caveat about such polities needing to be consistent with the overarching Policy, it is this kind of independence and autonomy within the UC locations that has led to uneven compliance with NAGPRA and CalNAGPRA in the past. The Tribe, therefore, would recommend required universal application of this policy.<br>With regard to Section III.B.6. The Tribe is concerned about the phrase " ..under normal museum procedures..." This could be construed as being in direct conflict with III.B.4 which recognizes that there is such a thing as the culturally appropriate treatment of ancestors and NAGPRA items-- treatment that can differ, and quite markedly so, from "normal museum procedures." | We will add flowcharts/guidance for the consultation and repatriation processes to achieve greater consistency.<br><br>Deleted "under normal museum procedures." |

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| 95 | III.B. Purposes & Principles | III.B.3) As drafted, this section seems to suggest that each "UC Location" will establish policies consistent with the Policy, but the parameters of these policies is unclear. AB 2836 requires that a systemwide policy be adopted, and only allows campuses, based on their individual circumstances, to adopt policies not inconsistent with the systemwide policy. We request clarification regarding the intent of this provision and the extent to which each UC Location would be able to adopt their own policies. See additional comments under Section E (Repatriation and Disposition).   | We added clarification that campuses need not develop local policies. However, if campus implementing policies are adopted, pursuant CalNAGPRA § 8025(a)(5), these must be consistent with this Policy and be in place within one year after release of this Policy.   |
| 96 | III.B. Purposes & Principles | III.B.4) What does "in consideration of state and federal law, and UC policy" mean in this context? Could this be construed as limiting application of the ethical, respectful, and culturally appropriate care afforded human remains and cultural items?  | We deleted this phrase to avoid misinterpretation.   |
| 97 | III.B. Purposes & Principles | I suggest this distinction between transfer of possession and control, because, in some cases, to federally recognized and non-federally recognized tribes, and to other Native American tribes and Native Hawaiian organizations may request that, for the security of the remains and their associated funerary objects under their control, the remains and AFOs be kept in mausoleum-type facilities on UC lands. Unless this has changed in the last few years, this has been the case with the relationship between the ____ Tribe and UC ____.   | Based on comments received, we are now using the legal terminology for clarity. Section V.I.2 addresses situation described by this comment. UC may transfer ownership but enter into an agreement with the tribe to maintain physical custody at the request of the tribe.  |
| 98 | III.B. Purposes & Principles | III.B.6) This section is reflective of the concerns identified above regarding placing undue burdens on tribes. This would require tribes to make inquiries, rather than following a proactive approach of outreach to tribes, which will likely result in the status quo. Tribes cannot inquire into what they do not know exists. This issue was discussed in more detail above. Further, the reference to "normal museum procedures" is concerning. How will this limit the ability of tribal representatives' rights' to view collections? Are these procedures culturally sensitive? Are they available to tribes? The Tribe had a very disturbing incident occur during a visit to view the ____ collection at the Phoebe Hearst. During that visit, the Tribe's representative along with a representative from the Navy asked to be alone with the collection, which they were told was against the museum's procedures. The representatives insisted to be left alone and the museum staff member actually locked them both in the room after leaving angrily. The University must recognize that some procedures are in conflict with tribal customs and preferences and cannot be used to make representatives uncomfortable or force them to compromise tribal values in order to view their ancestral remains. | We are sorry for your experience. We have relayed it to the campus administrators. We have deleted the clause, "normal museum procedures". The section on Stewardship (V.H) addresses these commenter's concerns. Tribes have a right to access their ancestors and to make requests for culturally appropriate treatment of the ancestors. Also, note that we added section V.G.2. to permit tribes to register complaints. |



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| 99  | III.C. Statement on Implementation of CalNAGPRA | The main concern identified with this section is why the provisions of CalNAGPRA are not interwoven with the Policy as a whole. While this section states that the University will comply with state law, failing to incorporate those provisions throughout the Policy leaves no guidance on how campuses must comply with that statute. Further, this approach lacks transparency and cannot be properly implemented by the University, nor used by tribes to advocate their position. To avoid confusion and conflicting interpretation regarding applicable law, the state law should be included throughout.                               | We have integrated CalNAGPRA throughout the Policy, and added a section (V.E.3) regarding State Cultural Affiliation.   |
| 100 | III.C. Statement on Implementation of CalNAGPRA | <p>The use of the term "transfer" in section III.C (top of page 10) is problematic. CalNAGPRA requires cultural affiliation, meaning all transfers under that Act are in fact California "repatriations" and federal "dispositions." Specificity here may help avoid confusion.</p> <p>Footnote 7 (also page 10) seems to imply that non-federally recognized tribes have standing under 10.11, when they have none (the only mention of such entities in 10.11 is the requirement that federally recognized tribes be asked which non-federally recognized tribes should be consulted.) We worry that this footnote could cause confusion.</p> | <p>See response to comment 60.</p> <p>We revised this section to clarify that UC is required to transfer Human Remains and Cultural Items that are State Culturally Affiliated with California Indian Tribes as required by CalNAGPRA, consistent with NAGPRA. (A transfer to a federally recognized California Indian Tribe would be a Repatriation under both NAGPRA and CalNAGPRA; transfer to a tribe that is State recognized, but not federally recognized, would be a Disposition under federal NAGPRA.)</p> |

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| 101 | IV. Roles & Responsibilities | <p>Re #1, Campus Repatriation Official:<br/>           "Campus Repatriation Official: The person at a UC campus assigned compliance and procedural responsibilities with regard to this Policy, and all 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."</p> <p><u>Comment:</u> DELETE this sentence!<br/>           Looking at this organization chart there is too few people for this:<br/>           1) Chancellor or designee:<br/>           2) Faculty Chair of the Campus Committee who works with both the Chancellor or designee and the Campus Repatriation Official (there needs to be a connection between the committee and work of the repatriation office).<br/>           3) Campus Repatriation Official: 1st and 2nd sentence are fine. Need to make it clear that they are not responsible for international repatriation. [ADD] They are responsible for respectfully assisting tribes in complying with the purposes and principles of this Policy, including access, consultation and repatriation for all Native American and Native Hawaiian collections. They will ensure all summary reports, notices, and documents needed by the campus committee, systemwide committee, and tribes are provided.</p> | <p>This section has been revised in response to many requests. We took many of the suggestions made here and simplified this section.</p> <ul style="list-style-type: none"> <li>-We separated roles between Systemwide and Campuses, and re-ordered for clarity.</li> <li>-We collapsed President and President's Designee.</li> <li>-We collapsed Chancellor and Chancellor's Designee and Repatriation Official to remove redundancies.</li> <li>- We added Faculty and Other Academic Appointees, Staff, and Students who may have compliance responsibilities.</li> <li>- We added delegated authority to the Repatriation Coordinator.</li> <li>-We retitled Liaison with Repatriation Coordinator in response to concerns with the word Liaison. (Also, liaison may be confused with Campus Tribal Liaisons that have a broader role at campuses.)</li> <li>-We clarified responsibilities.</li> <li>-We moved qualifications for the Repatriation Coordinator from Consultation section to this section.</li> </ul> |
| 102 | IV. Roles & Responsibilities | <p>Re #6, Liaison:<br/>           "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."</p> <p><u>Comment:</u> If this Campus has a Tribal Liaison, then they should maintain good communication with them on tribal visits and needs.</p>  | <p>See response to comment 101.</p>   |

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| 103 | IV. Roles & Responsibilities | <p>B. The Draft Policy Creates a Bureaucratic Structure with Inadequate Accountability</p> <p>An additional concern to the Draft Policy's structure and organization is its creation of an additional layer of bureaucracy consisting of a campus repatriation official, campus committee, campus point of contact, chancellor, chancellor's designee, liaison, president, president's designee, and systemwide committee without a flow chart showing each person's or entity's role during the process, with the lowest-ranking officials charged with assisting the tribes (the liaison), who then reports to the campus repatriation official, neither of whom are responsible for ensuring compliance with the Draft Policy. (Draft Policy at pp. 10-11.) To compound the confusion, in one section of the Draft Policy the Chancellor "is responsible for oversight and compliance" with the policy, but later in the Draft Policy it states that the campus and systemwide committees are responsible "to provide oversight and compliance with this Policy, . . ." (Draft Policy at pp. 10, 16, and 30.) To be effective, there needs to be an official with authority and oversight over the entire process who reports directly to the Chancellor and can work directly with the tribes to avoid confusion and to ensure compliance.</p> | See response to comment 101.   |
| 104 | IV. Roles & Responsibilities | <p>Re: #1 (Campus Repatriation Official)<br/>Comment: What are the professional qualifications for this position, and how will they interact with tribes? Qualifications must include provision for knowledge of California Indian and Hawaiian culture and values.</p>  | We agree with this comment. We will add qualifications in Version 3. |
| 105 | IV. Roles & Responsibilities | <p>Re: #5 (Chancellor's Designee)<br/>Comment: What are the professional qualifications for this position, and how will they interact with tribes? Qualifications must include provision for knowledge of California Indian and Hawaiian culture and values.</p>   | We agree with this comment. We will add qualifications in Version 3. |
| 106 | IV. Roles & Responsibilities | <p>Re: #6 (Liaison)<br/>Comment: What are the professional qualifications for this position, and what role do tribes play in the selection process? Qualification must include provision for knowledge of California Indian and Hawaiian culture and values; and a proven record of working successfully with tribes.</p>  | See response to comments 101 and 104.                                |
| 107 | IV. Roles & Responsibilities | <p>Re: #8 (President's Designee)<br/>Comment: What are the professional qualifications for this position, and how will they interact with tribes? Qualifications must include provision for knowledge of California Indian and Hawaiian culture and values.</p>  | See response to comments 101 and 105.                                |

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| 108 | IV. Roles & Responsibilities | <p>The role of the Campus Liaison (page 11) in the repatriation process is highly problematic and not clearly explained in the UC Policy. The definitions section of the proposed Policy (page 11) characterizes the role of the Liaison as providing “assistance”. However, the proposed Policy also asserts that the Liaison is responsible for reviewing tribal claims or requests and identifying missing, incorrect, or incomplete information that is provided by tribes (page 29). This sets up a process that assumes tribal information is missing, incorrect, or incomplete from the outset. No other lines of evidence or expert opinion are subject to the same “review”. This process is thereby designed to disqualify tribal information rather than acknowledge it as a valid line of evidence with equal or greater weight compared to other lines of evidence.</p> <p>This proposed process is especially concerning because there is no way for tribes to rebut such a disqualification, since there is no standard for what is adequate or complete information, nor is it clear why tribal information is the only line of evidence that is passed through this arbitrary filter. In effect, the role of the Campus Liaison is to discredit information that is provided by tribes. This has certainly been our past experience with many Campus Liaisons, and it is highly disturbing to see this role and this flawed process formalized within the proposed Policy. We strongly urge you to change the role of the Liaison to one of documentation or compilation of evidence, rather than arbiter of evidence that is then subject essentially to multiple rounds of deferential appeals, designed to exhaust tribes’ resources and emotions. Our experience has been that this biased and obstructive approach has been commonly practiced at the UC Davis and UC Berkeley campuses. The current UC Davis and UC Berkeley approaches to repatriation are NOT models of best practices. Indeed, it is because of their flawed approaches that tribes advocated for AB 2836. The proposed Policy would institutionalize and standardize the worst of the current practices within the UC system. It is a road map to obstruction.</p> <p>With respect to cultural affiliation, the Liaison should (1) identify all tribes who were consulted, (2) identify all tribes who asserted cultural affiliation, (3) document any additional lines of evidence regarding cultural affiliation and (4) refer the decision regarding cultural affiliation to the campus committee. With respect to the identification of cultural items, the Liaison should (1) document the identifications made by consulting tribes, (2) document the identifications made by museum staff, and (3) refer the decision regarding identification of cultural items to the campus committee for a</p> | <p>The Roles and Responsibilities section has been revised for clarity and reworded to avoid misconception captured by this comment. (We note that prior language regarding assistance was meant to help tribes meet the technical/procedural requirements so that their claim could go forward without excuse or delay. It was not meant to put the liaison in the position of making judgments or determinations on the evidence.)</p> <p>We have clarified the role of the Repatriation Coordinator. See response to comment 101.</p> <p>The appeals section now also includes a mechanism for filing complaints on the process.</p> <p>The documentation and process suggestions are very helpful and will be further considered for Version 3 of the Policy.</p> <p>See also response to comment 230.</p> |

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|     |                              | <p>decision. The decision as to whether something is not a cultural item should not be made by the Liaison. This initial decision should be made by the Campus Committee. Consulting tribes should be copied on this documentation, and should have the opportunity to meet with the Campus Committee prior to any decision being made. This process would (1) provide transparency regarding how identifications of cultural affiliation and cultural items are made, (2) provide consulting Tribes an opportunity to engage before the decision, (3) ensure that the decision is made by a Campus Committee (in which Native American perspectives are equally represented) rather than a single individual, and (4) provide clear documentation, should a dispute arise.</p> |   |
| 109 | IV. Roles & Responsibilities | <p>Sections 4 and 7 establish responsibility and authority of Chancellor and President without establishing what training they will have on NAGPRA and indigenous cultures/histories to give them sufficient background for making their decisions. The committee members have to have 5 years of experience. What experience do the Chancellor and President have to have? What is the grievance policy for when they may make questionable decisions?</p>   | <p>The Chancellor and the President have ultimate responsibility. Like all other areas under their purview, they will rely on staff to provide information needed to make a decision, including the tribal perspectives. See also Appeals section. Campus decisions can be appealed to the systemwide committee/the Office of</p> |

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|     |                              |   | the President. Tribes may also submit a request for review by the NAHC and National NAGPRA. See also response to comment 14.   |
| 110 | IV. Roles & Responsibilities | Who will the Liaison report to?   | Roles and Responsibilities section was revised for clarity. Positions were consolidated as the Liaison role caused confusion. Duties and qualifications more clearly articulated. See response to comment 101. |
| 111 | IV. Roles & Responsibilities | Liaison seems redundant to me – what does the CRO do? I don't see CRO's responsibilities specifically in the policy text.   | See response to comment 101.   |
| 112 | IV. Roles & Responsibilities | How will you remove members before a term ends, if need be? What can tribes do to report or complain? About Liaison? About CRO? Liaison can't take action about CRO, their boss.  | Tribes can appeal any UC decision. Appeals section was revised to escalate issues up the ladder. See response to comment 109.  |
| 113 | IV. Roles & Responsibilities | Concerns were expressed about the reporting structure for the Tribal Liaison. The Tribal Liaison currently reports to the Campus Repatriation Official. Concerns were raised about how to address a Tribal Liaison or Campus Repatriation Official that are not meeting expectations set forth in principles section.   | See response to comment 101.   |
| 114 | IV. Roles & Responsibilities | Liaison: It may be helpful to term this role as the "NAGPRA Liaison" or "NAGPRA Coordinator" to avoid any confusion with Tribal Liaisons which several campuses may also have which have a broader role. Changing the term to NAGPRA Coordinator and expanding the responsibilities to include completing the Inventories, Summaries, etc. may help address comments regarding roles.   | See response to comment 101.   |
| 115 | IV. Roles & Responsibilities | There doesn't need to be a NAGPRA tribal liaison. There needs to be an ethical, responsible Campus NAGPRA Official. The buck needs to stop with one person who does the job and is the go-to person, but with sufficient reporting, oversight, and transparency that will keep the person on task and accountable. They should be terminated or reassigned if they are not meeting their job requirements. The people doing this job as appointments or hires need to have time considerations. Faculty and Chancellors have many assignments, don't start this off with too much for one person to do. | See response to comment 101.   |

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| 116 | IV. Roles & Responsibilities | Under this section, the Tribe has the same concerns regarding several of the defined roles. Specifically, we are concerned about the Campus Repatriation Official, Campus Point of Contact, Chancellor's Designee, Liaison, and President's Designee roles. For each, the Tribe requests that the Policy include guidance on the required experience vis-a-vis NAGPRA and repatriation for each position, their overall qualifications, a process for how they will be chosen, ability of tribes to voice concerns when encountering issues with any of the defined roles, and any other pertinent information regarding these individuals. | See response to comment 101. |

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| 117 | IV. Roles & Responsibilities | <p>D. Roles Of Campus Repatriation Officer And Tribal Liaison As Provided in the Policy Do<br/>Not Remedy The Problems Of The Past</p> <p>First and foremost, the roles and responsibilities of the individuals and groups of individuals (committees) in charge of determining whether our tribe (1) will be permitted/invited to consult regarding the inventory and (2) whether our claims for repatriation will be honored are convoluted and lacking in ability to provide our tribe and other tribes with any confidence that the information we provide will be held in confidence by the respected individuals or that the individual responsible for “consulting” with our tribe will have the necessary decision-making authority to create a successful pathway for the repatriation and reburial of our ancestors and their belongings.</p> <p>In April of 2017, the Tribe participated in a Tribal Forum at the University of California at Berkeley. The purpose of the forum was to discuss Berkeley’s intentions of digitizing the ethnographic materials it had in its possession to the public via the internet. The Tribal Forum, however, quickly became a discussion of Berkeley’s treatment of Native American ancestral remains and its overwhelming tendency and practice of classifying remains as Culturally Unidentifiable Inventory thereby subjecting those ancestor’s remains and belongings to be repeatedly violated through non-tribal consensual testing and handling. A final report of the findings and recommendations from the Tribal Forum was submitted to the Chancellor. These recommendations provided for an inventory to be completed in compliance with the NAGPRA, an acknowledgement and remedy of the “devastation wrought by early Berkley anthropologists and researchers”, to establish a consultation policy with all tribes regarding the campus’ collection of Native American ancestral remains, funerary goods, and cultural items, the establishment of a tribal liaison that would have the authority to consult with tribes on behalf of the Chancellor, field complaints about the repatriation process, and report directly to the Chancellor regarding the repatriation process from the beginning to the end. Yet, nowhere in this Policy does this “role” exist. Instead, there is a liaison who will work as a triage person to the repatriation process – but not an advocate in any effective way or with any authority other than to help direct the process taken. Given the UC’s failure in repatriating Native American ancestral remains, California Native American Tribes deserve to know that the person they are communicating with has the authority to assist them in the best and most effective way possible in obtaining a successful repatriation and reburial of their</p> | <p>Roles and Responsibilities section has been modified for greater clarity.<br/>See response to comment 101 and 109.</p> <p>We revised definition of Confidentiality. We also clarified distribution is only on a need to know basis.<br/>See response to comment 21.</p> <p>Thank you for your comment about digitization. We will be discussing these matters with the Workgroup.</p> |



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|     |                | <p>ancestors. Requiring the tribes to learn a new structure of bureaucracy – without even acknowledging how the old process will be reconciled – provides undue burden on the tribes and only frustrates an already emotionally wrought legal process. In the simplest of terms: Whoever is put in charge, needs to actually be in charge. Gone is the time of platitudes of how the UC will respect tribes in the repatriation process, now is the time for a real commitment to change by the UC.</p> |   |
| 118 | Committees     | <p>I absolutely disagree with non-federally recognized tribes being excluded in the membership requirements stated in [sic]</p>   | <p>The membership criteria for the committees is dictated by CalNAGPRA. However, note that non-federally recognized tribes are included, albeit in smaller numbers (3 federally recognized to 1 non-federally recognized in the systemwide committee, and 2 federally recognized to 1 non-federally recognized in the campus committees).</p> |

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| 119 | Title               | I don't like the title.<br>UC Policy on Native American Repatriation?   | The title was decided by the Workgroup.   |
| 120 | V. Campus Committee | <del>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.</del>  | See response to comment 118.  |
| 121 | V. Campus Committee | <del>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.</del>  | See response to comment 118.  |
| 122 | V. Campus Committee | <del>Have a graduate degree in either Currently conduct research with a minimum of five years experience Anthropology, Archaeology, Environmental Studies, Ethnic Studies, History, Law, Native American Studies, or Sociology, with a focus in California. Have a minimum of five years' experience working in their field. Have a working knowledge of repatriation federal and state laws.</del>   | Requirements a and b are from CalNAGPRA.  |
| 123 | V. Campus Committee | "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. <del>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.</del> " | This was an inadvertent mistake. We corrected to mirror the systemwide requirements, and keep decisions local. Workgroup wanted to make sure tribes were consulted for exceptions, thus we added: "... <u>seek the advice of tribal representatives</u> and communicate the justification for the exception to the Campus Committee." |
| 124 | V. Campus Committee | Re Section b: "The Campus Committee shall <u>do any of the following as needed to assist in the compliance of this policy</u> "   | This suggestion was adopted for both committees.  |
| 125 | V. Campus Committee | Re Section b.3: "Make recommendations to the Chancellor or Chancellor's designee for revisions to local campus policies and <u>any</u> practices consistent with this Policy;"  | We have accepted this recommendation.   |
| 126 | V. Campus Committee | Re Section b.5: "Review claims <u>as brought forward by the Campus NAGPRA official</u> for cultural affiliation and requests for repatriation / disposition of human remains of Native American or Native Hawaiian ancestors and cultural items, <u>and the Notices of Inventory Completion and/or Notices of Intent to Repatriate to ensure compliance with NAGPRA and CalNAGPRA, including appropriate consultation</u> and make recommendations to the Chancellor or Chancellor's designee"  | We have accepted this recommendation.   |

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| 127 | V. Campus Committee | Re Section b.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 <del>that have not reached the Campus Committee for consideration,</del> and/or make recommendations for resolution to the Chancellor or Chancellor's designee"   | We accepted this recommendation.  |
| 128 | V. Campus Committee | Re: 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). the person shall refrain from the final vote."<br><br>Comment:<br>*Isn't the UC conflicted since they are choosing to return or not a cultural item that might have significant research or monetary value? | We agree that this section is thorny. We have modified so that committees can deliberate and decide how to manage.<br>See response to comment 14. |
| 129 | V. Campus Committee | Re Chair duties, #1 and 2: "In consultation with the Campus Committee membership and campus NAGPRA Official implementation staff as appropriate, schedule dates, times and locations for meetings; ensure meetings are called and held in accordance with this Policy"<br><br>"In consultation with Campus Committee membership, and campus NAGPRA official 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"   | We accepted this recommendation.  |

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| 130 | V. Campus Committees | <p>The voting membership of the Campus Committee shall be as follows:<br/>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:<br/>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.).<br/>Cultural resources protection under tribal, state, and federal law.<br/>Consultation with state and federal entities and agencies.<br/>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.</p> <p>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:<br/>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.).<br/>Cultural resources protection under tribal, state, and federal law.<br/>Consultation with state and federal entities and agencies.<br/>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.</p> <p>...</p> <p>The Campus Committee shall:<br/>Works closely with the System-Wide Committee and Tribes, to [a]ccess campus implementation...</p> <p>...</p> <p>Record Keeping. The Campus Committee shall maintain a record of all votes, including both the majority and minority opinions. Commenter added: Meeting minutes need to be filed/archived, and made available to tribes upon request.</p> <p>...</p> <p>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</p> | <p>See response to comment 118. Requirements come from CalNAGPRA.</p> <p>See response to comment 21 regarding confidentiality.</p> <p>Consultation flowchart will contain points of communication with the tribes to keep them informed of the status of their case.</p> |

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|     |                         | <p>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. Commenter added: Claimants should be notified about standing meetings or told when their case will be discussed at the meeting.</p> |   |
| 131 | V. Systemwide Committee | <p><del>"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."</del></p>  | <p>This is from of CalNAGPRA. NAHC recommended adding a preference to Ca tribes (in accordance with CalNAGPRA), and deleting tribes outside of Ca. We have edited in accordance with the NAHC recommendation.</p> |

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| 132 | V. Systemwide Committee | <del>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.</del>   | This came from CalNAGPRA.<br>However, exceptions may be made (for both the systemwide committee and the campus committees) provided they promote repatriation and amplify the Purpose and Principles of the Policy. In making such exceptions, UC will seek the advice of tribal representatives, and communicate the justification for the exception to the Systemwide Committee. |
| 133 | V. Systemwide Committee | Re item 3, UC members:<br>"Four (4) members from UC."<br>[Comment: "Three (3)" -- The committee membership needs to be an odd number with tribes have a majority.]<br>"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"<br>"a) <del>Have a graduate degree in either</del> <u>Currently conduct research with a minimum of five years' experience</u> in Anthropology, Archaeology, Environmental Studies, Ethnic Studies, History, Law, Native American Studies, or Sociology, with a focus in California.<br>"b) <del>Have a minimum of five years' experience working in their field</del> <u>served on a UC campus repatriation committee for at least five years' prior.</u> " | The number of members came from CalNAGPRA.<br>Requirements in a and b are also from CalNAGPRA.<br><br>See response to comment 132 regarding exceptions. We took the spirit of this comment and inserted "consider the individual's prior experience and knowledge in NAGPRA/CalNAGPRA and these fields" in what should be considered for exceptions.                               |
| 134 | V. Systemwide Committee | Re item 3, UC members:<br>"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. <del>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.</del> "  | This flexibility comes from CalNAGPRA. We do not think it hurts repatriation efforts.  |

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| 135 | V. Systemwide Committee | <p>Re b.3), “Assess campus implementation, timeliness, and compliance with this Policy through the review of campus strategic plans for repatriation, <del>campus proactive outreach programs and</del> campus reports of their repatriation-related activities, and <del>through audits</del> <u>through the results of audits, and/or coordinated site visits</u>, or site visits, as necessary”</p> <p>Commenter notes with regard to section reading “review of campus strategic plans for repatriation”: This should be defined or referenced to the section that defines this.</p> | <p>We renamed to “Repatriation Implementation Plan” and pulled it out to its own section per NAHC request.</p> <p>We believe, “through audits, or site visits” is substantively the same as suggested language.</p> |
| 136 | V. Systemwide Committee | Re Systemwide Committee Procedures, commenter remarks, “Should this be in the policy or a guidance document?”  | We agree this could be pulled out as an exhibit, perhaps in version 3 of the draft policy.  |
| 137 | V. Systemwide Committee | <p>“Conflicts of Interest. If the Systemwide Committee is considering a case involving the tribe of a Systemwide Committee member, <del>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).</del>”</p>   | See response to comment 14.   |
| 138 | V. Systemwide Committee | <p>“Frequency of Meetings. The Systemwide Committee shall meet no less frequently than three (3) times per academic year <u>(meeting no less than once a year in person)</u>.”</p>   | This addition is reasonable, but we believe the committee needs to decide for itself what works. More than a once per year in-person meeting may be necessary. The current language allows for flexibility.         |

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| 139 | V. Systemwide Committee | <p>Comment: Representative needs to be appointed by the Tribe; appointment will be upon discretion of the tribe.</p> <p>Edits:</p> <p>1) Systemwide Committee shall be as follows:<br/>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:<br/>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.).<br/>Cultural resources protection under tribal, state, and federal law.<br/>Consultation with state and federal entities and agencies.<br/>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.</p> <p>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:<br/>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.).<br/>b) Cultural resources protection under tribal, state, and federal law.<br/>c) Consultation with state and federal entities and agencies.<br/>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.</p> <p>...</p> <p>In selecting members, the President or the President's designee will seek a diversity of...commenter added: in close consultation with the local tribal communities</p> <p>....</p> | <p>Per law, NAHC must make the nominations. Only 4 from those nominations will be selected by the University.</p> <p>The requirements for the qualification of the committee membership comes from NAGPRA. See also response to Comment 132.</p> <p>The policy already includes requirement to consult with tribal representatives for exceptions.</p> <p>The Repatriation Coordinator is responsible for maintaining relationships with the tribes.</p> <p>The policy language mirrors CalNAGPRA.</p> <p>Transparency on campus processes is already required later in the policy. We will work on flowcharts on repatriation process and consultation.</p> <p>The requirement to maintain records on votes is already in the Policy.</p> <p>The section on Confidentiality has been strengthened.<br/>See response to comment 21.</p> |



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|   |                | <p>The charge of the Systemwide Committee shall be to promote the implementation of this Policy...commenter added: and maintain excellent relationships with the local Tribes, and drive the implementation</p> <p>...</p> <p>2) In close consultations with the local tribes, make recommendations [m]ake recommendations to the President or President's designee...</p> <p>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...commenter added: The System-Wide Committee in consultation with Tribes, should review inventories of all UC campuses to determine if such campus holds potential NAGPRA collections.</p> <p>4) In close consultations with the local tribes, make recommendations 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;</p> <p>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; ...commenter added: Prevent temporary and permanent faculty to store and/or utilize any potential NAGPRA items for teaching purposes.</p> <p>...</p> <p>7) Serve as a resource to promote repatriation. Commenter added: Develop and make materials available to Tribes to explain process of repatriation within the UC system.</p> <p>Record Keeping. The Systemwide Committee shall maintain a record of all votes, including both the majority and minority opinions. Commenter added: Meeting minutes need to be filed/archived for every meeting and made accessible to Tribes, if requested. Therefore, confidential information should not be documented in the minutes but reference to confidential information (filed elsewhere) should be noted.</p> |             |

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| 140 | V.A. Committees | <p>The policy requires a significant number of elders, spiritual leaders, tribal leaders, or tribal members who have a minimum of five years' prior experience to serve on each committee. Given the number of Systemwide and campus-level committees, we are concerned that it may be difficult to populate these committees if the five years' requirement is firmly enforced. Furthermore, there is no indication as to whether or not an elder or tribal leader can serve on multiple committees (i.e. for multiple campuses) and/or concurrently serve on the Systemwide committee. While the policy contains a provision that allow elders or spiritual elders from other nationally recognized tribes (i.e. outside of California) to serve in place of representatives from Californian tribes, the policy could benefit from including a process by which certain requirements could be waived. We have similar concerns regarding the faculty representatives appointed to these committees. As currently written, faculty serving on the committee should have a graduate degree in either Anthropology, Archaeology, Environmental Studies, Ethnic Studies, History, Law, Native American Studies, or Sociology, with a focus in California, in addition to five years' previous experience. The academic disciplines listed may be unnecessarily narrow. Faculty in other fields, such as Religion, Art History, Geography, and Public Policy might also be appropriate to serve on these committees. We urge that either the list of disciplines be expanded or that the requirement of a Ph.D. in a specific set of fields be dropped. The crucial issue here is deep engagement with the issue and it is possible to imagine scholars from numerous fields in the humanities, social sciences, and some professional schools meeting this requirement.</p> <p>The policy does not specifically state how these committees will be staffed and resourced. In places, the policy states "to the extent permitted by UC resources..." What are these resources, and who exactly is providing them? Are resources going to be supplied by the Office of the President? By each individual campus? A combination of the two? We believe that a firm commitment of resources from the Office of the President is needed to ensure that the policy can be put into practice effectively.</p> | <p>See response to comment 132. The requirements came from CalNAGPRA, however, exceptions can be made.</p> <p>Resources are not typically promised via policy.</p> |
| 141 | V.A. Committees | <p>Another item for consideration is the make-up of these committees, particularly among the Native committee members, in regard to features such as gender, age, position, and other such identity markers. If possible, the committee recommends including language in the policy that encourages diverse representation within the constituent groups of the committees.</p>   | <p>See response to comment 132.</p>  |

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| 142 | V.A. Committees | <p>The Tribe's comments on both sections are the same and should be read as such herein.</p> <ul style="list-style-type: none"> <li>• Exceptions to Committee Composition: it is unclear where the statutory authority for this provision is stated. AB 2836 provides no authority for the University to make exceptions to the committee composition and was done so with explicit intent. For too long, tribes have protested that the committees responsible for making cultural affiliation and repatriation determinations have been "stacked" with academic interests opposed to repatriation. This has resulted in legitimate claims being denied without the ability of tribes to have their voices heard. The Policy cannot include unilateral authority for the University to make such exceptions for fear of continuing the resistance encountered by tribes for decades. The Tribe requests that the intent and purpose of this provision be made clear and because current law does not provide authority for the University to make exceptions to each committee's composition, it must either be revised or removed.</li> <li>• Under section A.1(b) items 1-5 and A.2(b) items 1-7, will there be consultation with tribes if there are amendments to the Policy, guidance issued, recommendations regarding consistency, and assessing implementation? How will the University assess implementation if they are not collecting information from tribes regarding their experiences during the process? These sections must be revised to incorporate tribal consultation to ensure that any of the contemplated actions include tribal participation and input. If only input from largely University sources is sought, the results and recommendations may be skewed towards concerns related to academic research and could result in the reversion to procedures that deny repatriation.</li> <li>• Conflicts of Interest: this provision would require the recusal of Native American representatives from the associated committee, which would allow the committee to be "stacked" against tribal interests. If the person subject to recusal under this section is one of the appointed tribal representatives, how will the University ensure that the composition is maintained as stated in this provision? This needs to be removed or substantially clarified.</li> <li>• Chair: why does the Chair of the respective committee need to be a University member?</li> <li>• Subject Matter Experts: this section is also concerning as there is little in the way of process in determining expertise and need. Based on tribes' experiences with the University system, experts could be sought to counter tribal information, which would lead to rejected claims. While the Tribe</li> </ul> | <p>We heard many concerns about the rigidity of the requirements. We have therefore provided a path for exceptions, provided the purpose is the promotion of repatriation, consistent with the principles of this policy. Note that nominations come from the NAHC (so they can ensure requirements are met for their nominees, as they deem necessary). The President / Chancellor must consult with tribal authorities for exceptions. Regarding the requirements for A.1(b) and A.2(b) of the policy, these too come from CalNAGPRA.</p> <p>We will consider adding a requirement to seek periodic tribal input in version 3 of the policy.</p> <p>Since the committee is balanced, we expect that any issues that arise will be deliberated by a committee that understands tribal issues. Subject experts (if needed) would likewise be selected by the balanced committees. These decisions are up to the committees.</p> <p>We revised so that the Chair can come from either the tribal or university members.</p> <p>See response to comment 14 regarding Conflicts of Interest.</p> |

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|     |                 | understands the intent of this provision, it must be substantially clarified if it remains part of the Policy.  |                              |
| 143 | V.A. Committees | With regard to the constitution of committees that include UC representatives and/or faculty: In addition to the graduate degrees listed, such as Anthropology, Native American Studies and so forth, I would add Linguistics. There are some of whom work with CA Indian Tribes on language revitalization, particularly at UC Berkeley and UCLA, and would have the capacity to serve on both the Systemwide and Campus Committees. | See response to comment 132. |

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| 144 | V.A. Committees             | <p>Why is there no provision for a Vice Chair for the Systemwide Committee (page 14)?</p> <p>Why it is assumed that the UC General Counsel would be the counsel for the Committee (page 15) in all circumstances? Might there be situations where UC General Counsel may have an actual or perceived conflicts of interest and thereby make it desirable to have the potential to secure outside counsel? Why can't a tribal representative be chair?</p> <p>How many and which UC campuses have a number of individuals or sets of individuals that exceeds 100 and thereby would have no fewer than 3 meetings per year (page 18)? Should these campuses be named in the Policy for transparency, acknowledging that it is possible that over time the qualifying campuses could change?</p>   | <p>The committees can add a vice chair if they want to.</p> <p>OGC is the counsel for the University. Per UC standard practices, OGC can approve outside counsel if justified and funds are available.</p> <p>Currently, only UCB and UCD have human remains that exceed 100.</p>  |
| 145 | V.A.1. Systemwide Committee | I absolutely disagree with non-federally recognized tribes being "excluded" in this language regarding voting membership as stated under.. V. PROCEDURES, A. Committees, a. Composition, 1. Page 11 of 37 and Page 15 of 37 # 2. Campus Committees. a. Composition. 1)   | We are not sure we understand the comment. Ca tribes <i>are</i> represented (3 fed recognized and 1 non-fed recognized), in accordance with the requirements of CalNAGPRA.   |
| 146 | V.A.1. Systemwide Committee | We would both advocate for a quorum requirement for the Systemwide NAGPRA Committee—to ensure that any Committee decision or other business has the weight of the body behind it.  | Systemwide Committee can make recommendations, or this can be sorted out through the post issuance consultation process.   |
| 147 | V.A.1. Systemwide Committee | NAGPRA affects <u>all</u> tribes & the UC's held remains from us all. Why should all 4 be CA Indian? Though I want to emphasize there should be a focus on CA Indian, other tribes should be able to be involved esp. if they work in UCs.   | These requirements come from CalNAGPRA. See also response to comment 131.  |
| 148 | V.A.1. Systemwide Committee | With regard to V.A.1.a, the Tribe would recommend stipulating how the NAHC will solicit nominations for the membership of the Systemwide Committee. Being supplied with this information would allow the Tribe to review the proposed process for adequacy and comprehensiveness. With regard to V.A.1.a.3, the Tribe would recommend stipulating how the President or President's Designee will "seek the advice of tribal representatives". Additionally, with regard to the language in this section the Tribe recommends it be made clear if there is a term limit on the renewable two (2) year terms and clarify how new nominees will be sought or selected if the seats remain renewable indefinitely. With regard to V.A.1.b.3, the Tribe would recommend outlining what would constitute "correction action" and what an audit would entail. | <p>We cannot control how NAHC will solicit nominations.</p> <p>We anticipate that committees will need to establish many of the logistical issues once they are established and they have a better understanding of the issues. However, we will consider staggered periods of service so that there is continuity.</p> <p>Corrective action would case-dependent. For example, corrective actions for missed reports could involve submission of all late reports, and adoption of new procedures to avoid such oversights. The</p> |

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|     |                             |   | auditors are in a separate office, independent of the auditee.  |
| 149 | V.A.1. Systemwide Committee | Why are there no term limits on the systemwide committee?<br>In the name of transparency, are there provisions to summarize annually the decisions of each campus committee?  | Voting members shall serve for renewable two (2) year terms.<br>There are several reporting requirements built into the policy, both to the campus committees and to the systemwide committees, including Notices of Inventory Completion, Notices of Intent to Repatriate, NIRs, Summaries, Previously unreported items found through re-evaluations, acceptance of new remains, positive or negative repatriation / disposition requests. Committees can also request more reports as needed. |
| 150 | V.A.1. Systemwide Committee | “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”<br>Comment: It is quite inappropriate for UC to assume they can determine qualifications for tribal elders, spiritual leaders, and leaders and members designated by their tribes. These qualifications must be determined by the tribes. | These requirements come from CalNAGPRA. Note also that NAHC must nominate the tribal members.   |
| 151 | V.A.1. Systemwide Committee | “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.”<br>Comment: It is inappropriate to suggest that tribes outside of California could serve on a Systemwide Committee addressing California Indian issues.   | See response to comment 131.  |

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| 152 | V.A.1. Systemwide Committee | <p>“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:”</p> <p>Comment: It is quite inappropriate for UC to assume they can determine qualifications for tribal elders, spiritual leaders, and leaders and members designated by their tribes. These qualifications must be determined by the tribes.</p>   | These requirements come from CalNAGPRA.   |
| 153 | V.A.1. Systemwide Committee | <p>“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.”</p> <p>Comment: It is inappropriate to suggest that tribes outside of California could serve on a Systemwide Committee addressing California Indian issues.</p>   | These requirements come from CalNAGPRA.<br>See also response to comment 131.  |
| 154 | V.A.1. Systemwide Committee | <p>“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.”</p> <p>Comment: Tribes should be involved in selection of these members;</p>  | Yes, we agree. That is why the process requires us to see the advice of tribal representatives.   |
| 155 | V.A.1. Systemwide Committee | <p>“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).”</p> <p>Comment: If a tribal Systemwide Committee member must recuse because of conflict, the substitute must be another tribal representative from another non-involved tribe.</p> | Yes, we agree. This is what we meant by the requirement that the “balance in the composition” must be maintained. If a tribal member must recuse themselves, the substitute must be another tribal member. If a UC member must recuse themselves, the substitute must be another UC member. |

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| 156 | V.A.1. Systemwide Committee | <p>“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.”</p> <p>Comment: Why can't the chair be a tribal representative?</p>   | We’ve edited to allow for either a tribal member or a UC member to be the chair.   |
| 157 | V.A.1. Systemwide Committee | <p>“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.”</p> <p>Comment: This General Counsel must demonstrate knowledge and understanding of Indian Law, California Indian culture and values, in addition to NAGPRA and CalNAGPRA law.</p>         | Yes, we agree.   |
| 158 | V.A.2. Campus Committees    | <p>The plan is for policy to become effective January 1, 2020. I imagine re-constituting the committee at the systemwide and campus levels may take some time. The NAHC has a role in recommending members. Since the nominations are being made by an entity outside of UC what happens if there are not timely nominations? Is there a timeline for when the campus committees need to be in place or an interim plan? This may not need to be in the policy but perhaps there can be guidance to the campuses for timelines for appointing the new committees? I would want to avoid delaying any repatriations while the committees are transitioning if possible.</p> | As we are still receiving input in this area, UC will submit a request for nominations as soon as policy is finalized or close to being finalized.                                       |
| 159 | V.A.2. Campus Committees    | <p>First, the proposed policy calls for at least one member of the campus committee to be a member of an American Indian or Native American Studies Program. However, not every campus with a NAGPRA-eligible collection has such a program. (UCSC, for instance, has a NAGPRA-eligible collection but not such a program.) Council recommends incorporating additional flexibility into the requirements for the composition of committees in ways that prioritize expertise over specific discipline.</p>  | The policy has a path for exceptions provided the such exceptions promote repatriation and amplify the Purpose and Principles contained in the Policy. See also response to comment 132. |



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| 160 | V.A.2. Campus Committees | Members agree that shifting final approvals from UCOP to the campus to reduce delays, while reserving the role of the Systemwide Committee and UCOP for difficult cases is a step in the right direction. Members are concerned that for the various Systemwide and campus-level review committees, there are a significant number of elders, spiritual leaders, tribal leaders, or tribal members having a minimum of five years prior experience required. Similar language is used for faculty members having a minimum of five years' experience working in their field. Given the number of Systemwide and campus-level committees, it may be difficult to populate these given the experience threshold. Furthermore, there is no indication whether an elder or tribal leader can serve on multiple committees (for multiple campuses) and/or concurrently serve on the Systemwide committee. A similar concern was raised for the faculty participants of the committees. | See response to comment 132.   |
| 161 | V.A.2. Campus Committees | The committee asks whether the "5-year requirement" proposed on page 15 of the draft policy is appropriate in every consideration of California tribal membership, and also requests that the policy provide clear information regarding the number of California tribes from which committee members will eventually be chosen. Finally, the committee raises a crucial question regarding the protocols and transparency of the nomination process for serving on the proposed committee. This matter is especially important due to differences of power, wealth, and political/legislative influence among the many Native tribes of California.  | These requirements come from CalNAGPRA. The NAHC will provide nominations, per CalNAGPRA. UC has no control over that process.                             |
| 162 | V.A.2. Campus Committees | We wonder whether it is reasonable to expect California tribes to have members who meet the proposed 5-year requirement (page 15). It might be helpful to know how many California tribes there are and to be cognizant of differences among them when selecting committee members across different tribes. What exactly is the nomination process (how do people get nominated and what do they need to do to be considered?) and what are the criteria related to who - among the nominees - will be selected to serve on the committee?  | See response to comment 161.   |
| 163 | V.A.2. Campus Committees | Under Composition of Campus Native American Repatriation Implementation and Oversight Committee (pp. 15 and 16): The language of the draft (p. 16) refers to three members of the UC. But it does not state that the UC must be the campus itself and that the three members are to be faculty (although that may be assumed).  | We would rather leave in this flexibility for campuses to use as needed, e.g., if a specialist is found on another campus. This will be a campus decision. |

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| 164 | V.A.2. Campus Committees | Composition of the Campus Committee: The proposed policy calls for at least one member of the Campus Committee to be a member of an American Indian or Native American Studies Program (V.A.2.a.3). Not every campus with a NAGPRA-eligible collection has such a program. We recommend the language be amended--perhaps to include "or faculty member with expertise in that field of study."   | See response to comment 132.  |
| 165 | V.A.2. Campus Committees | <p>My first concern is with Section III, B, 1 re: Composition of Campus Committees.</p> <p>a) I am concerned that there is a requirement mandating that two of the three Native American members of each campus committee be from federally recognized tribes. In the case of my own campus, I am not sure that such a mandate would be in the best interest of the local Native American communities, none of whom are federally recognized. All of the NAGPRA material in our collections have been designated "culturally unidentifiable"--not because they cannot be associated with a descendent community, but because that descendent community is not federally recognized. I worry that having a campus committee dominated by Native American members from non-local federally recognized tribes would not be in the best interest of the general principles (to promote repatriation or return of cultural materials to the appropriate descendent communities) outlined at the beginning of the policy. So I would like there to be some wiggle room here for some exceptions in favor of non-federally recognized representation, and not just in favor of increased federally recognized representation.</p> <p>b) the current draft states that at least one of the faculty representatives needs to be from an American Indian or Native American Studies program. FYI--our campus has no such program (sad, but true). So, what is a campus to do in that case</p> <p>Commenter hopes campus will be granted permission to return all of the ancestral remains in its custody tribe (through a disposition). However, commenter fears that if they are not quite able to complete this disposition before these policies are put into place and the stipulations of CAL NAGPRA come into force, then the stated goals of this revised policy--to speed up and facilitate repatriation and disposition--will be hindered rather than helped by these rules in our particular case.</p> | <p>See response to comment 132.</p> <p>No actions in process should be retracted based on this policy. Further, repatriations/dispositions in process are entirely consistent with this policy.</p> |

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| 166 | V.A.2. Campus Committees | <p>§ V.A.2. Campus Committees (pg. 15):</p> <ul style="list-style-type: none"> <li>o § V.A.2.a.1 and 2: Campus is required to solicit nominations from the NAHC for tribal representatives on the committee.</li> <li>•Are procedures in place for campuses to receive nominations from the NAHC as early as January 2020? If not, what is considered a reasonable timeframe for campus to receive nominations?</li> <li>•Do the strict criteria eliminate potentially valuable members of the Native American community?</li> <li>o § V.A.2.a.3: Membership guidelines are rigid for campus representatives and a knowledgeable and well qualified person might not meet the strict degree criteria. Do campuses, with approval by UC President have flexibility to appoint someone who does not meet strict criteria over someone who does meet these criteria?</li> <li>O Should there be training for members for committee service? If so, what might that training look like, and who is best positioned to offer this training?</li> <li>o A system of rotation and overlap of memberships should be implemented for all committees.</li> </ul> | <p>See response to comments 161.<br/>We added 2-year term limits.</p> <p>With regarding to training, this could be something the systemwide committee could consider/deliver.</p> <p>We will consider staggering the memberships.</p> |
| 167 | V.A.2. Campus Committees | <p>Frequency of meeting 3X/year is vague. Is this calendar year or academic? Can they meet three times in one week? Consider changing this to at least once every 4 months.</p>  | <p>The policy stipulates minimally 3/per academic year. They can meet more frequently. Summer breaks may impede summer meetings, but it's up to the campus/committee.</p>   |
| 168 | V.A.2. Campus Committees | <p>How do the current people actually doing the work fit into this campus role? Who does all the work? Like inventories, osteorecords for MNI, rehousing? Do they get feedback or direction from Liaison? Will that person be an archeo trained person who knows what needs to happen? I suppose we needn't be included in the committee, but who will be telling us what to do now and how will they know? How often will they communicate with us?</p>   | <p>See response to comment 101.</p>   |
| 169 | V.A.2. Campus Committees | <p>With regard to V.A.2.b.6, the Tribe wonders if the reference to the "Campus Committee" in this section should actually read "Systemwide Committee."</p> <p>With regard to V.A.2.c. the Tribe would strongly recommend Campus Committees with existing NAGPRA collections meeting no less frequently that four (4) times per academic year, instead of three (3) times per year.</p>   | <p>No, this section (V.A.2.b.6) is about campus committees.</p> <p>Campus committees can meet more frequently as needed.</p>  |

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| 170 | V.A.2. Campus Committees | <i>Committee Composition.</i> The policy requires a minimum of five years' prior experience for elders, spiritual leaders, tribal leaders, or tribal members to serve on a committee. We are concerned that it may be difficult to fill the various committees if the five years' requirement is firmly enforced. We recommend that the University consider the U.S. Environmental Protection Agency (EPA) standard for qualifying an individual as an environmental professional. There, an environmental professional are may be qualified with a tribal issued certification or license and three years of relevant experience. Though not exactly on point, it may prove helpful. At a minimum, we recommend including a process whereby each institution of the University may waive such requirements for individuals nominated by their respective tribe, who otherwise meets other qualification requirement. Further, we suggest that clarification be provided on the nomination process for committee members (how are individuals nominated and what do they need to do to be considered?) and clarification on the criteria that will be applied for selection of a committee member among the nominees. Tribes should be notified with names of nominees and given an opportunity to comment or object which shall be considered in good faith.  | These requirements come from CalNAGPRA. See also response to comment 161 regarding nominations.  |
| 171 | V.A.2. Campus Committees | <p>Transparency in the entire repatriation process, for Tribes and for the campus committees responsible for UC Policy implementation, is essential to the goals stated in this new UC repatriation policy. Upon review by the Tribes, it remains unclear as to whether or not the campus committees will be provided with an opportunity for a full and adequate review of the repatriation process. Section V.A.2(b)(8) of the draft policy states that the campus committee shall "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."</p> <p>Therefore, the Tribes respectfully request that the final policy include specific language requiring that the campus committees also review repatriation claims that are denied as well as approved claims that receive a Notice of Intent to Repatriate. All too often, Tribes find themselves in an endless cycle of correspondence and meetings with campus officials who have denied claims that to the Tribes, appear to be compliant with the law and it's implementing regulations. A full review by the campus committees of denied and well as approved repatriation claims may help the UC system finally realize repatriation as its stated goal. We suggest that such an effort be undertaken.</p> | Section V.E.4. already requires reporting of positive or negative repatriation or disposition requests. In addition, the committees have the discretion to request any information they deem necessary for their oversight role. |

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| 172 | V.A.2. Campus Committees | <p>“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”</p> <p>Comment: It is inappropriate for UC system to dictate qualifications for a tribal representative; the tribe must decide the necessary qualifications.</p>                                 | These requirements come from CalNAGPRA. See also response to comment 131.  |
| 173 | V.A.2. Campus Committees | <p>“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.”</p> <p>Comment: It is inappropriate for non-California tribe to function in a committee concerning ancestor remains and cultural material repatriation and disposition.</p>  | See response to comment 131.   |
| 174 | V.A.2. Campus Committees | <p>“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”</p> <p>Comment: It is inappropriate for UC system to dictate qualifications for a tribal representative; the tribe must decide the necessary qualifications.</p>                        | These requirements come from CalNAGPRA.  |
| 175 | V.A.2. Campus Committees | <p>“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.”</p> <p>Comment: It is inappropriate for non-California tribe to function in a committee concerning ancestor remains and cultural material repatriation and disposition.</p>   | These requirements come from CalNAGPRA. See also response to comment 131.  |
| 176 | V.A.2. Campus Committees | <p>“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.”</p> <p>Comment: Why can't the Chair be a tribal member of the committee?</p>  | We have edited to allow for selection of the chair to come from the tribal or UC membership.   |
| 177 | V.B. Consultation        | At what point will enough consultation be enough? Will that be used to slow repatriation?   | We will add a flowchart to capture the Consultation process.   |
| 178 | V.B. Consultation        | <p>With regard to V.B.1., the Tribe recommends that "reasonable access" in this section be defined, as this is highly subjective between campuses.</p> <p>With regard to V.B.2., the Tribe is concerned about potential abuses of the caveat "To the extent permitted by UC and Tribal resources" that is used in this section. Please revisit the subject and discuss inserting different language that would encourage, mandate, or even set aside budgetary lines for such meetings.</p> | <p>We will consider fine-tuning the Access section (V.H.3) to ensure tribes have access to 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.</p> <p>Note also that Tribes can submit file complaints as well per new section V.G.2.</p> |

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|   |                |                  | <p>"To the extent permitted by UC and Tribal resources" is included in sections on outreach and activities that are not legally mandated, therefore these are only encouraged. Note however, that these plans must be submitted to the campus committee, who can then make recommendations to the chancellor.</p> |

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| 179 | V.B. Consultation | <p>The Tribe has significant concerns with this section of the Policy. As drafted, this section limits the requirements for consultation and will likely lead to a continuation of the issues complained of by tribes.</p> <p>First, the Policy states that consultation only applies to "NAGPRA-eligible collections." This seems to limit the consultation requirement for human remains and cultural items that are still deemed "culturally unidentifiable" - which means almost 2/3 of Berkeley's collection. This also does not take into account CalNAGPRA's broader definitions as to what items might be subject to repatriation. This reference needs to be revised.</p> <p>The Tribe also has questions regarding the Liaison's duties. For example, how will the Liaison "cultivate positive relationships" with Native American communities? There is no guidance for this role in the Policy so it is questionable as to whether the role will be effective. Further, without guidance, the role of each Liaison may differ from campus to campus, resulting in inconsistent application of the Policy.</p> <p>The Policy states that tribes will have "reasonable access" to human remains collections, but does not state what that means. As drafted, there is no transparency for tribes and would allow different campuses to require different procedures and requirements for access. The entire goal of AB 2836 was to provide for consistency and transparency and this provision would allow enormous latitude for campuses to make their own rules - one of the key reasons tribes are faced with such difficulty in repatriating their ancestral remains.</p> <p>Regarding cultural affiliation determinations, the Policy states that tribes will be allowed a "reasonable opportunity to present information regarding their cultural affiliation orally or in writing." This is a holdover from the old policy and from experience, the Tribe can state is ineffective and has no guidance for implementation. During the Tribe's contested struggle with Berkeley for the return of our ancestors, the Tribe requested an opportunity to meet with the campus NAGPRA committee addressing our claim and was never afforded the opportunity to explain our cultural affiliation information, which was then used against the Tribe. The Policy must provide for a clear and transparent consultation process for tribes and the respective committee to follow in processing repatriation claims. This holdover from an outdated and failed policy cannot be included in a policy intended to start a new chapter, one that promotes the repatriation of human remains and cultural items from all University holdings.</p> | <p>NAGPRA-eligible human remains or cultural items or NAGPRA-eligible collection has been defined as, "human remains or cultural objects that are required be captured in a NAGPRA/CalNAGPRA inventory or summary." Therefore, CUI is also captured. We are adding a flowchart to demonstrate the proper consultation process.</p> <p>See response to comment 101 regarding the Roles and Responsibilities section.</p> <p>See response to comment 178 regarding "reasonable access."</p> <p>UC will add consultation and repatriation process flowcharts for clarity and consistency.</p> <p>The confidentiality section has been updated to address these concerns. See response to comment 21.</p> <p>The Systemwide Committee is charged with ensuring consistency.</p> <p>We will review to ensure that tribes that want to present their cases before the committee(s) can do so.</p> <p>See response to comment 178 regarding policy sections on activities beyond those required by law. Meetings beyond those required by law to promote understanding of UC's process are important for the sake of collaboration on project of mutual interest and relationship building.<br/><i>Consultation</i> is absolutely required for compliance with NAGPRA and CalNAGPRA.</p> |

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|   |                | <p>The Tribe reiterates its comments regarding the confidentiality of information. It should be automatic that anything shared by a tribe during the cultural affiliation and repatriation process be held confidential, not providing another procedural burden that negatively affects tribes.</p> <p>The "Beyond Consultation Required by Law" section is also concerning. The current practice for University campuses is to adopt their own procedures for addressing cultural affiliation and repatriation. That has proved problematic in that none of the policies demand tribal consultation as part of the repatriation process and some campuses have no individual policy, relying instead on the current policy which likewise has no consultation mandate. It is clear from decades of failed compliance at some campuses that leaving the adoption of these policies and procedures to individual campuses is problematic at best. The intent of AB 2836 was to establish clear and binding policies on all campuses to prevent inconsistent application of the law. This Policy must include the consultation mandates and process, rather than leaving it to each campus under some strategic repatriation plan. Otherwise, it is likely that the status quo will continue and tribes will continue to face barriers to repatriation. As drafted, the Policy circumvents one of the key principals necessary for efficient and timely repatriation - consultation with the tribal communities whose ancestors sit on museum shelves awaiting return to their resting places. Additionally, the language regarding "inviting" tribes to discuss repatriation strategies and noting that campuses "should collaborate" with tribes to organize such meetings has no enforcement. How will campuses "invite" tribes? How can campuses be held accountable to this suggestion when there is no absolute requirement and no guidance? Similarly, the use of "should" and "collaborate" likewise lack enforcement and "collaborate" suggests something less than actual consultation with tribes. The Tribe cannot emphasize enough that the era of University-driven policies and procedures regarding repatriation are over. The Policy must include tribes at all junctures of the process - not just suggest "collaboration" and "invitation."</p> |             |



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| 180 | V.B. Consultation | <p>B. Consultation Between The Tribes And The UC Needs To Be Front And Center In This Policy, Instead The Importance Of Consultation Is Hidden Through The Pages Of The Policy And Its Position Of Priority Is Non-Existent. Consultation is not a one and done process, nor is it something that should be attempted lackadaisically. Up to this point in time, there has been only one UC Campus (UCLA) who has attempted to consult with our Tribe. Only one UC Campus who has gone through their Culturally Unidentifiable Inventory and acknowledged that we are the aboriginal land tribe and/or non-federally recognized tribe that would best be consulted in the repatriation and reburial of their “possessed” Native American ancestral remains, funerary goods, and sacred cultural items. Yet, our Tribe has not been asked to participate in consulting on what those items are or are what they mean to our people. Instead, we’ve simply been notified that they exist. Consultation, in California, is defined as “the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement.” In the UC Policy’s definition section, you simply state that the term consultation shall be the definition provided in NAGPRA, even though California Health and Safety Code Section 8025(a)(3) required the UC to utilize the definition of consultation as that found in California Government Code Section 65352.4, as quoted at the beginning of this paragraph. There is absolutely no commitment by the UC that they will honor a meaningful definition of consultation, therefore, there is no commitment by the UC to engage respectfully with California Native American Tribes or other tribes for that matter. Consultation is key to successful repatriation and reburial efforts by the UC. The UC therefore MUST develop a tribal consultation policy that reflects just that - a policy that acknowledges the importance of consultation and sets out clear guidance to its campuses and Locations on how tribal consultation will be implemented, in what stages consultation shall be required, and how UC representatives shall be held accountable in their interactions with tribal individuals (direct descendants) and tribal governments.</p> | <p>Consultation definition has been revised. See response to comment 85.</p> <p>We will also add flowcharts/guidance on Consultations, including all points at which there should be communication with the tribes.</p> <p>While the prior policy required campuses to consult in preparing their inventories and summaries, and upon request, the new draft policy requires a proactive review and consultation of all CUI determinations, regardless of whether a tribal request has been received, and engagement in consultations with potentially affiliated tribes, including California Indian Tribes under CalNAGPRA.</p> |

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| 181 | V.B. Consultation | <p><del>"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 a deep working knowledge and understanding with NAGPRA, CalNAGPRA, and other relevant laws and regulations; (b) familiar a deep working knowledge and understanding with the repatriation process; and (c) knowledgeable capacity to conduct positive and respectful 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."</del></p> <p>[Comment regarding preceding sentence: This should be at the start of the paragraph, both positions are required to be able to do this work. No one should be hired to be the Campus Repatriation Officer that cannot engage in ethical, positive relationships with tribes. If this is a part of their duties and they are not capable of it then they should be terminated!! I image a large campus to require more staff, but this work should be at the higher level.]</p> | <p>We accepted many of the recommendations made here, but moved these to the Roles and Responsibilities section, where we describe the role. The job requirements (deep working knowledge, understanding of NAGPRA/CalNAGPRA, etc.), however, were inadvertently missed and will be captured in Version 3 of the policy. See also response to comment 101.</p> |
| 182 | V.B. Consultation | <p><del>"The Liaison Campus Repatriation Official 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 Campus Repatriation Official shall also be responsible for assisting Native American Tribes and Native Hawaiian organizations in accessing ancestral human remains and cultural items and necessary associated documentation, 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 with appropriate campus officials."</del></p>   | <p>We accepted many of the recommendations made here, but moved these to the Roles and Responsibilities section, where we describe the role. See also response to comment 101.</p>   |

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| 183 | V.B. Consultation | <p>"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 <del>reasonable</del> opportunity to present information regarding cultural affiliation orally or in writing. <u>All draft reports and notices shall be provided to the Tribal representatives for review and comment before final submission.</u>"</p>   | <p>"Reasonable" is standard in access requests to make sure UC can feasibly meet request. Consultation and repatriation flowcharts will be included in Version 3 of the policy; we will included opportunity for the tribe to review and correct information presented to the UC committees, NAHC and National NAGPRA there.</p> |
| 184 | V.B. Consultation | <p><del>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.</del></p> <p><u>Comment:</u> Is it assumed that all information shared by Native American Tribes and Native Hawaiian organizations in consultation is confidential unless otherwise stated. Before disclosing information it should be reviewed by the Tribe for accuracy and completeness. Original information should not be kept in a place that can be viewed by anyone outside of the campus NAGPRA official and their staff unless explicit written permission has been given. Otherwise, is shall not be disclosed unless required by law.</p> | <p>See response to comment 21.</p>   |

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| 185 | V.B. Consultation | <p>B. The Policy Fails to Provide Guidance Concerning the Term “Consultation” which Forms the Cornerstone of Any Effective Repatriation Process and Violates State Law</p> <p>As previously noted, the cornerstone of any effective repatriation process must be consultation necessary for reevaluating previously identified culturally unidentifiable remains and items, assessing repatriation requests, and to make offers to transfer control required under federal regulations. Meaningful consultation is essential to the repatriation process. As previously noted, the Legislature documented the existing UC’s repatriation policy’s failure to include consultation with California Native American tribes resulting in their exclusion from the repatriation process. (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(9).)</p> <p>The Draft Policy defines “consultation” to mean a “process conducted in accordance with 43 C.F. R. §§ 10.5, 10.8(d), or 10.11(b).” Not only does this definition fail to provide guidance in conducting consultations, it requires some degree of legal expertise to locate and interpret these federal regulations. And even then, the cited regulations fail to define the term or provide any guidance in conducting consultations. At the same time, the Draft Policy omits any reference to California law which does provide such a definition and guidance, and which is purposely included in AB 2836, the legislation mandating the UC systemwide Policy (Gov. Code, § 65352.4; Health &amp; Saf. Code, § 8025, subd. (a)(2)(D)(3) (In developing a UC policy, the term “consultation” has the same meaning as defined in Section 65352.4.))</p> <p>Later in the Draft Policy under “Procedures,” it calls for “meaningful consultation,” including “the timely process of seeking, discussing, and considering carefully the views presented.” (Draft Policy at p. 19.) The failure to include this language in the definition of the term “consultation” is confusing. While this language is an improvement over the previous definition of the term used in the Draft Policy, it omits language from California law requiring that consultations also be conducted “in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement” and “in a way that is mutually respectful of each party’s sovereignty.” (Gov. Code, § 65352.4.) This is a significant oversight and deviation from California law because the Draft Policy only requires the UC to consider carefully the views presented without expressly requiring that tribal cultural values and sovereignty over their ancestors’ remains and related cultural items be assessed a part of any meaningful discussion in an effort to reach agreement.</p> | <p>We have adopted many of the recommendations in this comment. Below is a brief summary of changes.</p> <p>Definitions have been cleaned up to more closely align with both NAGPRA and CalNAGPRA, including using the definition of Consultation at Government Code § 65352.4.</p> <p>We added references to CalNAGPRA throughout the policy.</p> <p>UC will continue to work toward incorporating more specific guidance/flow charts on Consultation and Repatriation processes, working with Workgroup, NAHC and UC practitioners (specifically including UCLA).</p> <p>We defined “NAGPRA-eligible human remains or cultural items or NAGPRA-eligible collection” as human remains or cultural objects that are required be captured in a NAGPRA/CalNAGPRA inventory or summary.</p> <p>We moved sections regarding proactive actions to the Repatriation Implementation Plan and deleted the section on “Beyond Consultation.”</p> |

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|   |                | <p>To confuse matters even more, the Draft Policy under the section entitled “Beyond Consultation by Law,” mandates that 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.” Use of the phrase “NAGPRA-eligible collection” suggests that consultation is confined only to federal law and that conducting consultations concerning cultural affiliation, repatriation and disposition are “beyond” what is required by law, when nothing could be further from the truth. (See 43 C.F.R. §§ 10.5(b), 10.8(d), 10.9(b), 10.11(b); Health &amp; Saf. Code, § 8011, subd. (b).) Further, by delegating this to the campuses, the Draft Policy frustrates the Legislative purpose behind AB 2836 to create systemwide policies to avoid repetition of the UC’s past history “of inconsistent application of federal and state repatriation laws. . . .” (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(9).)</p> <p>The result is a glaring flaw in the Draft Policy violating California law and affecting the entire repatriation process. Despite its central importance, the policy expressly fails to recognize tribal cultural values and sovereignty during consultation concerning the tribes’ own ancestors’ remains and cultural items, thereby perpetuating “prejudicial policies against California Native Americans” acknowledged by the Governor in an Executive Order. (Governor’s Exec. Order No. N-15-19 (Jun. 18, 2019); (Health &amp; Saf. Code, § 8025, subd. (a)(2)(D)(3).)</p> |             |

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| 186 | V.B.1. Consultation | <p>“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.”</p> <p>Comment: Must also include consideration of tribal perspectives of respect and meaningful.</p>   | We agree. We will add a flowchart/guidance on Consultation to Version 3 of the draft policy to incorporate these suggestions.  |
| 187 | V.B.1. Consultation | <p>“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).”</p> <p>Comment: This liaison must have a background that has instilled familiarity and knowledgeable about tribal values and culture. This Liaison must also have authority to work with UC wide officers and committees.</p> | <p>We will add job skills to the Repatriation Coordinator role.</p> <p>We have added, “The Repatriation Coordinator shall be issued appropriate delegation of authority to effectively implement this policy” to address the authority issue raised by the commenter.</p> <p>See also responses to comments 101 and 181.</p>   |
| 188 | V.B.1. Consultation | <p>“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.”</p> <p>Comment: what are the limits/boundaries of study and research by tribes and academics?</p>   | <p>In terms of access by the tribes, we modified this sections to state, “...for the purposes of Consultation toward Repatriation or Disposition and cultural or spiritual care.” See also response to comment 178.</p> <p>In terms of access by academics, access will not be allowed on Human Remains and/or Funerary and Sacred Objects without the explicit approval of tribes. See section V.H.4 of the draft policy.</p> |
| 189 | V.B.1. Consultation | <p>“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.”</p> <p>Comment: There needs to be some detail about how this confidentiality is going to be effectuated; these details should be worked out with the tribal community.</p>  | <p>The repatriation and consultation flowcharts/guidance the University is working on for version 3 of this policy will several touch points with the tribe and allow for tribal review and correction of documents presented to the committees, National NAGPRA and the NAHC.</p> <p>See also response to comment 21.</p>   |

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| 190 | V.B.2 Beyond Consultation Required by Law  | <p>"We appreciate the addition of the section titled: Beyond Consultation Required by Law (page 20)."</p> <p>The draft Policy states that UC campuses with knowledge of existing NAGPRA-eligible human remains and cultural items in their possession have already submitted inventories and summaries (page 20). But does this mean that ALL such inventories and summaries have been completed and submitted for ALL campuses? This Policy also does not address the large volume of culturally unidentifiable inventories at several UC campuses. The Policy should have a process for revisiting these culturally unidentifiable (CUI) inventories to see if cultural affiliation can be established, rather than waiting for Tribes to make a request, and reasonable deadlines incorporated to see that this important work actually gets done.</p>     | <p>Yes, all campuses with knowledge of existing NAGPRA-eligible human remains and cultural items in their possession have already submitted inventories and summaries. However, if additional Human Remains and/or Cultural Items are found, UC must then evaluate, consult with the tribes, and submit an inventory/summary for those. See section V.C.3 of the policy, Previously Unreported Holdings.</p> <p>Campuses are already required per this policy to re-evaluate CUI. The Repatriation Implementation Plan section was revised for clarity, including the requirement to add timetables. (Note, we gathered these activities and moved them to new section VI, Repatriation Implementation Plans.)</p> |
| 191 | V.B.2 Beyond Consultation Required by Law  | The Committees and the campuses' tribal liaison will facilitate at least twice a year meetings with Tribes to promote repatriation and to explain the process.  | Similar wording and requirements as suggested here have been added to the new Section VI, Repatriation Implementation Plans.   |
| 192 | V.B.2 Beyond Consultation Required by Law  | Some members shared the concern that tribal consultation and approval requirements for access for research and instruction seems like potentially a very divisive issue. It is not difficult to imagine a situation when touching a sacred object (including human remains) in an invasive way (extracting a sample of tissue for DNA analysis or carbon dating) is viewed by different parties in irreconcilably different ways.   | UC would rather err on the side of caution. If all tribes described in Section V.H.4 do not agree to requested research access, access will be denied.   |
| 193 | V.B.2 Beyond Consultation Required by Law  | The Committees and the campuses' tribal liaison will facilitate at least twice a year meetings with Tribes to promote repatriation and to explain the process.  | See response to comment 178 regarding policy sections on activities beyond those required by law.  |
| 194 | V.B.2. Beyond Consultation Required by Law | <p><del>To the extent permitted by UC and tribal resources, campuses will invite tribes seeking repatriation or disposition to attend regularly scheduled meetings to visit campus and 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.</del></p> <p>To the extent permitted by UC resources, campuses will should, as requested, 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.</p> | We deleted this section, but moved portions to the new section VI on Repatriation Implementation Plans.  |

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| 195 | V.C 3. Reevaluations and Previously Unreported Holdings | In section C. "Inventories and Summaries," p. 23, "3. Reevaluations and Previously Unreported Holdings." – Commenter can see that there should be a moratorium on the handling of human remains and cultural items under this policy, but it is less clear that the University can restrict research to certain topics, in this case, to inquiry into whether NAGPRA and CalNAGPRA policies should apply. A more reasonable approach would be to permit research that does not involve handling of the remains or items to continue until it has been established that one of those policies applies. | Out of respect to the spiritual and cultural tenets of tribal communities, we prefer to err on the side of caution in cases where the newly discovered items may potentially be NAGPRA/CalNAGPRA-eligible.   |
| 196 | V.C 3. Reevaluations and Previously Unreported Holdings | Page 20, C: Is there a deadline for campuses who have not completed inventories? If not, shouldn't there be?<br>Page 23: Is there a deadline for each campus to come up with a plan to review existing materials that may contain Native American or Native Hawaiian remains or cultural items? If not, shouldn't there be?<br>The funding commitment to repatriate remains seems weak.<br>Typo: Page 24, 4: "A campus may access..." instead of "A campus may accession...."   | See response to comment 190.<br><br>Each campus is required to formulate a plan with timetables to review existing materials that may contain Native American or Native Hawaiian remains or cultural items<br><br>This is not a typo. Our intent is that campuses <i>not</i> add to their collections (i.e., "accession"), except as provided in this section.   |
| 197 | V.C 3. Reevaluations and Previously Unreported Holdings | Page 23: 1. It would likely be valuable to also add proactive review/consultation for the identification of associated funerary objects in consultation in addition to cultural affiliation. 2. In order to avoid any confusion that new scientific studies are not being initiating in order to complete this, perhaps a sentence to the nature of "Proactive review of information does not require or warrant new scientific studies" should be added.   | Associated funerary objects were added per this recommendation (which was echoed by others). For Previously Unreported Holdings it's possible that there is no existing information to rely on. For academic research, note that the restrictions in Section V.H.4 would apply.<br>Though tribal consultation is required for re-evaluations of CUI, we will consider how we can strengthen this section to clarify that the intent is not to warrant new scientific studies.<br>(This section was split in two; we moved the proactive review of CUI language to new section VI., Repatriation Implementation Plans.) |
| 198 | V.C 3. Reevaluations and Previously Unreported Holdings | The secure placement--and the prohibition of handling--of "all newly identified human remains or cultural items that are thought to be potentially subject to NAGPRA or CalNAGPRA" creates a circularity issue. Not only is there no reasonable, universal standard by which to determine which cultural items might be subject to NAGPRA's various object categories, but in most cases human remains and cultural items need to be subject to research and handling in order for a determination to be made.  | We believe we must err on the side of caution and treat all items that may potentially be NAGPRA/CalNAGPRA-eligible with great care. However, we recognize that some level of handling may be necessary to help establish whether the human remains or items are Native American; the policy allows work in furtherance of the campus' responsibilities to make determinations as required by NAGPRA/CalNAGPRA.  |



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| 199 | V.C. 3 Reevaluations         | Cultural affiliation: Concern expressed that re-evaluation of cultural affiliation would warrant/justify new scientific studies.  | See response to comment 197.   |
| 200 | V.C. 3 Reevaluations         | The Tribe supports the specific prohibition in the final paragraph of the Policy at page 23 of 37 relating specifically to requiring a cease of research and handlings of collections that are subject to re-evaluation (culturally unidentifiable inventory) and holdings that were previously unreported during the inventorying process. The Tribe supports this prohibition because these are the resources in which the University holds greatest responsibility of care to non-federally recognized tribes. It also prohibits access to researchers or academic investigators from handling our ancestors remains without first consulting with tribes- a process not embraced by all UC campuses and Locations. This is the type of guidance UC campuses and Locations need to have provided to them through this Policy for respectful repatriations. Tribes must be included in ALL STAGES of the repatriation process and this specific paragraph of the Policy achieves this goal. | We agree. We will also add a Consultation flowchart/guidance to involve tribes at all key points.  |
| 201 | V.C. Inventories & 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 <u>or provided an accounting of all culturally unidentifiable ancestral remains and funerary items.</u> "   | This suggestion is not accepted because this is statement is about the UC official Inventories and Summaries submitted to National NAGPRA. |

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| 202 | V.C. Inventories & Summaries   | <p>“Notwithstanding the above, as required by law and this Policy:</p> <p>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 control, it must complete its inventories and summaries as appropriate by law; and</p> <p>2) Campuses with existing inventories and summaries must update these should regularly review their unclaimed notices and all ancestral remains and funerary items labeled culturally unidentifiable when:</p> <p>a) They locate previously unreported holdings or collections that may include the human remains of Native American or Native Hawaiian ancestors or cultural items;”</p> <p>[Comment: redundant with number 1. Unless you mean additional items or remains from previously submitted notices. Then you would provide an update.]</p> <p>“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;</p> <p>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”</p> <p>[Comment: See my comment in a). These are two separate issues. If they are CUI campuses should be following 10.11. This should be a separate statement.]</p> <p>An update is otherwise required pursuant to NAGPRA, 43 C.F.R. § 10.13,8 or other applicable law.”</p> <p>[Comment: CalNAGPRA?]</p> | <p>Suggestions adopted from this comment:</p> <p>-We dropped the use of the word “stewardship” in this section.</p> <p>-We integrated CalNAGPRA.</p> <p>Other suggestions made in this comment have not been adopted because Subsection 1 applies to campuses that have never completed an Inventory or Summary because they have previously not been known to have any NAGPRA-eligible Human Remains or Cultural Items, while Subsection 2 applies to campuses that <i>have</i> submitted an Inventory or Summary and subsequently needs to submit an update.</p> |
| 203 | V.C. Inventories and Summaries | <p>Page 24: "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."</p> <p>Comment: Annually or is there a timeframe for when these should be reported?</p>  | <p>Clarified by revising as follows: “By September 30 of each calendar year, or date otherwise recommended by the Systemwide Committee, 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.”</p>  |

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| 204 | V.C. Inventories and Summaries | <p>One of the key problems identified by the Tribe in our experience and in discussions with other tribes who have encountered repatriation issues is the inventory and summary process required by both the federal and state statutes. This section of the Policy is one of the key ways to effect repatriation and unfortunately, falls way short of that goal.</p> <p>The Policy suggests that inventories and summaries already completed are sufficient by limiting the instances in which an inventory must be updated. The majority of inventories and summaries were developed nearly 20 years ago. The changes in available information, both through University channels and the ability of tribes to engage in these processes has grown incredibly. 20 years ago, the majority of tribes in California were struggling to survive, having limited to no resources to devote to repatriation efforts. With the advent of different economic development ventures, tribes today have far more resources to engage in these processes. It is simply unacceptable to presume that inventories prepared two decades ago are accurate. The Policy assumes that these inventories and summaries remain accurate, which is likely false in the majority of instances. The University cannot rely on outdated information to ensure compliance with AB 2836 and the culturally unidentifiable human remains regulations passed in 2010. The goal of this Policy and of federal and state law is to return all Native American human remains and cultural items to their tribal communities. The only way to ensure that goal is met is to require an affirmative duty to update all inventories and summaries for collections still in University holdings not subject to current NAGPRA/CalNAGPRA claims.</p> <p>Looking at item 2(c), the Tribe notes that the Policy seems to assume that information will be received by the campus, causing a need to reevaluate the cultural affiliation or number of items in the inventory or summary. This again places the burden on tribes to reach out to campuses, rather than placing a burden on campuses to proactively outreach to tribes (as UCLA has done). In the Tribe's own experience, Berkeley informed our staff that the campus waits for tribes to make claims, rather than seeking affiliated or potentially affiliated communities to return human remains and cultural items. Tribes cannot claim items they do not know are in the University's possession and without an affirmative duty to seek such information, campuses will be allowed to hold collections indefinitely. This simply maintains the status quo for many campuses and does nothing to alleviate the issues which gave rise to the passage of AB 2836. Overall, the update section is drafted in such a way as to limit the University's mandate to repatriate all of its Native American human remains and cultural items.</p> | <p>Section V.C recognizes all points at which we must update our inventories or summaries (see section V.C.2 a) through d)). We added a clarifying note that "new information" includes information obtained during Consultations conducted pursuant to Federal NAGPRA and CalNAGPRA, and in the course of campus review of existing inventories and summaries that list Human Remains and Cultural Items as Culturally Unidentifiable, pursuant to Section VI of the Policy.</p> <p>We have also clarified by separating out text that pertains to re-evaluations of CUI (see new section V.I., Repatriation Implementation Plans) from text pertaining to inventory or summary updates (to report previously unreported holdings, see section V.C.3 in version 2 of the policy).</p> <p>Per new Section VI, the policy requires that Repatriation Implementation Plans include a description of the process to be undertaken <i>proactively, regardless of whether a tribal request has been received</i>, to review and update previous CUI determinations, <i>in consultation with the tribes</i>. UC additionally intends to more clearly require/highlight the requirement that campuses MUST initiate tribal Consultation (in accordance with both NAGPRA and CalNAGPRA) on their CUI collections with tribes from whose tribal or aboriginal lands the remains originated, without waiting for a tribe to request such consultation. Note that if a tribe makes a request, that case will be prioritized. Also note that it is not our intent to revoke prior determinations of cultural affiliation; the re-review is only for prior <i>CUI</i> determinations. For cases where there has been a determination of cultural affiliation, new section VI of the Policy requires outreach to those tribes to invite repatriation requests.</p> |

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|   |                | <p>Under section 1 (Inventory Process), it is not clear when consultation is required because of the preceding section which limits the instances under which an inventory or summary must be prepared or updated. What is the practical effect of this section if there is no requirement to review all existing inventories and summaries in consultation with tribes?</p> <p>Additionally, the Policy states that if cultural affiliation cannot be determined, then the remains and funerary objects will be classified as "culturally unidentifiable." However, the Policy fails to require the next steps as provided in the federal regulations. Section 10.9(g) of the regulations requires that museums report the inventory information for culturally unidentifiable human remains to the National NAGPRA program who will send the information to the Review Committee. The Review Committee then makes recommendations for specific actions for disposition of such remains to the Secretary of the Interior. The Policy as drafted would simply stop the process at determining that remains are culturally unidentifiable, allowing a campus to retain possession indefinitely. However, the regulations do not allow the University to simply continue holding these remains. Rather, the regulations demand that the Review Committee suggest disposition actions, which is consistent with the mandate, not the suggestion, that Native American human remains be returned to tribal communities. The Policy falls short on not only compliance with the law, but also the intent of all NAGPRA statutes and laws which is the expedient return of Native American human remains and cultural items.</p> <p>Another glaring omission is a clear requirement to adopt policies and procedures to repatriate currently "culturally unidentifiable" human remains. AB 2836 has an explicit mandate to adopt these policies (see Public Resources Code § 8025(a)(2)(D)), and without that requirement, the Policy is in violation of the statute. It seems that any requirement for addressing culturally unidentifiable remains is buried within the Policy and in fact, the requirements that are there are inconsistent with the federal regulations. The Policy must include a standalone section dedicated to culturally unidentifiable remains with a clear process on how to meet the mandates of the regulations.</p> <p>This section also provides that campuses will "make available" Notices of Inventory Completion to tribes, as required by law. This is another example where the failure to conduct consultation with tribes and obtain case</p> | <p>In addition, UC will add detailed flowcharts/guidance (in version 3 of the policy) for the consultation and repatriation procedures, including all points at which the campus must communicate with the tribe. The tribes will also be given an opportunity to review and correct all notices.</p> <p>Reference to "existing information" is consistent with NAGPRA, and means that new studies are not necessary; however, we <i>will</i> consider supplemental information (provided by either UC or the tribes) -- this is one of the purposes for re-engagement in consultations. The consultation process (that we will insert in Version 3 of the Policy) will begin with UC providing to the tribe all information we have gathered about the human remains or items in question.</p> <p>Regarding NAGPRA Section 10.9(g), we agree that Federal NAGPRA requires that institutions report to National NAGPRA those human remains and cultural items that are determined to be "culturally unidentifiable." The Policy recognizes this by specifying that campuses are to provide inventories and inventory supplements (which must identify when human remains and cultural items have been determined to be culturally affiliated and when they have been determined to be culturally unidentifiable) to federal agencies, lineal descendants, and to tribes and Native Hawaiian Organizations as required by law (as well as, in the CalNAGPRA context, to the NAHC).</p> <p>We have also highlighted dispositions under to § 10.11 by creating a new subsection (V.E.5).</p> <p>We are working on procedural guidance for how to conduct comprehensive campus-wide reviews for NAGPRA/CalNAGPRA-eligible Human Remains and Cultural Items that have not been previously reported.</p> |

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|   |                | <p>studies has resulted in a Policy that will not assist with repatriation. With respect to the Tribe's claim with Berkeley for ____, a Notice of Inventory Completion was submitted to the National NAGPRA Program which failed to include all the tribes previously determined affiliated by the Navy. This resulted in those tribes submitting their own "claims" even though the finding of affiliation should have been for another Tribe, not specifically the Tribe as drafted in the Notice. Berkeley then used these "claims" to solicit claims from another 30 tribes, delaying the repatriation of our ancestors indefinitely (the Tribe notes that because of this tactic, the ancestors held by Berkeley could not return home with their other 549 relatives, who were reburied on ____ on October 31, 2019). Had it been required that the Notice be reviewed and approved by the tribes involved in the claim, the Tribe would have noted the error before publication and the repatriation would have been finalized and our people would have journeyed home together. To avoid these issues, Notices must be reviewed and approved by the tribes involved prior to publication, not just "made available."</p> <p>In addition, the last paragraph in this section further limits repatriation by stating that "existing information" fulfills the requirement of providing information to tribes who request it to supplement information in the inventory. The Policy then says, "if feasible and agreed to by the campus, the campus may perform further research in response to tribal requests..." This is one of the consistent problems with repatriation - campuses deciding when and what information should be used to update existing inventories. The reliance on "existing information" suggests that current inventories, no matter how long ago they were prepared, reflect the currently available information. If given a choice on whether to engage in "further research," how many campuses will willingly comply with such requests? It is very likely that this will result in, once again, maintaining the status quo, resulting in human remains and cultural items remaining in the University's possession.</p> <p>Under section 2 (Summary Process), the Tribe has the same concerns regarding these provisions. It is not clear if existing summaries must be updated, in consultation with tribes. The same issues are presented here as with the inventories as many summaries were completed 20 years ago. If the mandate of federal law is to return these items to tribal communities, the Policy must include required processes to ensure that such repatriation occurs. Further, the Policy requires a claim by a tribe, rather than proactively reaching out to determine affiliated communities. This again</p> | <p>Regarding the receipt of new materials, the Policy stipulates that Human Remains only be accepted if the primary purpose is repatriation.</p> <p>For other cultural items, in the rare circumstance that they are donated by someone with the right of possession, the Policy does not require repatriation.</p> |

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|   |                | <p>maintains the status quo and will not assist in the return of these items for the reasons we identified above.</p> <p>Subsection 3 (Reevaluations) is also troubling because its focus is extraordinarily narrow. The proactive approach required for identifying collections of previously unknown Native American human remains should be applied for the entire Policy, not just in these specific instances. While the Tribe endorses the proactive approach to locate unknown remains and cultural items, that approach must be explicit for the entire Policy.</p> <p>Furthermore, the reliance on campus strategic repatriation plans is very problematic. One of the Tribe's major concerns is that the procedures for addressing culturally unidentifiable remains are hidden here and the Policy is not consistent with the requirements of the federal regulations. Further, there is no requirement that tribes be involved in the development of these plans which will result in the continuation of policies and procedures that effectively reject repatriation. The Tribe also questions whether this section is in compliance with AB 2836 because the legislation requires a systemwide policy for repatriation, and this section seems to delegate the development of those policies to each campus. For the reasons identified above, that is very problematic and will only maintain the status quo for some campuses.</p> <p>Even more concerning is that the Policy requires tribes to request reevaluation of previous determinations that human remains and cultural items were culturally unidentifiable. The main problem is that this is contrary to federal law. 25 C.F.R. § 10.11 requires each campus with culturally unidentifiable remains to consult with tribes. Specifically, § 10.11(b)(2) requires the museum to initiate consultation with tribes from whose tribal lands the remains were removed, or from whose aboriginal lands the remains and cultural items were removed. Nowhere in the Policy is this requirement included or referenced. The regulations place an affirmative duty on museums to consult with tribes who may be culturally affiliated (based on the location from which the remains and cultural items were taken), whereas the Policy continues to place the burden on tribes. The Policy must be consistent with federal law and must be revised accordingly. The Tribe also notes that as drafted, the provisions regarding culturally unidentifiable remains is extremely disjointed and is mentioned in several places throughout the Policy, rather than having a dedicated section. Aside from the concerns noted above, this will result in confusion and misapplication of the Policy and federal law.</p> |             |

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|     |                                | <p>Under subsection 4 (New items), there should be an affirmative duty to seek immediate repatriation of such collections. The intent of this section was to provide a temporary location for items that otherwise might be lost or destroyed, but was not intended for such items to remain in the University's possession.</p> |  |
| 205 | V.C. Inventories and Summaries | <p>Section says if there is no inventory yet it must be done but the section does not provide any mechanism or timeline. When does it have to be done? Where will the funding/staff come from?</p>   | <p>Inventories and Summaries have been submitted to National NAGPRA, however, Section V.C recognizes all points at which we must <i>update</i> our inventories or summaries (see section V.C.2 a) through d)). We added a paragraph to clarify the required timelines: "In accordance with NAGPRA § 10.13, Summaries must be completed within 6 months and</p> |

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|     |                                |  | Inventories within 2 years of locating a previously unreported holdings or collections, absent an extension obtained under §10.9(f)."   |
| 206 | V.C. Inventories and Summaries | Concerned that UC's with no NAGPRA eligible collections wouldn't be present or involved. They might find things later, and won't know what to do –delays will ensue.   | The policy requires a Point of Contact for those campuses with no known collections. We added a requirement that they be knowledgeable about NAGPRA and CalNAGPRA.  |
| 207 | V.C. Inventories and Summaries | Human remains: The group discussed concerns regarding the identification of human remains. Who is conducting this work? Do they have the expertise to make these identifications? What is the timeline for accomplishing this? How will campuses be held accountable for this work? Are campuses identifying ancestors and materials in medical schools, libraries, etc.?  | Repatriation Implementation Plans now require a timeline. For re-review of previous CUI determinations, campuses must consult with tribes. For review of previously reported holdings, we have added a requirement that campuses engage the assistance of subject matter experts (e.g. osteologists, anthropologists, or tribal leaders, etc.). See also response to comment 204. |
| 208 | V.C. Inventories and Summaries | I think it would be important to outline to what extent the research would be conducted to make determinations about affiliation for previously unaffiliated remains. Destructive? Minimally invasive? Non-invasive? While this determination of the extent of research goes beyond the language in NAGPRA, I feel that the policy should at least include that research would be as minimally invasive as possible. | As the definitions of minimally invasive or destructive analysis, and how tribes feel about these procedure vary, we will consider addressing this concern by adding this as a point of discussion in the consultation process.   |



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| 209 | V.C. Inventories and Summaries | <p>With regard to V.C.1., the Tribe is concerned that there is no timeline or deadline by which each campus is to complete inventories of ancestors and associated funerary objects in its collections. There is also no timeline stipulated with regard to the time it will take for the NICs to be reviewed by the Campus Committee, or the time permitted for the approved by the Chancellor to be given. There is also no date set for the submission of the annual report mentioned in this section.</p> <p>With regard to V.C.2., the Tribe is concerned that there is no timeline or deadline by which each campus is to complete summaries of unassociated funerary objects, sacred objects, or objects of cultural patrimony in its collections. There is also no timeline stipulated with regard to the time it will take for the NIRs to be reviewed by the Campus Committee, or the time permitted for the approved by the Chancellor to be given. There is also no date set for the submission of the annual report mentioned in this section.</p> <p>With regard to V.C.3, the Tribe is concerned that there is no timeline or deadline by which each campus is to devise a plan, or implement said plan, to proactively review previous determinations of culturally unidentifiable human remains in consultation with tribal representatives. There is also no specificity as to when or how often a summary of the results of reviews conducted under this section will be supplied to the Chancellor, Campus Committee, or Systemwide Committee. Finally, it is unclear what the timeline would be for revisions to NICs, the review of such revised documents by the Chancellor, or their submission to externals. With regard to V.C.4, the Tribe is deeply concerned about the language that would permit a campus to accession cultural items from an individual or entity demonstrating right of possession. Such rights have been a point of debate since the inception of NAGPRA. The Tribe would encourage re-visitation of this language and, at the very least, require that such potential accessions be reviewed by the Campus Committee and/or Systemwide Committee to ensure cultural appropriateness and whether the transmission of such an object was truly voluntary (and not under duress, for example).</p> | <p>See response to comment 205.</p> <p>We have also added due dates for reports to the committees. The Repatriation Implementation Plans must be in place six months after the committees have been reconstituted.</p> <p>We added a requirement for the committee to evaluate whether Cultural Items have been donated under duress by an individual or entity (who demonstrated the Right of Possession).</p> |

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| 210 | V.C. Inventories and Summaries | <p>The draft states that new information may provide the basis for revising a decision on cultural affiliation or about the number of cultural items listed (page 20). It could be useful if the Policy could provide a few examples of what such information could constitute, including based on the experience of those on the Workgroup or participating in repatriation efforts. Might such be the same or different than those related to the reevaluation of inventories and summaries (page 23)? Also, might this relate to campus strategic plan implementation (page 23)? For example recommending that, in the absence of any evidence to the contrary, tribal identifications meet the preponderance of evidence standard, because evidence has been provided for the identification of a cultural item by an expert opinion, and no contradictory evidence is present. Such guidance would greatly facilitate a baseline for the identification of cultural items based on the expert opinion of tribal representatives.</p> <p>The section on campus strategic plan discusses “experts” to assist in the review of existing materials (page 23). Osteologists, anthropologists, and “similar experts” are cited. What about affiliated tribal representatives, shouldn’t their expertise also be sought? The Tribe has found that review of existing materials is a particularly important time to have tribal input and participation as it helps to collaboratively inform the protocols for counting Minimum Number of Individuals (MNI) and handling of the collections during such reviews. Similarly tribal representatives can often provide key cultural information regarding the identification of cultural items based on cultural knowledge that is not available to individuals outside of the community. Indeed, the Federal NAGPRA process (43 CFR 10.8(d)(4)(iii) and 43 CFR 10.9(b)(4)(iii)) require museum staff to ask Indian tribes what kinds of objects the tribe considers to be sacred objects, objects of cultural patrimony, or funerary objects. The failure of the UC Policy to treat such information as expert opinion illustrates how the proposed policy is in some ways more restrictive than federal NAGPRA. Indeed, given that the proposed Policy requires that the Campus Liaison “review” tribal information to ensure that it is “adequate” (page 23) the proposed Policy clearly and systematically discredits the knowledge of Native American communities at the same time that it privileges the knowledge of academics and museum staff, who are explicitly given the authority to categorize tribal knowledge and identifications as “incorrect or incomplete”. This issue is a tremendous problem the Tribe has encountered at UC Davis and must not be part of a systemwide Policy.</p> | <p>Added footnote:<br/>“This includes new information obtained during consultations conducted pursuant to Federal NAGPRA and CalNAGPRA, and in the course of campus review of their existing inventories and summaries that list human remains and cultural items as Culturally Unidentifiable, pursuant to Section VI of this Policy.”</p> <p>We appreciate the concern expressed here about the consideration of tribal knowledge. We are still considering how best to ensure that tribal viewpoints are fairly considered, without prejudice.</p> <p>We added tribal leaders in the list of subject matter experts the campus can use to make determinations of NAGPRA/CalNAGPRA-eligibility. See also response to comment 80. Consultation with tribes is required for cultural affiliation and repatriation processes.</p> <p>We are still working on the guidance/flowcharts for these processes.</p> <p>We have deleted the sentence referencing Campus Liaison review of tribal information to ensure its adequateness.</p> <p>We added a reference to Section V.H, where we describe our Stewardship requirements to clarify that these are the standards that apply to “secure” potentially NAGPRA/CalNAGPRA-eligible remains and items.</p> <p>This policy requires evaluations to find previously unreported remains or items, but we not yet addressed an obligation for campuses to seek lost items. We can address in Version 3 of the draft policy.</p> |

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|   |                | <p>The proposed Policy states that all newly identified human remains or cultural items must immediately be placed in a secure area (page 23). How is “secure area” being defined here? What are its characteristics? Is this area also segregated from other general or potential NAGPRA collections? This section also appears to interrelate with the section on Respectful Treatment (pages 32-33).</p> <p>The all too common situation of missing or lost items from a collection should also be addressed in the Policy. The Policy should be clear about what steps the museum should take to try and investigate the missing items (often human bone, burial, or ceremonial items which would be important to affiliated peoples) as well as to investigate and call back prior loans made without the input of affiliated peoples. Whenever possible, it is best to consider the whole of the collection in repatriation efforts. Steps, protocols, and timeframes should be developed for such efforts and made part of the Policy for consistency across UC campuses. Missing objects are so ubiquitous and problematic within museums that our office has actually prepared internal policy guidance (see attachment) regarding how to identify such loss. We are currently working toward a repatriation with the UC Davis campus in which 25% of the collection was missing or thrown away. Such loss is not acceptable.</p> <p>The reevaluations that result in a revision to campus inventories section (page 24) needs some additional detail to address some of the conflicts the Tribe and other tribes have encountered with UC reevaluations. How will human remains be counted? This is a particular area of inconsistency across UC campuses and warrants some specificity in the Policy. The Tribe prefers less handling of collections to prevent breakage, loss, and spiritual violations, and therefore generally prefers more of a lot approach and setting the MNI at 1. However, it has encountered at least one UC campus (UC Davis) that insisted on setting a maximum number of individuals which resulted in excessive handling and harms. Our understanding is that this egregious and damaging handling was, in part, one of the catalysts for the legislation (AB 2836) that resulted in the formation of the Workgroup and the revised Policy.</p> | <p>This policy contains a section on Stewardship and proper handling, but not on how we count remains. We acknowledge differences between campuses (and indeed between tribes), but the goal is to manage the process in consultation with the tribes, and in compliance with the regulations. We believe this is an area that the Systemwide Committee may be able to advise on.</p> |

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| 211 | V.C.1 Inventory Process | 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... <b>commenter added:</b> Include: Tribal Cultural Resources Departments and Tribal Historic Preservation Officers | We added “and persons designated by tribal representatives or traditional religious leaders” to ensure that the persons with whom we consult have been approved by the tribe. |

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| 212 | V.C.1. Inventory Process (Human Remains and Associated Funerary Objects) | <p><del>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.</del></p> <p><del>2. Summary Process (Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony)</del></p> <p><del>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</del></p> | We will consider moving this section to an appendix. |

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|   |                | <p>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.</p> <p>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.</p> <p>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."</p> <p>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.</p> <p>Comment: unnecessary except where it goes through UC's procedures and that should probably be in the guidance document.</p> |             |

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| 213 | V.C.1. Inventory Process (Human Remains and Associated Funerary Objects) | <p>"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."</p> <p>Comment: The best available expertise must include knowledgeable tribal representatives that hold information not available to non-tribal experts.</p> | We agree. This is why consultation with the tribes is required.   |
| 214 | V.C.3. Reevaluations   | "Have you considered biological materials derived from bone that are NOT bones? DNA extracts, etc.? Other parts of ancestors! If the tribes consider these to be ancestral remains, then they are subject to NAGPRA/repatriation"  | We have not yet resolved this issue. We will discuss with the Workgroup.                                  |
| 215 | V.C.3. Reevaluations   | Associated funerary objects: Re-evaluation of identification of associated funerary objects also necessary.  | We added Associated Funerary Objects.   |
| 216 | V.C.3. Reevaluations and Previously Unreported Holdings                  | Page 22: The proactive reevaluation plan is an unfunded mandate that will require considerable effort and additional staff if it is to be executed within a reasonable timeframe, especially at UC Berkeley where a large percentage of individual sets of human remains are culturally unaffiliated according to the 1993 inventory. What resources could be available to support this important activity?  | UC policies do not address funding resources; campuses will need to address these matters.                |
| 217 | V.C.3. Reevaluations and Previously Unreported Holdings                  | <p>"Compliance with NAGPRA, CalNAGPRA, and this Policy is a UC-wide responsibility. Proactive efforts are required across UC to ensure that all human remains and cultural items 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 <del>Liaison</del> campus NAGPRA Official-or Campus Point of Contact potential NAGPRA-covered-eligible human remains or cultural items."</p>   | This section was updated as requested (though note the role now belongs to the Repatriation Coordinator). |

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| 218 | V.C.3. Reevaluations and Previously Unreported Holdings | <p>"As part of the campus strategic repatriation plan, to update their reported inventories and summaries, campuses shall:</p> <p>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 <u>Liaison Campus Repatriation Official</u> or Campus Point of Contact. Campuses should engage the <u>appropriate expertise of an osteologist, an anthropologist, or similar expert</u> to assist in this review."</p> <p>[Comments: 1) Preliminary Assessment Task Forces should be created by the Chancellor or their designee with the Office of the President to cover all UC land holdings to assist the Chancellor or his designee to determine a) if and where all Native American and Hawaii collections and ancestral remains are located b) if any of them are NAGPRA eligible or require consultation to further make determinations c) recommend next steps for compliance with repatriation laws, if necessary or recommend a Point of Contact be designated. A report of findings will be provided to the UC Office of the President and the Chancellor. No campus or UC land holding should be considered without NAGPRA eligible collections until this assessment has been completed.]</p> <p>"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 <u>Liaison Campus Repatriation Official</u> or Campus Point of Contact.</p> <p>3) <u>Devise a plan to proactively review previous determinations of culturally unidentifiable human remains and funerary object to ensure compliance with NAGPRA Section 10.11</u> and in consultation with tribal representatives, re-evaluating originally considered evidence, as well as any newly available evidence or information. <u>Provide the Campus NAGPRA Committee all new Notices of Inventory Completion or dispositions as appropriate.</u></p> | <p>Per NAHC request, this text has been moved to section VI.</p> <p>Many of the edits suggested (or a close approximation) have been adopted.</p> <p>We have not integrated a "Preliminary Assessment Task Force," but note that section V.C.3 requires all campuses to assess whether they are in possession or control of previously un-reported NAGPRA-eligible human remains or cultural items.</p> <p>The purpose of the review of CUI (now in Section VI) is to evaluate whether the original CUI determination should be updated. This evaluation will occur in consultation with the tribes. In addition, the Repatriation Implementation Plans require outreach to promote consultation and UC/tribal relationships.</p> |
| 219 | V.C.3. Reevaluations and Previously Unreported Holdings | <p>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 <del>in the aforementioned re-evaluation plan.</del></p>   | <p>We have adopted suggestion.</p>  |



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| 220 | V.C.3. Reevaluations and Previously Unreported Holdings | <p>"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 <u>under the sole control of the Campus NAGPRA Official for inventory and appropriate care and access</u>, 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 <u>and applicable laws</u>. 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."</p>  | <p>We have not accepted the full recommendation because we do not want to place all authority of the remains and cultural items under the authority of a single person. However, we added a reference to Section V.H to clarify the standards under which potentially eligible remains or items must be held.</p> |
| 221 | V.C.3. Reevaluations and Previously Unreported Holdings | <p>Reevaluations that result in a revision to campus inventories shall be <u>updated by the Campus NAGPRA Official and these and all supporting documents will be reviewed by the Campus Committee upon completion and approved by the Chancellor or Chancellor's designee prior to being finalized for submission. The Campus NAGPRA Official will then ensure they are forwarded to the Systemwide Committee Chair and President's Designee for final approval.</u> Upon approval <u>by the UC President or their designee</u>, the <del>campus</del> <u>Campus NAGPRA Official</u> will <del>make the inventory available to federal agencies</del> <u>submit the Notices and summaries to National NAGPRA office for publication in the Federal Register. If a CalNAGPRA determination, then the process will follow these procedures. lineal descendants, and Native American Tribes and Native Hawaiian Organizations will be notified as the process progresses and when the Notices are submitted and published,</u> 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."</p> | <p>We have deleted this paragraph, but will capture process points in a flowchart in Version 3 of the draft.</p>  |
| 222 | V.C.3. Reevaluations and Previously Unreported Holdings | <p>"The <del>campus</del> <u>Campus NAGPRA Official</u> shall annually provide to the Campus NAGPRA Committee an overview of all materials, <u>new cases, updates for existing cases, tribal consultations, and future work found or reports received of previously unreported Native American or Native Hawaiian human remains or cultural items</u> in accordance with this section, <u>policy and all applicable laws, including a description of the items, tribes consulted, outcomes, and status.</u>"</p>   | <p>These edits were not accepted because not all reported findings will end up being NAGPRA-eligible, thus, the summary to the committee should be of all reports and materials found. If this results in new inventories or summaries, the committee would have seen it anyway.</p>                              |

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| 223 | V.C.3. Reevaluations and Previously Unreported Holdings               | <p>“As part of the campus strategic repatriation plan, to update their reported inventories and summaries, campuses shall:</p> <p>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 <u>the tribal community</u>, an osteologist, an anthropologist, or similar expert to assist in this review.”</p>   | <p>Per NAHC recommendation, we separated out discussion of previously reported holding from CUI reviews. We have clarified that consultations with tribes are required in the review of CUI determinations, and we added tribal leaders in the list of subject matter experts that may be used to evaluate whether an item is NAGPRA/CalNAGPRA-eligible.</p> <p>See also response to comment 204.</p> |
| 224 | V.C.3. Reevaluations and Previously Unreported Holdings               | <p>“As part of the campus strategic repatriation plan, to update their reported inventories and summaries, campuses shall:</p> <p>1) Devise a plan to review existing materials”</p> <p><u>Comment:</u> Tribal presence may be required during these reviews of existing materials in the search for human remains and cultural items.</p>   | <p>See response to comments 204 and 223.</p>  |
| 225 | V.C.4. Receipt of New NAGPRA-eligible Human Remains or Cultural Items | <p>“UC will not accept <del>any new stewardship of</del> 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.”</p> <p>[<u>Comment:</u> A note should probably be added that this excludes all health related matters where the individual is providing consent.]</p> <p>“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.”</p> <p>A campus <u>will not accept NAGPRA-eligible cultural objects, except upon the request</u></p> <p>[<u>Comment:</u>...see paragraph above.]</p> <p>“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.”</p> | <p>We added a notation to clarify that donations made under the UC Anatomical Donation Program are not covered by this policy.</p> <p>We deleted the word stewardship in this context.</p> <p>See response to comment 209 regarding review for donations made under duress.</p>   |
| 226 | V.C.4. Receipt of New NAGPRA-eligible Human Remains or Cultural Items | <p><b>Comment:</b> What about cultural items that may accompany the human remains, such as funerary objects? Who will determine that these cultural materials are not cultural items under NAGPRA? Why would it be ok to accept NAGPRA cultural items and not human remains?</p>   | <p>We will add “and Associated Funerary Objects” in version 3 of the Policy because we agree it makes sense to keep these together if we are accepting the Human Remains.</p>   |

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| 227 | V.D. Cultural Affiliation | I am concerned that the UC system continues to rely on "federally recognized" definitions for cultural affiliation. To comply with CEQA, you should change that to "federally recognized tribe or tribal community as noted by the Native American Heritage Commission." That ensures that you are in compliance with state law as well as federal law. This also ensures that all Indigenous peoples of California will be able to reclaim their ancestral burials and burial artifacts. Thank you. | NAGPRA/CalNAGPRA are the primary laws applicable to this policy. Under CalNAGPRA, tribes designated as California Indian Tribes by the state NAHC are able to file claims, regardless of whether they are federally recognized, and the UC Policy provides for repatriation or disposition of ancestral remains and cultural items to California Indian Tribes in accordance with that law, consistent with Federal NAGPRA.<br><br>The California Environmental Quality Act (CEQA) is a law that requires public agencies to measure and, where possible, mitigate environmental impacts of development projects and major land use decisions. While it does include provisions requiring tribal consultation, and while there may be some valuable insights to gain from experience with tribal consultation in the CEQA context, this Policy does not pertain to CEQA compliance. |
| 228 | V.D. Cultural Affiliation | Part D, additional verbiage should include Non-Federally (State) recognized Tribes.  | We have added sections to address cultural affiliation under CalNAGPRA.   |
| 229 | V.D. Cultural Affiliation | Page 24 of 37. D. Cultural Affiliation: we want non-federally recognized tribes included in this   | See response to comment 228.  |

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| 230 | V.D. Cultural Affiliation | <p>Determining cultural affiliation has been one of the most contentious and often complained of components regarding repatriation claims with the University. Campuses have required near scientific certainty regarding cultural affiliation, which is contrary to the law. Further, campuses have failed to consult with tribes regarding their cultural affiliation information, which has led to erroneous decisions. The original intent of NAGPRA was not to create a system designed to fail meaning that it set out to establish a framework that would allow tribes to claim human remains and cultural items without substantial burdens. It is imperative that this Policy clarify the requirements for establishing cultural affiliation, including deference to tribal knowledge regarding the community's ties to human remains and cultural items.</p> <p>Under section 1 (Types of Evidence), the Policy needs to clarify that tribes need not submit information for all categories of evidence referenced, but that evidence can be one form or a combination thereof. Some campuses erroneously require tribes to provide evidence in all of the referenced categories which is not the requirement of federal or state law. The Policy should clearly state such to avoid any confusion or misinterpretation. Further, that section states tribal information will be given "equal weight," but it is unclear what that means. Tribal knowledge should be given deference, not some amorphous standard of "equal weight." One of the major obstacles of repatriation and cultural affiliation determinations is the rejection of tribal knowledge as valid. The Tribe faced this exact issue with its NAGPRA claim with Berkeley. Our tribal information was rejected as less evidentiary than other information provided by a tribe that submitted a joint claim of repatriation. In fact, in a letter from the campus, the Tribe's religion and oral tradition was dismissed as "poetry." The Policy as drafted gives tribes no certainty that their information will be considered valid and provides no guidance as to how equal weight would be determined. It is time that the University allow tribes to use their own traditional knowledge about their ancestral territories and material culture to demonstrate cultural affiliation.</p> <p>Furthermore, this section must explicitly state that cultural affiliation need not be demonstrated with "scientific certainty." § 10.14(f) clearly states this principal, but it is not reflected in the Policy. Claims for repatriation have been rejected for lack of scientific certainty and the Policy must put an end to this practice as it is contrary to the law.</p> | <p>We appreciate the concern expressed here about the consideration of tribal knowledge. We are still considering how best to ensure that tribal viewpoints are fairly considered, without prejudice. For now, we have made the following changes:</p> <p>We added "Claimants do not have to establish cultural affiliation with scientific certainty,"</p> <p>We clarified that affiliation can be established using ANY of the lines of evidence, which includes folklore, oral tradition, historical information. Policy states Tribal knowledge shall be considered with equal weight.</p> <p>We also added:<br/>"Per CalNAGPRA 8016 (i), "Tribal oral histories, documentation, and testimonies shall not be afforded less evidentiary weight than other relevant categories of evidence on account of being in those categories."<br/>and<br/>"In considering the lines of evidence above, the campus will take into account unique California history."</p> |

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| 231 | V.D. Cultural Affiliation | Campus inventories identify cultural affiliation of human remains and associated funerary objects, however, campus summaries only report summaries to possibly culturally affiliated tribes, with no determination unless there is a claim. The first sentence could be revised to clarify this.  | This correction was made.  |
| 232 | V.D. Cultural Affiliation | <p><del>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: Existence of an identifiable present day Native American tribe or Native Hawaiian organization with standing under NAGPRA; Existence of an identifiable earlier group; and 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.</del></p> <p>[Comment: reference the NAGPRA and CalNAGPRA and talk about what this policy does beyond that.]</p> <p>“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.”</p> <p>[Comment: This is in the regulations. You can also repatriate with joint claims regardless if they have a common ancestor. There are some back to basics information done by National NAGPRA that we are going to include on our website to combat the erroneous application of the regulations by individuals looking to subvert the law.]</p> | <p>We may move this “legalese” to an appendix.</p> <p>To clarify, we agree that the regulations (and this Policy) only require a shared group identity between the present day tribe(s) and the identifiable earlier group.</p> <p>We also clarified that there can be joint claims under new section E.4. Note that text was pulled out of E.1 to its own section in E.4.</p> |

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| 233 | V.D.1. Types of Evidence | Types of Evidence (page 25) states that the perspectives of tribal representatives shall be considered with equal weight as other lines of evidence in determining cultural affiliation. While this might work when tribal participants and museum specialists have equal qualifications, how does this approach work to weigh the relative qualifications and knowledge of museum specialists who may not be as familiar with the affiliated tribe's cultural practices as affiliated tribal members? Without an acknowledgement of the potential relative qualifications of the participants, placing more weight on the knowledge of those who are culturally affiliated in at least some cases, we predict the challenges encountered by tribes seeking repatriation from the UC system will continue despite the revised Policy, as will inconsistent implementations of NAGPRA across the UC campuses. While we believe that it is reasonable to afford greater weight to the knowledge of tribal representatives regarding cultural knowledge of their tribe, it is clear that the proposed Policy does not even grant tribal representatives equal weight. Since the Campus Liaison is responsible for "reviewing" the adequacy, completion, and correctness of information provided by Tribal Representatives, it is clear that the information provided by Tribal Representatives has less weight than other lines of evidence. | See response to comment 230.<br><br>We have also deleted the sentence referencing Campus Liaison review of tribal information to ensure its adequateness                       |
| 234 | V.D.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 <del>must</del> <u>may</u> be established using <u>of any</u> 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 <del>evidence</del> <u>information pulled together in a summary report</u> , 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."   | We changed "must" to "may" as suggested. We kept "evidence," as this the term used in the regulations and it may come from various place, including tribal oral presentations. |

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| 235 | V.D.1. Types of Evidence                       | <p>"Campuses must ensure that tribes have publicly available access to a clear and transparent description of the requirements any necessary information for submitting claims or requests, including the minimum information needed, and the legal criteria/thresholds required for repatriation/disposition."</p> <p>[Comment: The determination is made by the totality of information provided at the time of decision making. It does not require an academic publication and the person on the street should be able to see a reasonable decision of them being more likely than not affiliated.]</p> <p>"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)."</p> | The language in this comment was removed because transparency about the process is already stated at the top of in Section E.  |
| 236 | V.D.1. Types of Evidence                       | <p>"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."</p> <p>Comment: Including tribal experts. There is a tendency to regard experts as academic when the expertise is often tribal.</p>  | See response to comment 230.   |
| 237 | V.D.2 Evidentiary Standard and Burden of Proof | <p>"Pg 26 says "Such a finding will not be ruled out solely because of <b>some gaps in the record</b>." That has to be more explicit – what gaps? That can be made more clear."</p>  | We added the reference to NAGPRA § 10.14(d) where this comes from. It is meant to be helpful in case there are gaps in the evidence provided by the tribes because of lost records, etc. |

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| 238 | V.D.2 Evidentiary Standard and Burden of Proof  | <p>We are also concerned with the apparently expansive reading of the law leading to the passage labeled "Burden of Proof" (pg. 26). This passage seems to go well beyond the "preponderance of evidence" threshold for establishing cultural affiliation found in the statute. Preponderance of Evidence is of course a well-known legal standard meaning only "more likely than not" -- an evidentiary bar set intentionally low by congress. Again, we are given pause by our experiences with the PHM. The museum has to date refused to return one of our ancestors left at their door anonymously with a note identifying her as one of our own. The available evidence then is slim. But what exists points to her "more likely than not" being our ancestor. We fear that the proposed "burden of proof" definition goes beyond what is required by NAGPRA and will give license to hostile museum personnel resisting our ancestor's return to her homeland.</p> <p>We are particularly bothered by the language, "the available evidence must be sufficient to establish a reasonable basis..." Again this goes well beyond the "more likely than not" legal threshold and appears to award power explicitly not granted by the NAGPRA statute to the museum. When combined with the proclivity shown by the PHM to read the definition of Native American in a dishonest way, we are concerned that this passage gives them permission to return to business as usual denying that ancestors of many tribes are Native American as defined by NAGPRA.</p> <p>We urge that you strike this entire "Burden of Proof" paragraph, as quoted above, from the policy.</p> | We deleted the burden of proof section, including the phrase quoted here.   |
| 239 | V.D.2. Evidentiary Standard and Burden of Proof | <p><del>Under federal NAGPRA, determinations must be made by a preponderance of the evidence (see also Preponderance of Evidence in Section II. Definitions).</del></p> <p><del>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.</del></p> <p>[Comment: Reference the applicable laws and only add process as is useful and transparent.]</p> <p><del>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.</del></p>   | We deleted the Burden of Proof paragraph. See also response to comment 230. |



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|     |                                   | [Comment: Reference the applicable laws and only add process as is useful and transparent.]   |  |
| 240 | V.E. Repatriation and Disposition | Page 26 of 37. E. 1. We Absolutely disagree with. We request non-federally recognized tribes have equal rights to repatriation and disposition. Page 28 of 37 # 1 and #2 We Absolutely disagree with. We request non-federally recognized tribes have equal rights to repatriation and disposition.   | We have added sections to address cultural affiliation under CalNAGPRA. Section V.E.2 addresses claims for disposition by non-federally recognized tribes, and V.E.3, claims for State Cultural Affiliation by California Indian Tribes. |
| 241 | V.E. Repatriation and Disposition | I appreciate that the UC is accepting of the deaccessioning of non-NAGPRA/CALNAGPRA remains and cultural items. While the text here in this section (5) states that deaccessioning is to be in accordance with campus policies and procedures, I do believe that the UC should provide at least minimum guidelines. While deaccessioning guidelines might fall out of the scope of this document, I do believe guiding principles that carry the weight of the UN Declaration on the Rights of Indigenous Peoples, would be beneficial. | These decisions are most appropriately made by the campus.<br>See response to comment 255.   |
| 242 | II. Definitions                   | #4a may not apply to all historic tribes in each area. Not all tribes are seeking federal recognition status  | Unfortunately, this definition is dictated by CalNAGPRA.   |

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| 243 | V.E. Repatriation and Disposition | <p>With regard to V.E., the Tribe is concerned about granting each campus permission to establish a unique process by which tribes must submit requests for repatriation or disposition. Permitting this autonomy in process development, including decisions pertaining to the minimum information necessary to be included in a claim, will create an undue burden on tribes that have collections across multiple campuses. The Tribe strongly encourages the Policy be written in such a way as to include an appendix/attachment that provides a Claim Request template that is to be universally used by all UC locations.</p> <p>Additionally, please clarify what is meant by making the information to be contained in a claim "publically available." Where would such information be made accessible to all tribes across the nation with ancestors and NAGPRA items in UC collections?</p> <p>Furthermore, with regard to Campus Committee recommendations regarding repatriation and disposition requests, the Tribe would recommend denoting a timeline within which the Chancellor or Chancellor's Designee will review the recommendations and provide written approval for an action to take place.</p> <p>Finally, as noted before in an earlier section, the Tribe does not find that requiring repatriation and disposition to occur "in accordance with accepted professional museum standards" to be in line with supporting and honoring culturally appropriate treatment protocols. In some instances these two "standards" will be in conflict with one another.</p> | <p>We will be adding flowcharts/guidance on consultation and the repatriation to help standardize the process.</p> <p>We have clarified the section on the minimum requirements so that these are uniform and transparent across the campuses. They include: Name of Tribe or Native Hawaiian Organization, Tribal Representative contact information, pertinent information to support a claim (e.g., information demonstrating Cultural Affiliation or basis for a Disposition Request), and if known, catalog number(s), description(s), and category or categories under which Repatriation is being requested.</p> <p>We also clarified that this minimum necessary information should not be used as a barrier for Repatriation / Disposition or termination of the process.</p> <p>We will consider adding timelines for review of requests submitted to the committees.</p> <p>Language regarding "accepted professional museum standards" has been deleted.</p> |

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| 244 | V.E. Repatriation and Disposition | <p>The Policy allows campuses to develop their own "clear and transparent processes" for requesting repatriation and disposition. However, this is contrary to AB 2836 which requires the systemwide policy to include this process. (See Public Resources Code §8025(a)(2)(B)). The intent of that provision in AB 2836 was to ensure campuses could not adopt their own policies due to the historically inconsistent application of the law across the University system. This Policy must include those procedures and cannot delegate that requirement to each campus.</p> <p>Under the section regarding claims by non-federally recognized tribes, the Policy ignores that CalNAGPRA gives these tribes a right to claim human remains and cultural items from institutions receiving state money. As noted above, the requirements of CalNAGPRA must be incorporated into this Policy.</p> <p>Subsection 3 addresses culturally unidentifiable human remains and cultural items. The Tribe notes again that the disjointed nature of the Policy with respect to this issue is confusing and will lead to problematic implementation. It is strongly suggested that one section be dedicated to this requirement. The Tribe's major concern, however, with this section is that it completely ignores part of the federal regulation. Under section 10.11, each campus must consult with tribes as noted in the Policy when there is a request or when an offer to transfer custody is made. However, the regulations have another consultation requirement under 10.11(b)(2), which is consultation with tribes from whose tribal land or aboriginal lands the remains and cultural items were removed. The express intent of this regulation was to return even "culturally unidentifiable" remains to tribal communities, thus the requirement to proactively consult with tribes most likely to be affiliated by virtue of where the remains were taken. The Policy is not only inconsistent with the regulations, but actually misstates this requirement by stating that, "Upon receipt of a request, a campus must initiate consultation" with tribes from whose tribal or aboriginal lands the items were removed. That is not what the regulations require and the Policy must be revised to accurately reflect the law.</p> <p>In addition, the Policy should clarify that in determining aboriginal lands, reliance on an Indian Claims Commission, Court of Claims, treaty, Act of Congress, or Executive Order may be used, but is not the only way to demonstrate such lands. The statute is clear in the use of the word "may" as being one way to demonstrate such lands, but is not the only way to do so. Given the historic reliance complained of by tribes on ways to avoid</p> | <p>UC is adding flowcharts/guidance on the consultation and repatriation to help standardize the process.</p> <p>CalNAGPRA has been incorporated. We have added sections to address State Cultural Affiliation under CalNAGPRA. Section V.E.2 addresses claims for disposition by non-federally recognized tribes, and V.E.3, claims for State Cultural Affiliation by California Indian Tribes.</p> <p>See also response to comments 77, 204, 230 and 243.</p> <p>We will add a requirement in Version 3 of the Policy that the campus must provide the reason for any denial of a claim or request.</p> <p>Note: "Deaccessioning" is used in this policy to refer to transfer for non-NAGPRA items. See response to comment 60 regarding Dispositions.</p> |

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|   |                | <p>repatriation, the Policy should clarify that those are not the only methods by which a tribe's aboriginal territory can be confirmed. In fact, the Policy should include deference to tribal knowledge regarding ancestral territories.</p> <p>Under section 4 (Review of Claims), the Tribe's main note is that any requirements must be clearly understandable to tribes. There must be transparency and the ability of tribes to request clarification if there is a question on what is required. One of the complaints by tribes is that requests from campuses are unclear and that a failure to respond to a campus' request for additional information as the campus deems sufficient has led to a denial or delay in repatriation claims.</p> <p>Regarding section 5 (Deaccessioning) AB 2836 is not limited to only "non-NAGPRA" items. The intent of this section was to offer another avenue for repatriation when a campus may claim that repatriation is not possible. This section needs additional consultation with tribes to develop guidance on deaccession policies.</p> |             |

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| #   | Policy Section   | General Comments  | UC Response   |
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| 245 | V.E.1. Claims for Cultural Affiliation and Requests for Repatriation by Federally Recognized Tribes or Native Hawaiian Organizations | <p>"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."</p> <p>[Comment: There is separate process if the request is for CUI as opposed to a completed Notice where the tribe is already listed. Then we only need a letter with the minimum information and it's done. We let the other tribes know if there are more than one and we set a pick up date. If CUI then the process you outline begins a consultation process with collaborative efforts to make a determination as referenced cultural affiliation.]</p> | W accepted the recommendations made here.                           |
| 246 | V.E.1. Claims for Cultural Affiliation and Requests for Repatriation by Federally Recognized Tribes or Native Hawaiian Organizations | <p><del>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.</del></p>  | We retained this paragraph, but added timelines per other requests. |
| 247 | V.E.2. Claims for Cultural Affiliation by Non-Federally Recognized Tribes  | Perhaps the header should read "Claims by Non-Federally Recognized Tribes" removing the term "cultural affiliation" since the paragraph goes on to read that non-Federally recognized tribes cannot be culturally affiliated under Federal NAGPRA. Perhaps Cal-NAGPRA should be referenced here to clarify claims by California Indian Tribes.  | We accepted this correction.  |

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| 248 | V.E.2. Claims for Cultural Affiliation by Non-federally Recognized Tribes                                  | <p>"Claims for Cultural Affiliation by Non-federally Recognized Tribes"</p> <p>"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)."</p> <p>[Comment: Need to reference CalNAGPRA]</p>  | We integrated CalNAGPRA, and added a section regarding State Cultural Affiliation.  |
| 249 | V.E.3. Requests for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects | <p><del>"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.</del></p> <p><del>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:</del></p> <p><del>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</del></p> <p><del>2) If no request is received, before any offer to transfer control of culturally unidentifiable human remains and associated funerary objects."</del></p> | We retained this section because we believe it's helpful to provide the legal requirements.   |
| 250 | V.E.3. Requests for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects | <p>Federal NAGPRA § 10.11 outlines the process that a campus must follow <del>to complete a disposition of culturally unidentifiable human remains once a determination of culturally unidentifiable has been made for human remains.</del> 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:</p>  | <p>We retained the first phrase recommended for deletion only so that it's clear that this would be a disposition.</p> <p>The regulations do not require disposition of Associated Funerary Objects, so we think it's important to retain the deleted sentence.</p> |

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| 251 | V.E.3. Requests for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects | <p><del>"The campus shall make a good faith effort to</del> will 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)). <del>After an appropriate response period (60 days),</del> <del>9 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.</del></p> <p>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:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol> <p>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)(ii)).</p> <p><del>Comment: It is unnecessary to go into detail where the regulations are just being quoted. This will change with CalNAGPRA, so both should be referenced and details left out."</del></p> <p>[<del>Comment:</del> It is unnecessary to go into detail where the regulations are just being quoted. This will change with CalNAGPRA, so both should be referenced and details left out.]</p> | <p>We will consider moving more legalistic sections to an appendix, however, the Workgroup wanted to make sure campuses did not get mired in perpetual efforts to consult with tribes from whose lands... They felt it was important to insert reasonable guidelines (e.g., 60 days) to ensure that the campus would move forward at some point.</p> |

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| 252 | V.E.3. Requests for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects | <p>"Upon receiving a request, the campus must initiate consultation with tribal representatives and traditional religious leaders of Native American tribes and Native Hawaiian organizations:</p> <p>From whose tribal lands, at the time of the removal, the human remains and associated funerary objects were removed; and</p> <p>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."</p> <p>Comment: Tribes need to have some authority in identifying aboriginal lands..., myths, legends, oral tradition, songs, etc.</p>   | See response to comment 77.  |
| 253 | V.E.3. Requests for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects | <p>"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:</p> <p>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.</p> <p>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."</p> <p>Comment: See comment above. (Tribes need to have some authority in identifying aboriginal lands..., myths, legends, oral tradition, songs, etc.)</p> | See response to comments 77. |
| 254 | V.E.4. Review of Claims and Requests   | "accepted professional museum standards"- This is an area that varies widely among museums and may be hard to define an accepted profession standard. It may make sense to either omit or further define.  | We deleted this phrase.      |



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| 255 | V.E.4. Review of Claims and Requests | <p>The Policy states that 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 laws and regulations (page 29). Please add some reference here to United Nations Declaration on the Rights of Indigenous People (UNDRIP) (page 8) and other authority or guidance that also recognizes that NAGPRA is a human rights law, and add a requirement for consultation with affiliated tribes regarding same. Otherwise, we predict that outcomes will continue to be solely dictated by the interpretations of repatriation standards and laws by professional museum staff applying their view of standard museum practices without regard to tribal viewpoints. In general, this privileging of museum and academic practices has become more entrenched in the proposed Policy and we are concerned that the proposed Policy will merely add more barriers to repatriation for Tribal Representatives. Indeed, the existing barriers to repatriation are so substantial that we have actually prepared internal policy guidance (attached) on how best to identify and navigate such barriers.</p> | <p>We deleted the reference to “accepted professional museum standards.”</p> <p>“Deaccessioning” is used in this policy to refer to transfer for non-NAGPRA/CalNAGPRA-eligible items. We changed the title of this section to clarify its scope.</p> <p>We wanted to acknowledge that the campus is permitted to deaccession items not subject to NAGPRA/CalNAGPRA. However, it would be inappropriate to <i>require</i> that the campus museums deaccession items outside the purview of NAGPRA/CalNAGPRA. These decisions are most appropriately made by the campus.</p> |

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| 256 | V.E.4. Review of Claims and Requests | <p><del>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 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.</del></p> <p><del>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.</del></p> <p><del>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. Comment: this is redundant. Have a claim process listed once and reference the section as needed.</del></p> <p><del>“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.”</del></p> | <p>See response to comments 243 and 255.</p> <p>The Workgroup decided to retain the requirement that the request/claim be responded to within 60 days (even if it repeats the law).</p> <p>The Workgroup and tribes requested specific reference to packaging materials in the Policy.</p> |

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|     |                                      | <p>[<u>Comment</u>: incorporate the first sentence as appropriate into the first claim section. Offering the packaging should be in a guidance document. It's too specific for a policy.]</p> <p><del>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.</del></p>   |                              |
| 257 | V.E.4. Review of Claims and Requests | <p>"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."</p> <p>Comment: This comment is for this sentence, and the identical sentence above: will the list include the actual minimum necessary information, or the name of the type of information only? Please clarify.</p> | See response to comment 243. |

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| 258 | V.E.4. Review of Claims and Requests | <p>"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."</p> <p>Comment: What about photographs of the human remains and cultural items?</p>  | We have not yet resolved this issue. We will discuss with the Workgroup. |
| 259 | V.E.5. Deaccessioning                | For consistency, there should be a UC -wide deaccessioning policy. If not in place yet, then this will need to be developed within 12 months after NAGPRA policy.  | See response to comment 255.   |
| 260 | V.E.5. Deaccessioning                | <p>C. The Policy's Statement On Deaccessioning Is Inadequate.</p> <p>The Policy's statement on deaccessioning is provided for in one sentence. This sentence simply states that campuses, not Locations, may voluntarily deaccession items. What does this mean though? How will items be determined to no longer be part of a permanent collection? Will tribal consultation be required by the UC of the individual campuses and Locations? What is the overarching policy of the UC in regard to the repatriation of these items to California Native American Tribes? What if a campus or Location decides that they do not wish to "voluntarily" transfer these items from a permanent collection for repatriation to a tribe? Simply stating that campuses may voluntarily deaccession a collection is not enough. Missing is an expressed commitment and directive from the UC that consultation in determining deaccession from a collection for purposes of repatriation to a tribe is supported by the UC and campuses and Locations are directed to comply with such requests when the Repatriation Officer deems it is appropriate and/or when the Tribe requests deaccession, with deference to the latter.</p> | See response to comment 255.   |

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| 261 | V.E.5. Deaccessioning            | <p>"Campuses may voluntarily deaccession items that have been determined not to be human remains or cultural items as defined by NAGPRA and CalNAGPRA, in accordance with campus policies and practices."</p> <p>[Comments: If UC controlled items not falling under either NAGPRA or CalNAGPRA are requested by a Tribe, consultation towards transfer, loan, or deaccessioning may begin as allowable by law and/or UC policy. These negotiations will involve all appropriate departments and UC officials. This is a big issue. The UC and campuses have policies that should be referenced. There is due diligence that has to be followed following donation stipulations. You are setting up potential problems.]</p> | See response to comment 255.  |
| 262 | V.E.5. Deaccessioning            | <p>"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., <del>of no less than every two years</del> <b>annual</b>)."</p>  | This suggestion was adopted.  |
| 263 | V.F. Strategic Repatriation Plan | <p>Clarification is needed. It seems unclear in this area. In most of the rest of the document, it looks like UC will be working with non-federally recognized tribes in disposition of the ancestral remains, but on page 28 it states that "unidentifiable remains can go to non-federally recognized tribes but only after receiving recommendation from the Secretary of Interior". This should be fleshed out. Will this be UC's way of not turning over the ancestral remains?</p>   | <p>UC is committed to repatriating to both federally and non-federally recognized tribes. However, we are also obligated to follow both state and federal regulations.</p> <p>See response to comment 27.</p>                     |
| 264 | V.F. Strategic Repatriation Plan | <p>With regard to section V.F., the Tribe requires clarification about when Campus Committees must be appointed and seated. The strategic plan at each campus is to be developed within six months of the seating of the Campus Committees, but it is not clear within what span of time after the UC Policy is adopted that the Committees will be chosen.</p>  | <p>Per CalNAGPRA, UC must obtain nominees for the committees from the NAHC. Assuming we have the NAHC nominees prior to the finalization of the Policy, we expect to expedite selection soon after the policy is implemented.</p> |
| 265 | V.F. Strategic Repatriation Plan | <p>This section is in conflict with AB 2836, which requires the systemwide policy to address repatriation issues. As noted above, the legislation was drafted to ensure that there was a consistent application across the University system with respect to repatriation. Allowing campuses to develop their own processes is inconsistent with the law. Additional consultation with tribes on this section is necessary to understand the University's intent in including it within the Policy.</p>  | <p>UC has engaged in 4 public work sessions and additional One-on-One sessions by request. UC will add Consultation and Repatriation flowcharts/guidance for consistency across UC.</p>   |
| 266 | V.F. Strategic Repatriation Plan | <p>Timeline: The policy calls for a Strategic Repatriation Plan to be produced on each affected campus "within six months of the Chancellor or Chancellor designee's appointment of the Campus Committee" (V.F.). This planning timeline may be too short, especially for campuses that have large collections.</p>  | <p>Campuses are already beginning to think about how they will implement this policy. We think 6 months for a plan will be sufficient. We also note that the policy does not prohibit updates to the plan as needed.</p>          |

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| 267 | V.F. Strategic Repatriation Plan | <p>In regard to the standards for implementing a timeline for the return of remains, the policy allows each campus to set those timelines independently, which makes sense, as every case will be different. Nonetheless, might there be some parameters or limits around the implementation timeline to meet benchmarks?</p> <p>The policy states "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)" (p. 30). There is no indication of who will receive reminders or requests, and the policy does not go into detail on the information that the notifications will contain for the repatriation of human remains. The committee encourages more policy guidance on these implementation issues. We also want to ensure breadth in the notification pool to ensure that all potentially impacted tribes, including non-represented tribes, are made aware of campus holdings.</p>   | <p>We added a sample timeline for the Repatriation Implementation Plans.</p> <p>Each campus is unique and will need to develop their own.</p> <p>We added "to tribal officials" (which is a defined term) to clarify to whom the notices should be sent. We will also add flowcharts/guidelines for the repatriation and consultation processes.</p> |
| 268 | V.F. Strategic Repatriation Plan | <p><del>"Each campus</del> <u>Campus NAGPRA Official</u> <del>with NAGPRA-eligible human remains or cultural items</del> 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:</p> <p>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."</p> <p><u>[Comment: The Campus Repatriation Official should be respectful of Tribe's responsibilities and commitments in developing timetables. No response from a tribe does not mean they are not interested.]</u></p> <p>...</p> <p><del>The campus</del> <u>Campus NAGPRA Official</u> will submit the final strategic repatriation plan to the Campus Committee <u>and the Chancellor or their designee</u>, with a copy to the Systemwide Committee <u>and UC President and/or their designee</u>.</p> | <p>See response to comment 101.</p>  |

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| 269 | V.F. Strategic Repatriation Plan | <p>"The strategic repatriation plan should address campus specific concerns and circumstances, in addition to the following components:<br/>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."<br/>Comment: It will be necessary to work with tribes to determine what a reasonable timeline might be, similar to working out what respectful behavior might be.</p>  | <p>The campus must evaluate their collections and resources, and develop their own plans. They can involve tribes in this task if they think it would be helpful. They can also use this as an opportunity to evaluate whether more resources are needed.</p> <p>The Consultation flowcharts/guidance in development will address respectful behavior.</p>   |
| 270 | V.G. Oversight                   | <p>"The Chancellor <u>or their designee</u> 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). <u>The Campus Repatriation Official will submit a yearly budget in May prior to the start of each fiscal year to the Chancellor or their designee with sufficient resources to complete necessary tasks agreed upon by the Chancellor or the Chancellor's designee and the Campus Committee. It is the responsibility of each campus to sufficiently fund and staff for compliance with applicable state and federal regulations. Time may be assigned for requesting grants and external support.</u>"</p> | <p>We added a requirement to include a budget in Repatriation Implementation Plan.</p>   |
| 271 | V.G. Oversight                   | <p>Edits to last paragraph:<br/>Campuses shall consult with the Campus Committee <u>and Tribes</u>, before making any changes to related campus policies and procedures.</p>  | <p>Campuses are free to consult with tribes regarding their campus policies; however, we do not think it's necessary to build this in as a requirement. There are already two controls in place: 1) review by the campus committee (which has equal UC/tribal representation), and 2) campus policies must be consistent with the systemwide policy, NAGPRA and CalNAGPRA.</p> <p>Note also that campuses only have one year to finalize their local policies (should they choose to develop these).</p> |
| 272 | V.H. Appeals                     | <p>With respect to the V.H. section, the Tribe remains concerned, as highlighted in other sections, with the lack of timelines and/or deadlines associated with Appeals-based actions. The ambiguity of the phrasing "...tribal representatives shall be given reasonable opportunity, upon request, to present their views..." is also troublesome. The Tribe believes the policy would benefit from more detail and specificity regarding how tribes can bring appeals, when, and to whom.</p>  | <p>We edited this section to provide greater clarity on how and to whom to submit a request for an appeal, and to ensure escalation of the issues.</p> <p>We will review to ensure that tribes are provided with the opportunity to present their cases (orally or written).</p>   |

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| 273 | V.H. Appeals   | One of the glaring omissions from this section is consultation with the tribe(s) seeking repatriation. If a tribe makes a request for reconsideration, the Policy provides no requirement for consultation with the tribe at any point in the process. In the Tribe's experience, the Tribe requested reconsideration of the denial of its claim, but was never granted an opportunity to be heard. The appeals process must include mandatory tribal consultation when there is a dispute. The same holdover language regarding a "reasonable opportunity to present their views orally or in writing" is included in this Policy from the old policy. The Tribe knows that this does not work and gives no certainty to tribes as to what a "reasonable opportunity" means. The appeals section needs to be revised, in consultation with tribes. | See response to comment 272.   |
| 274 | V.H. Appeals   | "Tribal representatives who disagree with cultural affiliation determinations or with repatriation and disposition decisions, are encouraged to work with the <del>Liaison</del> <u>Campus Repatriation Official</u> for assistance in resolving disputes."   | See response to comment 272.   |
| 275 | V.H. Appeals   | "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. <u>Campuses are encouraged to develop an appeals process and make it widely available. As soon as a tribal seeks to appeal a copy of the process will be provided to them immediately.</u> "  | See response to comment 272.<br>We also added requirement for campus to make a complaint process publicly available. |
| 276 | V.H. Appeals   | "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."<br>Comment: While working with the liaison is a practical matter, UC should be cautious about relegating tribal communications to subordinate staff; tribal governments must be regarded with the respect due a sovereign nation. High level officers such as the Chancellor and the Campus Committee must be available to tribes.   | See response to comment 272.   |
| 277 | V.H.1. Appeals | Appeals (page 31): We appreciate the statement in the Policy that third-party mediation is encouraged to assist in efforts to reach agreement (page 31). Our experience, however, has been that UC campuses have been reluctant to accept mediation as a tool for resolution. For example, UC Davis, in recent years declined to engage in mediation. Can the Policy be revised to require or at least encourage engagement in valid but "external" processes?  | See response to comment 14.  |



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| 278 | V.H.1. Appeals   | The appeals process appears to be limited to tribal representatives. Should the policy consider a dispute process for faculty or other University constituents? In the event there is not a dispute process for faculty or others questioning determinations, would faculty be limited to lawsuits for considering disputes or grievances and would this potentially unnecessarily delay repatriations?   | At this point, the appeal process is meant to address tribal concerns.   |
| 279 | V.H.2. Multiple Claims for Repatriation or Disposition | Multiple Claims for Repatriation or Disposition (page 32): There is a long history and practice of entities and agencies trying to help manufacture conflict between tribes to then argue that the outcome desired by the entities and agencies is the most reasonable. The proposed Policy states that if UC is unable to determine which requesting party is "the most appropriate", then UC will not repatriate until the requesting parties reach agreement or a court tells UC what to do. The concern here is that those in the UC system who disfavor repatriation will try and create conflict between claimants to then stall the repatriation process. The Tribe has encountered this within the UC system before with both UC Davis and UC Berkeley. How can the Policy be revised in such a way to further prevent this from happening? | Consulting with all tribes with a potential cultural affiliation early in the process should help address these issues.<br>All staff are expected to perform in a way that honors the core principle of this policy: repatriation. |
| 280 | V.I. Stewardship                                       | Section 4 says that there should be no access without permission of affiliated groups to human remains. What about access to associated burial items?   | We added Associated Funerary Objects   |
| 281 | V.I. Stewardship                                       | The provisions regarding access to ancestral human remains for "research, instruction, exhibition or other purposes" should exclude exhibition. Use of Native American human remains for profit is a violation of 18 USC 1170. Exhibition of Native American human remains is abhorrent.  | UC is non-profit, but in any case, we believe leaving Exhibition in this section would provide better protection because it would be <u>prohibited without explicit tribal approval</u> .  |

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| 282 | V.I. Stewardship | <p>With respect to section V.I., the Tribe would add that the soil matrix from ancestors' interment locations and that which adheres to the ancestors and funerary objects, as well as soils that may adhere to other NAGPRA items, needs to also be kept so that they can be offered to descendants or tribes at the time of transfer. The same standard would apply to any residues that may be mineral, ethnobotanical, protein-based, etc. that may have been removed from ancestors or NAGPRA items.</p> <p>The Tribe also objects to the language in V.I.4. proposing to continue the use of ancestors for research, destructive analyses, classroom use, or exhibition for all ancestors, regardless of the status of their cultural affiliation assessment or their status in a pending repatriation/disposition. In other words, prior to full NAGPRA compliance being realized and prior to a formal repatriation or disposition being completed, the Tribe does not support additional research, analyses, educational uses, etc. being performed on ancestors. Such uses are also not condoned for funerary objects (whether associated or unassociated), sacred objects, or objects of cultural patrimony. However, after transfer of ancestors and/or NAGPRA items has successfully concluded, should the descendant or tribe now in possession of the ancestors and NAGPRA items wish to permit research, destructive analyses, classroom use, or exhibition, that would be the sovereign right of that individual or tribe.</p> | <p>The Policy requires return of all packaging materials. Adding a statement regarding soil adhering to remains or items makes sense.</p> <p>If all tribes described in Section V.H.4 do not agree to requested Research, Instruction, Exhibition, or Other Purposes, <u>access will be denied</u>. We believe this sets a very high bar, but at the same time allow research when the tribes want it.</p> |

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| 283 | V.I. Stewardship | <p>In section I. "Stewardship," p. 34 A careful reading of this item suggests that the University is not in fact claiming the right to impose a moratorium on research for any purpose other than that of making a determination about compliance. We emphasize that the University should err on the side of permitting research until a clear case has been made that it is improper, so long as that research does not involve handling the materials while their status is being investigated. For instance, suppose I am an anthropologist studying funerary pots, and I had already sketched some such pots in the possession of the University before the question of their status arose. I should be permitted to use my own sketches, which were made in good faith, and continue research in related publications and other unprotected materials. In order to make crystal clear that this is the intention, we propose a revision that will make this explicit: "...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. Research and instruction that do not require further handling of the objects or remains are permitted."</p> <p>Also on p. 34 is the statement: "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." Under normal circumstances, it is peers in the discipline, reviewing a manuscript or proposal, who declare a project "without scholarly merit." The University should protect every faculty member's right to carry out research as s/he sees fit, in accordance with disciplinary standards, even in the case of human remains improperly obtained in violation of human decency. Ethics, as understood under the first three considerations, may dictate denying a petition for research, instruction, or dissemination of knowledge based on such remains. But we ask that the University policy state explicitly that scholarly merit be determined by faculty members and their academic peers, and that though it is listed last here it be considered as important as each of the other three factors.</p> | <p>The prohibition in V.H.4 of Version 2 of the draft policy does not apply to academic notes, but only to the actual remains and funerary and sacred objects.</p> <p>We have added "as determined by faculty members and their academic peers," to the review for academic merit. However, we did not add a statement about all factors being equally weighted because in fact, research cannot take place unless tribes have provided consent and/or input as required by prior section, and items must be treated with respect.</p> <p>See response to comment 3.</p> |

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| 284 | V.I. Stewardship | <i>Collection or Objects on Loan.</i> It is unclear what the University's procedure is with regard to collection or individual objects on loan. What policy or provisions does the University have in place to ensure that items on loan are properly inventoried and repatriated in accordance with federal and state law? We suggest that the Policy be updated to include process and procedures to ensure that collection or individual objects are not on loan as | We agree. We have a section on loans <i>to</i> UC, and are considering adding a section on loans <i>from</i> UC. We will add documentation and tracking requirements. |

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|     |                  | a compliance avoidance transaction, whether intentional or inadvertent, i.e., to avoid inventory and repatriation requirements.  |  |
| 285 | V.I. Stewardship | Comment: See my comments above under the definition of stewardship. (NOOOOOO! You are conflating several issues. Stewardship: Ethical collections stewardship will manifest in a variety of forms in accordance with the needs, priorities, aspirations, and goals of the material culture and associated descendant communities. We further recognize that stewardship of collections must be conducted in a spirit of consultation and collaboration.) It could be placed here and the term above changed to "Control versus Possession" | We agree. We have dropped use of the word stewardship, except for when we mean the care of Human Remains and Cultural Items.   |
| 286 | V.I. Stewardship | "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 <del>Liaison</del> <u>Campus NAGPRA Official</u> shall be provided a copy of all petitions, including documentation and approvals received from tribal representatives."  | See response to comment 101.   |
| 287 | V.I. Stewardship | "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 <u>and/or funerary objects</u> of Native American or Native Hawaiian ancestors, and (iv) scholarly merit."   | We added Cultural Items (which includes Funerary Objects).   |
| 288 | V.I. Stewardship | <b>Comment:</b> What respectful treatment is must be determined in consultation with tribes.   | We agree. Section V.H.1 recognizes that consultation is imperative for providing care and treatment, and requires campuses to publicly post the means for making a request for traditional care. |
| 289 | V.I. Stewardship | "Each campus with a NAGPRA-eligible collection shall publicly post the means to make a request for traditional care."<br>Comment: What is the public post? How will it reach tribes?   | We can clarify that the campuses are required to post this information on their websites.  |

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| 290 | V.I. Stewardship   | <p>“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.”</p> <p>Comment: UC must keep in mind that the liaison will be working with high level tribal officers and spiritual leaders, and so should, in addition to having appropriate professional credentials, have immediate access to high level UC personnel, as well.</p>   | <p>We agree; this is one of the reasons why we have the Repatriation Coordinator reporting directly to the Chancellor or Chancellor’s Designee.</p> <p>See also response to comment 101.</p> <p>We have also added a section on Complaints so that tribes can register complaints about any processes or treatment (see V.G.2).</p>                  |
| 291 | V.I.1. Respectful Treatment  | <p>“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 <del>NAGPRA-eligible Native American or Native Hawaiian</del> collection shall <del>publicly post the means to make a request</del> collaborate with the affiliated tribe for <u>developing traditional care practices to the extent possible</u>. <del>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.”</del></p>         | <p>We have defined NAGPRA-eligible, so we kept that reference.</p> <p>We accepted language regarding collaboration with tribe.</p>   |
| 292 | V.I.3. Access by Lineal Descendants, Native American Tribes, and Native Hawaiian organizations for Consultation and Cultural or Spiritual Care | <p>“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 <u>with the Campus NAGPRA Official</u>. <u>These requests should be made with sufficient notice, at least a month in advance to allow for adequate preparation and staffing</u>. <del>Tribal representatives shall present evidence indicating approval by their tribal chair to access such ancestral remains and cultural items.”</del></p> | <p>We added suggested additions (except specifically requiring one month’s notice).</p> <p>We retained text commenter proposed for deletion.</p> <p>We felt it was important that appropriate tribal approvals be presented because we had heard concerns about access by unauthorized persons. This helps maintain the security of the remains.</p> |
| 293 | V.I.4 Access to Remains  | <p>The group discussed concerns with past practice of allowing research access to ancestors and NAGPRA cultural items. Does the access policy also apply to funerary objects and other cultural items?</p>  | <p>We added Funerary and Sacred Objects.</p>   |

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| 294 | V.I.4 Access to Remains...                 | I mostly found the sections on research (Section X, D and Section XI) to be thoughtful and well written. However, these sections seem to only deal with research on human remains and not on the other cultural materials that fall under NAGPRA. I think this needs to be cleaned up and similar criteria applied to all NAGPRA related materials. In addition there seems to be an assumption that research on human remains (or other NAGPRA related materials) will only be done "at the behest of" or "in collaboration with" descendent communities. Such collaborative work is, of course, the ideal. However, are we unwilling to permit research on these materials "with the permission of" the affiliated descendent groups, even if that work is not directly "at the behest of" or "in collaboration with" specific tribes? "Collaborative research" has a very specific definition within social science research; are we strictly adhering to that definition? For example, currently much of my own research (on Native American pottery recovered from archaeological sites, but not NAGPRA related), is mostly done with the "permission" of the appropriate descendent community and "in consultation" with them, but it is not "collaborative" research, nor is it done at the "behest" of these tribes. Are we no longer going to permit any research on NAGPRA related materials, even with the express permission of the affiliated tribe, that is not strictly speaking "collaborative"? Worth thinking about. | The Policy allows for collaborative or non-collaborative research on human remains, provided prior approval from the tribes is provided. |
| 295 | V.I.4 Access to Remains...<br>From M Noble | Many tribes have been equally concerned with research access to associated funerary objects. I believe AFO should be treated similarly to human remains in terms of requirements for access.   | See response to comment 293.   |

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| 296 | V.I.4. Access to the Remains and/or funerary objects of Native American or Native Hawaiian Ancestors for Research, Instruction, Exhibition, or Other Purposes | <p>"UC shall not permit research, destructive analysis, classroom use, or exhibition of human remains and/or funerary objects of Native American or Native Hawaiian ancestors, except as outlined below.</p> <p>1) If the remains <u>and/or funerary objects</u> 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.</p> <p>2) If the remains <u>and/or funerary objects</u> of Native American and Native Hawaiian ancestors are culturally affiliated, the campus must obtain explicit written permission of the culturally affiliated tribes.</p> <p>If the remains and/or funerary objects 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.</p> <p>If the remains and/or funerary objects 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.</p> <p>Whether internal or external to UC, all petitioners seeking access to NAGPRA-eligible human remains and/or funerary objects for research, instruction, exhibition or other purposes must provide documentation demonstrating compliance with the above requirements. The Liaison Campus NAGPRA Official <del>should initiate contact</del> <u>is not responsible for contacting with the tribal representative(s) and, but may</u> assist in these efforts as needed.</p> | <p>See response to comment 293.</p> <p>The Workgroup wanted to make sure it was the Liaison (now called the Repatriation Coordinator) that made initial contact, and not a researcher.</p> |
| 297 | V.J. New Requests for Short-term Care and Loans Received from Other Institutions  | <p>While this may be more applicable to campus policies, perhaps the UC could make a statement about the loaning of university holdings to other institutions and museums, to ensure that NAGPRA-related belongings and ancestors are not loaned out, particularly for research or exhibition, without express permission from tribes. From my read, this only addresses loans coming into the campus, not loans going out from campus</p>   | <p>Correct. Final Policy could address loans OUT.</p>  |



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| 298 | V.J. New Requests for Short-term Care and Loans Received from Other Institutions | <p>This item is unrelated to the rest of the document. It reads like an “add on,” that is, hastily stuck in at the end, without proper consideration of how it relates to the rest of the document, nor the ramifications. In short, I recommend that it be removed entirely. If this is considered an important issue, then perhaps a separate policy that pertains to loans should be established (since this policy is specifically about repatriation). I offer some rationale below.</p> <p>1.The basic document describes how this UC policy will pursue “repatriation of Native American and Native Hawaiian human remains and cultural items” and how to “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 &amp; Safety Code §§ 8010-30.” Temporary loans *to* UC faculty or organizations are clearly not relevant to this, as we don’t have the authority to repatriate items that we do not own. They really have nothing to do with repatriation.</p> <p>2.Most of the collaborative projects I have been involved with were never subject to NAGPRA or CalNAGPRA to begin with. They are remains possessed by the tribe and provided to me on a loan basis. Thus, while the remains I have in my possession would be subject to Item J, by virtue of the fact they are Native American, again they are not related to the scope of this general policy as it is stated, which is about NAGPRA and CalNAGPRA (and health and safety code).</p> <p>3.Item J.2 states “UC may accept requests for the short-term care of human remains ... for periods not to exceed two years.” I don’t know where the figure “2 years” comes from, but this is absurdly short. Ten years would be a more reasonable window, although even that is short. Let me explain a typical scenario. Inadvertent skeletal remains are discovered during a construction project, such as trenching for a pipeline. If there is interest, I visit with the Cultural Resource Management company doing the excavation and meet with the tribal representatives to discuss potential analyses. Eventually, I receive samples of teeth or bone to conduct mutually agreed-upon research of historical significance to the tribe, for example, to determine how old the remains are, their genetic relationship to people today, the health of individuals, their diets, and so forth. Typically the rest (the vast majority) of the remains are then reburied according to tribal wishes, with the understanding that the samples provided to me will be partially or completely consumed during analysis. In many cases, no funding for analyses is provided by the developer, CRM company, or tribe. Thus, I must apply for grants, such as National Science Foundation, and</p> | <p>UC is choosing to implement a high bar on research and stewardship on human remains, sacred and funerary objects based on ethical principles. At the same time, such research is permitted if approved by the tribes.</p> <p>We note that extensions to the loan agreements could be approved by the Chancellor or designee.</p> <p>The conditions of Section V.H.2 apply, unless otherwise described in the loan agreement and approved by the Chancellor or designee after consultation with the campus committee.</p> <p>Regarding confidentiality, see response to comment 21.</p> <p>If a committee member has a conflict of interest, they should recuse themselves. The names and affiliations of the committee members can be made available to the collaborating tribe so that they can help identify such potential conflict.</p> <p>We can add a requirement that the collaborating tribe be informed of the UC approval procedures, and their right to identify any concerns or potential conflicts, and to redact confidential information.</p> |

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|   |                | <p>recruit student volunteers to help with the work. This, by itself, can take several years, as first applications to NSF are often rejected and the applicant asked to resubmit. When funding is finally in place, the research then proceeds insteps, with each step informing future steps. For example, we might extract collagen from bone and submit if for radiocarbon dating (typically 6 months turn-around). The results of the radiocarbon date would then inform what other types of research we would conduct, which again could take many months or years. This is because, for example, different DNA extraction techniques would be used for young (500 years) versus very old (10,000 years) remains. In some cases we need to repeat analyses because the initial sample was too small or not well preserved enough. I then often meet with tribal members to discuss initial results, we might publish a preliminary article together, and discuss possibilities for follow-up analyses to answer questions that might come up during the first round of analyses. All of this could easily take 5-10 years. Any remaining material, at the end of the all my analyses, would then also be returned to and presumably reburied by the tribe. Two years is not nearly enough time for a typical project.</p> <p>4.Item J.3.2 states “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.” Section V.I.2 states that all remains be “managed and preserved in accordance with the standards set out by 36 C.F.R. § 79.9(b)(3).” This clearly is at odds with most tribal requests asking for studies of DNA, diet, and so forth, which consumes and does not preserve samples. This needs to be removed.</p> <p>5.Item J.3.3 states that the “Campus Repatriation Official” should enter into an agreement with the tribe (or controlling agent). Since these are not items subject to repatriation, as they are on loan, the “repatriation official” is not a relevant individual. The agreement should be between the qualified individual receiving the loan, who has established a relationship with the tribe and is familiar with the process. Not with someone with no relationship with the tribe and who is not otherwise involved in any of the research or handling of the remains. This is the same as any outgoing loan *from* our museum. We enter into an agreement with the researcher or PI that we would make a loan to, not with someone uninvolved with the basic research who happens to be at the institution.</p> <p>6.Item J.3.4 states “All such agreements shall be reported to the Campus Committee and the Systemwide Committee.” This could violate the needs of some tribes to keep historically-significant research in confidence until they are made public, for example, through a presentation at a conference, dissemination to media outlets, or academic publication. Further, I don’t</p> |             |

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|   |                | <p>see why the various members of the campus and systemwide committees, who will have a range of political viewpoints, need to be aware of collaborative research between a tribe and my lab. Since they do not have any power to stop such collaborative work, this only creates the possibility of people spreading gossip, using it as a political weapon, generating animosity over what is often a very politically-sensitive issue, or “scooping” innovative research a UC lab might be involved in.</p> |             |

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| 299 | V.J.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. <u>All loans and requests for short-term care must be logged by the Campus NAGPRA Official and listed in the annual report along with names and acceptance and return dates and conditions.</u> ” | The suggestion to add documentation requirements will be considered and added in Version 3 of the Policy.   |
| 300 | V.J.2. Care for Loans   | “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. <u>All loans must be logged by the Campus NAGPRA Official and listed in the annual report along with names and acceptance and return dates and conditions.</u> ”   | See response to comment 299.  |
| 301 | V.J.2. Care for Loans   | “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.”<br><br><b>Commenter added:</b> <i>Unless, affiliated Tribes have given explicit written permission for testing, UC should not carry out such functions or take in remains for such purposes.</i>   | Added a note that unless affiliated Tribes have given explicit written permission for testing, the campus may only use minimally invasive procedures and shall not use destructive analysis, including but not limited to DNA analysis. |
| 302 | V.J.3 Conditions for Loans  | Will there be strict penalties for violating terms of loan agreements?  | Faculty are subject to discipline per the Academic Personnel Manual for violating University policies.  |

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| 303 |                | <p>III. THE REEVALUATION OF CULTURALLY UNIDENTIFIABLE REMAINS AND ITEMS FAILS TO COMPLY WITH FEDERAL AND STATE LAW ON REPATRIATION</p> <p>The Legislature has already documented that the existing UC repatriation Draft Policy fails to comply with federal law, specifically Sections 10.10 and 10.11 of the Code of Federal Regulations (43 C.F.R. §§ 10.10 and 10.11 [Sections 10.10 and 10.11.]). (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(12).) The Legislature found that the UC has classified large portions of its remains and cultural items as “culturally unidentifiable” in violation of federal law. (<i>Ibid.</i>) The Legislature found that the UC’s existing policy failed to “equally consider the cultural and religious concerns of tribes . . . and instead is partial to perceived educational and research potential that these human remains and cultural items may have for academia and science.” (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(11).) The reevaluation and repatriation of remains and items previously identified as culturally unidentified is a core requirement for the UC policy. (Health &amp; Saf. Code, § 8025, subd. (a)(2)(D).)</p> | See response to comments 15, 204, and 230. |

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| 304 |                | <p>A. No Framework or Guidance is Provided in the Draft Policy for Campus Reevaluations of Culturally Unidentifiable Remains and Items, Including Time Frames for Completing the Process</p> <p>Despite the Legislature documenting the existing UC policy's failures concerning culturally unidentifiable remains and items, the Draft Policy delegates this responsibility to each campus while failing to provide baseline standards or a minimal framework for campuses to reevaluate their previous inventory and cultural affiliation determinations. The policy requires each campus to:</p> <p>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</p> <p>(Policy at p. 23.) The Draft Policy is contrary to state law which requires the UC to adopt "systemwide" policies governing this reevaluation process. (Health &amp; Saf. Code, § 8025, subd. (a)(2)(D).) No substantive guidance or framework is provided for campuses to follow and even the term "proactively review" is left undefined; one campus's interpretation to "proactively review previous determinations" can be vastly different from another's. Given that many inventories and summaries are well over 20 years old, and many were performed with inadequate consultation, systemwide policies are necessary for mandating reevaluations under specific circumstances across the UC, particularly for older collections. While the Draft Policy neglects to create a framework for reevaluations, it also does not obligate campuses to initiate consultations, including with California Native American tribes, related to culturally unidentifiable items, which would be an integral part of such reevaluations. (See 43 C.F.R. § 10.11(b)(1); Draft Policy at pp. 23-25.) This is a significant omission because meaningful consultations are essential for effective repatriation of these very items.</p> <p>The Draft Policy does not address the need to expedite repatriation given that the obligation to repatriate under federal NAGPRA has existed since 1990 and under CalNAGPRA since 2001. No timeframes or goals are set for campuses to complete the process, with guidance provided for establishing these deadlines, incorporating factors such as the size and scope of collections. And given the UC's history of noncompliance as documented by the Legislature, the Draft Policy needs to set the outside time parameters for even larger collections to meet along with substantial consequences for their non-compliance.</p> | <p>We appreciate all comments outlined in this letter. Below we attempt to address them succinctly.</p> <p>We will add flowcharts/guidance for how campuses are to conduct consultations and the repatriation process.</p> <p>We integrated CalNAGPRA throughout the policy.</p> <p>We added required minimum elements for the Repatriation Implementation Plans, including a sample timeline. The Plans must be provided to both campus and systemwide committees, thus these can be evaluated against each other, and either committee can make additional recommendations (to the President for Systemwide or the Chancellor for campus).</p> <p>We clarified that consultations are required for reevaluations of CUI.<br/>See also response to comment 15.</p> |

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|   |                | As currently drafted, the Draft Policy will result in fragmented and Balkanized processes across campuses, often in conflict state and federal law, with campuses pursuing varied reevaluation plans, some less vigorously than others. |             |

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| 305 |                | <p>B. No Framework or Guidance is Provided in the Draft Policy for Locating Remains and Cultural Items Outside of its Museums</p> <p>The UC is a vast academic and research institution with ten campuses, more than 238,000 students and 190,000 faculty. Both federal and state law require repatriation of remains and cultural items in possession or control of a state agency (or a state agency receiving federal funding) regardless of whether these remains and items are contained within a museum. (43 C.F.R. §§ 10.2 (3)(i), 10.10, 10.11; Health &amp; Saf. Code, §§ 8012, subd. (a), 8015; 8025.)</p> <p>As part of its reevaluation, the UC will need to create a process to identify remains and cultural items located outside of its museums, for instance in its various academic departments, located on and off campus. Here again, no guidance or framework is provided for campuses to follow. The Draft Policy requires each campus to create a policy to:</p> <p>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</p> <p>(Draft Policy at p. 23.) Contrary to state law, no systemwide framework or guidance is provided for conducting this search and no timeframes are created for completing such a process. (Health &amp; Saf. Code, § 8025, subd. (a)(2)(D.) Like its policy for reviewing items previously identified as culturally unidentified, the Draft Policy will result in a fragmented patchwork of campus plans, with campuses pursuing varied searches, some more vigorously than others, with nothing preventing a campus from poorly staffing the effort and otherwise delaying the process.</p> | <p>We are working on procedural guidance for how to conduct reviews for NAGPRA/CalNAGPRA-eligible Human Remains and Cultural Items.</p> |



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| 306 |                | <p>C. The Draft Policy's Updates of Inventories and Summaries Fails to Comply with State law</p> <p>Under its inventory process, the Draft Policy only requires compliance with federal NAGPRA, including in consulting with tribes. (Draft Policy at p. 21.) Further, inventory summaries are only required for a campus "that has a NAGPRA-eligible collection. . . .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." (Draft Policy at p. 22.) State law includes "state cultural affiliation" including California Native American tribes' cultural affiliation to remains and cultural items, which is broader in scope than federal NAGPRA (which is generally confined to federally recognized tribes). (Health &amp; Saf. Code, §§ 8012, subds. (f), (j), 8013, subds. (a)(2), (3), (c).)</p> <p>The Draft Policy requires that inventories be "made available to federal agencies, lineal descendants, and Native American Tribes, and Native Hawaiian organizations, as required by law" without specifying what this entails and without incorporating state law which requires submission to the Commission for publication on its website. (Health &amp; Saf. Code, § 8013, subd. (e).)</p> <p>As to the creation and reevaluation of inventories, the Draft Policy requires that any inventory reevaluations that result in a revision to campus inventories be reviewed by the Campus Committee and approved by the Chancellor. (Draft Policy at p. 24.) Under state law, within 90 days of completing an inventory and summary, the UC must provide a copy to the Commission for publication on its website, which also includes any updated inventories or summaries. (Health &amp; Saf. Code, § 8013, subds. (e) and (i).) In conjunction with reevaluations and updates, the Draft Policy needs to incorporate language ensuring reasonable access to all remains and cultural items as part of these processes, including for California Indian tribes as defined under state law. (Draft Policy at pp. 21-24.) The Draft Policy fails to provide guidance in determining reasonable access, including any presumptions facilitating tribal access. Further, the Draft Policy should provide a procedure for tribes challenging the inventory and reevaluation processes, including expressly permitting appeals of such challenges.</p> <p>The Draft Policy fails to incorporate state law concerning the creation and reevaluation of inventories, including in establishing California tribal cultural affiliation. This is not only vital under state law, but is also an important factor in repatriating items to non-federally recognized tribes under federal law. (See 42 C.F.R. § 10.11(c)(2)(ii)(A).)</p> | <p>We integrated CalNAGPRA throughout the policy, and defined "NAGPRA-eligible" so that it includes CalNAGPRA.</p> <p>See response to comment 15.</p> <p>We added a requirement that campuses must also submit summary/inventory notices to the NAHC, in addition to National NAGPRA.</p> <p>For clarity, we will add California Indian Tribes to the V.H.3 regarding access. See also response to comment 178.</p> <p>We will add Consultation flowcharts/guidance.</p> <p>Per NAHC request, we also made the following edits:<br/>-The Strategic Repatriation Plan was renamed "Repatriation Implementation Plan" and brought to greater prominence by elevating to its own section (VI).<br/>-Elements of the Implementation Plan throughout the policy were brought together in this section.<br/>-We added greater clarity as to its requirements.</p> <p>We clarified tribes can appeal campus decisions to the UC Office of the President. We also added a mechanism for tribes to submit complaints about any campus processes.</p> |

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| 307 |                | <p>D. The Policies Concerning Culturally Unaffiliated Remains and Cultural Items Fails to Comply with Federal and State Law</p> <p>1. The Draft Policy Fails to Include State Cultural Affiliation</p> <p>The Draft Policy limits evaluation of cultural affiliation to federal NAGPRA. (Draft Policy at p. 24.)<sup>2</sup> As previously discussed concerning the Draft Policy’s framework, under the claims process the UC asserts that it “will make every effort to engage with non-federally recognized Native American tribes in the cultural affiliation process” consistent with federal law, without specifying what these efforts will entail or even requiring consideration of state cultural affiliation as required under state law. (Draft Policy at p. 27; (Health &amp; Saf. Code, §§ 8012, subd. (f)); 8013, subd. (a)(3).) As to the types of evidence that may be considered to establish cultural affiliation, the Draft Policy again limits such evidence under “federal statute and regulations.” (Draft Policy at p. 25.) It does so despite the fact that state law requires consideration of “state cultural affiliation” by California Indian tribes. (Health &amp; Saf. Code, §§ 8012, subd. (f)); 8013, subd. (a)(3).) Not only is this required for compliance with California law, but it may be considered as part of the disposition of culturally unidentified remains under federal NAGPRA as well. (43 C.F.R. § 10.11(c)(2)(ii)(A) and (B).)</p> <p>2 The Draft Policy states: “Under federal NAGPRA, all of the following requirements must be met to determine cultural affiliation between a present-day federally recognized Native American tribe . . . .”</p> | <p>We integrated CalNAGPRA throughout, and added a definition for State Cultural Affiliation, and specific sections on State Cultural Affiliation and Claims by California Indian Tribes.</p> <p>We will add flowcharts to clarify the Repatriation process. UC will consult with the NAHC about how to resolve areas of potential conflict between CalNAGPRA and NAGPRA.</p> |

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| 308 |                | <p>2. The Draft Policy Fails to Provide Adequate Guidance in Identifying and Evaluating Evidence of Cultural Affiliation</p> <p>As to the types of evidence that may be considered to establish cultural affiliation, the Draft Policy lists: “geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.” (Draft Policy at p. 25.) But it fails to provide guidance that any one of these alone may be sufficient to identify remains and associated funerary objects and related cultural affiliation.</p> <p>The Draft Policy goes even further by providing that: “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.” (Draft Policy at p. 25.) But nothing in federal or state law requires that tribal perspectives (which is not defined) can only be given equal weight as to other forms of evidence. (43 C.F.R. §§ 10.2(e)(1) 10.14(d); Health &amp; Saf. Code, § 8013, subd. (a)(3).) Rather, “[a] finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence . . . .” (43 C.F.R. § 10.14(d); Health &amp; Saf. Code, § 8013, subd. (a)(3).) There may be instances where, based upon the totality of the circumstances, “tribal perspectives,” or rather “tribal knowledges,” including oral tradition, outweigh other forms of proffered evidence.</p> <p>Further, the Draft Policy contains no guidance explaining that cultural affiliation is based upon a preponderance of the evidence which “should not be precluded solely because of some gaps in the record.” (43 C.F.R. § 10.14(d).) This is a serious omission because historical gaps are inevitable when evaluating tribal knowledge, some of which may contain oral histories, and some of which was systemically and intentionally suppressed throughout the state’s history and dealings with California Native Americans. Recently, the UC has rejected tribal claims as being “incomplete” relying upon “some gaps in the record.” The Draft Policy need to be clear that these “gaps” are insufficient, by themselves, to justify denying claims, particularly when repatriation is otherwise required under federal NAGPRA absent any claims (as discussed in subsection three below). (43 C.F.R. § 10.11(c)(1) and (2).)</p> <p>Beyond cultural affiliation, the Draft Policy omits any discussion of the evidence to be evaluated to determine whether items are “cultural items” as defined under the Draft Policy, including associated/unassociated funerary objects, sacred objects and objects of cultural patrimony. (43 C.F.R. § 10.2((d)(2),(i),(ii),(3),(4).) This also requires evaluating similar</p> | <p>We modified the evidence section in response to this comment as follows, “Cultural Affiliation <u>or State Cultural Affiliation</u>...<u>may</u> be established using <u>any</u> the following types of evidence...”</p> <p>We also replaced the section citing equal weight with language from CalNAGPRA 8016 (i), “Tribal oral histories, documentation, and testimonies shall not be afforded less evidentiary weight than other relevant categories of evidence on account of being in those categories.”</p> <p>Finally, per NAHC request, we added, “In considering the lines of evidence above, the campus will take into account unique California history.”</p> <p>See also response to comment 230 with regard to tribal knowledge.</p> <p>Note Section V.D.2 references NAGPRA §10.14(d), “Such a finding of Cultural Affiliation / <u>State Cultural Affiliation</u> will not be ruled out solely because of some gaps in the record.” For clarity, we also added, “Claimants do not have to establish Cultural Affiliation / State Cultural Affiliation with scientific certainty.”</p> <p>See also response to comment 80 regarding identification of “cultural items”.</p> |

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|   |                | <p>evidence of “geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion” raising similar evidentiary concerns. This initial determination is critical since items may be improperly omitted from inventories because a campus made the determination that they did not qualify as cultural items as defined under the Draft Policy. (Draft Policy at p. 4.) The identification of “cultural items” under the Draft Policy must be incorporated into the repatriation process replete with tribal consultations and an evidentiary evaluation to avoid improper omissions.</p> |             |

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| 309 |                | <p>3. The Draft Policy Fails to Comply with Federal Law by Requiring Campuses to Offer to Transfer Control of Culturally Unidentifiable Items</p> <p>The Draft Policy requires tribes to make requests for culturally unidentifiable remains and cultural items before the UC will consider repatriating these. (Draft Policy at pp. 27-28.) No provision in the Draft Policy exists for repatriation outside the claims and request process for culturally unidentifiable remains and cultural items. (Ibid.) But where no requests are made, Federal NAGPRA actually requires agencies “to offer to transfer control” of these items and remains subject to a descending priority list of tribes based upon the location of where the items and remains were found, or to other tribes willing to accept the remains, including to non-federally recognized tribes. (43 C.F.R. § 10.11(c)(1) and (2).)</p> <p>In an odd twist on federal law, the Draft Policy states that “[i]n the event of multiple requests” a campus “must transfer control” of these items and remains to a “federally recognized tribe located on the land where the objects were removed” or “to tribes located on aboriginal lands subject to a final judgment of the Indian Claims Commission or the U.S. Court of Claims.” (Draft Policy at p. 28.)</p> <p>First, federal law does not require that any requests be made before such a transfer must occur. (43 C.F.R. § 10.11(c)(1) and (2), (ii).) Second, as to aboriginal lands, federal law only states that a final judgment of the Indian Claims Commission or the U.S. Court of Claims is just one method for establishing this fact. (43 C.F.R. § (c)(1)(ii).)</p> <p>Under the Draft Policy, in instances where multiple requests are not made and these two conditions are not met, “the campus may transfer control” to a federally recognized tribe “that has submitted a request or a non-federally recognized tribe.” (Ibid.) But nothing in federal law permits such a process. As mentioned, federal law does not require the need for any requests and has a descending order for such mandatory transfers. (43 C.F.R. § (c)(1)(i)(ii) and (2)(i)(ii)(A)(B).)</p> <p>The failings of the Draft Policy in this regard are significant because in some instances tribes, for various reasons, may not make claims. Federal law nonetheless creates a required procedure for their mandatory repatriation or return, while the Draft Policy fails to do so—even adding an additional barrier by requiring multiple requests before it requires such repatriations. Unfortunately, the Draft Policy does so in spite of the fact that the Legislature documented that existing policy fails to comply with this very federal regulation (43 C.F.R. § 10.11). (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(12).)</p> | <p>We have highlighted dispositions under §10.11 by creating a new subsection (V.E.5). We will also further consider these comments regarding this section of NAGPRA.</p> <p>We deleted reference to multiple requests in this section. We agree it confused matters.</p> <p>We deleted text reading, “that has submitted a request” to allow for pro-active disposition offers to non-federally recognized tribes.</p> <p>See response to comments 27 and 77.</p> |

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| 310 |                | <p>IV. THE DRAFT POLICY FAILS TO INCORPORATE STATE LAW FOR ASSESSING REPATRIATION CLAIMS AND DISPUTE RESOLUTION</p> <p>A. The Draft Policy's Repatriation Claims Process Fails to Incorporate State Law</p> <p>The Draft Policy's repatriation claims process solely relies upon federal NAGPRA. (Draft Policy at pp. 26-28.) Under the Draft Policy, only tribes meeting the criteria for federal cultural affiliation may submit claims for repatriation. (Draft Policy at p. 26.) As the Draft Policy notes, "NAGPRA does not give standing to non-federally recognized Native American tribes." (Draft Policy at p. 27.) Instead, the Draft Policy relegates non-federally recognized tribes to submitting a request for culturally unidentified remains and items under Section 10.11, subdivision (c), even though, as discussed above, under this federal process the UC must be the one to "offer to transfer control" to the non-federally recognized tribe.</p> <p>Not only does state law permit non-federally recognized tribes to make claims for repatriation, but all claims (including from federally recognized tribes) must go to the Commission for publication on its Web site for 30 days. (Health &amp; Saf. Code, §§ 8014 and 8015, subd. (a).) Nothing in federal NAGPRA precludes the UC from also initiating the state repatriation process in addition to the federal process. (Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc. (2007) 41 Cal.4th 929, 936 (Preemption occurs "when simultaneous compliance with both state and federal directives is impossible.")). In fact, the Legislature specifically intended that the UC policy "meet the intent of both federal and state law regarding the repatriation of human remains and cultural items in consultation with California Native American tribes." (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(10).) While the UC Draft Policy asserts that it will comply with both NAGPRA and CalNAGPRA, it fails to incorporate the CalNAGPRA process throughout the Draft Policy, including the claims process. (Draft Policy at p. 9.)</p> <p>By circumventing the Commission, as well as California's non-federally recognized tribes, the Draft Policy perpetuates historical discrimination against California's tribes, defeating one of the Legislature's purposes in enacting CalNAGPRA. (Health &amp; Saf. Code, § 8011, subd. (f) (CalNAPRA intended to: "Provide a mechanism whereby California tribes that are not federally recognized may file claims with agencies and museums for repatriation of human remains and cultural items.").)</p> | <p>We integrated CalNAGPRA throughout, and added a definition for State Cultural Affiliation, and specific sections on State Cultural Affiliation and Claims by California Indian Tribes.</p> <p>See response to comments 306, 307 and 309.</p> |

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| 311 |                | <p>B. The Draft Policy's Claims Review Process Fails to Incorporate State Law</p> <p>Under the Draft Policy, claimants must submit written requests for repatriation and the UC will send a written status update within 60 days. (Draft Policy at p. 29.) After a claim is "accepted" by a campus, the campus committee will engage in consultation under federal NAGPRA. (Ibid.) The campus committee makes a recommendation to the Chancellor or his/her designee who then must approve the request. (Ibid.)</p> <p>But under CalNAGPRA, after the Commission has published the request for 30 days, if there are no other requests or unresolved objections, then the item may be repatriated. (Health &amp; Saf. Code, § 8015, subd. (a).) Nothing precludes the UC from complying with both state and federal law, until compliance with both becomes impossible. (Viva!, supra, 41 Cal.4th at p. 936.) Only to the extent that the two statutes ultimately yield different outcomes would compliance with both become impossible. Not only is compliance with both statutory schemes required under state law, compliance with both substantially facilitates repatriation to a tribe most culturally affiliated with the remains and items fulfilling the purposes of both statutes.</p> | See response to comments 306, 307, and 309. |

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| 312 |                | <p>C. The Draft Policy's Dispute Resolution Process Fails to Comply with State Law</p> <p>Under the Draft Policy, the UC will evaluate multiple claims to determine if the claimant "has a valid request for repatriation/disposition under NAGPRA." (Draft Policy at p. 32.) "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."</p> <p>Under federal law, where multiple requests are made, an agency "must determine by a preponderance of the evidence which competing requesting party is the most appropriate claimant." (43 C.F.R. § 10.10(c)(2).) Presumably, the UC would apply this standard, but the Draft Policy is unclear on this. If the agency is unable to determine which party is the most appropriate claimant, it "may retain the cultural items in question until the competing parties agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or by a court of competent jurisdiction." (Ibid.) Neither state nor federal law recognizes the right of an agency "to provide stewardship" of remains and cultural items, which is a right not defined under the Draft Policy.</p> <p>Under state law, the disputing parties must submit the dispute to the Commission for mediation. (Health &amp; Saf. Code, § 8016, subds. (a), (d).) If the parties are unable to resolve the dispute through mediation, then the Commission must resolve it. (Health &amp; Saf. Code, § 8016, subd. (j).) Nothing in federal law precludes the UC from requiring the parties to mediate their dispute before the Commission, consistent with NAGPRA's language encouraging the parties to resolve their disputes and in relying upon any Commission determinations during this process. The failure to incorporate the state dispute resolution process is significant because it facilitates repatriation, including to California's non-federally recognized tribes, and permits the Commission to exercise its expertise to assist in the process.</p> | <p>We added "by a preponderance of the evidence" as the standard UC would use to try to determine the most appropriate party if we receive multiple conflicting requests for transfer from different Tribes (each of whom have a valid request for Repatriation/Disposition under NAGPRA and/or CalNAGPRA).</p> <p>We replaced "stewardship" with "retain."</p> <p>With regard to disputes, the draft policy explicitly references CalNAGPRA §8016 as an avenue to settle a dispute.</p> <p>With respect to the comment that under state law, disputing parties <u>must</u> submit their dispute to the NAHC for mediation and resolution: We appreciate the issue being raised. It is not entirely clear whether/how this would apply if, for example, a California tribe chooses to make a claim under Federal NAGPRA instead of CalNAGPRA, or if a tribe prefers to bring its request for assistance in resolving a dispute to National NAGPRA. We will give further consideration to this matter.</p> <p>See also response to comment 14.</p> |



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| 313 |                | <p>V. Other Concerns Undermining the Draft Policy</p> <p>A. The Draft Policy Fails to Incorporate State Law Definitions</p> <p>As noted previously, while the Draft Policy states that the UC will comply with both federal and CalNAGPRA (Draft Policy at p. 9), it fails to incorporate state law throughout, including in its definitions. Even though CalNAGPRA contains definitions of many key terms, including “Museum,” “California Indian tribe,” and “State cultural affiliation,” which differ from, or are not defined under, federal NAGPRA, the Draft Policy only incorporates federal law definitions. (Draft Policy at pp. 2-8.)</p> <p>The Draft Policy’s failure to include state law definitions is significant because they extend repatriation to include California non-federally recognized tribes and their cultural affiliation to remains and cultural items. As discussed above, this also results in the Draft Policy’s failure to incorporate the Commission into the Draft Policy’s cultural affiliation, claims, and disposition processes. The Commission is the agency tasked with preventing severe and irreparable damage to Native American cemeteries and sacred sites, including responsibility under CalNAGPRA for facilitating the repatriation process. (Pub. Res. Code, § 5097.94, subd. (g); Health &amp; Saf. Code, §§ 8013-8020.)</p> | <p>We have clarified definitions, and incorporated CalNAGPRA and specific CalNAGPRA definitions.</p> |

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| 314 |                | <p>B. The Draft Policy Skews the Systemwide and Campus Committees Towards Academic Members Without Legal Authority for Doing So</p> <p>Consistent with state law, the Draft Policy creates both systemwide and campus committees. (Draft Policy at pp. 11-18.) The composition of these committees is provided for under state law. (Health &amp; Saf. Code, § 8026, subds. (a)(2) and (b)(2).) The Draft Policy augments this by creating a chair position which must be chosen “from amongst the four UC members.” (Draft Policy at pp. 14 and 18.) But none of the UC members is required to have repatriation experience, unlike the Native American members, and no legal authority exists for imposing this requirement. (Policy at pp. 11-12 and 15-16; Health &amp; Saf. Code, § 8026, subds. (a)(2) and (b)(2).) Because the law does not authorize the imposition of such skewed qualifications for the chair position, the policy must allow the committees to select their own chairs.</p> <p>The Draft Policy also allows the Chancellor or designee to serve as a non-voting member of the Campus Committee. (Policy at p. 16.) This position also is not authorized under state law which clearly intended to maintain a balance between academics and Native American members and it creates a conflict of interest, as the Campus Committee is responsible for making recommendations to the Chancellor or designee, including for evaluating appeals. (Draft Policy at pp. 16 and 31.)</p> <p>The Draft Policy allows the systemwide committee to retain subject matter experts, including the UC’s General Counsel, to assist it in carrying out its duties. (Draft Policy at p. 15.) But the Draft Policy fails to provide a process for assessing need, or for the retention of such experts, including whether the committee should vote on such matters.</p> <p>The Draft Policy also implements its own conflict policy for these committees. (Draft Policy at pp. 14 and 18.) While it requires the UC to maintain the balance in the composition of the committees when appointing substitute members to serve in place of the conflicted member, it fails to explain the process for doing so and does not expressly give preference to California tribes in making these selections involving the Native American members.</p> <p>Even more striking, the Draft Policy fails to define a conflict of interest. A specific definition is necessary here because conflicts may arise where the repatriation involves the specific member’s academic department, museum, or tribe.</p> | <p>We revised this section so that the Chair can come from either the tribal or University members.</p> <p>It might be important for the President/Chancellor or Designee to listen to the discussion. The balance is maintained, however, because this person is a non-voting member.</p> <p>The appeal process now elevates disputes over campus decisions to the UC Office of the President.</p> <p>Subject Matter Experts will be brought in only when the committee seeks and invites them. The committee will undoubtedly establish their own protocols to decide upon these matters.</p> <p>We recognize the need to manage conflicts of interest (COI) in the committee, including potential conflicts for both tribal and UC members, and have added language to the policy specifying that the committees will establish procedures for managing COI.</p> |

UC Native American Cultural Affiliation and Repatriation Policy  
All Comments (Native American Tribes, NAHC, & UC) on Policy Ver. 1 and UC Response

| #   | Policy Section | General Comments   | UC Response   |
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| 315 |                | <p>Conclusion</p> <p>As currently drafted, the Draft Policy will result in fragmented and Balkanized processes across campuses, often in conflict state and federal law, with campuses pursuing varied reevaluation plans, some more vigorously than others. The Draft Policy may actually cause harm by codifying policies and procedures that conflict with state and federal law in critical areas including in its consultation process, policy structure and campus delegations, inventory process, the reevaluation of culturally unidentifiable remains and items, the processing of repatriation claims and dispute resolution, the repatriation process, as well as in the creation of systemwide and campus committees. Moving forward, the Commission remains committed to assisting the UC in resolving these concerns and in creating an effective UC repatriation policy, and urges the UC to commit to continue shaping the Draft Policy, companion documents, and implementation guidance in collaboration with the Commission and California Native American tribes through July 1, 2020.</p> | <p>Thank you, we appreciate your comments and will take them under advisement as indicated above.</p> |