

UC Native American Cultural Affiliation and Repatriation Policy

All Comments (Native American Tribes, NAHC, & UC) on Policy Ver. 2 and UC Response

Comment No	Sec No	Sec Header	Dimension	Sub-Dimension	Comment	UC Response
1	V.C.4	Receipt of New NAGPRA-Eligible Human Remains or Cultural Items	Accession & Deaccession	Accession	<p>UC will not accept any new Possession or Control of NAGPRA-eligible Human Remains, except upon request of a Native American Tribe or Native Hawaiian Organization, or by special approval by the campus Chancellor, and provided that the primary reason for acceptance of the new request is to facilitate the Repatriation process in accordance with the Purpose and Principles of this Policy. The campus shall report to the Systemwide Committee and the UC President or President's designee any acceptance of new Native American or Native Hawaiian Human Remains.</p> <p><i>Add: If a campus receives a request or inquiry regarding the curation of cultural items or potential cultural items (i.e., ethnographic items or items from a Native American cultural or archaeological site), then the campus shall first notify potentially culturally affiliated Tribal Representatives who have requested such notification, so that Tribes have the opportunity to coordinate the return of Cultural Items prior to any decision by the campus regarding Accession.</i></p> <p><i>Comment: This way Tribes can follow up with the agency/individual who has possession of the human remains, if necessary.</i></p> <p>A campus may Accession NAGPRA-eligible Cultural Items donated by an individual or entity demonstrating the Right of Possession, provided that the Campus Committee evaluate whether the transmission of such an object was truly voluntary (and not under duress), and that UC's care for such items complies with Section V.H.1. Respectful Treatment below of this Policy.</p>	<p>We note that in general, the policy does not allow acceptance of new Cultural Items, unless the purpose is to further repatriation. The first exception is to honor a tribe's request, in which case the tribe would have been notified. The second exception, is upon the Chancellor's approval. UC will consider further clarifying that if the potential cultural affiliation is known, UC will notify these tribes before agreeing to accession new items.</p> <p>Should UC agree to accession new NAGPRA-eligible items, we will follow the requirements of NAGPRA/CalNAGPRA, supplementing our inventories/summaries, and follow the path towards repatriation.</p>
2	V.C.4	Receipt of New NAGPRA-Eligible Human Remains or Cultural Items	Accession & Deaccession	Accession	<p><i>Add: If a campus receives a request or inquiry regarding the curation of Native American human remains, then the campus shall notify potentially culturally affiliated Tribal Representatives who have requested such notification.</i></p> <p><i>Comment: This way Tribes can follow up with the agency/individual who has possession of the human remains, if necessary.</i></p>	See response to comment 1.
3	V.C.4	Receipt of New NAGPRA-Eligible Human Remains or Cultural Items	Accession & Deaccession	Accession	Any Native American object from a cultural site is potentially a Cultural Item. This means that museum policies would need to be updated to reflect this protocol any time that objects from a Native American site (historic property, cultural site, etc.) are accessioned.	See response to comment 1.
4	V.E.7	Deaccessioning of Human Remains and Items which are not NAGPRA-Eligible	Accession & Deaccession	Deaccession	<i>Add: Should a campus Deaccession Native American objects, then Tribes whose Aboriginal Territory includes the provenience or provenance of those objects shall have the right of first refusal.</i>	NAGPRA/CalNAGPRA regulations do not apply to items that have been determined not to be NAGPRA/CalNAGPRA-eligible. This section is simply meant to acknowledge that voluntary deaccessioning is a viable option.
5	II.15	Definitions	Accession & Deaccession	Deaccession	While deaccessioning is a tool available for returning items to tribes, it should not be used in lieu of a robust and respectful NAGPRA process that could also repatriate these items to tribes.	See response to comment 4.
6			Accountability & Enforcement		In [Our Tribe]'s November comment Letter, the Tribe raised concerns regarding the lack of accountability within the UC System with respect to timelines and the rules outlined in the existing and revised Policy. This issue was also raised by other individuals during the Work Sessions, and is one that needs to be addressed so that there are clear consequences when deadlines are missed or Policy is not followed by UC Representatives. Ideally these consequences should include mechanisms that lead to a resolution of the issues that results in missed deadlines or failures to follow policy.	We believe we have more fully spelled out the role of the systemwide committee in evaluating the timeliness and effectiveness of campus implementation. Both campus and systemwide committees also have an oversight role, and the policy permits Chancellors and the President to initiate audits (See Sections V.A, V.B., and V.H in Version 3).
7			Accountability & Enforcement		Once goals are established, what are the mechanisms to determine progress toward those goals, e.g., a specific framework for measuring progress that those goals are being met? Is there an accountability mechanism? The policy should also include some kind of language about re-reviewing the policy itself for effectiveness.	<p>The campus and systemwide committees will be responsible for evaluating performance at the campus level. The systemwide committee is clearly charged with requesting and evaluating reports as it deems necessary to assess effectiveness of this policy.</p> <p>Triggering criteria for re-reviewing the policy now include 1) when there are changes to NAGPRA or CalNAGPRA that would affect this policy, 2) when internal or external auditors or the Systemwide Committee recommend changes to this policy, 3) as deemed appropriate by the President, and 4) at least every five (5) years.</p> <p>Section V.A.1.b also provides that one of the responsibilities of the Systemwide Committee is to recommend changes to the policy, and Section III.D. requires UC to consult with the Systemwide Committee before making changes to the Policy.</p>

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8			Accountability & Enforcement		Specific information should be included about who to hold accountable, and how, if the NAGPRA policy is violated and/or deadlines are missed. There is a history of university staff being negligent and/or dishonest.	We believe the revised policy now more clearly specifies the roles of the individual University officials as well as the campus and systemwide committees. Minimum qualifications of the Repatriation Coordinator are more clearly described, and we expect both the Systemwide and Campus Committees to have full information (as required by the Policy) to evaluate performance. Campus Repatriation Implementation Plans are required to include benchmarks and timelines, and reporting on the status of pending consultations.
9			Accountability & Enforcement		The new NAGPRA Policy must have meaningful disciplinary criteria and consequences applicable to University of California faculty upon violation of the NAGPRA Policy, e.g., additional training in ethical conduct and the NAGPRA Policy, public apologies, demotions, transfer, pay reductions and loss of tenure. The NAGPRA Policy also needs to require annual performance appraisals to evaluate faculty and staff understanding in the application of the NAGPRA Policy as a correction of past misconduct by faculty with respect to NAGPRA-related matters.	UC has existing investigatory and disciplinary processes for faculty and staff alleged to have violated University policies and practices. The policy now states that UC may pursue legal action if employees or retirees/emeriti are found to have removed Human Remains or Cultural Items without authorization. The policy now clearly states that training must be provided to all persons responsible for carrying out the requirements set forth in this policy with training developed in consultation with tribal or other subject matter experts and UC personnel who have demonstrated successful Repatriation. Minimum qualifications for the campus Repatriation Coordinators are now spelled out, and we expect these qualifications will be used as a basis for hiring and performance reviews.
10			Accountability & Enforcement		The policy should include repercussions (legal or otherwise) against individuals who have stolen remains or items, or allowed theft to occur.	The policy now states that UC may pursue legal action if employees or retirees/emeriti are found to have removed Human Remains or Cultural Items without authorization.
11			Accountability & Enforcement		There should be audits at the systemwide level. Bad actors have gotten away with things because things sit in the limbo state: if it's not a denial, it wouldn't even go to an appeal process. The system has abdicated its authority for too long. Unless we know what is going on at the campuses, we won't know what's happening at the campuses.	The systemwide committee is charged with seeking and reviewing any information it deems necessary to assess effectiveness of the consultation and repatriation processes at the campus level. Repatriation Coordinators are now required to submit annual reports of pending consultations for which a request for repatriation has not been submitted. The policy now more clearly describes the right of Tribes to submit complaints to the Chancellor or President at any stage of the process.
12			Accountability & Enforcement		Tip off line: UC should make reference to a whistleblower hotline, both in policy and on UC NAGPRA websites so that members of the public or other UC staff/students can report suspicions.	We appreciate this suggestion and have incorporated it into Section V.E.2. of the revised policy.
13			Accountability & Enforcement		To the topic of resources and repercussions, campuses are going to have to allocate resources that haven't been allocated in the past. Too many campuses have been pursuing other priorities on the backs of what should've been focused on repatriation efforts. You can't make Tribes pay for what should've been done in the past. Resources are often a matter of negotiation but there are benchmarks. The AI museum has staffing benchmarks and benchmarking comparable institutions to see what best practices are for resources and staffing. I think we can mandate benchmarks and consultants if need be to advise on how this should be done.	The policy states that the President and Chancellors will be responsible for allocating sufficient resources. Sections V.A.1.b and V.A.2.b section assign the systemwide and campus committees authority to assess adequacy of resources and make recommendations. Each campus's Repatriation Implementation Plan is required to include timelines as well as budgetary/resource needs.
14			Accountability & Enforcement		Where is the teeth? What are the repercussions on bad actors? I'd encourage this body look at repercussions being included in the policy. Likewise, where are the consequences if things don't happen? Tribes are concerned about bias at all levels. We need options and remedies as to how UC will address that, as well as concrete timelines.	We have clarified the role of the systemwide committee to assess timelines and effectiveness of campus implementation and to make recommendations to the President. With respect to bad actors, UC has existing personnel procedures for potential disciplinary actions against faculty and staff. We have expanded upon and clarified the processes whereby Tribes may bring complaints to campus and/or systemwide officials at any time.

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15	V.G.1	Appeal of Disputed Claims	Appeals Process	External	<u>Add: UC agrees to participate in mediation of repatriation disputes in good faith. UC also agrees to participate in non-UC dispute resolution, such as National NAGPRA dispute resolution or CalNAGPRA dispute resolution.</u> <u>As part of reviewing the campus determination, the President or President's designee shall make a recommendation regarding whether the Campus Committee determination was consistent with the Systemwide Policy. If it is found that the Campus Committee determination was not consistent with the Systemwide Policy, then the President or President's designee shall also recommend changes to the staff, Campus Committee, or other changes, as appropriate, to ensure that future decisions are consistent with the Systemwide Policy.</u>	Section V.I.3. of the policy affirms 1) the right of Tribes to request third-party mediation and 2) that UC will make a good faith effort to participate in dispute resolution/mediation with the Federal Advisory Review Committee and Native American Heritage Commission.
16			Appeals Process	External	It is not clear in the policy whether UC will commit to third-party arbitration of disputes, e.g., with the Native American Heritage Commission.	Section V.I.3. of the policy affirms 1) the right of Tribes to request third-party mediation and 2) that UC will make a good faith effort to participate in dispute resolution/mediation with the Federal Advisory Review Committee and Native American Heritage Commission.
17			Appeals Process	External	There should be a commitment from the campuses to participate in the appeals process with the Native American Heritage Commission. Some campuses appear to have declined to participate in external CalNAGPRA mediation.	Section V.I.3 of the policy affirms 1) the right of Tribes to request third-party mediation and 2) that UC will make a good faith effort to participate in dispute resolution/mediation with the Federal Advisory Review Committee and Native American Heritage Commission.
18	V.G.1	Appeal of Disputed Claims	Appeals Process	Internal	<u>Add Underlined Text:</u> Tribal Representatives who believe University determinations (including but not limited to those related to Cultural Affiliation / State Cultural Affiliation, <u>Cultural Item Identification</u> , Repatriation, Disposition, Inventories, <u>or Summaries</u>) were not supported by the preponderance of evidence, <u>did not accord Tribal Evidence appropriate weight</u> , or were based on an incorrect interpretation of law or policy, may appeal to the President or President's Designee by submitting a claim to President@ucop.edu.	We have revised the language concerning the appeals process to incorporate most suggestions. We did not add "summaries" as determinations are not made for items on summaries. See Section V.I.2. of the revised policy.
19			Appeals Process	Internal	The Band asks that an appeal process be clearly defined within the NAGPRA Policy. A step-by-step guide, again including exact response times that University of California representatives are obligated to follow in order to process requests in a timely manner. In our experience, University of California representatives have been unresponsive and failed to timely process requests in the absence of a NAGPRA Policy that addresses reasonable timeframes.	We have added clarity to the appeals process, to include timelines by which UC must respond. See Section V.I.2. of the revised policy as well as the Appeals Flowchart in Appendix B.
20			Appeals Process	Internal	Tribes should have a mechanism to appeal to a senior campus official (or an official at UCOP with direct authority to effectuate approval).	We have added clarity to the appeals process. See Section V.I.2. of the revised policy as well as the Appeals Flowchart in Appendix B.
21	V.G	Appeals, Complaints, & Multiple Claims	Appeals Process	Internal	UC Comment Matrix 4 states that "We are considering having a case re-heard at the campus prior to escalating to OP, especially where the Chancellor's designee (Rather than the Chancellor) made the decision. However we would like your input on this idea." [Our Tribe]'s Opinion: The ability to re-hear cases would be a helpful option, so long as it is contingent upon Tribal consent or request (i.e., it is an option, but not a requirement).	We have included in Section V.I.2. of the revised policy the option for Tribes to appeal directly to the Chancellor in the event the initial decision was made by the Chancellor's Designee.
22			Appeals Process		On the appeals section, there is holdover from the 2001 policy. What's a reasonable opportunity and who gets to decide that? We need to think about language there. Delete "reasonable".	Section V.I.3. of the revised policy now clearly states that Tribal Representatives <u>will</u> be invited to present their views orally or in writing to Campus or Systemwide Committees and/or UC decision-makers. The term "reasonable" has been removed.
23			Appendices		A lot of the content is going to move to the appendices. Will that be in the next version? What is the process for what is in the policy vs. what is in the appendices? There are concerns that big picture items may move out of the actual policy and into the appendices.	We have distributed the planned appendices, to include flowcharts and narratives for the consultation and repatriation processes, as well as an appeals flowchart, summary of reporting duties of the Repatriation Coordinator, and a sample campus Repatriation Implementation Plan timeline. We believe these documents add greater clarity and transparency to the text of the policy without extracting any significant elements from the policy itself.
24			Appendices		After reviewing Version Two of the Policy, my staff was pleased to see that much of the worst language from Version One had been removed, but remained concerned that key issues <i>to improve the process</i> (for which we had provided suggested language) had still not been addressed, and in many cases, had instead been proposed to be placed in appendices (which have not yet been drafted). Our experience has been that when Tribal concerns are moved to appendices for resolution, it creates a much less transparent approach, and these key issues often end up unresolved. Our understanding is that Version Three of the Policy will include drafts of these Appendices, but we remain concerned that there may not be adequate time for Tribal review and revision of these Appendices.	We have distributed the planned appendices, to include flowcharts and narratives for the consultation and repatriation processes, as well as an appeals flowchart, summary of reporting duties of the Repatriation Coordinator, and a sample campus Repatriation Implementation Plan timeline. We believe these documents add greater clarity and transparency to the text of the policy without extracting any significant elements from the policy itself.

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25			Audits & Oversight		Each University of California campus must designate a full-time NAGPRA point of contact who is primarily responsible for implementation of the new NAGPRA Policy. While [Our Tribe] understands that not all University of California campuses hold Native American collections, remains, or NAGPRA items, tribal communities need to have local University of California representatives that are dedicated 100% to assisting repatriation efforts in accordance with the new NAGPRA Policy. This will require University of California campuses to work closely together to ensure integration between individual campus policies and procedures and University of California-wide policies and procedures to avoid inconsistencies/conflicts between any differences in implementation and to reduce the financial burden borne by tribal communities resulting from having to travel between their local campus and Berkeley.	Each campus with known NAGPRA/CalNAGPRA-eligible items must have a Repatriation Coordinator. In addition, all other campuses must ensure sufficient resources such that a qualified Point of Contact is available to receive Tribal inquiries. We do not believe this will necessitate each campus to appoint an individual dedicated full-time to repatriation in order to be effective, but we do agree that the individual must be adequately qualified to serve as a liaison and be able to respond to Tribes in a timely manner. If NAGPRA-eligible collections are identified on campuses that do not presently have such collections, those campuses will need to determine the resources needed to effectuate repatriation of those items in consultation with tribes and potentially using the resources of other campuses.
26			Audits & Oversight		The [Our Tribe] is concerned that the University of California lacks sufficient funding to create, implement and monitor the efficacy of this new NAGPRA Policy. We ask that this NAGPRA Policy outlines how the work associated with its implementation will be funded, what the funding process is and how long it will take. We also ask that the University of California dedicates a specific amount as soon as this NAGPRA Policy is implemented, to ensure that actions follow this NAGPRA Policy. Again, legislation has been in place since 1990 but has at no point led the University of California to react sufficiently to adhere to such. The Band is concerned that without provisions, this NAGPRA Policy, too, will not be acted upon in a timely manner.	We have clarified in Sections IV.A. and IV.B. that the President and Chancellors are responsible for ensuring sufficient resources are available at the systemwide and campus levels, respectively. The specific timelines and funding required will be determined by each campus as part of its Repatriation Implementation Plan.
27			Audits & Oversight		We respectfully request that the UCOP Governance Office establish a Tribal Liaison position within the UCOP Governance Office so that there is a mechanism for tribal consultation when Tribes need to reach out regarding repatriation. We have found that Tribal Liaisons greatly increase the transparency of agency processes to consulting tribes and also are able to effectively advocate for Tribal concerns within those processes.	We agree that repatriation is one of many valuable areas where UC-Tribal relations could be improved through establishment of a systemwide Tribal Liaison. While outside the scope of this policy, the possibility of appointing a Tribal Liaison who can work with Tribes on all issues of interest is under consideration by UCOP.
28			CalNAGPRA		A pathway for making claims needs to be created for non-federally recognized tribes that do not have the resources to pursue claims. Adding CalNAGPRA into the process still leaves out many tribes.	Both NAGPRA and CalNAGPRA set forth the requirements UC must follow in determining the priority of claimants. Tribes concerned with the definition of a California Indian Tribe should raise their concern to the Native American Heritage Commission. It is our understanding that the Commission is well aware of these issues and is working towards resolving them. With respect to resources, Section V.B.1.k. describes the role of the Repatriation Coordinator in assisting Tribes in seeking state/federal grants or other available UC or third-party resources to facilitate Consultation and Repatriation. To the extent permitted by UC or third party resources, UC will provide for necessary costs incurred by the Tribes, including stipends for tribal and other experts, travel, meals, and overnight accommodations.
29	V.C.1	Inventory Process	CalNAGPRA		<i>Add Underlined Text:</i> Consistent with CalNAGPRA, if after Consultation with California Indian Tribes, State Cultural Affiliation is established with a non-federally recognized California Indian Tribe, the campus <u>Repatriation Coordinator</u> shall include that information in the Inventory or Inventory supplement that it prepares pursuant to CalNAGPRA § 8013.	This clarification has been included in version 3 of the revised policy.
30			CalNAGPRA		This policy does not appear to comply with CalNAGPRA and relies solely on publication in the Federal Register for notice. We would request that the notice also be posted on the Native American Heritage Commission website, where it would be specifically accessible to all California tribes.	We have clarified NAHC publication of notices throughout the policy. See also Appendix A, Repatriation Flowchart. Section V.B.1.j. also obligates the Repatriation Coordinator to keep affected Tribes promptly informed of UC and campus decisions, publication of notices by National NAGPRA and the NAHC, and other relevant news and information.
31			Claims from Non-Members		How will UC identify individuals who are not members of a Tribe who make a claim?	We would identify lineal descendants according to NAGPRA regulations (43 CFR 10.2(b)(1)).
32			Collaboration between Campuses, Outside Agencies		Are there other government agencies/departments from which information can be obtained? There needs to be some way to access state databases that identify land, maps, records, etc., which UC could then use to determine cultural identifiability. UC itself has information on remains, and that information should be made available to the tribes.	Section V.B.1.c. now lists resources the campus Repatriation Coordinator may utilize in seeking information about Human Remains or Cultural Items, and to identify potentially Culturally Affiliated Tribes, traditional Aboriginal lands from where the Human Remains and/or Cultural Items were removed, and whether or not the Tribes are currently physically present in the area.

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33			Collaboration between Campuses, Outside Agencies		As part of Work Session discussions regarding ways to eliminate barriers to repatriation, there was extensive discussion regarding coordinating repatriation with other agencies or campuses. This is often helpful when Cultural Items and Ancestors from a single Burial Site are being curated at multiple different museums. Such coordination can mean that instead of consulting with each museum separately, Tribes can have a single consultation to coordinate repatriation across multiple museums. While we have not had the opportunity to participate in this type of coordinated repatriation, we believe that it would be very helpful and urge you to add Repatriation Coordination to the Policy.	<p>We agree that coordinating repatriation across campuses can streamline the process. Both the revised policy (see Section V.B.1.) and Appendix A-1 describe the process by which the Repatriation Coordinator will proactively contact other campuses to identify potential collections from the same site. Appendix A-1 further confirms that multiple campuses may coordinate their efforts to facilitate Repatriation or Disposition under a single request.</p> <p>The Repatriation Implementation Plans also a requirement that campuses reach out to agencies that have Control of Human Remains and Cultural Items currently held by UC at least annually</p>
34			Collaboration between Campuses, Outside Agencies		<p>At the UCSB meeting, we discussed transferring items in 1 place and closer to where they were taken, e.g., if Tongva they would move to UCLA, as a temporary move from repatriation. We're discussing that but we don't want to do that in error.</p> <p>But, you'd also have to send disassociated items. Otherwise, we still have to visit your campus. We have split collections so we can work together with other campuses now.</p> <p>Some tribes would not want the remains disturbed. There are challenges to moving remains and items which may merit further discussion.</p> <p>Maybe we could establish one process, e.g., the same request sent to two or more campuses, and the campuses would then collaborate.</p>	<p>We agree that, in some cases, transfer of Human Remains and Cultural Items to campuses physically closer to the Tribe may be desirable. However, as noted, some Tribes may prefer their ancestors not be disturbed. We believe this best handled on a case-by-case basis during consultation rather than as a matter of policy, factoring in the interests of all Culturally-Affiliated Tribes as well as logistical considerations such as the availability of appropriate space at potential receiving campuses.</p> <p>Both the revised policy (see Section V.B.1.) and Appendix A-1 describe the process by which the Repatriation Coordinator will proactively contact other campuses to identify potential collections from the same site. Appendix A-1 further confirms that multiple campuses may coordinate their efforts to facilitate Repatriation or Disposition under a single request.</p>
35			Collaboration between Campuses, Outside Agencies		The policy should address how UC can facilitate (i.e., streamline through a single or coordinated mechanism) claims for human remains and cultural items held by various campuses.	We have clarified that Repatriation Coordinators should collaborate with regard to collections held at multiple campuses, and UC may review claims under a single Tribal request. See Section V.B.1. and Appendix A-1.
36	V.C.3	Previously Unreported Holdings	Collaboration between Campuses, Outside Agencies		<p>What about Human Remains and Cultural Items that are not in sole Control (i.e., Possession but not Control)? Or a collection that is partly in control of UC, partly in Control of another?</p> <p>As was raised during the Work Sessions, need a policy statement that UC will make best efforts to see that the whole of a collection is subject to timely repatriation, by trying to work with the other Controlling entity and use of possible "piggybacking" to promote efficiencies. In addition to logistical concerns, separation of collections can create spiritual violations for tribes.</p>	Section VI. of the policy now requires the following: "Campus Repatriation Implementation Plans will include a schedule for reaching out to agencies that have Control of Human Remains and Cultural Items currently held by UC to prompt and encourage those agencies' Repatriation efforts. Such agencies must be contacted at least annually."
37	V.A.1.c	Systemwide Committee	Committee Membership, Composition, & Role	Documentation	"The Systemwide Committee shall maintain a record of all votes, including both the majority and minority opinions..." Who within the Committees will maintain this record? Will this record be accessible to Tribes or to the public?	We have clarified the role of the Repatriation Coordinator in maintaining systemwide and campus records.
38	V.A.2.c	Campus Committees	Committee Membership, Composition, & Role	Documentation	<u>Add Underlined Text:</u> The Campus Committee shall maintain a record of all votes, including both the majority and minority opinions, <u>and a record of tribal evidence.</u>	We have specified records of evidence submitted by the tribes as documents that must be retained as part of the committee record.

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39	V.A.1.c	Systemwide Committee	Committee Membership, Composition, & Role	Documentation	<p><u>Add Underlined Text:</u> The Systemwide Committee shall maintain a record of all votes, including both the majority and minority opinions, and a record of tribal evidence. This record shall be maintained by the Systemwide Committee Chair, and filed with [clearly identify where such information is filed].</p> <p><i>Comment:</i> This Policy does not contain any clear guidelines for what shall constitute a majority/minority decision, especially with respect to representation.</p> <p>For example, how many individuals of the committee must be present in order to have a quorum for the purposes of making a decision or recommendation? Will they be tasked with developing their own policies and procedures and be required to post them on a public facing website? Will Roberts Rules be used?</p> <p>Does this need to include a minimum attendance number of members with respect to UC Committee Members versus Tribal Committee Members?</p> <p>It may be more difficult for Tribal Committee members to attend these meetings, especially if they are held on college campuses or distant from remote reservations. Lack of Tribal Committee attendance may reflect barriers to participation for these Committee Members. For example: Will remote meeting technology be used? Is there a per diem? Systemwide parking placard?</p>	We have added greater clarity regarding quorum and voting requirements, as well as the use of remote technology. See Section V.A.1.c.
40	V.A.1.c.5	Systemwide Committee	Committee Membership, Composition, & Role	Documentation	<p>Where will these minutes be stored, and who will have access to them?</p> <p>Please make the minutes accessible to Tribes.</p>	The policy now requires that tribes be provided written justifications for campus determinations, and additionally be invited to attend committee meetings. See Sections V.A.2.c and V.B.2.c, and Appendices A and A-1.
41	V.A.1.c	Systemwide Committee	Committee Membership, Composition, & Role	Function	<p>“If substitutions are made to replace a member who has been recused...”</p> <p>Who within the Committees will maintain this record? Will this record be accessible to Tribes or to the public?</p>	The Conflict of Interest section has been bolstered by adding a more robust description of what constitutes a conflict, and the ability of the tribes to identify potential conflicts. Tribes will be provided a list of campus committee members. Meeting records will include documentation of all members who were present and voted, including records of recusals and substitutions.
42	V.C.2	Summary Process	Committee Membership, Composition, & Role	Function	<p><u>Add Underlined Text:</u> ...the <u>Campus Committee</u> shall evaluate whether by a preponderance of the evidence, the requested items meet the NAGPRA definitions...</p>	The text referenced in this comment has been deleted.
43	V.A.2.b	Purpose and Responsibilities of the Campus Committee	Committee Membership, Composition, & Role	Function	<p><u>Add: 8) Review information regarding cultural affiliation and make determinations regarding cultural affiliation. Consulting Tribes shall have the opportunity to attend any meeting where such a decision is being made and to formally make assertions of cultural affiliation to the Campus Committee including through both oral and written evidence;</u></p> <p><u>9) Review information regarding the identification of cultural items and make decisions regarding the identification of cultural items. Consulting Tribes shall have the opportunity to attend any meeting where such a decision is being made and to formally make identifications of cultural items to the Campus Committee including through both oral and written evidence;</u></p> <p><i>Comment:</i> This ensures that decisions regarding cultural affiliation and identification of cultural items are being made in a more equitable, fair, and transparent way, and that tribes have the opportunity to present their own information during such decisions.</p>	<p>The Campus Committee will make recommendations regarding identification of cultural items, requests for cultural affiliation, requests for repatriation/disposition, and review notices of inventory completion and notices of intent to repatriate (see item 6 in Section V.A.2.b). Therefore, they already review all items identified by the suggested language.</p> <p>Also, the revised policy now clearly states that Tribes will be invited to attend and present evidence at any meetings where decisions are being made, and will be invited to review the information to be presented in advance for completeness and accuracy. (See Sections V.A.1 and V.A.2, and Appendices A and A-1.)</p>
44	V.A.1.c	Systemwide Committee	Committee Membership, Composition, & Role	Function	<p><u>Add: A list of these subject matter experts shall be maintained by the Systemwide Committee Chair, and be made available to Tribes, upon request. At the end of every year, the Systemwide Committee shall review the list of subject matter experts. If the subject matter experts list consists mainly of non-Native American or non-Tribal individuals, then this may be an indicator academic expertise is being privileged over Tribal Knowledge. If this occurs, then this policy document shall be revised to include mechanisms to remove such privileging.</u></p> <p><i>Comment:</i> 1) Consider this list being posted to a public facing website for transparency and efficiency. 2) There needs to be a mechanism to identify and address bias or privileging.</p>	These situations will be case-specific. UC will rely on the committee to make recommendations. Tribes will be informed if a committee invites a subject matter expert to attend a meeting or consult, and Tribes may request recusal or dismissal.
45	V.E.6	Review of Claims and Requests	Committee Membership, Composition, & Role	Function	<p><u>Add Underlined Text:</u> Campus <u>Committee</u> review of claims or requests shall reflect consideration of Native American or Native Hawaiian viewpoints...</p>	The text referenced in this comment has been deleted.

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46	V.D.1	Types of Evidence	Committee Membership, Composition, & Role	Function	<i>Add Underlined Text:</i> In considering the lines of evidence above, the campus <u>Committee</u> will take into account unique California history.	It is more than the Campus Committee that needs to consider these circumstances (for instance, the Repatriation Coordinator and the Chancellor [or Chancellor's Designee]). For this reason, we have not adopted the suggested edit.
47	V.A.1.c.2	Systemwide Committee	Committee Membership, Composition, & Role	Function	<i>Add Underlined Text:</i> In consultation with Systemwide Committee membership, establish and confirm an agenda for each meeting; and ensure the meeting agenda and relevant documents are circulated to Systemwide Committee members in advance of the meeting to ensure sufficient time for the members to review the materials <u>and arrange travel</u> ;	Suggested change was adopted.
48	V.A.1.c.1	Systemwide Committee	Committee Membership, Composition, & Role	Function	<i>Add Underlined Text:</i> In consultation with the Systemwide Committee membership, staff of the President or President's designee, and campus NAGPRA/CalNAGPRA Repatriation Coordinators, schedule dates, times and locations for meetings; ensure meetings are called and held in accordance with this Policy; <u>ensure that meeting times and locations are equally accessible for all Committee Members, which may mean identifying an off-campus location or setting up options for remote attendance.</u>	We added remote option. We think it's more appropriate that Committees decide on their own where to hold meetings; this doesn't need to be addressed in the policy.
49	V.B	Consultation	Committee Membership, Composition, & Role	Function	<i>Add Underlined Text:</i> The Repatriation Coordinator <u>and Campus Committee</u> at each campus that has a NAGPRA-eligible Collection shall engage in meaningful Consultation with Tribal Representatives...	It is the Repatriation Coordinator's job to engage in the consultation process (see new text in section V.B.1, which now more clearly describes consultation). However, the tribes will be invited to Campus Committee meetings where their case is being contemplated.
50	V.A.2.c	Campus Committees	Committee Membership, Composition, & Role	Function	<i>Delete Text in Strikeout:</i> The Campus Committee may seek, as needed, the advice of external or internal subject matter experts, and invite guests to its meetings in order to provide particular expertise to assist the Committee in carrying out its duties...	We are not opposed to deleting this text; we may delete in the final policy.
51	V.A.2	Campus Committees	Committee Membership, Composition, & Role	Function	The comments that were made with respect to the Systemwide Committee also apply to the Campus Committee.	See responses to comments 37, 39, 40, 41, 44, 47, 48, 52, 53, and 54.
52	V.A.1.a.2	Systemwide Committee	Committee Membership, Composition, & Role	Membership	<i>Add:</i> d) Relevant community based research.	The text referenced in this comment has been deleted.
53	V.A.1.a.3	Systemwide Committee	Committee Membership, Composition, & Role	Membership	<i>Add:</i> <u>Individuals who have a Conflict of Interest shall not be eligible to serve on the Committee. If a Tribe identifies a candidate as having a potential conflict of interest, then the candidate may not serve on the Committee until the allegation has been resolved.</u> <i>Comment:</i> In addition to defining Conflict of Interest, there needs to be a clear mechanism for entities outside of the UC System to identify a potential Conflict of Interest.	See response to comment 41.
54	V.A.1.a	Systemwide Committee	Committee Membership, Composition, & Role	Membership	<i>Add:</i> <u>The names of all potential members shall be published on the UCOP NAGPRA website for 60 days prior to those members being selected, so that Tribes have the opportunity to identify if those potential members may have a Conflict of Interest.</u> <i>Comment:</i> This provides a mechanism for Tribes to identify a potential Conflict of Interest, prior to an individual being selected for the Committee.	See response to comment 41.
55			Committee Membership, Composition, & Role	Membership	As voiced in the University of California, Riverside work session, the Band is concerned about the requirements put on potential tribal representatives, as they are asked to have 5 (five) years of NAGPRA (or related) experience; a requirement that is assumed for and not asked of the University of California representatives. We believe the University should defer to the wishes of the tribe, it should be the prerogative of the individual tribe to designate their representatives and who they see qualified to serve on this committee.	The text referenced in this comment has been deleted. See also response to comment 28. Note that the standing campus committee has a total of 3 tribal members, and the systemwide committee has 3. These tribal members will not be representing the interests of their own tribe, per se, but rather in general, the interests of Native Americans as it relates to the campus repatriation efforts.
56			Committee Membership, Composition, & Role	Membership	Membership criteria allow for exceptions to the requirements, but there should be some more details established more within the exception. This should be more explicit about sensitivities, success, or demonstrating tribal understanding.	As these decisions will be made on a case-by-case basis, it is difficult to spell out more specifics, but we note the exception must be in furtherance of Repatriation, and that the President/Chancellor must seek the advice of Tribal Representatives, and communicate the justification for an exception to the committees.
57	V.A.1.c	Systemwide Committee	Committee Membership, Composition, & Role	Membership	<i>Revise to add underlined word:</i> The Systemwide Committee shall nominate a Chair from amongst <u>its</u> the members, who, upon approval of the President or President's designee, shall serve for two (2) consecutive years.	We have no objection to suggested change. We may adopt this edit in the final policy.

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58			Committee Membership, Composition, & Role	Membership	The committee should go back and look at Academic Senate favoritism. We are <i>now</i> for repatriation but we know schools such as UCB haven't been. We can't be so naïve as to believe we'll always have leadership that is in favor of repatriation. We need accountability. Preferences is given go Academic Senate members with a history of working with Tribes but that's a mixed bag. This could be addressed by having membership as an uneven number.	The requirements for committee members follow those in CalNAGPRA. See also response to comment 41.
59			Committee Membership, Composition, & Role	Membership	Tribal committee members are required to have 5 years of experience in NAGPRA-related matters unless exceptions are made; while this is consistent with CalNAGPRA requirements, UC representatives are not required to have similar demonstrated experience. This rule should be applied across the board.	The requirements for committee members follow those in CalNAGPRA.
60			Committee Membership, Composition, & Role	Membership	We ask that the nomination process is clearly outlined, transparent and addresses the following: 1. Who within the University or campus is reaching out to the tribal community to receive nominations for Tribal representatives to serve on a committee and will this be a subject of consultation? 2. How are such tribal communities identified and will this be a subject of consultation? 3. What documents/information needs to be provided by the tribe and will this be a subject of consultation? 4. Who is part of the election process and will this be a subject of consultation? 5. What measures are taken to prevent nepotism?	This comment was forwarded to the NAHC. Per CalNAGPRA, the NAHC is responsible for providing nominees to UC.
61	V.A.1.a	Systemwide Committee	Committee Membership, Composition, & Role	Membership	While we understand that AB 2836 identifies some membership requirements with respect to this committee, we do recommend an odd number of members, in order to avoid gridlock or split decisions.	We understand the intent behind this comment, but we will follow the CalNAGPRA requirements for committee members.
62	V.A.1.a	Systemwide Committee	Committee Membership, Composition, & Role	Membership	Will membership be staggered so as to avoid wholesale loss of institutional memory and experience on the Committees?	Yes, we have added language that the President or Chancellor attempt to stagger terms.
63			Committee Membership, Composition, & Role	Membership	With respect to the educational experience of UC committee members, what constitutes "a focus in California"? UC should consider that campuses may be served by having people with additional knowledge of non-California tribes as well.	We understand the intent behind this comment, but we will follow the CalNAGPRA requirements for committee members.
64			Committee Membership, Composition, & Role	Multiple Committees	As a general matter, we are concerned with the complex nature of the policy and the campus wide, and campus committee structure. It appears that the appointment process alone for these groups will take some time and then the unwieldy nature of them will result in a slow-down of any requests for repatriation. We recommend that there be one UC-wide committee with authority to make decisions on all repatriation requests.	We understand the intent behind this comment, but we will follow the CalNAGPRA requirements for committee members. CalNAGPRA requires that both campus committees and a systemwide committee be established.
65	V.A.1.b.7	Systemwide Committee	Committee Membership, Composition, & Role	Role	<i>Add Underlined Text: Serve as a resource to promote Repatriation – both as a process and outcome.</i>	We believe we've strengthened the principle of repatriation as a goal throughout the policy.
66	V.A.2.b.8	Campus Committees	Committee Membership, Composition, & Role	Role	<i>Add Underlined Text: Serve as a resource to promote Repatriation – both as a process and outcome.</i>	We believe we've strengthened the principle of repatriation as a goal throughout the policy.
67	V.A.2.b.5	Campus Committees	Committee Membership, Composition, & Role	Role	Review claims as brought forward by the Repatriation Coordinator for Cultural Affiliation and/or State Cultural Affiliation and requests for Repatriation / Disposition of Human Remains of Native American or Native Hawaiian ancestors and Cultural Items...	We revised the language for clarity. Committees make recommendations regarding identification of Cultural Items, Requests for Cultural Affiliation and/or State Cultural Affiliation and requests for Repatriation / Disposition of Human Remains and Cultural Items, and also review Notices of Inventory Completion and/or Notices of Intent to Repatriate.
68	V.A.2.c	Campus Committees	Committee Membership, Composition, & Role	Role	Our comments with respect to Systemwide Committee Procedures also apply to Campus Committee Procedures	See responses to comments 37, 39, 40, 41, 44, 47, 48, 52, 53, and 54.
69	V.A.2.b.6	Campus Committees	Committee Membership, Composition, & Role	Role	State " <u>make</u> campus decisions" instead of " <u>review</u> campus decisions"?	Use of the word "review" is correct. The campus committees advise the and the Chancellor or Chancellor's Designee, who is ultimately responsible for decision-making.

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70			Committee Membership, Composition, & Role	Terms	Members are appointed to renewable two-year terms. Will there be a limit to the number of terms any member can serve? The policy should specify that terms will be staggered so as to avoid significant turnover and loss of institutional memory.	Yes, we have added language that the President or Chancellor should attempt to stagger terms by have a variety of variable appointments, generally not exceeding 6 years.
71			Committee Membership, Composition, & Role	Voting Outcomes	Regarding voting, if there's a tie, it should go to the tribal point of view. Give a preference to the tribes. That should be addressed as a guiding principle.	We feel that the committee should be able to come to a conclusion and make a recommendation based on a majority of votes. In addition, votes aren't always straight-forward. For example, a committee could decide that culturally affiliate is appropriate with one tribe, but not another. UC will further consider how to address this issue.
72	V.A.2.a	Campus Committees	Committee Membership, Composition, & Role	Voting Outcomes	This Campus Committee has the potential to deadlock in a 3-3 vote reaching no decision. This can be corrected a number of ways: 1. A decision rule that any deadlock is always resolved in favor of repatriation and reburial; or 2. A procedural rule that any deadlock requires the President or her designee to immediately initiate consultation with all Native American Tribes that have make a claim of affiliation with such consultation not to end until a path to repatriation and reburial has been achieved; or 3. An appeal process to a third party such as the Native American Heritage Commission or Advisory Council on Historic Preservation or another similar established body. Proposed revision: [Our Tribe] would recommend that any deadlock always be resolved in favor of repatriation and reburial.	See response to comment 71. Also note that tied votes can be appealed.
73			Committee Membership, Composition, & Role	Voting Outcomes	With respect to the system and campus committees, they are dramatic improvements but if they are equally divided among tribal and academic members, the possibility exists that they will deadlock. What happens in that instance?	See response to comment 71. Also note that tied votes can be appealed.
74			Communication from UC		Information needs to be proactively communicated to tribes. Auburn got a call yesterday saying UCD changed their policy in August. If it's an issue in dispute why not just pick up the phone and call us? Obstacles we've encountered with UCD have shown that you have to know to ask the exact right question in the exact right way with the exact right words. Campuses are using the semantics of a situation in a manner that disadvantages of the tribes. Those tactics should not be used.	Please see more robust language in Consultation Section V.B.1, and Appendices A and A-1. Explicit communication with the tribes is required at certain points in the process. Also, tribes may lodge a complaint at any point.
75			Communication from UC		It would be great if museums could note when they have repatriated something. This is helpful when coordinating repatriation with other tribes, for example, if we could know that a particular collection, item, or set of ancestral remains was repatriated.	We will consider how best to post information regarding UC's inventories and summaries, perhaps listing only the Notices of Inventory Completion or Notices of Intent to Repatriate related to items that have not been claimed so as to avoid confusion. (Note that UC Davis is already updating their website to provide the repatriation status.)
76			Communication from UC		When museums are mailing our information out, the tribal leadership may not be the same as the cultural leadership. We could potentially add language to ask the Tribe to identify who the traditional religious leaders are for their community.	We agree that Tribal leadership and cultural leadership may differ within Tribes. The policy's definition of "Tribal Representative" allows the Tribe to designate the individuals with whom it wishes UC to engage in the Consultation and Repatriation processes.
77			Communication from UC		When new remains or cultural items are found, UC should be proactively notifying tribes. UC has records of where they were found, as well as records of who lived in that area. The tribes should not have to seek this information out from UC.	Section V.B.1.a. as well as Appendices A and A-1 clearly obligate the Repatriation Coordinator to initiate contact with Tribes when revising Inventories, creating new Inventories and Summaries (and/or Inventory or Summary supplements under CalNAGPRA), and reevaluating Culturally Unidentifiable Inventories. Appendix A-1 further requires the Repatriation Coordinator to gather and share documentation and information, including catalogs, reports, and other relevant information.
78			Complaints Process		A clear complaint process that is distinctly separate from the appeals process needs to be in place. Sometimes there is nothing to appeal because a request sits in limbo with no decision ever being made.	We have elaborated on the complaints process in Section V.I.1. of the revised policy and in Appendix A-1, Item #9. In addition, the Repatriation Coordinator must provide a written description of the Repatriation/Disposition decision-making, dispute resolution, and complaint processes to tribes during the Consultation process (see Section V.B.1).

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79	V.G.2	Complaints	Complaints Process		<i>Add underlined text:</i> Complaints about the consultation processes or access, in advance of any decision or recommendation <u>including but not limited to</u> cultural affiliation, repatriation, or disposition, can be directed to the Campus Chancellor or Chancellor’s Designee. Contact information for filing a complaint shall be posted on a public facing UC web page <u>and shall be provided to Tribes as part of the Consultation process.</u>	We have elaborated on the complaints process in Section V.I.1. of the revised policy and in Appendix A-1, Item #9. In addition, the Repatriation Coordinator must provide a written description of the Repatriation/Disposition decision-making, dispute resolution, and complaint processes to tribes during the Consultation process (see Section V.B.1).
80	V.G	Appeals, Complaints, and Multiple Claims	Complaints Process		Similar to the appeals process, UC should have a mechanism to elevate complaints to the systemwide level, not just to national NAGPRA. The complaint process should be accessible at any stage of the consultation/review/appeals process.	We have adopted this suggestion, allowing tribes to file their complaint with the Campus Committee, the Systemwide Committee, or the UC President, or to seek mediation.
81			Complaints Process		UC should have a plan for recourse should there be issues with the repatriation coordinator, for example if tribal representatives feel uncomfortable working with the individual or if they do not feel their needs are being heard or met at the campus level.	We have elaborated on the complaints process in Section V.I.1. of the revised policy and in Appendix A-1, Item #9. In addition, the Repatriation Coordinator must provide a written description of the Repatriation/Disposition decision-making, dispute resolution, and complaint processes to tribes during the Consultation process (see Section V.B.1).
82			Confidentiality		The definition of confidentiality is incomplete and should include, at minimum, the confidentiality requirements currently used under State law (Public Resources Code § 5097.9 and § 5097.993, and Government Code § 6254). It should also specify that information provided under consultation as confidential. All committee members should be informed of this obligation.	PRC Section 5097.9 and 5097.993 are not directly applicable to this policy and do not address confidentiality. Government Code 6254 also does not set out confidentiality requirements, but Government Code Section 6254(r) does allow state agencies to withhold certain records (and references the cited PRC sections) from disclosure in response to public records requests. We have incorporated language from 6254(r) into the definition of Confidential Information. In addition, Sections V.B.1 and V.B.2. and Appendices A and A-1 expand on how UC will maintain confidentiality of information, including during the consultation process, identifying all documentation and information shared that will have restricted access and the extent of such restriction, and allowing tribes to review notices prior to publication.
83	II.7	Definitions	Confidentiality		The Policy or appendices should include language identifying how confidentiality will be maintained. For example, identifying who has access to confidential information, how confidential information is secured (digitally and hardcopy), and how requests for confidential information should be addressed. If the UC system already has a policy for handling confidential information, then this also should be referenced. Typically, [the tribe] prefers to be notified if an agency/entity is requesting [tribal]-confidential information, since sometimes such requests are made as part of the NAGPRA process. In the past, UC staff have used confidentiality to create roadblocks to repatriation (by saying that other tribes have objections to something, but not identifying the other tribe, or the nature of the objection). In such circumstances, this creates a situation where there is no path forward for [the tribe], and the museum staff are speaking on behalf of this “other Tribe”, and this “other Tribe” may have no idea that their information is being used to block another Tribe’s consultation process.	Sections V.B.1 and V.B.2. and Appendices A and A-1 expand on how UC will maintain confidentiality of information, including during the consultation process, identifying all documentation and information shared that will have restricted access and the extent of such restriction, and allowing tribes to review notices prior to publication. Appendix A-1 describes the duty of the Repatriation Coordinator to gather and share documentation and information at the campus regarding collections and a list of additional Tribes that have been or will be consulted.
84	II.8	Definitions	Conflicts of Interest		<i>Add underlined text:</i> Financial, <u>professional</u> , or personal interests. <i>Comment:</i> Professional interests can also lead to prejudice. For example, as an Undergraduate student at the University of California, Berkeley from 2003-2005, [Our Tribe]’s Repatriation and Research Specialist was a student in Archaeology classes where the Faculty Instructors taught that archaeologists had a professional and ethical duty to curate and not repatriate objects from other cultures because those cultures (1) were not able to steward the objects as well as archaeologists could and (2) because the research value of those objects had a greater value to the public good than the “selfish” need of a smaller community for repatriation. This seems like a clear example of a professional prejudice or bias against repatriation.	We have added language to include professional bias or interests that may prejudice a committee member’s decision.
85	V.A.1.c	Systemwide Committee	Conflicts of Interest		<i>Add underlined text:</i> <u>Office of</u> General Counsel should provide input on legal matters, and may be invited to regularly attend Systemwide Committee meetings. <i>Comment:</i> Should not be limited just to General Counsel to allow flexibility and exclude those with Conflicts of Interests and biases.	Within UC, "General Counsel" refers to the Office of General Counsel. Sections. V.A.1 and V.A.2 also now expand on identifying Conflicts of Interest.
86	V.A.1.c	Systemwide Committee	Conflicts of Interest		<i>Add:</i> The Systemwide Committee will establish procedures for identifying and managing Conflicts of Interests.	This has been added to the policy.

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87			Conflicts of Interest		Does Conflict of Interest include bias? There is 1 individual at UCB, [], that has profoundly impacted tribes. In our situation, he has bias against Pechanga. We are in this situation with UCB because of []. One person can poison the well. There can be personal bias so that should be included.	<p>We have expanded upon language to better describe personal, professional, or financial bias or interests that may prejudice a committee member's decision, and to allow Tribes to identify individuals they believe may have a conflict of interest. See Sections V.A.1 and V.A.2.</p> <p>The Complaints process in Section V.I.1 also permits tribes to file complaints at any point in the repatriation process.</p>
88	II.8	Definitions	Conflicts of Interest		UC Comment Matrix Item 10 asked whether the issue of Conflicts of Interest should be in the Policy. We believe that it is important that this issue be clearly addressed in the Policy, because Conflicts of Interest have often been a problem and there has not been a clear mechanism to address them (both for the Repatriation Coordinator and for Committee Members).	<p>We have expanded upon language to better describe personal, professional, or financial bias or interests that may prejudice a committee member's decision, and to allow Tribes to identify individuals they believe may have a conflict of interest. See Sections V.A.1 and V.A.2.</p>
89			Consultation Process, Roles & Responsibility, Documentation	Documentation	<p>In addition to creating a mechanism for more transparent and equitable decision-making processes (as described in our comment above), the Policy still needs a robust mechanism for including and incorporating Tribal Knowledge. We appreciate that the Policy <i>commits</i> to doing this, but the Policy also needs a <i>mechanism</i> for <i>how</i> Tribal Knowledge will be given equal or greater weight during decision making processes, because often we have not been able to insert Tribal Knowledge into these processes (this information cannot receive equal or greater weight if it is not presented to the decision-makers). We believe that clearer mechanisms with respect to documenting the record of Consultation may address this issue.</p> <p>The current UC NAGPRA process:</p> <ul style="list-style-type: none"> • Does not record or document when Tribes disagree with decisions made by the UC representative; • Does not have an option for Tribes to revise or make their own additions to the Record of Consultation; and • Does not include information regarding tribal agreement or disagreement in the inventories and summaries. <p>[Our Tribe] prepared two documents (<i>Museum Collections – How to Identify Missing or Lost Items and NAGPRA Inventory Process – Gaps and Bias in Inventory/Consultation Documentation</i>) that demonstrate the many ways that the current documentation and Record of Consultation process within the UC System obscures and biases information, rather than being transparent and fair.</p> <p>It is important that the Record of Consultation maintained by UC Representatives:</p> <ul style="list-style-type: none"> • Include verbal or written information provided by Tribal Representatives during Consultation with respect to Cultural Affiliation or the identification of Cultural Items (even if the Repatriation Coordinator or Note Taker does not agree with that information or feels that it is inadequate); • Be provided to consulting tribes after each meeting and on a regular basis during the consultation process, so that Tribes can clearly see (1) that their recommendations are being included in the record and (2) verify that the record is consistent with their recommendations; • Include a mechanism for consulting tribes to revise the Record of Consultation with respect to the decisions and comments that have been made by that consulting tribe; • Include a mechanism for consulting tribes to confirm that they agree or disagree with the Record of Consultation, especially before the Record of Consultation is provided to the Campus Committee; • List any disagreements, and whether those disagreements were resolved; and • List any Native American objects from an accession that are not being repatriated or not being identified as cultural items (since often this information is not clearly presented, and it is significant). <p>By correcting these gaps in the recordation of consultation, the transparency and consistency of the repatriation process will be improved and it is more likely that disputes will be addressed because the NAGPRA policy process will have clear mechanisms to identify and resolve dissenting opinions. Again, this type of framework belongs in the core policy, and not an appendix.</p>	<p>Section V.C.2.b has been re-written to address this concern. It now reads: "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.' All evidence, including academic evidence, must be evaluated critically taking into consideration the potential bias of the sources of the evidence, including academic authors, the credibility of certain evidence in light of contrasting evidence, such as tribal oral histories, other works discrediting the sources of evidence, or the circumstances in which the evidence was produced. Furthermore, decisions must be made in consideration of the line(s) of evidence that are available without prejudice owing to the absence of other lines of evidence."</p> <p>We have also strengthened the policy (and its accompanying Flow Chart) throughout to identify points through all stages of the process where Tribes will have an opportunity to present evidence, including Tribal Knowledge; and specifies that Tribal knowledge will not be afforded less weight during evidentiary review.</p> <p>These measures include requiring documentation of all communications between the Repatriation Coordinator and Tribal Representatives, documentation of all evidence and documents presented (including those submitted by Tribes), requiring that Tribes be provided with the opportunity to review and supplement the information that is to be presented to the Campus Committee and to the Chancellor, documenting instances where Tribes disagree with information gathered by the Repatriation Coordinator, and inviting Tribal Representatives to provide information verbally or in writing directly to the committees.</p> <p>See also points 5-9 of Initial Consultation Phase in Appendix A-1, which requires that the Repatriation Coordinator: maintain a communication record, including tribally-vetted information; share evidence, draft Inventory and other documents with the consulting tribe; invite tribes to consult via in-person meetings, site visit or other format; and invite tribes to review the packet going to the committee, and to provide supporting or supplemental information (if they wish). Further in the Campus Review phase, Tribe(s) will be invited to provide a response to the Campus Committee's recommendation before it is provided to the Chancellor.</p>

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90			Consultation Process, Roles & Responsibility, Documentation	Response Process	The new NAGPRA Policy must set forth definitive criteria with respect to how the University of California, no matter the campus, responds to tribal requests for NAGPRA consultations. We believe a 14-day response window acknowledging receipt of the request is reasonable with a 90-day window to complete consultation, unless the potential claimant requests more time.	Appendix A-1 now requires the Repatriation Coordinator to acknowledge Tribal requests for Consultation within 5 business days of receipt. With respect to completion of consultation within a specified window, the duration of the consultation process can vary significantly depending upon many factors such as the size and nature of the collections included in consultation, the number of campuses involved, whether multiple Tribes are included in the consultation, and Tribal readiness to arrange consultation meetings. We have, however, included time points wherever possible by which UC must respond.
91	V.A.2.b	Campus Committees	Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	<p><i>Add underlined text:</i> <u>8) Review information regarding cultural affiliation and make determinations regarding cultural affiliation. Consulting Tribes shall have the opportunity to attend any meeting where such a decision is being made and to formally make assertions of cultural affiliation to the Campus Committee including through both oral and written evidence;</u> <u>9) Review information regarding the identification of cultural items and make decisions regarding the identification of cultural items. Consulting Tribes shall have the opportunity to attend any meeting where such a decision is being made and to formally make identifications of cultural items to the Campus Committee including through both oral and written evidence;</u></p> <p><i>Comment:</i> This ensures that decisions regarding cultural affiliation and identification of cultural items are being made in a more equitable, fair, and transparent way, and that tribes have the opportunity to present their own information during such decisions.</p>	<p>The Campus Committee will make recommendations regarding identification of cultural items, requests for cultural affiliation, requests for repatriation/disposition, and review notices of inventory completion and notices of intent to repatriate (see item 6 in Section V.A.2.b). Therefore, they already review all items identified by the suggested language.</p> <p>Also, the revised policy now clearly states that Tribes will be invited to attend and present evidence at any meetings where decisions are being made, and will be invited to review the information to be presented in advance for completeness and accuracy. (See Sections V.A.1.c and V.A.2.c, and Appendices A and A-1.)</p>
92	V.B	Consultation	Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	<i>Add underlined text:</i> Each campus that has a NAGPRA-eligible Collection shall work collaboratively with Tribal Representatives to facilitate the Cultural Affiliation and State Cultural Affiliation of Native American or Native Hawaiian ancestral Human Remains and Cultural Items, and provide Tribal Representatives reasonable opportunity to present information regarding Cultural Affiliation or State Cultural Affiliation orally or in writing to the Repatriation Coordinator and Campus Committee.	This section has been completely re-written to enhance the consultation process. "Tribal Presence" has been added to Sections V.A.1 and V.A.2 to require that tribes be invited to committee meetings where their requests will be deliberated. See also Appendices A and A-1.
93	V.C.2	Summary Process	Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	<i>Add underlined text:</i> <u>In general, the Campus Committee shall accept the identifications made by Tribal Representatives. The Campus Committee must meet with Tribal Representatives prior to rejecting an assertion of cultural affiliation or an identification of cultural items. If the Campus Committee rejects the identifications made by Tribal Representatives, then such rejections shall include (1) clear and substantial evidence in support of the rejection and (2) a process to appeal the rejection.</u>	We have clarified that, in evaluating items to establish whether they meet the definitions of Cultural Items and their Cultural Affiliation or State Cultural Affiliation, campuses will Consult with Tribal Representatives and utilize the types of evidence and standards of proof stipulated in NAGPRA and CalNAGPRA. (See response to Comment 89.) We have also clarified that Tribes will be invited to review all evidence to be provided to the Committees, may add to the packet that will be provided to the Committee, and will additionally be invited to attend Campus Committee meetings. If the Campus Committee denies with request, a clear explanation will be provided. Information on how to appeal a determination will also be provided to the Tribe. See Sections V.A.2.c., V.C.2, and V.B.1.j, and Appendices A and A-1.
94			Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	An important corollary of integrating tribal input into the consultation process is for tribes to be able to speak for themselves, and not have museum staff paraphrase or summarize using their recording methods and language. When there is a disagreement, it is difficult for tribal members to insert their views about how the inventory and identification process is proceeding.	We agree, and have added language throughout the policy to amplify Tribal voices and ensure Tribal Representatives are able to provide evidence in their own words throughout the process as well as to review records of consultation and Review Packets prior to committee consideration. The policy includes clearer mechanisms for submitting complaints directly to the Chancellor or President. (See also Response to Comment 93.)

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95			Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	<p>Non-tribal individuals taking notes on consultation sessions may result in inaccurate reflection of tribal viewpoints. Notes from consultations should not be considered “final” until after they are sent back to the tribes to be sure the note taker understood correctly what was communicated, and the tribes given the opportunity to have input on the final notes. It is easy to make incorrect assumptions because tribal members often communicate in a manner differently from what a Western note taker might be perceiving; for example, the notes might indicate silence as agreement whereas in reality the individual was remaining silent in order to contemplate.</p> <p>Tribes should also have the opportunity to ensure that information considered confidential is not published.</p>	<p>The policy now more clearly reflects that tribes are asked to review consultation notes and other documentation to be sure what is recorded accurately reflects what was presented by the Tribes.</p> <p>The policy includes more detailed language on how UC will maintain confidentiality of Tribal information. Sections V.B.1 and V.B.2. and Appendices A and A-1 expand on how UC will maintain confidentiality of information, including during the consultation process, identifying all documentation and information shared that will have restricted access and the extent of such restriction, and allowing tribes to review notices prior to publication.</p>
96			Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	<p>The new NAGPRA Policy should mandate bi-annual consultation meetings between University of California campuses to facilitate discussions with tribal communities that informed by progress reports prepared by faculty on NAGPRA Policy compliance and progress with the return of remains and items. University of California NAGPRA key staff with decision-making authority should be mandated to attend the consultation meetings.</p>	<p>We have inserted additional requirements from campuses to Tribal Representatives. Section V.B.1.i. requires the campus Repatriation Coordinator to keep affected Tribes promptly informed of all UC and campus decisions, relevant news and information about affiliated or otherwise relevant collections, and publication of notices by National NAGPRA and the NAHC. The Repatriation Coordinator will also provide quarterly updates to Tribes with whom they are consulting. Campuses must also implement outreach programs per Section VI of the policy, including establishing a schedule (at least annually, but more often as appropriate) for reaching out to Culturally/State Culturally Affiliated Tribes that have not yet requested the affiliated Human Remains and Cultural Items to see how the campus can support them in these efforts and discuss a stewardship agreement if the Tribe is not able to physically accept the transfer.</p>
97	V.C.1	Inventory Process	Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	<p>These steps should be clearly documented, and tribes should have the ability to document or revise portions of the record of consultation with respect to their determinations, so that differences in opinion and disagreements are clearly conveyed.</p> <p>There should also be an option for a neutral third party, such as a mediator or Tribal Liaison, to document the consultation process. Because the Campus Repatriation Coordinator typically has ties to both an academic discipline and to a campus, they are not a neutral third party, and our experience has been that their record of consultation typically fails to include tribal knowledge, when it differs from their opinion.</p> <p>In [Our Tribe]’s November letter, we had suggested that the record of consultation regarding cultural affiliation 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. We still recommend this process.</p>	<p>Notes, review packets, and other documents will be shared with Tribes before they are provided for the committee and Tribes can provide additional information and/or correct inaccurate information. We believe the revised documentation standards will reflect the information noted here. Tribal Representatives may request third-party mediation to assist, and may include any means mutually agreed to by all parties and approved by the Chancellor.</p>
98			Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	<p>UC Comment Matrix 1 also referenced charts that are in development. Please clearly include Tribal roles and checkpoints in these charts, since without that information, it is often unclear to Tribes how they can participate in processes or when specific types of information should be submitted.</p>	<p>Appendices A and B clearly spell out, in flowchart form, the roles and responsibilities of all parties, including Tribal Representatives, to the repatriation process. We welcome further input in ensuring Tribes can fully follow the roles and sequences of events.</p>

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99			<p>Consultation Process, Roles & Responsibility, Documentation</p>	<p>Tribal Input & knowledge</p>	<p><i>UC Matrix Items 7 (Consultation), 8 (Roles and Responsibility Regarding Cultural Affiliation Determinations) & 11 (Documentation Requirements)</i></p> <p>[Our Tribe] has raised extensive concerns regarding the UC Policy’s failure to clearly identify who is making decisions regarding cultural affiliation and identification of cultural items. These decisions are often made by a single individual, who has broad discretionary ability to reject tribal identifications.</p> <p>In response to this concern, UC Comment Matrix Item 11 states “Per policy, cultural affiliation requests already go to the committee.” This assertion creates the impression that the Campus Committee makes decisions regarding cultural affiliation. This assertion is incorrect. When the Campus Committee reviews a Cultural Affiliation request from the Repatriation Coordinator, the Repatriation Coordinator <i>has already made a decision or recommendation regarding Cultural Affiliation and the Campus Committee is simply reviewing the decision.</i> In our experience, the Campus Committee:</p> <ul style="list-style-type: none"> • Almost always confirms the decision of the Repatriation Coordinator; • Almost never meets with the Tribes directly; • Is never aware if Consulting Tribes disagree with the decision or recommendation made by the Repatriation Coordinator (because the Campus Committee does not meet with the Consulting Tribes); and • Almost never reviews (or sees) any of the information regarding cultural affiliation. <p>In short, this is a closed process with no mechanism for direct tribal input on the decision. If only the campus Repatriation Coordinator meets with the Campus Committee, then only the Repatriation Coordinator’s opinion will be represented in the decision-making process. It is unlikely that tribal knowledge would receive even equal weight, given such a process. Our experience has been that tribal knowledge is not even presented during these processes, because there are no Tribal Representatives in the room.</p> <p>UC Comment Matrix Item 8 expresses concern that giving Tribes the ability to meet directly with the Campus Committee will skew or bias the process in favor of Tribes, be time consuming, and mentions that usually the Campus Committees only considers written evidence. This observation is troubling, since it characterizes Tribal Consultation as “creating bias” and would create a process where only written evidence is considered by Campus Committees. Excluding the ability of tribes to talk to your decision-making Committees seems inconsistent with the language of federal and state law, as well as just a bad idea if you are trying to improve the repatriation process. When Tribal Consultation is not clearly understood and is characterized negatively, then typically, effective Tribal Consultation does not happen. We are also deeply concerned that a request for Tribal Consultation was interpreted as a request for something that would create bias. This misinterpretation may indicate that there is still a deep lack of understanding on the part of the UC System with respect to what Tribal Consultation is. For this reason, my staff has included extensive language in this document, and in the attached redline that would provide more clear language and mechanisms for Tribal Consultation. This requirement that Campus Committees only consider written evidence is questionable, since presumably the Campus Repatriation Coordinator is submitting the evidence to the Campus Committee and some elements of this submission are verbal. This practice of privileging the decisions and opinions of the Repatriation Coordinator over the decisions and opinions of Consulting Tribes is something that we are trying to weed out of the Policy because it has led to so many barriers to repatriation. We raise this issue not to pick at small details, but to illustrate a point of entrenched systemic bias that needs to be resolved at the Policy level.</p> <p>As part of an effective Tribal Consultation Process (Matrix Item 7) Consulting Tribes should have the opportunity to meet with the Campus Committee directly. They should have this opportunity prior to and during any decisions regarding cultural affiliation. Tribes should have a clear mechanism for providing written comments to the Campus Committee (in addition to verbally presenting their positions during meetings) and Consulting Tribes should receive advance notice when the Campus Committee is making decisions or discussing information regarding a consultation in which the Tribe is involved. This is a very standard type of meeting model that is used by many government agencies (including the California Native American Heritage Commission) and has proven to be effective.</p> <p>The existing Policy should be changed so that the Campus Committee:</p> <ul style="list-style-type: none"> • Makes decisions regarding cultural affiliation based on the information that the Repatriation Coordinator has provided (the Repatriation Coordinator should not make decisions or recommendations) and the oral and written information Tribes provide; • Meets directly with Consulting Tribes when making such decisions, and makes the decision as part of a discussion with those Tribes, rather than behind closed doors; • Has an assigned Note Taker who clearly records the decisions, information provided, and whether Consulting Tribes agree with the Campus Committee, so that there is a clear written decision with supporting documentation. <p>We believe that it is important that the Campus Committee should also be the decision maker with respect to the identification of cultural items, which is a follow-up item that you had identified in Matrix item 8. In general, decision making should rest with the Campus or</p>	<p>We appreciate these comments and agree that Tribal Representatives will be invited to meet with the committees in person or by real-time virtual means, following Tribal consultation and input on the Review Packet. We have modified the draft policy accordingly. We have clarified that Tribes will be invited to review all evidence to be provided to the Committees, may add to the packet that will be provided to the Committee, and will additionally be invited to attend Campus Committee meetings. See Sections V.A.2.c, V.C.2, and V.B.1.j, and Appendices A and A-1.</p>
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					Systemwide Committees, because these committees include representation of both California Native Americans and UC representatives and therefore can lead to decisions and a decision making process that is more equitable than a decision made by a single individual.	
100			Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	When consulting with tribes, those tribal individuals with knowledge should be at the table. We should make sure we offer the cultural leaders space at the table during the discussion of cultural affiliation. In an invite, we should be sure not to exclude cultural officers when talking about repatriation.	We agree that Tribes should be free to identify and designate any Tribal Representative(s) they deem appropriate to be part of the consultation process.
101			Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	When you sit at the negotiating table there are certain tenets. One of them is you have to take a tribe at face value. When they come to negotiate, accept the tribes are doing so in good faith and telling you the truth. Tribes need to be given the benefit of coming from a place of truth.	We agree, and we hope the revised policy makes it clearer that UC values Tribal input and accepts the validity of non-academic lines of evidence. See also response to comment 89.
102	V.C.1	Inventory Process (Human Remains and Associated Funerary Objects)	Consultation Process, Roles & Responsibility, Documentation		<p>"...campuses shall consult with Lineal Descendants (if known) and with Tribal Representatives and traditional religious leaders..."</p> <p>Comment: Are these any traditional religious leaders or ones representing Indian tribes or Native Hawaiian organizations? 43 C.F.R. Sec. 10.9(b)(3) provides as follows: (3) Provision of information. During inventory consultation, museums and Federal agency officials must provide the following information in writing to lineal descendents, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains and associated funerary objects. Proposed revision: Need a definition or additional text that traditional religious leaders must represent an Indian tribe or Native Hawaiian organization similar to Tribal Representatives.</p>	The policy defines "Tribal Representative" as the principal leader of a Tribe or the individual designated or authorized by the governing body of a Tribe or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to NAGPRA and/or CalNAGPRA under this policy." Therefore, Tribes can designate whoever they want to represent the Tribe. We do believe it is important for the Tribes to identify persons authorized by the Tribe to represent the Tribe.
103	V.B	Consultation	Consultation Process, Roles & Responsibility, Documentation		<p>"The campus Repatriation Coordinator shall confirm that the Tribal Representative has been designated or authorized by the governing body of a Native American Tribe or Native Hawaiian Organization, or assigned Consultation responsibilities by tribal code, policy, or established procedure."</p> <p>Comment: Please clearly identify how Tribes can convey this information (i.e., a letter on tribal letterhead, an e-mail from the THPO, etc.).</p>	We have clarified Section V.B.1.d. to state: "Consultation will be conducted with Tribal Representatives authorized by their tribal government to consult on the Tribe's behalf concerning Repatriation. If the campus Repatriation Coordinator is unclear whether the representative is the authorized representative, they may contact the Tribal Historic Preservation Officer (THPO) or tribal administration and request an official tribal letter providing this information."
104	V.B	Consultation	Consultation Process, Roles & Responsibility, Documentation		<p><i>Change:</i> Lineal Descendants, Native American Tribes, and Native Hawaiian Organizations shall <u>be permitted reasonable</u> access...</p> <p><i>To:</i> Lineal Descendants, Native American Tribes, and Native Hawaiian Organizations shall <u>have</u> access...</p> <p><i>Comment:</i> "Reasonable access" is not clear, and seems to convey unclear and arbitrary limitations on access.</p>	We agree and have deleted "reasonable" from this sentence.
105	V.G.3	Multiple Claims for Repatriation or Disposition	Cultural Affiliation & Repatriation Process	Additional Barriers	<p>"Once the multiple Requestors/Claimants agree upon an arrangement, and once UC is provided with assurance of protection against liability (either under the provisions of NAGPRA/CalNAGPRA or under an agreement among the Claimants), UC will repatriate to the Native American Tribe(s) specified in such an agreement..."</p> <p>Comment: "Protection against liability" is undefined and can range from a waiver of claims to a full contractual indemnity against all claims and all attorney fees and costs. Liability insurance might also be required with the UC being added as an additional insured. Finally, this may even include a waiver of the sovereign immunity of the tribe. Any requirement beyond a waiver of claims creates unnecessary entry barriers for less wealthy tribes to complete their repatriation. Proposed revision: Change "an assurance of protection against liability" to "least intrusive waiver of claims against UC from all Claimants that is possible under the circumstances."</p>	We are planning to revise this sentence to delete the language regarding an assurance of protections against liability.
106	V.E.1	Claims by Federally Recognized Tribes or Native Hawaiian Organizations	Cultural Affiliation & Repatriation Process	Additional Barriers	<p><i>Add:</i> <u>As part of that repatriation, campuses may not require Tribes to sign paperwork that waives sovereignty or places other requirements upon the Tribe.</u></p> <p><i>Comment:</i> Most UC campuses have rather extensive transfer of ownership paperwork that places additional requirements and restrictions on the repatriation.</p>	We are not aware of any UC documents that require a tribe to waive sovereignty, and agree that it would be inappropriate to do so. We believe some paperwork regarding the method/mode of transfer or acknowledging transfer has taken place, etc. would be appropriate. However, we agree that the intent is <u>not</u> to create barriers or impose conditions on which UC will repatriate items that have already been determined to be subject to transfer. We also note that one of the Repatriation Coordinator's duties is to discuss with the Tribe barriers towards repatriation, and to the extent possible to try to alleviate those barriers. (See Section V.B.1.)

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107	V.E.1	Claims by Federally Recognized Tribes or Native Hawaiian Organizations	Cultural Affiliation & Repatriation Process	Additional Barriers	<u>Add: Nor may campuses impose additional requirements to repatriation, such as requiring that all other culturally affiliated Tribes approve the repatriation.</u> <i>Comment:</i> For a while, UC Berkeley was doing this in order to avoid repatriating.	We agree that once all Notice requirements have been met, and if there are no other outstanding requests for repatriation/disposition that have been made within the prescribed time periods, we should not require that all other culturally affiliated tribes “approve” the repatriation. We will add clarifying language to this effect.
108	V.E	Repatriation and Disposition	Cultural Affiliation & Repatriation Process	Claims	<u>Add underlined text:</u> All claims <u>to the Campus Committee</u> for Cultural Affiliation, and Requests for Repatriation or Disposition...	We have reworded this section and, in the process, removed this sentence.
109	V.E	Repatriation and Disposition	Cultural Affiliation & Repatriation Process	Claims	<u>Add: Examples of appropriate requests for clarification include: confirming that a Tribal Representative is identifying certain objects as Cultural Items and NOT identifying other objects as Cultural Items, or confirming that a Tribe is asserting cultural affiliation.</u> <u>Examples of inappropriate requests that are not consistent with UC Policy of privileging Tribal oral histories, documentation, and testimonies are: requesting additional information to provide cultural affiliation or cultural identification after a Tribe has already provided such information or asserting that Tribal oral histories, documentation, and testimonies by themselves do not meet the Preponderance of Evidence standard.</u>	The section of the policy detailing minimum information that could be requested by UC has been removed because it caused confusion. However, the response to comment 89 may address the concerns raised here.
110	V.D.2	Evidentiary Standard	Cultural Affiliation & Repatriation Process	Claims	<u>Add: Geographic areas of Traditional and Cultural Affiliation meet this evidentiary standard.</u>	Per comments received, we have removed most language that reiterates requirements of NAGPRA / CalNAGPRA. It is unnecessary to highlight one line of evidence without naming the others. (NAGPRA 10.2 specifies the following lines of evidence: geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion; thus, geographical is already included.) Please see response to comment 89.
111	V.E.	Repatriation and Disposition	Cultural Affiliation & Repatriation Process	Claims	<i>Change:</i> However, this minimum necessary information should not be used as a barrier for Repatriation / Disposition or termination of the process. Rather, it should be a tool for Claimants/Requestors to know what information is needed to process their claim or request, and provides an opportunity for the Repatriation Coordinator to work with the Claimant or Requestor to facilitate Repatriation or Disposition. <i>To:</i> However, this <u>minimum information</u> should not be used as a barrier for Repatriation / Disposition or termination of the process. Rather, it should be a tool for Claimants/Requestors to know what information is needed to process their claim or request, and provides an opportunity for the <u>Repatriation Coordinator and Campus Committee</u> to work with the Claimant or Requestor to facilitate Repatriation or Disposition. <u>In general, minimum necessary information should be the type of information that is needed to correctly and accurately move forward with the Inventory or Summary process. It should not be an arbitrary requirement for tribes to “prove” cultural details, i.e., requests for additional information.</u>	See response to comment 109.
112			Cultural Affiliation & Repatriation Process	Claims	The majority of collections have been deemed culturally unidentifiable, which makes them ineligible for repatriation under NAGPRA and CalNAGPRA. And sometimes UC judges the affiliation of the remains and objects by UC. The burden of proof should be on the UC to challenge claims of affiliation once the tribe has self-identified with remains based on location, burial practices, dates, etc. If the Tribe makes the cultural determination, the burden should be on the UC to prove otherwise. The current process has led to years of battling with UC campuses (e.g., [Our Tribe] has been fighting with Hearst since 2008 over claims of 2000 ancestral remains).	UC needs to comply with NAGPRA and CalNAGPRA, which requires that we review the evidence and make determinations based on the preponderance of evidence. However, this policy requires that campuses re-evaluate all prior CUI determinations (see Section VI), under the guiding principles articulated in Section III.B, and that the newly constituted committees (with equal tribal representation) make recommendations to the Chancellor. The policy further describes best practices to achieve our goal of repatriation. (See Section V.B. and Appendices A and A-1.)
113	V.D	Cultural Affiliation and State Cultural Affiliation	Cultural Affiliation & Repatriation Process	Decision-making	The Policy needs to clearly identify who is making a decision regarding accepting/rejecting/considering a determination of cultural affiliation. This decision should be made at the Committee level, and not at the staff (Repatriation Coordinator) level.	The policy specifies that the campus committees are responsible for making recommendations to the Chancellor regarding the identification of Cultural Items, Requests for Cultural Affiliation and/or State Cultural Affiliation and requests.
114	V.G.3	Multiple Claims for Repatriation or Disposition	Cultural Affiliation & Repatriation Process	Multiple Claims	<i>Change:</i> UC may receive <u>multiple conflicting requests</u> for transfer from different Tribes, each of whom UC <u>determined</u> has a valid request for Repatriation/Disposition under NAGPRA and/or CalNAGPRA. If UC is unable to determine by a preponderance of the evidence... <i>To:</i> UC may receive <u>multiple requests</u> for transfer from different Tribes, each of whom UC <u>may determine</u> has a valid request for Repatriation/Disposition under NAGPRA and/or CalNAGPRA. <u>UC shall first meet with the Claimants to resolve the multiple claims.</u> If resolution cannot be reached, and if UC is unable to determine by a preponderance of the evidence...	See Section V.D.7. We have rewritten the section to more clearly describe the process for resolving competing requests for transfer after UC has already made a determination of cultural affiliation with multiple tribes (typos in paragraph 2 notwithstanding), and to more clearly distinguish <i>competing</i> requests from <i>joint/coalition</i> requests. We note some tribes prefer that UC not become involved in such competing requests.

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115			Cultural Affiliation & Repatriation Process	Multiple Claims	The policy should be clear as to how UC makes determinations when an item or collection could be affiliated with multiple tribes, or if multiple tribes have made a claim.	See response to comment 114.
116			Cultural Affiliation & Repatriation Process	Out of State Tribes	To what extent do the collections belong to out of state tribes? How will tribes be informed and what is the process UC will go through to repatriate those? UC needs to focus on the implementation of that and the resources required, and include that in the policy.	The policy requires that UC re-evaluate all prior determinations of CUI in accordance with both NAGPRA and CalNAGPRA. One of the triggering events is when the NAHC publishes the list of California Indian Tribes. (See Section VI.)
117	V.C	Inventories and Summaries	Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	<p>“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.’ In considering the lines of evidence above, the campus will take into account unique California history.”</p> <p>Comment: This language is helpful, but is not enough on its own. The Policy needs to include clear mechanisms for how tribal knowledge will receive equal or greater weight.</p> <p>For example, the Policy should assert that tribal knowledge by itself does constitute a preponderance of evidence. Similarly, the policy should assert that it is reasonable for a tribal representative to identify everything from a burial site as a funerary object.</p> <p>This clarification alone, would eliminate so many of the current barriers to repatriation. This clarifying language, which identifies how the Policy will ensure that tribal knowledge is given equal weight, is a necessary fix.</p>	UC needs to comply with NAGPRA and CalNAGPRA, which requires that we review the evidence and make determinations based on the preponderance of evidence. We cannot preemptively say that any type of evidence will automatically meet this standard without review. However, we modified the policy to clarify that determinations can be made in consideration of line or lines of evidence that are available (e.g., a determination can be made based on tribal evidence without academic evidence). Section V.C.2.b has been re-written and now reads: “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.’ All evidence, including academic evidence, must be evaluated critically taking into consideration the potential bias of the sources of the evidence, including academic authors, the credibility of certain evidence in light of contrasting evidence, such as tribal oral histories, other works discrediting the sources of evidence, or the circumstances in which the evidence was produced. Furthermore, decisions must be made in consideration of the line(s) of evidence that are available without prejudice owing to the absence of other lines of evidence.”
118			Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	According to the criteria, using any type of evidence e.g. oral history has always been in the law. What has been used are antiquated theories and archaeology reports in denying tribal requests. The workgroup should continue trying to resolve those.	See response to comments 89 and 117.
119	V.C.1	Inventory Process	Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	<u>Add: When considering the best available expertise, Tribal Knowledge should be treated as expert opinion.</u>	See response to comments 89 and 117.
120			Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	After the robust discussions in the Work Sessions, we are hopeful that the UC’s commitment to repatriation as an outcome (and not simply as a process) is sincere, and importantly, will be sustained. We do believe that the issues in Version Two of the Policy can be addressed if there is a sincere commitment to not only acknowledge Tribal Lines of Evidence as <i>equal</i> , but to <i>privilege</i> such evidence to reflect the fact that Tribes <i>are</i> the authorities with respect to their own cultural heritage and practices. We appreciate that University of California Representatives appeared to commit to this approach verbally during the Work Sessions, and request that Version Three of the Policy include this commitment in writing.	We believe we have addressed the concerns while remaining within the legal requirements of NAGPRA and CalNAGPRA. Please see response to comments 89 and 117.
121	V.C.3	Previously Unreported Holdings	Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	<p><i>Change:</i> In performing its evaluation to determine eligibility under NAGPRA/CalNAGPRA, the campus <u>may</u> seek tribal expertise.</p> <p><i>To:</i> In performing its evaluation to determine eligibility under NAGPRA/CalNAGPRA, the campus <u>must</u> seek tribal expertise.</p>	We have changed this sentence to indicate the campus will seek tribal expertise.
122			Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	<p>In Tongva territory, you have racist data. Why should it fall on the tribes to disprove the racism and theories that were accepted as fact? The people who are accepting data should do their own research. “The preponderance says that ancestors over 2,000 years old are not Tongva.” That’s wrong.</p> <p>Archaeologists often stand on their thesis. Then other archeologists will write off of their thesis which creates a buildup trend. We provide strong evidence that goes beyond a “thesis” and we still get pushback.</p> <p>I am concerned that academics are going off of previous thesis instead of cultural knowledge. The University is always using debunked information.</p>	We appreciate the concern. We believe we have addressed these while remaining within the legal requirements of NAGPRA and CalNAGPRA. Please see response to comments 89 and 117.

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123	V.D.2	Evidentiary Standard	Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	Oral traditions are not being treated as “equal” or sufficient to meet the “preponderance of evidence” threshold. The policy should have clear examples of what would be considered to constitute a preponderance of evidence. Tribal evidence should be given the greatest weight and should be considered sufficient on its own if there is no evidence to the contrary.	We appreciate the concern. We believe we have addressed these while remaining within the legal requirements of NAGPRA and CalNAGPRA. Please see response to comments 89 and 117.
124			Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	Recognition of tribal voice needs to be written firmly into the policy. For example, our culture dedicates and consecrates cemeteries, and therefore everything from that site is considered a funerary object according to our beliefs. That identification has often not been accepted by museum staff, as is also commonly the case for other oral histories.	We appreciate the concern. We believe we have addressed these while remaining within the legal requirements of NAGPRA and CalNAGPRA. Please see response to comments 89 and 117.
125			Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	Speaking historically, the biggest problem hasn’t been the preponderance of evidence but rather the type of evidence. Some categories of evidence are discounted. Changing the standard to make it easier doesn’t necessarily help. The policy indicates that tribal accounts cannot be discounted. Anyone walking into a room with the viewpoint that tribal accounts are not as valid is biased and should not be part of the process.	We appreciate the concern. We believe we have addressed these while remaining within the legal requirements of NAGPRA and CalNAGPRA. Please see response to comments 89 and 117.
126			Cultural Affiliation & Repatriation Process	Tribal Input & knowledge	<p>Tribal knowledge needs to be considered seriously within the context of historical academic inaccuracies. Archaeological theory is often used. Mark Macarro has talked about the word for “buffalo” but according to archaeologists his people were not there. It would not be in the language if it hadn’t existed. One thing we heard from Berkeley was “that was poetry.”</p> <p>The policy needs to talk about community based research practices and sit down with people in the community. We should look for community based scholars to serve in these capacities.</p> <p>Early anthropologists found no value in spiritual recounts/sites. Committees want a piece of paper that says that, when it was never accounted for in early reports.</p> <p>In the context of this policy specifically, indigenous knowledge speaks to the elitism of the UC. There needs to be a cultural shift valuing/accounting tribal knowledge over someone who grew up in a western society who spent 20 years “studying” the issue.</p> <p>A response we received from UC Davis was that our evidence was inadequate. We could accept their assertion and ask what the pathway to “adequacies” looks like (we did that and didn’t get a response) or say no, tribal elder evidence is adequate.</p>	<p>We appreciate the concern. We believe we have addressed these while remaining within the legal requirements of NAGPRA and CalNAGPRA. Please see response to comments 89 and 117.</p> <p>Also see Appendices A and A-1, requiring written determinations with a rationale be provided to the Tribes.</p>
127	V.E	Repatriation and Disposition	Cultural Affiliation & Repatriation Process		<u>Add: Tribal representatives may also make these requests to the Campus Committee, during a Campus Committee meeting.</u>	The policy now states that Tribes will be invited to committee meetings to participate and provide evidence and additional information. See Section V.A.2.c and Appendices A and A-1.
128			Cultural Affiliation & Repatriation Process		Flexibility needs to be built into the process of evaluating tribal claims to geographic areas. For example, NAHC maintains details on which tribes have occupied which parts of the state, but that is based on self-reported data the tribes have provided to the state. Not all tribes provide that information because they prefer the state not to have that information, e.g., they do not trust the state not to misuse the data.	UC is required to review the lines of evidence that are available. Some of these issues can be addressed during the Consultation process. See also Sections V.B.1 and V.B.2.
129			Cultural Affiliation & Repatriation Process		UC should say that AFO and UFO with CUI designation will be given to the right tribe.	See response to comment 112.
130	II.1	Definitions	Definitions	Aboriginal Lands	<p>1) Aboriginal Lands.</p> <p><u>Add: Aboriginal land may also correspond to the geographic area of traditional and cultural affiliation of a tribe, as identified by a tribe pursuant to § 21080.3.1 of the California Public Resources Code or as identified by the California Native American Heritage Commission. California Public Resources Code § 5097.94(m).</u></p> <p><i>Comment:</i> As part of AB 52, most tribes have identified this area as their geographic area of traditional and cultural affiliation. It would make sense to cross-reference this, and would allow tribes to use maps that they already have.</p>	Per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA.
131	II.14	Definitions	Definitions	Culturally Unidentifiable	<u>Add: Any Cultural Items or Human Remains from an area that corresponds to the geographic area of traditional and cultural affiliation of a California Indian Tribe are likely to be culturally affiliated to that Tribe, and should most likely not be identified as culturally unidentifiable.</u>	See response to comment 110.

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132	II.12	Definitions	Definitions	Cultural Affiliation	<p><i>Add:</i> <u>Cultural affiliation may also correspond to the geographic area of traditional and cultural affiliation of a tribe, as identified by a tribe pursuant to § 21080.3.1 of the California Public Resources Code or as identified by the California Native American Heritage Commission. California Public Resources Code § 5097.94(m).</u></p> <p><i>Comment:</i> As part of AB 52, most tribes have already identified areas of traditional and cultural affiliation. It would make sense to be able to use these existing identifications, rather than to have to re-prove cultural affiliation for each new site or statute.</p> <p>As mentioned during the Work Sessions, the idea that living tribes are not affiliated with older sites within their territories is a logical fallacy that is frequently used to deny or limit repatriations. By referencing the AB 52 geographic area of traditional and cultural affiliation, this loophole would be closed, and it would be much easier for Tribes to use existing information and legal processes to demonstrate cultural affiliation.</p>	See response to comment 110.
133	II	Definitions	Definitions	Aboriginal Lands	<p>The definition of “Aboriginal Lands” in NAGPRA does not apply well to California. There are not treaties, etc., so we need to revisit what the aboriginal lands are in California.</p> <p>Will tribes have any input into the process of how aboriginal lands are determined?</p>	We agree this definition is not a perfect fit given California's particular history; however, "Aboriginal Lands" is specifically defined by NAGPRA. Per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA.
134			Definitions	Aboriginal Lands	<p>The Draft Policy includes the following definition of “Aboriginal Lands”:</p> <p>“Aboriginal Lands: Land that is recognized as the aboriginal land of an Indian Tribe. For the purposes of making determinations related to Disposition of Culturally Unidentifiable Human Remains, aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order. 43 C.F.R. § 10.11(b)(2)(ii).”</p> <p>We assert that this definition is far too narrow given the history of genocide and land theft from California’s indigenous tribes. The documents cited above will not provide a sound basis for a particular tribe’s aboriginal lands because the Land Claims Commission and treaty documents are limited with regard to the information they will provide about aboriginal land tenure. Moreover, the treaties that were signed in California were never ratified, so any reference to them must be clearly identified as such. We recommend that aboriginal lands may be identified through a number of collateral sources, including anthropological studies and reports, ethnography, linguistic data and traditional tribal knowledge including oral tradition and songs. Such material is substantive and is used to verify aboriginal ties for federally-recognized tribes when taking land into trust, so this information should be acceptable for purposes of this policy.</p>	See response to comment 133.
135	II.1	Definitions	Definitions	Aboriginal Lands	<p>There are no treaties in California only the horrific 18 unratified treaties that were hidden by Senate Resolution. There are only a few Executive Orders and there are very few claims either in the Indian Claims Commission or the United States Court of Claims. Some Mission Indian Tribes like the Santa Ynez Chumash are mentioned in the Mission Indian Relief Act of 1891 and in the report that Act commissioned called the Report of the Smiley Commission.</p> <p>While these documents are the sources for how certain tribes were federally recognized and how they obtained federal trust land for reservations they are not the complete aboriginal territories of such tribes.</p> <p>Proposed revision: Additional evidence may be submitted by any Native American Tribe to further document such Tribe’s Aboriginal lands.</p>	See response to comment 133.
136			Definitions	Cultural, Funerary, Sacred Objects	<p>AB 52 is not super explicit on definitions so having clear baselines to show your argument will be accepted will be helpful. The policy should include examples. For example, ceremonial and burial sites are dedicated and items found there are funerary objects. This is a very clear definition, but very few museum staff (including UCD) accept that definition. Having that example of saying yes, this is a reasonable definition of a funerary object would go a long way.</p>	NAGPRA/CalNAGPRA define Funerary Objects. It is difficult to be more definitive by way of examples in policy when circumstances are case specific. All available lines of evidence (including evidence presented by Tribes during Consultation) will be considered in making determinations, and the Policy also provides tribes with the opportunity to add their statements for consideration by the Campus Committee.
137	II.3	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p><i>Add:</i> <u>Associated funerary objects should be identified by consulting Tribes, as part of the inventory process.</u></p> <p><i>Comment:</i> Often museum staff have not accepted identifications of Associated Funerary Objects that are made by tribes, so the addition of clarifying language to the definitions, in addition to clarifying processes and mechanisms to the policy will ensure a more consistent and less ambiguous process for the identification of cultural items.</p>	See response to comment 134.

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138	II.4	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p>Add: <u>For the purpose of identifying cultural items, it is reasonable to assume that all of the objects at a burial site are funerary objects.</u></p> <p><i>Comment:</i> Often museum staff will require that consulting tribes prove that objects were intentionally placed at a burial site, before agreeing that such objects are funerary objects. This creates a huge burden on tribes to prove something on an object-by-object level (there can be thousands, or tens of thousands, of objects at these sites).</p> <p>It is more rational (and consistent with NAGPRA definitions) to assume that something that is at a burial site is a funerary object. This common sense clarification, would resolve many of the current barriers to repatriation that are faced by tribes.</p>	See response to comment 134.
139	II.22	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p>Add: <u>Any collection that contains Native American objects has the potential to contain cultural items.</u></p> <p><i>Comment:</i> Often collections from “non-burial sites” are seen by museum staff as not being subject to NAGPRA. This is a gap the Policy should close.</p> <p>Such collections are not receiving the same review and protections that “NAGPRA-eligible” collections receive, because there is often no requirement that researchers obtain tribal consent prior to conducting research, which can be damaging or culturally inappropriate.</p>	Per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA. See also response to comment 134.
140	II.13	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p>Add: <u>Cultural Items should be identified by consulting Tribes, as part of consultation. Any collection that contains Native American objects has the potential to contain cultural items.</u></p> <p><i>Comment:</i> Often collections from “non-burial sites” are seen by museum staff as not being subject to NAGPRA. This is a gap the Policy should close.</p> <p>Such collections are not receiving the same protections that “NAGPRA-eligible” collections receive, because there is often no requirement that researchers obtain tribal consent prior to conducting research, which can be damaging or culturally inappropriate.</p>	Per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA. However, we can further clarify in Section V.B.1 that tribes may request and receive access to complete accession and catalog records (or comparable information) from their area of interest so that the tribe can evaluate whether there are other collections that may contain items that are potentially NAGPRA/CalNAGPRA-eligible.
141	II.28	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p>Add: <u>Objects of Cultural Patrimony should be identified by consulting Tribes, as part of consultation.</u></p>	NAGPRA/CalNAGPRA define these terms. We agree that these identifications, and the formation of the evidence to support these, should happen during the consultation process.
142	II.34	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p>Add: <u>Sacred Objects should be identified by consulting Tribes, as part of consultation. In the example above, the ancient pottery sherds or arrowheads would be sacred objects, if they were devoted to a traditional Native American religious ceremony or practice. Because a culture may ascribe religious significance to cultural sites in general, or to certain types of objects, a Tribe may broadly define Sacred Objects, and this definition should be treated as inclusive, to correspond with Sacred Objects as they are defined by culturally affiliated Tribes.</u></p> <p><i>Comment:</i> Unfortunately, this definition has frequently been misinterpreted to mean that only objects that are considered sacred by western standards are Sacred Objects. The added language makes the common sense clarification that this definition should apply to Sacred Objects as they are defined by the culturally affiliated Tribe.</p>	The definitions used by UC are those in the regulations. We have strengthened the language in the policy to ensure that tribal knowledge is given equal weight as other lines of evidence.
143	II.37	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p>Add: <u>The Summary should include a description of every collection that contains Native American objects. Affiliated tribes should be consulted during preparation of the Summary.</u></p> <p><i>Comment:</i> Often museum staff will arbitrarily decide which collections of Native American objects do or do not contain cultural items. This results in Native American objects being identified as “not Cultural Items” without any tribal consultation, which is inconsistent with federal and state laws. This clarification is necessary to ensure a more consistent and technically correct application of NAGPRA processes.</p>	Per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA. We note that NAGPRA permits summaries to contain a general description of a collection in lieu of an item by item description. However, we can further clarify that tribes may request and receive access to complete accession and catalog records (or other comparable information) from their area of interest so that the tribe can evaluate whether there are other collections that may contain items that are potentially NAGPRA/CalNAGPRA-eligible.
144	II.41	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p>Add: Unassociated Funerary Objects should be identified by consulting Tribes, as part of consultation.</p>	See response to comment 134.
145	II.18	Definitions	Definitions	Cultural, Funerary, Sacred Objects	<p>Need further information and consistency on how something that is found at a grave site would or would not be treated as a funerary object. Museum staff have not given consistent answers on what would be considered a funerary object, but rather have tended to state that given items are <i>not</i> funerary objects without an explanation as to why. UC should step away from a limited application of how “funerary object” is defined. Tribes should not have to show intent to bury an item with a specific individual, or that an item was manufactured specifically for burial. The burden of proof should be on UC to prove beyond a preponderance of evidence that something is not a funerary object.</p>	See response to comment 134.
146	II.30	Definitions	Definitions	Preponderance of Evidence	<p>Add: Information provided by Tribes should be privileged over other lines of evidence when determining a Preponderance of Evidence. In general, information or identifications provided by Tribes should be considered to meet the Preponderance of Evidence standard.</p>	See response to comments 89 and 117.

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147	II	Definitions	Definitions	Preponderance of Evidence	We'd like to better understand terms like "totality of evidence" for cultural affiliation vs. "preponderance of evidence." How will those be defined and applied?	See response to comments 89 and 117.
148	II.20	Definitions	Definitions	Inventory	<u>Add: Affiliated tribes should be consulted during preparation of the Inventory.</u>	Per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA. However, Appendix A-1 directs the Repatriation Coordinator to initiate contact with Tribes when revising Inventories, creating new Inventories and Summaries (and/or Inventory or Summary supplements under CalNAGPRA), and reevaluating Culturally Unidentifiable Inventories.
149	II.23	Definitions	Definitions	Human Remains	<u>Add underlined text: Determinations of whether Human Remains or Cultural Items are Native American shall not be precluded based solely on their age and such identifications may also be made by Tribes based on Tribal Knowledge and Cultural Practice.</u>	Under the policy, consistent with NAGPRA and CalNAGPRA, all determinations are to be based on a preponderance of all the available lines of evidence, including evidence presented by tribes. Tribes may present evidence such as that cited in this comment, and under the policy such evidence will be considered in making determinations.
150	II.19	Definitions	Definitions	Human Remains	<u>Add: Since the concepts of freely given or naturally shed are culturally subjective, such determinations should be made by Tribes.</u>	Per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA. Thus, there is no longer any reference to items "freely given or naturally shed," though that language is included in the NAGPRA definition of "human remains" (which is incorporated into CalNAGPRA). Under this policy, consistent with NAGPRA/CalNAGPRA, determinations of whether something meets the definition of a Cultural Item under NAGPRA are to be made based on the preponderance of all available lines of evidence, including evidence presented by Tribes.
151			Definitions	Consultation	Also, since CalNAGPRA does not define the term "consultation" we would request that the term be defined in this policy so as to be consistent with Senate Bill 18 (Burton, 2004).	The definition of Consultation used in this policy reflects the definition described in California Government Code 65352.4, as enacted in Senate Bill 18 (Burton, 2004). In addition, we have enhanced the guidance on Consultation. See Section V.B.
152	II	Definitions	Definitions		Explain if the Policy uses a convention for capitalization (there seems to be some internal inconsistencies) and consider if italicizing defined terms might be useful.	Terms capitalized in the policy are those which are defined in the policy and/or defined under NAGPRA/CalNAGPRA. We have clarified this in Section II.
153	II	Definitions	Definitions		In [Our Tribe]'s November 2019, comment letter, the Tribe urged that the definitions in the Policy be updated to include clarifying language with respect to the identification of cultural items, and many other repatriation processes. The Version Two revisions did not include this clarifying language. Instead, the revisions simply included more cross-references to CalNAGPRA. The definitions section of the Policy should not simply repeat existing federal and state law. The purpose of the policy is clarify and interpret existing law so that it can be better implemented. And the purpose of <i>this</i> Policy is to promote repatriation <i>outcomes</i> . Therefore, the definitions section of the policy document should include additional language to make repatriation to Tribes of their Ancestors, belongings, and gifts, <i>easier</i> within the UC System. The additional language that we have proposed in redline would make identifications of cultural items and cultural affiliation less difficult, eliminate many arbitrary roadblocks, reduce areas of museum interpretation, and lead to a more consistent, fair, and straightforward repatriation process with improved repatriation outcomes for Tribes. We understand that some may prefer to make these clarifications only in other sections of the Policy, such as the appendices. While it is helpful to also have clear language in these sections, it is critical that such language also be present in the definitions themselves whenever possible.	Per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA. We have worked to provide clarifying language throughout the policy wherever possible. However, evaluations will need to be made on a case-by-case basis. See also response to comments 89 and 117.
154	II.29	Definitions	Definitions		There is no definition for Physical Custody, this appears to be an obsolete reference.	You are correct; this has been deleted.
155			Equalization of Voices		Non-federally-recognized tribes are at a disadvantage, non-state-recognized tribes even more so. Concern is that tribes with the greatest resources will have the greatest voices. UC should consider putting measures in place to equalize the process.	NAGPRA/ CalNAGPRA define Lineal Descendant, Indian Tribe, Native Hawaiian Organization, and California Indian Tribe, and set out the rights of each with respect to repatriation, including providing an order of precedence for repatriation. While UC recognizes this creates a disadvantage for non-federally recognized tribes, UC must follow the law. Under UC's policy, systemwide and campus committees will include representatives of both federally-recognized and non-federally recognized tribes, and provides a mechanism for making dispositions to non-federally recognized tribes in accordance with the law. If a tribe is concerned that it will not gain State recognition, they should bring their concern to the NAHC.

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156	V.C	Inventories and Summaries	Identification & Affiliation of Remains & Cultural Items	Method of Determination	<u>Add: In determining if materials meet the definition of Cultural Items, the Campus Committee may use any the following types of evidence: geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion. The Campus Committee must consider the totality of evidence.</u> Comment: Who is determining if materials meet the definition of cultural items? This determination should be made at the Committee level, and not by the Repatriation Coordinator.	We have reworked the sections on Inventories and Summaries to describe the role of the Repatriation Coordinator in consulting with Tribes on these processes. Determining whether materials meet the definition of Cultural Items rests with the Campus Committees and Chancellors.
157			Identification & Affiliation of Remains & Cultural Items	Method of Determination	In terms of establishing cultural affiliations, the canons of construction by which the Campus Committees would establish affiliation should be clearly laid out.	We have strengthened areas of the policy describing the methods by which Campus Committees will be expected to establish Cultural Affiliation. See Section V.C.2.b.
158			Identification & Affiliation of Remains & Cultural Items	Method of Determination	The policy should make it clear that any questions regarding definitions, determinations, or other aspects of implementation will be interpreted in a way that benefits the tribes. When in doubt, any piece of information should be evaluated through the lens of the tribal communities, i.e., in a manner that specifically advances repatriation. For example, in the case of UC holding remains and cultural items, does UC have the proof that they obtained these items legally? If not, it should be presumed that the tribes have the right to have them returned.	Section V.C.2.b. includes language intended to address the potential for biased academic sources to be used and favored over tribal knowledge, as well as concerns that the lack of certain lines of evidence has been used to their disadvantage, instead of basing determinations weighing the evidence that is available. UC will waive the requirement at NAGPRA § 10.10(a)(iii), which would normally require that a Tribe present evidence supporting a finding that UC does not have the "Right of Possession." See also response to comments 89 and 117.
159			Identification & Affiliation of Remains & Cultural Items	Tribal Input & knowledge	A definition of "tribal knowledge" should be included, and that term should be included in the written procedures for determining cultural affiliation.	We added "tribal knowledge" per NAHC comments received in the last round. We have chosen not to define it as this term is not used throughout the policy. We believe that, in the single context of its use, the phrase generally stands on its own. [Section V.C.2.b states, "The campus must consider the totality of evidence, and make determinations of Cultural Affiliation / State Cultural Affiliation based on the preponderance of the evidence, including tribal knowledge and oral histories, regarding whether there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of the requesting Tribe(s) and an identifiable earlier group with respect to the Human Remains and Cultural Items being requested."]
160	V.C	Inventories and Summaries	Identification & Affiliation of Remains & Cultural Items	Tribal Input & knowledge	<u>Add: In general, identifications of Cultural Items that are made by Tribal Representatives will be accepted by the Campus Committee. The Campus Committee must meet with Tribal Representatives prior to rejecting an assertion of cultural affiliation or an identification of cultural items. If the Campus Committee rejects the identifications made by Tribal Representatives, then such rejections shall include (1) clear and substantial evidence in support of the rejection and (2) a process to appeal the rejection.</u>	UC has an obligation to review all evidence; however, we have clarified that in evaluating items to establish whether they meet the definitions of Cultural Items and their Cultural Affiliation or State Cultural Affiliation, campuses will Consult with Tribal Representatives and utilize the types of evidence and standards of proof stipulated in NAGPRA and CalNAGPRA. Please also see response to comments 89 and 117. We have also clarified that Tribes will be invited to review all evidence to be provided to the committees and may meet with the Campus Committee. If the Campus Committee disagrees with request, a clear explanation is provided and information on how to appeal is provided. See Section V.B.1.j.
161			Identification & Affiliation of Remains & Cultural Items	Tribal Input & knowledge	<i>Identification and Definition of Cultural Items</i> The Tribe supports the general policy of using the extended definition of "Cultural Items" to include "Human Remains and Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony". We would request that the policy explicitly include tribes in the evaluation and identification of such objects, especially those that are currently culturally unidentifiable, and acknowledge tribes as experts in such identification. Tribal expertise should also extend to the "preponderance of evidence" standard in the policy.	Appendices A and A-1 more clearly spell out the ideal of Tribal participation and sharing of evidence during all stages from Inventory to Transfer, including the identification of the objects noted in the comment. Further clarification concerning Tribal expertise and evidence is described in Section V.C.2.b.

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162	V.C.1	Inventory Process	Identification & Affiliation of Remains & Cultural Items		<p><i>Add underlined text:</i> In addition, campuses must request that Tribes provide certain information, including, as appropriate, information regarding the kinds of objects the Tribe reasonably believes to have been made <u>or modified</u> exclusively for burial purposes or to contain Human Remains of their ancestors.</p> <p><i>Comment:</i> Examples could include manos, metates, ollas, lithic tools, and other items ritualistically sacrificed (broken) as part of tribal cultural practices.</p>	This section has been fully rewritten. Further details concerning Tribal participation in the Inventory process are described in Appendix A-1.
163	V.C	Supplements to Inventories and Summaries	Identification & Affiliation of Remains & Cultural Items		<p><i>Add underlined text regarding when inventories or summaries must be updated:</i> They obtain new information that provides the basis for revising a decision about the Cultural Affiliation/State Cultural Affiliation or about the number <u>or nature</u> of Cultural Items listed in a previously submitted Notice of Intent to Repatriate or Notice of Inventory Completion</p>	The suggestion has been incorporated in the text now appearing in Section VI.
164	V.C	Supplements Inventories and Summaries	Identification & Affiliation of Remains & Cultural Items		<p><i>Add underlined text regarding when inventories or summaries must be updated:</i> They obtain Possession or Control of Human Remains or Cultural Items that are or are likely to be Culturally Affiliated with a newly <u>or reinstated</u> Federally Recognized Tribe</p>	We will incorporate this suggestion in the text now appearing in Section VI in the final policy.
165			Inclusion of Non-Recognized Tribes		<p>It is clear that the definitions used in the Cal-NAGPRA are outdated and we assert that they will be updated soon. It is well-known today that the Federal Acknowledgement process through the Bureau of Acknowledgement and Recognition is flawed and is a waste of significant time and money for tribal groups that have attempted to be recognized through that process. Our Tribe has never sought to be federally-recognized, and does not wish to be forced into a settler-based governmental structure, however the Tribe has taken many steps to formalize itself as a California Nonprofit Mutual Benefit Corporation, including obtaining formal certification with the Secretary of State. Moreover, members of the Tribe have long sought to establish a land trust so that it can formally hold conservation easements to protect tribal cultural sites. The development of the Sagorea Te Land Trust has been a twenty-year process that has been dreamed about and prayed on by the Tribe's membership. It is becoming a reality, but it is separate and apart from the formal nonprofit mutual benefit corporation that will be an adaptation for the Tribe to modernize its informal governance to be one that is more "acceptable" by the State and other settler institutions.</p> <p>We understand that the Tribe will be included in the NAHC Contact List under Government Code Section 65040.2 et seq. if it meets one or more of the following criteria:</p> <ul style="list-style-type: none"> • Federally recognized California Native American tribes. • California Native American tribes that function as a governmental body that carries out general government functions, has regularly elected officers, operates under a tribal constitution, and maintains a tribal roll. • California Native American tribes that have submitted a completed petition for recognition by the federal government. Submission of a letter of intent to petition for federal recognition is not alone sufficient for inclusion on the list. • California Native American tribes possessing documentation that they were formerly recognized. • California Native American tribes that are recognized as a Native American tribe by the surrounding community, including other tribes and local governments. • California Native American tribes who are members of continuously operating historical tribes that were signatories to an unratified treaty. • California Native American tribes whose representation is through a non-profit organization dedicated to general governance and tribal community well-being and for which the majority of the non-profit's membership is not represented by any other tribal group. <p>To support a claim for inclusion on the list, the following additional criteria will be considered:</p> <ul style="list-style-type: none"> • California Native American tribes whose members possess BIA documents of tribal affiliation to an historical California Native American tribe. • California Native American tribes whose members have a shared cultural affiliation with an historical California Native American tribe(s). • California Native American tribes that are eligible to receive federal services by virtue of the fact that they are California Indians. • California Native American tribes with documentation of interaction with the federal, state, or local government through legislation and/or agreements. • Documentation of tribal government activities in the form of meeting minutes, government actions or decisions made, meeting dates, or organizations with which the tribe is/has worked with. • Proof of a tribal roll or membership. <p>We anticipate that the Cal-NAGPRA will be amended to reflect the more modern process followed by the NAHC for tribal consultation purposes. It is the only logical outcome that inclusion on the NAHC Native American Contact List would also be a basis for inclusion in the Cal-NAGPRA, with full rights to repatriate ancestral remains and items of cultural patrimony that are affiliated with a modern California Indian Tribe that is aboriginal to lands where items and remains were taken. We ask that you consider this expanded process for the next policy draft.</p>	We have deleted definitions and other legalistic portions of the policy in part because it is unnecessary to restate these in our policy, and also because the policy is less likely to become outdated when changes are made in NAGPRA and CalNAGPRA. We believe this will allow UC to more easily implement NAGPRA / CalNAGPRA-related regulatory changes.

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Comment No	Sec No	Sec Header	Dimension	Sub-Dimension	Comment	UC Response
166			Inclusion of Non-Recognized Tribes		Might be good to have a way to get a commitment to including non-federally-recognized tribes. Write in something about must include them?	We have rewritten the policy to clarify the ability of non-Federally-recognized Tribes to submit requests. Under Federal NAGPRA, UC must follow different procedures for Federally-recognized and non-Federally-recognized Tribes. See Sections V.D.3-5, and Appendices A and A-1.
167			Intellectual Property, Photographs, Reproductions		During the course of the Work Sessions, it came to light that many cultural items and Ancestral bones had been 3D scanned and that the University of California and/or their researchers may assert intellectual property rights to such data. This means that after our Ancestors have been repatriated, researchers could simply print up a new set of bones and put them on display in a museum or use them for other purposes. While we appreciate the University of California's commitment to ethical teaching and research moving forward, we request that past research be brought into this Policy framework, as it was based on our Ancestors, their belongings, and gifts, usually without the consent of descendant communities. Often this research has been inaccurate, and has been used in ways that continue to harm descendant communities. Graton Rancheria Representative Buffy McQuillen gave many examples of this phenomenon during the UC Davis Work Session. We urge the University of California to address these ethical issues.	We agree that further efforts are needed to resolve the use of existing data maintained by UC museums and individual faculty members. This includes not only the existence of 3D images but also photographic data, ethnographic field notes, and possibly other data obtained without Tribal knowledge or consent. While these concerns fall outside the scope of a repatriation policy, we take them seriously and believe they warrant further discussion and evaluation, the outcome of which may be more appropriate in a separate UC policy or guidance. Note that future research use of Human Remains and Cultural Items is limited narrow circumstances, <u>with</u> tribal approval.
168			Intellectual Property, Photographs, Reproductions		The policy should specify that when remains and cultural items are returned, original photographs, 3D images, and other documentation from which data could be gathered should also be returned as well.	See response to comment 167.
169			Intellectual Property, Photographs, Reproductions		[Our Tribe] encourages the NAGPRA Policy to include photographs, images, casts, and 3D images of ancestral remains and NAGPRA items be included in scope of items to repatriated to tribes, if requested. This is necessary to stop the unauthorized use for research and publications, exploitation and, in many cases, further desecration of our ancestors and NAGPRA items.	See response to comment 167.
170	V.C.1	Inventory Process	Inventory		"Campus" is unclear [with respect to campus actions/responsibilities], specify who at the Campus will do this. The Repatriation Coordinator? The Campus Committee?	This section has been fully rewritten for clarity and the sentence in question has been deleted.
171	V.C	Inventories and Summaries	Inventory		Regarding this statement in the policy: "UC campuses with knowledge of existing NAGPRA-eligible Collections Human Remains in their Possession or Control have already submitted inventories and summaries." Comment: We are unable to verify this statement at this time and suspect that 100% of UC campuses with knowledge of existing NAGPRA-eligible Collections have not all submitted inventories and summaries. In any event these inventories and summaries have dribbled out over the last 10 of more years by random acts of publication in the Federal Register which most tribes do not read regularly. Therefore, these inventories need to be recirculated or at least be placed on easily accessible web pages. For those that already exist, they need to be immediately recirculated to the tribes that are included therein as affiliated. For those that do not exist, this could be added to the Repatriation Implementation Plan (R.I.P.). Proposed revision: UC campuses with knowledge of existing NAGPRA-eligible Collections Human Remains in their Possession or Control need to recirculate the inventories and summaries they have already submitted to all Native American Tribes that are included therein as affiliated to any Human Remains or Cultural Items.	We appreciate this comment. We will consider how we can best post information about UC's Inventories and Summaries. Tribes may also search National NAGPRA databases for Inventories, Summaries, and Notices. See: https://grantsdev.cr.nps.gov/NagpraPublic/Home/Inventory https://grantsdev.cr.nps.gov/NagpraPublic/Home/Summary https://grantsdev.cr.nps.gov/NagpraPublic/Home/Notice (For Summaries, tribes can then review the list to see if they are listed or the other associated tribes are listed and request these summaries.)
172	V.C	Inventories and Summaries	Inventory		<u>Add underlined text:</u> UC campuses with knowledge of existing NAGPRA-eligible Collections Human Remains in their Possession or Control have already submitted inventories and summaries. <u>However, many of these inventories and summaries may be incomplete, inaccurate, or incorrectly classify Human Remains and Cultural Items as Culturally Unidentifiable.</u>	Sections V.C.3. and VI require campuses to re-review their existing CUI inventories and summaries, including Human Remains and Cultural Items previously determined to be Culturally Unidentifiable, in consultation with Tribes.
173			Inventory		Not being able to review the notice of inventory before it's been submitted is a problem. In our situation there are 7 bands. When the NOI went out it didn't include the additional 2 tribes. Had we been given the opportunity to review, we would've noted that, it would've been simple, and avoided the situation.	Appendices A and A-1 now clearly include an opportunity for consulting Tribes to review the Draft Notice of Inventory Completion, to allow for identification of inaccuracies and provision of supplemental information. In addition, the consultation section (V.B.1) has been enhanced and details the steps the Repatriation Coordinator must take to identify potentially culturally affiliated tribes.
174			Loans of Remains & Cultural Items		I vote to say NO to loans – that's how things go "missing" in my experience. So NOOOO do not loan out any NAGPRA materials.	Sections V.K.1-2 have been revised to carefully detail required <i>narrow</i> conditions for loans and we have added more detailed documentation requirements.

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175			Loans of Remains & Cultural Items		Policy should reflect that remains and cultural items will not be loaned out to other institutions, students, etc. The language should specify that remains and items will be left untouched until they are claimed, and then only moved with the approval of the tribe.	Recognizing that it may be advantageous to allow for the possibility of loans in certain circumstances, the revised policy permits loans from UC to external entities, but only upon request by Culturally Affiliated Tribes or Aboriginal Lands Tribes, or in furtherance of Repatriation or Disposition. See Section V.K.2 for conditions imposed on loans, including Loan Agreements detailing the expectation of respectful stewardship and other applicable conditions in accordance with this policy (see also Section V.J).
176	V.I	New Requests for Short-Term Care and Loans	Loans of Remains & Cultural Items		Regarding loans external to UC: Only if initiated by affiliated tribe(s) and serve tribal purpose such as for ceremony or knowledge transmission. Regarding transfers within UC: Only if affiliated tribe is notified, tracking system in place, or if brings collection closer to affiliated tribe.	See response to comment 175. The policy is silent on transfer within UC because after listening to tribes at the working sessions, we believe that such details should be discussed during consultation and are case specific. Some tribes may not want items moved. Note that Section V.B.1 now states, "UC campuses should work collaboratively with each other when engaging in Consultation with Tribes that may have Human Remains or Cultural Items in collections across multiple campuses."
177	V.A.2.c	Campus Committees	Misc./Other		<i>Add: <u>Office of</u></i> Campus Counsel should provide input on legal matters, and may be invited to regularly attend Committee meetings.	Within UC, "General Counsel" refers to the Office of General Counsel.
178	V.D.2	Evidentiary Standard	Misc./Other		<i>Change to add underlined text:</i> Under <u>Federal NAGPRA and CalNAGPRA</u> , determinations must be made by a preponderance of the evidence...	This sentence was deleted during revision of the policy; however, Section V.C.2.b, Determining Cultural Affiliation / State Cultural Affiliation, now makes reference to both NAGPRA and CalNAGPRA.
179	V.A.1.c	Systemwide Committee	Misc./Other		<i>Delete text in Strikeout:</i> ...and invite guests to its meetings in order to provide particular expertise to assist the Systemwide Committee...	We are not opposed to deleting this text; we may delete in the final policy.
180			Native Hawaiian Organizations		[With regard to crafting its policy,] UC needs to invite and include Native Hawaiians in the consultation and revision process, as their presence and voices have been absent in the process.	UC has solicited input from non-California tribes that have been culturally affiliated with UC held human remains. However, as CalNAGPRA specifically mandates that UC consult with California Native American tribes, and as we likely have very few (if any) Native Hawaiian Cultural Items, we have focused our efforts on California tribes. We note that the improvements made as a result of these interactions will also benefit Native Hawaiian Organizations (to the extent that we have Native Hawaiian cultural items).
181			Native Hawaiian Organizations		UC should develop a separate policy for Native Hawaiian organizations, as their concerns and traditions differ greatly from Native American Tribes in California.	This policy describes how UC will pursue the value of repatriation and ensure compliance with CalNAGPRA and NAGPRA. As NAGPRA provides rights to Native American Tribes, Native Hawaiian Organizations (NHO), and Lineal Descendants, we believe all should be covered under a single policy. Moreover, the general process for consultation and repatriation would be the same for NHOs as it is for Native American or California Indian Tribes. Therefore, a separate policy is not necessary.
182	V.A.1.b.2	Systemwide Committee	Oversight & Compliance Process		<i>Add underlined text:</i> Make recommendations for corrective action or <u>systemwide or campus</u> audits to the President or President's designee to ensure compliance with this Policy, and applicable laws and regulations	Suggested change was adopted.
183	IV.B.1	Roles / Responsibilities	Oversight & Compliance Process		<i>Consider striking:</i> The Chancellor may designate a "Chancellor's Designee" for these purposes. <i>Comment:</i> Experience shows, such designation can lead to additional hoops for tribes to jump through as well as to entrench a culture of noncompliance. Also, tribes are used to having government-to-government consultation with the actual decision maker.	We believe authorizing the Chancellor to assign a designee at his or her discretion to be reasonable. This not only affords Tribes an additional option for appeal at the campus level (see Section V.I.2. and Appendix B), but may allow for more expeditious decision-making in the event the Chancellor is unavailable.
184	IV.A.1	Roles / Responsibilities	Oversight & Compliance Process		<i>Consider striking:</i> The President may designate a "President's Designee" for these purposes. <i>Comment:</i> Experience shows, such designation can lead to additional hoops for tribes to jump through as well as to entrench a culture of noncompliance. Also, tribes are used to having government-to-government consultation with the actual decision maker.	We believe authorizing the President to assign a designee at his or her discretion to be reasonable, in order to allow for more expeditious decision-making in the event the President is unavailable.

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185			Oversight & Compliance Process		NEW d. ONGOING JURISDICTION OVER UC BERKELEY The University of California Berkeley has been a persistent violator of NAGPRA and deliberately obstructs repatriations by tribes. [Our Tribe] commented on this originally in 2008 before the State Senate Committee on Government Operations, the Honorable Dean Flores, former Chair. There is little or no reason to believe things will change at Berkeley despite some new rhetoric. Proposed revision: A new sub-section (d) be added to the Systemwide Committee placing Berkeley under probation and direct review of the Systemwide Committee until such time that UC Berkeley completes its Repatriation Implementation plan and it is approved by the Systemwide Committee.	We believe it is unnecessary to place UC Berkeley on probation. The revised policy spells out the process all campuses will need to follow to accomplish repatriation. In addition, the campus committee and systemwide committee will have oversight responsibilities. (See Sections V. A-B.)
186			Oversight & Compliance Process		The Tribe is concerned with the elements of the Policy relating to oversight. While the Systemwide Committees and the Campus Committees may request records from campus officials as needed to fulfill oversight functions, and the Chancellor or Chancellor's Designee is responsible for compliance, the Policy does not appear to contain meaningful enforcement mechanisms capable of resolving campus non-compliance. Accordingly, we request that there be specific measures to enforce compliance with this policy, which would include the Oversight Committees which are comprised of Tribal representatives. Oversight committees should be able to request audits and consult with tribes as needed to evaluate compliance.	The Campus and Systemwide Committees all have a clear responsibility to assess compliance and recommend audits (see Sections V.A.1.b and V.A.2.b). In addition, the policy requires the Repatriation Coordinator to provide ongoing reports to the committees (see Appendix D). The Committees also have authority to recommend corrective action to the Chancellor or President.
187			Oversight & Compliance Process		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. There are also mechanisms within the Policy for internal audits. However, there is no language in the Policy regarding what will be done with the results of the audits. We recommend that the Policy include a mechanism for making changes to the Policy based on either the results of an internal or external audit.	Section III.D. now spells out the triggering circumstances for re-review of this policy, which include when the UC auditors or external auditors recommend changes.
188			Pending Claims		How would implementation of the new policy impact pending claims that are ongoing as of August 1 st ?	Ongoing/pending claims will not be impacted by implementation of the new policy.
189	VI.2	Repatriation Implementation Plan	Policy Implementation & Revision	Campus Implementation Plans	<u>Add: ...and shall offer assistance with repatriation, such as assistance identifying reburial locations, setting up a secure workspace for reburial preparations, or assistance with funding labor costs associated with reburial preparations.</u>	The Consultation Section V.B.1. and Appendix A-1 (items #30-31) require that the Repatriation Coordinator inquire about potential barriers and, to the extent possible, attempt to alleviate these, or at the request of the tribe, help find other resources.
190	VI.1	Repatriation Implementation Plan	Policy Implementation & Revision	Campus Implementation Plans	<u>Add underlined text: ...consider any changes in applicable law, consider the addition of new or reinstated Federally Recognized Tribes...</u>	We will incorporate suggestion in the text now appearing in Section VI in the final policy.
191	VI.5	Repatriation Implementation Plan	Policy Implementation & Revision	Campus Implementation Plans	<u>Add: This timeline must 1) allow for review of the draft Plan by interested parties, and 2) demonstrate how budgetary resources could expedite repatriation.</u>	We have reworded Section VI.5. to include additional clarity regarding timelines and budgetary expectations. Note that the Repatriation Implementation Plans must be reviewed by the campus and systemwide committees.
192			Policy Implementation & Revision	Campus Implementation Plans	Appendix D includes a timeline for the campus repatriation plan. However, there needs to be more substance about what goes into a repatriation plan.	We have updated Section VI. to include additional clarity about the required content of the campus Repatriation Implementation Plans, and Appendix C contains a Sample Campus Repatriation Plan Timeline. However, as each campus has a different type of collection and resources, each will necessarily look different.
193			Policy Implementation & Revision	Campus Implementation Plans	As we discussed during the UC Davis Work Session, we recommend that one of the Policy Appendices include an outline with clear requirements for the contents of Campus Repatriation Implementation Plans so that these Plans are consistent with the System-Wide policy and to clarify expectations for the Plans. The different UC Campuses already have widely varying interpretations and implementations of NAGPRA, which makes it difficult for Tribes to coordinate repatriation. Including clear requirements and an outline for the Campus Repatriation Implementation Plan would lead to a more consistent repatriation process across the campuses.	See response to comment 192.
194	VI	Repatriation Implementation Plan	Policy Implementation & Revision	Campus Implementation Plans	Looking at what goes into the plans, it would be good to include a template in the appendix.	See response to comment 192.
195	V.F	Oversight	Policy Implementation & Revision	Future Revisions	<u>Add underlined text: UC shall consult with the Systemwide Committee and with Tribes before making any changes to this Policy.</u>	We do not believe all potential changes to the policy would necessitate Tribal consultation, particularly those of a minor or especially time-sensitive manner. The Systemwide Committee may determine that Tribal consultation concerning proposed policy changes is appropriate. We will also provide an advance copy of any proposed changes to NAHC for review and comment prior to implementation.

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196			Policy Implementation & Revision	Future Revisions	An audit was built into AB 2836. These audits might show UC that we need to tweak things. Is there a re-engagement with tribal communities if the audit exposes things? In the future, if revisions need to take place, what is the mechanism for review and engagement?	We do not believe all potential changes to the policy would necessitate Tribal consultation, particularly those of a minor or especially time-sensitive manner. However, we have added Section III.D., which spells out the triggering circumstances for re-review of this policy (including when UC or external auditors recommend changes), and requires that UC provide an advance copy of proposed changes to the systemwide committee and the NAHC.
197			Policy Implementation & Revision	Future Revisions	Given the aggressive timeline for finalizing the Policy, the extent of the revisions that need to be made, and the fact that the Appendices will not even be released until Version Three of the revised Policy, we believe that the Policy, expected to be finalized later this year, will most likely still need further revision. Similarly, it is likely that previously unforeseen issues will come to light after the Policy has been put in place. For this reason, we believe that the Policy should include a mechanism for making regular revisions, especially during the first five years it is in place. These revisions should also include meaningful consultation with tribes and the NAHC.	See response to comment 196.
198			Policy Implementation & Revision	Implementation	Has UC gone through the exercise of processing real cases to “work the process” using the revised policy? If so please share the exercises and results.	We have added flowcharts detailing the repatriation process. In doing so, UC Office of the President consulted with campus NAGPRA practitioners (including UCLA) to ensure that the process captured by this policy reflects reality and successful models.
199			Policy Implementation & Revision	Implementation	It would be good to test drive the policy to see if it’s practical and what the issues are. Perhaps build in a year after the policy is adopted.	The Campus and Systemwide Committees will monitor the progress and success of the new procedures and make recommendations to the Chancellor and President for additional guidance, templates, and other changes to improve and streamline the process. (See Sections V.A.1.b and V.A.2.b.)
200			Policy Implementation & Revision	Implementation	The UC working group should look to and seek guidance from UCLA as a highly successful model of repatriation. While many of the procedural methods are likely outside the scope of the policy itself, any effective practices (including the role and function of the repatriation coordinator) that can be codified into the policy should be.	See response to comment 198.
201			Policy Scope		[W]e ask you to be mindful that this new NAGPRA policy needs to be concise, innovative, and consequential. Simply reiterating language from [NAGPRA] or [CalNAGPRA] is not enough. These laws have been in place for 30 and 19 years, respectively, and have failed to facilitate an efficient and respectful way to return our ancestors and our belongings to their respective communities.	We appreciate this comment and have rewritten many areas of the policy to remove language that simply restates the law and to more clearly enumerate the procedures UC will use to facilitate repatriation. (See Section V.B.1 and Appendices A and A-1.)
202			Policy Scope		In general, I am concerned the policy itself is wordy, indirect, and lacks consistency with NAGPRA and the CUI rule. The revised policy appears to unnecessarily complicate the NAGPRA process, it is confusing and difficult to follow. The policy appears to muddle and overlap NAGPRA and CalNAGPRA.	We believe the revised policy more fully incorporates the procedures for both NAGPRA and CalNAGPRA and more clearly identifies the sequence of events for both processes, both within the text of the policy as well as in the flowcharts (see Appendix A). See also response to comment 201.
203			Policy Scope		The NAHC workgroup has discussed the length of the policy but a lot of it reiterates what the law is. In those cases, the policy should just say “as required by law” since these laws are also being fine tuned and the legislature will be making tweaks.	See response to comment 201.
204			Policy Scope		The policy lacks a defined process for cases which might have claims simultaneously under both NAGPRA/Culturally Unidentifiable and CalNAGPRA. It also lacks an explanation on how these two processes work together. I recommend an easy to follow flow chart and once the policy is complete I recommend examples of test runs of the process.	See responses to comments 201 and 202.
205			Policy Scope		[Our Tribe] urges the University of California to embrace this new NAGPRA Policy in an impactful manner that results in the correction of past failures, as well as healing and building a new and meaningful partnership with Indian tribes and their communities. The implementation of this new NAGPRA Policy must demonstrate the University of California’s commitment to adjust its priorities and set standards in this field, as it has done in other disciplines already.	We appreciate this comment, and believe that we have addressed the concern. Section III.B. clearly states the core principles (including repatriation) and we have amended that section to more clearly recognize UC’s role in the acquisition of human remains and cultural items in violation of Indigenous communities’ spiritual and cultural beliefs, without the free, prior and informed consent. See Section II.B.
206	III.	Policy Text	Policy Tone		Feels like this section should go at the top of the Policy and that the Policy should not lead with definitions but rather with the Guiding Principles.	UC Policy requires a standard format for the drafting and issuance of University-wide policies. See https://policy.ucop.edu/doc/1100677/PolicyonPolicies
207	V.H	Stewardship	Policy Tone		Rename title to “Respectful Stewardship.”	Suggested change was adopted.
208			Policy Tone		The policy is overly legalistic. If the point is to set a tone, it should set a point of truth-telling instead of legal language.	See response to comment 201.
209	V.C.3	Previously Unreported Holdings	Previously Unreported Holdings		<i>Add underlined text:</i> By September 30 of each calendar year, the campus <u>Repatriation Coordinator</u> shall annually provide to the Campus Committee an overview of all materials found or reports received [...] including a description of the items, Tribes consulted, outcomes, and current status.	Suggested change has been adopted in Section V.E.3.

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210	V.C.3	Previously Unreported Holdings	Previously Unreported Holdings		<p><i>Change:</i> The Repatriation Coordinator must periodically review whether the campus is in Possession or Control of previously un-reported NAGPRA-eligible Human Remains or Cultural Items, engaging as necessary the assistance of appropriate subject matter experts (e.g., osteologists, anthropologists, tribal leaders, etc.).</p> <p><i>To:</i> The Repatriation Coordinator must periodically review whether the campus is in Possession or Control of previously un-reported NAGPRA-eligible Human Remains or Cultural Items, engaging as necessary the assistance of appropriate subject matter experts (e.g., tribal representatives, tribal leaders, osteologists, anthropologists, etc.).</p>	Suggested change has been adopted in Section V.E.2.
211			Previously Unreported Holdings		UC needs to incorporate a process for campus-wide review of non-reported items. This should include a means of surveying departments or individuals who might not be on the “usual” radar for such reviews.	We have added new guidance with respect to campus surveys for previously unreported items. See Section V.E.
212	III.B.2	Purpose and Principles	Purpose & Principles		<p><i>Add underlined text:</i> Furthermore, UC commits to respecting the authority of Tribal Knowledge by accepting the identifications of Cultural Items, as they are made by descendant Tribes.</p> <p><i>Comment:</i> This is a logical extension of the principles of UNDRIP.</p>	Please see response to comments 89 and 117.
213	III.B.1	Purpose and Principles	Purpose & Principles		<i>Add underlined text:</i> Repatriation or Disposition of all Human Remains of Native American and Native Hawaiian ancestors and Cultural Items <u>to descendants</u> is a fundamental objective and value of UC that must be accomplished as expeditiously and respectfully as possible.	We have opted against including this language out of concern the statement could be read as limited to lineal descendants (as defined under NAGPRA) only.
214	III.B.3	Purpose and Principles	Purpose & Principles		<i>Add:</i> <u>These minimum standards and practices are intended to increase the accountability and transparency of repatriation within the UC System by removing barriers to repatriation.</u>	We have revised Section III.B., principle 1, to include similar language. Note that campuses will also have to report on various aspects of their activities (see Appendix D). Sections V.B and Appendices A and A-1 also provide greater detail to move UC forward in fulfillment of the principles articulated in III.B.
215	III.B.4	Purpose and Principles	Purpose & Principles		<i>Add underlined text:</i> This Policy applies to all UC Locations <u>and is intended to promote consistency across the UC system.</u>	Section III.B. now includes a statement of intent to promote consistency across the UC system.
216	III.B	Purpose and Principles	Purpose & Principles		<p>Additional Guiding Principles to include, per Work Session comments:</p> <ul style="list-style-type: none"> - That this Policy is designed to influence how UC implements its federal and state NAGPRA responsibilities to improve the repatriation process to expand repatriation outcomes to tribes so that the Ancestors, their belongings, and gifts may be brought home. - That this Policy acknowledges the Indian canons of construction regarding federal Indian Law that: laws must be interpreted as the Indians would have understood them, be construed liberally in favor of the Indians, resolve all ambiguities in the law in favor of the Indians, and preserve tribal property rights and sovereignty. - That this Policy is not designed to externalize repatriation costs onto tribes, and that UC will seek methods to reduce the burden on tribes of meaningful participation in its repatriation processes. 	<p>Section III.B. now affirms that the policy is designed to govern how UC implements its responsibilities under NAGPRA and CalNAGPRA to improve the Repatriation process so that the Human Remains and Cultural Items may be brought home.</p> <p>With regard to working with tribes to remove barriers, please see response to comment 189.</p> <p>Tribal Canons of Construction do not apply to UC. However, please see response to comments 89 and 117.</p>
217	III.A.2	Purpose and Principles	Purpose & Principles		<p>At the UCSB meeting, the phrase “in many cases,” was objected to as there are no examples where Human Remains and Cultural Items were taken with the free, prior and informed consent of Indigenous communities.</p> <p>Proposed revision: DELETE: “In many cases, ...”</p>	We have deleted this phrase.
218	III.B.2	Purpose and Principles	Purpose & Principles		Delete the phrase “in many cases”	We have deleted this phrase.
219	III.B.2	Purpose and Principles	Purpose & Principles		Policy states that “in many cases” remains and cultural items were taken without consent. There are no cases where remains were <i>not</i> taken without consent. The statement of principles should be reworded to acknowledge this.	We have deleted this phrase.
220	III.B	Purpose and Principles	Purpose & Principles		Rename section to “Purpose and Guiding Principles”	Suggested change was adopted.
221	V.C.1	Inventory Process	Recordkeeping		<p><i>Add underlined text:</i> Campus Inventories and Notices of Inventory Completion (NICs), including Inventory supplements prepared pursuant to CalNAGPRA, shall be reviewed, <u>revised, and corrected</u> by the Campus Committee at the next committee meeting after completion (or as early as possible) 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 <u>Repatriation Coordinator</u> will make them available to federal agencies, NAHC, Lineal Descendants, and Native American Tribes and Native Hawaiian Organizations, as required by law. By September 30 of each calendar year, or date otherwise recommended by the Systemwide Committee, the <u>Campus Committee</u> shall provide an annual report of all <u>Rejections and Notices of Inventory Completion</u> made pursuant to this section to the Systemwide Committee and the UC President or President’s designee.</p> <p><i>Comment:</i> This way campuses are held accountable for and there is recordation of rejections/failures to accept tribal identifications.</p>	This section has been deleted; however, we believe we have captured the intent behind the suggested edits. For example, Section V.A.2.b.2 provides the campus committee the ability to annually review a summary of requests that have been received at the campus, but have not yet been formally elevated to the campus committee for review; Appendices A and A-1 require multiple opportunities for the tribe to review documents and make corrections; and duties are more clearly defined by the swim lanes in the flowcharts.

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222	V.C.2	Summary Process	Recordkeeping		<i>Add underlined text:</i> Claims for Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony and Notices of Intent to Repatriate (NIRs) shall be reviewed, <u>revised, and corrected</u> 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 <u>Repatriation Coordinator</u> shall make the NIRs available to federal agencies, Lineal Descendants, and Native American Tribes and Native Hawaiian Organizations, as required by law. The campus <u>Committee</u> shall provide an annual report of all <u>Rejections, Summaries, and NIRs</u> made pursuant to this section to the Systemwide Committee and the President or President's designee.	See response to comment 221.
223	V.C.1	Inventory Process	Recordkeeping		<i>Add underlined text:</i> Upon request by appropriate Tribal Representatives, the campus <u>Repatriation Coordinator</u> shall provide all available additional documentation...	See response to comment 221.
224			Recordkeeping		There needs to be a database at the campus level and the individuals need to log whatever is brought onto campus and this needs to be made clear to faculty as well (perhaps via annual notices, inventories upon retirement or leaving the university). Medical schools tend to be good about keeping track of things brought in for research but the social sciences often do not. Campuses need an awareness and tracking mechanism in place. Repositories often get stuck with what is left behind (and may be given little to no information about it). There are collections with NAGPRA-eligible items that exist in faculty members' possession, including items that faculty members might take home with them and keep when they retire. UC should implement a method to sort these issues out.	The policy now includes added conditions for loans, including a stipulation that detailed records of agreements are maintained and reported to the Campus Committee (see Section V.K.1). We have also added language concerning personal collections and other items taken home by faculty, and included in Section V.E.1. a requirement that the Chancellor communicate annually with all relevant faculty, researchers, students, staff and UC retirees from fields most likely to have used Human Remains and Cultural Items, to raise awareness about the requirements of this policy and related laws and regulations.
225			Remains & Items Held by Individuals or Off Campus		Annual notices should be sent to all faculty, researchers, post-docs, graduate students, etc., asking them to identify cultural items or remains that they have in their possession.	This is now include in Section V.E.1.
226	IV.B.3	Roles / Responsibilities	Remains & Items Held by Individuals or Off Campus		As discussed in the Work Sessions, need a method for reaching out on regular and possibly confidential basis to current and retired faculty regarding collections that might be in offices or off campus.	This is now include in Section V.E.1.
227			Remains & Items Held by Individuals or Off Campus		Database of (NAGPRA) campus wide objects brought in. <u>Must</u> declare researcher holdings or be brought to task by law/police.	Section V.J.1. now requires University employees or retirees/emeriti that have removed Human Remains or Cultural Items from UC premises to immediately return these to the University, and that UC may pursue legal action for items taken without authorization.
228	V.C.3	Previously Unreported Holdings	Remains & Items Held by Individuals or Off Campus		Need language that faculty (including docs, postdocs, and retired) must proactively declare anything they may have that may be out of compliance. As discussed in Work Sessions, also impose some level of due diligence on campuses to regularly notice and solicit from faculty. Consequence of noncompliance in code of conduct. Amnesty for whistleblowers.	Section V.J.1. now requires University employees or retirees/emeriti that have removed Human Remains or Cultural Items from UC premises to immediately return these to the University, and that UC may pursue legal action for items taken without authorization. Section V.E.1. obligates the Chancellor to communicate annually with all relevant faculty, researchers, students, staff and UC retirees from fields most likely to have used Human Remains and Cultural Items, to raise awareness about the requirements of this policy and related laws and regulations.
229			Remains & Items Held by Individuals or Off Campus		[Our Tribe] is troubled to have become aware of ancestral remains and NAGPRA items being held in possession by individual University of California faculty members. We like to support the suggestions made by an attendee at the University of California, Riverside work session, to create an anonymous tip-line, where students and staff can report faculty that possess human remains and NAGPRA cultural items.	Section V.J.1. now requires University employees or retirees/emeriti that have removed Human Remains or Cultural Items from UC premises to immediately return these to the University, and that UC may pursue legal action for items taken without authorization. Section V.E.1. obligates the Chancellor to communicate annually with all relevant faculty, researchers, students, staff and UC retirees from fields most likely to have used Human Remains and Cultural Items, to raise awareness about the requirements of this policy and related laws and regulations. Section V.E.2. includes a link to the UC Hotline where individuals can report known or suspected instances where Native American items are not properly maintained or reported.

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230	IV.B.4	Roles / Responsibilities	Repatriation Coordinator		<p>“The Repatriation Coordinator is responsible for coordinating with staff at campus museums and all other departments bearing compliance responsibilities with this Policy, maintaining proper documentation of all transactions [...] and providing reports, notices, and documents as required by this Policy.”</p> <p>This appears to grant broad and discretionary authority to a single individual. Much of this authority should be held by the Campus Committee. See detailed comments in [Our Tribe]’s cover letter for this redline.</p>	<p>We have revised Section IV.B.4. to clarify the responsibilities of the Repatriation Coordinator, and added Appendix D to itemize the reporting responsibilities of this position, including reporting of requests that have not been elevated to the Campus Committee. We do intend that the Repatriation Coordinator will have broad responsibility for many functions but wish to make clear that decision-making authority rests with the Chancellor upon the recommendation of the Campus Committee. The Complaint process is also clearly highlighted in various places of the policy, so that tribes have a recourse when they have concerns about the process. (See Section V.I.1.)</p>
231	V.E.6	Review of Claims and Requests	Repatriation Coordinator		<p><i>Add underlined text:</i> The campus Repatriation Coordinator 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.</p>	<p>We have removed this sentence from the policy and moved it to Appendix A-1, with clarification that this is the responsibility of the Repatriation Coordinator.</p>
232			Repatriation Coordinator		<p>Each campus, including campuses where items/remains are not known to exist, should be tasked with establishing a point of contact for NAGPRA-related issues. Individual would be in place when new items/remains are identified, and would be able to serve as a more local point of contact for tribes whose ancestral remains might be held at a distant campus.</p>	<p>Section IV.B.5 describes this role. Appendix A-1 also describes how campuses will coordinate with one another to the extent possible when items from the same site are located at various campuses.</p>
233	IV.B.4	Roles / Responsibilities	Repatriation Coordinator		<p><i>Delete text in Strikeout:</i> Repatriation Coordinators are individuals designated by the Chancellor or Chancellor’s Designee at each campus with known NAGPRA-eligible collections to carry primary responsibility...</p>	<p>This change was not incorporated because if the campus has a known NAGPRA/CalNAGPRA-eligible collection, they must have a Repatriation Coordinator, but if they do not have a known NAGPRA/CalNAGPRA-eligible collection, they must minimally have a Repatriation Point of Contact. (See Sections IV.B.4-5.). We note that the Repatriation Points of Contact must nonetheless be knowledgeable about NAGPRA and CalNAGPRA and must be available to receive Tribal inquiries.</p>
234			Repatriation Coordinator		<p>What criteria will be set in place for the repatriation coordinator role? The working group should make it clear that the individual assigned to that position must be committed to repatriation, be familiar with tribal history, and have a history of interaction with the UC system.</p> <p>Ultimately, the sole purpose of this process is so that we can put our ancestors in the earth where they belong. That person must understand that purpose, must be respected by all tribes, be able to cut through the bureaucracy, and be aware of how to work with other agencies in cases where collections are split to facilitate the return of all of those remains/items.</p>	<p>We re-inserted the qualifications for the Repatriation Coordinator, which had been inadvertently deleted. Section IV.B.4. describes the qualifications of the Repatriation Coordinator, which includes direct experience in building positive relationships with Tribes through consultation as well as demonstrated experience with NAGPRA and CalNAGPRA.</p>
235			Repatriation Coordinator		<p>With respect to the role of the liaison, there is an issue of somebody else speaking for you and that does not work. The people who are filtering the information may not even realize what they’re doing. We need to ensure there’s an option for tribal voice and tribal representatives speaking with decision-makers at every step in the way. The liaison must not be speaking on the tribe’s behalf.</p>	<p>We agree, and have revised the policy to more clearly affirm the rights of the Tribes to present their views, in their own words, directly to the committees either orally or in writing. We have more clearly stated that Tribal review of all documentation related to the Consultation, Cultural Affiliation, and Repatriation processes is welcomed and encouraged, with the opportunity for Tribes to correct or supplement the record at each stage.</p>
236			Repatriation Process		<p>Does the revised policy address concerns of Tribes who have experienced difficulty repatriating with the UC system?</p>	<p>We have heard from Tribes who have expressed concern regarding difficulties in the repatriation process and have worked to address the areas of the process where those difficulties have occurred. See Sections V.B.1-2 and Appendices A and A-1.</p>
237			Repatriation Process		<p>It is not always evident what has been separated from NAGPRA-eligible items. The policy should make it clear that items that “go along” with NAGPRA-eligible items will also be returned to the tribes. It should be written into the policy that the packaging that remains and cultural items will be returned in the packaging with which they were originally stored.</p>	<p>This is addressed in Section V.J.1.</p>

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238			Repatriation Process		<p>The new NAGPRA Policy needs to establish a cradle-to-grave process that campuses are to follow during the repatriation process, including, but not limited to best practices to start the process, the University of California Point of Contact, response times, and repatriation window. The NAGPRA Policy should include information on the following processes:</p> <ol style="list-style-type: none"> 1. Potential claimant may contact University of California and request inventories of ethnographic and archaeological materials to which they may be culturally affiliated. 2. University of California will respond to request within 2 weeks. 3. Claimants may request a consultation visit. An authorization letter from a federally-recognized tribal government must be provided prior to the visit. 4. University of California will accommodate such visit no later than six weeks after the receipt of the request. 5. Claimant must request repatriation in writing, including information to establish cultural affiliation. 6. University of California needs to respond within two weeks to acknowledge receipt of the request. 7. University of California needs to respond within three months upon receipt of request, with: <ul style="list-style-type: none"> - Needed information - Date/Time when the request will be taken to committee for decision, unless claimant requests additional time to provide needed additional information. 8. University of California needs to notify claimant within two weeks after determination if request was granted or denied. If denied, the University of California needs to sufficiently explain why the claim was denied and must outline further process including steps and Point of Contact to appeal the decision. 9. Part of the appeal process should be that the claimant can request a meeting with the decision-making committee to present their argument. 	<p>We appreciate these recommendations. The policy has been substantially revised to address all points made in this comment. The policy includes proactive outreach from the Repatriation Coordinator as inventories are updated, time points by which UC must respond to Tribal inquiries and requests, invitations to Tribes to meet directly with Campus and Systemwide Committees, and clearer procedures for submitting appeals and complaints. (See Section V.B.1, and Appendices A, A-1, and B.)</p>
239			Resources & Assistance to Tribes		<p>During the UC Berkeley Work Session, several representatives from UCLA identified steps that the UCLA campus has taken to make repatriation easier, such as providing a space for reburial, funding assistance, or providing workspace for reburial preparations. We would strongly support revising the Policy to reflect these UCLA processes. The revisions that we have discussed to date are simply to remove the barriers that the UC system has placed on repatriation. The process itself for Tribes is still expensive, time consuming, and difficult to coordinate. Especially since it was not Tribes who dug up these Ancestors or cultural items, yet it is tribes who are absorbing much of the financial and logistical costs of returning and re-interring these Ancestors and cultural items. Providing financial or logistical assistance, would increase the number of successful repatriations, because it would remove other barriers to repatriation that exist. During the same Work Session, one of the UC Representatives asked if substantially increasing the funding to museum staff would speed up the process. If there is funding that is available, please make it available to Consulting Tribes as well, and in a way that is equitable.</p>	<p>We acknowledge the burdens in terms of time, cost, and effort that Tribes must bear in the consultation and repatriation process. The Repatriation Coordinator is tasked with discussing with tribes potential barriers and attempting to alleviate these to the extent possible. (See Section V.B.1. and Appendix A-1). In addition, Repatriation Implementation Plans require estimated budgets to carry out duties under this policy, and the option to include estimates for various timelines according to variable resources.</p>
240			Resources & Assistance to Tribes		<p>Furthermore, [Our Tribe] supports a recommendation voiced during the University of California, Riverside work session, that this NAGPRA Policy needs to include the allocation of funds made available to tribes to assist with repatriation efforts. The University of California has devoted significant resources to accumulate huge inventories of ancestral remains and NAGPRA items through research and other policies that encourage fieldwork. Consequently, the University of California should commit similar funding and other resources to ensure that both the University and impacted tribal communities have sufficient resources to effect the return of human remains and NAGPRA items to their respective tribal communities.</p>	<p>See response to comment 239.</p>
241			Resources & Assistance to Tribes		<p>Once things are repatriated, it takes a lot of resources. If the agency or museum makes the offer to help in areas like land, travel/lodging stipend, etc. Not everyone takes advantage of that but it's helpful.</p>	<p>See response to comment 239.</p>
242			Resources & Assistance to Tribes		<p>Reburial is not an option for all tribes, and many tribes do not have the land to rebury. UC and the tribes must come to an agreement about what to do with ancestral remains in such cases.</p>	<p>See response to comment 239.</p>
243			Resources & Assistance to Tribes		<p>The policy should obligate UC to assist, whenever possible, in funding travel and repatriation costs. Many tribes lack the resources to take possession of items/remains, especially if the remains and items are located at multiple and/or distant campuses.</p>	<p>See response to comment 239.</p>
244			Resources & Assistance to Tribes		<p>The UCLA Chancellor designated a portion of its property off campus for tribal burials. UCSC and UCD are also working on this. Is it possible for the UC system to designate secure and appropriate areas for remains to be buried? UC should shoulder that burden and pay for it to happen for remains at all campuses. Possibility of encouraging/working with other state agencies (e.g., state parks) with open land closer to tribal homelands that could be designated for burials? This is vitally important for non-federally recognized tribes, who have no land, space, or finances for repatriation.</p>	<p>While we appreciate this comment, the policy is not the right place to address this issue. As UC works towards improved relationships with tribal communities, this could be the subject of ongoing dialogue.</p>

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245			Resources & Assistance to Tribes		<p>UC needs to evaluate its own role in the historical excavation and stealing of artifacts and remains, and needs to come to terms with the enormity of the harm and problems created by UC staff, faculty, and administrators.</p> <p>For example, often unrecognized tribes do not have land on which to re-bury their ancestors, nor do they have funds to access legal representation or other points of contact for repatriation.</p> <p>Will UC include in its policy a mechanism to assist with this issue? UCLA set aside land for reburial; other campuses that hold ancestral remains (Berkeley in particular) should be required to allocate resources to facilitate burial.</p>	<p>We have revised Section III.B. to more clearly acknowledge the role of UC in the acquisition of Human Remains of Native American and Native Hawaiian ancestors in violation of these communities' spiritual and cultural beliefs and without consent, and that healing and reparation cannot be complete while Human Remains and Cultural items remain in UC's control.</p> <p>See also response to comments 239 and 244, and Section V.B.1. and Appendix A-1.</p>
246	V.H.1	Respectful Treatment	Respectful Treatment	Care, Handling, Storage	<p><u>Add underlined text:</u> Consultation with Tribal Representatives is imperative for providing <u>respectful</u> care and treatment in accordance with tribal traditions.</p>	<p>UC agrees with this suggestion. We will incorporate it in the final policy.</p>
247	V.H.1	Respectful Treatment	Respectful Treatment	Care, Handling, Storage	<p><u>Add underlined text:</u> Each campus with a NAGPRA-eligible Collection shall publicly post the means to make a request for traditional care. <u>Such requests may also be made during consultation.</u></p>	<p>We clarified in Section V.J.1 that this is part of the consultation process. In Section V.B.1, we also added that the Repatriation Coordinator should work with Tribes to identify any requests for traditional care and restrictions for ancestral remains and objects in the care of the campus.</p>
248	V.H.2	Management and Preservation Standards	Respectful Treatment	Care, Handling, Storage	<p><u>Add underlined text:</u> <u>If a request for respectful treatment appears to conflict with these standards, then a request for exception should be considered, in order to facilitate respectful treatment, and all determinations will be documented.</u></p>	<p>While we do not disagree with this suggestion, we believe it is unnecessary. All exceptions to the standards at 36 CFR 79.9(b)(3) must be sent to the campus committee for review and recommendation to the chancellor.</p>
249	V.H.1	Respectful Treatment	Respectful Treatment	Care, Handling, Storage	<p><u>Add:</u> <u>Lineal Descendants or Tribal Representatives may also make recommendations to the campus for appropriate disposal (burning, interment, etc.), rather than accepting custody of such containers. The campus must present the Lineal Descendant or Tribal Representative with Proof of Appropriate Disposal within 90 days of such a request.</u></p> <p><u>Handling of Human Remains and Associated Funerary Objects will be minimized to reduce the potential for loss, damage, and disrespect to these sensitive items including during the Inventory and Summary processes. Appropriate means to minimize handling shall be developed in consultation with affiliated tribes. Examples of appropriate means to minimize handling can include but are not limited to: using a lot approach for bags of faunal remains and setting the Minimum Number of Individuals (MNI) at 1.</u></p> <p><u>Potentially culturally affiliated tribes will be timely notified by the campus Repatriation Coordinator prior to the proposed movement of the collections or proposed updates to care and treatment policies so that Tribal Consultation on these changes, if requested, may occur.</u></p>	<p>We have reworded this section to include more detail on measures to be taken to minimize risk of loss, damage, and disrespect. See also response to comment 247.</p>
250	V.H.1	Respectful Treatment	Respectful Treatment	Care, Handling, Storage	<p><u>Change:</u> To the maximum extent possible, Human Remains and Associated Funerary Objects from the same Burial Site and from the same general geographic location <u>should</u> be kept together.</p> <p><u>To:</u> To the maximum extent possible, Human Remains and Associated Funerary Objects from the same Burial Site and from the same general geographic location <u>shall</u> be kept together.</p>	<p>We believe the current wording to be appropriate, as keeping Human Remains and Associated Funerary Objects together may not always be possible.</p>
251	V.H.1	Respectful Treatment	Respectful Treatment	Care, Handling, Storage	<p><u>Delete text in strikeout:</u> UC welcomes such requests, and will collaborate with the affiliated Tribal Representative to develop and incorporate traditional care practices to the extent possible. In cases where traditional care requests cannot be strictly accommodated, the campus will collaboratively explore alternative arrangements with Native American Tribes and Native Hawaiian Organizations in order to implement culturally sensitive care while upholding the safety and security of all collections.</p>	<p>Since the second sentence provides the context for requests that cannot be strictly accommodated, we are not opposed to this change. We can incorporate it in the final policy.</p>
252			Respectful Treatment	Care, Handling, Storage	<p>Museum staff refresh their catalogs periodically which results in handling sacred material in inappropriate ways. UC needs a mechanism for individual tribes to specify culturally appropriate ways by which remains must be handled to prevent further damage, including indicating the tools being used and the purpose. Handling must be minimized as much as possible, including the use of methods of inventory (e.g., reviewing field notes or other data) that avoid handling entirely.</p> <p>For materials of <i>unidentified tribes</i>, including culturally unaffiliated or newly discovered materials, museum should consult with <i>potentially affiliated tribes</i> to determine appropriate handling methods.</p>	<p>We have revised the policy to further affirm that handling must occur as little as possible and only for essential functions. See also response to comment 247.</p>
253			Respectful Treatment	Care, Handling, Storage	<p>Some campuses are known to have been holding remains disrespectfully in boxes, etc. Minimum standards for storage should be established and maintained.</p>	<p>We regret that Human Remains have been held disrespectfully. Section V.J.1. includes further detail regarding minimum standards for appropriate handling and storage. See also response to comment 247.</p>
254	V.H.1	Respectful Treatment	Respectful Treatment	Care, Handling, Storage	<p>The policy does not address that often inappropriate handling of Ancestors and cultural items occurs as part of the Inventory or Summary process. One of the key ways to ensure that there is a mechanism for respectful treatment of Ancestors and cultural items is to require that museum staff consult on such respectful treatment prior to any handling of Ancestors and cultural items including handling that is conducted as part of the Inventory, Summary, or other processes associated with repatriation.</p>	<p>Please see response to comment 247.</p>

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255	V.H.1	Respectful Treatment	Respectful Treatment	Care, Handling, Storage	<p>The processes for consistent documentation, decision making, and accountability that we are requesting for determination of cultural affiliation, identification of cultural items, and dispute resolution should be in place for setting up respectful treatment.</p> <p>The Policy should clearly identify who is responsible for making decisions regarding whether respectful treatment can be accommodated, the policy should document the concerns raised by tribes and whether or not tribes felt like the concerns were addressed, and there should be clear options for appealing determinations.</p>	<p>The Repatriation Coordinator is responsible for proactively discussing with Tribes any accommodations for respectful treatment or traditional care (see Sections V.B.1 and V.J.1). We have also clarified that all exceptions to the standards at 36 CFR 79.9(b)(3) must be sent to the campus committee for review and recommendation to the chancellor.</p> <p>Tribes may utilize the complaint process described in the policy to elevate concerns regarding respectful treatment to the Chancellor or President.</p>
256			Respectful Treatment	Care, Handling, Storage	<p>The University of California will need to establish policies and procedures and allocate funding for remains and NAGPRA items that remain in the custody of the University of California. Because some tribes prefer to have their ancestors and cultural items not returned, policies and procedures need to address appropriate storage and access of human remains and NAGPRA items.</p>	<p>Please see response to comment 239. Sections V.J.1-3 address the standards for respectful treatment, management, and preservation and access by lineal descendants and tribes for consultation and cultural/spiritual care.</p>
257	V.H.1	Respectful Treatment	Respectful Treatment	Care, Handling, Storage	<p>UC Comment Matrix Item 5 noted that “UC needs your advice in this area. It may be difficult in some cases to determine if the remains and materials are Native American without the use of those procedures.”</p> <p>Often Tribal Knowledge can be used to make the identification (so the invasive handling is not necessary) or can be used to identify alternatives to the invasive handling. This is another reason why consultation before initiating any such handling is so important, and why it is so important that there be strong language supporting respectful treatment.</p> <p>For example, a (non-UC) museum approached [Our Tribe] to request a letter of support for a NAGPRA grant to hire an osteologist to go through the animal bones in their collections, because they believed that human bones were mixed in with the animal bones, and the museum wanted to make sure that they were returning all of the human bones.</p> <p>[Our Tribe] pointed out that the Tribe considered those animal bones to be associated funerary objects (that were associated with the human bones that they were comingled with). Traditionally, funerary objects should never be separated from burials. The Tribe worked with the Museum to develop a culturally appropriate way to prepare their inventory document, and no additional handling was needed because the Tribe was able to provide an identification. This resolution took a matter of hours to accomplish and respected the Tribe’s traditions for respectful treatment and the Tribe’s expertise.</p> <p>Had the osteological analysis been conducted, it would have taken months to complete and cost tens of thousands of dollars for a damaging analysis that was not wanted or needed for, or required by, the NAGPRA Process.</p> <p>This example illustrates the importance of talking to Tribes before doing any such damaging handling, and illustrates that often the belief that “damaging or invasive handling is necessary” is a logical fallacy that can be resolved by talking the process through with Tribes, rather than making assumptions.</p>	<p>Thank you for your input. We have clarified in Sections V.C.2 and V.C.3 that campuses will consult with Tribal Representatives in evaluating items to establish whether they meet the definitions of Cultural Items and their Cultural Affiliation/State Cultural Affiliation, and to update inventories/summaries.</p>
258	V.C.3	Previously Unreported Holdings	Respectful Treatment	Research, Testing, Analysis	<p>“Ongoing research and handling (other than that conducted in furtherance of the campus's responsibilities to make determinations as required by NAGPRA/CalNAGPRA) must cease until a determination has been made about whether NAGPRA or CalNAGPRA applies.”</p> <p>Who makes this decision?</p>	<p>We have revised this section to clarify the Chancellor's role in making these determinations.</p>
259	V.H.4	Access to Human Remains, and/or Funerary and Sacred Objects	Respectful Treatment	Research, Testing, Analysis	<p>“UC shall not permit research, destructive analysis, classroom use, or exhibition of Human Remains and/or Funerary and Sacred Objects of Native American or Native Hawaiian ancestors, except as outlined below.”</p> <p>Comment: This does not include all of the Human remains and other items listed as Cultural items: (13) Cultural Items: Human Remains and Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony.</p> <p>Proposed revision: In addition to Human Remains please include all Cultural Items in the prohibition against research, destructive analysis, classroom use or exhibition.</p>	<p>We have rewritten this statement to include all Human Remains and Cultural Items.</p>
260	V.I	New Requests for Short-Term Care and Loans	Respectful Treatment	Loans	<p>Add <u>underlined text</u>: 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 or CalNAGPRA responsibilities, <u>if affiliated Tribes have also given explicit written permission for such testing.</u></p> <p>Delete: (Note that unless affiliated Tribes have given explicit written permission for testing, in carrying out these duties, the campus may only use minimally invasive procedures and shall not use destructive analysis, including but not limited to DNA analysis.)</p>	<p>We have not incorporated this suggestion for several reasons. First, in this circumstance, cultural affiliation has probably not been established so it's likely not possible to secure approval of affiliated tribes for the analysis. However, the language proposed for deletion provides that only minimally invasive procedures can be used, and prohibits destructive analysis without the approval of culturally affiliated tribes.</p>

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261	V.H.4	Access to Human Remains and/or Funerary and Sacred Objects	Respectful Treatment	Research, Testing, Analysis	<i>Add: If the above requirements cannot be met, then the request for research, analysis, use, or exhibition will be denied.</i>	We have revised Section V.J.4. for greater clarity and believe it is more clear that requests for research, analysis, use, or exhibition will not be approved unless the criteria described in this section are met.
262	V.H.4	Access to Human Remains and/or Funerary and Sacred Objects	Respectful Treatment	Research, Testing, Analysis	<i>Add: UC shall not permit research, destructive analysis, classroom use, or exhibition of Human Remains and/or Funerary and Sacred Objects of Native American or Native Hawaiian ancestors, except in the limited circumstances as outlined below.</i>	Suggested change was adopted.
263			Respectful Treatment	Research, Testing, Analysis	Hope we move into DNA [testing], then old problems will be solved.	We note that many Tribes oppose destructive analysis such as DNA analysis. Section V.J.4. sets forth the limited conditions upon which such analysis could be performed following explicit written permission of Culturally Affiliated Tribes or Indian Tribes* whose Aboriginal Lands (as outlined in NAGPRA § 10.11) overlap with the location where the Human Remains originate. * NOTE: Upon further reflection we realize that even the revised language in Version 3 contains a couple critical flaws in that in the case where the Human Remains or Cultural Items are Culturally Unidentifiable, the requirement that prior approval be obtained from "Indian Tribes" inadvertently excludes California Indian Tribes. <i>This was not our intent and we will address it in the final policy.</i> For example, one potential fix we are considering is deleting the term "Indian Tribes" and inserting "tribes" instead. Likewise, in the case where the Human Remains and/or Cultural Items have been Culturally Affiliated, we are considering explicitly adding State Cultural Affiliation, such that explicit written authorization from the Culturally Affiliated or State Culturally Affiliated Tribes must be obtained.
264			Respectful Treatment	Research, Testing, Analysis	I very much do <u>NOT</u> want DNA testing on remains. Scientifically not a sound or ethically appropriate way to do this. Then you, UC, hold people's DNA and say you can verify people as Indian now? Our communities adopted, brought people in, <u>intermarried</u> – the DNA isn't going to distinguish between Chumash and Tongva, for example. It can just say Native American.	See response to comment 263.
265			Respectful Treatment	Research, Testing, Analysis	Regarding culturally unidentifiable remains, sometimes it's just because of lack of documentation or ability to prove where the remains are from. UC should consider making DNA testing available for those tribes who request it, in order to facilitate identification/affiliation of remains.	See response to comment 263.
266	V.H.4	Access to Human Remains and/or Funerary and Sacred Objects	Respectful Treatment	Research, Testing, Analysis	<i>Rename section to add underlined text: Restriction of Access to Human Remains, and/or Funerary and Sacred Objects of Native American or Native Hawaiian Ancestors for Research, Instruction, Exhibition, or Other Purposes</i> <i>Comment: Per Laura Miranda's comment during the UC Riverside Work Session, this title appears to provide a mechanism for research/instruction/etc. Please update the language.</i>	Suggested change was adopted.
267			Respectful Treatment	Research, Testing, Analysis	The draft policy prohibits destructive analysis, but does not define or describe what would constitute "destructive analysis" (or, for that matter, "non-destructive analysis"). While such definitions might be worth defining, the policy should ultimately leave it up to the tribes to define what would be considered "destructive."	We appreciate this comment and have added examples of what would constitute "destructive analysis" throughout the policy. See Sections V. J.4, V.K.1, and VI.
268			Respectful Treatment	Research, Testing, Analysis	To the question raised at UCR, the topic of 3D scanning is taking place and that is unsettling. This is a new topic, but it should be addressed in the policy since the lines are blurred. From a custom perspective, photos are inappropriate so I can imagine 3D being equally disrespectful. The committee included no research to be done and we may want to consider adding, no 3D scanning, to that section. That should not be allowed. I would put it in the research category.	See response to comments 167 and 263.
269			Respectful Treatment	Research, Testing, Analysis	UC should stand by its policy of not permitting research/testing on human remains or cultural items, and apply that to testing for determination of potential affiliation. Exceptions should only be made in the event a tribe comes forward to request it; UC should not initiate seeking permission from the tribes.	We believe that the request need not necessarily originate from a tribe, but we reworded this section for clarity. Such uses will only be approved under narrow circumstances and with tribal approval. See Section V.J.4, and also response to comment 263.

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270	V.H.3	Access for Consultation and Care	Respectful Treatment	Tribal Representatives	Delete text in <i>strikeout</i>: Lineal Descendants, Native American Tribes, and Native Hawaiian Organizations shall be permitted reasonable access...	Suggested change was adopted.
271	V.H.1	Respectful Treatment	Respectful Treatment	Tribal Representatives	Recommend adding language about the respectful treatment of Native people who visit/meet with UC to discuss repatriation, e.g., like at the Inian. Coming onto campus or to the museum can be a very painful and emotional experience; tribal representatives should be welcomed and treated with dignity and courtesy.	We agree that treatment of Tribal Representatives with dignity, courtesy, and respect is paramount. We have rewritten the Consultation process described in Section V.B.1. to include this expectation as well as clarifying guidance on ensuring this is achieved.
272	V.H.4	Access to Human Remains and/or Funerary and Sacred Objects	Respectful Treatment		<u>Add: The Repatriation Coordinator shall review the compliance documentation and contact any listed Tribes to confirm their consent.</u>	We have added a requirement that documentation demonstrating compliance with all requirements described in this section (which includes tribal approval) must be provided to the Repatriation Coordinator. See Section V.J.4.
273	V.H.4	Access to Human Remains and/or Funerary and Sacred Objects	Respectful Treatment		<i>Change:</i> The Repatriation Coordinator should initiate contact with the Tribal Representative(s) and assist in these efforts as needed. <i>To:</i> The campus Repatriation Coordinator must initiate contact with the Tribal Representative(s) and assist in these efforts as needed. <i>Comment:</i> Unclear what “these efforts” refers to.	This sentence was deleted during revision of the policy.
274	V.H.4	Access to Human Remains and/or Funerary and Sacred Objects	Respectful Treatment		Clarify the statement “does not fit the description in 0 above”	Thank you for bringing this error to our attention. It has been removed from the policy.
275	V.H.4	Access to Human Remains and/or Funerary and Sacred Objects	Respectful Treatment		The word “cognizant” is not clearly defined, please reference culturally affiliated or geographically affiliated Tribes.	We have rewritten this statement to be more specific as to which tribes' permission must be obtained.
276	V.C.2	Summary Process	Summary		<u>Add underlined text:</u> ...each campus that has a NAGPRA-eligible Collection shall complete a written summary of <u>all</u> Native American and Native Hawaiian collections...	We have rewritten this section and removed this sentence.
277			Timelines, Deadlines, Goals		Are the definitions consistent with federal law and/or CalNAGPRA?	We apply the NAGPRA/CalNAGPRA definition, so we do believe there is consistency. Also, per NAHC and tribal requests, we have removed most definitions of terms that are already defined by NAGPRA and CalNAGPRA. We’ve only retained those that most helpful with the reading of this Policy, and those specifically defined by this policy.
278			Timelines, Deadlines, Goals		The policy should obligate UC and individual campuses to determine estimates for completion of the repatriation process with given resources, as well as to set benchmarks for the amount of resources required to achieve 100% repatriation at a more rapid pace (e.g., x resources to complete the process in ½ the time, y resources to complete the process in ¼ the time).	See response to comment 239.
279			Timelines, Deadlines, Goals		[Our Tribe] asks that the new NAGPRA Policy contains quantitative criteria to measure its efficacy through the inclusion of specified deadlines for the completion of inventories and return of Native American human remains and NAGPRA cultural items, with shorter deadlines should be put in place via individual campus procedures for campuses with small collections. We propose that the University of California mandates all campuses to review and update their inventories within 24 months of the NAGPRA Policy’s effective date. Furthermore, the University of California should mandate a 5-year window from the NAGPRA Policy effective date to return ancestral remains and funerary objects returned to their respective tribal communities. Campuses may be allowed to ask for a one-time, twelve-month extension, so long as the request for extension is made after consultation with the affected tribal community and pursuant to a written justification specifying the need for extension to be addressed to the Campus Committee and University of California Committee. Without quantitative criteria, the NAGPRA Policy is an open-ended goal without imposing an affirmative obligation on the faculty/professionals charged with implementation of the new NAGPRA Policy. Timelines will elevate the importance of these issues and justify funding requests for the University of California and affected campuses. We are concerned that without such deadlines, another 30 years will go by without having ancestors returned to their communities.	We have inserted timelines and deadlines where possible, while recognizing that full completion of items on the repatriation plans will be campus-specific depending on the nature of their collections, and may also vary depending the readiness/ability of Tribes to participate in the process or reach timely agreement in cases of competing claims.

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280			Training & Education		[Our Tribe] proposes that initial and annual trainings be made mandatory for all University of California faculty to raise their awareness of this new NAGPRA Policy, and the procedures and best practices that faculty will be obligated to follow once the NAGPRA Policy is implemented. We strongly believe that tribal communities and the University of California are experiencing resistance from faculty, deferring to entrenched norms and entertaining antiquated views pertaining to Native American remains and collections. Additionally, The University needs to distribute educational materials to raise awareness of students who might witness violations to this NAGPRA Policy first-hand through exposure to unethical displays and/or use of Native American remains and NAGPRA items in the classroom. Educational materials need to include handouts, posters, and messaging through social media and networking sites, e.g., Facebook, Twitter, Instagram, etc. to explain the new NAGPRA Policy standards and put ethical practices and methods into the public spaces that aspiring experts in the field may visit.	The revised policy requires that the Chancellor annually communicate with all relevant faculty, researchers, students, staff and UC retirees from fields most likely to have used Human Remains and Cultural Items, to raise awareness about the requirements of this policy and related laws and regulations (including means of reporting concerns). Given the varying size and nature of individual UC campuses, we believe each campus is best equipped to determine the nature and scope of training for that campus.
281			Transfers of Remains & Objects		Transfers: need to include non-NAGPRA materials of the NAGPRA eligible "collection," right – otherwise it's split. Splitting collections leads to things going missing, getting inaccessible, or documents muddled.	See response to comments 33 and 34 with regard to transfers between campuses. We agree we have to use great care if we are to transfer items between campuses, and that this is a matter for consultation with the tribes and coordination between campus Repatriation Coordinators.
282			UC Holding of Unrepatriated Remains & Items Under Third-Party Control		The policy should address collaborations with agencies that control human remains and cultural items in our care, as well as how UC expects other agencies who might have remains and cultural items in their possession that are under the control of UC.	Campus Repatriation Implementation Plans are required to include a schedule for reaching out to agencies that have Control of Human Remains and Cultural Items currently held by UC to prompt and encourage those agencies' Repatriation efforts. Such agencies must be contacted at least annually. See Section VI. We also added a section on loans from UC to external entities, describing all the conditions for such loans, including that the external entities provide proper care for the items in accordance with the UC policy. See Section V.K.2.
283			UC Holding of Unrepatriated Remains & Items Under Third-Party Control		UC should have a principle statement that we will not hold remains within UC's possession but under the control of another agency if that agency is not in compliance with NAGPRA/repatriation. For example, BLM forbids UC as the curation facility to even discuss with tribes that UC has them. BIA has refused to initiate consultation 30 years after the passage of NAGPRA. These are cases where they should be sent back to the controlling agency.	Campus Repatriation Implementation Plans are required to include a schedule for reaching out to agencies that have Control of Human Remains and Cultural Items currently held by UC to prompt and encourage those agencies' Repatriation efforts. Such agencies must be contacted at least annually. We note that returning Human Remains and Cultural Items back to the controlling agency may not be consistent with Tribal wishes, as Tribes may prefer their ancestors not be disturbed.
284			UC Holding of Unrepatriated Remains & Items Under Third-Party Control		We do want a mechanism for dealing with agencies who refuse to repatriate.	See response to comment 282. We note that returning Human Remains and Cultural Items back to the controlling agency may not be feasible, or consistent with Tribal wishes, as Tribes may prefer their ancestors not be disturbed.
285	V.C.1	Inventory Process	Unaffiliated Remains & Cultural Items		<u>Add underlined text:</u> Consistent with Federal NAGPRA, if after Consultation with Tribal Representatives from Federally-recognized Tribes a Campus <u>Committee</u> is unable to determine the Cultural Affiliation of any Human Remains and Associated Funerary Objects, then the <u>Campus Committee will instruct the Repatriation Coordinator to classify them as Culturally Unidentifiable in its NAGPRA Inventory.</u>	We have rewritten this section and removed this sentence.
286			Unaffiliated Remains & Cultural Items		This new NAGPRA Policy should also establish the steps the University of California will take to initiate efforts to identify affiliated tribes. It should also be noted that remains and cultural items where the excavation location is known to the University of California, cannot be considered unaffiliated. Therefore, this NAGPRA Policy needs to define how the University of California faculty, no matter the campus, must proceed to identify affiliated tribes.	Section VI. requires campuses develop, as part of their Repatriation Implementation Plan, procedures to proactively review and update previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, and initiate or re-initiate consultation with Tribes from whose Tribal lands (at the time of removal) or Aboriginal Lands the Human Remains and Associated Funerary Objects were removed. In addition, as per CalNAGPRA, this section requires that when the NAHC issues the list of California Indian Tribes provided for under CalNAGPRA §8012, campuses must include in their Repatriation Implementation Plans a description of how they will supplement their Inventories and Summaries within one year of the date the NAHC issues the list.
287					Of critical importance, the Tribe strongly recommends the UC incorporate the federal canons of construction to the Policy, see pages 2 and 28.	Tribal Canons of Construction do not apply to UC. However, please see response to comments 89 and 117.

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288					The Policy must clarify the types of evidence and standards of evidence to be used consistently with federal law, see pages 2 and 27.	The policy requires that UC comply with NAGPRA and CaINAGPRA, including the lines of evidence that may be used. See definition of Cultural Affiliation and State Cultural Affiliation in Section II, and Sections V.C.2-3.
289			Definitions		The Policy must clarify and be consistent in the use of the term "Culturally Affiliated Tribe", see page 5.	See response to comment 302.
290					The review of claims or requests must be done in a timely manner with tribal consultation, see page 32.	See response to comment 306.
291			Respectful Treatment	Research, Testing, Analysis	The Policy must prohibit the use of 3-D scanning technologies, see page 36.	See response to Comment 167.
292			Consultation Process, Roles & Responsibility, Documentation		The Policy must include language that provides for tribal consultation and a process which is timely and transparent for short term care and loans.	We have added clarifying language for conditions and examples regarding short-term care and loans, including a section addressing loans from UC to external entities, which stipulates loans may be made only upon request by Culturally Affiliated Tribe(s) or Aboriginal Lands Tribes, or in furtherance of Repatriation or Disposition. See Sections V.K.1-2.
293			Policy Scope		As an overarching and guiding consideration, as well as keeping with the comment from the Governor's Tribal Liaison, the Policy should be simplified by removing any unnecessary legal references, which can create additional burdens and barriers. This would include any and all references or use of the Antiquities Act.	We have removed language in the policy that restates definitions or requirements in the law, except where necessary to facilitate understanding of the policy.
294			Policy Scope		We must focus on the Policy's purpose which is to address the areas where the UC system has failed to implement repatriation. The use of simplified language and processes will generate productive collaboration and outcomes for tribes and the UC.	We have carefully reviewed, rewritten, and reorganized sections of the policy that were found to be unclear or overly legalistic in language. While it is not possible to entirely remove legal or formal language in a policy written to implement the law, we believe the revised policy will be more easily understandable and easier to follow. Importantly, we have also added flowcharts to outline the process UC will follow. See Sections V.B.1 and Appendices A and A-1.
295			Consultation Process, Roles & Responsibility, Documentation	Tribal Input & knowledge	The Tribe believes there should be a new Section II entitled: Guiding Principle: NAGPRA, CaINAGPRA, all federal and state regulations, and this Policy shall be interpreted giving preference to Native American tribes and Native Hawaiians pursuant to the federal statutory canons of construction, where statutes, etc., are to be liberally construed in favor of Indians and all ambiguities resolved in their favor.	We have strengthened the Purpose and Guiding Principles and other areas of the policy to ensure that Tribal evidence and perspectives are sought out and valued throughout all stages of the Consultation and Repatriation process. Please also see response to comments 89 and 117.
296			Misc./Other	Documentation	All tribal comments and UC responses must be retained and accessible for future review and use by tribes.	We are publicly posting all tribal comments and UC's responses, and will also make them available upon request. UC will gladly make arrangements to discuss any remaining questions a tribe may have.
297			Misc./Other		The Tribe would like adequate time to review and comment on all appendices to the Policy. Depriving tribes of the opportunity to review and comment on these documents, which comprise the bulk of the Policy, diminishes the efforts of tribal leaders, representatives and other stakeholders as well as the UC system in developing this important Policy. We highly encourage you to begin to release prior to the April 15 Version 3 release for review.	All of the previously proposed appendices have now been released for review and comment. We appreciate that releasing these documents prior to release of the updated policy would have been helpful; however, as the final revisions to the policy prior to release necessitated further revisions to the appendices, we regret that we were unable to release those documents beforehand.
298		Scope	Policy Scope		The footnote below should be made part of the Scope, exceptions to the Policy should not be footnoted. "Note that this policy covers NAGPRA-eligible Human Remains and Cultural Items (all as defined in this Policy). As such, this policy is not intended to cover the procedures that apply to inadvertent discovery of Native American remains during ground disturbing land development activity governed by California Public Resources Code § 5097.8 and Health and Safety Code § 7050.5, or notification and consultation requirements related to Tribal Cultural Resources pursuant to the California Environmental Quality Act. (See UC CEQA Compliance.) In addition, this Policy does not apply to voluntary and consented donations through the University's Anatomical Donation Program. (See UC Policy on Anatomical Donation/Materials Programs.)"	The Scope has been re-written, but have retained the clarifying footnote in Section I. The footnote clarifies that this policy does not apply to inadvertent discovery and donations through UC's Anatomical Donation Program. These are not considered exceptions to this policy on repatriation.
299	I	Policy Summary	Policy Scope		The parenthetical language should be above in the Scope where Cultural Items was first used. "The University of California (UC) adopts as a fundamental value the Repatriation of Human Remains and Cultural Items (<i>Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony</i>), in accordance with state and federal law."	The term "Cultural Items" has been removed from the Scope, thus it now first appears in Section I, where it is footnoted.

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300	II	Definitions	Definitions		<p>Insert the footnote language in the actual Policy.</p> <p>"Definitions included here are intended to facilitate the reading of this policy, but note that both Federal NAGPRA and CalNAGPRA contain definitions sections that apply to implementation of those respective laws. In cases of inconsistency, the definitions associated with the cognizant regulations shall take precedence over definitions provided here. Under CalNAGPRA, terms have the same meaning as in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), as interpreted by federal regulations, except as noted in CalNAGPRA § 8012. Therefore, Federal citations provided in this Section are not meant to suggest that the underlying definitions apply only in implementation of Federal NAGPRA."</p>	We have deleted this footnote as we have removed most of the definitions already defined in the law. A clarifying statement has been added to the introduction of Section II.
301	II	Definitions	Definitions		<p>This Policy uses the terms "totality of the evidence" and "totality of the circumstances and evidence" - neither are defined terms in the Policy. The Policy should also confirm and state clearly that the knowledge of tribal representatives shall be afforded greater evidentiary weight.</p>	<p>We have removed all uses of the phrase "totality of the evidence" or "totality of the circumstances and evidence," except for one use in Section V.C.2, which we believe stands on its own in context. We note that NAGPRA uses similar phrasing in 43 CFR 10.8, 10.9 and 10.14.</p> <p>With respect to giving evidentiary preference to Tribes, please see our response to comment 117.</p>
302	II	Definitions	Definitions		<p>This Policy uses "Affiliated Tribe" and "Culturally Affiliated Tribe" - use one term and stick with it.</p>	We have reviewed the policy to replace use of "Affiliated Tribe" with "Culturally Affiliated Tribe." Thank you for pointing this out.
303	V.B.1	Consultation	Consultation Process, Roles & Responsibility, Documentation		<p>Revise text as follows (additions shown in underline and deletions in strikeout):</p> <p><u>Tribal Consultation is a mandatory requirement to ensure compliance with critical element of compliance with this Policy and is required by</u> NAGPRA and CalNAGPRA at various stages of the Inventory, Summary, Repatriation and Disposition processes.</p>	We have clarified that consultation is a critical element <u>required</u> by NAGPRA, CalNAGPRA and this policy, and significantly modified Section V.B.1 to provide detailed guidance on the consultation process.
304	V.D.1	Types of Evidence	Cultural Affiliation & Repatriation Process		<p>Strike: The campus must consider the totality of the evidence.</p> <p>This sentence is not applicable in this section "Types of Evidence." This sentence speaks to an evidentiary standard, not type. Don't conflate types of evidence with standards of evidence.</p>	We have rewritten this section and removed this sentence.
305	V.D.2	Evidentiary Standard	Cultural Affiliation & Repatriation Process		<p>The Tribe recommends repeating the canons of construction here.</p>	Tribal Canons of Construction do not apply to UC. However, please see response to comments 89 and 117.
306	V.E.6	Review of Claims and Requests	Cultural Affiliation & Repatriation Process		<p>Insert an introductory paragraph requiring the UC to to conduct an audit on all claims or requests that have been pending for 6 months from the time the claim or request was submitted to the UC. The UC principle states the UC will do everything it can to expeditiously repatriate NAGPRA items.</p>	Section V.A.2.b.2 provides the campus committee with the ability to annually review a summary of requests that have been received at the campus, but have not yet been formally elevated to the campus committee for review. In addition, the tribe can elevate concerns via the complaint process in V.I.1.
307	V.E.6	Review of Claims and Requests	Cultural Affiliation & Repatriation Process		<p>Rename heading: Review of Claims and Requests</p>	We have substantially rewritten/reorganized this text and deleted this heading.
308	V.E.6	Review of Claims and Requests	Cultural Affiliation & Repatriation Process		<p>Delete text in strikeout: A Claimant or Requestor on must submit a request for Repatriation or Disposition in writing.</p>	This sentence was deleted during revision of the policy.
309	V.E.6	Review of Claims and Requests	Cultural Affiliation & Repatriation Process		<p>Insert: 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, <u>in a timely manner but no later than within 6 months from the date of the claim or request.</u></p>	As each case can vary in the degree of consultation required and the length of time that it can take, it is difficult to specify a deadline by which the Chancellor will make a determination in policy. In addition, as we provide more instances of tribal input during the process, we are mindful that imposing a deadline may inadvertently limit the time a tribe may have to provide meaningful responses during the process. We do note that we will comply with the NAGPRA requirement to repatriate within 90 days of receipt of a written request for repatriation provided that the repatriation may not occur until at least 30 days after publication of a notice in the Federal Register.

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310	V.H.4	Access to Human Remains, and/or Funerary and Sacred Objects	Respectful Treatment		Insert: UC shall not permit research, destructive analysis, <u>any 3-D scanning technologies, including saving, editing, and/or printing of 3-D scans</u> , classroom use, or exhibition of Human Remains and/or Funerary and Sacred Objects of Native American or Native Hawaiian ancestors, except as outlined below.	See response to comment 167.
311	V.H.4.1	Access to Human Remains, and/or Funerary and Sacred Objects	Respectful Treatment		Reword to add underlined text and delete text in strikeout : If the Human Remains and/or Funerary and Sacred Objects of Native American and Native Hawaiian ancestors are pending Repatriation or Disposition, the campus must obtain explicit written permission from the <u>Culturally Affiliated Tribe(s)</u> cognizant Native American Tribes or Native Hawaiian Organizations.	Suggested change was adopted.
312	V.H.4.4	Access to Human Remains, and/or Funerary and Sacred Objects	Respectful Treatment		If the Human Remains and/or Funerary and Sacred Objects of Native American and Native Hawaiian ancestors are Culturally Unidentifiable and the Tribe does not fit the description in <i>O above</i> , 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. What is this referencing? Reword to "3) above."	Thank you for bringing this error to our attention. It has been removed from the policy.
313	V.I	New Requests for Short-Term Care and Loans	Loans of Remains & Cultural Items		Language is needed to address the scenario where the Affiliated Tribe disagrees with the loan of Human Remains and Cultural Items.	Section V.K.1 provides examples of acceptable circumstances under which UC may <i>receive</i> loans, including upon request by a culturally affiliated tribe. Other circumstances may involve items that have not yet been culturally affiliated, but for which UC is assisting another entity in their repatriation duties. Section V.K.2 describes the circumstances under which UC will consider <i>making</i> loans, which may only be made upon request of a Culturally Affiliated Tribe(s) or Aboriginal Lands Tribes, or in furtherance of Repatriation or Disposition.
314	V.I.1	Care for Native American Tribes or Native Hawaiian Organizations	Loans of Remains & Cultural Items		Reword to add underlined text and delete text in strikeout : UC may maintain temporary physical care of Human Remains of Native American or Native Hawaiian ancestors and Cultural Items at the request of <u>the Culturally Affiliated Tribe(s)</u> a Native American Tribe or Native Hawaiian Organization(s). 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 <u>the Culturally Affiliated Tribe(s)</u> a Native American Tribe or Native Hawaiian Organization(s), so as to engage in a collaborative research project between UC researchers and the <u>Culturally Affiliated Tribe(s) or Native Hawaiian Organization(s)</u> , Native American Tribes , or research performed by UC in consultation with the <u>Culturally Affiliated Tribe</u> , respective Native American Tribe .	We have substantially rewritten this section. Please also see response to comment 313.
315	V.I.2	Care for Loans from Entities Other than Native American Tribes or Native Hawaiian Organizations	Loans of Remains & Cultural Items		Insert underlined text: Under certain circumstances and provided the conditions in section 3 below are satisfied, UC may accept requests for short-term care <u>and loan</u> of Human Remains of Native American or Native Hawaiian ancestors from entities who are not Native American Tribes or Native Hawaiian Ancestors for periods not to exceed two years. Extensions beyond two years require approval from the Chancellor or Chancellor's designee, <u>in consultation with the Culturally Affiliated Tribe(s)</u> . Comment: The Policy should include language that provides for Tribal Consultation where the Culturally Affiliated Tribe and UC must consult at the initial short-term loan request, and if granted, consult again at the end of 2 years to allow the Culturally Affiliated Tribe to hold/accept the NAGPRA items as a direct route to repatriation rather than the UC continuing to hold items.	We have substantially rewritten this section. Please also see response to comment 313.
316	V.I.2.2	Care for Loans from Entities Other than Native American Tribes or Native Hawaiian Organizations	Loans of Remains & Cultural Items		Reword to add underlined text and delete text in strikeout : (Note that u Unless <u>Culturally Affiliated Tribes</u> have given explicit written permission for testing, in carrying out these duties, the campus may only use minimally invasive procedures and shall not use destructive analysis, including but not limited to DNA analysis.)	Suggested change was adopted.

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317	V.I.2.4	Care for Loans from Entities Other than Native American Tribes or Native Hawaiian Organizational	Loans of Remains & Cultural Items		Reword to add underlined text and delete text in strikeout : Other research or care approved by or performed in Consultation with the <u>Culturally Affiliated</u> respective Native American -Tribe or Native Hawaiian Organization.	Suggested change was adopted.
318	V.I.3	Conditions for Loans	Loans of Remains & Cultural Items		Insert underlined text: UC maintains the Human Remains of Native American or Native Hawaiian ancestors and Cultural Items in accordance with the standards described in Section V.H.2 above unless otherwise described in the agreement between the Controlling Agent and UC and approved by the Chancellor or Chancellor's Designee after consultation with the Campus Committee <u>and the Culturally Affiliated Tribe.</u>	We have opted not to include this as UC may accept Culturally Unidentifiable Human Remains or Cultural Items. However, exceptions can be made either in the loan agreement or in accordance with Section V.J.2, with the review of the Campus Committee and approval by the Chancellor. In the case where a Culturally Affiliated Tribe has made the request for the loan, we presume that they would have also stated their preferences for the care of the Human Remains or Cultural Items. We can consider making this more clear in the final policy.
319			Misc./Other		The Commission finds that this latest draft Policy, like the initial draft, conflicts with, or fails to adequately incorporate, both federal and state Native American Graves Protection and Repatriation Acts (NAGPRA), which are intended to expedite and facilitate the repatriation of Native American remains and related cultural items.	We have incorporated CaINAGPRA throughout the policy, but most importantly, we have captured the CaINAGPRA process in the flowchart in Appendix A and its accompanying narrative in Appendix A-1. We are open to further discussion with the NAHC to clarify as necessary how the process would work.
320			Policy Scope		Policy Structure As the Commission previously commented, an effective systemwide policy, as required under AB 2836, should be succinct, include standards, baselines, and clearly lay out the goals and processes, with ample citations to both federal and California NAGPRA. As discussed at our March 3, 2020 meeting, the policy should track the related flow chart to enable campuses to effectively follow and implement it. The Policy should serve as a guidance document on carrying out the law, rather than as a recitation of federal and state laws. This is the approach that federal agencies have taken to enforce NAGPRA. To the extent that the Policy does attempt to restate the law, in many places it does so incorrectly, as explained more fully below under the Detailed Analysis portion of this letter. The Policy also contains conflicting and overlapping language, with no cross references to other sections of the Policy. For example, the Policy discusses federal and state cultural affiliation with no cross-references to consultation, inventory, summaries, and repatriations/disposition, all of which touch upon this issue. This concern is particularly acute for state cultural affiliation where the Policy does not explain how it is to be used in conjunction with federal cultural affiliation, as well as during repatriation/disposition, nor explain the process and best practices, in clear, non-technical language.	We have removed language that restates the law, made clearer the procedures UC will use to implement the law, and simplified language wherever possible. State and Federal Cultural Affiliation processes have been more clearly described in the body of the policy as well as in the flowcharts and flowchart narrative in Appendices A and A-1. See also Sections V.C and V.D.

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321			Policy Scope		<p>Consultation Another overarching concern has been the UC’s apparent reluctance to engage in meaningful consultation as required under AB 2836. (Health & Saf. Code, § 8025, subd. (a)(3).) The Commission’s December 4, 2019 advice letter raised serious concerns about the UC’s compliance with AB 2836’s requirement for consultation with California Native American tribes. Specifically, the Legislature 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 & 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>The Commission appreciates that the UC made significant strides to improve consultations by scheduling four public work sessions at its campuses, scheduled for the end of January and February. In conjunction with the public sessions, the UC also agreed to 15-minute consultations with requesting tribes. The UC also informed the Commission that it would conduct additional individualized consultations telephonically, as well as at its Oakland offices upon tribal request.</p> <p>On January 23, the UC provided notice to tribes, with a link to its latest Policy for work sessions scheduled to begin January 31, at UC Berkeley and February 7, at UC Riverside. Asking tribes to review an intricate and lengthy policy (40 pages), in conjunction with detailed federal and state repatriation laws, on such short notice, is not conducive to meaningful consultations, nor is it respectful of each party’s sovereignty.</p> <p>A related issue with these working sessions is that tribes raised their concerns with the Policy, but had little dialog and discussion from the UC to resolve these concerns in an attempt to reach agreement. In other instances, the UC claimed the Policy addressed concerns without completely understanding the issues and/or it failed to make additional follow-up inquiries to better understand the nuances of the concerns. Nor did the UC respond to past Commission or tribal comments as part of its latest consultation process. The Commission, as well as many tribes, recognizes that the UC’s latest draft fails to incorporate these comments, without explanation.</p> <p>Furthermore, no work sessions were scheduled north of the Bay Area, notwithstanding the many tribes located in Humboldt and Siskiyou counties. This is a significant oversight because many tribal members lack the resources to commute to Berkeley or Davis to attend day-long consultations, especially on short notice.</p> <p>Finally, the UC has not committed to any public work sessions beyond this initial revised draft of the policy. Considering the short notice provided for the first two work sessions, and the burden placed on tribes to travel long distances on short notice, many tribes will likely wait until the final draft before making comments. The Commission recommends that additional work sessions and consultations be scheduled after the completion of the final third draft and that the UC accommodate tribal requests for individual consultations at mutually preferable locations, including on tribal lands.</p>	<p>UC has made significant efforts to seek and consider tribal perspectives via multiple channels. First, in early 2019, UC formed the President’s Native American Advisory Council (PNAAC), a body established by UC President Napolitano to advise UC on a broad range of issues pertaining to Native Americans and Native Hawaiians at the university, including NAGPRA. UC leadership and staff have attended all PNAAC meetings to hear their input. In addition, In April 2019, a Cultural Affiliation and Repatriation Policy Advisory Workgroup was also established, comprised of four members nominated by the UC Academic Senate, and four members nominated by PNAAC members. The Workgroup includes members of federally recognized and non-federally recognized tribes from different regions of California. The members from the Academic Senate represent departments such as law, history, and ethnic studies, all with expertise in Native American issues.</p> <p>Second, UC has published 3 version of the policy and invited over 400 tribes to provide input. We have accepted input via SurveyMonkey, written communications, phone communications, during the four public sessions referenced in this comment, and during 1:1 sessions prior to the public portion of the four public working sessions.</p> <p>UC has also met with the NAHC for 3 full day meetings to discuss the policy.</p> <p>Due to time constraints, UC has not been able to more timely post our response to every comment received, but our responses to all comments received thus far have now been posted on our website. Finally, UC has been in meaningful dialogue with a number of tribes regarding version 3 of the policy to further understand tribal perspectives, and clarify or revise the final policy.</p> <p>UC has done the best we could to receive and respond to tribal input, including delaying implementation and writing 3 drafts of the policy, each addressing tribal concerns to the extent possible.</p>
322			Inventory		<p>Re-inventorying to Locate Remains and Related Cultural Items While the Policy acknowledges that previously unreported items “may be found in disparate academic units of the UC,” it omits any requirement that campuses systematically search museums and departments for unreported items, something expressly required under state law. (Health & Saf. Code, § 8025 subds. (a)(2)(A) and (D).) Even the prior version of the Policy issued in August of 2019 acknowledged this concern by requiring campuses to create plans to search museums and departments for remains and cultural items. (Aug. 2019 Policy at p. 23.) As the Commission previously commented on this issue in the prior draft Policy, the Policy should provide detailed guidance for conducting these reviews, as well as timeframes to the campuses for accomplishing this.</p>	<p>We have included procedures by which the campus will search museums and departments for previously unreported NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items. In particular, Section V.E.2. now provides detailed guidance to campuses on how to seek previously unreported items, within one year from implementation of this policy and every 3-5 years thereafter, engaging as necessary the assistance of appropriate subject matter experts (e.g., Tribal Representatives, Tribal leaders, osteologists, anthropologists, etc.).</p>
323			Repatriation Process		<p>Inadequate Claims Process: Improper Delegation to Campuses with No Timeframe for Compliance The Policy delegates to each campus responsibility for establishing “a clear and transparent process for Native American Tribes or Native Hawaiian Organizations to submit a request for Repatriation or Disposition in accordance with federal and state law and this Policy.” (Policy at p. 28.) This violates AB 2836, which requires the UC to adopt systemwide policies governing claims. AB 2836’s mandate for a systemwide policy is aimed, in large part, at avoiding the problems that arose in the past as a result of the UC’s inconsistent application of repatriation laws across the various campuses. (Health & Saf. Code, § 8025, subd. (a)(2)(B)and (D); Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subd. (a)(8).) The Policy’s continued failure to provide systemwide guidance and to set deadlines for campuses to initiate their claims’ processes remains a significant concern.</p>	<p>We have added detailed flowcharts to guide campuses on how to conduct their repatriation processes and to ensure greater consistency. We invite further input to clarify these procedures where necessary.</p> <p>See Appendices A and A-1, and Section V.B.1.</p>

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324			Repatriation Process		<p>The Claims Process for Culturally Unidentified Items Violates State and Federal Law The Policy requires tribes to file claims for CUI, which, in turn, trigger consultations. (Policy at p. 30.) If no claim is filed, a campus could retain items indefinitely before deciding to initiate consultations. (Ibid.) This procedure violates federal law, which clearly states the UC “must offer to transfer control” of these remains and items to a descending priority list of tribes. (43 C.F.R. § 10.11(c)(1)-(2).) Nothing in the Policy, however, requires the UC to notify tribes about the existence of any remaining CUI after its re-inventory process and to inform them about the necessity of filing a claim to initiate consultations on every single remain and item. As a result, the Policy discourages the mandatory disposition of CUI; a result the Legislature sought to avoid when it enacted AB 2836. (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subd. (a)(12).)</p>	<p>UC consulted with National NAGPRA about what Federal law (specifically, 43 C.F.R. § 10.11) requires with respect to consultation on CUI collections -- National NAGPRA advised that it is within an institution’s discretion as to <i>when</i> to initiate consultation (i.e., it would be legally compliant to initiate such consultation only upon receiving a request for consultation or disposition, or to do so proactively, before receiving such a request).</p> <p>Nonetheless, we have chosen to require that campuses conduct such CUI consultation proactively (i.e., regardless of whether a tribal Request has been received). This has been further clarified in Version 3 of the policy, Section VI, which specifies that the campus Repatriation Implement Plan must describe the process the campus will use to proactively: 1) Inform tribes of UC collections which may include Cultural Items and invite consultation, and 2) Review and update previous CUI determinations, in consultation with tribes.</p> <p>In addition, Section V.D.5 states, “[P]ursuant to CalNAGPRA § 8013(c) and (g), UC campuses must consult with California Indian Tribes to prepare supplementary inventories and summaries for those portions of their collections previously identified as Culturally Identifiable, which supplements must be completed within one year from the date the NAHC issues the list of California Indian Tribes provided for under CalNAGPRA §8012.”</p> <p>Finally, this section also states, “In order to facilitate Disposition under NAGPRA §10.11 and in order to comply with CalNAGPRA, this policy requires Campuses to initiate Consultation (i.e., regardless of whether they receive a Tribal Request) with Tribes regarding Human Remains and Associated Funerary Objects classified as ‘Culturally Unidentifiable’ under NAGPRA” It further clarifies, “In accordance with NAGPRA § 10.11(c), a campus that has completed Consultation pursuant to § 10.11(b) must offer to transfer Control of the Culturally Unidentifiable Human Remains (and, per this policy, Associated Funerary Objects)” in the order of priority set forth by CalNAGPRA.</p> <p>Thus, we believe that we have addressed this concern.</p>
325			Inventory		<p>The Process (or lack thereof) for Reviewing Existing CUI Determinations Fails to Comply with State Law The Policy requires campuses to develop plans for reviewing existing CUI determinations within six months after the Chancellor’s appointment of a Campus Committee, but no later than January 1, 2021. (Policy at p. 39.) But there is no guidance explaining the required elements for these plans and no deadlines are required for completing reviews under the plans. This enables campuses to potentially avoid reviews through delay, and will result in inconsistent CUI review policies across the UC system. Both outcomes contravene the spirit, intent, and language in AB 2836. (Health & Saf. Code, § 8025, subd. (a)(1)(D); (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subds. (a)(9) and (12).)</p>	<p>Section VI has been revised to provide more clarity about the requirements of the Repatriation Implementation Plans. See also response to comment 192.</p>
326			Repatriation Process		<p>The Process for Repatriating Unclaimed Items to Culturally Affiliated Tribes Fails to Adhere to State Law The Policy provides that, for culturally affiliated items where no claim was filed, that campuses must develop plans to notify “tribal officials,” to “invite Repatriation requests (e.g., of no less than every year), with instructions on how to submit such requests.” (Policy at p. 39.) Consistent with its other campus delegations, no deadline is set for when campuses must actually begin these notifications and the term “notify” is not defined, including a requirement that campuses inform tribes of the specific items for which the UC has determined their cultural affiliation. This will result in inconsistent systemwide policies with varying degrees of implementation in violation AB 2836. (Health & Saf. Code, § 8025, subd. (a)(2)(B).)</p>	<p>Section VI describes the requirement for outreach to Culturally Affiliated/State Culturally Affiliated Tribes to see how the campus can support them for the transfer of their items or to discuss a stewardship agreement if the Tribe is not able to physically accept the transfer. We believe each case might look different, and greater detail is unnecessary.</p>

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327			Respectful Treatment	Research, Testing, Analysis	<p>The Process for Allowing Research and Testing is Flawed Research and testing on sacred Native American remains and cultural items is one of the most fundamental human rights violations related to the exploitation of Native American remains and cultural items. First and foremost, California Native American tribes and not the University should drive all practices, policies and requests regarding testing. If it is the will of tribes to allow any testing, no testing should be allowed under this Policy unless all state and federally culturally affiliated tribes expressly agree in writing, specifically describing the extent and duration of permissible testing, and with no related appeals and complaints are still pending. In instances where only non-federally recognized tribes are culturally affiliated, then permission must also be obtained from federally recognized tribes that are recognized as aboriginal to the area from which the remains were removed, consistent with federal law. Second, the Policy is fatally flawed because it would permit testing prior to repatriation/disposition in instances where the tribe allegedly granting the request may not be the tribe that will ultimately be granted repatriation/disposition rights.</p>	<p>While we do not require the request to necessarily originate from a tribe, we reworded Section V.J.4 to require tribal authorization. Research will only be approved under narrow circumstances and only with tribal approval. If there is a culturally affiliated tribe, that tribe(s) must provide approval. If the items are not culturally affiliated, then all Indian Tribes* whose Aboriginal Lands (as outlined in NAGPRA § 10.11) overlap with the location where the Human Remains originate must provide approval. This section also requires that the Repatriation Coordinator clearly outline the duration, terms and conditions, and limitations in all access and loan agreements, including the termination date.</p> <p>* NOTE: Upon further reflection we realize that even the revised language in Version 3 contains a couple critical flaws in that in the case where the Human Remains or Cultural Items are Culturally Unidentifiable, the requirement that prior approval be obtained from "Indian Tribes" inadvertently excludes California Indian Tribes. <i>This was not our intent and we will address it in the final policy.</i> For example, one potential fix we are considering is deleting the term "Indian Tribes" and inserting "tribes" instead. Likewise, in the case where the Human Remains and/or Cultural Items have been Culturally Affiliated, we are considering explicitly adding State Cultural Affiliation, such that explicit written authorization from the Culturally Affiliated or State Culturally Affiliated Tribes must be obtained.</p>
328			Conflicts of Interest		<p>Conflicts of Interest are Not Properly Defined The Policy limits a conflict of interest to financial and personal conflicts, without defining what constitutes a "financial" or "personal" conflict. Absent a definition of what a personal conflict entails, UC officials involved in the repatriation/disposition processes within their departments could also serve on Campus and Systemwide Committees reviewing appeals and complaints arising out of their own decisions. (Nightlife Partners v. City of Beverly Hills (2003) 108 Cal.App.4th 81, 90 (Due process requires "a fair hearing before a neutral or unbiased decision-maker.")) In fact, under the Policy, the President's and Chancellor's designees may serve on committees which make recommendations concerning appeals and complaints to these very same individuals.</p>	<p>The policy now includes further clarification as to what may constitute a financial, personal, or professional conflict of interest. Tribes will be provided a roster of all Systemwide or Campus Committee Members and subject matter experts consulted or invited to the committee Meetings. Tribes who believe that one or more of these persons may have a conflict of interest with regard to their case may request that those individuals be removed as subject matter experts or abstain from voting on their case, as applicable. We have also revised the policy to delete the option for the Chancellor or President (or their designees) to serve as ex-officio non-voting committee members. See enhanced definition in Section II and also enhanced procedures in Sections V.A.1.c and V.A.2.c.</p>
329			Confidentiality		<p>Confidential Information The definition is limited to records related to consultations, and it does not include all records related to Native American graves, cemeteries, and sacred places as provided for under Government Code section 6254, subdivision (r). Maintaining confidentiality is essential to any effective repatriation process and in building tribal trust. The Commission recommends that language similar to AB 52 be used requiring that any information, including the location, description, and cultural resources shall not be disclosed to the public consistent with existing Public Records Act exceptions. (See Pub. Resources Code, § 21082.3, subd. (c)(1).)</p>	<p>See Response to Comment #82. We have incorporated language from Government Code section 6254(r) into the definition, as previously recommended by the NAHC and some tribes. In addition, Sections V.B.1 and V.B.2. and Appendices A and A-1 expand on how UC will maintain confidentiality of information, including during the consultation process, identifying all documentation and information shared that will have restricted access and the extent of such restriction, and allowing tribes to review notices prior to publication.</p>
330			Audits & Oversight		<p>Use of Audits Because of the UC's "history of inconsistent" compliance with repatriation laws documented by the Legislature, the Commission also recommends that the Policy incorporate greater accountability by requiring periodic audits with corresponding timelines for addressing any concerns identified by the audit. (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1 (Legislative Findings), subs. (8) and (9).)</p>	<p>The Campus and Systemwide Committees all have a clear responsibility to assess compliance and recommend audits (see Sections V.A.1.b and V.A.2.b). In addition, the policy requires the Repatriation Coordinator to provide ongoing reports to the committees (see Appendix D). The Committees also have authority to recommend corrective action to the Chancellor or President.</p>

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331	II	Definitions	Definitions		Definitions A prominent concern in the Policy's definitional section is its attempt to restate legal definitions that already exist under the law, while the Policy fails to provide guidance in their practical application and meaning. The best example of this is the Policy's use of the legal terms "museum or Federal agency" throughout its definitions. (See Associated Funerary Objects; Funerary Objects; Inventory; Notice of Intent to Repatriate; Notice of Inventory Completion.) The Policy does so despite the fact that the terms are not otherwise defined under the Policy, which is confusing and may result in some staff erroneously concluding that their UC program is neither. Since the Policy already applies to the entire UC, it would be more appropriate, and useful, to clarify that it covers the entire UC, including associated items found anywhere within the UC system, no matter where they are housed, including but not limited to museums, collections, academic departments, clinics, and research programs.	Per prior recommendations, we have now removed definitions of terms in this policy that are already defined in the law, with the exception of a few terms retained for convenience.
332	II	Definitions	Definitions		<i>Associated Funerary Objects:</i> The Policy defines funerary objects to mean items "that were made exclusively for burial purposes or to contain human remains." (Policy at p. 3) But federal NAGPRA does not require that the items be made exclusively for burial purposes, only that the items were placed intentionally with the remains. (43 C.F.R. § 10.2(d)(2) and (3).) This is a significant difference because campuses may misclassify associated funerary objects believing that such items must be made exclusively for burial purposes.	This definition has been deleted.
333	II	Definitions	Definitions		<i>Burial Site:</i> The proposed Policy provides the two federal and state legal definitions of burial site without explanation. The Policy should use CalNAGPRA's definition, but note that under federal law, a burial site must also have been part of a death rite or ceremony of a culture and specifically includes rock cairns and pyres.	This definition has been deleted.
334	II	Definitions	Definitions		<i>California Indian Tribe:</i> Rather than provide legal verbiage, the Policy should simply state that a tribe under federal law is defined as one that is federally recognized, which is listed by the BIA and provide the link to the list. The Policy should explain that CalNAGPRA incorporates these tribes located in California, as well as California tribes identified by the Commission under criteria set forth by state law. There is no reason to set out the detailed legal criteria for Policy purposes because the campuses will not be making this determination.	This definition has been deleted.
335	II	Definitions	Definitions		<i>Confidential Information:</i> This is a vast improvement over the UC's prior definition of this term, but it needs to be expanded to include not only records related to consultations (Pub. Resources Code, § 6254.10) but also all records related to Native American graves, cemeteries, and sacred places as provided for under Government Code section 6254, subdivision (r). Further the Commission recommends adopting language similar to AB 52 governing the California Environmental Quality Act, which provides that all information, including, but not limited to, the location, description, and use of tribal cultural resources submitted by a tribe shall not be disclosed to any other public agency or the public consistent with section 6254, subdivision (r). (See Pub. Resources Code, 21082.3, subd. (c)(1).) This is an important tribal issue because many sacred places are subject to looting, vandalism, and desecration, and tribes need to be assured that the UC will maintain their confidences.	See response to comment 329.
336	II	Definitions	Definitions		<i>Conflict of Interest:</i> The proposed definition limits a conflict of interest under the Policy to financial and personal ones, without stating what constitutes a "personal" conflict. To be meaningful, a conflict must be better defined to avoid having individuals reviewing decisions in which they personally participated (including claims, dispositions, disputes, and repatriations) which may involve that person's specific academic department, museum, or affiliated tribe, including where they receive compensation as a contractor. The goal should be to avoid having individuals with a vested personal stake in an outcome from participating in the review or complaint process. (Nightlife Partners v. City of Beverly Hills (2003) 108 Cal.App.4th 81, 90 ("Due process, however, always requires a relatively level playing field, the 'constitutional floor' of a 'fair trial in a fair tribunal' in other words, a fair hearing before a neutral or unbiased decision-maker."))	See response to comment 328.
337	II	Definitions	Definitions		<i>Consultation:</i> Insert a sentence at the end which states "See Consultation section for details and best practices."	As recommended, we have referenced Section V.B.1. in this definition.
338	II	Definitions	Definitions		<i>Control:</i> The definition is overly legalistic making it difficult to understand. It could be more simply stated to be a legal interest (including ownership) in remains and associated funerary objects that are treated as belonging to a museum, department, or program, including items on loan to a third party.	This definition has been deleted.
339	II	Definitions	Definitions		<i>Cultural Affiliation:</i> The definition uses the term "Indian Tribe" without defining this term (although the term "tribe" is defined) and it only cites to federal law, which incorrectly suggests that it only applies to federally recognized tribes under federal NAGPRA. The definition should include a citation to Health and Safety Code section 8012, subdivision (f). Further, the later definition of "tribe" should be changed to "Indian Tribe" and its definition should specify that it includes federally recognized, as well as, other California Indian tribes as identified under state law.	We have clarified that capitalized terms in the policy (including within definitions) are defined in this policy or by NAGPRA/CalNAGPRA. Note also that in this policy, we use both "Cultural Affiliation" (as defined by NAGPRA) and "State Cultural Affiliation" to describe shared group identities between present day California Indian Tribes and an identified earlier Tribe or group, per CalNAGPRA 8012(f).
340	II	Definitions	Definitions		<i>Cultural Items:</i> This definition is overly legalistic. There is no reason to specify that CalNAGPRA means only those items originated in California because CalNAGPRA only applies to California Indian Tribes having a cultural affiliation with the cultural items.	This definition has been deleted.
341	II	Definitions	Definitions		<i>Disposition:</i> The definition is confusing when it states: "specifically, as used in this Policy, transfer of Culturally Unidentifiable Human Remains, with or without Associated Funerary Objects (as distinguished from 'Repatriation,' which applies only to transfer of Culturally Affiliated Human Remains and Cultural Items)." CalNAGPRA does not make this distinction and it is not necessary for the Policy to distinguish between the two. To the extent that the UC feels it must distinguish between them, it would be clearer to state that where the term "disposition" is used instead of "repatriation," it is referring to the disposition process for culturally unidentifiable remains and associated items under federal NAGPRA (43 C.F.R. § 10.11(c)).	In response to this comment, we have revised this definition for clarity.

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342	II	Definitions	Definitions		<i>Funerary objects:</i> CalNAGPRA incorporates the term as part of “cultural items.” Please add a citation to Health & Saf. Code, § 8012, subd. (d).	This definition has been deleted.
343	II	Definitions	Definitions		<i>NAGPRA-eligible Human Remains/Cultural Items and NAGPRA-eligible Collection:</i> The Policy inconsistently refers to “NAGPRA-eligible collections,” and “each campus with the Possession or Control of Native American or Native Hawaiian Human Remains and Associated Funerary Objects.” (See Policy at pp. 13 and 23.) While the definition does include CalNAGPRA, it is confusing to use only a federal law reference to refer to both state and federal law. Further, the term presupposes that it only applies to collections which have already been determined to be “NAGPRA-eligible.” Much of the Policy applies to collections and items that are “potentially” NAGPRA-eligible, so use of this term forecloses items that actually must be captured by the policy so they may be identified and repatriated if they fall under NAGPRA. The Policy should eliminate this confusing reference and just refer to Human Remains and Cultural Items, which are already defined. The term “collection” should be used when providing examples of the different divisions and departments which may have remains and associated items required to comply, including but not limited to any museums, collections, departments, clinics, and research programs. (See 43 C.F.R. § 10.2(1) and (3).)	We retained this definition because it simplifies the reading of the policy; however, we changed the term itself to include CalNAGPRA, so that it’s clear that we mean this term to apply to Human Remains or Cultural Items under either NAGPRA or CalNAGPRA. References within the policy have been updated to “NAGPRA/CalNAGPRA-eligible Collection.” Within the policy, we use the qualifier “potential” when items may <i>potentially</i> be required to be captured in a NAGPRA/CalNAGPRA Inventory or Summary, but the determination has not yet been made.
344	II	Definitions	Definitions		<i>Native American:</i> Please include citations to state law, which incorporates federal law. (Health & Saf. Code, § 8012, subd. (j).)	This definition has been deleted.
345	II	Definitions	Definitions		<i>Notice of Inventory Completion:</i> While the Commission appreciates the citation to CalNAGPRA, the definition only incorporates federal requirements. It should specify that within 90-days of completion, all campuses shall provide copies of the inventory and summary to the Commission for publication on the Commission’s Web site for 30 days, as well as making these available to all tribes.	This definition has been deleted.
346			Committee Membership, Composition, & Role		Procedures The Policy spends an inordinate amount of space to the composition of the Systemwide and Campus Committees. For example, much of this is already defined in law and actually may change, so citations to law is the preferable manner in which to reference this. Please eliminate it or place in guidance documents.	We have removed procedural and composition requirements of the Systemwide and Campus Committees that are already defined in law.
347			Committee Membership, Composition, & Role	Systemwide Committee	Systemwide Committee: Composition AB 2836 sets out the requirements for the Systemwide Committee, which does not include the President/designee as non-voting members. (Policy at p. 15.) The inclusion of the President/designee in this Committee is problematic because the Committee makes recommendations to the President regarding policy revisions, guidance and best practices, corrective-action audits, and tribal appeals. It would undermine the integrity of the process if the President/designee participated in these very decisions, even in a non-voting capacity.	We have also revised the policy to delete the option for the President (or President’s designee) to serve as an ex-officio non-voting committee member.
348			Committee Membership, Composition, & Role	Systemwide Committee	Systemwide Committee: Procedures: Conflicts of Interest As discussed above, the Policy should set out what constitutes a conflict of interest. (Policy at p. 16.) By leaving this decision to each campus, there is a substantial risk that inconsistent campus policies will develop. Under the Policy, Systemwide and Campus-wide Committees, as well as Chancellors/designees, are required to make decisions regarding cultural affiliation, repatriation/disposition, claims, appeals, and disputes. A conflict of interest arises anytime they review matters involving their specific academic department, museum, or affiliated tribe, including when they receive compensation as a contractor. The goal should be to avoid having individuals with a vested personal stake in an outcome from participating in the review process. For instance, under the policy, a museum’s director may participate in decisions concerning approvals and appeals, which could include approvals and appeals arising from his or her own decisions. (Nightlife Partners, supra, 108 Cal.App.4th at p. 90 (“Due process, however, always requires a relatively level playing field, the ‘constitutional floor’ of a ‘fair trial in a fair tribunal’ in other words, a fair hearing before a neutral or unbiased decision-maker.”))	See response to comment 328.
349			Committee Membership, Composition, & Role	Systemwide Committee	Systemwide Committee: Procedures: Chair While the Commission appreciates the change permitting the Chair to be chosen from any of the Committee members, under the Policy, the nominee must be approved by the President/designee. (Policy at p. 16.) This would permit Committee members (particularly those that work within the UC) to lobby the President and skews the process in favor of UC nominees. Nothing in AB 2836 authorizes or provides such authority to the President. Rather, the composition of the Committee was carefully determined by the Legislature and, accordingly, this requirement should be stricken from the policy.	The policy now specifies that the Systemwide and Campus Committees will each nominate a Chair who will serve upon approval of the President and Chancellor, respectively. We respectfully note that AB 2836 does not preclude the President or Chancellor from appointing the committee Chairs. We do not believe assigning appointment authority to the President or Chancellor (or their designees) conflicts with the language of AB 2836, and wish to point out this is standard practice for other legally mandated UC committees (e.g., Institutional Review Boards, Institutional Animal Care and Use Committees, or Institutional Biosafety Committees).
350			Committee Membership, Composition, & Role	Campus Committee	Campus Committee: Composition: Reference to NAGPRA-Eligible Collection The policy again refers to “NAGPRA-eligible collection” which is potentially confusing because the definition is broader than just NAGPRA or just “collections.” (Policy at p. 17; See definitional comments on this term.)	See response to comment 343.

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351			Committee Membership, Composition, & Role	Campus Committee	Campus Committee: Composition: Chancellor/Designee Like Systemwide Committees, AB 2836 sets out the requirements for the Campus Committee, which does not include the Chancellor/designee as non-voting members. (Policy at p. 19.) The Commission appreciates the potential interest by the Chancellor, but including the Chancellor may unfairly skew the Committee's decision-making. The Committee makes recommendations to the Chancellor regarding implementation, claims, disputes, and tribal access. It would not be appropriate for the Chancellor/designee to also participate in these decisions, even as non-voting members. (See Comment re: President/Designee above.)	We have also revised the policy to delete the option for the Chancellor (or Chancellor's designee) to serve as an ex-officio non-voting committee member.
352			Committee Membership, Composition, & Role	Campus Committee	Campus Committee: Procedures: Conflicts of Interest The Policy needs a comprehensive conflict of interest policy. (Policy at p. 20.) Like the Systemwide Committee, by leaving this decision to each campus, there is a significant risk of inconsistent campus policies. (See prior Comment on Conflicts of Interest for the Systemwide Committee and under Definitions.)	See response to comment 328.
353			Committee Membership, Composition, & Role	Campus Committee	Campus Committee: Procedures: Chair While the Commission appreciates the change permitting the Chair to be chosen from any of the members, the Policy requires that the nominee be approved by the Chancellor/designee. (Policy at p. 20.) This allows Committee members (particularly those that work within the UC) to lobby the Chancellor and skews the process in favor of UC nominees. Nothing in AB 2836 authorizes or provides such authority to the Chancellor. To the contrary, the Legislature carefully delineated the Committee's composition and structure. This requirement should be stricken from the policy.	See response to comment 349.
354			Consultation Process, Roles & Responsibility, Documentation		Consultation As to consultation, at the March 3, 2020 meeting, the UC provided an update guidance document to provide best practices for effective consultation. That document should be an integral part of the Policy as the backbone for repatriation. If the UC does decide to use it as a guidance or best practices supplement, then it should be the very first one.	We appreciate your input on this guidance document and have incorporated these best practices into Section V.B.1. of the policy.
355			Consultation Process, Roles & Responsibility, Documentation		Consultation: "NAGPRA-Eligible Collection" As previously explained, use of the term "NAGPRA-eligible Collection" is potentially confusing because the definition is broader than just NAGPRA or "collections." (Policy at p. 21; See Comments to use of the term under Definitions.)	See response to comment 343.
356			Consultation Process, Roles & Responsibility, Documentation		Consultation: Collaboration The Policy requires campuses "to work collaboratively with Tribal Representatives to facilitate the Cultural Affiliation and State Cultural Affiliation of Native American or Native Hawaiian ancestral Human Remains and Cultural Items, and provide Tribal Representatives reasonable opportunity to present information regarding Cultural Affiliation or State Cultural Affiliation orally or in writing." The Policy, however, does not, address three significant sources of friction between the tribes and the UC: 1) complete and full access to remains and cultural items during the inventory process; 2) adequate notice necessary to participate in the inventory process while the inventory is being assembled and culturally identified; and 3) adequate notice to participate in the claims repatriation or disposition process.	We have added flowcharts and significantly enhanced the Consultation section. We believe these modifications address all concerns described in this comment, including access to Human Remains and Cultural Items, access to information held by UC, invitations to engage in consultation when new information or Human Remains or Cultural Items are identified, and invitations to present information orally or in writing directly to the campus committee. See Section V.B.1, and Appendices A and A-1.
357			Consultation Process, Roles & Responsibility, Documentation		Consultation: Confidentiality Waivers As discussed above under the definition of Confidentiality, maintaining confidentiality is integral to effective consultation and in building trust with the tribes. Responsibility for maintaining confidentiality falls on the UC which has the legal obligation to repatriate. If unique circumstances arise where the UC is somehow precluded from maintaining specific confidential information, then the UC must provide the basis for this concern to the tribes in advance of any related consultations in an effort to reach agreement concerning any proposed disclosure. (Policy at p. 22.) Tribes need to know that the UC will maintain and respect confidentiality and that any proposed exceptions will be carefully explained and agreed to in advance of any disclosures. In relation to exceptions, the Policy fails to provide guidance concerning the circumstances under which a waiver of confidentiality should be sought. Moreover, nothing in the Policy precludes a campus from including it as standard contract language or from requiring waivers as a condition for tribal participation in the repatriation process. These waivers should only be requested by the UC when absolutely necessary to comply with its statutory obligations and no tribe should be compelled to execute a waiver as a condition to participating in the Policy's process. When confidentiality is waived by a tribe, the waiver should be in writing so that all parties understand the nature, scope, and duration of the waiver.	The policy does not reference or endorse confidentiality waivers, and we are unaware of any instance in which a campus has required a tribe to waive any of its confidentiality rights as a condition for participating in the repatriation process. While we agree that a tribe should not be required to provide such a waiver as a condition of participating in the repatriation process, we do not believe it is necessary to insert new language into the policy addressing confidentiality waivers. Sections V.B.1 and V.B.2. and Appendices A and A-1 expand on how UC will maintain confidentiality of information, including during the consultation process, identifying all documentation and information shared that will have restricted access and the extent of such restriction, and allowing tribes to review notices prior to publication. Appendix A-1 describes the duty of the Repatriation Coordinator to gather and share gathers documentation and information at the campus regarding collections and a list of additional Tribes that have been or will be consulted.

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358			Consultation Process, Roles & Responsibility, Documentation		<p>Consultation: Inventories and Summaries</p> <p>The policy would only require campuses to update existing inventories under the following circumstances:</p> <ol style="list-style-type: none"> 1. Previously unreported holdings or collections are located that may include remains or cultural items; 2. Remains and cultural items are likely to be culturally affiliated with a newly federally recognized tribe; 3. New information about cultural affiliation is obtained which provides a basis for revising a prior determination; and 4. An update “is otherwise required” under federal or state law. <p>(Policy at pp. 22-23.)</p> <p>The enumerated list omits reference to the need to update existing inventories as part of the requirement to update existing CUI inventories to ascertain whether cultural affiliation can now be determined. (Health & Saf. Code, § 8025, subd. (a)(2)(D).) But in a separate note below the list it states:</p> <p>Note that ‘new information’ includes 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>In order to avoid confusion, the Policy should expressly include the note as a fifth circumstance necessitating an inventory update. In addition, all faunal collections within UC control are in need of re-review to identify potential Native American human remains. When UCLA re-reviewed its collections, the amount of identified Native American human remains that had previously been missed was remarkably high. This needs to be incorporated in the circumstances requiring an update to inventories.</p> <p>Adding to this confusion is the fact that the Policy requires campuses to update inventories and summaries under CalNAGPRA, which includes adding State Cultural Affiliation. (Policy at pp. 23-24.)¹ Yet, this is not expressly identified as one of the circumstances warranting the updating of existing inventories. (Policy at pp. 22-23.) This creates internal inconsistencies within the Policy which hinders compliance. The Policy also requires inventory updates as “otherwise required” under federal and state law. (Policy at p. 23.) This language fails to provide any assistance or guidance to the reader. To be effective, the Policy needs to set out in clear, simple language all the circumstances where campuses must update their inventories, including for State Cultural Affiliation.</p> <p>As discussed at our March 3, 2020 meeting, we also recommend that notice of summaries be provided to the Commission so that this information may be published on the Commission’s Web site.</p> <p>Finally, the need to update inventories is related to the Policy’s requirements that campuses implement plans for reviewing existing CUI, culturally affiliated, but unclaimed items, and outreach, yet organizationally they are found in completely different places within the Policy with no cross-references. (See “Inventories and Summaries” at pp. 22-23 and “All Such Agreements Shall Be Reported to the Campus Committee and the Systemwide Committee Repatriation Implementation Plan” at pp. 39-40.)</p> <p>¹ “Campus inventories must include a summary of the evidence, including evidence obtained through tribal Consultation, used to determine whether the objects are Associated Funerary Objects and the Cultural Affiliation / State Cultural Affiliation of the Human Remains based on the preponderance of the evidence.” (Policy at p. 24.)</p>	<p>We have deleted much of the text that reiterates the requirements of NAGPRA and CalNAGPRA. Section V.C.3 of the policy now states that inventories and summaries must be updated/supplemented as required by NAGPRA and CalNAGPRA [NAGPRA, 43 C.F.R. § 10.13, CalNAGPRA § 8013(c) and (i)] if there are new items to report, or if there are changes to previously submitted inventories or summaries. This eliminates potential internal inconsistencies.</p> <p>Section V.C.3 also specifically clarifies that campuses must update or supplement their Inventories and Summaries due to changes resulting from reevaluations of previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects. It also clarifies that campuses must supplement Inventories and Summaries as provided for in CalNAGPRA §8013(c) and (g) within one year of the date the NAHC issues the list of California Indian Tribes provided for under CalNAGPRA §8012 and comply with all other applicable CalNAGPRA requirements.</p> <p>Section V.E.2. has been enhanced to provide guidance on how to how campuses should go about finding previously unreported Human Remains or Cultural items, and specifies these may be found in faunal collections.</p> <p>The processes described in Appendices A and A-1 specify that Notices must be provided to the NAHC for requests made under CalNAGPRA.</p>
359			Inventory		<p>Inventory Process (Human Remains and Associated Funerary Objects): The Policy Needs to Include the CalNAGPRA Process</p> <p>Under the inventory process, the Policy only requires campuses to “make available” inventories and inventory supplements to the Commission and to tribes. (Policy at pp. 23-24.) But CalNAGPRA requires campuses to affirmatively provide a copy of inventories and summaries to the Commission within 90-days of completion which must be posted on the Commission’s Web site for 30-days. (Health & Saf. Code, § 8013, subd. (e).) These state law requirements are not included in the Policy. Additionally, the Policy fails to require providing tribes with the inventories within six months of completion as required under Federal law. (43 C.F.R. § 10.9(e)(1).)</p>	<p>Section V.C.3. now includes a statement that Inventories and Summaries must be updated/supplemented as required by both NAGPRA and CalNAGPRA and that notice (<u>including providing a copy of the inventory*</u>) must be given to both Tribes and to federal and state officials as required by NAGPRA (25 USC 3003(d), 43 CFR 10.9 (e), 43 CFR 10.11 (d), and 43 CFR 10.13) and CalNAGPRA (§ 8013(e) and (g)).</p> <p>Appendices A and A-1 incorporate the requirements to notify tribes, and to submit Inventory/Summary Supplements and Notices to the NAHC and National NAGPRA, as applicable under CalNAGPRA and NAGPRA. UC welcomes further input from the NAHC regarding these processes.</p> <p>*We inadvertently omitted <u>Summaries</u> in Footnote 14. We will edit to clarify that both Inventories and Summaries must be given to Tribes and to federal and state officials as required by NAGPRA and CalNAGPRA.</p>

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360			Inventory		<p>Inventory Process: Consultation During Inventory Fails to Incorporate CalNAGPRA The inventory process only incorporates federal NAGPRA consultation. (Policy at p. 23.) Only after the inventory process, does the Policy require CalNAGPRA consultation (Policy at p. 24.) Consultation with California tribes during inventory is critical because these tribes have an understanding of their unique cultural heritages, ceremonies, and rituals. (Health & Saf. Code, § 8013, subd. (a).) This understanding is necessary for determining whether objects found near the remains constitute associated Cultural Items as required under the Policy. (Policy at p. 23)² Further, the Policy uses the term “materials” when referring to associated items, which is confusing because the term is not defined, while “cultural items” is defined. (Policy at p. 23.)</p> <p>² For example, the Policy, citing CalNAGPRA, requires campuses to consider “geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information,” to determine whether items are Cultural Items, most of which can only be obtained during consultation with tribes during inventory consultations.</p>	Section V.C.2 clarifies that the Repatriation Coordinator must consult with Tribes to determine whether objects are Cultural Items and to determine Cultural Affiliation/State Cultural Affiliation. The noted reference to “materials” has been removed.
361			Inventory		<p>Inventory Process: Tribal Access During Inventory While the Policy calls for consultation (at least under federal NAGPRA), no provision is made for tribal access during the inventory process. (Policy at pp. 23-24.) Under the Policy, access is only provided “for the purposes of Consultation toward Repatriation or Disposition and cultural or spiritual care.” (Policy at pp. 35-36.) Access should be provided throughout the entire process, from inventory, cultural affiliation, summary, claims, appeals, to repatriation/disposition. Further, the Policy requires “reasonable access,” but offers no guidance as to what factors should be considered in providing that access. Because of state and federal NAGPRA’s emphasis on repatriation/disposition, the Policy should state that access will be liberally granted. Other factors to be considered should include consideration of any of the following: 1) the size and scope of the campus’s collection; 2) tribal availability; 3) the distance of the tribe(s) from the collection and difficulty in getting to the collection; and 4) the difficulty in accessing the location where remains and items are stored. This is exceptionally important, particularly given the UC’s repatriation history as documented by the Legislature, as well as the potential reluctance of campuses with larger collections to engage in the process.</p> <p>Compounding this concern is the fact that the Policy later imposes confusing restrictions on access by requiring Tribal Representatives to “present evidence indicating approval by their tribal chair to access such ancestral Human Remains and Cultural Items.” (Policy at p. 36.) The Policy fails to define the term “tribal chair,” but throughout the Policy, “Tribal Representatives” are permitted to otherwise participate in the process. While the Commission understands the need for proper tribal authorization, how that authorization is granted depends on each individual tribe—the elected tribal chairperson (or other leader) is not always able, or required, to grant that authorization pursuant to tribal law, customs, or traditions. Given that the authorization process will depend on each tribe, the requirement that Tribal Representatives first present evidence of tribal chair authorization is arbitrary and possibly overly restrictive.</p> <p>An additional barrier to access is the Policy’s requirement that access requests “should be made with sufficient advance notice to allow for adequate preparation and staffing.” (Policy at p. 36.) It is unreasonable to assume that a tribe would understand what notice is sufficient to accommodate any particular campus’s need for “adequate preparation and staffing.” In order to accommodate access and institutional needs, the Policy must specify a reasonable notice period, such as two weeks, but with an emphasis on accommodating tribal needs.</p>	We modified Section V.J.3 to specifically include all phases of the repatriation process. The term “reasonable” has been deleted. Section V.B.1 and Appendices A and A-1 also require the campus to provide access to the Human Remains and Cultural Items and any information held by UC about them. References to approval of the Tribal chair have been removed. We have also clarified that these access requests should normally be made at least two weeks in advance of the visit.
362			Inventory		<p>Inventory Process: Associated Items Improperly Limited Under the Policy, “campuses must request that Tribes provide certain information, including, as appropriate, information regarding the kinds of objects the Tribe reasonably believes to have been made exclusively for burial purposes or to contain Human Remains of their ancestors.” (Policy at p. 24.) But, as discussed regarding the definition of associated funerary objects, a funerary object may include any object used as part of a death rite or ceremony reasonably believed to have been placed intentionally with the remains. (43 C.F.R. § 10.2(d)(2); Health & Saf. Code, § 8012, subd. (d).) The object need not have been made exclusively for burial purposes, but can include items associated with a tribe’s culture and rituals or with the individuals themselves.</p>	We have removed this language from the policy.
363			Inventory		<p>Inventory Process: Deficiencies in the Summary Process: Process Omitted Further, the Policy refers to “collections” which suggests that it only applies to remains and associated items that are part of a museum collection or something similar. There is no reason not to eliminate the pervasive use of the terms “NAGPRA-Eligible Collection” and “collection” in favor of Native American remains and cultural items. (See first bulleted comment to Definitions.)</p>	See response to comment 343.
364			Inventory		<p>The Policy states: “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.” (Policy at p. 25.) But under Federal law, it is not just an invitation to consult, but consultation is required. (43 C.F.R. § 10.8(d)(1).) Further, this consultation must be initiated before the completion of the summary process via letter and personal dialogue with the tribe. (43 C.F.R. § 10.8(d)(2).) The consultation process should also comply with state law which exceeds the federal requirements. (See Gov. Code, § 65352.4)</p>	The quoted language has been deleted. Section V.C.1-3 all require consultation in creating inventories/summaries. See also Section V.B.1.

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365			Inventory		<p>Inventory Process: Deficiencies in the Summary Process: State and Federal Cultural Affiliation The organization of the Policy is confusing because it discusses the process for completion of inventories and summaries before it discusses the procedures for determining state and federal cultural affiliation (which must be assessed during inventory and summary completion [see 43 C.F.R. §§ 10.8 and 10.9]). (See Policy at pp. 23-25 and 27.) To be meaningful, the process for determining cultural affiliation needs to be incorporated into the inventory and summary processes as part of consultations, which is the time at which the campus will be obtaining and assessing information obtained from the tribes before it completes the processes.³</p> <p>³ For instance on p. 24, the Policy states: “Consistent with CalNAGPRA, if after Consultation with California Indian Tribes, State Cultural Affiliation is established with a non-federally recognized California Indian Tribe, the campus shall include that information in the Inventory or Inventory supplement that it prepares pursuant to CalNAGPRA § 8013.” No reference is made here that later in the Policy, at p. 27, a procedure exists for determining State Cultural Affiliation.</p>	We have reorganized the policy clarify that determinations on whether items meet the definitions for Human Remains or Cultural Items and Cultural Affiliation/State Cultural Affiliation are both part of the Inventory and Summary processes. See Section V.C.1-3.
366			Inventory		The Commission appreciates that tribal histories, documentation, and testimonies will not be afforded less evidentiary weight than other evidentiary categories, but the Policy omits language from NAGPRA stating that a finding of cultural affiliation “should not be precluded solely because of some gaps in the record.” (43 C.F.R., § 10.14(d).) As mentioned during National NAGPRA’s March 4 presentation at UC Berkeley, this language is important because tribes should not be denied cultural affiliation because of “gaps” which are a part of any linguistic, folklore, or oral tradition which, in many instances, are the primary ways tribes passed on their histories and traditions.	Although we had previously captured the language regarding “gaps” (see Section V.D.2 of version 2 of the policy) we have moved this to Section V.C.2.b in version 3 of the policy so that it is more obvious and together with other language regarding factors to take into consideration in determining cultural affiliation / state cultural affiliation.
367			Inventory		<p>Inventory Process: Deficiencies in the Summary Process: Claims and NIR Process Inappropriately Placed Under “Inventories and Summaries” and Not Explained Under the heading “Inventories and Summaries” and the subheading “Summary Process,” the Policy discusses that claims for unassociated funerary objects and Notices of Intent to Repatriate (NIRs) must be reviewed by the Campus Committee and approved by the Chancellor. (Policy at p. 25.) The subdivision only discusses the process for creating summaries (consistent with the subheading) and fails to describe the process for submitting and evaluating claims for associated or unassociated items. Moreover, it fails to describe the NIR process and how it is part of the summary process, if at all. Compounding the confusion, the Policy later states, under the heading “Repatriation and Disposition,” that each campus “shall establish a clear and transparent process for Native American Tribes or Native Hawaiian Organizations to submit a request for Repatriation or Disposition in accordance with federal and state law and this Policy.” (Policy at p. 28.) The Policy needs a separate primary heading (denoted with its own Roman numeral) to discuss the procedures for repatriation and disposition, including the claims process and issuances of NIRs. The Commission is also concerned that by delegating to each campus the responsibility for creating claims policies with no deadline for doing so will lead to delays and inconsistent processes across campuses, something AB 2836 sought to eliminate. (Assem. Bill No. 2836 (2017-2018 Reg. Sess.) § 1, subd. (a)(8) (“There is a history of inconsistent application of federal and state repatriation laws by some campuses within the University of California system.”).) The Policy needs to provide a claims process consistent across all campuses.</p>	We have reorganized the policy significantly, removing sections that primarily reiterate NAGPRA/CalNAGPRA, to discuss first the Inventory/Summary processes, and then the Repatriation/Disposition claims processes. Importantly, newly added Appendices A and A-1 provide an overview of the entire procedures, with swim lanes that delineate responsibilities or actions by the various players.
368			Inventory		<p>Inventory Process: Unreported Holdings The Policy acknowledges that previously unreported items “may be found in disparate academic units of the UC, e.g., inadvertently included among fauna or other materials.” (Policy at p. 26.) But no procedure is set out requiring campuses to conduct systemic searches of all departments, museums, collections, clinics, and research programs, including “disparate academic units.” (Health & Saf. Code, § 8025 subds. (a)(2)(A) and (D) (UC must adopt systemwide policies for “cultural items while in possession of a University of California campus” and for the “identification” of remains and cultural items.)) All the Policy requires is that each campus “communicate with all relevant faculty, researchers, and staff to raise awareness about the requirements of this Policy and related laws and regulations.” (Policy at p. 26.) The Policy does not explain how each campus can communicate with “all relevant staff” when the repatriation staff required to implement the Policy do not necessarily understand which departments, clinics and research programs may actually have remains and cultural items. And nothing in the Policy expressly requires existing museums and collections to conduct additional searches to locate previously unreported items. Even the prior Policy issued by the UC in August of 2019 acknowledged this concern by requiring that each campus: 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.” (Aug. 2019 Policy at p. 23.) As the Commission previously commented on this prior Policy, the Policy should provide clear guidance and timeframes to the campuses for accomplishing this. Not only does this current Policy not address this concern, it eliminates the requirement altogether. This is inconsistent with state and federal law which requires repatriation by all agencies receiving state and/or federal funding having possession and custody of Native American remains and cultural items. (25 U.S.C. § 3001, et seq.; 43 C.F.R. §§ 10.2(3),(i); Health & Saf. Code §§ 8012, subds. (e), (g), 8013, subd. (a), 8025, subds. (a)(2)(A) and (D).</p>	We note that Version 2 had not removed this requirement, but rather, it was moved and discussed in Section V.C.3. In Version 3 of the policy, we have significantly enhanced the section on previously unreported holdings in Section V.E.2. to include more detailed guidance on how campuses are to manage the process of locating such items. See also response to comment 322.

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369			Cultural Affiliation & Repatriation Process		<p>Repatriation and Disposition: Inadequate Claims Process: Improper Delegation to Campuses with No Timeframe for Compliance</p> <p>The Policy delegates to each campus responsibility for establishing “a clear and transparent process for Native American Tribes or Native Hawaiian Organizations to submit a request for Repatriation or Disposition in accordance with federal and state law and this Policy.” (Policy at p. 28.) This violates AB 2836, which requires the UC to “[a]dopt and implement clear and transparent policies and procedures on the systemwide requirements for submitting claims for the repatriation of Native American remains and cultural items, . . . deemed culturally affiliated but that are not subject to a current repatriation claim, . . .” (Health & Saf. Code, § 8025, subd. (a)(2)(B), emphasis added.) The purpose of this language was to address “a 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 (Legislative Findings), subd. (a)(8).) Delegating responsibility to each campus to develop its own claims process with no timeframes or guidance for doing so not only violates AB 2836, but also will result in inconsistent claims policies across campuses and potential delay by other campuses who may be reluctant to comply. The claims process should be uniform across campuses with clear guidance for implementation.</p>	We have added more specific direction on claims processes, including the flowcharts in Appendix A and corresponding narrative in Appendix A-1.
370			Cultural Affiliation & Repatriation Process		<p>Repatriation and Disposition: Inadequate Incorporation of the State Law Claims Process for Federally Culturally Unidentifiable Remains and Cultural Items</p> <p>The Policy states that “UC campuses must comply with all requirements of CalNAGPRA including those pertaining to claims for State Cultural Affiliation, as well as the requirements of Federal NAGPRA.” (Policy at pp. 29-30.) The Policy needs to better explain that State Cultural Affiliation can be used for repatriation/disposition if a federally recognized tribe sponsors the request, and if no such sponsorship can be arranged, the non-federally recognized tribe may still obtain the remains and items through CUI disposition upon National NAGPRA’s approval. The Policy should explain that this approval process can be time consuming and that tribes should be encouraged to work out other arrangements, if possible, to avoid this delay. (43 C.F.R. § 10.11(c)(2)(ii)(A).) In conjunction with state cultural affiliation, the Policy should provide guidance to encourage repatriation to non-federally recognized tribes consistent with both NAGPRA and CalNAGRPA. As mentioned at the March 4, 2020 National NAGPRA presentation at UC Berkeley, this can be encouraged through the use of sponsorships or joint requests made by federally and non-federally recognized tribes.</p> <p>Conspicuously absent from the Policy is any description of the CalNAGPRA claims process, including for filing claims with the Commission, publication on the Commission’s Web site, applicable time frames for repatriation, and the dispute process for resolving multiple repatriation claims. (Health & Saf. Code, §§ 8014-8016) The Policy follows only federal law procedure permitting each campus to review disposition requests by non-federally recognized tribes subject to Campus Committee and Chancellor review. (Policy at p. 31.) Nothing precludes compliance with both statutes, unless a direct conflict arises.</p>	<p>Section V.D.3 clarifies that a non-Federally Recognized Tribe may partner with a Federally Recognized Tribe, or request a Federally Recognized Tribe sponsor their Request. We feel it’s not our place to encourage such partnerships, and indeed some non-federally recognized tribes would rather make their claim through the disposition process, but we are willing to assist upon request, as now stated in the draft policy.</p> <p>We have revised Section V.D to more clearly describe:</p> <ul style="list-style-type: none"> -Requests for Repatriation under NAGPRA by Culturally Affiliated Federally Recognized Tribes, -Requests made under CalNAGPRA for Human Remains and Cultural Items that are State Culturally Affiliated with a California Indian Tribe, -Requests made by Non-Federally Recognized Tribes, and -Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects. <p>Section V.D also incorporates by reference, the Flowchart in Appendices A and A-1, which describe the requirement to provide Notices to NAHC for claims under CalNAGPRA (previously in the Inventory section of the policy).</p> <p>Section V.I outlines the process for filing complaints and appeals, including tribes’ option to seek NAHC assistance per CalNAGPRA 8015 and 8016.</p>
371			Cultural Affiliation & Repatriation Process		<p>Repatriation and Disposition: The Disposition Process Fails to Comply with Federal Law and Will Cause Unnecessary Delay and/or Failure to Affirmatively Offer to Transfer Control</p> <p>The Policy provides that the UC will initiate consultation for the disposition of culturally unidentified remains and items: 1) Within 90 days of receiving a tribal request; or, 2) If no request is received before any offer is made prior to transfer control of the remains and items. (Policy at p. 30.) This is inconsistent with the Federal Regulations which do not contemplate a claims process for CUI. Rather, federal law requires that the UC “must offer to transfer control” of these remains and items to a descending priority list of tribes. (43 C.F.R. § 10.11(c)(1)-(2).) Under the Policy, if no request is made, then the disposition process can be delayed indefinitely. No time limit is set for the UC to make the offers required under Section 10.11 absent a tribal request. Moreover, nothing in the Policy requires the UC to notify tribes about the existence of any remaining culturally unidentified items and to inform them about the necessity of filing a request or claim to initiate consultations on every single remain and item. As a result, in some instances, culturally unidentified items in major collections may never occur or may occur in an extremely delayed or haphazard fashion. This is precisely the result the Legislature sought to avoid when it enacted AB 2836.</p> <p>Under the Policy, within 90 days of receiving a claim, the UC must initiate consultations, but no deadline is set in the Policy for when these consultations must actually occur or be completed. (Policy at pp. 30-31.)</p> <p>Finally, no deadline is set for determining disposition, which must also be reviewed by the Campus Committee and the Chancellor/designee. (Policy at pp. 31-32.) Under the Policy, campus initiative for the timely disposition of remains and items will vary, a result the Legislature sought to avoid when it enacted AB 2836.</p>	<p>Please see response to comment 323.</p> <p>We have inserted timelines and deadlines where possible, while recognizing that each consultation / determination is case specific and the timing depends on many factors.</p>

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Comment No	Sec No	Sec Header	Dimension	Sub-Dimension	Comment	UC Response
372			Cultural Affiliation & Repatriation Process		Repatriation and Disposition: Care for Remains and Cultural Items The Policy states that remains and cultural items will be preserved in accordance with 36 C.F.R. § 79.9(b)(3), unless an exception is brought before the Campus Committee, presumably by a campus seeking to be relieved of some or all of its obligations. (Policy at p. 35.) This raises four major concerns. First, the Policy does not set out Section 79.9's seven requirements for protecting these items. Staff should not be expected to ascertain these requirements from outside sources, when the requirements can be laid out in the Policy. Second, the Federal Regulations do not provide for the unbridled exception created by the Policy. Third, no standard is provided for evaluating exceptions to compliance with this Federal Regulation. And fourth, no notice is required to state and federally culturally affiliated tribes at the time such a request is made or after it is granted. (Policy at p. 35.)	In response to Tribal and NAHC input, we have endeavored to avoid restating the law when not required. We do not believe it is necessary to restate the requirements of 36 C.F.R. § 79.9(b)(3) in the policy, as those requirements are already laid out in the regulations; however, we will add a link to those regulations. Regarding exceptions, we note that 36 C.F.R. § 79.9(b)(3) sets out standards for providing long-term curatorial services to FEDERALLY-owned and administered archeological collections., and that UC is voluntarily adopting these. Therefore, it is within our discretion to make exceptions, including at a tribe's request. We also note that the Campus Committee must review exceptions, and therefore oversight is inherent in the process.
373			Cultural Affiliation & Repatriation Process		Repatriation and Disposition: Appeals and Complaints: The Appeals Process Fails to Adequately Incorporate the State Law Process for Appeals The policy follows federal law in providing for appeals and tribal disputes over items. (Policy at pp. 33-34.) But tribes may also utilize CalNAGPRA's process to the extent that no direct conflict between the two processes occurs. (43 C.F.R. § 10.11(c)(2)(ii); Health & Saf. Code, §§ 8015 and 8016.) The Policy needs to explain the CalNAGPRA claims process for posting claims on the Commission's Web site for 30 days, along with the 90-day period for repatriation. (Health & Saf. Code, § 8015, subd. (a).) This deadline is generally consistent with federal NAGPRA. 43 C.F.R. § 10.10(a)(3).)	The Appeals Section in V.G.1 of Version 2 of the policy included a list of tribal rights, including their right to file a request for assistance with the NAHC. These rights are again articulated in Section V.I.3 of Version 3 of the policy. We additionally clarified that to the extent that there is no direct conflict between the federal process referenced and the CalNAGPRA process, UC will make a good faith effort to participate in the NAHC dispute resolution/mediation process. Section V.D.3 captures the timelines required in CalNAGPRA 8015 and 8016. We would be happy to discuss with NAHC to clarify further if necessary.
374			Cultural Affiliation & Repatriation Process		Repatriation and Disposition: Appeals and Complaints: No Deadlines or Timelines Set The Policy allows for appeals and complaints but does not set deadlines for filing and completion for these. (Policy at pp. 33-34.) This is significant because (at a minimum) appeals need to be initiated and completed prior to the repatriation/disposition, something the Policy does not address. The Policy should also require the UC to provide notice to the tribes about their appeal rights and applicable deadlines at each stage of the decision-making process. Further, deadlines need to be set for the Systemwide Committee's and chancellor's determinations.	We agree, and have added time points/deadlines in Section V.I.3. and Appendix B. In addition, Section V.B.1. requires the Repatriation Coordinator, as part of the Consultation process, to provide tribes with a written description of the Repatriation/Disposition decision-making, dispute resolution, and complaint processes. Also, if cultural affiliation cannot be determined or there is a disagreement regarding the designation of Cultural Items, the tribe must be provided with a detailed explanation and information about how to file a complaint or appeal.
375			Cultural Affiliation & Repatriation Process		Repatriation and Disposition: Appeals and Complaints: Written Decision The Policy does not expressly require a written decision by the Systemwide Committee or the President/designee setting forth the factual and legal basis for their decisions. (Policy at pp. 33-34)(See, e.g. Gov. Code, § 11425.50.) A written decision is essential for maintaining fundamental fairness and integrity of the process. (Johnson v. Housing Authority of City of Oakland (2019) 38 Cal.App.5th 603, 615, review denied (Oct. 23, 2019).)	The policy now includes the requirement that Tribes receive a written notice of all decisions, to include the rationale and basis for that decision. (See V.B.1(h), V.I.2, and Appendices A and A-1.)
376			Cultural Affiliation & Repatriation Process		Repatriation and Disposition: Appeals and Complaints: Extra-record Evidence The Policy gives the President/designee the ability to consult with the Systemwide and Campus Committees outside the parties' presence, and does not provide tribes with any opportunity to respond or participate in these communications. (Policy at p. 33) (See, e.g. Gov. Code, § 11430.10; Nightlife Partners v. City of Beverly Hills (2003) 108 Cal.App.4th 81, 90 (Due process requires "the absence of even a probability of outside influence . . .").) This deprives the tribes of the ability to know the nature of such consultations, which may materially affect the President/designee's decision-making process, including the ability to respond to these communications.	This language has been removed from the policy. In addition, we have now added that tribes will be invited to will be invited to present their views orally or in writing to Campus or Systemwide Committees and/or UC decision-makers.
377			Cultural Affiliation & Repatriation Process		Repatriation and Disposition: Appeals and Complaints: Multiple Claims The Policy does not explain that federally recognized tribes may agree to mediation and dispute resolution by the Commission as provided for under CalNAGPRA. (Policy at p. 34.) (Health & Saf. Code, § 8016, subd. (c).) The Policy also does not explain the CalNAGPRA resolution process that could apply to CUI in the event of disposition subject to Section 10.11. (Policy at p. 34.)	We have revised the policy (see Section V.I.3.) to specifically name these additional tribal rights under NAGPRA and CalNAGPRA.

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378			Cultural Affiliation & Repatriation Process		Repatriation and Disposition: Appeals and Complaints: Access As mentioned above, the Policy requires “reasonable access” without laying out the factors campuses should consider in determining this access, with a presumption favoring liberal access to foster repatriation. (Policy at pp. 35-36.) (See prior Access comments provided above under Inventories.)	See response to comment 361.
379			Cultural Affiliation & Repatriation Process		Repatriation and Disposition: Appeals and Complaints: Complaints The Policy permits tribes to submit complaints about access or consultations to the Chancellor/designee only “in advance of any decision or recommendation regarding cultural affiliation, repatriation, or disposition.” (Policy at p. 34.) Tribes should be able to raise complaints about access and consultations at any time they occur. The Policy should set a standard for reviewing such complaints, favoring liberal access consistent with NAGPRA’s purpose facilitating repatriation/disposition. Further, timelines need to be created for evaluating complaints to prevent unnecessary delay in the process.	The language cited in the policy was not meant to be restrictive, but to simply distinguish complaints from appeals of a UC decision. We have edited this section to remove the ambiguous language and to set forth a timeline for a response and ability of the tribe to elevate the matter to the systemwide committee.

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380			Cultural Affiliation & Repatriation Process	Research, Testing, Analysis	<p>Repatriation and Disposition: Appeals and Complaints: Research and Testing</p> <p>Nothing touches more fundamentally to tribal sovereignty and respect than invasive testing and research on remains and associated items. The UC should not seek to test unrelated to repatriation and any such requests should only be made by the tribes. No testing should be permitted under the Policy unless all state and federally culturally affiliated tribes expressly consent in writing as to the extent and duration of any permissible testing where no complaints or appeals are pending. In instances where only non-federally recognized tribes are culturally affiliated, then permission must also be obtained from federally recognized tribes that are recognized as aboriginal to the area from which the remains were removed, consistent with federal law.</p> <p>Ironically, the concerns raised by testing are exemplified by the issues raised by the proposed testing exceptions themselves.</p> <ul style="list-style-type: none"> • <i>Non-Federally Recognized Status</i> One circumstance where testing would be allowed by a tribe is where the remains and items are “Culturally Unidentifiable only due to the tribe’s status as non-federally recognized” and the non-federally recognized tribe is “known to have a relationship of shared group identity with the particular Human Remains and Associated Funerary Objects.” (Policy at p. 36.) The term “Culturally Unidentified” is defined by the Policy as only applying to federal NAGPRA. (See Definitions at p. 5.) This creates a standard impossible for tribes to meet because, under federal NAGPRA, only federally recognized tribes are eligible to participate in the cultural affiliation process. Consequently, a non-federally recognized tribe could never establish that its cultural affiliation was denied only due to its status as non-federally recognized because it is per se precluded from participating in the process. <p>Concomitantly, if the Policy is intended to apply to non-federally recognized tribes that have established State Cultural Affiliation to the remains and items, then the Policy is still problematic. Federal Regulations require that the UC “offer to transfer control” of all culturally unedified remains, regardless of State Cultural Affiliation. (43 C.F.R. § 10.11(c)(1).) The Federal Regulations provide a descending list of tribes to which the culturally unidentified remains and items must be offered, without regard to State Cultural Affiliation. (43 C.F.R. § 10.11(c)(1)(i)-(ii), (2)(i)(ii).) Put simply, even if a non-federally recognized tribe with State Cultural Affiliation gave written permission to the UC to perform research and testing on remains and cultural items, it would not be effective because the tribe may have no legal right to repatriation under federal NAGPRA. In such an instance, the UC would also need the written permission of any federally recognized tribes, consistent with NAGPRA.</p> <ul style="list-style-type: none"> • <i>Pending Repatriation</i> Another such circumstance identified in the Policy where a tribe may agree to testing is where the remains and items “are pending Repatriation or Disposition.” (Policy at p. 36.) This term is not defined, but could be read to include anytime during the repatriation/disposition process, including inventory, and during appeals and complaints. <ul style="list-style-type: none"> • <i>After Federal Cultural Affiliation (Prior to Repatriation)</i> Yet another circumstance identified in the Policy where a tribe may agree to testing is where a tribe grants permission after federal cultural affiliation has determined, regardless of state cultural affiliation (which may include non-federally recognized tribes). (Policy at p. 36.) In many instances, federally recognized tribes can agree to sponsor or enter into agreements with non-federally recognized tribes. In this instance, permission must be granted based upon state and federal cultural affiliation. <ul style="list-style-type: none"> • <i>Federally Recognized Tribes Aboriginal Lands</i> Finally, the Policy would allow the UC to obtain permission to test from tribes for culturally unidentified remains under Federal NAGPRA from all federally recognized tribes whose aboriginal lands overlap the location where the remains originate. (Policy at p. 36.) This exception is problematic because it fails to consider state cultural affiliation (which can include non-federally recognized tribes), as well as the ability of these federally recognized tribes to sponsor or enter into agreements with state culturally affiliated non-federally recognized tribes who may have closer ties to the remains. <ul style="list-style-type: none"> • <i>At the Behest of an Affiliated Tribe</i> Under the heading, “Care for Loans from Entities Other Than Native American Tribes or Native Hawaiian Organizations,” the Policy permits the UC to retain and test remains for a period not to exceed two years for “loans” when the following occurs involving: <ul style="list-style-type: none"> o “A request that UC perform an analysis of the Human Remains of Native American or Native Hawaiian ancestors at the behest of an Affiliated Tribe.” o “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 or CalNAGPRA responsibilities. (Note that unless affiliated Tribes have given explicit written permission for testing, in carrying out these duties, the campus may only use minimally invasive procedures and shall not use destructive analysis, including but not limited to DNA analysis.)” o “Other research or care approved by or performed in Consultation with the respective Native American Tribe or Native Hawaiian Organization.” (Policy at p. 38.) <p>No testing should ever be permitted unless all state and federal culturally affiliated tribes agree in writing as specified above, regardless of whether the remains come from another entity or individual. Further consultation with “respective” tribes is not defined, but must include federal and state culturally affiliated tribes and, when appropriate, federal tribes that are recognized as aboriginal to the area where the remains were found.</p> 	<p>Please see response to comment 327.</p> <p>The Loans Section (V.K.1) is intended to allow analysis or examinations at the request of Culturally Affiliated tribes or to assist other institutions in carrying out their NAGPRA/CalNAGPRA duties; it is not intended to allow generalized research of the type addressed in Section V.J.4. We have revised this section to clarify and to detail the conditions for such loans. We are happy to discuss if these intentions are still not clear.</p>

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381			Cultural Affiliation & Repatriation Process		<p>Campus Implementation Plans: Reviewing CUI Determinations</p> <p>The Policy requires that campuses develop plans for reviewing CUI determinations within 6 months after the Chancellor’s appointment of a Campus Committee, but no later than January 1, 2021. (Policy at p. 39.) While the Commission supports the creation of a deadline, the Policy does not provide adequate systemwide guidance for these plans, and no timeframes for completing the process. In other words, a campus could create a plan that has no deadlines for completing its reevaluation for existing CUI collections, thwarting or delaying the effort. It also permits campuses to have different plans across the system, something that violates AB 2856 requiring systemwide CUI policies. (Health & Saf. Code, § 8025, subd. (a)(2)(D).)</p> <p>The Policy’s language is ambiguous because it could be read to mean that campuses must only consider (or evaluate without decision) “changes in applicable law” or the addition of newly federally recognized tribes and non-federally recognized tribes under CalNAGPRA without actually determining if cultural affiliation can be determined as required by AB 2836. (Health & Saf. Code, § 8025, subd. (a)(2)(D).) Furthermore, nothing requires a campus to systematically reevaluate all of its prior-existing CUI collections in an effort to establish state and federal cultural affiliation and to otherwise affirmatively offer the remains and items to tribes as required under AB 2836 and the Federal Regulations. (43 C.F.R. § 10.11(c); Health & Saf. Code, § 8025, subd. (a)(2)(D).) It also gives priority to federally recognized tribes to request reevaluations, without providing a mechanism for non-federally recognized tribes to associate with federally recognized tribes to also claim priority. It also provides this priority without requiring the campus to provide any notice to these tribes about its collections or information about their discovery. Campuses need to conduct systemic reevaluations consistent with the Policy for inventorying and culturally identifying prior-existing CUI collections, as well as adhere to the process for repatriation/disposition for all items where cultural affiliation may now be determined.</p>	<p>We have added a deadline of Oct 1, 2021 for the creation of the campus Repatriation Plans (i.e., “within six months of the Chancellor’s appointment of the Campus Committee, and no later than October 1, 2021”). We do provide campuses with the flexibility of establishing their own schedules because different campuses have very different circumstances, with collections at each campus varying significantly in size and other characteristics. Each campus will have to evaluate all the requirements of this policy, NAGPRA and CalNAGPRA in light of the particular characteristics of all their collections and prioritize accordingly. We do not believe this flexibility violates CalNAGPRA. All campuses must have plans with the required elements outlined in Section VI, and Exhibit C also provides a sample repatriation plan timeline that campuses can tweak to meet their unique circumstances. These plans will be submitted to the campus committee and to the systemwide committee, so there will be oversight. We also note that the actual procedures for consultation and the repatriation/disposition processes (which includes review of previous determinations of CUI) have now been systematized and mapped in Section V.B.1 and in the flowchart and narrative in Exhibits A and A-1 to provide campuses with uniform guidance, as required by Health & Saf. Code, § 8025, subd. (a)(2)(D).</p> <p>Section VI has been revised to clarify that campus Repatriation Implementation Plans must include the process to proactively (i.e. regardless of whether a tribal Request has been received):</p> <ul style="list-style-type: none"> a) Inform Tribes of UC collections that may include Cultural Items and invite Tribes for Consultation, and b) Review and update previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects. <p>The revised language also clarifies that, “In performing these reevaluations, campuses will consult with Tribal Representatives, reevaluate originally considered evidence, and consider: any newly available evidence or information, changes in applicable law, the addition of new California Indian Tribes under CalNAGPRA and new Federally Recognized Tribes under NAGPRA, or other Tribes that should be consulted.”</p> <p>Because requests for reevaluations are essentially consultation requests, Section VI does grant priority when tribes make a request for reevaluation of a previous determination. However, the policy does not specify that only federally recognized tribes can submit such requests. (Note that new text in Section V.D.4, Requests by Non-Federally Recognized Tribes, addresses the possibility of non-federally recognized tribes partnering with federally recognized tribes.)</p>

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382			Cultural Affiliation & Repatriation Process		<p>Campus Implementation Plans: The Process (or lack thereof) for Repatriating Unclaimed Items to Culturally Affiliated Tribes Fails to Adhere to State Law</p> <p>Federal NAGPRA requires the repatriation of culturally affiliated Native American remains and cultural items. (43 C.F.R. § 10.6(a).) Specifically, federal NAGPRA gives custody of the remains and associated items subject to a priority list between lineal descendants and federally recognized culturally affiliated tribes. Remains and items can become unclaimed if no lineal descendent or tribe submits a claim within one year of publication. (43 C.F.R. § 10.2(h)(2)(i).) For such remains and items, AB 2836 requires the UC to adopt policies “on the systemwide requirements for submitting claims” for repatriation for culturally affiliated items for which no claims were made. (Health & Saf. Code, § 8025, subd. (a)(2)(B).)</p> <p>Instead, the Policy provides that for culturally affiliated items where no claim was filed, that campuses must develop plans to notify (an undefined term under the Policy) “tribal officials” (another undefined term under the Policy), to “invite Repatriation requests (e.g., of no less than every year), with instructions on how to submit such requests.” (Policy at p. 39.) The term “notify” is not defined, but any notice under the Policy should include copies of the summaries to the culturally affiliated tribes so they understand the specific remains and items where the UC has determined their cultural affiliation.</p> <p>The Policy requires campuses develop plans “to invite” claims, but does not require the campus to repatriate the remains and items in a timely manner. Further, despite the fact that this Policy is required to be “systemwide,” it permits each campus to fashion its own plan leading to inconsistent systemwide plans with no guidance for creating such plans. Finally, the Policy does not provide timelines specifying when campuses must begin providing these notices under their plans.</p>	<p>While the NAGPRA section referenced in this comment speaks of unclaimed remains and items, CalNAGPRA 8025, subd. (a)(2)(B) requires UC to “[a]dopt and implement clear and transparent policies and procedures on ... notification to tribes of human remains and cultural items deemed culturally affiliated but that are not subject to a current repatriation claim.” UC believes that Section VI of the policy meets the requirement of CalNAGPRA to notify culturally affiliated tribes of remains or items awaiting their claim. Section VI has been updated to require a schedule for reaching out to Culturally/State Culturally Affiliated Tribes to see how the campus can support them in repatriation efforts and to discuss a stewardship agreement if the Tribe is not able to physically accept the transfer. We do provide campuses with the flexibility of establishing their own schedules because they may have to evaluate all the requirements of this policy, NAGPRA and CalNAGPRA, and all their collections to prioritize accordingly. However, the policy requires campuses reach out to culturally affiliated tribes at least annually. Section V.D.2 of the policy does require campuses to expeditiously repatriate human remains and Cultural Items as required by NAGPRA and CalNAGPRA.</p> <p>UC is considering adding that reminders must include information regarding the published Notices of Inventory Completion or Intent to Repatriate so that tribes can more easily identify remains or items in question.</p> <p>See also response to comment 381.</p>
383			Cultural Affiliation & Repatriation Process		<p>Campus Implementation Plans: Better Definition Needed for Outreach for Proactive Consultation</p> <p>The Policy requires campuses to create “[a]n outreach program that promotes proactive Consultation with Native American Tribal Representatives regarding the Affiliation, Repatriation, and Disposition of the ancestral Human Remains and Cultural Items, including a reasonable timeline for such activities” (Policy at p. 39.) While the Commission applauds efforts to promote consultation, the Policy does not explain how this is different from the campuses existing obligation to engage in consultation. Under state and federal law, campuses already have an obligation to consult with tribes that are likely to be culturally affiliated with the remains and associated items. (43 C.F.R. § 10.5(a) and (b); Health & Saf. Code, § 8013, subd. (a).) In order to be meaningful, the Policy must explain what outreach programs promoting proactive consultation means and how this differs from campuses’ existing legal obligations to initiate consultations. As mentioned during the March 4, 2020 National NAGPRA presentation at UC Berkeley, proactive outreach can include attending inter-tribal meetings and conferences, frequent emails and calls, and public meetings.</p> <p>The Policy requires regularly scheduled meetings with tribes “to discuss Repatriation/Disposition strategies” subject to “UC and tribal resources.” This provides campuses reluctant to repatriate an easy way to avoid such meetings by underfunding this effort and it puts a financial burden on tribes who were not responsible for disinterring the remains and have no concomitant obligation to repatriate. If repatriation is a UC priority, it can provide the minimal resources to provide meeting rooms or to hold meetings at tribal locations.</p>	<p>Section V.B.1 recognizes and encourages a holistic campus-wide approach to improving UC’s relationship with Tribes. Campuses are currently considering how they can more fully and meaningfully engage with tribes beyond Consultation required by NAGPRA and CalNAGPRA, and each campus is likely to have its own approach depending on the size and nature of their campus and collections, and available resources.</p>
384			Misc./Other		<p>Conclusion</p> <p>As currently drafted, the Policy will still result in fragmented processes across campuses, often in conflict with state and federal law, with campuses pursuing varied reevaluation plans, some more vigorously than others. The Policy continues to cause potential harm by codifying policies and procedures that conflict with state and federal law in critical areas including: consultations, confidentiality, policy structure, campus delegations, inventory process, the reevaluation of culturally unidentifiable remains and items, the claims process for previously unclaimed items, the processing of repatriation claims and dispute resolution, the repatriation/disposition processes, conflicts of interest, and the creation of systemwide and campus committees. Moving forward, the Commission remains committed to assisting the UC in resolving these concerns and in crafting an effective UC repatriation policy. The Commission appreciates the UC’s willingness to improve shaping the Policy, companion documents, and implementation guidance in collaboration with the Commission and California Native American tribes.</p>	<p>We greatly appreciate the input the Commission has provided. We believe the revisions in version 3 more adequately capture both the requirements of NAGPRA/CalNAGPRA and UC’s commitment to repatriation and consistency throughout the system. We look forward to engaging in further dialogue as we prepare the final language in this policy.</p>