



# Native American Cultural Affiliation and Repatriation Policy

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<b>Scope:</b>	This policy applies to campuses, laboratories, medical centers and health systems, as well as satellite offices, affiliates, and other units controlled by the Regents of the University of California.

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## **I. POLICY SUMMARY**

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

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## **II. DEFINITIONS**

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This policy adopts the definitions of NAGPRA ([25 U.S.C. §§ 3001](#) and [43 C.F.R. § 10.2](#)) and CalNAGPRA ([Cal. Health & Safety Code § 8012](#)),<sup>2</sup> as applicable. For convenience,

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

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

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

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

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

**Conflict of Interest:** Financial, professional, or personal bias or interests that may prejudice a committee member’s decision. Such interests may include investments, real estate interests, sources of personal income, including gifts, loans, travel payments, positions of management or employment, unpaid board/commission membership, or other personal interest, such that a decision-maker or person voting on an issue could potentially personally benefit from the decision being made by that person or the committee or organization on which they participate, or otherwise have an interest that could significantly impair or appear to significantly impair the individual's objectivity. (See also Sections V.A.1.c and V.A.2.c.)

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

**Cultural Affiliation [Culturally Affiliated]:** Cultural Affiliation means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between members of a present-day Indian Tribe or Native Hawaiian Organization and an identifiable earlier group. Cultural Affiliation is established when the Preponderance of the Evidence based on geographical, kinship, biological, archaeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion reasonably leads to such a conclusion. 43 C.F.R. § 10.2(e). (See also Preponderance of Evidence definition below.)

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

**Deaccession:** The act of permanently removing an accessioned item from a permanent collection.

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

**Federally Recognized Tribe:** Any Tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. § 3001(7)

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

**Preponderance of Evidence:** “Preponderance of Evidence” is the evidentiary standard where the evidence as a whole, shows that the fact sought to be proved is more likely than not. Under CalNAGPRA, “Preponderance of Evidence” means that the party’s evidence on a fact indicates that it is more likely than not that the fact is true. CalNAGPRA § 8012(l).

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

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

**Stewardship:** The care of Human Remains and Cultural Items.

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

**Tribe:** Any tribe, band, nation, or other organized group or community Indigenous to the United States.

**Tribal Representative:** 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.

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### III. POLICY TEXT

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#### A. STATEMENT ON LANGUAGE

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

In addition, in order to make the Policy easier to read, the term “Tribes” is often used in place of “Native American Tribes, Native Hawaiian Organizations, and Lineal Descendants.” When used in reference to rights provided to California Indian Tribes under CalNAGPRA, “Tribes” refers to California Indian Tribes.

#### B. PURPOSE AND GUIDING PRINCIPLES

- 1) Repatriation or Disposition of all Human Remains of Native American and Native Hawaiian ancestors and Cultural Items is a fundamental objective and value of UC that must be accomplished as expeditiously and respectfully as possible. This 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.
- 2) UC supports the intent of Executive Order N-15-19 of the State of California, and recognizes and commits to implementing the rights of Indigenous peoples articulated in Article 12 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as follows: “the right to the use and control of their ceremonial

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

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

objects; and the right to the Repatriation of their ancestral Human Remains.”<sup>6</sup> UC also commits to providing access to and Repatriation of Native American or Native Hawaiian ancestral Human Remains and their Cultural Items “through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples.”<sup>7</sup> UC acknowledges its role in the acquisition of Human Remains of Native American and Native Hawaiian ancestors and their Cultural Items that were obtained in violation of Indigenous communities’ spiritual and cultural beliefs, without the free, prior and informed consent of Indigenous communities. UC further acknowledges that the federal Native American Graves Protection and Repatriation Act (NAGPRA) and California NAGPRA (CaINAGPRA) were enacted to restore Native American and Native Hawaiian rights to ancestral Human Remains and Cultural Items.

- 3) UC acknowledges that the injustices perpetrated on Indigenous peoples are reflected even to the present, and that as long as ancestral Human Remains and Cultural Items remain in the University’s control, healing and reparation will be incomplete.
- 4) UC will comply with NAGPRA, CaINAGPRA, and this policy. This policy establishes minimum uniform standards and practices that are binding across the UC system.
- 5) This policy is intended to promote consistency and applies across the UC system, including at campuses, laboratories, medical centers and health systems, as well as satellite offices, affiliates, and other units controlled by the Regents of the University of California. UC campuses must ensure compliance with this policy at all UC locations over which they have management responsibilities. Pursuant CaINAGPRA § 8025(a)(5), Pursuant to CaINAGPRA § 8025(a)(5), campuses need not develop additional local policies, but if they wish to do so, such local policies must be consistent with this policy and be in place within one year after release of this policy.
- 6) UC is committed to ethical and respectful care and culturally appropriate treatment of the Human Remains of Native American and Native Hawaiian ancestors and Cultural Items while they are in UC’s Possession or Control.<sup>8</sup> UC recognizes that culturally appropriate treatment must derive from Consultation with Lineal Descendants and Tribal Representatives of Native American Tribes and Native Hawaiian Organizations.
- 7) It is the policy of UC to transfer<sup>9</sup> the Human Remains of Native American and Native Hawaiian ancestors and Cultural Items to Federally Recognized and non-

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<sup>6</sup> United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 12, ¶ 1, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), available at <https://undocs.org/A/RES/61/295>.

<sup>7</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 12, ¶ 2.

<sup>8</sup> “Possession” and “Control” are defined by NAGPRA, [43 C.F.R. § 10.2\(a\)\(3\)\(i\)](#) and [43 C.F.R. § 10.2\(a\)\(3\)\(ii\)](#).

<sup>9</sup> Repatriation or Disposition under NAGPRA and CaINAGPRA.

Federally Recognized Tribes in accordance with NAGPRA and CalNAGPRA, as applicable.

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

#### C. STATEMENT ON COMPLIANCE OF CALNAGPRA

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

#### D. REVISIONS TO THIS POLICY

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

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

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

Prior to instituting changes to this policy, UC will provide an advance copy of proposed changes to the Systemwide Committee (see also Section IV) and the California Native American Heritage Commission (NAHC) for their review and comment.

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## IV. ROLES / RESPONSIBILITIES

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The University will provide all persons responsible for carrying out the requirements set forth in this policy with training developed in consultation with tribal or other subject matter experts and UC personnel who have demonstrated successful Repatriation.

### A. SYSTEMWIDE

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

The President is responsible for allocating sufficient resources to fulfill the obligations of the President's office and Systemwide Committee, as described under this policy.

2. Systemwide Committee: See Section V.A.1 below.

### B. CAMPUS

1. Chancellor or Chancellor's Designee: The Chancellor of a UC campus is delegated broad powers as the executive head of all campus activities. For the purpose of this policy, the Chancellor is responsible for oversight and compliance with this policy, NAGPRA, CaNAGPRA, and applicable laws and regulations at the campus level. The Chancellor is responsible for the approval/disapproval of Requests described in the Policy. The Chancellor may designate a "Chancellor's Designee" for these purposes. (Except for the separation of roles noted in Section V.I.2, for simplicity, this policy uses the term "Chancellor" rather than "Chancellor or Chancellor's Designee" throughout the Policy.)



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

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

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

The Repatriation Coordinator must coordinate with staff at campus museums and all other departments bearing compliance responsibilities with this policy, maintain proper documentation (including but not limited to correspondence, Consultations, loans, transfers, federal and state notices, Inventories, Summaries, and determinations regarding Cultural Affiliation, Repatriation, or Disposition), and provide reports, notices, and documents as required by this policy (See Appendix D). The Repatriation Coordinator must be issued appropriate delegation of authority to effectively implement this policy

The Repatriation Coordinator will report to the Chancellor.

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

5. Repatriation Point of Contact: Campuses without known Possession or Control of Native American Human Remains or potentially eligible Cultural Items must appoint a Repatriation Point of Contact. This person must be knowledgeable about NAGPRA and CalNAGPRA, and serve as the contact person to receive inquiries from Tribes, or the UC community, and reports of any discovery of previously un-reported Human Remains or Cultural Items at the campus.

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

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## V. PROCEDURES

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### A. COMMITTEES

#### 1. Systemwide Committee

##### a. Composition

The President must establish a Systemwide Native American Repatriation Implementation and Oversight Committee (hereinafter called the "Systemwide Committee") in accordance with the requirements of CalNAGPRA.

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

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

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

The President may observe committee meetings.

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

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

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

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

#### c. Systemwide Committee Procedures

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

Virtual Presence. While in-person attendance is encouraged, committee members, tribal members, presenters, staff, and others invited to committee meetings may attend via a telecommunications system.

Tribal Presence. UC will invite a Tribe that appeals a campus decision regarding identification of Cultural Items, Cultural Affiliation, Repatriation or Disposition to provide oral or written evidence, statements, or other information to the Systemwide Committee and/or attend the Systemwide Committee meeting where the appeal will be deliberated.

Record Keeping. The Repatriation Coordinator will maintain a record of all Systemwide Committee votes, including both the majority and minority opinions, and all evidence and documents presented (including those submitted by Tribes) and meeting minutes.

Conflicts of Interest. All Systemwide Committee members must abide by basic principles of ethical conduct, recusing themselves if they believe they cannot perform their duties objectively. The Systemwide Committee will identify and manage Conflicts of Interests (COI), as defined in Section II, taking into consideration the following:

- Tribes making a Request must be provided with a roster of all Systemwide Committee Members and subject matter experts consulted or invited to the Systemwide Committee Meetings. If the Tribe(s) believes that one or more of these persons may have a COI with regard to their case, they may present information to explain their opinion and request that such persons be removed as subject matter experts or abstain from voting on their case, as applicable. The President will consider and make a decision on the Tribe's request. The decision must be communicated to the Tribe(s), with an explanation if the request is denied.
- Systemwide Committee members who have a professional, personal or financial interest or bias in a matter before the Systemwide Committee must either: recuse themselves from voting on the matter (stating their professional, personal, or financial interest); or, disclose their professional, personal, or financial interest or bias to the President, who may request such person recuse themselves, or with the concurrence of the remaining Systemwide Committee members, permit the person with the Conflict of Interest to vote.

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

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

- 1) In consultation with the Systemwide Committee membership, staff of the President, and campus NAGPRA/CalNAGPRA Repatriation Coordinator, schedule dates, times and locations for meetings; ensure meetings are called and held in accordance with this policy;
- 2) In consultation with Systemwide Committee membership, establish and confirm an agenda for each meeting, and ensure the meeting agenda and relevant documents are circulated to Systemwide Committee members in advance of the meeting to ensure sufficient time for the members to review the materials and arrange logistics or travel;
- 3) Officiate and conduct meetings;

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

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

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

2. Campus Committees
  - a. Composition

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

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

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

The Chancellor may observe committee meetings.

b. Purpose and Responsibilities of the Campus Committee

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

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

- 1) Assess campus implementation, timeliness, adequacy of resources (e.g., through benchmarking), and compliance with this policy through consultation and review of the campus Repatriation Implementation Plan (see Section VI), reports, and audits, as necessary;
- 2) Annually review the handling of Requests that have been received at the campus, but have not yet been formally elevated to the Campus Committee for review;
- 3) Make corrective action recommendations to the Chancellor;
- 4) Make recommendations to the Chancellor for revisions to local campus policies and practices consistent with this policy;
- 5) Make recommendations to the Chancellor for the issuance of guidance, best practices, and a Repatriation Implementation Plan for the successful campus implementation of this policy, including compliance with NAGPRA and CalNAGPRA;
- 6) Make recommendations regarding the identification of Cultural Items, Requests for Cultural Affiliation and/or State Cultural Affiliation and requests for Repatriation / Disposition of Human Remains and Cultural Items, and review Notices of Inventory Completion and/or Notices of Intent to Repatriate to ensure compliance with NAGPRA and CalNAGPRA, including appropriate consultation, and make recommendations to the Chancellor;
- 7) Review campus decisions for consistency with this policy and legally applicable requirements and, when requested by a Tribe, assist in the resolution of complaints made in accordance with Section V.I.1 and/or make recommendations for resolution to the Chancellor; and
- 8) Serve as a resource to promote Repatriation.

c. Campus Committee Procedures

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

Virtual Presence. While in-person attendance is encouraged, committee members, tribal members, presenters, staff, and others invited to committee meetings may attend via a telecommunications system.

Record Keeping. The Repatriation Coordinator will maintain a record of all Campus Committee votes, including both the majority and minority opinions, and all evidence and documents presented (including those submitted by Tribes) and meeting minutes.

Conflicts of Interest. All Campus Committee members must abide by basic principles of ethical conduct, recusing themselves if they believe they cannot perform their duties objectively. The Campus Committee will identify and manage Conflicts of Interests (COI), as defined in Section II, taking into consideration the following.

- Tribes making a Request must be provided with a roster of all Campus Committee Members and subject matter experts consulted or invited to the Campus Committee Meetings. If the Tribe(s) believes that one or more of these persons may have a COI with regard to their case, they may present information to explain their opinion and request that such persons be removed as subject matter experts or abstain from voting on their case, as applicable. The Chancellor will consider and make a decision on the Tribe's request. The decision must be communicated to the Tribe(s), with an explanation if the request is denied.
- Campus Committee members who have a personal, professional or financial interest or bias in a matter before the Campus Committee must either: recuse themselves from voting on the matter (stating their professional, personal, or financial interest); or, disclose their professional, personal, or financial interest or bias to the Chancellor, who may request such person recuse themselves, or with the concurrence of the remaining Campus Committee Members, permit the person with the Conflict of Interest to vote.

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

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

- 1) Confer and Coordinate with the Repatriation Coordinator on a regular basis for the mutual exchange of information;
- 2) Schedule dates, times and locations for meetings in consultation with the Campus Committee membership and Repatriation Coordinator; ensure meetings are called and held in accordance with this policy;

- 3) Establish and confirm an agenda for each meeting in consultation with Campus Committee membership and Repatriation Coordinator, and ensure the meeting agenda and relevant documents are circulated to Committee members in advance of the meeting to ensure sufficient time for the members to review the materials and arrange logistics or travel;
- 4) Officiate and conduct meetings;
- 5) Ensure there is sufficient time during the meeting to fully discuss agenda items; and
- 6) Ensure meeting minutes are complete and accurate, retained, and reviewed at the next meeting.

Tribal Presence. The Repatriation Coordinator will invite the Tribe(s) whose case is being deliberated by the Campus Committee (regarding determinations for the identification of Cultural Items, Cultural Affiliation, Repatriation or Disposition) to provide oral or written evidence, statements, or other information to the Campus Committee and/or attend the Campus Committee meeting where the case will be deliberated.

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

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

## B. CONSULTATION

### 1. Consultation Process and Guidance

Consultation is a critical element required by NAGPRA, CaINAGPRA, and this policy at various stages (i.e., Inventory, Summary, Repatriation, and Disposition). UC uses the following definition of Consultation: "The meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American Tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the Tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance." (California Government Code 65352.4)



All successful Consultations involve relationship building and respect. Repatriation Coordinators must seek out and foster these relationships with the designated NAGPRA Tribal Representatives, Tribal Historic Preservation Officers, and/or other representatives. Below are some of the common characteristics of a successful Consultation:

- Relationships that acknowledge and respect a Tribe's sovereignty, cultural protocols, and cultural and religious practices and knowledge;
- Multiple repeated contacts using a variety of methods;
- Accommodations for tribal needs in facilitating respectful Consultation;
- Invitations to all Tribes that have an interest;
- Identify and address tribal concerns in this process;
- Full access to relevant information throughout this process;
- Flexible meeting agendas and schedules, with opportunity for tribal input on the agenda or schedule themselves.

Repatriation Coordinators must engage in Consultation that reflects the principles and characteristics stated above, with ongoing meaningful dialog regarding Cultural Affiliation and the identification of Cultural Items throughout the Inventory and Summary processes, with the goal of Repatriation. Consultation may be in the form of in-person meetings, phone calls, and written correspondence. UC campuses should work collaboratively with each other when engaging in Consultation with Tribes that may have Human Remains or Cultural Items in collections across multiple campuses.

Relationship building cannot be over-emphasized. Campuses are encouraged to develop a holistic campus-wide approach with the understanding that Repatriation is just one aspect of the UC's relationship with Tribes. Repatriation Coordinators should work with other campus departments to foster UC/Native American relationships. Some examples of this are:

- Facilitating a meeting with a recruiter focused on Native American communities when a Tribe visits the campus for a NAGPRA Consultation,
- Informing a Tribe of and connecting them with UC archives that may be of interest to the Tribe,
- Visiting with Native American students on campus.

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

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

- a. The Repatriation Coordinator will initiate Consultation as required by this policy, as early as possible when new information or Human Remains or potential NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items are identified.

- b. Response. If Consultation or information has been requested by a Tribe, the campus Repatriation Coordinator will acknowledge receipt of the request within five business days. Within 60 days from the receipt of the request and no less than monthly thereafter, the campus Repatriation Coordinator will provide the requested information or the status of the work being done on the request.
- c. Preparation. The campus Repatriation Coordinator will review all known information about the Human Remains or Cultural Items, and 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. Other places to research for potential Tribes are NAHC resources, previous NAGPRA Federal Register notices, and federal land claims. An initial communication (e.g., letter or email) with sufficient information will be provided to Tribal Representatives to determine if they have an interest in participating in the Consultation process, believe they are Culturally Affiliated with Native American Human Remains and/or Cultural Items, and if they know of other Tribes that may have an interest.
- d. 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.
- e. Campuses should maintain a record of all communications in a communication log. Communication may be through posted letter, email, phone, and in-person as the occasion warrants the fullest discussion. When using non-written forms of communication, a follow-up email or letter should be sent within a day to ensure that agreed to decisions and next steps are accurate. Any formal notes should be offered and reviewed by the Consulting parties to ensure accuracy before they are accepted into the formal record. Consistent and repeated contact best assures progress.
- f. For meetings, campuses should work with Tribal Representatives to find a mutually agreeable time, place, format, agenda, and arrangements for special requests (such as smudging space, parking, meals, and documentation). The Repatriation Coordinator should inquire about whether there are barriers to tribal participation. To the extent possible, the Repatriation Coordinator should attempt to alleviate any barriers. This may also include travel support through grants or allocation of funding.
- g. The campus Repatriation Coordinator should work with the Consulting Tribes to provide any needed documentation related to collections and Human Remains

prior to Consultation meetings. Documentation may include catalogs, reports, summaries of NAGPRA related information, and notices.

- h. During Consultation meetings, the campus Repatriation Coordinator will listen and engage respectfully. The Repatriation Coordinator will endeavor to make meetings as comfortable, respectful, and productive as possible. This may include:
  - i. Making cultural arrangements, such as beginning meetings with a traditional land acknowledgment, providing an opportunity for a traditional opening if requested, or traditional offerings as relevant.
  - ii. Providing access to associated records and requested Human Remains, Cultural Items, and other requested materials. (See also Section J.3 and Appendices A & A-1.)
  - iii. Providing a written description of the Repatriation/Disposition decision-making, dispute resolution, and complaint processes.
  - iv. As soon as possible, but no later than ten (10) days after the meeting, providing written meeting notes and list of action items to Tribal Representatives to ensure accuracy and understanding by all participants. Such notes and other information shared by the Tribe during Consultation should be maintained as part of the Consultation record.
  - v. Together with Tribes, identifying all documentation and information shared that will have restricted access and the extent of such restriction.
  - vi. Working with Tribes to identify any requests for traditional care and restrictions for ancestral remains and objects in the care of the campus.
- i. The campus Repatriation Coordinator must keep affected Tribes promptly informed of all UC and campus decisions, relevant news and information about affiliated or otherwise relevant collections, and publication of notices by National NAGPRA and the NAHC. The Repatriation Coordinator will also provide quarterly updates to Tribes with whom they are consulting.
- j. In the event that Cultural Affiliation cannot be determined or there is disagreement about the designation of Cultural Items, the Repatriation Coordinator will transmit a detailed explanation and information on possible paths to change the outcome, and how and to whom to file a complaint or appeal.
- k. At the request of Tribe(s), the Repatriation Coordinator may partner with and assist Tribe(s) in seeking state and 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.
- l. The campus Repatriation Coordinator will offer to assist, as needed or requested, with transfer/Repatriation logistics, which may include stewardship agreements, coordinating reburial lands, and applying for NAGPRA Repatriation grants.

## 2. Confidentiality

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

Campus and Systemwide Committee members and other UC or Tribal Representatives with a need to know must be advised of their obligations to maintain confidentiality for all such information conveyed to them in the course of their duties under this policy or during Consultation. Hard copies of Confidential Information must be kept in locked file cabinets. Electronic copies of Confidential Information must be maintained in accordance with UC Policy BFB-IS-3: Electronic Information Security<sup>12</sup>.

### C. CULTURAL AFFILIATION/STATE CULTURAL AFFILIATION, INVENTORIES, AND SUMMARIES

In accordance with the requirements set forth in NAGPRA and CaINAGPRA, campuses must create/supplement Inventories and Summaries in Consultation with Tribal Representatives. As part of this process, campuses must assess 1) whether they have items in their Possession or Control that meet the definitions for Human Remains, Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony (“Cultural Items”); and 2) whether Cultural Affiliation / State Cultural Affiliation can be established for Human Remains and Cultural Items listed or described on Inventories and Summaries.

#### 1. Inventories and Summaries

Campus Inventories must list the Human Remains and Associated Funerary Objects in their collections, and include a synopsis of the evidence, including evidence obtained through 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.

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<sup>12</sup> See <https://policy.ucop.edu/doc/7000543/BFB-IS-3>.

Campus Summaries must describe the collections in the Possession or Control of UC that may contain Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony for the purpose of providing information to Tribes that may wish to submit Requests regarding these items.

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

In evaluating items to establish whether they meet the definitions of Cultural Items and their Cultural Affiliation or State Cultural Affiliation, campuses will Consult with Tribal Representatives and utilize the types of evidence and standards of proof stipulated in NAGPRA and CalNAGPRA.

a. Determining Whether Objects are Native American Cultural Items

For Requests under Summaries, upon receiving a Tribal Representative's identification and Request for Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony, the campus must evaluate whether by a preponderance of the evidence, the requested items meet the NAGPRA/CalNAGPRA definitions of Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony, whether the requested Cultural Items are Culturally Affiliated with the Tribe making the Request, and whether all other Repatriation conditions of NAGPRA/CalNAGPRA have been satisfied. 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." Note that determinations of whether Human Remains or potential Cultural Items are Native American must not be precluded based solely on their age.

b. Determining Cultural Affiliation / State Cultural Affiliation

The campus must consider the totality of 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.

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. In deliberations

concerning California Indian Tribes, the campus will take into account unique California history that might have created gaps in records.

Cultural Affiliation / State Cultural Affiliation will not be precluded solely because of some gaps<sup>13</sup> in the record. Further, Requestors do not have to establish Cultural Affiliation / State Cultural Affiliation with scientific certainty.

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

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

UC campuses with knowledge of existing NAGPRA/CalNAGPRA-eligible Collections of Human Remains in their Possession or Control have already submitted Inventories (for Human Remains and Associated Funerary Objects) and Summaries (for Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony). However, these must be updated/supplemented, in consultation with Tribal Representatives, as required by NAGPRA and CalNAGPRA if there are new items to report, or if there are changes to previously submitted inventories or summaries. (See NAGPRA, 43 C.F.R. § 10.13, CalNAGPRA § 8013(c) and (i).)<sup>14</sup>

Note that one circumstance where campuses will be required to update or supplement their Inventories and Summaries is to reflect changes resulting from reevaluations of previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects, as required under this policy in Section VI.

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

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<sup>13</sup> NAGPRA § 10.14(d).

<sup>14</sup> Notice (including providing a copy of the Inventory) must be given to Tribes and to federal and state officials as required by NAGPRA (25 USC 3003(d), 43 CFR 10.9 (e), 43 CFR 10.11 (d), and 43 CFR 10.13) and CalNAGPRA (§ 8013(e) and (g)).

If the campus is aware that items described in an Inventory or Summary are no longer in UC's possession for any reason, including because they have been lost, the campus should make note of that in Inventory or Summary Supplements or updates.

#### D. REQUESTS FOR REPATRIATION AND DISPOSITION

##### 1. Flowchart: Repatriation / Disposition Process

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

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

For Repatriation Requests under NAGPRA, when all the criteria for Cultural Affiliation and Repatriation set forth in NAGPRA § 10.9 or § 10.10 are met<sup>15</sup>, and at least thirty (30) days have passed since the publication of any required notices in the Federal Register, UC must work with the claimant to expeditiously repatriate Human Remains and Cultural Items within ninety (90) days of receipt of a written Request for Repatriation from the Culturally Affiliated Federally Recognized Tribe. If the Tribe is not ready to receive a physical transfer, then a stewardship agreement should be established and reviewed each year as needed.

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

California Indian Tribes may file Requests under CalNAGPRA for return of Human Remains and Cultural items with which they have State Cultural Affiliation.<sup>16</sup> As required by CalNAGPRA, campuses will consult with California Indian Tribes to determine State Cultural Affiliation.

When all the criteria set forth in CalNAGPRA §§ 8014 and 8015, are met, UC will expeditiously transfer the requested Human Remains and Cultural Items to the requesting Tribe, after the following conditions have occurred:

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<sup>15</sup> As noted in Section V.C.2.a., 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."

<sup>16</sup> To be clear, a California Indian Tribe can choose to file a Request under either CalNAGPRA or NAGPRA, or both.

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

This Repatriation must occur within 30 days after the last day of the 90-day period, or on a date agreed upon by all parties.

For more information, see also:

- Section V.D.2 (which will be relevant in cases where a CalNAGPRA Request is made by a Culturally Affiliated Federally recognized California Indian Tribe);
- Sections V.D.4 and V.D.5 (which will be relevant in cases where a CalNAGPRA Request is made by a California Indian Tribe that does not have federal recognition).
- Appendices A and A-1 for information on the Repatriation/Disposition process.

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

Any Federally Recognized or non-Federally Recognized Tribe may submit a Request for Disposition under the process described in Section V.D.5 and outlined in NAGPRA § 10.11. NAGPRA distinguishes Federally Recognized Tribes from non-Federally Recognized Tribes. NAGPRA does not give standing to non-Federally Recognized Tribes to request Cultural Affiliation, but does provide a mechanism for making Dispositions to them under certain circumstances. In addition, a non-Federally Recognized Tribe may partner with a Federally Recognized Tribe, or request a Federally Recognized Tribe sponsor their Request. At the request of the non-Federally Recognized Tribe, the Repatriation Coordinator may assist with the process.

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

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

In order to facilitate Disposition under NAGPRA §10.11 and in order to comply with CalNAGPRA, this policy requires Campuses to initiate Consultation (i.e., regardless of whether they receive a Tribal Request) with Tribes regarding Human Remains and



Associated Funerary Objects classified as “Culturally Unidentifiable” under NAGPRA<sup>17</sup>. (See also Section VI).

A Request for Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects may be submitted by a Federally Recognized or non-Federally Recognized Tribe. NAGPRA § 10.11<sup>18</sup> outlines the process that a campus must follow to complete a return of Human Remains that are not Culturally Affiliated with a Federally Recognized Tribe (such a transfer is considered to be a “Disposition” of “Culturally Unidentifiable” Human Remains under NAGPRA). UC will also include Associated Funerary Objects in any transfer of Human Remains made under NAGPRA § 10.11.

In accordance with NAGPRA § 10.11, UC must initiate Consultation regarding the Disposition of Culturally Unidentifiable Human Remains and Associated Funerary Objects:

- a. Within 90 days of receiving a Request from a Federally Recognized Tribe to transfer Control of Culturally Unidentifiable Human Remains and Associated Funerary Objects; or
- b. If no Request for Consultation is received, before any offer to transfer Control of Culturally Unidentifiable Human Remains and Associated Funerary Objects.

In addition, pursuant to CalNAGPRA § 8013(c) and (g), UC campuses must consult with California Indian Tribes to 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.

In order to avoid delay of a Disposition to a requesting Tribe, after making a good faith effort to consult with all Tribes from whose tribal lands, at the time of the removal, the Human Remains and Associated Funerary Objects were removed and with all Tribes from whose Aboriginal Lands the Human Remains and Associated Funerary Objects were removed,<sup>19</sup> and after an appropriate response period (60 days),<sup>20</sup> the Repatriation Coordinator will proceed with carrying out the Disposition Request.

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

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<sup>17</sup> See Section VI of this policy, requiring campuses to develop and submit to the Campus and Systemwide Committees Repatriation Implementation Plans that include provisions and a timeline for conducting this required proactive review.

<sup>18</sup> The requirements of NAGPRA § 10.11 apply to all Dispositions of CUI Human Remains and AFOs, including those that have been determined to be State Culturally Affiliated to a California Indian Tribe under CalNAGPRA. Campuses must comply with requirements of both CalNAGPRA and NAGPRA.

<sup>19</sup> See NAGPRA § 10.11(b)(2)

<sup>20</sup> Although NAGPRA does not address the length of a response period, sixty (60) days provides Tribes with a reasonable period to voice an interest without unduly delaying next steps.

Human Remains (and, per this policy, Associated Funerary Objects) in the following priority order:

- a. The Federally Recognized Tribe or Native Hawaiian Organization from whose tribal land, at the time of the removal, the Human Remains and Associated Funerary Objects were removed.
- b. The Federally Recognized Tribe(s) or Tribes that are recognized as aboriginal to the area from which the Human Remains and Associated Funerary Objects were removed. Aboriginal land may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.

If none of the Tribes identified above agrees to accept Control, the campus may offer to transfer Control of Culturally Unidentifiable Human Remains (and per this policy, Associated Funerary Objects) to any other Federally Recognized Tribe or to a non-Federally Recognized Tribe. Under NAGPRA, Disposition to a non-Federally Recognized Tribe may only take place after receiving a recommendation from the Secretary of the Interior or authorized representative (NAGPRA § 10.11(c)2(ii)).

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

## 6. Joint Requests for Cultural Affiliation or State Cultural Affiliation

A coalition of Tribes may jointly submit a Request for Repatriation. In such cases, Cultural Affiliation or State Cultural Affiliation must be established for each Tribe requesting Repatriation via the joint request, but joint Requests will not be interpreted as competing Requests. (See Section V.C.2.b.)

## 7. Competing Requests for Repatriation or Disposition

After UC has published a Notice of Inventory Completion (NIC) or Notice of Intent to Repatriate (NIR), listing multiple Tribes as Culturally Affiliated or eligible to submit a Request for Disposition, UC may receive competing Requests for transfer from multiple Tribes, each with a valid claim for Repatriation/Disposition. If each of the Tribes has a legally valid claim, and if the law does not specify an order of precedence that gives one Tribe priority over another, UC will retain the Human Remains or Cultural Items until the requesting parties reach agreement on proper Disposition or until the dispute is

resolved. Note that competing requests are distinct from joint or coalition Requests described above in Section V.D.6.

For assistance in resolving a dispute, the parties may choose mediation by a third party mutually agreeable to the Tribes with conflicting claims, or other appropriate means. Tribal Representatives may also file a request with the Federal Advisory Review Committee per NAGPRA § 10.17, or If the Tribe is not ready to do a physical transfer then a stewardship agreement should be established and reviewed each year as needed. If the Tribe is not ready to do a physical transfer then a stewardship agreement should be established and reviewed each year as needed. If the Tribe is not ready to do a physical transfer then a stewardship agreement should be established and reviewed each year as needed. for Requests that fall under CalNAGPRA, with the NAHC, per CalNAGPRA § 8016.

Once the competing Requestors 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 requesting Tribes), UC will repatriate to the Tribe(s) specified in such an agreement, provided that the Tribe(s) have been determined by the UC to be entitled to Repatriation or Disposition under this policy.

#### E. PREVIOUSLY UNREPORTED HOLDINGS

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

##### 1. Raising Awareness

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

##### 2. Locating Previously Unreported Holdings

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

Within one year from implementation of this policy and every 3-5 years thereafter, the Repatriation Coordinator must review whether the campus is in Possession or Control of previously un-reported NAGPRA/CalNAGPRA-eligible Human Remains or Cultural

Items. In performing their review, the Repatriation Coordination will send a communication to all campus department deans or chairs, providing necessary information so that they can make an informed initial assessment about whether their departments potentially hold NAGPRA/CalNAGPRA-eligible items. Engaging as necessary the assistance of appropriate subject matter experts (e.g., Tribal Representatives, Tribal leaders, osteologists, anthropologists, etc.), the Repatriation Coordinator will review the items in all high risk departments (e.g., archaeology, anthropology, biology, etc.) and all departments identified by department deans or chairs as potentially holding NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items. University faculty, researchers, students, staff who use Human Remains that are thought *not* to be NAGPRA/CalNAGPRA-eligible for research or teaching should identify the provenance of the remains.

Anyone who suspects that Native American items are not properly maintained or reported as required by this policy should contact the campus Repatriation Coordinator. Alternatively, they can file a report using the UC Hotline, <https://www.ucop.edu/uc-whistleblower/>.

### 3. Reporting to Campus and Systemwide Committees

By September 30 of each calendar year, the campus Repatriation Coordinator will provide to the Campus and Systemwide Committees: a list of locations reviewed (if any) and reports received of previously unreported Human Remains or Cultural Items; a description of the items found and identifications made, where they were located, and the current status of the newly identified items subject to NAGPRA or CalNAGPRA, including status of updated Inventory/Summaries, and whether Consultation has been initiated.

### 4. Protecting Items Potentially Subject to NAGPRA or CalNAGPRA

All newly identified items that are under the sole Control of the University and are thought to be potentially subject to NAGPRA or CalNAGPRA must immediately be placed in a secure area in accordance with the requirements of Section V.J.2 of this policy. In addition, ongoing research and handling (other than, as determined by the campus Chancellor, research and handling that is conducted in furtherance of the campus' responsibilities to make determinations as required by NAGPRA/CalNAGPRA) must cease until a determination has been made about whether NAGPRA or CalNAGPRA applies. In performing its evaluation to determine eligibility under NAGPRA/CalNAGPRA, the campus will seek tribal expertise. If Human Remains and Cultural Items subject to NAGPRA or CalNAGPRA are found, the University will comply with all applicable portions of this policy (e.g., Consultation, Inventory/Summary completion, and respectful treatment), NAGPRA (including § 10.13), CalNAGPRA, and campus policies and procedures. If the items are found to be not

NAGPRA/CalNAGPRA-eligible, they will be returned to the department from which they came and the findings recorded in the Repatriation Coordinator's annual report.

NAGPRA and CalNAGPRA require institutions to update their Inventories and Summaries when they obtain or discover that they have Possession or Control over previously unreported collections. (See NAGPRA § 10.13, CalNAGPRA § 8013(i), and §§ V.C.2 and 3 of this policy.) In accordance with NAGPRA § 10.13, Summaries must be completed within 6 months and Inventories within 2 years of locating a previously unreported holding or collection, absent an extension obtained under § 10.9(f).

F. RECEIPT OF NEW NAGPRA/CALNAGPRA-ELIGIBLE HUMAN REMAINS OR CULTURAL ITEMS

UC will not accept Possession or Control of NAGPRA/CalNAGPRA-eligible Human Remains, except upon a Tribe's request or upon approval by the Chancellor, and in all cases, provided that the primary reason for acceptance of the Human Remains is to facilitate the Repatriation process in accordance with the Purpose and Guiding Principles of this policy. Within two weeks of acceptance, the Repatriation Coordinator must report to the Campus and Systemwide Committees any newly accepted NAGPRA/CalNAGPRA-eligible Human Remains.

A campus may Accession NAGPRA/CalNAGPRA-eligible Cultural Items donated by an individual or entity demonstrating the Right of Possession, provided that the Campus Committee evaluates whether the transmission of such an object was truly voluntary (and not under duress) and that UC's care for such items complies with Sections V.J.1 and V.J.2.

UC faculty, researchers, students, and staff with a private collection of Human Remains or Cultural Items are encouraged to transfer Possession and Control to UC so that UC can pursue Repatriation or Disposition as described in this policy.

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

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

H. OVERSIGHT

The Systemwide Committee and Campus Committees will promote the implementation of this policy consistent with the Purpose and Guiding Principles contained herein, and provide oversight of compliance with this policy, and with state and federal laws and regulations, in accordance with Section V.A of this policy. The Systemwide Committee

and Campus Committees may request reports from campus officials as needed to fulfill their oversight functions.

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

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

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

UC must consult with the Systemwide Committee before making any changes to this policy (see Section III.D). Campuses must consult with the Campus Committee before making any changes to related campus policies and procedures.

## I. COMPLAINTS AND APPEALS

### 1. Complaints

Complaints about the consultation processes or access can be directed to the campus Chancellor, who will respond within forty-five (45) days from receipt of the complaint. If the Tribe has elevated its concern to the campus Chancellor and is still dissatisfied with the response, the Tribe can additionally file their complaint to any of the following: the Campus Committee, the Systemwide Committee, or the UC President (at [President@ucop.edu](mailto:President@ucop.edu)), or seek mediation. Contact information for filing a complaint must be posted on the campus' website.

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

Tribal Representatives who believe UC determinations (including but not limited to those related to Cultural Affiliation / State Cultural Affiliation, identification of Cultural Items, Repatriation, Disposition, or Inventories) were not supported by the preponderance of evidence, did not accord proper consideration of tribal evidence, or were based on an incorrect interpretation of law, may initiate an appeal through any of the following options up until a Notice is published in the Federal Register. After the Chancellor has made a determination, the campus will wait at least thirty (30) days before submitting Notices of Inventory Completion and/or Notices of Intent to Repatriate to National NAGPRA to allow affected Tribe(s) to request an appeal.<sup>21</sup>

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<sup>21</sup> If all affected Tribes agree to shorten or waive the 30-day waiting period, UC may proceed with the submission of the Notice to National NAGPRA.

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

See also Appeals Flowchart in Appendix B.

Information about how to file an appeal must be posted on a public-facing campus web page. The appeal will be reviewed, based on the existing record and the evidence previously submitted (i.e., new evidence will not be considered as part of an appeal, but may be the basis of a new Request).

For an appeal to the Chancellor: Within thirty (30) days of receipt of the Tribe(s)' request for an appeal, the Chancellor will make the decision to uphold, reverse, or modify the determination of the Chancellor's Designee, provided that all applicable legal and policy requirements are met, and provide the appealing Tribe(s) with a written explanation and basis for approving or denying the appeal.

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

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

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

- 1) Will be invited to present their views orally or in writing to Campus or Systemwide Committees and/or UC decision-makers.
- 2) May request third-party mediation to assist in efforts to reach agreement. Such mediation may include any means mutually agreed to by all parties and approved by the Chancellor.
- 3) May file a request with the Federal Advisory Review Committee per NAGPRA § 10.17, for assistance in resolving a dispute. To the extent permitted by UC resources, UC will make a good faith effort to participate in the Federal Advisory Review Committee dispute resolution/mediation process.
- 4) May file a request with the NAHC for assistance in resolving a dispute for claims falling under CalNAGPRA (CalNAGPRA § 8015 and § 8016). To the extent that there is no direct conflict between the federal process referenced in 3) above and

the CalNAGPRA process referenced herein, UC will make a good faith effort to participate in the NAHC dispute resolution/mediation process.

Notes:

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

## J. RESPECTFUL STEWARDSHIP

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

### 1. Treatment

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

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

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

Only authorized individuals will have access to Human Remains and Cultural Items, which must be stored in dedicated spaces that are not accessed by the public. Human Remains should be handled as little as possible, and only for essential functions (e.g., safety issues and functions essential to Repatriation or curation).

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



unless necessary for compliance with NAGPRA/CalNAGPRA, and if soil is loosened, it will be collected and offered as well.

Human Remains and Cultural Items in UC's Possession or Control must not be removed from UC premises except as permitted under Section K.2. University employees or retirees/emeriti that have removed Human Remains or Cultural Items from UC premises must immediately return these to the University; UC may pursue legal action for items taken without authorization.

## 2. Management and Preservation Standards

Campuses must ensure that all Human Remains and Associated Funerary Objects are managed and preserved in accordance with the standards set out by [36 C.F.R. § 79.9\(b\)\(3\)<sup>22</sup>](#), except as approved by the Chancellor. All exceptions must be reviewed by the Campus Committee, which will make a recommendation to the Chancellor.

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

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

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

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

- 1) If the Human Remains and/or Cultural Items have been Culturally Affiliated, the campus must obtain explicit written authorization from the Culturally Affiliated Tribes.

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<sup>22</sup> Though these regulations only directly apply to UC in limited circumstances (e.g., where UC has possession of federal collections), UC is adopting these standards for all Human Remains and Associated Funerary Objects in its Control or Possession.

In addition, if a Federally Recognized Tribe sponsored or partnered with a non-Federally Recognized Tribe, then the non-Federally Recognized Tribe must also grant authorization.

- 2) If the Human Remains and/or Cultural Items are Culturally Unidentifiable, the campus must obtain authorization from all the Indian Tribes whose Aboriginal Lands (as outlined in NAGPRA § 10.11) overlap with the location where the Human Remains originate.

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

Whether internal or external to UC, all persons seeking access to NAGPRA/CalNAGPRA-eligible Human Remains and/or Cultural Items for research, instruction, or other purposes must provide to the Repatriation Coordinator documentation demonstrating compliance with the above requirements. The Repatriation Coordinator must ensure that no pending appeals or complaints have been filed related to the Human Remains or Cultural Items requested before forwarding the request and all compliance documents referenced above to the Chancellor for approval.

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

The Repatriation Coordinator must clearly outline the duration, terms and conditions, and limitations in all access and loan agreements, including the termination date. Researchers will be required to disseminate their research results to all Tribes described in 1) or 2), as applicable. The Repatriation Coordinator will keep a record of all research access requests received, tribal authorizations, and Chancellor approvals.

By September 30 of each year, the Repatriation Coordinator must provide to the Campus and Systemwide Committees a summary of all access agreements executed in accordance with this section, including a listing of the Human Remains accessed or loaned, the Tribes consulted, approvals obtained, and the terms of use.

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

##### 1. Loans to UC

Except as permitted herein, Human Remains or Cultural Items from private collections or other institutions are not permitted on campus. However, under certain

circumstances and provided the conditions below are satisfied, campuses may accept loan agreements for UC's care of Human Remains and Cultural Items.

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

- a) A request that UC perform an analysis of the Human Remains or Cultural Items at the behest of a Culturally Affiliated Tribe.
- b) A request that UC perform an examination of the Human Remains or Cultural Items to aid the loaning institution in carrying out its NAGPRA or CaINAGPRA responsibilities. However, unless Culturally Affiliated Tribes have given explicit written authorization for testing, in carrying out such examinations, the campus may only use minimally invasive procedures and may not use destructive analysis (such as radiocarbon dating, DNA analysis, stable isotope analysis).
- c) A request from an agency that recently discovered Human Remains or Cultural Items that is unable to provide immediate and appropriate care.
- d) Other research or care approved by or performed in Consultation with the Culturally Affiliated Tribe(s).

Conditions for Loans to UC

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

- a) The controlling agent has requested that the UC maintain such short-term care.
- b) The Chancellor and the controlling agent have entered into an agreement in writing, delineating the terms of the loan, including, if appropriate, applicable terms relating to NAGPRA or CaINAGPRA compliance responsibilities.
- c) Loans may not exceed two years unless extensions are approved by the Chancellor.
- d) UC maintains the Human Remains and Cultural Items in accordance with the standards described in Section V.J.2 above unless otherwise described in the agreement between the controlling agent and UC and approved by the Chancellor after consultation with the Campus Committee.
- e) Records of all such agreements must be maintained by the Repatriation Coordinator and reported to the Campus and Systemwide Committees within two weeks of execution and acceptance of items.

2. Loans from UC to External Entities

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

Conditions for Loans from UC

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

- a) Loans may be made only upon request by Culturally Affiliated Tribe(s) or Aboriginal Lands Tribes, or in furtherance of Repatriation or Disposition.

- b) Loans may not exceed two years unless extensions are approved by the Chancellor.
- c) UC will enter into a Loan Agreement which details the terms of the loan: the precise items loaned, the start and end date of the loan, the expectations for respectful stewardship and other applicable conditions in accordance with this policy and any applicable campus museum/repository policies, and the methods of transfer to/from one location to another.
- d) Culturally Affiliated or potentially Culturally Affiliated Tribes will be provided an advance copy of the Loan Agreement and provided an opportunity to comment before the materials are moved.
- e) All loan agreements from UC will be reported to the Campus Committee and the Systemwide Committee within two weeks of execution of the agreement by the Repatriation Coordinator.
- f) The Repatriation Coordinator will create a method to track all loans, maintaining a list that minimally includes the name of the entity to whom the loan is made, a general description of the materials loaned, date loaned, and date returned.
- g) The Repatriation Coordinator will annually review the list and follow up to ensure the return of loaned items.

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## **VI. REPATRIATION IMPLEMENTATION PLAN**

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Each campus with NAGPRA/CalNAGPRA-eligible Human Remains or Cultural Items will develop a Repatriation Implementation Plan in coordination with the Campus Committee within six months of the Chancellor's appointment of the Campus Committee, and no later than October 1, 2021. The Repatriation Coordinator must provide a copy of the campus Repatriation Implementation Plan to the Systemwide Committee within 5 days from finalization of the Plan.

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

1) Proactive Review of CUI Determinations.

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

- a) Inform Tribes of UC collections that may include Cultural Items and invite Tribes for Consultation, and
- b) Review and update previous determinations of Culturally Unidentifiable Human Remains or Associated Funerary Objects.

In performing these reevaluations, campuses will consult with Tribal Representatives, reevaluate originally considered evidence, and consider: any newly available evidence or information, changes in applicable law, the addition of new California Indian Tribes under CalNAGPRA and new Federally Recognized Tribes under NAGPRA, or other Tribes that should be consulted. Reevaluation may provide the basis for revising a decision for Cultural Affiliation/State Cultural Affiliation, or about the number or nature of Cultural Items listed in a previously submitted Notice of Intent to Repatriate or Notice of Inventory Completion. (See also Sections V.B.1, V.C., and Appendices A and A-1 for more details on the process).

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

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

- Tribes from whose tribal lands, at the time of the removal, the Human Remains and Associated Funerary Objects were removed;
- Tribes from whose Aboriginal Lands the Human Remains and Associated Funerary Objects were removed; and
- California Indian Tribes: 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. (See also Section V.C.3).

If Tribal Representatives request a reevaluation of a previous determination that specific Human Remains or Cultural Items are Culturally Unidentifiable, such Requests will be prioritized.

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

Campus Repatriation Implementation Plans will include a schedule 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. Such Tribes must be contacted at least annually.

## 3) Outreach to Controlling Agencies

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

4) Budget Estimate

Campuses must estimate the costs necessary to carry out their responsibilities under this policy and include a detailed budget in their Repatriation Implementation Plans. Campuses may benchmark against institutions with similarly sized collections to estimate the costs.

5) Campus Repatriation Plan Timeline

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

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

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## VII. RELATED INFORMATION

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

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## VIII. FREQUENTLY ASKED QUESTIONS

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Not applicable

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## IX. REVISION HISTORY

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

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## **X. APPENDIX**

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Appendix A	Repatriation/Disposition Process Flowchart
Appendix A-1	Repatriation/Disposition Process Flowchart Narrative
Appendix B	Appeals Flowchart
Appendix C	Sample Campus Repatriation Plan Timeline
Appendix D	Summary of Campus Repatriation Coordinator Reporting Duties

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Tribe(s)

Repatriation Coordinator

Campus Committee

Chancellor

Tribal inquiry or request for repatriation or disposition under NAGPRA or CalNAGPRA (1)

Initial contact with Tribe(s) (1)

Identify items in geographic or cultural areas of interest (2)

Gather information & evidence at the campus. Query other campuses about items from same site(s) (3)

Share gathered information with Tribes and invites consultation (4)

Accepts invitation for consultation (4)

Initiate or respond to request for formal consultation\*, including offer of site visit (5)

\* See Consultation, Policy § V.B.

Provide feedback or tribal information (6)

Continue consultation (8)

Update consultation record and evidence record based on consultation (7)

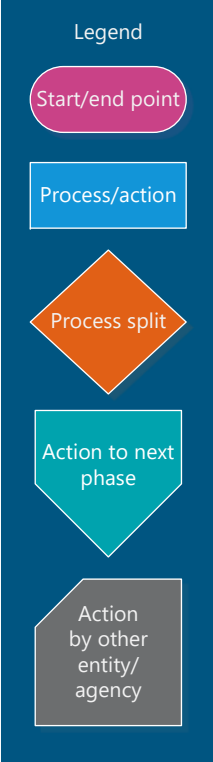
Is there sufficient information to decide on cultural affiliation, repatriation, or other decision? (8)

Provides feedback on Review Packet (at least 30 days) (10)

Prepares Review Packet (9)

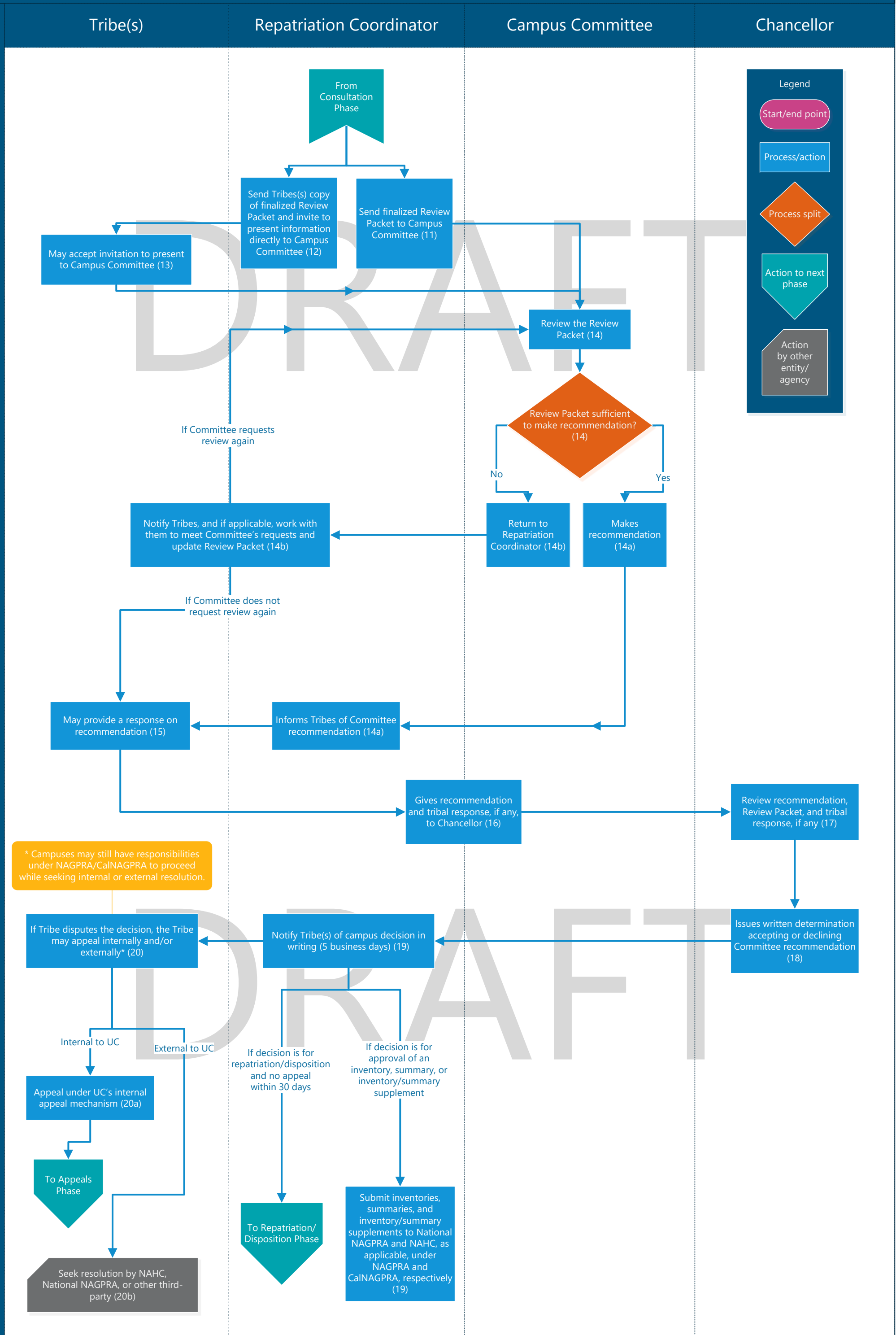
To Campus Review Phase

If at any point in this process, a Tribe believes that the Repatriation Coordinator is not acting in good faith or is otherwise unsatisfied with the process, Tribal Representatives may submit a complaint to the Chancellor as described in policy Section V.I.1. Complaints.



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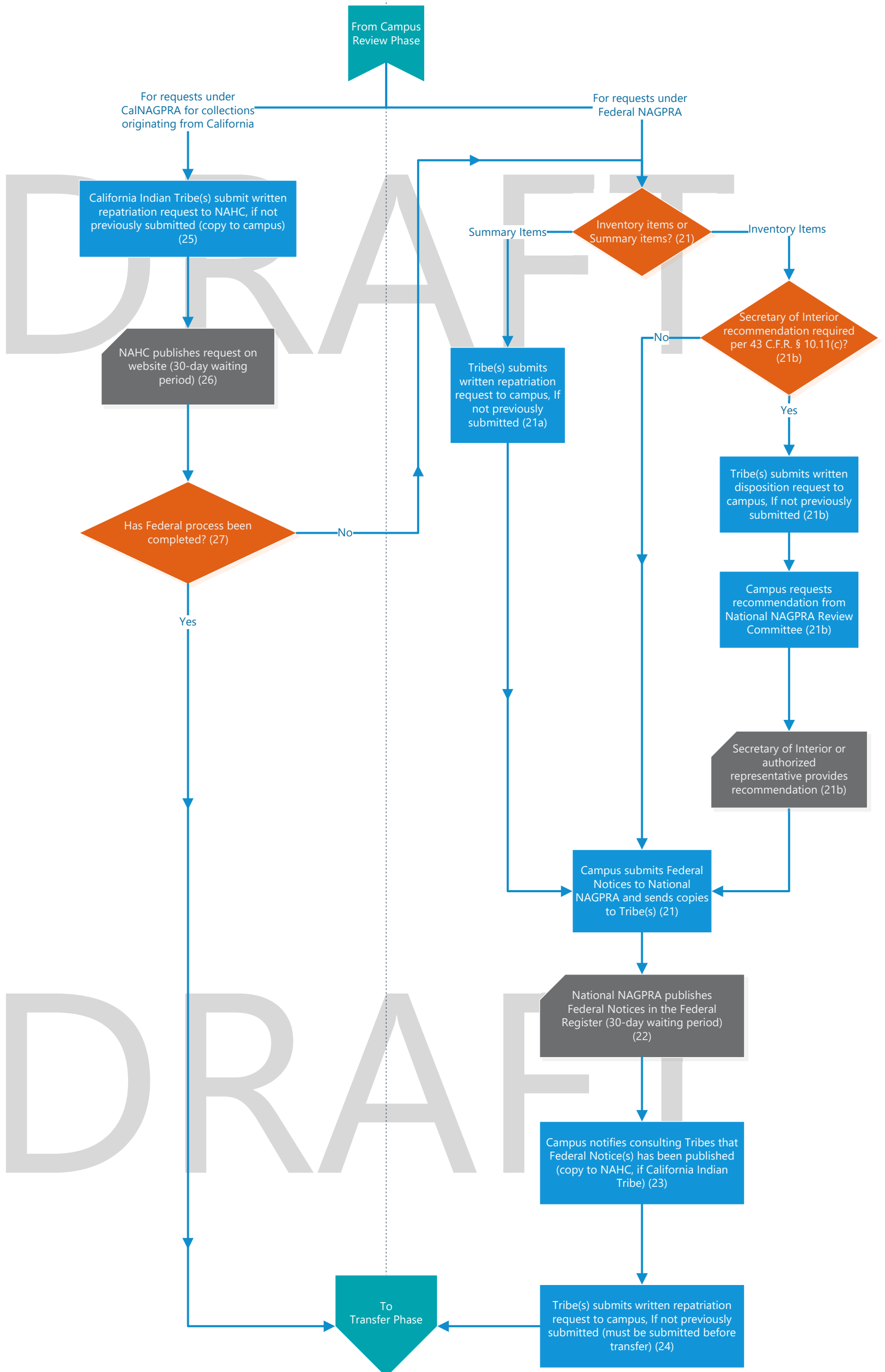
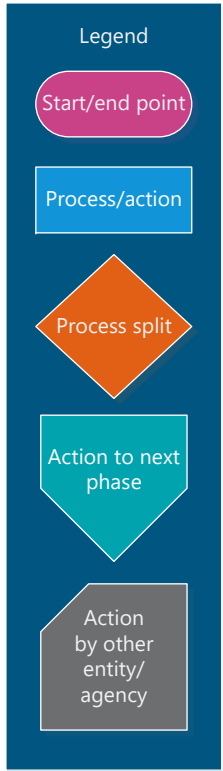
Legend

- Start/end point
- Process/action
- Process split
- Action to next phase
- Action by other entity/agency

\* Campuses may still have responsibilities under NAGPRA/CalNAGPRA to proceed while seeking internal or external resolution.

CaINAGPRA Process

Federal NAGPRA Process



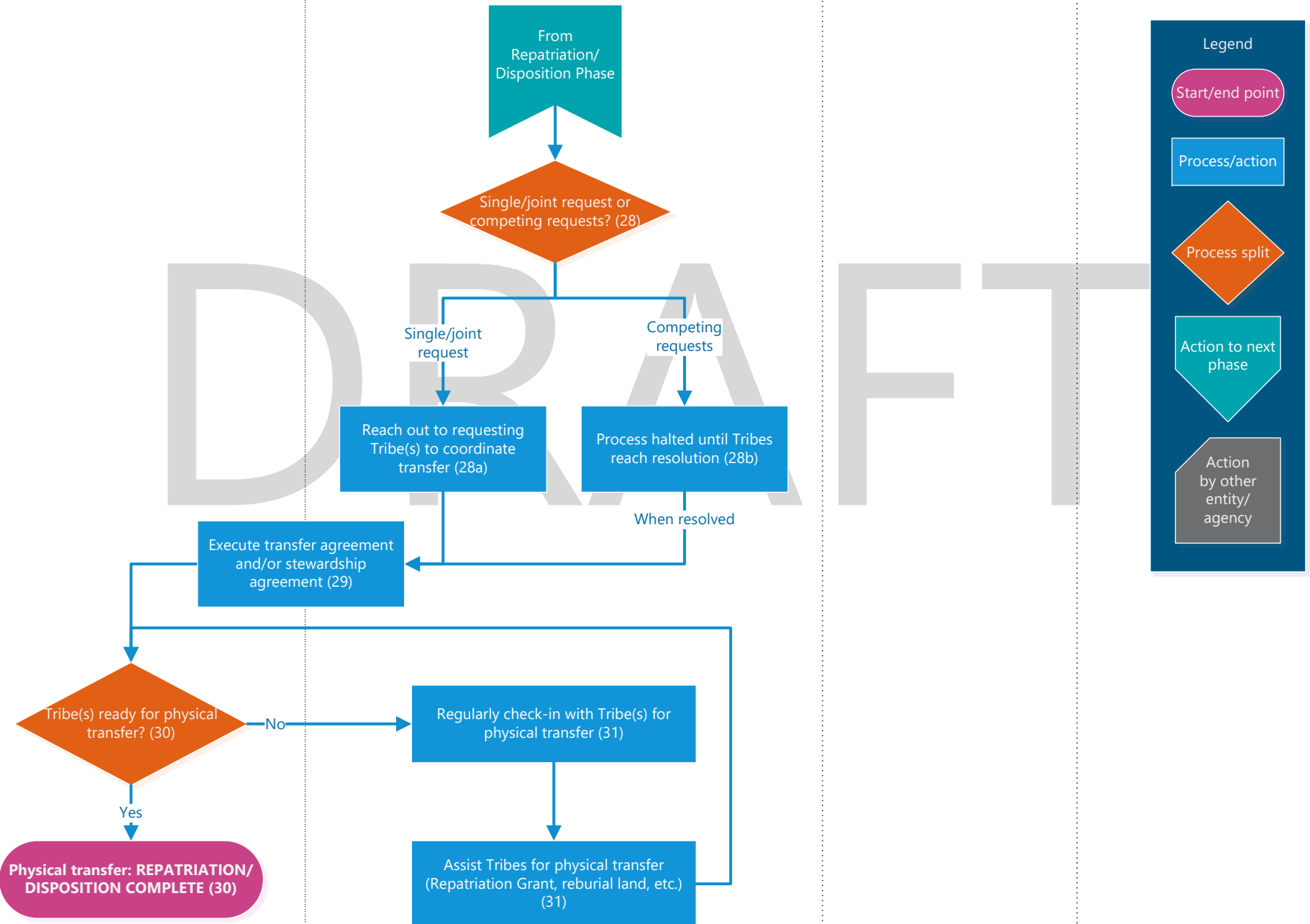
# Repatriation and Disposition Process – Transfer Phase

Tribe(s)

Repatriation Coordinator

Campus Committee

Chancellor



## Repatriation and Disposition Flowchart Narrative

The Repatriation and Disposition Flowchart and this accompanying Narrative describe the process campuses follow to respond to tribal requests for Cultural Affiliation, Repatriation, or Disposition, to review those requests, to conduct repatriations or dispositions under NAGPRA or CalNAGPRA, and to legally and/or physically transfer Native American Human Remains or Cultural Items. The Flowchart and Narrative provide an overview; they are not meant to capture all scenarios or nuances that may arise in the process. If at any point in this process, a Tribe believes that the Repatriation Coordinator is not acting in good faith or is otherwise unsatisfied with the process, Tribal Representatives may submit a complaint to the Chancellor as described in policy Section V.I.1., Complaints.

Unless otherwise indicated, days are measured in calendar days. Timelines may be revised upon mutual agreement, provided revised dates do not conflict with NAGPRA/CalNAGPRA requirements.

The Flowchart's columns identify the primary roles involved in this process (e.g., Tribe(s), Repatriation Coordinator, Campus Committee, or Chancellor). Actions in a given column are the responsibility of the respective role. Actions that overlap columns indicate that the roles work collaboratively together on a given action.

The exception to this is the flowchart for the Repatriation/Disposition Phase. Instead, the columns separate the actions under the CalNAGPRA process or the Federal NAGPRA process. Each action identifies the responsible role (e.g., Tribe(s) submit written repatriation requests, campus submits Federal Notices to National NAGPRA, etc.)

### **Initial Consultation Phase**

1. The NAGPRA/CalNAGPRA process is normally initiated either by the UC campus Repatriation Coordinator, by a Tribe requesting information regarding potentially eligible Cultural Items, or by a Tribe making a Request for Repatriation or Disposition under NAGPRA or CalNAGPRA. If a Tribe requests information, Repatriation, or Disposition, the Repatriation Coordinator must acknowledge receipt of the tribe's inquiry within 5 business days. The Repatriation Coordinator must 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 in

accordance with this policy. A Campus Committee may also prompt the Repatriation Coordinator to initiate contact with Tribe(s).

2. The Repatriation Coordinator works with the Tribe(s) to identify the items in the Tribe's cultural or geographic areas of interest.
3. The Repatriation Coordinator gathers documentation and information at the campus regarding collections in the tribal geographic or cultural areas of interest. Documentation may include catalogs, reports, relevant information needed to compile (or update or supplement) NAGPRA/CalNAGPRA Summary or Inventory documents or supplements, and a list of additional Tribes that have been or will be consulted as appropriate for each situation.

Repatriation Coordinator reaches out to other campuses to determine if they have potentially eligible Cultural Items that are from the same site(s). In Consultation with the Tribe(s) and subject to tribal agreement, multiple campuses may coordinate their efforts to facilitate Repatriation or Disposition under a single Request.

4. Within 60 days from the receipt of the Request or the initial contact and no less than monthly thereafter, Repatriation Coordinator shares information gathered at this point with Tribes and invites formal Consultation on identified items. The tribe(s) may then respond to the shared information and accept the invitation for Consultation regarding the potential NAGPRA/CalNAGPRA-eligible Cultural Items or Human Remains.
5. The Repatriation Coordinator initiates or responds to Requests for formal Consultation under NAGPRA and CalNAGPRA. Consultation may be for the purpose of determining Cultural Affiliation, identifying NAGPRA/CalNAGPRA-eligible Cultural Items or Human Remains, and/or facilitating Repatriation and/or Disposition. The Policy describes the Consultation process more thoroughly. (See Policy § V.B. Consultation)
  - a. Repatriation Coordinator begins a communication log, which documents interactions between the campus and Tribes, an evidence record, which brings together the totality of gathered evidence, and a Consultation record, which contains a tribally-vetted overview of information shared by the Tribe during Consultation. This documentation will be continuously updated during the Consultation process (see below).
  - b. Repatriation Coordinator shares evidence, draft Inventory, if applicable, and other documents with consulting Tribes.

- c. Repatriation Coordinator invites Tribes to consult via in-person meetings, a site visit, or other formats (calls, video conferencing, etc.) as appropriate.
6. Tribe(s) provides feedback or additional information on shared evidence, draft Inventory, and other documents.
7. Repatriation Coordinator updates documentation such as the Consultation record and evidence record based on Consultation.
8. Consultation continues between all parties, as needed. This is an iterative process where the Repatriation Coordinator continues to consult with the tribe(s) and the tribe(s) continues to provide feedback or information to the Repatriation Coordinator. The cycle of consultation continues until the Repatriation Coordinator has sufficient information for a campus decision on cultural affiliation, repatriation, or other decision.
9. When the Repatriation Coordinator has sufficient information for a campus decision, the Repatriation Coordinator prepares a Review Packet for the Campus Committee and invites the Tribe(s) to review the Review Packet and provide supporting or supplemental information. The Review Packet contains the Repatriation Coordinator's recommendation & analysis, draft or existing Inventory or Summary (or Inventory or Summary supplements), draft Notice of Inventory Completion for Human Remains and Associated Funerary Objects or Notice of Intent to Repatriate for Requests for Objects of Cultural Patrimony, Sacred Objects and Unassociated Funerary Objects, and any other documents necessary for the Campus Committee to make its recommendation. At a minimum, the Review Packet should: (1) identify all Tribes and their representatives who were consulted and when, (2) identify all Tribes who asserted Cultural Affiliation or State Cultural Affiliation, and (3) document any lines of evidence regarding Cultural Affiliation or State Cultural Affiliation. Note that if at any point in this process, a Tribe believes that the Repatriation Coordinator is not acting in good faith or is otherwise unsatisfied with the process, Tribal Representatives may submit a complaint to the Chancellor as described in Section V.I.1 of the policy.
10. Tribe(s) provides feedback on contents of draft Review Packet. Tribes given at least 30 days or additional time as agreed upon during Consultation. Tribes may add additional information or a letter to the Review Packet.

## **Campus Review Phase**

### *Committee Review*

11. Repatriation Coordinator provides Final Review Packet to Campus Committee.
12. Repatriation Coordinator also sends a copy of the Final Review Packet to Tribe(s) with an invitation for tribe(s) to present information directly to Campus Committee.
13. Tribe(s) may accept the invitation to present information directly to Campus Committee in-person, virtually, or in writing.
14. Campus committee reviews the packet and information presented by Tribe. Campus Committee either:
  - a. Makes a recommendation. The Repatriation Coordinator will inform the Tribe(s) of the Campus Committee's recommendation within 5 business days of the Campus Committee making its recommendation.

OR

- b. Returns the Request to the Repatriation Coordinator. For example, the Campus Committee may request the Repatriation Coordinator engage in additional Consultation with other Tribes, gather additional information to consider the Request, revisions, edits, or make clarifications or edits to the Inventory or Notices, etc.
  - i. In the event a Request is returned, and if applicable, the Repatriation Coordinator works with the tribe(s) to address the concerns. If the Request is to consult with a Tribe not previously consulted, then the Repatriation Coordinator will initiate Consultation with that Tribe as described in the Consultation Phase of this flowchart.
  - ii. If the Committee requests to review the matter again after the issue they raised has been resolved, then the Repatriation Coordinator updates the Review Packet as necessary and resends it to the Campus Committee to make a recommendation.
  - iii. If the Committee indicates that it does not need to review the matter again, the Repatriation Coordinator proceeds with the process.

15. Tribe(s) will be invited to provide a response to the Campus Committee's recommendation before it is provided to the Chancellor.
16. The Repatriation Coordinator and Campus Committee will then provide the Campus Committee's recommendation with any received tribal response to the Chancellor.

*Chancellor Review*

17. Chancellor reviews the Campus Committee's recommendation, the review packet, and any tribal response to the recommendation if provided.
18. The Chancellor then issues a written determination with rationale accepting or declining the Campus Committee's recommendation.
19. Repatriation Coordinator notifies tribe of campus decision in writing within 5 business days of campus decision. The Repatriation Coordinator must copy the Systemwide Committee and President when notifying the Tribe.
  - a. If the decision is for Repatriation or Disposition and there is no appeal, then the Repatriation Coordinator proceeds with the Repatriation or Disposition.
  - b. If the decision is for an Inventory, Summary, or Inventory/Summary Supplement under CalNAGPRA, the Repatriation Coordinator will submit them to National NAGPRA and NAHC, as applicable, under NAGPRA and CalNAGPRA, respectively.
20. In the event that a Tribe disputes a campus decision, the Tribe may:
  - a. Initiate an appeal under UC's internal appeal mechanism. After a decision, UC will wait at least 30 days before submitting Notices to National NAGPRA to allow for any Tribe to appeal, unless all Tribes agree to shorten or waive the 30-day waiting period, or if the campus receives a Request that satisfies the requirements of NAGPRA under § 10.10. Then, this decision will move forward following regulation requirements. A Tribe may appeal a decision under UC's internal appeal mechanism up until a Notice has been published in the Federal Register for 30 days. See Policy, section V.I.1 Appeals and the Appeals Flowchart (Appendix B) for additional clarification;

AND/OR



- b. Seek resolution by NAHC, the Federal Advisory Review Committee, or other third-party.

Note that campuses may still have responsibilities under NAGPRA or CalNAGPRA to proceed with the campus decision even while seeking resolution. The Repatriation Coordinator will inform affected Tribes of any such developments.

### **Repatriation/Disposition Phase**

The Repatriation/Disposition Phase Flowchart describes the process for completing repatriations and dispositions. Separately campuses are required to submit inventories, summaries, and inventory/summary supplements to National NAGPRA and the Native American Heritage Commission (for collections originating from California and covered by CalNAGPRA) as described in the Policy section V.C.3.

#### *Submission of Notices/Disposition Request under federal NAGPRA*

21. The Federal NAGPRA process varies depending on the nature of the requested Cultural Items.
  - a. For Summary items (Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony), the Tribe(s) submits a written Request for Repatriation to the Repatriation Coordinator, if Request not previously submitted (e.g., a Tribe(s) may have submitted a written request at the onset, which initiated Consultation or it may have submitted it in the course of Consultation). The Repatriation Coordinator will support the Tribe(s) as needed for formally requesting Repatriation in writing, including providing a template or the minimal information needed for a Request. After receipt of the Request, the Repatriation Coordinator submits the Federal Notice(s) to National NAGPRA and sends copies to Tribe(s).
  - b. For Inventory Items (Human Remains and Associated Funerary Objects), the process further depends on whether the NAGPRA regulations require a recommendation by the Secretary of Interior or authorized representative (See 43 C.F.R. § 10.11(c)). If Secretary of Interior recommendation is not required, then the Repatriation Coordinator may proceed with submitting Federal Notices to National NAGPRA and sends

copies to Tribe(s). If Secretary of Interior recommendation is required, the Tribe(s) first submit a written Request for Repatriation/Disposition to the Repatriation Coordinator, if Request not previously submitted. Then, the Repatriation Coordinator submits a Disposition Request to National NAGPRA. The Federal NAGPRA Advisory Review Committee reviews the Disposition Request and provides a recommendation to the Secretary of Interior. The Secretary of Interior or an authorized representative then provides a recommendation. After receiving the recommendation, the Repatriation Coordinator may proceed with submitting Federal Notices to National NAGPRA and sends copies to Tribe(s).

#### *Federal Notice Publication/Claim/Request*

22. National NAGPRA coordinates the publication of any Notices in the Federal Register, including reviewing and editing the Notices as necessary. Tribe(s) not listed in the Notice have 30 days from the publication of the Notice to also submit a Request for Repatriation/Disposition. If an additional request is received, it will be processed as appropriate following NAGPRA and CalNAGPRA. For example, the request may require additional consultation or Committee Review, or it may proceed to the next step, e.g., if claim from tribe submitting the additional request had already been considered by Campus Committee.
23. When the Notice(s) has been published in the Federal Register, the Repatriation Coordinator provides a copy of the published Notice(s) to the consulted Tribe(s), highlighting when the 30-day waiting period will end. The Repatriation Coordinator will also provide a copy to the NAHC if the Notice includes a California Indian Tribe(s).
24. If Tribe(s) have not yet submitted a written repatriation/disposition request to the campus, then it must before transfer.

#### *Submission of Repatriation Requests under CalNAGPRA*

25. If a Tribe(s) would like to make a request under CalNAGPRA for collections originating from California, the California Indian Tribe(s) may submit a Request to NAHC (copying the campus), if not previously submitted (e.g., a tribe may have submitted a written request at the onset, which initiated consultation or it may have submitted it in the course of consultation).

26. For tribal Requests made under CalNAGPRA, NAHC determines if criteria in California Health & Safety Code section 8016(b) are met, and if so, forwards the Request to the campus, and publishes the Request for Repatriation on website for 30 days.
  - a. If the NAHC receives more than one Request for Repatriation for the same item or a dispute arises, then the Requests are resolved according to CalNAGPRA § 8016.
  - b. Otherwise, the campus proceeds with Repatriation, provided that federal NAGPRA requirements are met.
27. Even if the request was made under CalNAGPRA, the campus must complete the Federal NAGPRA process as well. If the federal process has been completed, then the campus may proceed with the transfer. But, if the federal process has not been completed yet, then the campus must do so.

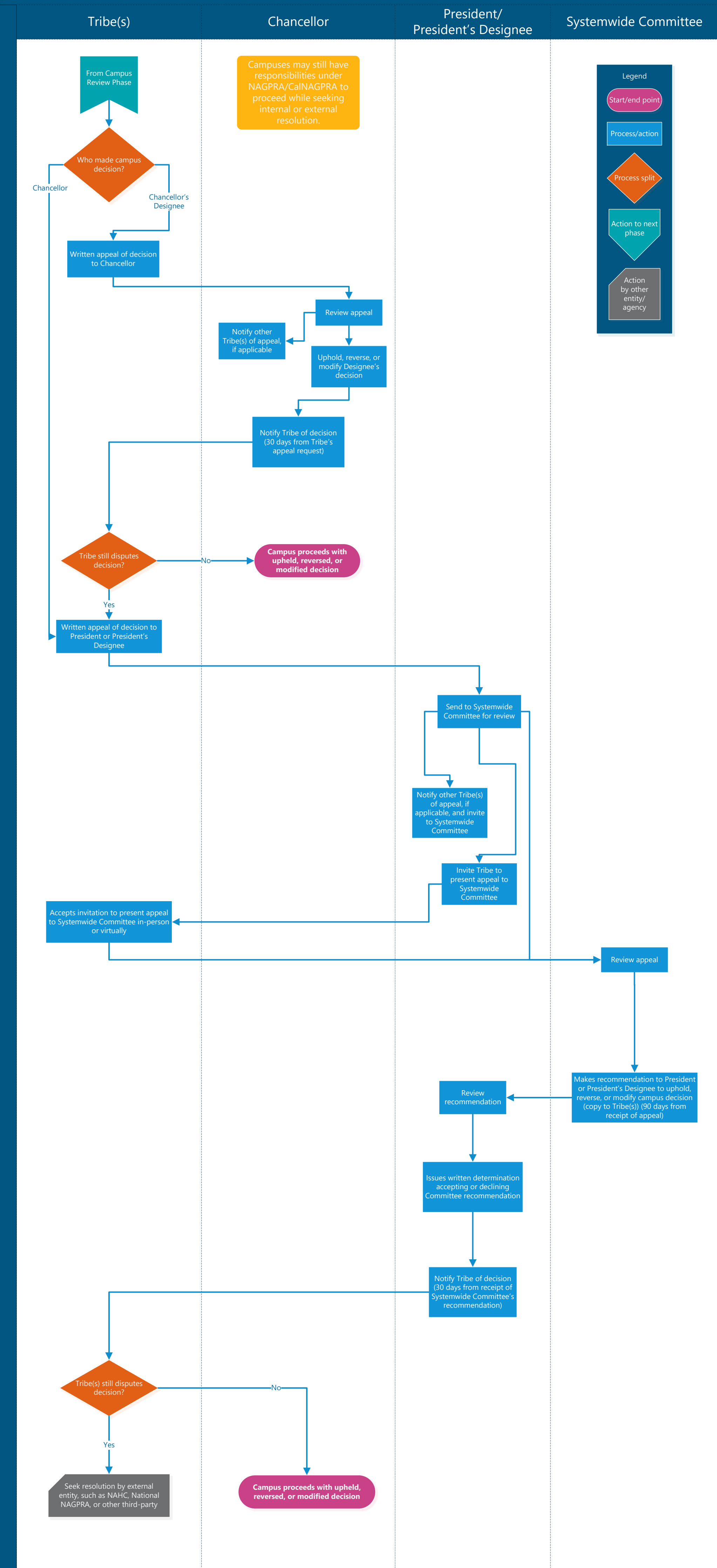
### **Transfer Phase**

28. After the campus completes the NAGPRA and CalNAGPRA processes, the Repatriation Coordinator will then commence transfer based on the received Request(s).
  - a. For single or joint Requests, Repatriation Coordinator reaches out to Tribe(s) to coordinate transfer.
  - b. For competing Requests as described in 43 CFR § 10.10(c)(2), Repatriation Coordinator informs each of the Tribes of the claims. The process is halted until tribes reach resolution. (See also Section V.D.6.)
29. The campus and requesting Tribe(s) execute a transfer agreement and/or a stewardship agreement if they are not ready for a physical transfer.
30. When the Tribe(s) are ready for physical transfer, the Repatriation Coordinator prepares and coordinates signature of transfer paperwork, selects mutually agreeable transfer date, and offers to assist with other transfer logistics (rehousing, reburial land, repatriation grant, etc.).
31. If the Tribe(s) are not ready for physical transfer, the Repatriation Coordinator will check-in with Tribe at least annually to facilitate physical transfer and update the terms of the stewardship agreement as needed. The Repatriation Coordinator will also offer to assist the Tribe(s) to facilitate the physical transfer. This may include helping the Tribe(s) find reburial land or apply for a Repatriation grant.

# Repatriation Process – Appeals Phase

An appeals process is available for Tribes. See Policy section V.I.2.

## Appendix B



<b>Sample Campus Repatriation Plan Timeline</b>	
<b>Benchmark</b>	<b>Date (All Dates are Samples)</b>
Select Campus Committee Members	10/31/2020
Contact Culturally Affiliated / State Culturally Affiliated Tribes	10/01/2020
Contact Controlling Agencies	11/01/2020
Develop Budget Estimate	11/01/2020
Begin Invitations for Consultation and Reevaluations of CUI	Within 1 month of NAHC posting of List of California Indian Tribes
Review Progress in accordance with Repatriation Implementation Plan	4/01/2022
Repatriation completed of 10% of campus NAGPRA/CalNAGPRA-eligible Collection	Target Date in Accordance with campus Repatriation Implementation Plan
Repatriation completed of 20% of campus NAGPRA/CalNAGPRA-eligible Collection	Target Date in Accordance with campus Repatriation Implementation Plan
Repatriation completed of 30% of campus NAGPRA/CalNAGPRA-eligible Collection	Target Date in Accordance with campus Repatriation Implementation Plan
Repatriation completed of 40% of campus NAGPRA/CalNAGPRA-eligible Collection	Target Date in Accordance with campus Repatriation Implementation Plan
Repatriation completed of 50% of campus NAGPRA/CalNAGPRA-eligible Collection	Target Date in Accordance with campus Repatriation Implementation Plan

## Summary of Campus Repatriation Coordinator Reporting Duties

What	To Whom	Campus Committee	Systemwide Committee	Campus Community	When
Overview of all materials found or reports received of previously unreported Native American or Native Hawaiian Human Remains or Cultural Items (See Section V.E.3)		X	X		By September 30, 2021 and annually thereafter
Agreements for acceptance of short-term care and loan of Human Remains from entities who are not Native American Tribes or Native Hawaiian Organizations (See Section V.K)		X	X		Within two weeks of execution and acceptance of items
Any acceptance of new Native American or Native Hawaiian Human Remains (See Section V.F)		X	X		Within two weeks of acceptance
Agreements for the loan of Human Remains to External Entities or Transfers within UC (See Section V.L)		X	X		Within two weeks of execution of agreement
Summary of all access agreements executed for Research, Instruction, or Other Purpose (See Section V.J.4)		X	X		By September 30 of each calendar year
Copy of the campus Repatriation Implementation Plan (See Section VI)			X		5 days from completion of plan (which is due no later than 6 months after constitution of Campus Committee & no later than Oct 21, 2021).
Summary of Requests that have been received at the campus, but have not yet been formally elevated to the Campus Committee for review (See Section V.A.2.b.2)		X			Annually