

UNIVERSITY OF CALIFORNIA POLICY AND PROCEDURES ON CURATION AND REPATRIATION OF HUMAN REMAINS AND CULTURAL ITEMS

I. GENERAL PRINCIPLES

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

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

The general principles of this policy, as stated above, apply to all human remains in the University's collections. The remainder of this policy pertains to Native American and Native Hawaiian human remains and "cultural items." "Cultural items," as used throughout this policy, refers to associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony, as defined by the federal Native American Graves Protection and Repatriation Act ("NAGPRA;" P.L. 101-601). This policy is intended to ensure both adherence to the above statement of principles and compliance with NAGPRA.

II. POLICY REGARDING NATIVE AMERICAN HUMAN REMAINS AND CULTURAL ITEMS

It is the policy of the University of California to respect Native American and Native Hawaiian concerns regarding the treatment and disposition of Native American and Native Hawaiian remains and cultural items that are part of the University's collections, and to repatriate such remains and cultural items to lineal descendants (as defined by NAGPRA), Indian tribes, and Native Hawaiian organizations under specified conditions, in accordance with federal and state law.

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

NAGPRA does not give standing to non-federally-recognized groups to seek repatriation of human remains or cultural items. However, in the event that the State of California develops a process for according official state recognition for repatriation purposes to Native American tribes, bands, nations, rancherias or other entities that is consistent with state and federal law including the California and United

States constitutions, the University, in addition to repatriating to federally-recognized tribes under specified conditions, will also repatriate to such state-recognized tribes under specified conditions and to the extent permissible under law.

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

III. UNIVERSITY ADVISORY GROUP ON CULTURAL AFFILIATION AND REPATRIATION OF HUMAN REMAINS AND CULTURAL ITEMS

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

B. Responsibilities. The Advisory Group shall:

1. Review and advise the President or designee regarding campus implementation of and compliance with this policy and related applicable law and regulations;
2. Review campus decisions regarding potential cultural affiliation and repatriation of Native American or Native Hawaiian remains and cultural items, and report its findings and recommendations to the President or designee;
3. Make recommendations to the President or designee for revisions to this policy and any associated guidelines; and
4. Assist in the resolution of disputes that may arise in connection with this policy.

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

The following procedures and criteria shall be utilized to implement this policy:

IV. REVIEW OF COLLECTIONS: INVENTORIES AND SUMMARIES

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

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

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

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

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

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

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

C. Updates to inventories and summaries.

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

V. DETERMINATION OF CULTURAL AFFILIATION

To the extent possible, campus inventories and summaries shall identify the cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, as defined by federal law. "Cultural affiliation" refers to a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present-day Native Hawaiian organization or federally-recognized Indian tribe and an identifiable earlier group.

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

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

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

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

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

VI. REQUESTS FOR REPATRIATION

A. General

Campus review of repatriation requests shall reflect consideration of academic expertise and Native American or Native Hawaiian viewpoints, and shall provide for consultation with requesting

individuals or tribes, as required by NAGPRA.

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

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

Upon the written request of a lineal descendant, Indian tribe or Native Hawaiian organization, the University will expeditiously repatriate human remains, funerary objects, sacred objects, and objects of cultural patrimony if lineal descent has been established or if cultural affiliation between the requesting tribe or organization and the requested remains or cultural items has been established in accordance with federal law and if all other requirements for repatriation of such human remains or cultural items as set forth in federal law are met.

C. Requests from California-recognized Indian tribes.

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

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

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

In addition, in the case of human remains that meet the above criteria and that have been (or should

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

VII. Liaisons, Conflicts, and Mediation

A. Liaison.

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

B. Resolution of Disputed Claims for Cultural Affiliation and Repatriation.

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

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

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

C. Multiple Claims for Repatriation.

Where there are multiple requests for repatriation, and where the University is unable to determine which requesting party is the most appropriate claimant, the University shall retain and preserve the human remains or cultural items until the requesting parties reach agreement on proper disposition or until the dispute is resolved by mediation, a court of competent jurisdiction, or other appropriate means. The parties may choose mediation by a third party, which may be the NAGPRA Review Committee established by federal law or other appropriate entity mutually agreeable to the disputants.

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

VIII. TEACHING AND RESEARCH USE OF REMAINS AND CULTURAL ITEMS IN UNIVERSITY COLLECTIONS

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

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

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

Questions concerning the implementation of any part of this policy may be directed to the Vice Provost for Research in the Office of the President.