

Office of the President

TO THE MEMBERS OF THE ACADEMIC AND STUDENT AFFAIRS COMMITTEE:

DISCUSSION ITEM

For Meeting of September 26, 2018

POLICIES AND PRACTICES REGARDING TREATMENT OF NATIVE AMERICAN REMAINS AND ARTIFACTS

EXECUTIVE SUMMARY

Six campuses currently house Native American human remains and cultural items: Berkeley, Davis, UCLA, Riverside, Santa Barbara, and Santa Cruz. The Berkeley campus houses one of the largest collections in the United States.

This item provides information about the University’s management and treatment of human remains and cultural items subject to the federal and California Native American Graves Protection and Repatriation Acts (NAGPRA), including the legal landscape, historical tensions surrounding this issue, and the University’s plans to strengthen NAGPRA activities going forward.

BACKGROUND

Legal Landscape

In 1990, the federal government enacted the Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA requires museums and federal agencies to transfer Native American human remains and cultural items—funerary objects, sacred objects, or objects of cultural patrimony—to lineal descendants and culturally-affiliated, federally-recognized Indian tribes and Native Hawaiian organizations.

In 1991, the University of California issued a systemwide Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items (hereinafter referred to as the “UC Cultural Repatriation Policy”), which was last substantively revised in 2001. This policy addresses the treatment and disposition of human remains and cultural items that are in the University’s custody, including the repatriation of these items under applicable law, including NAGPRA. The UC Cultural Repatriation Policy states that it is the policy of the University to respect Native American and Native Hawaiian concerns regarding the treatment and disposition of Native American remains and cultural items. It explicitly requires campuses to consult with tribal authorities both in preparing inventories and in responding to repatriation requests. The UC Cultural Repatriation Policy also establishes a systemwide Advisory Group to: 1) review and

advise the President or designee regarding campus implementation of and compliance with the 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 the Policy and any associated guidelines; and 4) assist in the resolution of disputes that may arise in connection with this policy. Campuses may further establish their own local NAGPRA advisory committees. The three campuses with museums housing NAGPRA-covered human remains and cultural items have established such committees (Berkeley, Davis, and UCLA).

In 2001, California passed the California Native American Graves Protection and Repatriation Act (CalNAGPRA) to facilitate repatriation to California Indian tribes, in part because at the time the federal NAGPRA repatriation requirements applied only to remains and cultural items requested by culturally affiliated, federally recognized tribes and the regulations required museums to retain possession of culturally unidentifiable remains (including remains associated with non-federally-recognized tribes) pending promulgation of regulations for that purpose unless legally required to do otherwise or recommended to do otherwise by the Secretary of the Interior.¹ CalNAGPRA requires that the State develop processes for according official State recognition to Native American tribes and issue a list of such state-recognized tribes for the purposes of repatriation. While the State has not yet issued guidelines for this process, the UC Cultural Repatriation Policy includes a provision specifying that the University will repatriate to State-recognized tribes, which is consistent with CalNAGPRA.

Current Status of NAGPRA Activities

Each campus with NAGPRA-covered collections has completed inventories and summaries of human remains and cultural items as required by federal NAGPRA and has provided copies to relevant tribes as well as to federal officials for publication in the Federal Register, as required by law. Campus overviews of the current status of their NAGPRA activities are attached to this item.

Historical Tensions

Human remains and associated materials have come to UC campuses by a wide variety of means, including archeological digs, unintentional discoveries, transfers from county coroner's offices, and donations. Regardless of the means, the difficult, fraught, and often tragic context in which human remains and objects were removed from their burial locations, often without the consent of descendent communities, is well-documented and acknowledged, and this history overshadows tensions about university collections that include Native American remains and associated cultural items.

¹ Since then, federal NAGPRA regulations were promulgated that require museums to offer to transfer culturally unidentifiable remains to federally-recognized tribes, and that specify that museums may make dispositions of culturally unidentifiable remains to non-federally recognized tribes when there is no request from a federally-recognized tribe, upon recommendation of the Secretary of the Department of Interior.

In addition, compliance with NAGPRA involves following a number of steps prescribed both under the law and under University policy, including consultation with tribes, evaluation of multiple lines of evidence, making often complex determinations, getting appropriate review, and publication of Notices in the Federal Register. These steps can be labor-intensive and time-consuming. Moreover consultation is an iterative process. All of this is difficult to work through and can contribute to perceptions that the University stalls or unfairly or unlawfully denies repatriation.

The University has published Notices of Inventory Completion in the Federal Register, allowing for the repatriation or transfer of nearly 6,000 Native American human remains and more than 200,000 associated funerary objects, pending claims from the relevant tribes, and each campus continues to update its NAGPRA summaries and inventories as needed and as required by law. In completing inventories, the University has consulted and continues to consult with Native American tribes as required by NAGPRA and the UC Cultural Repatriation Policy. Campuses report that they are regularly engaged in communications with Native American tribes, including through written and telephonic communications, visits, and consultations. For whatever reason, though, many of the culturally affiliated Native American human remains have not been claimed by the tribes and continue to be housed at UC campuses until such requests for repatriation are made. For example, at UC Berkeley, 45 percent of the human remains published as culturally-affiliated in Berkeley's Federal Register Notices remain in the Hearst Museum's care, to be transferred at the affiliated tribes' discretion, at such time as their own cultural, spiritual, and logistical concerns allow.

Another area of occasional tension arises when the University and tribes reach different conclusions about whether particular items meet the criteria for coverage under NAGPRA or about how to interpret and appropriately weight different lines of evidence in making determinations under applicable laws. Both the law and the available evidence are not always straightforward to interpret. Disagreements arise that can cause tension.

There is also a perception that the UC Cultural Repatriation Policy gives undue deference to the perceived educational and research potential that human remains and cultural items have for academia and science. While the Policy does recognize this potential, it also recognizes that individuals and communities have cultural and religious concerns that *must* be considered in determining the treatment and disposition of remains in its collections. The importance of this balance was expressed by the late U.S. Senator Daniel Inouye, lead author of the NAGPRA legislation: "NAGPRA represents an effort to strike a balance between the interest in scientific examination of skeletal remains and the recognition that Native Americans, like people from every culture around the world, have a religious and spiritual reverence for the remains of their ancestors."² It is important to note that the potential educational or research value should not be, and is not, used as a factor by the University in determining cultural affiliation or in determining whether human remains or cultural items are subject to repatriation. In addition, the UC Cultural Repatriation Policy prohibits research or teaching use of human remains and cultural items in

² Daniel K. Inouye, *Repatriation: Forging New Relationships*, 24 ARIZ. ST. L.J. 1 (1992). Senator Inouye was the Senate sponsor of NAGPRA.

cases where a repatriation request has been received and repatriation is pending, unless permitted by the tribal authority that has been determined to have jurisdiction over the remains and items, subject to exceptions provided by federal law.

Disagreements have also surfaced over the handling and storage of remains and cultural items. The process of identifying human remains and cultural items and establishing affiliations involves careful examination and documentation of collections, in-depth research, and consultation with multiple potentially affiliated tribes. The process is time consuming for all parties. Normally, the remains need to be handled to some degree in order to properly identify and separate human bones from fauna; this process can be very disturbing to Native Americans and others. Even with consultation, there is not always agreement on the process, and, at times, some tribes would prefer that the remains not be handled at all.

It is important to note that there are good examples of UC relationships with Native American tribes having gone well. At UC Santa Barbara, for example, the campus entered into an agreement with the Santa Ynez Band of Chumash Indians to establish an ossuary to securely and respectfully hold ancestral remains and associated burial objects. This agreement allows the Band to conduct religious rites and ceremonies to honor their ancestors, and, with prior tribal approval, it also allows students and scholars to study the Chumash remains and cultural items to gain a deeper understanding of the history and accomplishments of the Chumash people. Similarly in 2016, UCLA assisted with the burial of 2,000 remains associated with the Gabrielino-Tongva Tribe, by offering to allow the tribe to bury the remains on UCLA property.

Efforts to Strengthen the University's NAGPRA Activities

In 2017, UC Berkeley received feedback from a forum it convened consisting of individuals from many tribal communities around the region and members of the Berkeley academic community. As a result, the campus implemented various changes to improve relations with tribes and Native American individuals on campus, including revamping its NAGPRA committee to: 1) reflect a wider range of academic perspectives and more diverse cultural and professional backgrounds; 2) stagger terms to routinely allow for fresh perspectives as well as more predictable turnover; and 3) disallow research unit directors with a direct stake in decisions from serving as the campus NAGPRA official (i.e., the person who makes the final recommendations and determinations that go forward to the UC Office of the President for review). In addition, in order to consider suggested policy and procedural changes and make recommendations, the campus also appointed a Native American Museum and Library Stakeholder Outreach Working Group, comprised of a variety of stakeholders, including faculty, staff, and members of Native American descendant communities. The UC Berkeley campus Hearst Museum also now allows tribes to request certain treatment of physical objects and human remains in accordance with tribal traditions; the Museum has consistently been able to comply with these requests.

At UC Davis, the campus administration initiated an active dialogue about its NAGPRA compliance efforts in 2010 in response to concerns raised by local tribal communities and students. In 2011, a campus NAGPRA Advisory Committee was appointed to provide

recommendations on campus policies and procedures, and to address overall NAGPRA compliance efforts, with an emphasis on creating a proactive consultation process. This committee includes campus representatives from a number of disciplines as well as representation from two local tribes. In 2013, the Advisory Committee recommended creating a centralized position solely dedicated to NAGPRA. This position was filled in 2014 and is autonomous from any of the campus museums. The campus now has three full-time NAGPRA-dedicated staff members charged with developing a proactive compliance program. In addition, based on the geographic location of remains housed at UC Davis, the campus invited fifteen tribes to consult on its campus NAGPRA policy. Four tribes provided feedback, most of which was directly addressed or incorporated into the campus NAGPRA policy finalized in July 2017.

Notwithstanding these efforts, the University recognizes and seeks to address the continuing concerns expressed by the Native American community. At the President's direction, the University is assembling a workgroup to conduct a substantive review and revision of the UC Cultural Repatriation Policy, committee structures, and implementation practices. (See attached memo to Provost Brown dated August 24, 2018.) The workgroup will include representatives from the existing University Advisory Group on Cultural Affiliation and Repatriation of Human Remains and Cultural Items, the Academic Senate, and Native American tribes. A plan for the workgroup's review and revision of the UC Cultural Repatriation Policy is due to the President by September 28, 2018.

Key to Acronyms

Cal NAGPRA	California Native American Graves Protection and Repatriation Act
NAGPRA	Native American Graves Protection and Repatriation Act

Attachments:

[Attachment 1: Campus Overviews on NAGPRA Activities](#)

[Attachment 2: President's letter to Provost Brown](#)