



OFFICE OF THE PROVOST AND
EXECUTIVE VICE PRESIDENT FOR ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT
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Oakland, California 94607-5200

April 24, 2020

CHANCELLORS
ACADEMIC COUNCIL CHAIR BHAVNANI
LABORATORY DIRECTOR WITHERELL
ANR VICE PRESIDENT HUMISTON

Re: Systemwide Review of Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Colleagues:

Enclosed for systemwide review are proposed revisions to Presidential Policy on Native American Cultural Affiliation and Repatriation (“Policy Version 3”).

Background Context

On August 24, 2018, President Napolitano requested Provost Brown to convene a workgroup to substantively revise the existing Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items (“Current Policy”). The policy pertains to the treatment and repatriation of Native American and Native Hawaiian human remains and cultural items under the University’s stewardship and the University’s compliance with the federal Native American Graves Protection and Repatriation Act (“NAGPRA”), its accompanying regulations, and the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”). This effort was in response to AB2836, a California bill (enacted in 2018) that required the University to revise its Current Policy. The President emphasized that the revised policy should be consistent not only with the law but with the values and principles of the University, including the fundamental value of repatriation of Native American and Native Hawaiian human remains and cultural items.

Provost Brown established the Cultural Affiliation and Repatriation Policy Advisory Workgroup (“Workgroup”) in early 2019. The Workgroup is comprised of four members nominated by the UC Academic Senate, and four members nominated by the President’s Native American Advisory Council (PNAAC), a body also established by President Napolitano to advise UC on a broad range of issues pertaining to Native Americans and Native Hawaiians at the university. The Workgroup includes members of federally recognized and non-federally recognized tribes from different regions of California. The members from the Academic Senate represent departments such as law, history, and ethnic studies, all with expertise in Native American issues.

After deliberations with the Workgroup, in August 2019, UC submitted a draft first version of the revised policy (“Policy Version 1”) for 90-day systemwide review. Policy Version 1 was also distributed to stakeholders across California for comment, including California Native American tribes on the Native American Heritage Commission (NAHC) contact list and the NAHC itself. UC received extensive feedback from the Academic Senate, Native American tribes, and the NAHC (the collection of comments and UC’s responses are available on the Policy Update webpage, <http://ucal.us/nagpra>). After consideration of those comments with the Workgroup, UC drafted a second version of the revised policy (“Policy Version 2”).

Among the comments received, Native American tribes requested, and the Workgroup concurred, that the UC should consult further with California Native American tribes. In response, UC invited California Native American tribes to attend four public work sessions on UC campuses (UC Berkeley, UC Riverside, UC Santa Barbara, and UC Davis) in January and February 2020 (recordings of the work sessions are available on our Policy Revision webpage, <http://ucal.us/nagpra>). At the work sessions, representatives from UC engaged in direct dialogue with members of the California Native American community. In addition to the four public work sessions, UC representatives met with tribes one-on-one as requested to hear individual concerns. After the completion of the four work sessions, UC compiled the comments received from those conversations along with written comments sent by tribes (the collection of these comments and UC’s response will be posted on the Policy Revision webpage in a couple of weeks).

Issues addressed by UC

UC deliberated with the Workgroup to discuss the major concerns heard to date and how to address these in Policy Version 3, which is now being considered for systemwide review. Below is a list of key changes made in response to comments heard during the public work sessions, one-on-one meetings, and written communications sent by tribes and the NAHC. Many concerns were addressed in previous drafts (Policy Version 1 and/or 2), but were either enhanced in Policy Version 3 as noted below in italics, or are captured below because of their significance and shift from the Current Policy.

1. The draft policy emphasizes repatriation of Native American and Native Hawaiian human remains as a fundamental objective and value of the University and creates a list of principles that undergirds the Policy. *Policy Version 3 strengthens these principles by adding an acknowledgment of UC’s role in the acquisition of Human Remains and Cultural Items, the injustices perpetrated on indigenous peoples, and Repatriation as necessary for healing and reparation.* [§ III.B]
2. As required by AB 2836, the draft policy requires reconstitution of the systemwide and campus committees to include equal Native American representation. *In response to criticism about the length of the policy and unnecessary reiteration of the law, Policy Version 3 removes reiterations of member qualifications and committee composition requirements specified in CalNAGPRA. In addition, the Committee Procedures sections are enhanced to specify quorum and documentation requirements, to provide tribes an invitation to attend Committee meetings where*

their request will be discussed, and to better address conflicts of interests (see below). The Campus Committee section also permits the Committee to review the handling of all requests received by the campus that have not yet been elevated for Committee review/recommendation to ensure transparency and accountability. [§§ V.A and V.B]

3. The draft policy shifts final approvals of repatriation to the campus from UCOP to reduce delays in repatriation; the role of the systemwide committee and UCOP will be to provide oversight, consistency and to hear appeals of campus determinations. (See also appeals and complaints below). [§§ V.A.1-2, Appendices A, A-1, and B, and §§ V.H, and V.I]
4. *Policy Version 3 provides greater clarity about what constitutes a potential conflict of interest and how to manage it, including providing tribes the opportunity to identify potential conflicts. [§§ V.A.1 and V.A.2]*
5. *In response to NAHC and tribes' requests and in order to promote transparency, collaboration, and consistency, Policy Version 3 provides a detailed description of the repatriation process via a flowchart and flowchart narrative. The flowcharts and policy text also contain greater clarity on which UC official or committee is responsible for which actions, and more timelines. [Appendices A and A-1, and throughout policy.]*
6. The draft policy requires campuses to appoint a repatriation coordinator to work with and assist tribes to facilitate repatriation. *Policy Version 3 adds a description of the qualifications of the Repatriation Coordinator. [§IV.B]*
7. The draft policy explicitly incorporates the process for disposition of culturally unidentifiable human remains and cultural items to either federally recognized tribes or non-federally recognized tribes (including California Indian Tribes) via NAGPRA (43 C.F.R. §10.11) and/or CalNAGPRA (Ca H&SC §§8010-30). (See also repatriation implementation plans below.) [§§ V.D.3-6 and VI, and Appendices A and A-1]
8. The draft policy requires campuses create repatriation implementation plans, including the following elements: invitations for consultation and proactive reevaluations of all previous determinations of culturally unidentifiable human remains or associated funerary objects; outreach to culturally affiliated tribes; outreach to controlling agencies to prompt and encourage their repatriation efforts; budgets; and timelines. *Policy Version 3 provides more details for these Plans. [§ V.I]*
9. The draft policy prohibits use of human remains *and cultural items* for research (including destructive analysis) without explicit tribal approval. *Policy Version 3 adds cultural items to the prohibition, simplifies the text, provides examples of destructive analysis, and explicitly prohibits exhibition of human remains (as defined by NAGPRA/CalNAGPRA) under any circumstance. [§V.J.4]*

10. The draft policy provides a means for tribes to submit complaints about any processes or to appeal any campus determination. *Policy Version 3 enhances the Appeals section to better explain the options available to tribes, and provides an appeals flowchart.* [§ V.I.1-3 and Appendix B]
11. *In order to promote best practices, consistency, respectful treatment and successful relationship building, Policy Version 3 adds a more detailed description of the consultation process.* [§V.B.1.]
12. The draft policy addresses the need to maintain confidentiality of sensitive tribal information, including places that have traditional tribal cultural significance (such as locations of Native American graves, cemeteries, and sacred places). *Policy Version 3 provides more guidance in the consultation section and flowcharts, such as providing tribes opportunities to identify confidential information and review draft notices before being published in the Federal Register.* [§§ II, V.B.2, and Appendices A and A-1]
13. *Policy Version 3 improves the policy structure, deletes sections repeating or paraphrasing the law unless to stress a point or to provide context for policy requirements, simplifies the language used to the extent possible, and provides more clarity on which UC official or committee is responsible for certain actions and timelines for those required actions.*
14. *Policy Version 3 permits tribes to submit a single claim requesting inter-campus coordination.* [Appendices A and A-1]
15. The draft policy contains requirements for respectful treatment of human remains and cultural items, including management and preservation standards, and access by lineal descendants and tribes, and consultation to determine appropriate care. *Policy Version 3 additionally requires that Human Remains and Cultural Items be stored in dedicated spaces not accessed by the public and limits handling of human remains. It also prohibits removal of items from UC premises, except when specific approval is provided (by UC and affected tribes).* [§§ V.J.1-3]
16. *Policy Version 3 identifies opportunities for tribes to preview the documentation on which the Committees will form their recommendations, to add to it, and to present their cases directly to the committees, either in person or by writing.* [§V.B.2 and Appendices A and A-1]
17. *In response to tribal concerns that a lack of certain lines of evidence was used as reason to deny repatriation, and that evidence was used was often biased, Policy Version 3 clearly states that all categories of evidence are not required to establish cultural affiliation. In addition, a statement has been added directing committees to evaluate critically all presented evidence (including academic evidence), taking into*

account potential bias, the circumstances in which the evidence was produced, and the credibility of the evidence in light of other sources of evidence. [§V.C.2.b]

18. *Policy Version 3 provides greater detail on how campuses are to assess whether they have previously unreported holdings, what needs to be reported to the campus and systemwide committees, and provides the whistleblower UC Hotline to report noncompliance. [§V.E.1-3 and Appendix D]*

19. *Policy Version 3 adds a section on loans from UC to external entities, and the conditions under which this can occur. [§V.K.2]*

Systemwide Review

Systemwide review is a public review distributed to the Chancellors, the Director of the Lawrence Berkeley National Laboratory, the Chair of the Academic Council, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, especially affected employees, about policy proposals. Systemwide review also includes a mandatory, 90-day full Senate review, however, due to the time sensitive nature of this policy, the Senate has agreed to a 60-day review period.

Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about these proposals. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

We would appreciate receiving your comments no later than **June 24, 2020**. Please submit your comments to RPAC@ucop.edu. If you have any questions, please contact Lourdes DeMattos at Lourdes.DeMattos@ucop.edu or (510) 987-9850.

Sincerely,



Michael T. Brown, Ph.D.
Provost and
Executive Vice President for Academic Affairs

Enclosures:

- 1) Presidential Policy Native American Cultural Affiliation and Repatriation Policy (clean copy)
- 2) Presidential Policy Native American Cultural Affiliation and Repatriation Policy (redline copy)
- 3) Model Communication

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cc: President Napolitano
Executive Vice Chancellors/Provosts
Executive Vice President and Chief Operating Officer Nava
Senior Vice President Bustamante
Interim Vice President Lloyd
Vice President Maldonado
Vice Provost Carlson
Vice Provost and Interim Vice President Gullatt
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Executive Director Baxter
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