



2. 12 Policy on Repatriation of Cultural Heritage Materials

Introduction

California is home to 109 federally-recognized California Native American Tribes, in addition to a number of Tribes seeking federal recognition. San Diego County alone is home to 17 federally recognized Tribal Governments, and one non-federally recognized Tribal Government. According to the 2020 Census, there were a total of 1.4 million American Indian and Alaska Native individuals in the State.¹ California has always been home to a diverse Native American population, as demonstrated by the second largest number of federally-recognized Tribes in any state.

The Native American Graves Protection and Repatriation Act (NAGPRA) was passed on November 16, 1990, with the specific intent to repatriate Native American human remains, funerary objects (associated and unassociated), sacred objects, and objects of cultural patrimony (collectively referred to as “cultural items” in applicable law)² under the control of federal agencies and institutions receiving federal funds to their affiliated tribal communities. The statute and its implementing regulations outline the rights and responsibilities of lineal descendants, Indian Tribes, Native Hawaiian organizations, federal agencies, and museums under the Act, and provide procedures for complying with NAGPRA. In addition, in 2001, the State of California adopted a parallel statute (referred to as CalNAGPRA) to ensure all state agencies and institutions receiving state funds comply with the federal law. California law was further amended in 2018 and specifically required the University of California to update its NAGPRA policies and procedures to guarantee compliance with both the federal and state statutes. Additional amendments were made to CalNAGPRA in 2020, through AB 275.

The University of San Diego (“USD”) receives both federal and state funding, has collections with Native American human remains and “cultural items,” and must comply

¹ This figure includes both individuals who identify as “American Indian and Alaska Native alone” and those who identify as “American Indian and Alaska Native” within categories of two or more races: <https://data.census.gov/cedsci/profile?g=0400000US06>.

² The federal Native American Graves Protection and Repatriation Act can be found at [25 U.S.C. §§ 3001-13](#) and its accompanying regulations at [43 C.F.R. §§ 10.1-.17](#). The California Native American Graves Protection and Repatriation Act can be found at [California Health & Safety Code \(CHSC\) §§ 8010-30](#).

with the requirements of both NAGPRA and CalNAGPRA. This Policy supersedes all prior policies and procedures adopted by the University with respect to the treatment, disposition, and repatriation of human remains and “cultural items”³ subject to state and federal NAGPRA laws.

USD recognizes that the repatriation of human remains and “cultural items” is a fundamental human right and an exercise of tribal sovereignty for all California Native American Tribal Governments. USD further recognizes that California Native American Tribes have expertise with respect to their tribal history and practices. USD shall give deference to Traditional Tribal Knowledge when making determinations regarding cultural affiliation, as well as in determining what items may be human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony.

Through this Policy, USD intends to comply with both the mandate and spirit of NAGPRA and CalNAGPRA and commits to the timely and appropriate repatriation of ancestral remains and “cultural items” in possession of all campuses, including museums and collection-holding units, under USD’s control. It is USD’s express policy to receive, review, and decide repatriation claims in a respectful and expeditious manner in consultation with California Native American Tribes, with the ultimate goal of repatriating all Native American human remains and “cultural items” from its collections university wide.

Purpose

The purpose of this policy is threefold: 1) to achieve timely repatriation of Native American and Native Hawaiian ancestral human remains and cultural items to Tribes, Native Hawaiian organizations, and lineal descendants, while building respectful and lasting relationships with Tribes in the region and beyond; 2) to prevent the use or acquisition of NAGPRA/CalNAGPRA-eligible materials; and 3) to educate the university community on NAGPRA and CalNAGPRA. USD is committed to fully implementing the spirit as well as the legal requirements of both the federal Native American Graves Protection and Repatriation Act (NAGPRA), and its accompanying regulations, and the California Native American Graves Protection and Repatriation Act (CalNAGPRA), which were enacted to acknowledge the fundamental human right of Native Americans and Native Hawaiians to their ancestral human remains and cultural items.

³ This Policy uses terms as defined in both the federal and state NAGPRA statutes. The University recognizes that Tribes may find these terms objectionable, and the University intends no disrespect from the necessary use of the legal language as defined in federal and state law. All definitions in the federal and state NAGPRA statutes are incorporated herein by reference. While the term “Tribe(s)” is used throughout this policy, the University acknowledges and respects the preferences of different communities to self-identify using terms such as “Nation” and “Band,” among others.

Definitions

1. “Traditional Tribal Knowledge” is defined as knowledge systems embedded and often safeguarded in the traditional culture of California Native American Tribes, including, but not limited to, knowledge about ancestral territory, cultural affiliation, traditional ceremonial practices, material culture, lifeways, climate, and subsistence. (Public Resources Code §8012(p)).
2. “Consultation” is defined as the meaningful and prompt process of investigating, reviewing, and reflecting carefully on the views of Indian Tribes and lineal descendants, in a manner that is cognizant of all parties’ cultural values, and with the goal of reaching agreement.
3. “Covered parties” are all USD students and employees, including faculty, staff, and administrators, and other parties working within USD’s purview.
4. References to USD’s “purview” include being: a) located on USD’s property; b) in USD’s possession, control, or custody; c) part of any USD-owned collection on loan to another institution; and d) within the jurisdiction of USD’s academic programs or other non-academic operations.
5. “Deaccessioning,” the act of permanently removing an accessioned item from a permanent USD collection, may occur through the repatriation or disposition process as described in NAGPRA or CalNAGPRA or through a voluntary transfer that is not required under NAGPRA or CalNAGPRA.

Guiding Principles

1. The University of San Diego acknowledges that the land on which the university community gathers is the traditional and unceded territory of the Kumeyaay Nation. The University wants to pay respect to the citizens of the Kumeyaay Nation, both past and present, and their continuing relationship to their ancestral lands.
2. Repatriation or appropriate disposition of all NAGPRA/CalNAGPRA-eligible items is a fundamental objective grounded in the values of USD. This must be accomplished as expeditiously and respectfully as possible, with consideration of and deference to Tribal Traditional Knowledge with respect to culturally appropriate treatment.
3. This policy is informed by the educational mission and core values of USD (Policy 1.2), the University’s commitment to serving the community, working for social justice, and promoting ethical and compassionate leadership, as well as the principles of Catholic social teaching such as the life and dignity of the human person, solidarity in the pursuit of justice and peace, and the call to care for people and the earth. These values align with efforts to respect tribal sovereignty, support tribal self-

determination, and build long-term collaborative and equitable relationships with Native American Tribes and Native Hawaiian organizations.

4. This policy should be understood in relation to the broader University imperative to teach and learn about the histories, cultures, and ways of knowing of Tribes in San Diego and beyond. As an independent Catholic university, we acknowledge and deeply regret the Church's involvement in the colonization of Native Americans and Native Hawaiians. Following the aforementioned principles of Catholic social teaching, we believe it is imperative to examine and correct the historical legacy of colonialism, genocide, slavery, and oppression, and actively resist the violence of continuing colonial practices.
5. A priority for USD is to proactively consult with Tribes, in keeping with the University's mission of teaching, research, and public service. The University is committed to working with Native American Tribes and Native Hawaiian organizations with respect to determinations of cultural affiliation and repatriation of NAGPRA/CalNAGPRA-eligible items in the University's purview.
6. USD recognizes that NAGPRA/CalNAGPRA-eligible items include the ancestors of many present-day Native Americans and Native Hawaiians and their culture and heritage, and the University is committed to ethical and respectful care and culturally appropriate treatment of such items that are in its purview.
7. This policy refers specifically to the legal requirements of NAGPRA and CalNAGPRA, but the University is committed to repatriation efforts beyond items under these statutes. USD recognizes and commits to implementing the rights of Indigenous peoples articulated in Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as follows: providing access to and repatriation of ancestral human remains and cultural items "through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned."⁴

Directives

1. Compliance

Compliance with NAGPRA and CalNAGPRA is a university-wide responsibility and requirement. Reports of noncompliance must be submitted immediately to the Provost for a prompt investigation and corrective action that may result in sanctions or other disciplinary measures, in alignment with other University policies, depending on the infraction. Investigations shall be carried out within 60 days.

2. Review and amendment

⁴ [United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Article 12](#), 1, U.N. Doc. A/RES/61/295 (Sept. 13, 2007)

This policy may be amended as needed to provide additional details on procedural matters or due to legal changes that require modifications. The policy shall be reviewed annually by the Repatriation Committee. Any proposed amendments to the policy shall be reviewed by the Repatriation Committee for feedback prior to being submitted for approval to the University Senate and the President. The Repatriation Committee members shall be invited to attend any University Senate meetings in which amendments to this policy will be reviewed. Prior to instituting changes to the policy, USD will provide an advance copy of proposed changes to the California Native American Heritage Commission (NAHC) for their comment. If the NAHC or the USD Repatriation Committee recommends consultation with California Indian Tribes, USD will notify tribes and post proposed changes on a USD public-facing website for a minimum of forty-five (45) days so that Tribes have an opportunity to comment. In addition, if any mandated changes are introduced into the policy to comply with state or federal laws, notification will be made to Tribes.

3. Repatriation Coordinator

- a. The Provost designates the Repatriation Coordinator. The Coordinator may be an administrator or a tenured faculty member but may not be the USD Tribal Liaison. It is preferable that this be a fully dedicated administrative position. The Coordinator must have an in-depth understanding of NAGPRA, CalNAGPRA, and consultation practices and processes, as well as the ability to build and maintain positive working relationships with Tribes. For these same reasons, it is important that the person to assume the role can make a multiyear commitment—preferably three or more years minimum—to the position.
- b. The Coordinator reports to the Provost.
- c. The Provost provides the Coordinator with strong support in terms of a budget line, reassigned time, and other needs such that repatriation efforts can be carried out in a timely manner.
- d. The Repatriation Coordinator is responsible for developing, implementing, and updating USD's NAGPRA/CalNAGPRA procedures in accordance with all relevant laws and regulations and the guiding principles and directives in this policy, and in consultation with the Repatriation Committee.
- e. Claims involving repatriation and other appropriate disposition, and all steps in these processes, are managed by the Repatriation Coordinator.
- f. The Repatriation Coordinator shall engage, as necessary, the assistance of appropriate subject matter experts, identified in consultation with potentially affiliated Tribe(s).
- g. USD will have a designated budget to accommodate tribal consultations and cover repatriation expenses (packing, wrapping, and transfer of cultural items and ancestors) as well as potential reburials. The University will also help to provide funding to Tribes who have not received a grant for repatriation.
- h. All successful consultations involve relationship building and respect. The Repatriation Coordinator shall seek out and foster these relationships with the designated Tribal Representatives, such as tribal historic preservation officers

(THPOs), cultural directors, elders councils, preservation or culture committees, and/or other representatives.

4. Repatriation Committee

- a. Functions, responsibilities, and reports. The committee oversees the implementation of USD's NAGPRA/CalNAGPRA policy and procedures. The committee submits an annual report to the Provost and University Senate at least two weeks prior to the last regularly scheduled meeting of the Senate in the spring semester. This report shall provide a summary of the University's repatriation and disposition activities and committee decisions and actions. Additional reports may be submitted as needed. The Repatriation Committee may form ad hoc committees as needed to fulfill its functions and responsibilities.
- b. Membership. The committee shall have ten members, as follows:
 - 1) The Repatriation Coordinator is an ex-officio non-voting member.
 - 2) The USD Tribal Liaison is an ex-officio voting member.
 - 3) The Director of University Galleries is an ex-officio voting member.
 - 4) Three faculty voting members, preferably with knowledge of or whose area of research is related to Native American communities, from at least two different academic units. One alternate shall also be appointed.
 - 5) A student voting representative, preferably from the American Indian Student Organization (AISO).
 - 6) The committee will have three voting tribal members: a) one Kumeyaay representative; b) one Luiseño representative; and c) one representative from any federally-recognized or non-recognized Tribe. Each tribal representative should have a designated alternate in case of absence.
- c. Appointment and terms. Faculty members of the Repatriation Committee will be appointed by the University Senate. All other members and alternates will be appointed by the Provost in consultation with the USD Tribal Liaison and with local Tribes, regarding the members in 4.b.6). For 4.b.6)a) and 4.b.6)b), each respective Tribe will nominate its own representatives and alternates. Members serve two-year terms and typically will be appointed in the Spring to serve terms commencing June 1. An appointment not made by June 1 shall be made as soon as practicable. The term of a member who is appointed after June 1 shall end on the same date as the term would have ended had the appointment commenced June 1. All appointed members may be reappointed to serve additional terms, provided they still fit the same category of membership. To the extent possible, terms of service will be staggered to provide continuity of membership.
- d. Vacancy. When a vacancy occurs on the Repatriation Committee, its chair shall immediately notify the Provost and the Chair of the University Senate and request the appointment of a new member to fill the vacancy from the same representative category as the departed member, as pertinent (see Sections 4.b and 4.c). If the vacancy occurs within an unexpired term, then appointment of

the new member will be to the unexpired portion of that term. The Provost and the University Senate shall ensure that the committee remains fully staffed in order to avoid any delays in the work of the committee.

- e. Chair. The Repatriation Coordinator serves as the chair of the Repatriation Committee. The Chair is a non-voting member.
- f. Meetings, deliberations, and decision-making. The committee chair shall convene at least one meeting per semester and may request additional meetings as needed. A quorum will consist of at least 50% of members, including at least two tribal members (see 4.b.6). Meetings shall be open to non-members of the committee. The Repatriation Coordinator makes repatriation recommendations to the committee based on the evidence. However, the Repatriation Committee has final decision-making authority and should always work towards consensus.
- g. Appeals. In the event there is an appeal to a decision from a Repatriation Committee member, faculty member, Tribe, or another party involved, the appeal is submitted to the Provost. The Provost makes the final decision and informs all parties involved within 45 days of receipt of the appeal. Additional appeal options that exist include third-party mediation, review by the NAGPRA Review Committee (federal NAGPRA), or for California Tribes, the Native American Heritage Commission (NAHC), which are statutorily protected appeal rights.

5. Responsibilities of Covered Parties

- a. All Covered parties shall comply with all provisions of NAGPRA/CalNAGPRA and adhere to the guiding principles and directives in this policy.
- b. If a Covered party is (or believes they may be) in possession of NAGPRA/CalNAGPRA-eligible items or if they are aware of any items potentially subject to NAGPRA or CalNAGPRA in USD's purview, the Covered party must inform the Repatriation Coordinator immediately.
- c. A Covered party may not knowingly acquire for USD, accept on USD's behalf, or bring within USD's purview any NAGPRA/CalNAGPRA-eligible items or any items potentially subject to NAGPRA or CalNAGPRA without prior written authorization from the Repatriation Coordinator and prior written consent of the pertinent Tribe(s).
- d. A Covered party may not use NAGPRA/CalNAGPRA-eligible items or any items potentially subject to NAGPRA or CalNAGPRA for teaching, research, or other activities associated with their role at USD without prior written authorization from the Repatriation Coordinator and prior written consent of the pertinent Tribe(s).

6. Proactive efforts, awareness, and education

- a. Raising awareness. Proactive efforts are required across campus to ensure that all human remains and cultural items are reported and treated appropriately

while in USD's care. Upon implementation of this policy and annually thereafter, the Provost shall communicate with the entire University community to raise awareness about the requirements of this policy and related laws and regulations. To the extent possible, USD should similarly communicate with USD retirees, especially those most likely to have used human remains and cultural items.

- b. Periodic review. Within one (1) year from implementation of this policy and every three to five (3-5) years thereafter, the University must review whether there are any NAGPRA/CalNAGPRA-eligible items in its purview. In performing their review, the Repatriation Coordinator shall send a communication to all deans, department chairs and program directors, and unit heads of relevant non-academic areas providing a) necessary definitions; b) instructions on what to look for; c) how to report any located holdings; and d) an appropriate reporting timeline.
 - c. Protecting items potentially subject to NAGPRA or CalNAGPRA. All items that are within the University's purview and are thought to be potentially subject to NAGPRA or CalNAGPRA must be managed and preserved in accordance with the guiding principles and directives of this policy and the requirements of applicable laws and regulations.
7. Voluntary deaccessioning of items which are not NAGPRA/CalNAGPRA-eligible
In addition to repatriation required by federal and state law, the University shall voluntarily deaccession human remains, cultural items, and other tribal cultural properties within its purview if a Tribe has requested repatriation of items that have been determined—through processes described in NAGPRA, CalNAGPRA, and this policy—not to be NAGPRA/CalNAGPRA-eligible. In making these decisions, USD shall consider the Tribe's relationship to such items, whether the items are related to other items subject to NAGPRA/CalNAGPRA, campus deaccessioning practices, and applicable laws.
8. Reburials and permanent curation
USD will consider potential reburials on USD property or permanent curation of ancestral heritage materials and human remains for communities that want materials or remains to stay with USD.
9. Accessibility
USD's NAGPRA/CalNAGPRA policy, procedures, and contact information must be made readily accessible through a dedicated public-facing website for the entire campus, regional Tribes, and the broader community and updated regularly.

(last updated October 10, 2022)