

Policy & Procedures for the Repatriation of Human Remains and Cultural Items at the University of California, Santa Barbara

This document sets forth policy and procedures by which the University of California at Santa Barbara (UCSB) seeks to implement the University of California Policy and Procedures on Repatriation of Human Remains and Cultural Items (hereafter "UC Policy and Procedures") and to comply with the Native American Graves Protection and Repatriation Act (P. L. 101-601, 11-4-90; hereafter "Federal Statute") and with Public Resources Code Sec. 5097.991, enacted by the California Legislature in 1991 (hereafter California Code).

Section 1. Definitions:

For purposes of UCSB Policy and Procedures the term

- (a) "Chancellor" means the Chancellor or the Chancellor's designee.
- (b) "Chancellor's Advisory Committee" means the UCSB Committee on Human Remains and Cultural Items.
- (c) "cultural items" means (1) human remains and associated funerary objects; (2) unassociated funerary objects; (3) sacred objects; and (4) objects of cultural patrimony. With the exception of human remains, each of the foregoing kinds of cultural items is defined within Section 2 of the Federal Statute.
- (d) "cultural affiliation" means "a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian Tribe and an identifiable earlier group." (Sec. 2(2) Federal Statute) Cultural affiliation may be determined or shown by "a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion." (Sec. 7(a)(4) Federal Statute)
- (e) "lineal descendant" (Sec. 7(a) Federal Statute) or "living descendants" (UC Policy and Procedures II. B.1. and III. A.) means those individuals who can trace their ancestry directly and without interruption to specific remains or to original family roots in the specific locale from which the remains were removed through such verifiable sources as mission records, ethnographic papers and literature, information compiled for enrollments of California Indians in all census records between 1928 & 1972, and other verifiable sources.
- (f) "Identified Indian Tribes" (UC Policy and Procedure B. 2. and III. B.) or "Indian tribe" (Sec. 2(7) Federal Statute) is understood to mean any tribe, band, nation, rancheria, reservation or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (g) "Native American" means of, or relating to, a tribe, nation, people, or culture that is indigenous to the United States (Sec. 2. (9) Federal Statute).
- (h) "rights of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation under applicable law (Sec. 2. (13) Federal Statute).

Section 2. Inventory of Native American human remains and associated funerary objects (UC Policy and Procedures, Section II. A; Sec. 5. Federal Statute.).

- (a) The Chancellor shall compile an inventory of the human remains and associated funerary objects in UCSB's possession. This process began on or about July 1, 1991, and the inventory shall be completed by January 1, 1996.

(b) The inventory shall involve adequate academic expertise and shall be conducted in consultation with tribal government officials and traditional religious leaders, and with the Chancellor's Advisory Committee.

(c) The inventory shall focus first on Native American human remains and associated funerary objects from the post-European contact period and ultimately on the entire Native American collection. To the extent possible the inventory shall identify the geographical origins and cultural affiliation of the human remains and funerary objects. In the inventory, specific and direct biological continuity shall be given priority in establishing cultural affiliation.

(d) Progress reports, on the inventory, in the form of itemized lists, shall be made to the Chancellor's Advisory Committee and to the President of the University. The final inventory of the collection shall also be transmitted to the President or designee upon its completion.

(e) In addition, a written summary of UCSB's collections of other cultural items, including unassociated funerary objects, sacred objects, and objects of cultural patrimony shall be completed by January 1, 1994. This summary shall be in lieu of an object-by-object inventory of such items. It shall be completed in consultation with the Chancellor's Advisory Committee and upon its completion the Chancellor shall consult with Native American tribal government and traditional religious leaders.

Section 3. Notification (UC Policy and Procedures, Sec. II. B; Sec. 5 (d) Federal Statute).

(a) Living Descendants

The Chancellor shall notify any identified living descendants and Indian tribes about particular human remains and associated funerary objects as soon as such descendants have been identified.

(b) Identified Indian Tribes

If the cultural affiliation of a particular human remain or associated funerary object is established, the Chancellor shall notify the affected Indian tribe no later than six months after the completion of the inventory. The notice shall include information: 1) identifying each of the human remains and associated funerary object, and the circumstances surrounding their acquisition; 2) listing the human remains or associated funerary objects as to which cultural affiliation is clearly identifiable as to tribal origin; and 3) listing the human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with an Indian tribe but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with that Indian tribe. Before cultural affiliation is determined to be present under this section, the Chancellor shall consult with the relevant Indian tribe(s) and with the Chancellor's Advisory Committee.

(c) Upon request by an Indian tribe that is entitled to notice under the preceding subsection, the Chancellor shall supply additional available documentation to supplement the information included in the inventory. The term "documentation" means a summary of existing records, including inventories or catalogues, relevant studies or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of the Native American human remains and associated funerary objects. The term "documentation" does not mean the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects. (Sec 5 (b) (2) Federal Statute)

(d) Inasmuch as preliminary indications are that remains and artifacts in the UCSB collection come almost entirely from an area inhabited primarily by Chumash Indians at the time of European contact, efforts will be made to notify individuals and families known to be

descended from or claiming descent from or cultural affiliation with the Chumash in this area of this fact and to keep them informed as to the progress of the inventory in accordance with the above procedures. For this purpose the Chancellor's Advisory Committee will assemble a list of Native American individuals and groups known or thought to have a direct interest in UCSB's collections of human remains and cultural items

(e) In addition to the notices provided for under subsections (a), (b), and (d) above, the chancellor shall, not later than three months after completion of the inventory, disseminate to the public through appropriate channels notice that (1) the inventory has been completed and (2) a copy of the inventory can be obtained upon request to a designated office.

(f) Notices under this section shall be transmitted to the President.

Section 4. Repatriation (UC Policy and Procedures, Sec III; Sec. 7 Federal Statute).

Repatriation shall be made in accordance with accepted professional museum standards and federal law and regulations.

(a) If, pursuant to Section 2 (c) above, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe is clearly established, the Chancellor, upon the written request of a known lineal descendant of the Native American (determined pursuant to Section 1 (e) above and applicable state law of descent), or, in the absence of a known lineal descendant, upon the written request of the Indian tribe, shall expeditiously return such remains and associated funerary objects.

(b) If, pursuant to Section 2 (e) above, the cultural affiliation with a particular Indian tribe is clearly established with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, and UCSB does not have a right of possession of such objects, upon the written request of the Indian tribe the Chancellor shall expeditiously return such objects.

(c) Where the cultural affiliation of Native American human remains and funerary objects has not been established pursuant to Section 2 (c) above, then, upon written request, the Chancellor shall expeditiously return such human remains and funerary objects if the requesting Indian tribe shows cultural affiliation by a preponderance of the evidence.

(d) Where the cultural affiliation of sacred objects and objects of cultural patrimony has not been established pursuant to Section 2 (e) above, the Chancellor shall expeditiously return such objects if (1) the requesting party is the direct lineal descendant of an individual who owned the sacred objects, (2) the requesting Indian tribe shows that the objects were owned or controlled by the tribe, or (3) the requesting Indian tribe shows that the sacred objects were owned or controlled by a member thereof and there are no identified lineal descendants of that member who wish to make a claim for the objects.

(e) If a known lineal descendant or an Indian tribe requests return of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony pursuant to sections (c) or (d) above and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that UCSB did not have the right of possession, the Chancellor shall return such objects unless that inference is overcome and UCSB's right of possession is proved.

(f) If any culturally affiliated items are to be returned pursuant to subsections (a) through (e) above, the Chancellor shall expeditiously return such items unless the items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned no later than 90 days after the date on which the scientific study is completed.

(g) If a request is made under subsection (c) or (d) above for return of cultural items the Chancellor shall, before making a decision on the request, consult with the individual or Indian tribe making the request and with the Chancellor's Advisory Committee, and consider the report of the mediator if there is mediation under subsection (i) below.

(h) Written requests under this section should be addressed to the Vice Chancellor for Research, UCSB, Santa Barbara, CA 93106. Such requests should be documented or otherwise supported with evidence of lineal descent and/or cultural affiliation.

(i) Third party mediation is encouraged to assist in efforts to resolve disagreements pertaining to requests for return of human remains or cultural items. Such mediation may include any means mutually agreed to by the relevant parties and approved by the Chancellor, including the services of a mutually approved mediator or the services of the UCSB ombudsman. The mediator shall hear the contentions of the parties, consult the Chancellor's Advisory Committee, make written findings of fact, and recommend a disposition of the unresolved issues to the Chancellor. In the event mediation does not resolve the competing contentions of the parties the Chancellor, after consultation with the parties involved, may initiate such other alternative dispute resolution procedures as the Chancellor may deem appropriate.

(j) Where there are multiple requests for repatriation of any cultural item and the Chancellor cannot clearly determine which requesting party is the most appropriate claimant, UCSB may retain the item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to this Policy or by a court of competent jurisdiction.

(k) If the Chancellor finally denies a request for return of a cultural item the individual or tribe that made the request may petition the President pursuant to procedures promulgated by the President.

Section 5. Implementing Regulations

The Chancellor may issue regulations to implement this Policy.

Section 6. Advisory Committee

The UCSB Committee on Repatriation of Human Remains and Cultural Items advises the Chancellor (or the Chancellor's designee) on the implementation of the UC Policy and Procedures, and on UCSB conformance with the Federal Statute and with the California Code.