



Carol T. Christ

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June 16, 2023

The Honorable Brian Schatz
Chairman
Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

The Honorable Lisa Murkowski
Ranking Member
Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Schatz and Ranking Member Murkowski:

Thank you for your letter of April 20, 2023, to UC President Michael V. Drake expressing your concern about the University of California, Berkeley's process to adhere to the *Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (Public Law 101-601)*. President Drake has asked me to respond to you directly.

I share your concern and frustration at the lack of progress in returning all of the Native American ancestors and cultural objects that have been held by the campus, including in the Phoebe A. Hearst Museum of Anthropology, for decades. I have personally made the acceleration of the repatriation process a top priority of mine in the last couple of years. Although there is still a long way to go, I believe that the revised policies, processes, organizational changes, increased staffing and additional resources are having a positive impact. I would be pleased to host you and/or your staff on campus for a visit to see the progress that we are making, at your convenience.

UC Berkeley is unique within the UC system because of the scope, size, and age of the collections located on our campus. The campus is 155 years old, and for many decades served as California's only major collecting institution through the Phoebe A. Hearst Museum of Anthropology. We are not proud of the fact that the NAGPRA eligible collection at the museum is one of the largest collections in the country and are working to address this injustice.

We acknowledge and apologize for the wrongs committed by UC Berkeley against Native American people, particularly with respect to how the University has handled its repatriation responsibilities. We recognize and regret that in the past, representatives of the University, and others, removed ancestors and sacred belongings without tribal permission or consultation, and that those ancestral remains and belongings were held for

the purpose of research and teaching. We have apologized directly to Tribal representatives, and we are currently engaged in a broad range of efforts to expedite the repatriation process and improve the campus's relationship with Tribal Nations.

I want to assure you that in the last several years, the university has abandoned past practices and comprehensively reformed and revised its repatriation policies, processes, and perspectives.

The campus is committed to the complete return of all Native American ancestors and cultural belongings. We also must acknowledge that any progress we have made as a campus is owed in the first place to the advocacy and hard work of the Native American members of our university community and the Native people of the State of California. They have held us accountable and have been essential to the improvement of our practices and processes.

While there is still significant work to be done, I would like to share some of the specific changes that have been made and the progress on repatriation since 2018:

- In 2019, I directed that all research and teaching with Native American ancestral remains and cultural belongings (“objects”) come to a halt on the Berkeley campus.
- Tribal traditional knowledge is now given deference as evidence of cultural affiliation. In the absence of other information, geographic location as a single line of evidence may be sufficient to establish cultural affiliation.
- Since 2020, the campus has repatriated approximately 1,000 ancestors and thousands of cultural items. To provide context, that is basically equivalent to the number of repatriations the campus completed in the preceding 30 years.
- In 2018, our Vice Chancellor for Research re-constituted the campus NAGPRA committee to include at least 50% Native American representatives. The committee was reformed again in Fall 2021 as per CalNAGPRA (*California Health & Safety Code (CHSC) §§ 8010-30*) and the University of California Native American Cultural Affiliation and Repatriation policy (UC Policy) with appointment of members nominated by the California Native American Heritage Commission (NAHC). The campus NAGPRA committee now consists of 3 UC affiliates and 3 California Native American tribal representatives.
- Native Nations are now more empowered in our repatriation process through the passage of CalNAGPRA and the new UC Policy. Since the new campus NAGPRA committee was formed, all claims submitted for repatriation have been approved. Not a single claim has been denied since 2019.
- The campus committee has also reviewed and approved previously denied claims for repatriation and is committed to continuing that practice. We have streamlined and simplified the process for reviewing previously denied claims submitted by Tribal representatives.
- The campus has moved responsibility for our repatriation efforts into the Chancellor's immediate office.

- The campus submitted information regarding its collections of Native American archaeological and ethnographic materials to the NAHC in April 2022.

Complete and comprehensive repatriation is an inseparable and necessary part of UC Berkeley's overarching commitment to be a more inclusive learning community and to better serve all the people of California.

We realize that so long as the remains of ancestors, sacred objects, and cultural items remain in the University's possession, justice will not be served, and the healing we seek will not be complete.

I am attaching responses to the questions raised in your letter and look forward to continued conversations about this critical issue. I welcome the opportunity to meet with you in person or to host you on the Berkeley campus in the near future.

Sincerely,

Carol T. Christ
Chancellor

Response to Senate NAGPRA letter questions

- 1. Please describe in detail how your institution determines if there is “a relationship of shared group identity that may be reasonably traced when your institution is determining cultural affiliation of NAGPRA-eligible items or ancestral remains, and explain how your institution interprets and applies the terms “totality of the circumstances” and “preponderance of the evidence” when making such determinations.**

In making cultural affiliation determinations, University of California (“UC”) campuses follow the federal Native American Graves Protection and Repatriation Act at 25 U.S.C. §§ 3001-13 and its accompanying regulations at 43 C.F.R. §§ 10.1-17 (jointly referred to as “NAGPRA”), the California Native American Graves Protection and Repatriation Act (“CalNAGPRA”) at California Health & Safety Code (CHSC) §§ 8010-30, and UC’s [Native American Cultural Affiliation and Repatriation Policy](#) (“UC Policy”)¹. UC utilizes the types of evidence and standards of proof stipulated in NAGPRA and CalNAGPRA (i.e., geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical evidence, other information or expert opinion, and Tribal Traditional Knowledge). Per UC Policy, Tribal traditional knowledge must be used to establish cultural affiliation, and per CalNAGPRA, deference is provided to Tribal traditional knowledge, oral histories, documentation, and testimonies relative to other relevant categories of evidence (CHSC § 8012(k) and § 8016(d)(6)).

To eliminate points where repatriation has historically stalled, UC policy further clarifies that:

- The simple absence of certain lines of evidence will not prejudice those available. (e.g., anthropological evidence need not be present if tribal oral historical evidence is available to evaluate cultural affiliation);
- Scientific certainty is not necessary;
- A single line of evidence may be sufficient to establish cultural affiliation; and
- Cultural affiliation cannot be precluded solely because of gaps in the record (e.g., historical events that might have created these gaps).

- 2. Please describe the process your institution undertakes to determine—**

- a. When there is sufficient evidence to proceed with repatriation; and**

Each UC campus has a NAGPRA Implementation Committee that finalizes cultural affiliation determinations. Committees consist of three UC representatives and three Tribal representatives.

UC begins the cultural affiliation process by reviewing all known information about the human remains or cultural items to identify potentially culturally affiliated Tribes and traditional aboriginal lands from where the human remains and/or cultural items were removed, regardless of whether the

¹ Where California law provides additional specificity or additional requirements that do not conflict with federal law, UC’s Policy incorporates California law.

Tribes are currently physically present in the area. UC then reaches out to potentially culturally affiliated Tribes to initiate consultation and share the information that has been gathered. During consultation, UC and the consulting Tribes discuss cultural affiliation based on all available evidence, including Tribal traditional knowledge. UC approaches consultation as an iterative process where Tribes continue to provide feedback or information until all are in consensus to proceed with repatriation.

After a consensus is reached with the Tribes through consultation, the campus prepares a review packet containing the following:

- An initial recommendation for cultural affiliation
- Draft inventory or summary
- Draft Notice of Inventory Completion or Notice of Intent to Repatriate
- All Tribes and their representatives who were consulted, and when
- All Tribes who asserted cultural affiliation
- All comments submitted by Tribes for inclusion in the review packet
- Any lines of evidence regarding cultural affiliation

The review packet is submitted to the campus NAGPRA committee, and Tribes are also invited to present information directly to the committee. The committee then makes a cultural affiliation determination or returns the review packet with revisions, edits, or clarifications. The committee may request that the campus engage in additional consultation or gather additional information. When the committee makes a determination, the chancellor of that campus reviews the determination and issues a decision in writing. Once approved by the chancellor, the Federal Register notice is sent to the National NAGPRA Program for their review and publication. Tribes are informed every step of the way and are invited to provide feedback before proceeding to the next step.

b. When a cultural item or ancestral remain is culturally unidentifiable

UC will first exhaust all records in its possession and make all efforts to gather documentation that may exist externally, including Tribal resources and information. Even for holdings with very limited provenience, such as “North America” and “North California”, this geographic information can be used to determine a group of Tribes to consult with. UC then follows the Tribal consultation and campus NAGPRA committee review processes described above to work towards a cultural affiliation determination.

UC Policy also requires the campus to review all prior culturally unidentifiable (CUI) determinations to determine cultural affiliation where possible. When UC is unable to locate any records indicating the geographic origin of the human remains or cultural items, or how they came into UC’s possession, we consult based on the knowledge we do have. This may be knowledge that is more broadly applicable, such as the campus’s collection and excavation history. In the case of remains for which there is no collection or excavation history, the campus committee has determined that

consultation with local tribes should be initiated.

For UC Berkeley, the human remains and cultural items in its possession were predominantly collected from the Bay Area. The majority of Bay Area Tribes are not federally recognized, presenting a significant obstacle in advancing the cultural affiliation and repatriation of CUI ancestors at UC Berkeley.

CUI inventories submitted to the National NAGPRA Program are provided to Tribes during consultation for revision and affiliation. 45% of ancestors still listed as CUI are likely Ohlone ancestors, but cannot be culturally affiliated under NAGPRA, as none of the Ohlone Tribes have federal recognition (25 U.S.C § 3001(7)). Those that were “affiliated” by UC Berkeley campus to the Ohlone people, were determined as such after consultation and grant funded research efforts.

As noted in the submitted inventories’ context statements, Jakki Kehl in 1999 compiled a report which found these Bay Area remains and funerary objects “are likely to be considered culturally unidentifiable under NAGPRA since...there are currently no federally recognized Ohlone/Costanoan tribes.” Kehl’s document, entitled “Research Documentation for Recommendation for Disposition”, outlines the evidence for “a relationship of shared group identity that can be demonstrated between these human remains, and associated funerary objects and the Ohlone/Costanoan tribes...[based on] the final judgment of the Indian Land Claims Commission...ethnographic and ethnohistorical literature...aboriginal territory...linguistic affinity...[and] creation legend.”

Per the federal NAGPRA process, UC Berkeley is currently consulting with federally recognized tribes to request disposition of “CUI” ancestors and funerary objects to non-federally recognized tribes through section 10.11.

Federal recognition, or reinstatement of removed recognition in some cases, would expedite the return of these ancestors and belongings, allowing UC Berkeley to repatriate these within one year.

3. Please describe the processes and methods your institution uses to gather and utilize Native traditional knowledge when determining the cultural affiliation of NAGPRA-eligible items of ancestral remains.

UC determines cultural affiliation using Tribal traditional knowledge shared during the consultation process. (See the response above regarding lines of evidence.) Per UC Policy Section V.B, Repatriation Coordinators must engage in Consultation that reflects the principles and characteristics outlined below.

- Relationships that acknowledge and respect a Tribe’s sovereignty, cultural protocols, and cultural and religious practices and knowledge;
- Multiple repeated contacts using a variety of methods;
- Accommodations for tribal needs in facilitating respectful Consultation;
- Invitations to all Tribes that have a cultural or geographical interest;
- Identification and addressing of tribal concerns in this process;

- Full access to consulting Tribes of relevant information throughout this process, including information known to the University about Human Remains or Cultural Items that are the subject of the Consultation and upon request, information about other collections containing Native American objects from the Tribe's area of interest;
- Flexible meeting agendas and schedules, with opportunity for tribal input on agendas and schedules; and
- Actions demonstrating meaningful engagement with Tribes, which exemplify trust and relationship building.

Consultation includes ongoing meaningful dialog with potentially affiliated Tribes regarding cultural affiliation and the identification of cultural items throughout the inventory and summary processes, with the goal of repatriation. Consultation may be in the form of in-person meetings, phone calls, video/remote conferencing, and written correspondence. Under UC policy, campuses should work collaboratively with each other when engaging in consultation with Tribes that may have human remains or cultural items in collections across multiple campuses.

Consultation is initiated as early as possible. Information is provided to Tribal representatives sufficient for them to decide if they are interested in engaging in consultation, if their Tribe may be culturally affiliated, and if they know of other Tribes that may have an interest in the human remains and cultural items.

Additional details regarding the consultation process UC follows is in Section V.B of the UC Policy.

4. Please provide examples of when your institution has used only Native traditional knowledge to culturally affiliate NAGPRA-eligible items or ancestral remains.

As required by changes made to CalNAGPRA in 2021, UC Berkeley provides deference to Tribal traditional knowledge. Since 2019, UC Berkeley has culturally affiliated and repatriated all claims using Tribal traditional knowledge, including funerary and sacred objects, ceremonial regalia, baskets, and beans and seeds. To maintain confidentiality in accordance with CalNAGPRA § 8012(e), we cannot share more specific details about these repatriations and the Tribal traditional knowledge that was used for cultural affiliation.

Some examples of how Tribal traditional knowledge has been used to identify cultural affiliation are: using knowledge about ancestral territories to demonstrate joint cultural affiliation in overlapping or close territories, or using knowledge about traditional ceremonial and funerary practices to show cultural affiliation with archaeological sites that evidence a clear continuation of the Tribe's funerary practices. In accordance with UC's new policy direction, since 2020, Tribal traditional knowledge has been instrumental in reviewing and updating previous CUI determinations with cultural affiliations, and in identifying objects of cultural patrimony, sacred objects, and funerary objects.

5. Please describe each allegation filed with the National NAGPRA program regarding your institution's failure to comply with NAGPRA including a summary of the circumstances and outcomes of the allegation(s).

- a. If your institution requested an informal discussion with the Secretary pursuant to 43 C.F.R. § 10.12(f)(1) in response to an allegation, please provide copies of all documents provided to, or received from, the Secretary in connection with the request.**

See Attached folders with Q5 Additional Correspondence and Proceedings documents.

- b. If an allegation of your institution's failure to comply with NAGPRA resulted in a notice of a failure to comply, please describe –**
- i. the steps your institution took to address the allegation, including the date on which the institution was informed of the allegation;**
 - ii. the reason for the allegation, whether or not a request for informal discussion was made or occurred;**
 - iii. the final determination of the Department of the Interior and the reason or reasons given for the determination;**
 - iv. the court's decision in any appeal your institution filed challenging the Department's determination;**
 - v. a civil action, if any, instituted by the U.S. Attorney General against your institution to collect a penalty; and**
 - vi. any corrective or remedial actions taken in response to an allegation or series of allegations, including but not limited to changes to applicable policies or procedures.**

The UC Berkeley campus was made aware of the following allegation filed with the National NAGPRA Program in 2008:

- In a letter dated March 28, 2008, the U.S. Department of the Interior (DOI) notified UC that DOI had received two allegations that UC Berkeley had failed to comply with NAGPRA. The letter indicated that DOI found the allegations to be unsubstantiated. *See attached copy of the March 28, 2008 letter.*
- The DOI letter stated that the allegations were filed by three individuals representing Advocates for the Protection of Sacred Sites, who alleged that UC Berkeley did not consult with Native American Tribal officials, lineal descendants, and traditional leaders concerning Native American human remains and associated funerary objects as required by NAGPRA.
- The DOI letter stated that the Advocates for the Protection of Sacred Sites did not allege any facts tending to support their allegation and stated that the allegations were determined to be unsubstantiated.
- We are unaware of any further actions regarding those allegations.

The UC Berkeley campus was made aware of the following allegation filed with the National NAGPRA Program in 2015:

- In a letter dated February 2, 2015, the U.S. Department of the Interior (DOI) notified UC that DOI had received a one-count allegation that UC had failed to comply with NAGPRA. The allegation related to human remains then located at UC Berkeley's Phoebe A. Hearst Museum which were from a San Joaquin County,

California archaeological site known as the “Cardinal Site.” *See attached copy of the February 2, 2015 letter.*

- The DOI letter alleged that UC Berkeley’s 2010 submission of a NAGPRA Inventory for the Cardinal Site was out of compliance with NAGPRA, because it was submitted after the Museum’s reporting deadline (which deadline was in 2000).
- The DOI letter included names of two individuals who had made the allegation to DOI. Although one of the individuals was identified as “T.D. White,” it should be noted that UC Berkeley Professor Timothy White stated at the time that he did not file the allegation with DOI. In the written transcript from the 11/20/2014 National NAGPRA Review Committee Meeting, David Tarler from the National NAGPRA Program stated that DOI had received a number of allegations over the years from “an individual, who we can only identify as T.D. White,” and that “this is the only individual to my knowledge that we cannot identify and the only communication that we have with this person is via email...and there’s no other identifying information.”
- Prior to issuing the letter (which stated that DOI had “substantiated” the allegation), DOI did not provide the University an opportunity to explain the relevant facts.
- On February 19, 2015, UC Berkeley requested an informal discussion with the Secretary’s designee pursuant to 43 C.F.R. 10.12(f)(1) in response to the allegation.
- On March 17, 2015, pursuant to 43 C.F.R. 10.12(f)(2) & (j), UC requested a hearing with respect to the February 2, 2015 Notice of Failure to Comply, requesting a reversal of the determination of an alleged failure to comply. The letter noted that UC had also invoked its right to engage in informal discussions with the Secretary’s representative pursuant to 43 C.F.R.(f)(1), that those discussions were ongoing, and that the request for hearing was made without prejudice to UC’s right to continue informal discussions with the Secretary’s representative. *See attached copy of the March 17, 2015 letter.*
- In its March 17, 2015 letter, and in informal discussions with the Secretary’s representative, UC contested the allegations of noncompliance by informing DOI that the human remains and items from the Cardinal Site were not in its “possession” or “control” as defined under NAGPRA because the remains in question were on loan to UC based on documentary evidence that archaeologists who excavated the material in 1976 had never transferred “control” to the Museum, planning instead for an eventual disposition to a consortium of Native American individuals, which consortium was no longer identifiable.
- UC noted that since the remains and cultural items were not under the Museum’s “control” or “possession” as defined by NAGPRA, the University was not required to report them via a NAGPRA inventory, though it had chosen to do so in 2010, which reporting served to notify potential NAGPRA claimants of the collection’s existence.
- Following informal discussions with the Secretary’s representatives in the National NAGPRA Program, the Hearst Museum and the Department of the Interior decided to resolve the disputed matter by entering into a Settlement Agreement. On September 30, 2015, the Hearst Museum entered into a formal settlement agreement (the effective date of which was October 15, 2015) with the Department of the Interior which required that the Museum reach out to various tribes and invite them to consult on the disposition of the remains, and that the Museum

approve for publication a Notice of Inventory Completion for the Cardinal Site by October 15, 2016. *See attached copy of the Settlement Agreement.*

- Under that agreement, the Museum took the following actions:
 - Identified sixteen federally recognized Indian tribes in whose aboriginal territory the San Joaquin County site may fall and, by the agreed upon date of November 15, 2015, invited them to consult on the disposition of the remains and funerary objects.
 - By the agreed upon date of August 15, 2016, completed consultation with the six federally recognized Indian Tribes that accepted the invitation to consult.
 - By October 15, 2016, submitted a Notice of Inventory Completion for publication in the Federal Register, using the model for disposition provided by the NAGPRA Regulations at 43 CFR 10.11. Submission of the Notice was the agreed upon last step in bringing the matter to a close. The Notice was published in the Federal Register on November 11, 2016.
 - In March 2022, UC Berkeley repatriated human remains and cultural items from the Cardinal site to the claiming Tribes.
- On October 19, 2016, UC and the Department of Interior filed a joint motion to dismiss the matter as a result of the parties' completion of the terms of the settlement agreement dated October 15, 2015. *See attached copy of the October 19, 2016 Motion to Dismiss.*
- On October 21, 2016, in response to the parties' joint motion, the Administrative Law Judge assigned to the matter issued an Order dismissing the proceeding "for good cause shown." *See attached copy of the October 21, 2016 Judicial Order dismissing the proceeding.*
- The October 21, 2016 Judicial Order dismissing the matter noted that pursuant to the terms of the settlement agreement, DOI deemed UC to be entitled to immunity from liability, as set forth in 25 U.S.C. Section 3005(f), for all claims arising from the facts of the proceeding. The Order also noted that the parties agreed to mutually waive any and all further actions or claims that may or could have been taken as a result of the facts that gave rise to the proceeding.
- Consistent with the terms of the Settlement Agreement, DOI did not take any action against UC to collect a penalty.

6. Please describe the process your institution undertakes to complete summaries and inventories pursuant to 43 CFR 10.8 and 43CFR 10.9 including the average length of time for completion and the average length of time to send the required Notice of Intent to Repatriate to the Manager of the National NAGPRA program

Inventories and summaries are initially prepared with information available to museum staff, such as archival records, archaeological site reports, or locational information. They are provided to Tribes to initiate consultation, which UC conducts according to the process described in the response to Question 3. Inventories and summaries are then updated to include information provided during consultation, if

appropriate to share. Once all consulting Tribes are in agreement about the cultural affiliation that is reflected in the draft inventory or summary, the campus submits the draft inventory or summary to the campus NAGPRA Implementation Committee for review. Tribes are invited to attend the campus committee review session and to speak or add to the review packet. Once the campus committee reviews and makes the determination, the Chancellor approves the recommendation, and the campus designated official submits the final inventory or summary to the National NAGPRA Program, if applicable. Since 2019, all claims have been approved. Note that the campus committee, per CalNAGPRA 8026(b), is composed of members nominated by the California Native American Heritage Commission. Half of the members are from Tribal communities, and half from UC, but must meet certain criteria with regard to degree type and experience. Preference is given to those that have demonstrated, through their professional experience, the ability to work in collaboration with Native American tribes successfully on issues related to repatriation or museum collection management.

The time taken to process a claim from inventory or summary development through to submission of a Notice to the National NAGPRA Program is contingent on a number of factors, although most take 6 months to 1 year at present.

Factors impacting time spent can include whether the collections are split between multiple institutions or not under UC control; a Tribe's available staff resourcing, schedule, and protocols; federal recognition; the size and complexity of the claim; preferences and priorities determined through consultation; and time required by National NAGPRA to review and publish the Federal Register notice.

a. For each summary prepared by your institution, please explain whether the determination listed in the summary as sacred, possible sacred, patrimonial or unassociated funerary objects was made by i: museum staff or ii) in consultation with tribal representatives or iii) some combination of (i) and (ii).

Summaries that have not been consulted on contain initial determinations made by museum staff using available information, which will be revised following consultation if the consulting Tribes are in agreement. Some initial determinations can be made using existing information, particularly for unassociated funerary objects that may have supporting archaeological evidence. However, summaries cannot be completed without consultation and Tribal traditional knowledge. Museum staff do not have the expertise to identify sacred objects, objects of cultural patrimony, or unassociated funerary objects that were not documented as coming from a burial context. There are approximately 560 summaries in total, for which determinations have been made by i) museum staff or iii) some combination of (i) and (ii), depending on the consultation status of the collection.

Note that unlike NAGPRA, where the posting of summaries is, in essence, an invitation for a consultation to determine if the items are cultural items and are culturally affiliated, under CalNAGPRA, consultation must take place prior to handling, during a "preliminary summary" phase and during a finalization phase. The list of state-recognized Tribes was made available to UC by the NAHC in March 2021. UC Berkeley is in the early stage of CalNAGPRA required consultations, and

review of all previous CUI determinations.

- b. For each inventory prepared by your institution, please explain whether the determination of human remains or associated funerary objects as either culturally affiliated or unaffiliated was made by i: museum staff or ii) in consultation with tribal representatives or iii) some combination of (i) and (ii).**

Determinations for inventories were made with Tribes through consultation, however some of these Tribes were not federally recognized when these inventories were submitted. As Tribes continue to become federally recognized, we are able to update CUI inventories to affiliate and repatriate them.

Each inventory submitted to the National NAGPRA Program contains a listing of Tribes and years they were consulted with. UC provided inventories to Tribes thought to be affiliated with each site for consultation, to affiliate prior to submission. All determinations were made using a combination of the 9 lines of evidence outlined by NAGPRA to establish a preponderance of the available evidence (geographic, linguistic, anthropological, folkloric, archaeological, kinship, historic, oral tradition, and biological).

UC Berkeley is in the early stage of CalNAGPRA required consultations and review of all previous CUI determinations for potential cultural affiliation and repatriation. In cases where the Tribe is not federally recognized, the NAGPRA disposition procedures at 43 CFR § 10.11 will be used.

- 7. Please describe the process your institution undertakes to determine if cultural items or ancestral remains are not culturally affiliated, including the length of time, on average it takes to notify the Manager of the National NAGPRA program.**

Please see response to question 2.b. above.

Within two years following identification of individuals as possibly Native American, the campus will submit an inventory as required by NAGPRA. If affiliation cannot be determined, a CUI inventory will be submitted while consultation continues to ensure eventual repatriation.

UC will first exhaust all records in its possession and make all efforts to gather documentation that may exist externally, including Tribal resources and information. Even for holdings with very limited provenience, such as “North America” and “North California”, this geographic information can be used to determine a group of Tribes to consult with. UC then follows the Tribal consultation and campus NAGPRA committee review process described above to work towards a cultural affiliation determination.

When UC is unable to locate any records indicating the geographic origin of the human remains or cultural items—or how they came into UC’s possession—we consult based on the knowledge we do have. This may be knowledge that is more broadly applicable, such as the campus’s collection and excavation history. For UC Berkeley, the human remains and cultural items in its possession were predominantly collected from the Bay Area.

UC Policy also requires the campus to review all prior culturally unidentifiable (CUI) determinations to determine cultural affiliation where possible, which it continues to do through consultation, mostly with non-federally recognized tribes.

8. Please explain any discrepancies between your institution's estimate of the number of cultural items and culturally unidentifiable remains in your institution's possession or control, and the number reported by the National NAGPRA program.

UC Berkeley did not submit counts as Minimum Numbers of Individuals (MNI) to the National NAGPRA Program but included information about ancestors in the report curation notes field. Historically, ancestors were described by sets of ancestral remains, represented by number of catalog records. The National NAGPRA Program may have estimated MNI for each site using these notes by site. As UC consults with Tribes, information including MNI is revised using available records or physical review if requested by the Tribe. This can result in updates to quantities across all NAGPRA categories, as the campus works to align records with Tribal knowledge and preferences to advance claims. UC Berkeley currently determines that there are 15,341 identified funerary objects; 251,803 items awaiting tribal identification as funerary, sacred, or objects of cultural patrimony; approximately 9,200 estimated MNI (6,652 sets or catalog numbers, of ancestral remains), of which 9,100 MNI are currently categorized as CUI remains undergoing review through consultation. The National NAGPRA Program reports UC Berkeley as holding 9,060 MNI and 123,280 associated funerary objects as of September 30, 2022.

The difference in the numbers of cultural items reported by the National NAGPRA Program and UC Berkeley stems from a difference between identified cultural items, and archaeological and ethnographic items that can only be identified as cultural items through consultation. Unlike CalNAGPRA, NAGPRA does not currently require reporting of archaeological and ethnographic holdings that have not been identified as potentially being cultural items. In addition to what is listed on the National NAGPRA database, the University wishes to consult with Tribes on sizable archaeological and ethnographic holdings. These holdings consist of 251,803 catalog records.

A significant obstacle in advancing the cultural affiliation and repatriation of the large numbers of CUI individuals at UC Berkeley is the issue of federal recognition. 45% of the individuals still listed as CUI are likely Ohlone ancestors, but cannot be culturally affiliated under NAGPRA as none of the Ohlone Tribes have federal recognition (25 U.S.C § 3001(7)).

Although we are moving forward with repatriation using the CUI process currently outlined in 43 CFR § 10.11, federal recognition of Ohlone people would expedite the return of these ancestors and belongings, allowing UC Berkeley to repatriate these within one year.

9. Please provide an inventory of any human remains that are in your possession, but controlled by another agency or institution. Please also note what effort, if any, has been taken to ensure the possession of these items comply with NAGPRA.

Please see the attached list of agencies and institutions thought to control collections in the possession of UC Berkeley, listed by state and county of origin. There are over 900 ancestors believed to be under agency control and over 1,700 sites with Native American archaeological belongings. This list is also available on the Campus NAGPRA website.

The University reported all currently known Native American human remains in its possession, including those under the control of agencies, in its NAGPRA inventories. Under UC policy, campuses must reach out to agencies that control human remains and cultural items in UC's physical custody to prompt and encourage repatriation and offer assistance in facilitating outreach or consultation with potentially culturally affiliated Tribes. UC communicates with Tribes regarding these collections and as mentioned above, posts information about agency collections on its public-facing website.

If legal control is unclear, UC makes all efforts to obtain and review documentation to determine control. However, in the interest of advancing repatriation, we offer to partner with the agency to initiate consultation and publish joint NAGPRA notices.

UC takes its adherence to NAGPRA policy seriously and we look forward to continuing this dialogue with the Committee and its members. If you have any questions regarding these comments, please contact Christine Treadway, Assistant Chancellor, Government and Community Relations at UC Berkeley at ctreadway@berkeley.edu or 510-643-4107 or Chris Harrington, Associate Vice President for Federal Governmental Relations, at Chris.Harrington@ucdc.edu or 202-997-3150.

Attachments:

- UC Native American Cultural Affiliation and Repatriation Policy
- UC Berkeley List of Controlling Agencies and Institutions
- March 28, 2008 DOI Letter to UC Notice of Allegations
- February 2, 2015 DOI Letter to UC Notice of Failure to Comply
- March 17, 2015 UC to DOI Request for Hearing
- 2015 Settlement Agreement
- October 19, 2016 Joint Motion to Dismiss
- Folder of responsive documents to question 5(a)

cc: Catherine Cortez Masto, U.S. Senator
Martin Heinrich, U.S. Senator
Mazie Hirono, U.S. Senator
Ben Ray Lujan, U.S. Senator
Patty Murray, U.S. Senator
Alex Padilla, U.S. Senator
Kyrsten Sinema, U.S. Senator
Tina Smith, U.S. Senator
Dan Sullivan, U.S. Senator
Jon Tester, U.S. Senator
Elizabeth Warren, U.S. Senator
President Michael V. Drake, MD
Special Advisor Brown
Provost and Executive Vice President Newman
Vice President Maldonado
Assistant Chancellor Treadway

Executive Director Motton
Director DeMattos
Systemwide Repatriation Coordinator Echávarri