

UC Native American Cultural Affiliation and Repatriation Policy

Partnering with Non-UC Controlling Institutions

I. Purpose and Background

This document addresses collections that are in the physical custody of UC campuses, but are under the legal Control of other institutions, e.g. federal and state agencies, museums, or other universities. For collections containing Human Remains and Cultural Items, the controlling institution must comply with NAGPRA and/or CalNAGPRA, as applicable. This document provides guidance for campuses to partner with such institutions to encourage and facilitate repatriation.

II. UC Policy Requirements

Per [UC Policy Section VI.C](#), Repatriation Coordinators must:

- Annually contact such institutions to prompt and encourage repatriation and/or to coordinate the transfer of Human Remains and Cultural Items to the controlling agencies, especially when Tribes have requested the transfer.
- Post on a UC public facing website a list of such collections by county and controlling institution/agency, including a general description of the items and to the extent known, their Provenance/Provenience and any potentially Culturally Affiliated Tribes.
- Communicate with potentially Culturally Affiliated Tribes regarding any changes to the status of these collections.

III. Definition of “Control”

Under NAGPRA, Control means having a legal interest in Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony sufficient to lawfully permit the Museum or federal agency to treat the objects as part of its collection for purposes of NAGPRA whether or not the Human Remains, Funerary Objects, Sacred Objects or Objects of Cultural Patrimony are in the physical custody of the Museum or federal agency. Generally, a Museum or federal agency that has loaned Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony to another individual, Museum, or federal agency is considered to retain Control of those Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony for purposes of NAGPRA. [43 C.F.R. § 10.2(a)(3)(ii)]

Under CalNAGPRA, Control means having ownership of Native American Human Remains and Cultural Items sufficient to lawfully permit an agency or Museum to treat the object as part of its collection for purposes of CalNAGPRA, whether or not the Human Remains and Cultural Items are in the physical

custody of the agency or Museum. Human Remains and Cultural Items on loan to an agency or Museum from another person, agency, or Museum will be deemed to be in the Control of the lender.
[CalNAGPRA § 8012(f)]

IV. Communication with Tribes and Controlling Institutions

In addition to the UC Policy requirements, campuses should inform potentially affiliated Tribes of any Human Remains or Cultural Items housed at UC that are under the Control of another institution. However, the campus should not engage in Consultation to identify Cultural Items or determine Cultural Affiliation unless the campus enters into an agreement with a controlling institution to perform Consultations on their behalf. The campus can and should initiate joint meetings with Tribes and controlling institutions to provide any information UC has collected regarding the Human Remains or Cultural Items, and to discuss Tribal preferences and the controlling institutions' plans for moving forward with repatriation processes. UC Repatriation Coordinators can provide guidance to assist controlling institutions to advance repatriation. Often, controlling institutions are more receptive if they know that the Tribes have requested UC presence because the campus has knowledge about the collection.

V. Advancing Repatriation When Control is Uncertain or Unasserted

Which institution has Control should be determined so that the controlling institution could take repatriation responsibility, especially considering the significant costs associated with managing the collection, engaging in Consultation, and physically repatriating the Cultural Items. Repatriation Coordinators should contact officials from the institutions that may have Control to jointly gather all available documentation and information about the items, their provenience, and the circumstances under which they came to be physically housed at the campus.

When it is clear that Control of items rests with another institution, and when, despite UC offers for assistance, the Controlling institution refuses to advance repatriation, campuses may elevate the matter within the controlling institution's organization or contact the National NAGPRA Program and/or the NAHC for guidance. If these efforts fail, below are a few alternatives campuses may consider when Control is uncertain or when an institution refuses to assert Control or advance repatriation.

The campus should keep potentially Culturally Affiliated tribes informed of the situation, especially if only part of a collection is under UC's Control and repatriation by UC may result in incomplete repatriation of a split collection.

In cases where there is ambiguity regarding who has Control:

- Joint notices are recommended if information and records are insufficient to determine with certainty which institution has legal control of the items. Both institutions should jointly work out with potentially affiliated tribes how to proceed with Consultation. UC can assist or take the lead in conducting the required Consultation and in submitting any required notices, most especially if doing so is the preference of the Tribes and would most expeditiously advance repatriation.
- If control as between UC and a Federal agency has not been addressed or resolved, the campus can determine what the campus has Control of and what they do not, and make such a statement to a Federal agency. It is advisable to notify both the Federal agency staff and the Federal Preservation Officer. It is then the federal agency's responsibility to refute such UC determinations. (43 C.F.R. 10.8(a) and 10.9(a))
- If institutions are unwilling to file joint notices or affirm responsibility/Control, working with campus counsel, where relevant statutes and circumstances allow, the campus may assume responsibility for/Control over the items, including responsibility for conducting Consultation and submitting any notices as required for NAGPRA/CalNAGPRA compliance. Publication of a notice provides an opportunity to other institutions to come forward and assert control of a collection. NAGPRA and CalNAGPRA also provide that if a museum proceeds in good faith to repatriate, it cannot be held liable for claims by an aggrieved party or other violations (25 USC 3005(f) and Ca. Health & Safety Code section 8018.). Therefore, campuses can move forward with repatriation even if an issue of control remains unresolved. If possible, the campus can try to enter into an agreement with the other institution to recover costs, including costs associated with Tribal support.
- Campuses should notify associated institutions prior to proceeding with repatriation activities as described above and provide an opportunity for them to take responsibility. If after 60 days, the institution has not responded, we recommend the campus move to a final notice and proceed.

VI. Recall Requests

A controlling institution may recall items under its Control for a variety of reasons. For example, it may have Human Remains and Cultural Items from the same site split across multiple repositories and may want to consolidate the items at a single repository. If a controlling institution requests physical transfer from a UC location, campus Repatriation Coordinators should seek the preferences of potentially Culturally Affiliated Tribes for handling and transport before proceeding. In addition, some Tribes may prefer that UC continue to hold items to minimize disturbance and handling, or to facilitate access if the UC location is more convenient for the Tribe. The controlling institution should be informed of the Tribes' preferences prior to transfer so that the controlling institution can take those preferences into account in their final instructions to UC.