UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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Kum-Kum Bhavnani
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Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

November 8, 2019

SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL

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

Dear Susan,

As you requested, I distributed for systemwide Senate review the proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation. Nine Academic Senate divisions (UCB, UCD, UCI, UCLA, UCM, UCR, UCSD, UCSC, and UCSF), and three systemwide committees (UCAF, UCAADE, and UCFW) submitted comments. These comments were discussed at Academic Council's October 23, 2019 meeting and are attached for your reference.

We understand that the Policy is intended to update UC's compliance with the federal and state versions of the Native American Graves Protection and Repatriation Act (NAGPRA), and strengthen UC policy and practices related to the curation, repatriation, and disposition of Native American remains and cultural items in the University's custody. Recent State legislation included several mandates to UC concerning its NAGPRA policies, processes, and consultation procedures, and UC has revised its Policy substantially to comply with legislation. The revised Policy assigns responsibility for overall policy implementation and compliance to a joint systemwide committee. It also asks the six UC campuses with NAGRPA-covered holdings to establish local committees to assess campus implementation of the policy and review claims for cultural affiliation and requests for repatriation or disposition of human remains.

Council strongly supports the broad goals of the Policy, to prioritize repatriation, better incorporate tribal input into UC processes, and increase the promptness and consistency of UC's responses to repatriation requests. We also draw your attention to some of the comments, concerns, and suggestions made in the Senate letters.

First, the proposed policy calls for at least one member of the campus committee to be a member of an American Indian or Native American Studies Program. However, not every campus with a NAGPRA-eligible collection has such a program. (UCSC, for instance, has a NAGPRA-eligible collection but not such a program.) Council recommends incorporating additional flexibility into the requirements for the composition of committees in ways that prioritize expertise over specific discipline. In addition, reviewers emphasized the need for a clear and fair process to determine tribal affiliation and to adjudicate claims of ownership of artifacts and remains in instances when

multiple tribes claim ownership, or when a committee cannot identify an affiliated tribe. Merced also suggested adding a reciprocity provision to enable Merced to seek assistance from colleagues at other campuses should it find itself in the position to potentially acquire NAGPRA-eligible items.

In addition, Council suggests including an option for tribes to request systemwide review and approval for repatriation when there are collections of human remains or cultural/funerary items on multiple campuses. The systemwide committee might also consider how to address remains and artifacts in UC's possession from outside of the United States. Finally, we encourage the University to articulate a strong systemwide funding commitment, to ensure successful and effective implementation.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

Kum-Kum Bhavnani, Chair
Academic Council

cc: Academic Council
Senate Directors

ACADEMIC SENATE
BERKELEY
320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

October 17, 2019

KUM-KUM BHAVNANI
Chair, Academic Council

Subject: Comments on the Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Kum-Kum,

On October 7, 2019, the Divisional Council (DIVCO) of the Berkeley Division discussed the proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation and was supportive of the revised policy. The Committee on Research (COR) and Committee on Diversity, Equity, and Campus Climate (DECC) reviewed and provided comments (see attached).

It was recognized that there may be an implicit tension with research interests and the need to repatriate remains and cultural objects. Two advantages to the revisions noted at the DIVCO meeting were the following:

- There is provision for improved communication with Native American tribes;
- Non-Federally-recognized tribes have been included.

In addition, DECC recommends that cost-sharing among parties be more clearly defined.

Thank you for the opportunity to comment. If you have any questions, please don't hesitate to contact me.

Sincerely,

Oliver O'Reilly
Chair, Berkeley Division of the Academic Senate
Professor of Mechanical Engineering

Enclosures

cc: Jennifer Johnson-Hanks, Vice Chair, Berkeley Division of the Academic Senate
Jocelyn Surla Banaria, Executive Director, Berkeley Division of the Academic Senate
David Ahn, Chair, Committee on Diversity, Equity, and Campus Climate
John Colford, Chair, Committee on Research
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate
Deborah Dobin, Senate Analyst, Committee on Research

ACADEMIC SENATE
BERKELEY
320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

September 26, 2019

PROFESSOR OLIVER O'REILLY
Chair, Berkeley Division of the Academic Senate

Re: COR comments on the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Chair O'Reilly:

At its September 11th meeting, COR briefly discussed the Proposed Presidential Policy on Native American Cultural Affiliation and Repatriation. It was noted that there might be an implicit tension between research needs and the need to repatriate remains and cultural objects. The committee understands the need for the revised policy and is impressed with the comprehensiveness of the proposed revision.

COR endorses the proposed revised policy.

With best regards,

John M. Colford, Jr.

John Colford, Chair
Committee on Research

ACADEMIC SENATE
BERKELEY
320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

October 2, 2019

PROFESSOR OLIVER O'REILLY
Chair, 2019-2020 Berkeley Division of the Academic Senate

Re: DECC's Comments on the Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

As requested, the Committee on Diversity, Equity, and Campus Climate (DECC) reviewed and discussed the Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation. DECC is generally very favorable of the revised policy. We especially welcome Section III "Policy Text," Part B(1), where the language is much more forceful about the University's responsibility to native peoples, when compared to the language of the 2001 policy which focuses much more on the University's own research interests. We believe acknowledging this deontological ethical obligation is a better starting point than the position of trying to accommodate the interests of repatriation within the University's other interests.

We would also like to highlight several other parts of the policy that we see as important. First, we commend the policy for explicitly stating on page 3 that "non-federally-recognized" tribes also have legitimate claims for repatriation. We also commend the recognition of competing claims on pages 8 to 9, and especially the explicit process for adjudicating such claims.

We have two concerns about an area that the policy does not address. The first is what to do in cases where the native people do not have sufficient resources or knowledge to maintain the repatriated objects. The policy leaves unclear whether the University will provide any assistance in this maintenance. We urge the University to consider reasonable requests for assistance here, and to be creative about policies that might keep artifacts in University maintenance but under possession of native people.

The second, which is related, is that some peoples may be unaware of their claims or be deterred from making claims based on earlier policy. We hope that the University will develop some form of outreach to proactively satisfy our ethical obligations to repatriate artifacts.

Finally, while this is not directly pertinent to the letter of the revised policy, DECC would like to remind the Senate that it will be engaged in a cluster hire in Native American scholarship. This seems like an excellent opportunity to be more intentional about synthesizing scholarship about the ethics and science of repatriation.

Sincerely,

David Ahn
Chair, Committee on Diversity, Equity, and Campus Climate

DA/lc

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October 15, 2019

Kum-Kum Bhavnani
Chair, Academic Council

RE: Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Kum-Kum:

Given the short consultation period, the proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation was forwarded only to the Committee on Affirmative Action and Diversity, whose response is enclosed.

Sincerely,

Kristin H. Lagattuta

Kristin H. Lagattuta, Ph.D.
Chair, Davis Division of the Academic Senate
Professor, Department of Psychology and Center for Mind and Brain

Enclosed: Affirmative Action and Diversity Response

c: Hilary Baxter, Executive Director, Systemwide Academic Senate
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate

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

The Committee on Affirmative Action and Diversity has reviewed the proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation. AA&D finds that:

In general, the committee perceives this substantial revision to policy as a good faith effort to make the system fair and transparent. The policy is now more comprehensive, detailed and includes a more robust appeal mechanism. This revision seems to address past criticism of UC policy and to help comply with new legislation. We are concerned about the policy on human remains, and the possibility that prior conflict has turned on questions of which contemporary groups might make recognizable claims of much older human remains.

The policy could be clearer about the steps that will be taken to secure representation from "unrecognized" tribes and the methods committees should use to determine the relationship between contemporary groups and much older remains and artifacts. It is UC's responsibility to comply with NAGPRA, both federally and under CA Assembly Bill 2836. The revised policy appears to address some past criticism about reluctance towards repatriation of academic collections, but the proposed revision may also represent a missed opportunity to better identify a clear approach to determining affiliation, which appears to be a primary sticking point since NAGPRA's inception. Improved methods for determining provenance of remains and artifacts would be of mutual benefit to the Native American communities claiming ownership as well as for the academic value in bringing archaeological, anthropological and forensic techniques to bear for collections that may not have actually been studied. Other than suggesting a good-faith intent to comply with the requirements of NAGPRA, it is not clear that the new policy necessarily makes it any easier.

The new policy seems to be consistent with our values and with generally decent treatment of human remains. However, we wonder how this policy differs from policies concerning the disposition of non-Native American human remains other than the inclusion of Native American tribal consultation.

University of California, Irvine

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October 16, 2019

Kum-Kum Bhavnani, Chair
Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

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

Dear Chair Bhavnani,

At its October 15, 2019 meeting, the Irvine Divisional Senate Cabinet agreed to forward concerns raised by the Council on Research, Computing, and Libraries (CORCL) and the Council on Equity and Inclusion (CEI) regarding the proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation.

CORCL noted that the requirement for tribal approval for access to human remains for research could potentially result in delayed or decreased access to research materials for UC researchers. However, the Council concluded that this concern was outweighed by the importance of respecting Native American and Native Hawaiian human remains and cultural items.

CEI suggested including an option for tribes with human remains or cultural/funerary items in collections of multiple campuses to request systemwide review and approval for repatriation. The Council expects that having to make multiple requests to multiple campuses, each with its own procedures, could prove to be expensive and administratively complex. CEI also suggested that in addition to consultation, UC should also notify tribes of the presence of human remains and cultural or funerary items in the University's possession. CEI anticipates that this notification may be particularly useful for non-recognized tribes with fewer resources to monitor university and museum collections.

If you have any questions related to the action of the Irvine Division, please do not hesitate to contact me.

Sincerely,

James Steintrager, Chair
Academic Senate, Irvine Division

C: Jeff Barrett, Chair Elect-Secretary, Academic Senate, Irvine Division
Lee Bardwell, CORCL Chair
Louis DeSipio, CEI Chair
Gina Anzivino, Assistant Director, Academic Senate, Irvine Division
Kate Brigman, Executive Director, Academic Senate, Irvine Division

UCLA *Academic Senate*

October 16, 2019

Kum-Kum Bhavnani
Chair, UC Academic Council

Re: Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Kum-Kum:

Thank you for providing UCLA with the opportunity to comment on the Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation. The policy was distributed to the committees of UCLA's Academic Senate for comment, and was discussed at the October 10, 2019 meeting of the UCLA's Executive Board. Members are overwhelming supportive of the proposal, which they believe will help to restore dignity to Native American and Native Hawaiian communities. However, they do believe there are points where the policy could benefit from clarification or expansion. As is our custom we have included the statements from Senate committees who chose to opine.

1. Committee Composition

The policy requires a significant number of elders, spiritual leaders, tribal leaders, or tribal members who have a minimum of five years' prior experience to serve on each committee. Given the number of Systemwide and campus-level committees, we are concerned that it may be difficult to populate these committees if the five years' requirement is firmly enforced. Furthermore, there is no indication as to whether or not an elder or tribal leader can serve on multiple committees (i.e. for multiple campuses) and/or concurrently serve on the Systemwide committee. While the policy contains a provision that allow elders or spiritual elders from other nationally recognized tribes (i.e. outside of California) to serve in place of representatives from Californian tribes, the policy could benefit from including a process by which certain requirements could be waived.

We have similar concerns regarding the faculty representatives appointed to these committees. As currently written, faculty serving on the committee should have a graduate degree in either Anthropology, Archaeology, Environmental Studies, Ethnic Studies, History, Law, Native American Studies, or Sociology, with a focus in California, in addition to five years' previous experience. The academic disciplines listed may be unnecessarily narrow. Faculty in other fields, such as Religion, Art History, Geography, and Public Policy might also be appropriate to serve on these committees. We urge that either the list of disciplines be expanded or that the requirement of a Ph.D. in a specific set of fields be dropped. The crucial issue here is deep engagement with the issue and it is possible to imagine scholars from numerous fields in the humanities, social sciences, and some professional schools meeting this requirement.

2. Resourcing

The policy does not specifically state how these committees will be staffed and resourced. In places, the policy states "to the extent permitted by UC resources..." What are these resources, and who exactly is providing them? Are resources going to be supplied by the Office of the President? By each individual campus? A combination of the two? We believe that a firm commitment of resources from the Office of the President is needed to ensure that the policy can be put into practice effectively.

3. Scope

The policy states that the general principles of this policy apply to all human remains in the University's collections. However, most of the policy pertains specifically to Native American and Native Hawaiian human remains and Cultural Items. As UC collections contain human remains and cultural items from around over the world, we urge the system to be proactive (as opposed to reactive) and discuss how to deal with remains and cultural items from outside of the

United States.

Thank you again for the opportunity to comment on this important proposal. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Michael Meranze
Chair, UCLA Academic Senate

Enclosures: Committee on Diversity, Equity, and Inclusion Response
Graduate Council Response
Council on Research Response
College of Letters and Science Faculty Executive Committee Response

September 30, 2019

Professor Michael Meranze
Chair, UCLA Academic Senate

Re: System-wide Review of Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Chair Meranze,

The Committee on Diversity, Equity, and Inclusion appreciates the opportunity to review the Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation. Committee members have no additional comments, suggestions, or edits. CODEI has found the policy to be appropriate and very timely.

Thank you for the opportunity to review and comment. If you have any questions, you are welcome to contact me at passos@humnet.ucla.edu or the Committee on Diversity, Equity, and Inclusion analyst, Annie Speights at aspeights@senate.ucla.edu or ext. 53853.

Sincerely,

José Luiz Passos,
Chair, Committee on Diversity, Equity and Inclusion

cc: Members of the Committee on Diversity, Equity, and Inclusion
Annie Speights, Committee Analyst, Committee on Diversity, Equity and Inclusion

September 30, 2019

To: Michael Meranze, Chair
Academic Senate

From: Andrea Kasko, Chair
Graduate Council

Re: Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

Given the timing of the request, the Graduate Council did not have an opportunity to discuss the Revised Presidential Policy on Native American Cultural Affiliation and Repatriation in-person; however, it was circulated electronically for review and comment.

Members offer the following for consideration:
-Members appreciate the inclusion of more specific and detailed definitions, descriptions of roles and responsibilities, and procedures. The list of specific principles that emphasizes repatriation is helpful. There is a marked improvement over the previous policy, and it resolves potential ambiguity; however, there are instances when, for example, terms could be defined before being used in the body of the document. For example, scattered throughout are references to terms and concepts (e.g. "associated/unassociated object", "accessioned item") that are not defined in the "Definitions" until after they are used.

-Members agree that shifting final approvals from UCOP to the campus to reduce delays, while reserving the role of the Systemwide Committee and UCOP for difficult cases is a step in the right direction.

-Some members shared the concern that tribal consultation and approval requirements for access for research and instruction seems like potentially a very divisive issue. It is not difficult to imagine a situation when touching a sacred object (including human remains) in an invasive way (extracting a sample of tissue for DNA analysis or carbon dating) is viewed by different parties in irreconcilably different ways.

-Members are concerned that for the various Systemwide and campus-level review committees, there are a significant number of elders, spiritual leaders, tribal leaders, or tribal members having a minimum of five years prior experience required. Similar language is used for faculty members having a minimum of five years' experience working in their field. Given the number of Systemwide and campus-level committees, it may be difficult to populate these given the experience threshold. Furthermore, there is no indication whether an elder or tribal leader can serve on multiple committees (for multiple campuses) and/or concurrently serve on the Systemwide committee. A similar concern was raised for the faculty participants of the committees.

Thank you for the opportunity to review and comment.

September 30, 2019

Michael Meranze
Chair, UCLA Academic Senate

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

Dear Professor Meranze,

The Council on Research (COR) conducted an independent electronic review of the proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation. The proposed policy is reasonable and addresses the issues of treating Native American artifacts respectfully and with consultation with the successors quite adequately. Members agree that the policy is written in compliance with AB 2836, signed into law on September 27, 2018. As such, UCLA COR endorses the policy in its entirety.

If you have any questions for us, please do not hesitate to contact me at desjardins@ucla.edu or via the Council's analyst, Elizabeth Feller, at efeller@senate.ucla.edu or x62470.

Sincerely,

Richard Desjardins, Chair
Council on Research

cc: Joseph Bristow, Immediate Past Chair, Academic Senate
Elizabeth Feller, Principal Analyst, Council on Research
Shane White, Vice Chair/Chair-Elect, Academic Senate
Members of the Council on Research

UCLA MEMORANDUM

FACULTY EXECUTIVE COMMITTEE
College of Letters and Science

A265 Murphy Hall
Box 951571
Los Angeles, California 90095

To: Michael Meranze, Chair, Academic Senate

Fr: Jeffrey B. Lewis, Chair, College Faculty Executive Committee

Date: September 30, 2019

Re: **College FEC Response to Revised Presidential Policy on Native American Cultural Affiliation and Repatriation**

The College Faculty Executive Committee (FEC) appreciates the opportunity to comment on the proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation. I had an opportunity to discuss the revisions with Distinguished Research Professor Carole Goldberg who served on the Cultural Affiliation and Repatriation Policy Advisory Workgroup that drafted this proposed policy. I also consulted with Professor Mishuana Goeman (Special Advisor to the Chancellor on Native American and Indigenous Affairs), Professor Greg Schachner (Chair, Archaeology IDP), and Professor Shannon Speed (Director, American Indian Studies Center). The documents you provided, as well as the synopsis of my conversations with these esteemed colleagues, were circulated to the members of the College FEC. The consensus is that the proposed changes will significantly improve the current policy and there we no suggestions for changes.

Given the charge of the College FEC, our review carefully considered the possibility of any encumbrance on the research or teaching of College faculty that would be created by the new policy. We found no evidence of any substantial encumbrance. The proposed changes are expected to have little impact on UCLA in part because UCLA has already repatriated nearly all of its holdings of Native American remains and funerary objects. Further, I was not able to identify any scholars in the College whose research or teaching would be limiting by the new policy. Rather, I found that opportunities for active areas of research for our faculty would likely be encumbered if the proposed policy is *not* adopted due to existing tensions between the Native American tribes and the UC arising from the current policy.

As always, our membership appreciates the consultative process and welcomes the opportunity to participate in the discussion of important matters like this. You are welcome to contact me at jblewis@ucla.edu with questions. Mitsue Yokota, Academic Administrator, is also available to assist you and she can be reached at (310) 794-5665 or myokota@college.ucla.edu.

cc: Lucy Blackmar, Assistant Vice Provost, Undergraduate Education Initiatives
Valeria Dimas, Executive Assistant, Academic Senate
Eric Wells, Committee Analyst, Undergraduate Council

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OCTOBER 14, 2019

KUM-KUM BHAVNANI, CHAIR, ACADEMIC COUNCIL

RE: REVISED PRESIDENTAL POLICY ON NATIVE AMERICAN CULTURAL AFFILIATION AND REPATRIATION

Dear Kum-Kum:

The proposed revised *Presidential Policy on Native American Cultural Affiliation and Repatriation* was distributed for comment to the Committee on Research (CoR), the Committee on Faculty Welfare and Academic Freedom (FWAF), the Committee for Diversity and Equity (D&E), the Library and Scholarly Communications Committee (LASC), and the school executive committees. CoR, D&E, and LASC opined. Their comments are enclosed.

At its October 2, 2019, Divisional Council (DivCo) endorsed forwarding committee comments for Academic Council's consideration. In doing so, DivCo wishes to emphasize the cultural sensitivity of this matter and the critical importance of respecting the cultures and traditions of the Native American and Native Hawaiian communities. For ease of access, committee comments are summarized here.

- CoR noted the terms "UC has", "has taken in", and "stewardship" would benefit from definition. With respect to the first two, CoR wondered whether these terms are inclusive of collections (or individual artifacts) on loan. CoR's concern is that ambiguity in policy language will create uncertainty for individual researchers trying to comply with the policy.
- CoR also recommended guidance be provided on who has the authority to accept collections, for research and/or teaching purposes, when an individual offers to donate a collection.
- Finally, CoR raised a question about the protections afforded to individual researchers. Can members of the Native American and Native Hawaiian communities approach a researcher and request entry to their laboratory and access to the artifacts in their laboratory, regardless of the artifacts' status (on loan, in possession of the researcher, etc.)? Guidance to researchers on this point would be helpful.
- D&E questioned whether the survey mechanism for seeking input on the policy from California Native American cultural stewards and stakeholders is culturally appropriate. Members noted Native American and Native Hawaiian review of the policy is paramount to ensuring the policy achieves desired ends and, as such, wants to ensure the vetting process supports that goal.
- LASC suggested a reciprocity provision be added to the policy to enable Merced to seek assistance from colleagues at other campuses should it find itself in the position to potentially acquire NAGPRA-eligible items. Due to the absence of need, Merced currently lacks the administrative infrastructure to oversee proper disposition of such items.

The Merced Division thanks you for the opportunity to opine.

Sincerely,

Tom Hansford
Chair, Divisional Council

CC: Divisional Council
Maria DePrano, Chair, LASC
Hilary Baxter, Executive Director, Systemwide Academic Senate
Laura Martin, Executive Director, Merced Senate Office

Encl (4)

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ACADEMIC SENATE, MERCED DIVISION
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September 27, 2019

To: Tom Hansford, Chair, Division Council

From: Michael Scheibner, Chair, Committee on Research (COR)

Re: Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

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CoR reviewed the proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation. We offer the below comments and requests for clarification.

CoR recognizes that, given the small size of UC Merced, the impact of this policy is much less than, for example, at UC Berkeley which maintains large collections of artifacts from burial sites (including human remains). UC Merced does have some teaching collections (without human remains) and individual researchers have collections on loan from other institutions. The main impact of this new policy will be felt across the UC system and research community (e.g. faculty, graduate students, and other scholars) as collections will disappear. In particular, there may be cases where research projects or dissertation topics may have to be terminated.

CoR inquires as to the definition of "UC has" and "has taken in" in the policy. Does this refer to collections (or individual artifacts) on loan? It appears that the policy is intentionally vague on this aspect. This vagueness creates uncertainty for the individual researcher. CoR recommends clarification of this language and additional guidance might be needed to assist the individual researcher with complying with this policy.

The term "stewardship" should also be defined.

CoR believes that additional guidance would also be useful for a case where an individual offers to donate a collection. Who has the authority to accept collections for research and/or teaching laboratories?

Overall, the question arises as to how individual researchers are protected. Can members of the Native American and Native Hawaiian communities approach a researcher and request entry to their laboratory and access to the artifacts in their laboratory, regardless of the artifacts' status (on loan, in possession of the researcher, etc.)?

We appreciate the opportunity to opine.

cc: Senate Office

UNIVERSITY OF CALIFORNIA, MERCED

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE FOR DIVERSITY AND EQUITY

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September 26, 2019

To: Tom Hansford, Chair, Divisional Council

From: Committee for Diversity and Equity (D&E)

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

The Committee for Diversity and Equity (D&E) reviewed the proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation.

This is an extensive revision to a policy pertaining 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 (NAGRPA).

The revision (abbreviated summary from Vice President Ellis cover letter) creates a list of principles that is explicit that the University seeks to repatriate and expresses the value of repatriation, reconstitutes the systemwide committee to strengthen Native American representation, shifts approvals of repatriation to the campus from UCOP to reduce delays, requires campuses to appoint a NAGPRA liaison, requires campuses to create a Strategic Repatriation Plan, requires campuses to proactively review existing materials that may contain Native American or Native Hawaiian remains or cultural items, and establishes as policy the respectful stewardship of human remains and cultural items when in the University's care.

State Law requires that the University submit the revised policy to the Native American Heritage Commission (NAHC's) for review, which has been done. The Office of the President will seek comments from the California Native American community via survey distributed to the NAHC's contact list.

The document is extensive and thorough, provides definitions of 37 terms, and describes campus committee compositions, procedures, and responsibilities. It is clear that UC wants to return remains and cultural items to California Indian Tribes whenever possible.

D&E wonders if the process for seeking input on the policy from California Native American cultural stewards and stakeholders through the survey mechanism is culturally appropriate. The wording for the committee formation and process is very much "university-ese" with committee Chair, terms, university faculty representatives with PhD's in anthropology, archeology, etc.

Native American or Native Hawaiian input is paramount for this document and want to make sure that the vetting process makes room for this in a way that it can be obtained if something is missing or stated inappropriately.

We thank you for the opportunity to comment on this systemwide review item.

cc: D&E Members
Fatima Paul, Associate Director, Senate Office
Senate Office

UNIVERSITY OF CALIFORNIA, MERCED

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ACADEMIC SENATE, MERCED DIVISION
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September 27, 2019

To: Tom Hansford, Senate Chair

From: Maria DePrano, Chair, Committee on Library & Scholarly Communications (LASC)

Re: Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

---

LASC reviewed the proposed, revised Presidential Policy on Native American Cultural Affiliation and Repatriation.

We have no reason to believe that UC Merced is currently in possession of NAGPRA-eligible items; consequently, our campus does not have a standing committee dedicated to oversight of these items in the manner of other UC campuses. Moreover, LASC does not envision the need to empanel such a committee at UC Merced.

However, in the event that UC Merced may be in a position to potentially acquire NAGPRA-eligible items, our campus would greatly benefit from external expertise available at other UC campuses or from a systemwide committee. LASC therefore suggests that the Presidential Policy include a reciprocity provision that allows campuses like UC Merced who lack the administrative infrastructure to oversee proper disposition of NAGPRA-eligible items to be able to seek assistance from colleagues at other UCs.

We appreciate the opportunity to opine.

cc: Senate Office

UNIVERSITY OF CALIFORNIA, RIVERSIDE

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CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY OFFICE BUILDING, RM 225

DYLAN RODRIGUEZ
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October 8, 2019

Kum-Kum Bhavnani, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: [Systemwide Review] Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Kum-Kum,

The Riverside Executive Council discussed the Presidential Policy on Native American Cultural Affiliation and Repatriation and did not wish to add additional points to the consultative responses received from the Divisional Senate's standing committees. The Council discussion of this matter did result in agreement that the feedback from the Committee on Academic Freedom and the Committee on Diversity, Equity, and Inclusion is both substantive and meaningful.

Committee on Academic Freedom's memo directs our attention to policy (and possibly legal) questions regarding the repatriation of remains and artifacts across US borders, as such transnational repatriation does not seem to be addressed in the existing policy. Further, the committee questions whether there ought to be a thorough review of the matter of confidentiality when considering information that may have originally been provided by Indigenous and Native people under the auspices (or colonialist assumptions) of non-confidentiality. Will tribal representatives and leaders have the opportunity to reclassify certain information as confidential, in light of this policy and the spirit in which it is being considered? Committee on Diversity, Equity, and Inclusion, on the other hand, raises a few questions for clarification that may be important for the policy's long-term feasibility. The committee asks whether the "5-year requirement" proposed on page 15 of the draft policy is appropriate in every consideration of California tribal membership, and also requests that the policy provide clear information regarding the number of California tribes from which committee members will eventually be chosen. Finally, the committee raises a crucial question regarding the protocols and transparency of the nomination process for serving on the proposed committee. This matter is especially important due to differences of power, wealth, and political/legislative influence among the many Native tribes of California.

As always, i appreciate our opportunity to provide input on this issue. I trust this will help in our systemwide consultation process.

Peace.

Dylan Rodríguez
Professor of Media & Cultural Studies and Chair of the Riverside Division

CC: Hilary Baxter, Executive Director of the Academic Senate
Cherysa Cortez, Executive Director of UCR Academic Senate Office

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COMMITTEE ON ACADEMIC FREEDOM

October 1, 2019

To: Dylan Rodriguez, Chair
Riverside Division of the Academic Senate

From: Dmitri Maslov, Chair
Committee on Academic Freedom (CAF)

Re: Presidential Policy on Native American Cultural Affiliation and Repatriation

The Committee on Academic Freedom considered the proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation ("Revised Policy"), submitted for Systemwide Review on August 19, 2019.

The policy deals with a set of highly complex issues, and some committee members indicated they feel "inadequate to judge the merits of the ethics and coverage of the policy and would leave that to experts." From the perspective of academic freedom, this policy's issues may be outside of the CAF domain.

There were questions or comments of a technical nature made by the Committee members. The draft describes the procedures for handling and repatriation of remains and materials within the national border; however, it does not provide any guidance for cases when such materials have to move ACROSS the border. What is the relationship between the UC and repatriation of remains or material artifacts of indigenous peoples who reside OUTSIDE of the national borders of what is now the United States? Is this question covered by another policy statement? The draft gives a definition and procedure for handling confidential information (p. 3). However, there is also the need to address long term rights of indigenous communities on the information originally disclosed as NONCONFIDENTIAL. What rights, ultimately, do these communities or their individual members retain to their information? More specifically, are they able to reclassify such materials/information to being CONFIDENTIAL or impose other restrictions, thereby preventing use of that information? Under Composition of Campus Native American Repatriation Implementation and Oversight Committee (pp. 15 and 16): The language of the draft (p. 16) refers to three members of the UC. But it does not state that the UC must be the campus itself and that the three members are to be faculty (although that may be assumed).

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COMMITTEE ON DIVERSITY, EQUITY, AND INCLUSION

October 1, 2019

To: Dylan Rodriguez
Riverside Division Academic Senate

From: Xuan Liu, Chair
Committee on Diversity, Equity, and Inclusion

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

Overall, CoDEI is supportive of the proposed Presidential Policy on Native American Cultural Affiliation and Repatriation, but we would like to have some clarification on the following issues:

1. We wonder whether it is reasonable to expect California tribes to have members who meet the proposed 5-year requirement (page 15).

2. It might be helpful to know how many California tribes there are and to be cognizant of differences among them when selecting committee members across different tribes.

3. What exactly is the nomination process (how do people get nominated and what do they need to do to be considered?) and what are the criteria related to who - among the nominees - will be selected to serve on the committee?

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September 30, 2019

To: Dylan Rodriguez, Chair
Riverside Division

From: Djurdjica Coss, Chair
Committee on Research

RE: Systemwide Review: Presidential Policy on Native American Cultural Affiliation and Repatriation

The Committee on Research reviewed the Presidential Policy on Native American Cultural Affiliation and Repatriation and had no additional comments.

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COMMITTEE ON FACULTY WELFARE

October 2, 2019

To: Dylan Rodriguez
Riverside Division Academic Senate

From: Abhijit Ghosh, Chair
Committee on Faculty Welfare

Re: Presidential Policy on Native American Cultural Affiliation and Repatriation

The Committee on Faculty Welfare (CFW) carried out an email discussion between Sep 23 and Oct 2, 2019 on the "Proposed Revised Policy: Presidential Policy on Native American Cultural Affiliation and Repatriation". The revised policy does not raise any concerns from CFW.

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SANTA CRUZ DIVISION
125 CLARK KERR HALL
(831) 459 - 2086

October 16, 2019

Kum-Kum Bhavnani, Chair
Academic Council

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

Dear Kum-Kum,

The Santa Cruz Division has reviewed and discussed the proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation. Our Committees on Affirmative Action and Diversity (CAAD), Academic Freedom (CAF), and Library and Scholarly Communication (COLASC) have responded.

The responding committees raised some potential logistical concerns regarding the proposed Campus Native American Repatriation Implementation and Oversight ("Campus") Committee for each campus with a NAGPRA-eligible collection (V.A.2).

- Composition of the Campus Committee: The proposed policy calls for at least one member of the Campus Committee to be a member of an American Indian or Native American Studies Program (V.A.2.a.3). Not every campus with a NAGPRA-eligible collection has such a program. (UC Santa Cruz, for instance, has a NAGPRA-eligible collection but does not have an American Indian or Native American Studies Program.) We recommend the language be amended--perhaps to include "or faculty member with expertise in that field of study."

- Timeline: The policy calls for a Strategic Repatriation Plan to be produced on each affected campus "within six months of the Chancellor or Chancellor designee's appointment of the Campus Committee" (V.F.). This planning timeline may be too short, especially for campuses that have large collections.

While our Division supports the revised policy and appreciates the thoroughness of the revision as well as the recognition that each campus should have the flexibility to develop appropriate plans for the campus, we are concerned about the potential accumulation of administrative responsibilities accruing to the small number of faculty members on each campus who would be eligible to participate in making such decisions. We are especially concerned that, by default, the burden could fall on under-represented Native American faculty. We wonder whether more of the burden of this labor--for instance, the construction of a model (but adjustable by campus) Strategic Repatriation Policy--could shift to the Systemwide Committee.

The Division appreciates the care that the working group put into this revision and understands the ethical and legal importance of this policy. The Special Collections & Archives at UC Santa Cruz do not have anything that falls into the relevant categories as identified in the policy. Although responding committees recognized that some UC faculty might feel that elements of this policy have the potential to create barriers to their research and teaching, and therefore limit their academic freedom, we note that academic freedom is only one of many University values, and do not believe it should necessarily be given priority over all of our other core principles. Further, we do not wish to see academic freedom used as a lever to cause harm. The Santa Cruz Division supports the proposed policy revision.

Thank you for the opportunity to opine.

Sincerely,

Kimberly Lau, Chair
Academic Senate, Santa Cruz Division

cc: Jessica Taft, Chair, Committee on Academic Freedom
Jin Zhang, Chair, Committee on Library and Scholarly Communication
Elizabeth Abrams, Chair, Committee on Affirmative Action and Diversity

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October 8, 2019

Professor Kum-Kum Bhavnani
Chair, Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, CA 94607

Re: Proposed Presidential Policy on Native American Cultural Affiliation & Repatriation

Dear Professor Bhavnani:

The proposed revisions to the Presidential Policy on Native American Cultural Affiliation and Repatriation was circulated to standing Senate committees for review and responses were received from an ad hoc committee, and discussed at the Divisional Senate Council meeting on September 30, 2019. Senate Council endorsed the proposed revisions to the Presidential policy on Native American Cultural Affiliation and Repatriation.

Sincerely,

Maripat Corr, Chair
San Diego Divisional Academic Senate

Cc: Steven Constable, Vice Chair, San Diego Divisional Academic Senate
Ray Rodriguez, Director, San Diego Divisional Academic Senate Office
Hilary Baxter, Executive Director, Systemwide Academic Senate

UCSF Academic Senate

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Sharmila Majumdar, PhD, Chair
Steven Cheung, MD, Vice Chair
Vineeta Singh, MD, Secretary
Jae Woo Lee, MD, Parliamentarian

October 16, 2019

Kum-Kum Bhavnani, PhD
Chair, Academic Council
Systemwide Academic Senate
University of California Office of the President
1111 Franklin St., 12th Floor
Oakland, CA 94607-5200

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

Dear Kum-Kum:

Our Executive Council discussed the Systemwide Review of Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation.

While UCSF is not currently one of the campuses that has possession of human remains of Native American and Native Hawaiian ancestors and cultural items, we recognize that it is feasible for UCSF to find such items in the course of construction activities particularly on the Parnassus Heights campus.

UCSF should be prepared to comply with the requirements of this policy in the event that it becomes applicable in the future.

Sincerely,

S. Majumdar

Sharmila Majumdar, PhD, 2019-20 Chair
UCSF Academic Senate

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UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
Sarah Schneewind, Chair
sschneewind@ucsd.edu

Assembly of the Academic Senate
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Oakland, CA 94607-5200
Phone: (510) 987-9466
Fax: (510) 763-0309

September 26, 2019

KUM-KUM BHAVNANI, CHAIR
ACADEMIC SENATE

RE: PROPOSED REVISED PRESIDENTIAL POLICY ON NATIVE AMERICAN CULTURAL AFFILIATION AND REPATRIATION

Dear Kum-Kum,

The committee has reviewed the Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation and we have the following comments.

- In section C. "Inventories and Summaries," p. 23, "3. Reevaluations and Previously Unreported Holdings."

UCAF can see that there should be a moratorium on the *handling* of human remains and cultural items under this policy, but it is less clear that the University can restrict *research* to certain topics, in this case, to inquiry into whether NAGPRA and CalNAGPRA policies should apply. A more reasonable approach would be to permit research that does not involve handling of the remains or items to continue until it has been established that one of those policies applies.

- In section I. "Stewardship," p. 34

A careful reading of this item suggests that the University is not in fact claiming the right to impose a moratorium on research for any purpose other than that of making a determination about compliance. We emphasize that the University should err on the side of permitting research until a clear case has been made that it is improper, so long as that research does not involve handling the materials while their status is being investigated. For instance, suppose I am an anthropologist studying funerary pots, and I had already sketched some such pots in the possession of the University before the question of their status arose. I should be permitted to use my own sketches, which were made in good faith, and continue research in related publications and other unprotected materials. In order to make crystal clear that this is the intention, we propose a revision that will make this explicit: "...the campus will impose a moratorium on all access for research, instruction, exhibition or other purposes unrelated to making determinations needed for compliance with NAGPRA and with this Policy, until the claim or request is resolved. Research and instruction that do not require further handling of the objects or remains are permitted."

- Also on p. 34 is the statement: "In reviewing petitions for research, instruction, exhibition, or other purposes unrelated to making determinations needed for compliance with NAGPRA, the campus shall consider (i) evidence of tribal consultation and approvals as required above, (ii) tribal input, (iii) efforts to maintain high standards of care and respect for all human remains of Native American or Native Hawaiian ancestors, and (iv) scholarly merit."

Under normal circumstances, it is peers in the discipline, reviewing a manuscript or proposal, who declare a project "without scholarly merit." The University should protect every faculty member's right to carry out research as s/he sees fit, in accordance with disciplinary standards, even in the case of human remains improperly obtained in violation of human decency. Ethics, as understood under the first three considerations, may dictate denying a petition for research, instruction, or dissemination of knowledge based on such remains. But we ask that the University policy state explicitly that scholarly merit be determined by faculty members and their academic peers, and that though it is listed last here it be considered as important as each of the other three factors.

UCAF appreciates the opportunity to comment on this matter. Please feel free to contact me with any questions.

Sincerely,

Sarah Schneewind

Sarah Schneewind, Chair
UCAF

UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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UNIVERSITY COMMITTEE ON AFFIRMATIVE ACTION, DIVERSITY, AND EQUITY (UCAADE)
Mona Lynch, Chair
lynchm@uci.edu

ACADEMIC SENATE
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

October 16, 2019

KUM-KUM BHAVNANI, CHAIR
ACADEMIC COUNCIL

Re: UCAADE's Feedback on Revised Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items

Dear Kum-Kum,

Thank you on behalf of UCAADE for the opportunity to provide feedback on the revised Policy and Procedures on Curation and Repatriation of Human Remains and Cultural Items. Members of UCAADE are also committed to the underlying goals of this policy, and have reviewed the revision with an eye toward achieving them. We were impressed by the level of care and detail in the effort to provide an expeditious and culturally sensitive process in repatriating Native American/Hawaiian remains and cultural artifacts. It is an improvement from the previous policy.

We would like to submit the following comments and questions for consideration:

1) In regard to the standards for implementing a timeline for the return of remains, the policy allows each campus to set those timelines independently, which makes sense, as every case will be different. Nonetheless, might there be some parameters or limits around the implementation timeline to meet benchmarks?

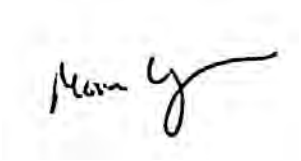
2) Another item for consideration is the make-up of these committees, particularly among the Native committee members, in regard to features such as gender, age, position, and other such identity markers. If possible, the committee recommends including language in the policy that encourages diverse representation within the constituent groups of the committees.

3) The policy states "For human remains and cultural items that have been culturally affiliated, but have not yet been requested, campuses shall develop timetables to continue to send reminder notifications and invite repatriation requests (e.g., of no less than every two years)" (p. 30). There is no indication of who will receive reminders or requests, and the policy does not go into detail on the information that the notifications will contain for the repatriation of human remains. The committee encourages more policy guidance on these implementation issues. We also want to ensure breadth in the notification pool to ensure that all potentially impacted tribes, including non-represented tribes, are made aware of campus holdings.

4) Finally, while we appreciate the logic of decentralizing the repatriation request procedures to individual campuses, we ask that you consider creating the option of allowing a tribe to make a single systemwide request. There may be situations where this is an advantage for a tribe that has human remains and cultural/funerary items in the collections of multiple UC campuses. Having to make multiple requests to multiple campuses, each with its own procedures, could prove to be expensive, burdensome, and administratively complex.

We hope these comments and suggestions are helpful as you finalize this policy.

Sincerely,



Mona Lynch
Chair, UCAADE

cc: Hilary Baxter, Academic Senate Executive Director
UCAADE Members

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October 17, 2019

KUM-KUM BHAVNANI, CHAIR
ACADEMIC COUNCIL

RE: Proposed Revised Presidential Policy on Native American Cultural Affiliation and Repatriation

Dear Kum-Kum,

The University Committee on Faculty Welfare (UCFW) has reviewed the proposed revised Presidential Policy on Native American Cultural Affiliation and Repatriation. Although none of the committee members has expertise in this area, we generally find this to be a comprehensive revision on an important topic. Nonetheless, we do have several points of feedback for consideration:

- Which of NAGPRA, CalNAGPRA, and the UC Policy prevails if there is a conflict between them?
- Why are there no term limits on the systemwide committee?
- In the name of transparency, are there provisions to summarize annually the decisions of each campus committee?
- What will happen to remains that cannot clearly be associated with any existing tribe?
- Page 20, C: Is there a deadline for campuses who have not completed inventories? If not, shouldn't there be?
- Page 23: Is there a deadline for each campus to come up with a plan to review existing materials that may contain Native American or Native Hawaiian remains or cultural items? If not, shouldn't there be?
- The funding commitment to repatriate remains seems weak.
- Typo: Page 24, 4: "A campus may access…" instead of "A campus may accession…."
- Page 26: How feasible would it be for campuses to provide photographs of all remains and all objects potentially affected by this policy?

Thank you for helping advance our shared goals.

Sincerely,

Jean-Daniel Saphores, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate