

SJSU Protocol for the Transfer of Collections for Purposes of NAGPRA:

In accordance with federal policy of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), institutions must consult with Native American Tribes regarding the handling and return of human remains and cultural items. Following publication of a Notice of Inventory Completion (NIC) for culturally affiliated collections in the Federal Register, if no other requests for the collection are made in a subsequent 30-day period for public comment, the University can go forward with transferring collection materials to affiliated Tribes. The following protocol establishes procedures for the transfer of human remains and cultural items from San Jose State University to Tribes in the 90 days following the period of public comment on the NIC. No federal standards or requirements exist to oversee this process, so this procedure will be in place until University officials amend or change it.

I. Repatriation and Disposition Transfer Process

The following sequence of activities will be used to facilitate and complete transfers of control and possession.

1. Transfer of Control

If the University has a claim and/or a request in hand at the time of the Notice publication and no additional claims are submitted during the 30 day holding period the University will transfer control of the published collection on the 31st day to the claimant or requestor.

To finalize the Transfer of Control, the University NAGPRA Coordinator will send an "Acknowledgement of Transfer of Control" (Appendix A) to the claimant(s) and/or requestor(s) who have successfully gone through the review process. This document acknowledges those Native American lineal descendant(s), Indian tribe(s)/group(s) or Native Hawaiian organization(s) as being the legal controller ("Tribal Controller") of the published collection(s). A copy of the Acknowledgement document needs to be signed by both the SJSU Provost (or designee) and by the Native American lineal descendant(s) or Tribal Leader(s) and returned to the University for the Transfer of Control to be finalized. The final signed document will be retained in the Office of the Provost's files and a copy will be provided to the President.

SJSU will notify the national NAGPRA office of this Transfer of Control by issuing a Repatriation Statement (Appendix A2) by the NAGPRA Repatriation Coordinator and a copy of the signed Acknowledgement of Transfer of Control.

Following the transfer of control, the University's NAGPRA Coordinator will initiate and coordinate the transfer of custody between the University and the Tribal Controller(s).

- a. For transfers involving an individual Native American lineal descendant/family, Indian tribe/group or Native Hawaiian organization, the NAGPRA Coordinator will coordinate the date, place, and manner of the transfer pursuant to 43 C.F.R. § 10.10(d).
- b. For transfers involving multiple Native American lineal descendants, Indian tribes/groups, or Native Hawaiian organizations, the NAGPRA Coordinator will send each Tribal Controller a letter confirming the particular objects(s) or collection(s) to be transferred and request that the Tribal Controllers identify and mutually agree to an individual or individuals who will accept the transfer of custody of particular objects or collections on their

behalf (hereafter referred to as the “Transfer Recipient(s)”). See Appendix B for the Transfer Recipient Authorization Form which may be used to authorize Tribal Recipients. As a means of recording and verifying official decisions, and pursuant to 43 C.F.R. § 10.10(f), the University requires that each Tribe communicate to the NAGPRA Coordinator, in writing, the name(s) and contact information for the Transfer Recipient(s) that have been approved; written approval by letter or email can stand in place of individual signatures to the Transfer Recipient form. Tribal controllers are required to notify the University, in writing, if they are deferring on the selection of Transfer Recipient(s); if the University does not hear from a Tribal Controller within 30 days of the initial letter asking them to name a Transfer Recipient or to defer, the University will assume the Tribal Controller is deferring and will proceed with the transfer accordingly. There must be at least one party named as Transfer Recipient before the University can

3. All objects and collections awaiting transfer will remain in the University’s care and custody until the University has written verification from each of the Tribal Controllers that they have identified and come to a mutual agreement on at least one Transfer Recipient. Tribal Controllers may request access to objects or collections that are awaiting transfer and will be arranged on a case-by-case basis. All objects and collections awaiting transfer will not be made available to anyone for research, teaching, or exhibition purposes without the written consent of all Tribal Controllers.
4. Once the Transfer Recipient(s) is identified the transfer of possession must occur within 90 days of the transfer of control. If the University continues to hold the collection for longer than 90 days, a “Held-in-Trust Curation Agreement” must be agreed upon by the parties involved.
5. Physical Transfer of Object(s) or Collection(s)
 - a. Prior to the transfer of custody, an inventory check will be done between the physical object(s) and the finalized inventory as reported to National NAGPRA Office. This ensures that the process is transparent and that all reported cultural objects and human remains are accounted for prior to the transfer. The inventory cross-check must be completed by Transfer Recipient(s) at a mutually agreed time and location. The University’s NAGPRA Staff must be present during this process and may help in the cross-check if invited to participate by the Tribal Recipients. Photocopies of all signed inventory cross-check sheets will be made available to the Tribal Controllers by the University.
 - b. At the completion of the inventory cross-check by the Transfer Recipients, if the objects or collections are not leaving University property the same day, all boxes will be sealed with tape to indicate that the box has been inventoried and completed.
 - c. The Transfer Recipient(s) will be required to sign a Receipt of Physical Delivery (Appendix C) upon physical transfer of the collection. The document will specify the contents of the transfer and the names of the Tribal Recipient(s). The SJSU Provost (or designee) will sign on behalf of the University. For transfers involving multiple Tribal Controllers, a photocopy of the signed Transfer of Custody will be sent to each of them for their records.
 - d. Pursuant to 43 C.F.R § 10.10(f)(1), the University will generate a record of every repatriation and disposition it effectuates. These files will permanently document the contents, recipients, and processes observed for all repatriations and dispositions.

ACKNOWLEDGEMENT OF TRANSFER OF CONTROL

Appendix A

Collection name/number: _____

The Board of Trustees of California State University, and in particular its San Jose campus (collectively referred to as “CSU”) pursuant to and in conformance with the Native American Graves Protection and Repatriation Act of 1990 (“NAGPRA”) and its implementing regulations hereby acknowledges that the **{human remains/items/human remains and items}** described in the Federal Register Notice (**see {insert Citation, Date}**) and summarized in Section 1, below, are rightfully controlled by the Indian Tribe(s) listed in Section 2, below (hereinafter “Tribes”).

Section 1: Description of Objects (include accession number, brief description, quantity) (hereinafter “Collection(s)”). Attach full inventory for large collections.

Pursuant to 43 C.F.R. § 10.10(e), the CSU informs the Tribe(s) that, to the best of its knowledge, it has no record or knowledge of any treatments of the Collection(s), with pesticides, preservatives or other substances that represent a potential hazard to the Collection(s) or to persons handling the Collection(s).

Section 2. Cultural Affiliation

Pursuant to 43 C.F.R. § 10.5(b), of NAGPRA, the following Tribe(s) have established by a preponderance of evidence the requisite cultural affiliation with the Collection(s). Therefore, in conformance with NAGPRA, the Tribe(s) are acknowledged to have the right to control of the Collection(s):

Pursuant to 43 C.F.R. § 10.10(d), in order to complete the repatriation/disposition of these Collection(s), the Collection(s) will be physically returned to the Tribe(s), on a date, at a place, and in a manner agreeable to CSU and the individual(s) identified and agreed to by the receiving Tribe(s) to accept the collection. When a repatriation/disposition involves multiple Tribes, CSU must receive written confirmation from all the Tribes regarding their mutual identification of, and agreement to, the identity of the individual(s) to whom physical delivery of the Collection(s) will be made prior to any such delivery.

Section 3. Location of Collections Pending Physical Delivery, Acknowledgement of Sufficiency of Process and Indemnification

The Tribe(s) hereby agree that until such time as physical possession by can be accomplished, the Collection(s) will be physically located at San Jose State University in the Office of the Provost's Curational Facility. During this time period, CSU will store the Collection(s) as a gratuitous bailment and will continue to store and care for the materials with ordinary care for up to 90 days after the Notice Publication waiting period is over. If physical transfer of the collections will take place after this 90 day period, CSU will require a Held-in-Trust Curation Agreement to be signed between the Tribal Controllers and CSU. CSU, its officers, agents, employees, and/or volunteers will not be held liable for any damages or loss to the Collection(s) as of the date this acknowledgement is executed, unless any damage or loss results from the gross negligence of CSU.

Section 4. Agreement of Tribes re Repatriation/Disposition

The individuals signing on this Acknowledgement on behalf of the Tribe(s) represent and warrant that they have full authority to act on behalf of the Tribe(s) in this matter. By signing this Acknowledgement the Tribe(s) hereby agree: (1) the consultations in connection with this repatriation/disposition were sufficient and in compliance with NAGPRA; (2) they have been notified of any presently known treatment of the Collection(s) with pesticides, preservatives, or other substances that represent a potential hazard to the Collection(s) or to persons handling the Collection(s); and (3) they will accept control of these Collection(s). In consideration for the administrative actions taken by CSU in connection with this repatriation/disposition, the Tribe(s) (1) hereby release CSU and the State of California and their employees, agents, officers, volunteers of any liability and responsibility, both with respect to the repatriation/disposition and handling of these Collection(s).

_____ Date: _____
Dr. Vincent J. Del Casino Jr.
Provost and Senior Vice President for Academic Affairs, San Jose State University

_____ Date: _____
Signature of Tribal Representative, Printed Name
Tribe affiliation: _____

_____ Date: _____
Signature of Tribal Representative, Printed Name
Tribe affiliation: _____

_____ Date: _____
Signature of Tribal Representative, Printed Name
Tribe affiliation: _____

_____ Date: _____
Signature of Tribal Representative, Printed Name
Tribe affiliation: _____

TRANSFER RECIPIENT AUTHORIZATION

Appendix B

The Tribal Controllers for the below named NAGPRA Collection(s) have designated the following Tribal Recipient(s) to act on our behalf for the physical transfer of the collection(s) at a specified time and date to be determined between the Tribal Recipient(s) and the SJSU NAGPRA Staff.

Collection Number/Name: _____

Tribal Recipient(s) Name	Tribal Affiliation

We, the undersigned, are appointed NAGPRA Designees for the Tribes affiliated with the Collection(s). As Designees, the governing authorities of these tribes have authorized us to administer NAGPRA-related affairs on behalf of the Tribe. Our signatures indicate our agreement with contents of this document and support for the actions contained therein.

Signature of NAGPRA Designee	Printed Name	Tribe	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**RECEIPT FOR THE PHYSICAL DELIVERY OF COLLECTION(S)
FOR THE PURPOSES OF NAPGRA
Appendix C**

The Tribal Controllers for the below named NAGPRA Collection(s) have designated the following Tribal Recipient(s) to act on the Tribe's behalf for the physical transfer of the collection(s). This document confirms that the Tribal Recipient(s) administered NAGPRA-related affairs regarding taking physical possession of the collections for purposes of NAGPRA. Signatures below indicate that San Jose State is no longer the curator, or in physical possession, of the collection described.

Collection Number/Name: _____

General collection description (of items transferred)

Signature of Tribal Recipient	Printed Name	Tribe	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Signature of SJSU NAGPRA Designee

_____ Date: _____

Dr. Vincent J. Del Casino Jr.
Provost and Senior Vice President for Academic Affairs, San Jose State University

REPATRIATION STATEMENT Appendix A2

{DATE}

In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3001 et seq) and its implementing regulations (43 CFR part 10), this statement certifies the following:

- The {1. Museum or Federal Agency} relinquishes possession or control of
- the {2. *choose appropriate terms*: human remains, associated funerary objects, unassociated funerary objects, sacred objects, objects of cultural patrimony} listed in the attached *Federal Register* notice(s) to
- {3. list all of the requesting lineal descendant (whose name may be withheld), Indian Tribes, or Native Hawaiian organizations}.

San José State University has no information about the human remains or cultural items being treated with pesticides, preservatives, or other substances that represent a potential hazard to the object(s) or to person(s) handling the object(s). Any information about these treatments was previously shared with the recipients.

After sending this repatriation statement, San José State University will:

1. Consult with the parties above on custody and physical transfer,
2. Document any physical transfer, and
3. Protect sensitive information from disclosure to the general public to the extent consistent with applicable law.

Nothing in the Act or this part limits the authority of San José State University to enter into any agreement with the requestor concerning the human remains or associated funerary objects.

San José State University will send a copy of this repatriation statement to all parties identified above.

Sincerely,

Alisha Marie Ragland, Repatriation Coordinator
Office of the Provost

Enclosure(s): Federal Register notice(s)

CC: {All requesting lineal descendants, Indian Tribes, or Native Hawaiian organizations}