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November 29, 2023

To: Campus Community

From: Dr. Cynthia Teniente-Matson, President



Re: **Presidential Directive (PD-2023-01)** San José State University's Protocol for Curation, Inventory, and Repatriation of Native American Remains Subject to the Native American and Graves Repatriation Act (NAGPRA) and CalNAGPRA (California NAGPRA)
Replaces PD-2021-03 (AMENDED), signed by Interim President Stephen Perez, 1/18/22

OVERVIEW

San José State University has curated collections of human remains, artifacts, and funerary objects (“Collections”) with technical support from faculty affiliated with the Department of Anthropology and in consultation with Native American tribes and Indigenous peoples for decades. For many years, faculty and supervised students were permitted to access the curated Collections for research and teaching purposes. Between 2008 and 2010, the Department adopted protocols for accessing and working with the Collections, which have been stored in a locked, secure location since the early 1990s. The Department has also had a Native American and Graves Repatriation (NAGPRA) Coordinator in place since 1990 per federal law. In 2020, the only part of the Collections affiliated with a federally recognized Tribe – the human remains from CA-STA-133 – was repatriated to the Central California Yokuts NAGPRA Coalition.

In 2001, California adopted a state law similar to NAGPRA but applicable to culturally affiliated Tribes that were *not* federally recognized – the California Native American Graves Protection and Repatriation Act of 2001 (CalNAGPRA). In September 2020, California Governor Gavin Newsom amended CalNAGPRA and signed into law Assembly Bill (AB) 275 (“Native American Cultural Preservation”) which amended and strengthened CalNAGPRA to “provide a seamless and consistent state policy to ensure that all California Indian human remains and cultural items be treated with dignity and respect.” AB 275 mandates agencies and museums that possess collections of Native American human remains and funerary objects, including SJSU, to engage in consultations with Native American and Indigenous California tribes to inventory and repatriate all CalNAGPRA affiliated collections. On October 10, 2023 Governor Newsom signed AB 389 to strengthen cultural resource law and further protect the dignity of Native American human remains and cultural items held by CSU institutions. Both laws require SJSU to “defer to tribal recommendations for appropriate handling and treatment” of human remains and funerary objects, and to adjust its policies accordingly. During consultations since 2021, several local Native American and Indigenous California tribes have asked SJSU to prescribe a stricter

set of protocols protecting the remains and artifacts housed on our campus than had been previously developed by the campus independent of those consultations.

The California State Auditor published a June 29, 2023 report on CSU compliance with NAGPRA and CalNAGPRA, prescribing best practices. The report requests and recommends that each CSU campus produce a single comprehensive repatriation policy for our NAGPRA compliance efforts.

SJSU POLICY ON REPATRIATION

This Directive sets forth the [SJSU Comprehensive Policy on Repatriation](#) and unifies campus protocols specific to [Consultation](#), [Inventory](#), and [Repatriation](#) of human remains and cultural items that are subject to NAGPRA or CalNAGPRA. The specific elements of each protocol are mutable, as they must be subject to change based on recommendations received through Tribal consultation, systemwide CSU policies, and new state or federal laws. Furthermore, through the audit process, SJSU made available all protocols through a publicly accessible website. This policy thus guides how that website should be maintained and what should be included in it.

The 2023 California Audit of CSU NAGPRA and CalNAGPRA compliance thus guides some elements of this policy.

- I. Physical Security and Care of Native American Human Remains
 - A. Tribes determine the storage, handling, and management of ancestral remains and cultural items.
 1. The curation spaces at SJSU that house the Collections will be exclusively managed by the SJSU NAGPRA Coordinator and the SJSU Tribal Liaison, supplemented by student assistants who are vetted by Tribal leaders, appropriately trained through a Tribal-approved education program, and supervised to assist with the inventory process.
 2. SJSU materials subject to NAGPRA or CalNAGPRA are subject to a complete moratorium on all research and teaching.
 3. Any physical access to or use of the Collections will require written approval after consultation and required affirmation by Tribal leaders.
 4. Audio, video, or photographic devices are prohibited in the curation spaces, as is taking photo images or videos of human remains, funerary objects, or the boxes in which these materials are held. The exhibition of images of Native American human remains is prohibited without explicit Tribal consent.

- B. Access to collections will be limited to collections' management professionals and reflect tribal requests.
 - 1. The Collections will continue to remain in a locked, secure area on campus, and all access will be overseen by the SJSU NAGPRA Coordinator and the SJSU Tribal Liaison in compliance with recommendations SJSU has received from Tribal leaders.
 - C. Accepting new collections and the loan of existing collections are prohibited.
 - 1. The campus will prohibit the loan of existing collections for materials subject to NAGPRA or CalNAGPRA. No additional Native American human remains or affiliated cultural items will be received by our campus for the purposes of curation or research.
 - D. SJSU staff will adhere to professional curation standards and maintain complete records.
 - E. Records, remains, and cultural items will be stored in dedicated and secured spaces with appropriate physical security conditions and an emergency plan.
- II. Consultation with Native American Tribes
- A. SJSU staff will conduct meaningful consultations with Tribes identified by the California Native American Heritage Commission (NAHC). Consultations will take place throughout the process of documenting inventories of human remains and cultural items as well as repatriation to culturally affiliated Tribes, in compliance with NAGPRA and CalNAGPRA.
 - B. SJSU staff will document the consultation process while maintaining appropriate levels of confidentiality upon Tribal request.
 - C. Conflict or disagreements between Tribes' perspectives on handling or repatriation will be addressed by a campus committee with Tribal representation and by mediation sought through the NAHC.
- III. Inventory of Native American Human Remains and Cultural Items
- A. Preliminary and final inventories will be prepared in accordance with Tribe-mandated protocols, and provided to Tribes for review and approval prior to submission to the NAHC.
- IV. Repatriation of Native American Human Remains and Cultural Items
- A. Repatriation of all culturally affiliated Native American human remains and cultural items subject to NAGPRA and CalNAGPRA currently housed at SJSU is the goal and responsibility of our institution.

- B. SJSU staff will provide Tribes' claims requests to the NAHC. The legal and physical transfer of control to Tribes will proceed as authorized by the NAHC or National NAGPRA offices.

SCOPE

This Presidential Directive applies to all SJSU faculty, staff, students, and administrators, as well as visitors to campus. All potential Native American human remains, cultural items, associated documentation and photographs, and archival content in campus institutions and departments is protected and subject to this Directive. It supersedes all previous protocols including those developed by the SJSU Department of Anthropology and any previous interim Presidential Directives.