



CSU NAGPRA SYSTEMWIDE COMMITTEE APPEAL PROCEDURE

I. GENERAL PROVISIONS

A. PURPOSE

The purpose of this CSU NAGPRA Systemwide Committee Appeal Procedure ("Appeal Procedure") is to outline how the CSU Systemwide Committee reviews and considers an Appeal submitted under the CSU Native American Graves Protection and Repatriation Act ("NAGPRA") Policy outlined in Section II(E)(14). This Appeal Procedure is developed in compliance with California Health and Safety Code 8028.7(a)(7).

Note: A Tribe or Lineal Descendant may also appeal to the Campus President. This Procedure does not include appeals to the Campus President. If a Tribe or Lineal Descendant appeals to a Campus President and the Systemwide Committee at the same time, the Appeal to the Campus President will be stayed until the Systemwide Committee makes a recommendation to the Campus President regarding the Appeal. Once the Campus President is in receipt of the Systemwide Committee's recommendation, the Campus President will review the Appeal and make a final determination.

B. APPEAL ELIGIBILITY

Any Tribe or Lineal Descendant that has consulted on the Collection may appeal a campus' decision or determination regarding the identification or repatriation of Human Remains or Cultural Items.

C. DEFINITIONS

This procedure adopts the definitions of federal NAGPRA, CalNAGPRA and the CSU NAGPRA Policy as applicable. In cases where definitions differ, the following definitions are provided for clarification. This Appeal Procedure capitalizes "Tribe" except when quoting directly from the federal NAGPRA or CalNAGPRA statutes or regulations, where original capitalization is preserved.

Administrative Record shall mean the record of all documents, data, communication and materials generated, received, relied upon, or considered by the Campus related to the

specified NAGPRA collection. This shall include any correspondence and documents submitted by or exchanged with the Appellant and all other requesting or consulting Lineal Descendants, Tribes or entities. The Systemwide Committee will also request that the Appellant submit all documents and communication it has provided to the Campus regarding the collection, to ensure that the Administrative Record is comprehensive and representative of all parties.

Appeal shall mean a challenge of a decision or determination made by a CSU Campus.

Appellant shall mean the Tribe or Lineal Descendant that is appealing an action of a CSU campus.

Campus shall mean a campus of the California State University System.

Collection shall mean an accumulation of one or more objects, items, or Human Remains for any temporary or permanent purpose that are being preserved and managed by a CSU Campus through a campus museum, department, gallery, unit museum, etc.

CSU Systemwide Committee shall mean the CSU Systemwide Committee as described in the CSU Native American Graves Protection and Repatriation Act (NAGPRA) Policy.

Days shall mean calendar days unless stated otherwise in the CSU NAGPRA Policy, federal NAGPRA or CalNAGPRA. In accordance with 43 CFR 10.1(f)(1), if a deadline falls on a Saturday, Sunday or State Holiday, the action is deemed timely if taken no later than the next calendar day that is not a Saturday, Sunday or State Holiday. A State Holiday includes any days during which the State government is closed because of a State Holiday, lapse in appropriations, or other reasons.

Decision or Determination shall mean the act of giving a judgment by a Campus regarding the (a) identification, (b) repatriation or (c) disposition of Human Remains or Cultural Items as identified in Cal Health & Safety Code Section 8028.7(a)(7).

Tribe shall mean a California Indian Tribe as defined under [CalNAGPRA §8012\(c\)](#). Additionally, for the purpose of this Process, it shall also include a Native Hawaiian Organization as defined in 43 CFR 10.2.



II. APPEAL PROCEDURE

A. Step 1: Appeal Submitted

Any Tribe or Lineal Descendant may submit an Appeal to the CSU Systemwide Committee by emailing the Appeal to nagpra@calstate.edu.

It is preferred that the Appeal be submitted on the Appeal Form, found on the CSU NAGPRA Website Page under Policy Resources, to capture the needed information. (See Template: CSU NAGPRA Appeal Form).

B. Step 2: Receipt of Appeal

The Systemwide NAGPRA Coordinator ("Systemwide Coordinator") will send a receipt of appeal by replying to the email containing the Appeal and simply state that the Appeal is received. The receipt must be sent within five (5) days of receipt; however, it is best practice to send at least the next business day.

The Systemwide Coordinator will also forward the email containing the Appeal to the Campus President and the President's Designee for their records. The Campus may send a notice stating that an Appeal was received to any other parties consulting on the collection, however, the Appeal and details of the Appeal and any associated documents shall not be released.

The Systemwide Coordinator will also work with the NAGPRA Coordinator for the Campus ("Campus Coordinator") that is the subject of the Appeal to determine if there are any NAGPRA statutory deadlines in place that the Appeal must comply with.

C. Step 3: Request for Administrative Record and Other Relevant Documents

Within five (5) days of receipt of the Appeal, the Systemwide Coordinator will send a request for the Administrative Record to the Campus Coordinator that is the subject of the Appeal (See Template Letter: Administrative Record Request). The Systemwide Coordinator will also send a Letter to the Appellant requesting any documents submitted to the Campus relating to the collection at issue (See Template: Letter to Appellant



Requesting Documents). The Letters will include a deadline for submittal of the documents.

Only information that was disclosed and exchanged in consultation between the parties is to be provided. As the Systemwide Committee supports consultation in the NAGPRA process, IT WILL NOT accept new information in considering an Appeal. Relevant documents in the Administrative Record may include, but are not limited to, the following: field notes, catalogue records, consultation documentation, communication records, relevant studies, and other pertinent data.

In order to assist Campus' in preparing complete Administrative Records, the Systemwide Committee has prepared an excel spreadsheet workbook for NAGPRA staff's use in preparing Administrative Records for both collections containing Human Remains and Associated Funerary Objects and/or collections containing other Cultural Items. (See Templates: Appeal Administrative Record Workbook (Repatriation of Human Remains or Associated Funerary Objects) and Appeal Administrative Record Workbook (Repatriation of Other Cultural Items))

D. Step 4: Campus NAGPRA Staff/OTR Meeting

Upon receipt of the Campus' Administrative Record, the Systemwide Coordinator, or its designee, will prepare a timeline of the Administrative Record, with links to applicable Administrative Record documents, for the Systemwide Committee's review. Once the timeline is drafted, the Systemwide Coordinator and legal counsel will meet with the Campus' NAGPRA staff to complete an in-depth review of the timeline and Administrative Record to ensure that it is complete and accurate.

E. Step 5: Committee Initial Review of Appeal

The Systemwide Committee will review the Appeal at its next committee meeting, but no later than 45 business days from receipt of the Appeal. (Note: Days shall be calculated beginning the next calendar day from the date of receipt.)

At a minimum, during the initial review, the Systemwide Committee will review and discuss the following items:

1. Appeal Documentation Submitted by Appellant

2. Acquiring and/or Receipt of the Administrative Record from Campus
3. Acquiring and/or Receipt of Documents Submitted by Appellant to the Campus re Collection
4. Additional Information needed by the Systemwide Committee for proper review of the Appeal and Next Steps to Obtain Information
5. Develop a Timeline for Completion of the Appeal Review Procedure
 - a. The Timeline shall include deadlines for submittal of the Administrative Record, etc. (See Template: CSU Systemwide NAGPRA Appeal Timeline)

To assist the Systemwide Committee in its review, it may use the Appeal Tracking Sheet and Review Form. (See Template: CSU Systemwide Appeal Procedure Tracking Sheet and Appeal Review Form)

The initial review may be the only time that the Committee meets to review the Appeal, but it also may be the first of several meetings depending on the nature of the Appeal.

F. Step 6: Committee Request Additional Information, as needed

An Appeal to the Systemwide Committee is intended to allow the Systemwide Committee the opportunity to review the actions of a Campus regarding the identification or repatriation of Human Remains or Cultural Items. It is NOT an opportunity to provide new information regarding identification or repatriation of Human Remains or Cultural Items to the Systemwide Committee. All information reviewed must be previously provided to the Campus. As described in Step 3, the Systemwide Committee will review the Administrative Record for the collection at issue in the Appeal. The Systemwide Committee will also request that the Appellant submit all documents and communication it has provided to the Campus regarding the collection, to ensure that the Administrative Record is comprehensive and representative of all parties. The NAGPRA Systemwide Committee will set a deadline for submittal of the Administrative Record.

The Systemwide Committee may also ask for additional information needed to ensure that it can properly review the Administrative Record and understand the determination made by the Campus, this may include information left out of the Administrative Record.

G. Step 7: Additional Committee Meeting, as needed

The Systemwide Committee may meet as many times as needed in order to review, discuss and make a recommendation regarding the Appeal.

Meetings will not be open to the public, the Appellant, consulting Tribes or Lineal Descendants or even the Campus out of respect for sovereignty and due to the confidential nature of the discussions regarding Human Remains, Cultural Items and Tribe's and Lineal Descendant's private information.

The Systemwide Committee, at its sole discretion, may request the Appellant, Campus or other consulting/requesting parties to the Collection to attend a meeting.

H. Step 8: Committee Recommendation Determination

Following a thorough review of the Appeal and Administrative Record, the Systemwide Committee will memorialize its recommendation by majority vote of the Committee members present at a meeting, if a valid quorum is present. The Systemwide Committee may also make a recommendation by poll vote, if necessary, under extenuating circumstances.

I. Step 9: Draft & Approve Committee Recommendation

The Systemwide Committee will write a letter to the Campus President providing its recommended disposition of the Appeal. The recommendation will be to (1) uphold, (2) reverse or (3) modify the initial determination or action of the campus. The letter to the Campus President will be accompanied by a more extensive memo explaining the reasoning for the recommendation. The memo may also include the procedural background of the Appeal, a review of the relevant statutes, laws, policies and legal review standards.

J. Step 10: Submit Committee Recommendation to President, Campus, Appellant and Other Participating Tribes or Lineal Descendants

The Chairperson of the Systemwide Committee will sign and deliver via email the letter to the Campus President within 20 business days of the Committee Meeting wherein the Systemwide Committee made its determination detailed in Step 8. If there is no Chairperson of the Committee, the Assistant Vice-Chancellor of the CSU Office of Tribal



Relations will submit the letter to the Campus present on behalf of the Systemwide Committee.

The Chairperson will also submit a copy of the letter to the Campus Presidential Designee, and Appellant. The Campus may distribute a copy of the letter to any other participating Tribe or Lineal Descendants actively consulting regarding the collection or any other Tribe or Lineal Descendant that has made a competing claim once a copy has been sent to the Campus President.

III. OTHER PROVISIONS

A. AMENDMENT, WITHDRAWAL OR STAY OF APPEAL

At any time, an Appellant may amend or withdraw the appeal by sending an email to the Systemwide Coordinator with an updated Appeal Form marked in the box for amendment or clearly identified as an amendment or written confirmation that the Appellant desires to withdraw the appeal.

At any point in this Process, if the Appellant requests a review of the Campus' determination from National NAGPRA, the Appeal will be automatically stayed until one of the following occurs (1) National NAGPRA accepts review of the determination and then the Appeal will be considered automatically withdrawn or (2) National NAGPRA declines the appeal and the stay is lifted. The Systemwide Coordinator will provide written confirmation to the Appellant and Campus of an automatic withdrawal or stay, including imposition and lifting of the stay.

B. CONFLICT OF INTEREST

Situations may arise in which individual Systemwide Committee members have, or may appear to have, a conflict of interest regarding an Appeal. In such circumstances, the Systemwide Committee members will recuse themselves from the Systemwide Committee's consideration of the Appeal. Recusal means that the person takes no part in the presentation, discussion, or Systemwide Committee's action.

If the Systemwide Committee Member refuses to recuse themselves, the Systemwide Committee, by majority vote, may declare that they have a conflict and remove them from the conflicted agenda item in a meeting.

Recusals will be documented both in the minutes of the Systemwide Committee meeting and in the memo describing the Systemwide Committee's reasoning for the recommendation. The documentation shall include the Committee Members name so it is clear that they were not involved in the presentation, discussion or Systemwide Committee's action for the Appeal.

C. DOCUMENT RETENTION AND RELEASE

The CSU Office of Tribal Relations will store a copy of the Appeal, the Administrative Record, and Systemwide Committee Determination in its electronic files.

Appeals and all related materials are not to be released unless required by state or federal law. Appeals and all related materials meet the exemption for release under Government Code section 7921.000 et seq, the California Public Records Act or the Freedom of Information Act.

EXHIBITS: Template Documents

Template: CSU NAGPRA Appeal Form

Template: Administrative Record Request

Template: Letter to Appellant Requesting Documents

Template: CSU Systemwide NAGPRA Appeal Timeline

Template: CSU Systemwide Appeal Procedure Tracking Sheet

Template: CSU Systemwide Appeal Review Form

Template: Appeal Administrative Record Workbook (Repatriation of Human Remains or Associated Funerary Objects)

Template: Appeal Administrative Record Workbook (Repatriation of Other Cultural Items))