

Royal Hawaiian Academy of Traditional Arts

835 Ahuwale Street, Honolulu, Hawai'i 96821 * Phone: (808)377-5611 * Fax: (808)377-5611

November 26, 2004

Tim McKeown, Designated Federal Officer
National Park Service
National NAGPRA Program Office
1849 C Street NW, NC 350
Washington, D.C. 20240

Dear Sir;

At the conclusion of the NAGPRA Review Committee teleconference on November 2, 2004, you invited anyone in attendance that wished to make comments to the committee, to provide them in writing and you'd make sure they got to everyone.

I have attached the comments I had intended to deliver but have modified them by attaching and marking, as exhibits, the documents that I would have referred to only verbally, had I been allowed to address the committee at that time. I have also typed my hand written notes, taken in response to comments made by Kaulukukui and Duckworth. Please distribute this letter, my comments and all marked and attached documents to the members of the committee.

Thank you for your attention to and cooperation in this matter. Please contact me if you have any questions.

Sincerely,



L. La'akea Sukanuma
President

Cc: Senator Daniel Inouye
Senator Daniel Akaka
Gale Norton, Secretary of the Interior
Carla Mattix, Office of the Solicitor, U.S. Dept. of the Interior
A. Van Horn Diamond, Van Horn Diamond 'Ohana
Emalia Keohokalole, 'Ohana Keohokalole
Mel Kalahiki, Na Papa Kanaka O Pu'ukohola Heiau
C. Kamuela Harris, Kekumano 'Ohana
Amelia Gora, Hawai'i Genealogy Society
Geri Bell, Hawai'i Island Burial Council

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Comments to the NAGPRA Review Committee – Nov. 2, 2004

By La'akea Suganuma. President

I am addressing this committee, once again, with continually fading optimism and hope that someone will give some attention to what I am saying. Also, as this matter takes its predictable course, I am further establishing that any future claim by any member of this committee that he or she was unaware of our concerns and positions, will be invalidated.

I. REHEARING OF THE DISPUTE BETWEEN THE ROYAL HAWAIIAN ACADEMY OF TRADITIONAL ARTS AND THE BISHOP MUSEUM: The committee made this decision based upon Hui Malama's charge of an alleged procedural error made by the committee in failing to notify all necessary parties to this dispute and thereby issuing a finding without consideration of all necessary facts. The committee, in its wisdom, determined that this was true. As a matter of principle, as well as organizational and personal integrity, and because my previous requests have gone unheeded, I must hereby insist that this committee specify the exact requirement of its procedures that was not properly followed.

In August 2001, I requested, from Katherine Stevenson, Associate Director, Cultural Resource Stewardship and Partnerships, National Park Service, information concerning the proper procedure for protesting the Bishop Museum's position regarding the Kawaihae Caves Complex matter. I received a response, along with a number of documents, from Robert Stearns, Manager, National NAGPRA Program (attached Exhibit "A") including the Dispute Resolution Procedures Of The Native American Graves Protection and Repatriation Review Committee (attached Exhibit "B"). These procedures were followed carefully and meticulously. During the hearing of this dispute at the St. Paul meeting, then committee member and author of the minority report, Rosita Worl, claimed that repatriation had taken place, the exact position held by Hui Malama. She further alleged that all of the claimants should have been notified, resulting in the dispute procedures being amended to include such a provision, **after** the hearing of this dispute was completed and the findings and recommendations issued (attached Exhibit "C"). The minutes of the St. Paul meeting reflect that:

"Ms. Worl asked if the parties to the dispute were present. Mr. O'Shea stated that the parties were the Royal Hawaiian Academy of Traditional Arts, Honolulu, HI, and the Bishop Museum, Honolulu, HI, and both were present at the meeting. Ms. Worl asked if all Native Hawaiian organizations named in the published Federal Register notices under discussion in the dispute (Federal Register 2000, volume 65, number 66;FR Doc. 00-8350 and FR Doc. 00-8351), were formally notified. Mr. Robbins stated that notice was given through publication of the meeting in the Federal Register. Ms. Worl recommended notifying all individuals or groups who may be involved in a dispute, even if they are not direct parties.

All of the claimants were well aware of this dispute being on the St. Paul agenda, via the media and federal register, and had more than ample time and opportunity to participate and provide input.

It has become incredibly obvious to the majority group of claimants that Hui Malama's unhappiness with the decision has prompted it, with the cooperation of certain members of the committee, to fabricate a reason for this entire misleading exercise. Charged with facilitating the resolution of disputes, under NAGPRA, this Review Committee, under the leadership of its current chair, has chosen to do just the opposite. We do recognize, however, that there are committee members who are making a sincere effort to discharge their duties honestly and with integrity, but have, unfortunately, been misled. Prior to the Washington, D.C. meeting, I sent letters, dated August 27, 2004 (attached Exhibit "D"), September 9, 2004 (attached Exhibit "E"), September 10, 2004 (attached Exhibit "F") and September 13, 2004 (attached Exhibit "G"), addressing the truths of this matter, all of which were ignored.

There was no error, according to the dispute procedure received from Mr. Stearns. The fact is that the thirteen claimants are divided into two groups with opposing positions*. The RHATA represents the majority argument that proper and legal repatriation never took place, as the museum had neither possession nor control at the time they allege that repatriation had been completed. The so-called "loan" to Hui Malama took physical possession away from the museum and at the point that Hui Malama refused to return the objects, the museum, obviously, had no physical control over them. A complaint filed by OHA, shortly after the "loan" was made prompted an inquiry by the National Park Service. Based upon Duckworth's response, Katherine Stevenson wrote, "I strongly urge you to honor your commitment to recover immediately and take back into direct care the Kawaihae Cave Complex human remains and funerary objects. Please notify me when the museum has completed recovery and has direct physical possession and control of the human remains and associated objects, and please describe for me the museum's plan regarding the Kawaihae Cave Complex NAGPRA claims." (Exhibits "H", "I", "J", "K", "L") Furthermore, there was no consultation with the claimants to determine the place and manner of said repatriation.

The minority group of claimants, led by Hui Malama, claims that repatriation had been completed. The museum's NAGPRA representative, G. Kaulukukui, as well as Director Duckworth and others, stated time and again, to the claimants, the Hawaiian people, the community-at-large, and the National Park Service, that the museum bore full responsibility for the recovery of the loaned objects. The Dispute Binder is replete with the museum's acceptance of responsibility for the "loan" and its promises to recover the objects from the cave, beginning as early as April 19, 2000 (attached Exhibit "M"). I submitted sixty (60) articles concerning this matter to the St. Paul Review Committee, a few of which I've included (Exhibits "N", "O", "P", "Q")

Many of us wondered why the museum never faulted or took action against Hui Malama, who refused to abide by the loan agreement and return the subject eighty-three (83) objects. It is clearly evident that the museum never intended to recover the items, never intended to get them back from Hui Malama, and was not going to pursue Hui Malama legally.

-On May 24, 2001, I met with Kaulukukui and Donald Duckworth to discuss the progress of my meetings with the various claimants in attempting to determine if an agreement on final disposition was possible. I was informed that, whatever was decided, a joint press release would be issued by the museum's public relations firm, with my prior approval.

- On August 2, 2001, I met with Kaulukukui, who indicated that the museum would proceed with recovering the objects and I said that the claimants would continue to discuss the matter.

- On August 4, 2001, I faxed some documents to Kaulukukui, with a cover letter which stated, "We understand the museum's interest in moving forth to conclude its obligatory responsibility (recovery) established prior to the recognition of our claimants' group and will continue our efforts as this matter progresses."

- On August 7, 2001, I received a letter which had been mailed to the claimants, stating that repatriation had been completed in April and that the museum had no further responsibility in the matter.

- Up until this point, I believed Kaulukukui to be a man of honor and integrity. He, however, proved me wrong. He treated the notice of repatriation as a necessary formality that would not affect the museum's plans to recover the objects, but obviously had never intended to keep his word.

- Time has proven that there was collusion between Kaulukukui and Hui Malama and that Kaulukukui, with malice and aforethought, purposely deceived the claimants. The record of this matter, as submitted by the RHATA, is complete and clearly presents the opposing positions, with the facts speaking for themselves.

- The museum's claim that repatriation was completed was a deceitful, cheap trick, designed to relieve itself of the obligation of the promised recovery and insuring Hui Malama's continual sole possession and control

* No Repatriation: Royal Hawaiian Academy of Traditional Arts, Van Horn Diamond 'Ohana, 'Ohana Keohokalole, Na Papa Kanaka O Pu'ukohola Heiau, Kekumano 'Ohana, Hawaii Island Burial Council, Hawaiian Genealogy Society.

Repatriation completed: Hui Malama, Nation of Hawaii, Pu'uhonua O Waimanalo, Native Hawaiian Advisory Council, DHHL.

No position: Office of Hawaiian Affairs.



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

W24 (2253)

Mr. L. Laakea Suganuma
835 Ahuwale Street
Honolulu, HI 96821

Dear Mr. Suganuma,

Your letter of August 29, 2001, to Katherine Stevenson has been forwarded to my attention at the National NAGPRA program. The National NAGPRA program has recently undergone reorganization and is now staffed by permanent employees; I anticipate that this reorganization will allow us to more fully assist the Native American, Native Hawaiian, museum, and federal agency communities in repatriation issues.

Your letter asked for guidance in ascertaining the proper procedures for the protest and challenge of the Bishop Museums position concerning the disposition of a group of objects from a cave complex on Hawaii Island. At the present time, there are three possible courses of action under NAGPRA. They are not mutually exclusive and may be pursued simultaneously.

If you disagree with the decision of the Bishop Museum, you may request the NAGPRA Review Committee to consider a dispute between you and the Bishop Museum, or request the Secretary of the Department of the Interior to investigate allegations of violations of the NAGPRA civil penalties regulations by the Bishop Museum.

The NAGPRA Review Committee is an advisory committee to the Secretary of the Interior. Among its other responsibilities, it is charged with helping to resolve repatriation disputes. I have included a copy of the dispute resolution procedures with this letter. You may also contact Martha Graham, the NAGPRA Review Committee Coordinator, for further information concerning the dispute procedures. Her telephone number is 202-343-1001.

The interim NAGPRA regulations regarding civil penalties were published in the Federal Register on January 13, 1997. I have enclosed a copy of the published interim regulations with this letter. Section 10.12 (b) lists definitions of "failure to comply" with the statute. Section 10.12 (c) advises the reader that "any person may bring an allegation of failure to comply to the attention of the Secretary." In this section, "the Secretary" is the Secretary of the Interior. You must send your correspondence directly to her.

Section 15 of the NAGPRA statute (PL101-601) covers enforcement of the statute, and states that if you think that the Bishop Museum has violated the NAGPRA statute or regulations, you may file an action in a U.S. district court. I have enclosed a published copy of the statute with this letter.

I also enclose a copy of the final rule of the regulations. I hope that this information will be helpful to you.

Sincerely,

A handwritten signature in cursive script that reads "Robert Stearns". The signature is written in dark ink and is positioned above the printed name and title.

Robert Stearns
Manager, National NAGPRA Program

Enclosures

**DISPUTE RESOLUTION PROCEDURES
OF THE
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE**

- (A) *Statutory Requirements.* 25 U.S.C. 3006(c) charges the Native American Graves Protection and Repatriation Review Committee, hereafter called "the committee," with the following responsibilities:
- (1) upon the request of any affected party, reviewing and making findings related to:
 - (i) the identity or cultural affiliation of Native American human remains and other cultural items, or
 - (ii) the return of human remains and other cultural items;
 - (2) facilitating the resolution of disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of human remains and other cultural items, including convening the parties to the dispute if deemed desirable.
- (B) *Kinds of Potential Disputes.* The following decisions shall be subject to committee recommendations and findings:
- (1) whether particular objects fit the definitions of human remains and other cultural items as specified in 25 U.S.C. 3001;
 - (2) determination of the cultural affiliation of particular human remains or other cultural items;
 - (3) determination of the ownership of particular human remains or other cultural items; and
 - (4) appropriate disposition of particular human remains or other cultural items;
- (C) *The Committee's Procedures.* Written requests for review of a dispute by the committee shall be directed to the committee's Designated Federal Official (Assistant Director, Cultural Resources Stewardship and Partnerships, National Park Service, 1849 C Street NW, NC-350, Washington, DC 20240). The written request should indicate the basis for the dispute and provide any documentation relevant to review of the claim. The following steps will be taken by the committee to facilitate resolution of disputes:
- (1) Upon receipt of a written request for review of a dispute, a letter acknowledging receipt of a request will be sent to the requesting party.
 - (2) The Designated Federal Official will consult with the Committee Chair to determine the appropriate response to the written request for review of the dispute.
 - (3) If the Committee Chair and the Designated Federal Official decide jointly that consideration of the dispute is not appropriate at that time, the Designated Federal Official will send a letter to the requesting party explaining why the committee is not prepared to consider the dispute and recommending other action.

- (a) The requesting party may appeal a decision that consideration of a dispute is not appropriate to the committee as a whole at a subsequent meeting of the committee.

- John Robbins Asst. Dir.

- (4) If the Committee Chair and the Designated Federal Official decide jointly that review of the dispute is appropriate, the Designated Federal Official will send a formal notification to each involved party requesting submission of:

None under #1

- (a) a statement outlining the relevant facts of the dispute,
- (b) a statement describing each party's interpretation of the facts,
- (c) a statement describing each party's understanding of all other involved parties' interpretation of the facts,
- (d) a statement of previous efforts to resolve the dispute, and proposed solutions.

- (5) Once it has been decided that review of a dispute is appropriate, members of the committee must avoid inappropriate contact with the involved parties. Any communications between committee members and involved parties relevant to the dispute must be through the Designated Federal Official.

- (6) Upon receipt and evaluation of the statements, the Designated Federal Official will consult again with the Committee Chair to determine whether review of the dispute by the committee is appropriate.

- (7) If the Committee Chair and the Designated Federal Official decide jointly that review of the dispute is not appropriate at that time, the Designated Federal Official will send a letter to all involved parties explaining why the committee is not prepared to undertake the review and recommending other action, including the submission of additional information clarifying the nature of the dispute.

- (a) The requesting party may appeal a decision that consideration of a dispute is not appropriate to the committee as a whole at a subsequent meeting of the committee.

- (8) If the Committee Chair and the Designated Federal Official decide jointly that review of the dispute is appropriate, they will place a review of the dispute on the agenda of the committee's next available meeting. The Designated Federal Official will:

- (a) inform members of the committee of the time and place of the committee meeting when the dispute will be reviewed and send copies of all relevant materials to the members.
- (b) inform all involved parties of the time and place of the committee meeting when the dispute will be reviewed and invite them to send a representative to appear before the committee.
- (c) publish notice in the *Federal Register* of the time and place of the committee meeting when the dispute will be reviewed.

- (9) At the meeting to review a dispute, the committee will review the facts of the dispute, listen to presentations by representatives of the involved parties, question the representatives, and develop recommendations for resolution of the dispute.
- (10) The Designated Federal Official will communicate the committee's written recommendations to all involved parties.
- (11) If the involved parties fail to reach resolution, any one of them may resubmit the dispute to the committee for further consideration. Procedures for dealing with resubmissions are the same as for the original dispute with the exception that the committee may decide to issue a finding, rather than a recommendation, regarding the dispute's resolution.

(D) *Conflict of Interest.* Situations may arise in which an individual member or the Designated Federal Official appears to have a conflict of interest regarding a particular dispute before the committee. In such circumstances, the committee member or Designated Federal Official should declare their conflict of interest and remove themselves from the committee's deliberation of the dispute.

APPROVED: _____

Armand Minthorn, Chair

DATE: _____

2.5.2001

DISPUTE PROCEDURES OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE

I. Authority. The Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3006(c)) assigns the following responsibilities to the Native American Graves Protection and Repatriation Review Committee (Review Committee) –

- A.** Upon the request of any affected party, of reviewing and making findings related to:
 - 1.** the identity or cultural affiliation of Native American human remains and other cultural items, or
 - 2.** the return of human remains and other cultural items.

Review Committee's consideration of a dispute.

III. Potential Disputes. Distinct from the Review Committee's role in reviewing and making findings per I.A. above, the following matters are appropriate for consideration by the Review Committee –

- A.** Whether cultural items fit the definitions of human remains and other cultural items as specified in 25 U.S.C. 3001;
- B.** Determination of the cultural affiliation of particular human remains or other cultural items;

- b. statement describing the requesting party's interpretation of the facts;
 - c. statement describing the requesting party's understanding of the other involved party(ies)'s interpretation of the facts;
 - d. summary of the consultation record;
 - e. a statement of previous efforts to resolve the dispute; and
 - f. proposed solutions.
2. The DFO will reply to the requesting party acknowledging receipt of the request for consideration of a dispute. The acknowledgment letter may include requests for clarification or additional information.

Hawaiian organizations, or lineal descendants listed in the published Federal Register notice(s).

- 1. a copy of the requesting party's initial correspondence requesting consideration of a dispute, including the information provided in response to IV.A.1;
 - 2. a copy of the acknowledgment letter sent to the requesting party; and
 - 3. a copy of the DFO's letter requesting information from the other party(ies) to the dispute.
- D. Review Committee chair and DFO consultation. The DFO will provide the information received from the parties, or a summary of the information received, to the Review Committee chair. The DFO will then consult with the chair to

notification of the Review Committee's findings and recommendation, any party(ies) may resubmit the dispute to the Review Committee if the party(ies) demonstrate that the party(ies) have substantial new information to offer for the Review Committee's consideration. The procedure for requesting reconsideration is the same as the procedure for the original request.

H. Contact.

1. Parties.

- a. The parties are encouraged to continue discussions after a dispute is proposed. Parties should inform the DFO of any resolution reached prior to the Review Committee's consideration of the dispute.

Review Committee's consideration of the dispute.

- A. In the event and for the time that the DFO must recuse him/herself as DFO during consideration a dispute, the DFO will delegate his/her responsibilities to another Federal employee who does not and would not appear to have a conflict of interest.

VI. Public Access to this Document. This document will be posted on the National NAGPRA Website.

APPROVED: /s/ Armand Minthorn,
Chair, Native American Graves Protection
and Repatriation Review Committee
May 10, 2003