

# Royal Hawaiian Academy of Traditional Arts

835 Ahuwale Street, Honolulu, Hawaii 96821 \* Phone (808)377-5611 \* Fax (808)377-5611

August 27, 2004

Tim McKeown, Designated Federal Officer  
National Park Service  
National NAGPRA Program Office  
1849 C Street NW, NC350  
Washington, D.C. 20240

Re: Request to reconsider the findings and recommendations of the NAGPRA Review Committee in the Kawaihae Caves Complex non-repatriation dispute held on May 9-10, 2003 in St. Paul, MN.

Dear Sir:

This is to address the above referenced request made by Hui Malama I Na Kupuna O Hawaii Nei and the Native Hawaiian Advisory Council dba Ke Kia'i, "due to procedural error." They allege that the "review committee failed to notify all necessary parties to this dispute and proceeded to issue a finding without consideration of all necessary facts." They further requested "that the review committee include reconsideration of this issue on the agenda of a future meeting held in Hawai'i.

Briefly, the facts are:

- There were no procedural errors. The involved parties and the Review Committee strictly adhered to the guidelines set forth in the Dispute Resolution Procedures of the Native American Graves Protection & Repatriation Committee in effect at the time.
- All the necessary facts, and more, were presented to the Review Committee. There are no other facts.
- All parties were properly notified per procedure. After the completion of the review, the Review Committee issued its findings and recommendations.
- Changes to the Dispute Resolution Procedure regarding expanding the notification requirements were made after the Review Committee had acted and its review was completed.
- There is no provision for changes to the Dispute Resolution Procedure to be retroactively effective.
- There are no provisions for reconsideration in the Dispute Resolution Procedure except under IV.G., which allows for the re-submission of the dispute if the parties fail to reach resolution following notification of the Review Committee's finding and recommendations and only if there is "substantial new information to offer for the Review Committee's consideration." This would not apply, as the parties were able to reach resolution during the review.
- There are no other provisions and/or defined grounds for reconsideration.
- Every claimant was well aware of the intent of the Review Committee to hear this dispute and had every opportunity to participate.
- The Royal Hawaiian Academy of Traditional Arts represented the position of the MAJORITY of the recognized claimants in this matter.
- The next procedural step of the dispute resolution process, submission to U.S. District Court is available to anyone dissatisfied with the Review Committee's actions.
- Hui Malama, the organization now requesting reconsideration, refused to comply with the recommendations of the Review Committee, and publicly stated, "because the NAGPRA review committee serves as an advisory board, the organization (Hui Malama) is not bound by its findings." (article attached)

## DISPUTE HISTORY

- On February 26, 2000 the Bishop Museum "loaned" the Kawaihae Caves collection to Hui Malama without permission or agreement of the other three claimants who were recognized at the time.



- Hui Malama claimed that it had returned the human remains, which they had previously taken possession of, and the borrowed 83 items to the caves from which they originated and sealed the entrance. Hui Malama has consistently refused to honor loan recall demands.
- By November of 2000, there were thirteen recognized claimants, the majority of which demanded that the museum recover the "loaned" items, only.
- In December of 2000, the museum announced its decision to designate all thirteen claimants as most appropriate
- The museum suspended their so-called recover effort, at the request of the claimants, to give them an opportunity to meet and attempt to find resolution. This was done over the next nine months. Failing this, the museum was so informed in August of 2001 and asked to resume the recovery, which their NAGPRA representative said they would.
- A few days later, the museum issued a letter to all claimants, stating that repatriation had taken place in April of 2001 and that the museum no longer had any connection to or responsibility in this matter.
- After numerous futile attempts to further discussion with the museum, the RHATA, on behalf of the majority group of claimants, requested to be heard by the NAGPRA Review Committee, alleging that proper repatriation had not taken place since, along with other reasons, the museum had neither possession of nor control of the subject items at the time it claimed repatriation had been effected. This was allowed in the May 2003 meeting in St. Paul, MN, wherein the museum, after reviewing the charges, admitted that they had erred and that proper repatriation had not taken place.
- The NAGPRA Review Committee found that the repatriation process was flawed and incomplete; the place and manner of return had not been determined per regulations, and the museum was responsible for completing the repatriation process. The committee recommended that the museum renew the consultation process, recall the loan of the 83 items to Hui Malama, and that all thirteen claimants be treated in a respectful and equitable manner.

#### SUMMARY

There was no procedural error committed by the involved parties or the Review Committee. All requirements of the Dispute Resolution Procedure, in effect at the time, were fulfilled. The amendments regarding notification of all claimants was made after the issuance of the Review Committee's finding and recommendations in this dispute and is not retroactively effective. It is ludicrous to allege violation of a requirement that was not in existence at the time the alleged violation took place. All of the thirteen claimants were aware of the Review Committee's decision to review this dispute, along with the date and location of the meeting, and had every opportunity to participate. There are no published guidelines and/or grounds for reconsideration that are applicable, and there are no facts that were not previously submitted.

Furthermore, lacking any detailed rules, requirements or grounds governing the submission of requests for reconsideration, how can a proper decision be made? What remedial options are available to the Review Committee, especially when there are no additional facts to consider? Does the committee have the authority, in fact, to reverse, rescind, amend or otherwise tamper with the findings and recommendations of a previous committee? Would the entire dispute be heard again, further adding to the backlog of reviews already pending attention by the Review Committee?

For all of the stated reasons and unanswerable questions, we hereby ask that the request for reconsideration in this matter be denied and that the findings and recommendations of the duly authorized NAGPRA Review Committee stand, as previously issued. Please contact me if you have any questions or comments.

Me Ke Aloha,

  
L. La'akea Suganuma  
Authorized Representative

Attachments



# Royal Hawaiian Academy of Traditional Arts

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

September 9, 2004

Tim McKeown, Designated Federal Officer  
National Park Service  
National NAGPRA Program Office  
1849 C Street NW, NC350  
Washington, D.C. 20240

Re: Request to reconsider the findings and recommendations of the NAGPRA Review Committee in the Kawaihae Caves Complex non-repatriation dispute held on May 9-10, 2003 in St. Paul, MN.

Dear Sir:

Please be advised that I will be attending the NAGPRA Review Committee meeting at the Sheraton Four Points in Washington, D.C. on September 17-18, 2004 to address the above referenced matter. In preparation for said meeting, the academy has procedural questions that we would like answered as soon as possible and no later than the beginning of the hearing of this matter in accordance with the Review Committee's agenda. In addition, we have requests, as outlined below.

Our questions are:


- Has any decision of the NAGPRA Review Committee ever been reconsidered?
- If so, where, specifically, would the rules concerning reconsideration be found?
- By what authority can a Review Committee act to reconsider any decision made by another duly authorized Review Committee?
- In accordance with the current Dispute Procedures of the Native American Graves Protection and Repatriation Review Committee, which became effective AFTER the issuance of the findings and recommendations of the Review Committee meeting in St. Paul, why weren't all parties, including all of the claimants, the majority of which insist that the St. Paul decision be upheld, notified of this scheduled Washington, D.C. meeting, including all relevant correspondence?
- What is the lawful administrative due process to be followed if there is disagreement with the findings and recommendations of the Review Committee?

Our requests are:

- In accordance with Section V. Conflict of Interest of the Dispute Procedures, we request that the interim chair, Rosita Worl, recuse herself from consideration of this matter as being unquestionably biased. Ms. Worl was the only dissenting member of the St. Paul Review Committee and the author of the minority report attached to the decision.
- We request that any other Review Committee member, who has an established relationship with any of the involved parties, preventing unbiased participation, recuse themselves from this proceeding.
- We further request that all parties attending the D.C. meeting be treated fairly and that sufficient and equitable time be allotted to all.

Thank you for your attention to these important matters. Please contact me if you have any questions. We look forward to your timely response.

Aloha,

  
L. La'akea Suganuma  
Authorized Representative

# Royal Hawaiian Academy of Traditional Arts

835 Ahuwale Street, Honolulu, Hawai'i 96821 \* Phone (808)377-5611 \* Fax (808)#77-5611

September 10, 2004

Tim McKeown, Designated Federal Officer  
National Park Service  
National NAGPRA Program Office  
1849 C Street NW, NC350  
Washington, D.C. 20240

Re: Request to reconsider the findings and recommendations of the NAGPRA Review Committee in the Kawaihae Caves Complex non-repatriation dispute held on May 9-10, 2003 in St. Paul, MN.

Dear Sir:

In addition to my previous correspondence, dated August 27, 2004 and September 9, 2004, this shall serve to raise additional questions that we request be answered as soon as possible, and no later than the beginning of the hearing of the above referenced matter.

The request made by Ho'oiipo Pa of Ke Kia'i and Kunani Nihipali of Hui Malama I Na Kupuna O Hawai'i Nei, dated July 12, 2004, states: "2) We ask that the review committee reconsider the findings related to the Bishop Museum's repatriation of cultural items from the cave at Kawaihae due to procedural error." This was also stated verbally during the NAGPRA teleconference call of July 19, 2004. The draft agenda of the forthcoming Review Committee meeting in Washington, D.C. refers to this as a "Request to rescind the review committee's finding regarding Kawaihae." We realize that this is a draft agenda but our concern certainly warrants immediate clarification.


The July 12, 2004 request further states: "We request that the review committee include reconsideration of this issue on the agenda of a future meeting held in Hawaii."

Our questions are:

- Is the committee addressing reconsideration or rescinding of the previous committee's findings?
- Again, by what authority is the committee considering acting on this matter?
- Has the request been amended from reconsideration to rescinding of the findings?
- Has the request for this to be heard at "a future meeting held in Hawaii" been amended?
- Why haven't all parties, as stated in the current Dispute Procedures, been officially notified of these matters?

Thanking you in advance, we look forward to your timely response.

Aloha,



L. La'akea Suganuma  
Authorized Representative



# Royal Hawaiian Academy of Traditional Arts

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

September 13, 2004

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

Re: Request to reconsider the findings and recommendations of the NAGPRA Review Committee in the  
Kawaihae Caves Complex non-repatriation dispute held on May 9-10, 2003 in St. Paul, MN.

Dear Sir:

In addition to my previous correspondences of August 27, 2004, September 9, 2004 and September 10, 2004, this is to raise additional questions that we request be answered as soon as possible and no later than the beginning of the hearing of the above referenced matter. We also hereby request that these questions and copies of all previous correspondences be forwarded by you to the legal counsel at the Office of the Solicitor who represents the NAGPRA Review Committee or the National NAGPRA Program. It is our understanding that the appropriate person is Carla Mattix, but will leave this in the good hands of your office to ensure that proper distribution is made in timely fashion.

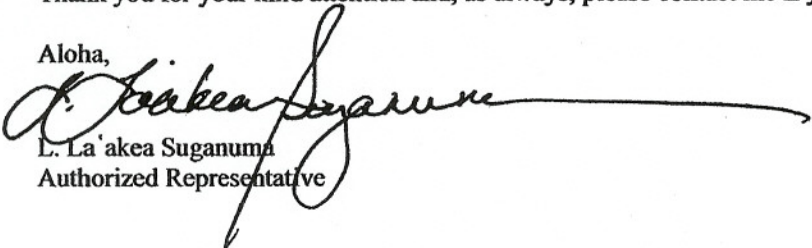
Furthermore, we believe that the answers to these questions will expedite the resolution of this matter to its lawful and proper conclusion and therefore, request that these questions be answered before any discussion of this matter ensues.

Our questions are:

- What were the notification requirements in effect at the time of the St. Paul Review Committee meeting?
- Were these requirements met?

Thank you for your kind attention and, as always, please contact me if you have any questions.

Aloha,

  
L. La'akea Suganuma  
Authorized Representative



# United States Department of the Interior

## NATIONAL PARK SERVICE

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

IN REPLY REFER TO:

W42(2275)

APR 7 2000

Dr. W. Donald Duckworth  
Bishop Museum  
1525 Bernice Street  
Honolulu, Hawaii 96817-0916

Dear Dr. Duckworth:

The National Park Service received the enclosed allegation that the Bishop Museum has failed to comply with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) and requesting that a civil penalty proceeding be instituted in this matter. Mr. Ogata's allegation focuses on certain human remains and funerary objects from Kawaihae, Kohala, Island of Hawaii, Hawaii.

To assist us in evaluating Mr. Ogata's allegations, we ask that you provide written answers to the following questions and any other documents or information you think relevant. A copy of the regulations implementing NAGPRA (43 CFR 10) are enclosed for your use. Please note that you are not required to respond to this inquiry. However, it will help our review of the allegation if you provide your perspective on this matter.

- 1) Do you consider that the Bishop Museum receives Federal funds within the meaning outlined at 43 CFR 10.2 (a)(3)(iii)?
- 2) On November 16, 1990, did the Bishop Museum have possession or control of items from Kawaihae, Kohala, Island of Hawaii, meeting the definitions of human remains or funerary object outlined at 43 CFR 10.2 (d)?
- 3) Has the Bishop Museum relinquished possession and control of human remains and funerary objects from Kawaihae, Kohala, Island of Hawaii, before publishing a notice in the Federal Register as required by 43 CFR 10.8 (f) and 10.9 (e)?

We would appreciate receiving your response to these questions, along with any other information you wish to provide, within 30 days of receipt of this letter. Note that this matter may lead to a civil penalty proceeding against you pursuant to 43 CFR Section 10.12; you may wish to consult counsel prior to responding to this letter.

Please feel free to contact Mr. John Robbins, Assistant Director, Cultural Resource Stewardship and Partnerships, at (202) 343-3388, if you have any questions.

Sincerely,

*[Signature]*  
FOR Robert Stanton  
Director

Enclosures

cc: Randall Ogata, 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:

APR 13 2000

H32(2200)

Dr. W. Donald Duckworth  
Director  
Bishop Museum  
1525 Bernice Street  
Honolulu, Hawaii 96817-0916

Dear Dr. Duckworth:

I have been informed that you have made statements regarding objects that may be covered by the Native American Graves Protection and Repatriation Act (NAGPRA) that the Bishop Museum may have given to Hui Malama.

Earlier this week, I sent you a letter requesting details about this situation in response to a letter that National Park Service Director Robert Stanton received from the Office of Hawaiian Affairs. We look forward to your detailed response to the allegations in the Office of Hawaiian Affairs letter as soon as possible.

In the meantime, I hope you will take every possible step to recover and take back into direct care by the Museum any artifacts that may be covered by NAGPRA that may have been given to other organizations with following the proper procedures required by NAGPRA.

Please feel free to contact me at (202) 208-7625, or John Robbins at (202) 343-3388, if necessary.

Sincerely,

*Margaret A. Gribick*  
for Katherine H. Stevenson  
Associate Director, Cultural Resource  
Stewardship and Partnerships

EXHIBIT J



## United States Department of the Interior

### NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

JUN 2 2000

Dr. W. Donald Duckworth  
Director  
Bishop Museum  
1525 Bernice Street  
Honolulu, Hawaii 96817-0916

Dear Dr. Duckworth:

In your letter of May 12, 2000, you asked for clarification of my letter to you of April 13, 2000. Let me try to provide more clarity in this response.

My concern about the artifacts which the Bishop Museum has turned over to representatives of Hui Malama first was raised by the letter, dated March 23, 2000, that National Park Service Director Robert Stanton received from Mr. Ogata and Mr. Kippen of the Office of Hawaiian Affairs (OHA). In response to the OHA concerns, Director Stanton sent you a letter, dated April 7, 2000, requesting certain information. We await your response to the Director's letter.

Subsequent to the Director's letter, the Honolulu Advertiser on April 6, 2000 (page 1 and A5), reported that you and other museum staff had indicated that objects covered by the Native American Graves Protection and Repatriation Act (NAGPRA) were turned over to Hui Malama: "Duckworth said that the loan was done with the understanding that the items would be placed in a secure interim facility on the Big Island, that the other claimants were not in disagreement, and that the loan would not affect the final disposition of the artifacts (p. A5)." Given the OHA letter we already had on hand, there did not seem to be general agreement regarding the concerns of other recognized claimants and issues related to security. In addition, of course, the public notice and period following it for others to come forward had not elapsed before the objects were turned over to Hui Malama.

Since my letter of April 13<sup>th</sup>, other statements by yourself have been reported by the local newspapers, e.g., "Bishop Museum Director W. Donald Duckworth yesterday apologized for the way the museum released rare Hawaiian artifacts to an Hawaiian organization in February (Honolulu Advertiser, April 19, 2000)."



BISHOP MUSEUM



A HAWAII NONPROFIT CORPORATION

TO: B. Tai  
R.A. 1

June 8, 2000

FAXED: 6/8/00  
202/273-3237

Ms. Katherine H. Stevenson  
Associate Director, Cultural Resource  
Stewardship and Partnerships  
National Park Service  
United States Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Dear Ms. Stevenson:

We appreciate your concern about this issue, and your response to our request for more clarity regarding the questions posed in your letter of April 13, 2000. In answer to your letter of June 2, 2000, I offer the following:

- First, let me reassure you that I personally responded to Director Stanton in a letter dated May 12, 2000. I enclose a copy of that letter for your reference.
  - Regarding the article in the April 6, 2000 issue of the *Honolulu Advertiser*: The idea of the loan itself as a way of facilitating repatriation negotiations had originally been agreed to by the four groups; the only question was where the items would be stored. The loan was subsequently made to Hui Malama, based on representations that the other three claimant groups had knowledge of, and agreement with, the interim storage location that had been secured by Hui Malama. We soon found out that was not the case, and called a meeting of all the groups at which Hui Malama admitted its responsibility for the loan being enacted.
- Let me emphasize that 1) a similar loan had been made in this same case one year prior, again entrusted to Hui Malama, and no problems or disagreements arose; and 2) as stated, this is a loan, and not an act of repatriation. Therefore, the public notice and period following for others to come forward is not affected.
- Regarding the article in April 19 issue of the *Honolulu Advertiser*: I did indeed publicly apologize for the way in which the items were released. In retrospect, we should have had the written consent of all concerned parties prior to making the loan. But as stated above, we were trusting not only the history of a previous loan involving the same organizations, but also the word of the organization to which the loan was made. We are now in the process of finalizing a new collections management policy for NAGPRA-related issues, in order to ensure this will never happen again.

HAWAII MARITIME CENTER  
 Yr 7 - 4444444 - 44444  
 Honolulu, Hawaii - 96813  
 (408) 523-6161 - Fax (408) 526-1579

**BERNICE PAUHAHI BISHOP MUSEUM**  
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<http://www.bishopmuseum.org>

AMY B.H. GREENWELL GARDEN  
PO Box 1000, Los Angeles  
Carmichael, CA 95608  
(916) 323-3316 • Fax: (916) 323-2394  
<http://www.bishopmuseum.org/greenwell>

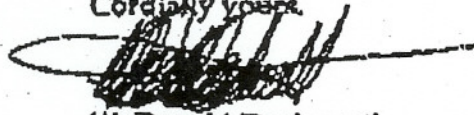
• Regarding the Museum taking steps to recover and take back into direct care these items, we have begun those steps. You may be aware through recent news coverage that on April 27, the Bishop Museum board of directors unanimously authorized the Museum administration to call for return of the items loaned out on February 26, 2000. We sent a letter to the four currently recognized claimants, requesting that they state their positions on the loan recall in writing by July 1, 2000. On July 1, unless there is consensus by the four that the items should remain where they are, the Museum will immediately require their return.

• Finally, let me also assure you that members of the Museum's administration, including our Collections Manager, have inspected the items' interim storage location, and the security arrangements, and found that the items are secure from damage as well as theft.

I certainly agree with your statement regarding Bishop Museum's responsibility for all the items in its care, and reaffirm that we take that responsibility seriously. If you have any further questions, please do not hesitate to contact me again.

With best regards, I am

Cordially yours,



W. Donald Duckworth  
President, Director & CEO

Enclosures (7 pages)  
(Hard Copy to Follow)