

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT
COMPREHENSIVE AGREEMENT
BETWEEN
U.S. ARMY GARRISON, HAWAII AT THE
PILILAAU ARMY RECREATION CENTER, WAI'ANAE, O'AHU, HAWAI'I,
AND KO'A MANA**

WHEREAS, the U.S. Army Garrison, Hawaii (USAG-HI) at the Pililaau Army Recreation Center (PARC), Wai'anae, O'ahu, Hawai'i, is responsible for the identification, protection, treatment, and disposition of Native Hawaiian human remains and other cultural items on lands under its ownership and control pursuant to the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001 *et seq.*; hereafter, NAGPRA) and 43 C.F.R. § 10, NAGPRA Regulations; and

WHEREAS, the USAG-HI must notify and consult with lineal descendants and culturally affiliated Native Hawaiian Organizations (NHOs) concerning the discovery and eventual disposition of such remains and other cultural items, per 25 U.S.C. 3002 and 43 C.F.R. § 10.3 – 10.6; and

WHEREAS, in any case in which lineal descendants cannot be ascertained, the USAG-HI must determine which NHOs have the closest cultural affiliation with such remains and other cultural items found on PARC, per 25 U.S.C. 3002 and 43 C.F.R. § 10.3 – 10.6; and

WHEREAS, Ko'a Mana is a NHO on the island of O'ahu, in the state of Hawai'i, that claims cultural affiliation with and asserts the right of possession and control over Native Hawaiian human remains and other cultural items from lands owned or controlled by USAG-HI in accordance with NAGPRA; and USAG-HI has determined Ko'a Mana to be the NHO with the closest cultural affiliation to Native Hawaiian human remains and cultural items found on PARC; and

WHEREAS, Native Hawaiian human remains have been found previously throughout the grounds of PARC; and it is likely that NAGPRA items, particularly human remains, and possibly other cultural items, may be discovered during the course of future activities at PARC; and

WHEREAS, the USAG-HI has the need to conduct activities at PARC including but not limited to landscaping, underground utilities maintenance, building repairs; including, but not limited to, excavation, demolition, and maneuver of heavy equipment; and intentional excavation potentially required for compliance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) or permitted under the Archaeological Resources Protection Act (16 U.S.C. 470) and

WHEREAS, 43 C.F.R. § 10.5(f) permits and encourages Federal Agencies to enter into comprehensive agreements with NHOs to establish the appropriate treatment of Native Hawaiian human remains and other cultural items;

NOW, THEREFORE, the USAG-HI and Ko‘a Mana agree that the following procedures will be followed for the notification, consultation, treatment, and disposition of all Native Hawaiian human remains and other cultural items that are inadvertently discovered or intentionally excavated on lands owned or controlled by the USAG-HI at PARC.

A. Objects to be Considered as Cultural Items

1. Based on USAG-HI’s consultation with NHOs, and pursuant to 43 CFR § 10.5(e)(1), USAG-HI shall consider the following as Native Hawaiian cultural items:
 - a. Human remains.
 - b. Associated funerary objects, which shall be understood to mean objects placed intentionally with human remains and still physically associated in space with such remains. The location of objects within the grave fill or in immediate proximity to human remains shall be understood as intentional placement with human remains.
 - c. Unassociated funerary objects, which shall be understood to mean objects intentionally placed with human remains but whose association has been disturbed through ground-disturbing phenomena, including but not limited to: rodent action, erosion, or vandalism. Types of objects characteristically placed intentionally with pre and post-contact Native Hawaiian human remains have been described in previous archaeological reports at this location.
 - d. Sacred objects, which shall be understood as specific ceremonial objects needed by Native Hawaiian religious leaders for the practice of traditional Native Hawaiian religions by their present day adherents. Such types of objects are described by NHOs and in previous archaeological reports.
 - e. Objects of cultural patrimony, which shall be understood to include items having ongoing historical, traditional, or cultural importance to the NHO itself, as distinct from items that could be owned and alienated by an individual organization member.

B. Consultation with Native Hawaiian Organizations (NHOs) to Determine Disposition

1. Dating back to January 2009 and subsequent consultations, the USAG-HI has consulted with multiple NHOs regarding various projects requiring National Historic Preservation Act compliance. Resulting from those consultations was the identification of a culturally affiliated NHO and the establishment of a NAGPRA Plan of Action (POA). In the POA, it was determined that the preferred disposition for Native Hawaiian cultural items, when possible, would be preservation-in-place. When preservation-in-place is not possible, the next preferred disposition would be to rebury the items on Federal land, in the existing burial vaults at PARC.

C. Specific Information Used to Determine Custody

1. The specific information used to determine custody was developed in accordance with 43 C.F.R. § 10.5(e)(2), 6(a)(2)(ii), and 14(c) and in consultation with the NHOs. Archival research on similar surrounding archeological sites was completed to gather any archeological information used as evidence in determining custody. Additional documentary evidence, particularly ethnohistoric, was sought by USAG-HI as consultation proceeded. Other types of evidence (e.g., kinship, biological, linguistic, folklore, oral tradition, and any other relevant information) were requested from the NHOs.
2. The identified NHO, Ko'a Mana, has provided evidence to prove they have standing under NAGPRA; have identified the existence of the earlier group, which in this case, are Native Hawaiians; and have established that they share the same group identity with Native Hawaiians (as defined in 43 C.F.R § 10.2(b)(3)(ii)). Types of evidence provided were statements of genealogical ties to Native Hawaiians and oral testimonies, including the sharing of traditional knowledge and *mo'olelo*, or oral traditions. The evidence provided has led the USAG-HI to believe that the NHO, Ko'a Mana, has demonstrated a cultural relationship to the cultural items. The USAG-HI has determined that Ko'a Mana is the closest culturally affiliated NHO at PARC. Based on the evidence provided, USAG-HI determined that rights to custody of Native Hawaiian cultural items are with Ko'a Mana.

D. Procedures

1. The following procedures will be followed for the notification, consultation, treatment, and disposition of all Native Hawaiian human remains and other cultural items that are inadvertently discovered or intentionally excavated on lands owned or controlled by the USAG-HI at PARC:
 - a. Planned Ground Disturbing Activities - Pursuant to 43 C.F.R. § 10.3(b)(1), ground-disturbing activities may be contracted, and treatment of Native Hawaiian cultural items, as defined above, will be carried out by or under the direct oversight of USAG-HI Cultural Resources Manager (CRM)/USAG-HI staff archaeologists. Contract employees under the CRM/USAG-HI archaeologists shall be understood to hold permits in the form of their contracts issued in accordance with the requirements of the Archeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.) and its implementing regulations.
 - i. Projects that involve ground disturbing activities will require compliance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108). Prior to the start of the project the USAG-HI CRM will insure that Section 106 compliance is completed.
 - ii. If through Section 106 consultation, the scope of the project requires the support of a Cultural Advisor, one shall be present. The responsibilities of the Advisor will be determined from that consultation.
 - b. Archaeological Monitoring - All ground disturbance, in areas and at depths likely to encounter Native Hawaiian cultural items, shall be monitored by an archaeological monitoring team employed and accepted by USAG-HI after consultation with affiliated NHOs. Areas and depths likely to encounter Native Hawaiian cultural items will be determined by the USAG-HI Cultural Resources Manager, based on previous archaeological and ethnographical documentation.
 - i. Prior to the start of the project, the USAG-HI or contracted archaeologist will develop an Archaeological Monitoring Plan (AMP) and Burial Treatment Plan (BTP), which will be approved by the USAG-HI CRM.
 - ii. Should an object that is potentially a Native Hawaiian cultural item be found during the course of monitoring, work shall halt in order to

further prevent disturbance of the item(s). Work can proceed after the following procedures have been implemented:

1. The archaeological monitoring team shall inspect the possible Native Hawaiian cultural item(s) and record it in place to the extent feasible, employing archeological recordation methods described in the approved monitoring plan.
 2. If the team determines that the object is not a Native Hawaiian cultural item, the archaeologist shall inform the CRM, and construction may continue in the vicinity of the object.
 3. Where the archaeological monitoring team certifies that the object is a Native Hawaiian cultural item, the CRM will work with the project proponent so see if the project can be modified, to the extent feasible, to leave the item(s) in-place. Procedures for preservation-in-place (D.1.c.) will be followed.
 4. Where rerouting is not feasible, the archaeological monitoring team shall inform the CRM. Procedures for intentional excavations (D.1.d.) will be followed.
- c. Preservation-in-Place – The preferred treatment is preservation-in-place. In the event that Native Hawaiian cultural items are encountered, whether inadvertently or during a project that requires monitoring, the CRM will consult with Ko‘a Mana. If preservation-in-place is appropriate the following will occur:
- i. The Native Hawaiian cultural items will be covered with their original matter as indicated by the archaeological findings (i.e. with sand, earth, etc.).
 - ii. Its location will be documented using GPS. The locational information will be incorporated into the USAG-HI Cultural Resources GIS database to ensure protection in the event of future planning and activities.
 - iii. Appropriate cultural protocols, such as *pule* or traditional invocations and religious ceremonies, shall occur; as considered necessary by Ko‘a Mana.
- d. Intentional Excavation of Native Hawaiian cultural items.
- i. Prior to the intentional excavation of Native Hawaiian cultural items, the CRM will consult with Ko‘a Mana to ensure that proper

- protocols, such as *pule* or traditional invocations and religious ceremonies related to the disinterment are followed.
- ii. Ko‘a Mana will be allowed to conduct proper cultural ceremonies related to the disinterment.
 - iii. The archaeological monitoring team shall record any Native Hawaiian cultural items found during archaeological monitoring, following the procedures set forth in the Archaeological Monitoring Plan and Burial Treatment Plan.
 - iv. All osteological analyses shall be done with due recognition of Native Hawaiian beliefs. No analyses shall be conducted which result in destruction of bone material.
 - v. Effort will be taken to shield items from direct sunlight and from excess attention.
 - vi. For immediate storage, the items should be wrapped with muslin cloth or like material prior to containment.
 - vii. The CRM will coordinate with PARC managers to find a secure temporary storage location on the premises.
 - viii. Section D.1.f. of this agreement will discuss disposition procedures.
- e. Inadvertent Discoveries – In the event that inadvertent discoveries of Native Hawaiian cultural items occur, the following procedures will take place:
- i. If an on-going activity is taking place which resulted in the inadvertent discovery of potential Native Hawaiian cultural items, the activity will cease.
 - ii. PARC managers will contact the CRM and provide them with general locational information and what activity may have resulted in the discovery. If human remains are discovered, the Provost Marshall and the Criminal Investigation Division will also be contacted.
 - iii. If the human remains are determined to not be associated with a modern crime, the remains will be treated as Native Hawaiian burial.
 - iv. Once the find is determined to be Native Hawaiian cultural item(s), the CRM will notify Ko‘a Mana of the inadvertent discovery by telephone or email within 2 days of the discovery.
 - v. Consultation with Ko‘a Mana on whether the items can be preserved-in-place or if intentional excavation is warranted, will take place within 7 days after notification. Procedures for each outcome is described in the aforementioned sections of this agreement.

f. Treatment

- i. In the event that Native Hawaiian cultural items need to be intentionally excavated, Ko'a Mana has expressed that the preferred treatment of the disinterred item would be to reinter the item(s) in the existing burial vaults at PARC.
- ii. The USAG-HI has determined that Ko'a Mana has rights to custody to Native Hawaiian cultural items, but since the Native Hawaiian cultural items will remain on PARC, no disposition or transfer of control will take place.
- iii. Prior to approving the reinternment of the Native Hawaiian cultural items on Army property, the USAG-HI will follow all Army procedures and regulations.
- iv. The USAG-HI will work with Ko'a Mana to ensure proper cultural protocols, such as *pule* or traditional invocations and religious ceremonies, are adhered to during the interment into the burial vault.

g. Disposition

- i. If additional claimants come forward, the USAG-HI shall determine which claimant is entitled to custody, pursuant to 43 C.F.R. § 10.14.
- ii. Prior to any disposition of Native Hawaiian cultural items, the USAG-HI will publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains and other cultural items were excavated intentionally or discovered inadvertently. The notice must provide information as to the nature and affiliation of the human remains and any other cultural items, and solicit further claims to custody. The notice will be published at least two (2) times, at least one (1) week apart. The disposition must not take place until at least thirty (30) days after the publication of the second notice to allow time for any additional claimants to come forward, pursuant to 43 C.F.R. § 10.6(c).
- iii. The USAG-HI must send a copy of the notice and information on when and in what newspaper(s) the notice was published to the Manager, National NAGPRA Program, pursuant to 43 C.F.R. § 10.6(c).

E. Term of Agreement

- a. From the date of the last signature, this Comprehensive Agreement (CA) shall remain in effect until further notice. The CA may be amended only with the written consent of all parties hereto.
- b. Any signatory party may terminate their participation in the CA upon 30 days written notice to the other signatories.

F. Anti-Deficiency Act

- a. The stipulations of the CA are subject to the provisions of the Anti-Deficiency Act (31 USC § 1341). USAG-HI will make reasonable and good faith efforts to secure the necessary funds to implement this CA in its entirety. If compliance with the Anti-Deficiency Act alters or impairs USAG-HI's ability to implement the procedures of this CA, USAG-HI will consult with the NHO in accordance with the amendment and termination procedures outlined in section E.

This agreement shall become effective upon the signature of all authorized parties.

U.S. Army Garrison, Hawaii



Thomas J. Barrett
Colonel, U.S. Army
Commanding

1 NOV 18

Date

Ko'a Mana



Glen Makakauli'i Kila

11/24/18

Date