

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT
COMPREHENSIVE AGREEMENT FOR
U.S. ARMY GARRISON, HAWAII AT
FORT DERUSSY MILITARY RESERVATION, WAIKIKI, O‘AHU ISLAND, HAWAII**

WHEREAS, the U.S. Army Garrison, Hawaii (USAG-HI) is responsible for the identification, protection, treatment, and disposition of Native Hawaiian human remains and other cultural items on lands under its ownership or control pursuant to the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. Chapter 32) and 43 CFR Part 10); and

WHEREAS, USAG-HI has administrative control of the federal land at Fort DeRussy Military Reservation (Fort DeRussy) and conducts or authorizes planned activities (undertakings) on owned or controlled lands at Fort DeRussy that may result in the archaeological intentional excavation of Native Hawaiian cultural items; and

WHEREAS, the term “cultural items” is defined in NAGPRA (25 U.S.C § 3001.3) and the implementing regulations (43 CFR § 10.14) includes Native Hawaiian human remains, traditionally called *iwi kupuna* (ancestral bones), funerary objects, sacred objects, and objects of cultural patrimony; and

WHEREAS, NAGPRA regulations [43 C.F.R. § 10.5(f)] permit and encourage Federal Agencies to enter into comprehensive agreements with Native Hawaiian organizations (NHO) to establish the appropriate and consistent treatment of discoveries of Native Hawaiian cultural items; and

WHEREAS, this NAGPRA comprehensive agreement is applicable in the event Native Hawaiian cultural items are found on federally-owned or controlled lands at Fort DeRussy, whether through intentional excavations during planned ground disturbing activities or inadvertent discoveries from natural disasters and other unplanned incidents, and

WHEREAS, treatment of Native Hawaiian *iwi kupuna* and other cultural items shall be carried out by or under the oversight of the USAG-HI Cultural Resources Manager (CRM) shall be implemented consistent with the outlined procedures of this agreement and includes intentional excavation or inadvertent discovery; and

WHEREAS, current guidance to USAG-HI from the Office of Army Cemeteries (OAC) and Installation Management Command (IMCOM), is to consolidate all human remains at a designated cemetery to minimize future disturbances, however the final decision shall rest with the USAG-HI Garrison Commander; and

WHEREAS, most NHO participating in the development of this agreement have expressed that preservation-in-place is the preferred treatment for Native Hawaiian *iwi kupuna* and other cultural items, except for the discoveries in proximity to contaminating contexts (e.g. sewer and grey-water utility lines); and

WHEREAS, Fort DeRussy sits at the northern shoreline of the Waikiki *ahupua'a* and within the area traditionally known as Kālia. Kālia was an estuary wetland at the mouth of Pi'inaio Stream where Native Hawaiians developed an aquaculture complex consisting of multiple ponds (*loko*) and channels (*'auwai*) in order to increase the productivity of the area and exploit a variety of floral and faunal resources. Native Hawaiians used, modified, and maintained the ponds and channels, and lived on sandy areas around them through the early 19th century; and

WHEREAS, Native Hawaiian *iwi kupuna* have been previously found buried in sandy sediment outside of the former wetlands within what is now Fort DeRussy, and it is likely that additional cultural items, particularly *iwi kupuna*, may be discovered during the course of future activities at Fort DeRussy; and

WHEREAS, USAG-HI has notified and consulted with the following culturally affiliated NHO to develop this comprehensive agreement; Kekumano 'Ohana, 'Ohana Ho'ohuli, 'Ohana Kawaihāpai, 'Ohana Keaweamahe, Koa Ike, Marae Ha'akoa, 'Aha Kūkaniloko Koa Mana Mea Ola Kanaka Mauli Hoali'i Iku Pau, the O'ahu Council of Hawaiian Civic Clubs, the Office of Hawaiian Affairs, and the Pacific Justice and Reconciliation Center; and

WHEREAS, USAG-HI has determined through consultation and receipt of information regarding cultural affiliation that the following NHO are likely to make a claim for custody of Native Hawaii cultural items from Fort DeRussy in accordance with NAGPRA: 'Ohana Ho'ohuli, 'Ohana Kawaihāpai, 'Ohana Keaweamahe, Koa Ike, and Marae Ha'akoa. For the purposes of this agreement, these NHO shall be collectively referred to as "NHO Participants", and

WHEREAS, USAG-HI has determined through consultation that the following NHO are not likely to make a claim of for custody of Native Hawaii cultural items from Fort DeRussy in accordance with NAGPRA: 'Aha Kūkaniloko Koa Mana Mea Ola Kanaka Mauli Hoali'i Iku Pau, Kekumano 'Ohana, the O'ahu Council of Hawaiian Civic Clubs, the Office of Hawaiian Affairs, and the Pacific Justice and Reconciliation Center. These NHO have not submitted additional cultural affiliation information but acknowledged support for one or more NHO Participants and indicated their intent to support and facilitate discussions between the NHO Participants and USAG-HI as needed. For the purposes of this agreement, these NHO shall be collectively referred to as "Supporting NHO"; and

WHEREAS, the former NHO known as Hui Mālama I Na Kupuna O Hawai'i Nei, specifically identified in NAGPRA (25 U.S.C. § 3001.6), was formally dissolved effective January 23, 2015 and was not included in consultation; and

WHEREAS, both the Hale Koa Hotel and the U.S. Army Hawaii Museum at Battery Randolph (Army Museum) operate at Fort DeRussy and have accepted responsibilities with some associated fiscal requirements to implement and support this agreement. For the purposes of this agreement, the Hale Koa Hotel and the Army Museum shall be collectively referred to as "Responsible Parties"; and

NOW, THEREFORE, USAG-HI, the Hale Koa Hotel, the Army Museum, the NHO Participants, and the Supporting NHO agree that the following procedures, developed through consultation, shall be used for the notification, treatment, care, handling, and disposition of all Native Hawaiian cultural items that are intentionally excavated or discovered inadvertently from within Fort DeRussy.

I. Cultural Items

Cultural Items as defined in NAGPRA (25 U.S.C. 3001.3) include:

- A. *Iwi kupuna* (ancestral bones, human remains)
- B. Funerary objects: objects placed intentionally with or near *iwi kupuna* at the time of death or later, as part of the death rite or ceremony.
- C. Sacred objects: ceremonial objects used by Native Hawaiian religious leaders for the practice of traditional Native Hawaiian religions by their present-day adherents.
- D. Objects of cultural patrimony: items having ongoing historical, traditional, or cultural importance to Native Hawaiian culture, as distinct from items that could be owned and alienated by an individual organization member.
- E. Types and Examples of Cultural Items:
 - 1. No specific types or examples of funerary objects or sacred objects have been identified by the NHO.
 - 2. Consultation identified that objects of cultural patrimony are not applicable to Hawaiian cultural practice as patterns, designs or icons are not associated with a person, 'ohana or area.
 - 3. USAG-HI shall append this agreement with a list if and when specific types or examples of objects are provided by NHO.

II. Consultation with Native Hawaiians

In response to planned Federal actions that may result in the intentional excavation of Native Hawaiian cultural items pursuant to NAGPRA, USAG-HI initiated consultation with NHO likely to claim cultural affiliation with Native Hawaiian cultural items discovered at Fort DeRussy in October 2018. Additional parties were solicited through the Hawai'i State Historic Preservation Division, Hawaiian Civic Clubs, and the O'ahu Island Burial Council, as well as public notices advertised in the Honolulu Star-Advertiser and Ka Wai Ola newspapers. A former member of Hui Mālama I Na Kupuna O Hawai'i Nei also assisted USAG-HI during development this Comprehensive Agreement by providing information about previous NAGPRA compliance efforts at Fort DeRussy, but declined to participate in this agreement.

Consultation meetings were held on November 3, 2018, February 23, 2019, and March 21, 2020. Numerous additional conversations and discussions with individual parties were conducted by phone, email, and in-person. Notification letters were sent to all Fort

DeRussy consulting parties in advance of the 2018 and 2019 meetings, along with email reminders. Email invitations for the 2020 meeting were sent to all parties that had responded to any comprehensive agreement communications or National Historic Preservation Act (NHPA) Section 106 consultations at any point for the upcoming project undertakings. Meeting minutes were sent to all responsive parties. USAG-HI hosted a field trip to the newly designated cemetery on Kuroda Field as part of the meeting on November 3, 2018.

NHO Participants have opted for email as primary method for notification and consultation.

III. Determination of Lineal Descent, Cultural Affiliation and Custody

- A. The specific procedures and information required to determine lineal descent, cultural affiliation, and entitlement to custody of NAGPRA cultural items are specified in 43 CFR §10.6 and §10.14. Evidence of cultural affiliation was requested from all NHO engaged in consultation.
- B. NHO Participants have provided evidence to establish that they have a shared group identity that can be reasonably traced to earlier Native Hawaiian groups. Types of evidence provided includes oral and written statements, testimonies of kinship and genealogical relationships, and traditional geographical connections to Kālia and the land that is now Fort DeRussy.
- C. The evidence provided by NHO Participants is considered private and sensitive and is maintained in confidentiality by USAG-HI at the request of the NHO Participants. Any such evidence provided by NHO Participants is considered to be a privacy interest exempt from mandatory public disclosure under the Freedom of Information Act pursuant to Exemption 6.
- D. The evidence provided has led USAG-HI to determine that the NHO Participants have demonstrated a cultural affiliation to *iwi kupuna* and other cultural items that may be intentionally excavated or inadvertently discovered at Fort DeRussy
- E. USAG-HI has determined, based on the evidence provided, that the NHO Participants each have equally close cultural affiliations. No NHO Participant has stated an intent to make an individual claim. Collectively they accept USAG-HI's offer to reburial any Native Hawaiian *iwi kupuna* at the designated cemetery instead of repatriation to a claimant(s).

IV. Procedures

USAG-HI shall use the following procedures for the assessment, notification, treatment, and disposition of all Native Hawaiian *iwi kupuna* and cultural items intentionally excavated or inadvertently discovered at Fort DeRussy.

A. Archaeological Monitoring

1. Based on existing archaeological and ethnographical documentation and the resulting identified probability areas, the CRM shall determine if the nature of an undertaking is the type that might result in the intentional excavation of cultural items.
2. If the CRM determines there is a likelihood to encounter cultural items, the CRM shall ensure that professional archaeological monitoring services are incorporated into the project requirements. Prior to the start of any planned ground disturbance, the CRM shall ensure the development of a work plan for archaeological monitoring and discovery that is consistent with this document and any requirements identified through National Historic Preservation Act consultation.

B. Cultural Advisors – Cultural advisors may be incorporated into projects as a result of Section 106 consultation under the following guidance.

1. NHO Participants request that cultural advisors have professional qualifications including traditional connections to the land at Kālia or Waikiki and/or the Native Hawaiian *‘ohana* that lived in the area, knowledge of appropriate cultural protocols, and training with reputable *kupuna*.
2. Cultural advisor duties may include conducting appropriate cultural protocols upon at the discovery and treatment of *iwi kupuna* and other cultural items, and providing advice on appropriate handling of cultural items.

C. Initial Assessment of Discoveries and Notification – USAG-HI shall use the following procedures in the event that potential *iwi kupuna* and other cultural items are discovered:

1. All ground-disturbing activities shall immediately halt within an initial 30-meter area around the discovery to prevent further disturbance and enable assessment of the discovery. The archaeological monitor shall notify the CRM with pertinent details on the same day as the discovery.
 - a. If the CRM determines that the discovery does not involve *iwi kupuna* or other cultural items, the CRM shall provide authorization for ground-disturbing activities to continue in the vicinity of the discovery following documentation and collection in accordance with the approved archaeological work plan.
 - b. Upon the discovery of any human remains, the CRM shall report the discovery to the U.S. Army Criminal Investigative Division, provide the notice to the Garrison Commander through the chain of command, and notify the Hale Koa Hotel and applicable project proponents of the discovery and work stoppage.
 - c. If the U.S. Army Criminal Investigative Division determines that the human remains are not part of a crime scene, the CRM shall notify the following parties by email or telephone of a potential discovery of *iwi kupuna* or other cultural items no later than the next business day.
 - 1) The NHO Participants and Supporting NHO in order to coordinate site access, consider treatment options, and conduct desired protocols, and;
 - 2) The Hawai'i State Historic Preservation Officer and O'ahu Island Burial Council for their awareness for addressing inquiries regarding the discovery.

2. Notification shall include a summary of the discovery circumstance, context, material, and a map of the discovery location.
3. If the initial assessment is inconclusive as to cultural affiliation of human remains, the preponderance of evidence will be evaluated and in the absence of conflicting information, the remains will be presumed to be *iwi kupuna*.

D. Initial Treatment of Discoveries

1. USAG-HI shall coordinate with the applicable project proponents and NHO Participants on each discovery of Native Hawaiian cultural items to consider feasibility of avoidance within seven (7) calendar days after notification.
2. For discoveries in proximity to contaminating contexts and in areas likely to be re-disturbed, the remains shall be consolidated following OAC and IMCOM guidance.
3. For each discovery, the CRM shall offer to coordinate site visits within seven (7) calendar days after notification for NHO Participants to conduct cultural protocols, such as *pule* (prayers) and *ho'okupu* (offerings), to the extent feasible and following safety requirements.
4. Treatment of Native Hawaiian cultural items shall be conducted in a respectful and professional manner, taking all precautions to prevent loss or damage, and to avoid unnecessary disturbance, physical modification, or separation of presumed individuals and associated funerary objects. If avoidance is not feasible, all observed burials and associated cultural items in a multiple-burial scenario shall be excavated as a unit so no mass burials are divided.
5. All discovered Native Hawaiian *iwi kupuna* shall be covered with the original overburden material or otherwise shielded from sunlight if it is not feasible to replace original material.
6. USAG-HI shall ensure that physical protective measures are in place or the area is otherwise guarded to prevent additional disturbance.
 - a. Measures may be implemented as appropriate and may include construction fencing, cones, or other barrier means as appropriate for the discovery and/or the 30-meter work stoppage area.
 - b. Overnight security personnel may be necessary if the remains must be left in an unprotected location overnight.
7. Each discovery location shall be documented using sub-meter accurate global positioning system (GPS) with indication of whether the items were removed or left in-place. The geographic information shall be incorporated into the USAG-HI Cultural Resources Geographic Information System database to ensure the capability for future identification. Sensitive information about the discovery shall be protected in accordance with the Archaeological Resources Protection Act and shall be exempt from public disclosure under Exemption 3 of the Freedom of Information Act.
8. If preservation-in-place is determined appropriate by the Garrison Commander, USAG-HI shall ensure the following:
 - a. Metal markers shall be set above the discovery location to identify the precise location with a metal detector for avoidance during future work in the area.
 - b. Markers shall be inconspicuous, installed very shallow or flush with the ground.
 - c. Contact information for USAG-HI and unique identification numbers shall be

indicated on the markers for reference.

9. Intentional excavation of Native Hawaiian cultural items shall occur when preservation-in-place is not authorized by the Garrison Commander.
 - a. Excavation of *iwi kupuna* shall be conducted manually, with non-metal instruments as much as feasible.
 - b. A field catalog shall be maintained for all collected items and samples.
 - c. Profiles shall be drawn of all wall faces showing features of each burial.
 - d. Intentionally excavated cultural items shall be repatriated and, if requested by the claimants, will be reburied at the designated cemetery.

E. Documentation and Analysis of Discoveries

1. Measurements of *iwi kupuna* shall be non-invasive using non-metal implements, as agreed in consultation.
2. Recordation and analysis of Native Hawaiian cultural items shall be documented in original context to the extent feasible, using controlled archaeological methods approved in the archaeological workplan.
3. Photographs
 - a. Only general locational photos are permitted at the burial location. The *iwi kupuna* must be covered in all photos, or photos may be taken of the location after the remains are removed to document setting.
 - b. No photo documentation of the remains shall be taken by Army employees or contractors, except by investigators for the U.S. Army Criminal Investigative Division.
 - c. Associated and unassociated funerary objects may be photographed.
 - d. All photos showing the nature or location of the discovery shall be protected in accordance with the Archaeological Resources Protection Act (32 CFR Part 229.18) and marked For Official Use Only exempt from public disclosure under the Freedom of Information Act Exemption 3.
4. Drawings
 - a. Burials shall be drawn in-place as plan view and/or profile as applicable, prior to any removal.
 - b. At a minimum, all drawings shall include a legend, north arrow, scale, recorder's name, date, area designation and feature designation.
5. Locational information
 - a. GPS coordinates shall be taken of each discovery and unassociated cultural item(s).
 - b. Locational information shall be maintained For Official Use Only and available to USAG-HI Cultural Resources staff, Army-contracted archaeologists, and NHO Participants, as needed for specified undertakings.
 - c. Discoveries shall be plotted on a map overlaid with the project design for future correlation.
6. Descriptive Recording shall include:
 - a. Full description of the discovery context, setting, arrangement, and burial type
 - b. Minimum number of individuals (MNI)
 - c. Estimated percentage of present remains
 - d. Estimation of age-at-death, race, sex and dental health

7. Analysis of cultural items shall include:

- a. Inventory and measurements of cranium, mandible, and infracranial skeleton required to determine MNI, age-at-death, stature, and sex of the individual.
- b. Non-invasive observations of pre-mortem, peri-mortem, or post-mortem trauma, health, pathology, or forensic characteristics (for example, arthritis or broken bones/mended bones, and cultural modifications).
- c. Additional in-depth non-destructive analysis may be conducted, if approved in writing by the NHO Participants through consultation (for example, oral-dental and skeletal pathologies).
- d. USAG-HI shall ensure that consultation with NHO Participants occurs before any proposed analysis of non-bone cultural objects that would involve off-site testing, such as basalt sourcing,
- e. All osteological analyses shall be done respectfully and in consideration of NHO Participant concerns and general Native Hawaiian beliefs. No analysis shall be conducted which results in destruction of human bone.

F. Construction may resume in the work stoppage area following the implementation of the procedures specified in this Comprehensive Agreement and after receipt of a written (including email) authorization from the CRM to the applicable project proponents. In all scenarios, the initial 30-meter work stoppage area may be appropriately condensed, based on coordination and consultation with the CRM, NHO Participants and project proponents.

G. Handling and care for Native Hawaiian cultural items in temporary storage.

1. USAG-HI acknowledges the desire for the cultural items to not leave the vicinity.
2. Temporary storage will be made available for recovered cultural items from Fort DeRussy at Fort DeRussy, as feasible.
 - a. Temporary storage shall be arranged for cultural items only.
 - b. Archaeological collections that are not NAGPRA cultural items will be held at the USAG-HI Cultural Resources Office or the archaeological service provider's laboratory until the completion of the undertaking.
3. The Army Museum has been designated as a temporary storage facility.
 - a. Processing of cultural items, analysis, and preparation for reburial cannot occur inside the Army Museum.
 - b. USAG-HI shall make best efforts to secure a suitable area to serve as a laboratory and/or alternative temporary storage facility at Fort DeRussy.
4. Temporary storage of cultural items will be in secure cabinets, or other secure location, approved by USAG-HI.
5. Upon recovery, cultural items will be rested on or wrapped with muslin (or similar material) and placed within *lauhala* baskets (or other breathable and natural container) prior to containment. Adequate ventilation and storage spacing will be maintained.
6. All excavated items shall be labeled by an archaeologist with all provenience information and recorded on a maintained inventory list.
7. Access to the storage facility can only be authorized by the CRM. Access shall be limited to USAG-HI Cultural Resources staff, project archaeologists, NHO

Participants as requested and coordinated by the CRM, and Army Museum Management. Access to the Army Museum is generally limited to regular business hours.

8. USAG-HI shall ensure that each storage facility has a log of personnel accessing the facility, and that each storage cabinet has a current and accurate inventory list. Copies of the log and inventory list will be made available upon request to those listed in G.7.
9. USAG-HI shall respond to NHO Participant requests to visit the storage facility within two (2) business days.
10. The NHO Participants shall prepare the Native Hawaiian cultural items for repatriation in containers suitable for reburial. USAG-HI shall provide access to the cultural items and use of a preparation location, ideally at Fort DeRussy.

H. NAGPRA Reporting

1. USAG-HI shall ensure that all NAGPRA discoveries are documented and reported.
2. All reports, appendices, and records documenting burial information shall be secured and stored at the USAG-HI Cultural Resources Office and shall be protected in accordance with the Archaeological Resources Protection Act (32 CFR Part 229.18) and marked For Official Use Only exempt from public disclosure under the Freedom of Information Act Exemption 3.
3. Sensitive Information specific to NAGPRA discoveries shall be maintained in restricted reports to be withheld from the public disclosure under the Freedom of Information Act. The reports shall include:
 - a. Location information
 - b. Illustrations of burials and cultural items
 - c. Detailed descriptions of the burials and contents
 - d. Osteological analysis
4. NHO Participants and Supporting NHO will be provided copies of the restricted reports, if requested.
5. Any publications or conference presentations involving information about cultural items pursuant to this Comprehensive Agreement requires approval from USAG-HI. NHO Participants and Supporting NHO will be given an opportunity to review and comment on any such publications and presentations prior to approval by USAG-HI.
6. If there is an associated archaeological monitoring report, general lists and discussion of the NAGPRA discoveries may be included in a publically available report, but NHO Participants and Supporting NHO will be given an opportunity to review and comment on any such report prior to publication.
7. No Native Hawaiian *iwi kupuna* or other cultural items shall be put on public display in any manner.

I. Disposition

1. Upon completion of the analysis, USAG-HI shall follow the procedures for determining disposition in accordance with all NAGPRA regulations at 43 CFR 10.6 and applicable Army regulations.
2. Notice of Intended Disposition (NID)
 - a. Prior to any disposition of Native Hawaiian cultural items, USAG-HI must

- publish general notices of the proposed disposition in a newspaper of general circulation of where the *iwi kupuna* and other cultural items.
- b. The notice must provide information as to the nature and affiliation of the *iwi kupuna* and any other cultural items, and solicit further claims to custody (see Appendix A, NID template).
 - c. Sensitive information about the nature of discoveries will not be included in the notice(s).
 - d. The notice(s) shall be published twice, at least one week apart in the Star Advertiser and the Ka Wai Ola, which are newspapers of general circulation in the area the potential claimants reside. Other sources of public distribution (e.g., Oahu Civic Clubs, USAG-HI Cultural Resources website, National Public Radio/Hawaii Public Radio, Public Libraries) may also be utilized for publication.
 - e. The disposition shall not take place until at least 30-days after the publication of the second notice to allow time for any additional claimants to come forward.
 - f. USAG-HI shall send a copy of the notice and information on when and in what newspaper(s) the notice was published to the Manager of the National NAGPRA Program.
3. Additional Claimants
- a. If additional claimants come forward during the 30-day period who can demonstrate at least equal strength of their claim relative to the claims of NHO Participants, USAG-HI shall determine which claimant is entitled to custody, pursuant to 43 CFR § 10.14, or the claimant shall join the shared custody status with the NHO Participants.
 - b. If, during the 30-day period of notification, additional claimants come forward and USAG-HI is unable to determine which claimant is entitled to custody of the cultural items, or if the NHO Participants sharing custody are contested, the process outlined in Section VIII, Dispute Resolution, shall be followed.
 - c. If no additional claimants come forward, USAG-HI shall repatriate the cultural items to the NHO Participants established herein as sharing custody.
4. Repatriation
- a. Repatriation is the designated method of disposition under NAGPRA.
 - b. Repatriation shall occur at the completion of disposition notices and after USAG-HI determines priority of (or entitlement to) custody.
 - c. NHO Participants requested to prepare *iwi kupuna* and other cultural items for repatriation and or/reburial.
 - d. USAG-HI shall support preparation of the cultural items by NHO Participants for repatriation and if reburial is requested, by providing materials for repatriation and containers suitable for reburial, as feasible. Materials will be specified later.
 - e. Repatriation is concluded with the completion of the Transfer of Custody (See Appendix B) releasing all Native Hawaiian cultural items indicated on an accompanying inventory list to the designated recipient(s) and USAG-HI relinquishes all responsibility of those items.

5. Reburial

- a. USAG-HI has committed to accepting requests for reburial repatriated NAGPRA cultural items from Fort DeRussy at the designated cemetery on Kuroda Field established in 2019.
- b. The NHO Participant(s) designated custody may submit a completed Reburial Agreement (See Appendix C) which shall include an inventory list of Native Hawaiian cultural items to be reburied. The NHO Participants are under no obligation to rebury all cultural items repatriated.
- c. USAG-HI shall work with the NHO Participants to ensure continued allowance and considerations for cultural protocols.
- d. USAG-HI shall develop the reburial method in consultation with the NHO Participants prior to the first reburial event to be used for future reburials. NHO Participants have discussed both above and below ground crypts with varying security and future access concerns, as well as individual burials.
- e. Reburial may occur at the designated cemetery following the completion of a Reburial Agreement.

V. Roles and Responsibilities

A. USAG-HI:

1. Shall be responsible for maintaining inventories of:
 - a. All new discoveries of Native Hawaiian cultural items encountered, and
 - b. All Native Hawaiian cultural items that are stored at the Army Museum, or designated storage facility, and
 - c. All Native Hawaiian cultural items that are repatriated to NHO claimants, and
 - d. All Native Hawaiian cultural items reburied at the designated cemetery.
2. Shall arrange for temporary storage and laboratory space at Fort DeRussy, as feasible.
3. Shall protect the sensitive inventory information in accordance with the Archaeological Resources Protection Act and the information shall be exempt from public disclosure under applicable Freedom of Information Act exemptions. This inventory shall be available for official use only.
4. Shall be responsible for coordinating the reburial of Native Hawaiian cultural items requested in the Reburial Agreement at the designated cemetery.
5. Shall coordinate changes and suggestions on vegetation variations at the cemetery that align with the traditions and beliefs of the NHO Participants.
6. Shall consult with all NHO Participants on the construction of a reburial crypt or other reburial methods at the designated cemetery, and any burials persevered in-place, before the completion of the first reburial event. The reburial method shall be approved by the Garrison Commander.
7. Shall coordinate with the Hale Koa Hotel landscaping plan.

B. NHO:

1. Shall keep their contact information current, as well as any designated secondary points of contact, with the CRM to facilitate notifications and distribution of materials.

2. Will respond within the specified timeframes to notices of discoveries and timeframes to conduct cultural protocols.
3. Will submit written reburial request for reburial of *iwi kupuna* and cultural items at the Kuroda Field cemetery.

C. Hale Koa Hotel:

1. Currently maintains all landscaping at Fort DeRussy pursuant to a Memorandum of Agreement with USAG-HI. This includes maintaining the vegetation at the designated cemetery on Kuroda Field.
2. Authorizes event permits for Kuroda Field, which excludes the designated cemetery area.
3. Shall inform USAG-HI prior to any changes to landscaping or construction around the designated cemetery.
4. Shall notify USAG-HI in writing if at any time, the Hale Koa Hotel can no longer maintain the landscaping for the designated cemetery. A new entity will be identified by USAG-HI.

D. Army Museum

1. The Army Museum may operate as the temporary storage facility for Native Hawaiian cultural items discovered at Fort DeRussy, prior to their reburial at the Kuroda Field cemetery, throughout the duration of this agreement. Other recovered material will be stored at the laboratory of the projects archaeological service provider or the USAG-HI curation facility.
2. Is not responsible for long-term curation of any Native Hawaiian cultural items that are discovered.
3. Will provide a secure area for the temporary storage of Native Hawaiian cultural items.
4. Will provide access to the temporary storage facility as specified in Section IV.G.7-9.
5. Is not required to support laboratory activities such as analysis. Analysis and preparations will be arranged elsewhere by USAG-HI, ideally at Fort DeRussy.
6. Shall notify USAG-HI in writing if the Army Museum can no longer be the temporary storage facility under this agreement. USAG-HI shall identify a new temporary storage facility.

VI. Data Confidentiality

- A. USAG-HI shall protect information regarding the nature and location of any archaeological resource, including burials and associated cultural items, in accordance with Section 9(a) of the Archaeological Resources Protection Act and the implementing regulations at 32 CFR Part 229.18. prohibited
- B. The evidence provided by NHO Participants is considered private and sensitive and is maintained in confidentiality by USAG-HI at the request of the NHO Participants. Any such evidence provided by NHO Participants is considered to be a privacy interest

exempt from mandatory disclosure under the Freedom of Information Act pursuant to Exemption 6.

VII. Additional Parties

- A. If at any time during the life of this agreement any other NHO expresses interest in participating in this agreement and can demonstrate at least equal strength of their claim relative to the claims of NHO Participants, USAG-HI shall consult with the NHO and may invite them to sign this Comprehensive Agreement.
- B. The addition of an NHO Participant or Supporting NHO to this agreement does not constitute an amendment to this agreement.

VIII. Dispute Resolution

The CRM shall be the primary point of contact to coordinate all activities under this Comprehensive Agreement, including the resolution of disputes.

- A. All disputes regarding the lineal or cultural affiliation of discovered Native Hawaiian cultural items shall be resolved in accordance with Sections 3 and 7(e) of NAGPRA and the implementing regulations 43 CFR 10.
- B. Should any interested NHO make a conflicting claim of lineal or cultural affiliation or dispute the methods of treatment or disposition of Native Hawaiian cultural items as delineated herein, the CRM shall notify the Garrison Commander. The Garrison Commander may elect to notify and solicit participation from the Army Environmental Command.
- C. USAG-HI shall continue consultation with the disputing parties, suggest that the disputing parties seek resolution among themselves, and, if the disputing parties concur, go before the NAGPRA Review Committee which is given the authority under 25 U.S.C 3006, Sec. 8(c)(4) and 43 CFR 10.16 and 10.17 to make recommendations on the resolution of disputes.
- D. If, upon receipt of the recommendations of the NAGPRA Review Committee, the most appropriate claimant still cannot be determined, the CRM shall retain the disputed Native Hawaiian cultural items until the question of custody is resolved, as stated in 43 CFR 10.15(a)(2).

IX. Terms of Agreement

- A. This Comprehensive Agreement shall become effective on the date it is signed by the USAG-HI Garrison Commander and shall remain in effect until terminated by the USAG-HI Garrison Commander.
- B. Appending items to this Comprehensive Agreement is not considered to be an amendment and does not require the signature of the Garrison Commander to be effective. The following items may be appended:
 - 1. Lists of examples of types of funerary objects, sacred objects or objects of cultural patrimony
 - 2. Additional Participating NHO.

C. Amendments.

1. Any NHO Participant or Responsible Party may propose to USAG-HI that the terms of this Comprehensive Agreement be amended, whereupon USAG-HI shall consider the proposed amendment.
2. USAG-HI shall make reasonable and good faith effort to consult with all parties to this agreement on the proposed amendments. In the event any NHO Participant is unresponsive following three contact attempts by email, the Garrison Commander reserves the right to decide the subsequent course of action.
3. Any amendment shall become effective upon the signature USAG-HI Garrison Commander.

D. Termination.

1. Any Responsible Party or NHO may withdraw their participation in this Comprehensive Agreement by providing 30-day written notice to the other parties.
2. Withdrawal of any Responsible Party or NHO from this Comprehensive Agreement does not terminate the agreement.

X. Anti-Deficiency Act

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

XI. Signatures

Federal Agency Official:

The signature of the USAG-HI Garrison Commander, as the Federal Agency Official with responsibility for installation compliance with NAGPRA, executes this agreement.


U.S. ARMY GARRISON, HAWAII


COL Thomas J. Barrett
Commander

7-22-20
Date

Responsible Parties:

The undersigned accept the responsibilities as specified within this agreement.



Edward Fagan
General Manager

HALE KOA HOTEL
27 July 20
Date

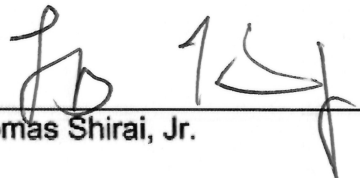
U.S. ARMY MUSEUM OF HAWAII, BATTERY RANDOLPH

Nevin G. Field
Nevin Field
Director

25 July 2020
Date

Native Hawaiian Organizations:

The NHO Participants and Supporting NHO acknowledge this Comprehensive Agreement was developed through meaningful and good faith consultation with USAG-HI and that they have the authority to sign on the behalf of the NHO with which their name is associated below.




Mr. Thomas Shirai, Jr.

'Ohana Kawaihāpai
8/4/2020
Date

'Ohana Ho'ohuli


Mr. William Ho'ohuli

Date



Mr. Glen Kila

Ko'a Ike
8/10/2020
Date



Mr. Christopher Oliveira

Marae Ha'akoa
8/10/2020
Date

‘Ohana Keaweamahi

Ms. Carolyn Keala Norman

Date

Mr. Kepo‘o Kei‘ipa‘akaua

Date

10 *with annotation* *from* **‘Aha Kūkaniloko Koa Mana Mea Ola Kanaka Mauli Hoali‘i Iku Pau**

Thomas Jay Lenchanko

Mr. Thomas Lenchanko

8/5/2020

Date

Kekumano ‘Ohana

Cy Harris

Mr. Cy Harris

8-4-20

Date

Pacific Peace and Justice Center

Kaleo Patterson

Reverend Dr. Kaleo Patterson

9.21.20

Date

O‘ahu Council of Hawaiian Civic Clubs

Shad Kane

Mr. Shad Kane
Chair

7-3-20

Date

Office of Hawaiian Affairs

Dr. Sylvia Hussey
Chief Executive Officer

Date

APPENDIX A – TEMPLATE

NOTICE OF INTENDED DISPOSITION (NID)

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.6 (c) of the intent to transfer custody of Native Hawaiian *[human remains (iwi kupuna), funerary objects, sacred objects and objects of cultural patrimony]* in the control of United States Army Garrison, Hawaii (USAG-HI) at Fort DeRussy Military Reservation (Fort DeRussy).

A detailed assessment of the Native Hawaiian *[human remains (iwi kupuna), funerary objects, sacred objects and objects of cultural patrimony]* was conducted by the USAG-HI Directorate of Public Works, Environmental Division archaeologists, and/or other contracted physical anthropologist, in consultations with recognized Native Hawaiian Organizations (NHO), established NHO consulting parties or recognized NHO claimants.

During the assessment Officials of USAG-HI have determined that, pursuant to 43 CFR 10.2 (d)(1), the physical iwi kupuna represented a minimum number of individuals (MNI) of *[provide total]* of Native Hawaiian ancestry based on a preponderance of associated evidence.

On *[date of discovery]*, said Native Hawaiian *[human remains (iwi kupuna), funerary objects, sacred objects and objects of cultural patrimony]* were discovered at site *[provide site number 50-80-##-####]* on Fort DeRussy, Honolulu County, Hawaii. *[Include information regarding the date and circumstances surrounding the removal]. [No known individuals were identified OR This individual has been identified as . . .].*

(Select one from below):

(if reported by an archaeological contractor)

The discovery is located at Fort DeRussy and was being *[surveyed/evaluated/excavated]* by contractor *[provide contractor's name]* as part of a cultural resource management project *[provide project name]* conducted to assist in compliance with Section 106 of the National Historic Preservation Act (NHPA) and the Advisory Council on Historic Preservation's implementing regulations as set forth under 36 CFR Part 800. The discovery appears to represent a *[provide short description of the discovery and associated archaeological site if applicable]*, and based on the nature of the archaeological features and artifacts identified there, is believed to be associated with Native Hawaiian culture who occupied the land in/and around Fort DeRussy in the Pre-Contact Era. Immediately upon the detection of a potential human burial, *[contractor's name]* ceased work activity within the area and notified the USAG-HI Cultural Resource Manager (CRM) by telephone and via email of the discovery.

(if reported by a soldier, civilian or other non-archaeological contractor)

The site is located at Fort DeRussy and was reported by *[insert who reported the remains, what the circumstances were, etc., insert any discussion about sites, features, etc., same as above if applicable]*.

and/or

Officials USAG-HI have determined that, pursuant to 43 CFR 10.2 (d)(2), the *[number]* items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native

Hawaiian individual.

and/or

Officials of USAG-HI have determined that, pursuant to 43 CFR 10.2 (d)(3), the [number] items described above are specific ceremonial objects needed by traditional Native Hawaiian religious leaders for the practice of traditional Native Hawaiian religions by present-day adherents.

and/or

Officials of Hawaiian have determined that, pursuant to 43 CFR 10.2 (d)(4), the [number] items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself rather than property owned by any individual.

and/or

In consultation with NHOs, the USAG-HI CRM has determined that, pursuant to 43 CFR 10.6 (a), the preponderance of historical and geographical evidence suggests that Fort DeRussy land was indigenously occupied by Native Hawaiians.

Lastly, officials of the USAG-HI have determined that, pursuant to 43 CFR 10.6 (a) (choose the applicable priority of custody category from bullets below):

- [name of lineal descendant/claimant] can trace [his/her] ancestry directly and without interruption to [name of known Native Hawaiian individual].
- the [iwi kupuna/funerary objects/sacred objects/objects of cultural patrimony] were removed from land within the exterior boundary of [name of ahupua'a or moku].
- the [iwi kupuna/funerary objects/sacred objects/objects of cultural patrimony] were removed from lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Home Commission Act of 1920.
- a relationship of shared group identity can be reasonably traced between the [iwi kupuna/funerary objects/sacred objects/objects of cultural patrimony] and the [culturally affiliated NHO].
- the [iwi kupuna/funerary objects/sacred objects/objects of cultural patrimony] were removed from lands that are recognized as the indigenous land of [HNO or 'ohana].

Representatives of any other NHOs that wish to submit a claim of ownership or control of the [human remains (iwi kupuna), funerary objects, sacred objects and objects of cultural patrimony] should contact the USAG-HI CRM, at the following address: Richard D. Davis, Cultural Resource Manager, USAG-HI Directorate of Public Works, Environmental Division, Conservation Branch, 948 Santos Dumont Ave, Bldg 105 WAAF, Schofield Barracks, 96857
Richard.d.davis154.civ@mail.mil, (808) 655-9707

Disposition of the Native Hawaiian [human remains (iwi kupuna), funerary objects, sacred objects and objects of cultural patrimony] will proceed after [insert date 30 days after publication of second notice] if no additional claimants come forward before that date.

The USAG-HI CRM is responsible for notify the [names of consulted/recognized NHO] and signatories to the Fort DeRussy Comprehensive Agreement that this notice has been published.

APPENDIX B - **TEMPLATE**

TRANSFER OF CUSTODY to NHO

[INSERT INTO LETTER HEAD TEMPLATE]

Transfer of Custody from U.S. Garrison, Hawaii to [Designated NHO]

We hereby document the repatriation of Native Hawaiian human remains and associated funerary objects discovered at Fort DeRussy Military Reservation from U.S. Garrison, Hawaii (USAG-HI) to the [NHO/recipient name]. The USAG-HI hereby relinquishes possession of the Native Hawaiian human remains and funerary objects to [NHO/recipient name].

The cultural objects consist of [number] minimum number of individuals (MNI) and [number] of associated funerary objects and are described in a Notice of [Inventory Completion/Notice of Intended Disposition/etc.], which was published in the [Federal Register/newspaper/etc] on [publication date(s)], in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq. The cultural objects inventoried in Enclosure 1 have been in the custody of USAG-HI.

Transfer of the human remains and associated funerary objects is effective as of [date], and is agreed to, and accepted by, the undersigned.

COL Thomas J. Barrett
Commander
US Army Garrison, Hawaii

Date

[Name of NHO Recipient]
[Title of NHO Recipient] [NHO Name]

Date

Enclosure: Inventory

APPENDIX C - **TEMPLATE**

REBURIAL AGREEMENT BETWEEN U.S. ARMY GARRISON, HAWAII AND **[NAME OF NHO]**

In accordance with the terms of the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (25 USC 3001-3013), 43 CFR 10 of its implementing regulations the United States Army Garrison, Hawaii (USAG-HI) has transferred legal control of Native Hawaiian remains and funerary objects described in the **[Federal Register Notice/Newspaper Notice]** published **[date of publication]** to: **[recipient NHO]**.

The Native Hawaiian remains and funerary objects listed in Exhibit A will be reburied in the USAG-HI Cemetery at Fort DeRussy Military Reservation (Fort DeRussy) Kuroda Field as mutually agreed upon by the Army and the **NHO name**;

NOW THEREFORE, USAG-HI and the NHO agree that the terms of this Reburial Agreement shall document (1) transfer of custody of the Native Hawaiian remains **[and funerary objects]** listed in Exhibit A for reburial in the Fort DeRussy Cemetery at Kuroda Field; (2) a process for reburial; and, a framework for access to, and use of the Cemetery following reburial, as provided below.

1. **TRANSFER OF NATIVE HAWAIIAN REMAINS [AND FUNERARY OBJECTS]**

Pursuant to the terms of NAGPRA and its implementing regulations (43 CFR 10), and as reflected in the **[Federal Register Notice/Newspaper Notice]** published **[date of publication]**, the USAG-HI has transferred to the **[Name of NHO]** custody of the Native Hawaiian remains and funerary objects documented in the outgoing receipt attached hereto as **Exhibit A [may be a different list]**.

2. **PROCESS FOR REBURIAL**

USAG-HI and the **[Name of NHO]** will prepare the ground for reburial of the Native Hawaiian remains **[and funerary objects]**, as agreed to in prior meeting(s), the Comprehensive Agreement and as described below.

A. Fort DeRussy Reburial Cemetery at Kuroda Field

USAG-HI and **[Name of NHO]** acknowledge and agree that they have had an opportunity to provide meaningful input regarding the location of the reburial area, the reburial site is within an area of compatible use, and has been approved by both the USAG-HI and the **[Name NHO]**.

B. Preparation

USAG-HI will continue to coordinate with the NHO on preparation activities for the reburial of the Native Hawaiian remains and funerary objects, including but not limited to, the use of wrappings and containers, subject to USAG-HI's reasonable discretion. The [Name of NHO] will take the lead on preparation of the remains, in accordance with their traditions, prior to reburial.

Draft sample- On the night of reinterment, Iwi Kupuna will be wrapped in kapa if available otherwise muslin then placed in hina'i and tied with sennet. This will be done by recognized descendants and the temporary lauhala baskets and muslin will also be reburied at the time of reinterment.

C. Reburial

While USAG-HI is the lead entity with respect to activities associated with the reburial in the Fort DeRussy Reburial Cemetery at Kuroda Field, it has consulted meaningfully with the [Name of NHO] and will take reasonable and appropriate steps to support and maintain the sanctity of the reburial. Only those representatives and workers designated by USAG-HI and the [Name of NHO] will be allowed to attend and/or participate in the reburial. The timing and scheduling of the events will be determined by USAG-HI in coordination with the [Name of NHO].

The Native Hawaiian remains and funerary objects shall be reburied in a manner as mutually agreed upon by USAG-HI and [Name of NHO]. If requested by the [Name of NHO], USAG-HI will install a grave liner, with the option of having openings to allow natural soil to mix with the reburied items as per the request of the [Name of NHO].

The [Name of NHO] agree that they will take the lead on ceremony, in accordance with their traditions, to include the giving of gifts to the ancestors being reburied, as appropriate. However, the [Name of NHO] agree that USAG-HI must determine that all aspects of the ceremony are in compliance with applicable Federal, State and Local laws, regulations and policies.

To the extent permitted by applicable law, the Reburial Ceremony will be closed to the general public. Representatives for USAG-HI, the Hale Koa Hotel, the U.S. Army Museum of Hawaii, Battery Randolph, and [Name of NHO] shall be permitted to attend if mutually agreed upon by USAG-HI and the [Name of NHO]. To the extent reasonably practicable, the USAG-HI and the Hale Koa Hotel will assist the [Name of NHO] in creating solitude for the ceremony and to minimize potential interference from visitors.

D. Marker

USAG-HI will install a grave-marker to identify the location of the reburial site, at the [Name of NHO] request. The [Name of NHO] will determine the inscription, subject to USAG-HI approval.

3. SITE ACCESS AND USE AFTER REBURIAL

The NHO shall have access to the Fort DeRussy Reburial Cemetery at Kuroda Field for religious and ceremonial uses, subject to any use restrictions, existing rights of way, easements or accessibility issues relating to the Cemetery and the Army installation. Subject to USAG-HI approval and coordinated with the Hale Koa Hotel, which shall not be unreasonably withheld, [Name of NHO] Members may enter the Fort DeRussy Reburial Cemetery at reasonable times during the day and may remain for a reasonable duration thereafter, in order to carry out cultural practices consistent with the purposes of this Reburial Agreement. Future reinterments shall be subject to the written approval of the Executive Director, Office of Army Cemeteries, in

accordance with the executed Fort DeRussy Comprehensive Agreement, and requisite documentation as set forth in Sec 1 above and appended to **Exhibit A**.

USAG-HI reserves to itself and its representatives, all rights accruing from its ownership of the Fort DeRussy Reburial Cemetery at Kuroda Field, including the right to engage in or permit uses of the Reburial Cemetery which are consistent and compliant with all applicable laws and policies. The **[Name of NHO]** acknowledge that USAG-HI and the Hale Koa Hotel has the right to conduct generally-accepted property management activities in the Reburial Cemetery, in a manner consistent and compliant with all applicable laws and policies, and the **NHO** shall not unreasonably interfere with the Army's use of the Fort DeRussy Reburial Cemetery at Kuroda Field. Hale Koa Hotel authorizes permits for Kuroda Field, which excludes the designated cemetery area.

4. COSTS

USAG-HI will assume the costs of the reburial (the opening and closing of the gravesite) of the Native Hawaiian remains and funerary objects listed in Exhibit A. USAG-HI will also assume the cost of the marker, including the inscription and installation, and preparation for repatriation as stated in the Fort DeRussy Comprehensive Agreement using muslin and natural fiber containers. The **[Name of NHO]** will assume their own costs associated with this Reburial Agreement, including but not limited to preparation activities associated with the remains and funerary objects that is above and beyond what is outlined in the Comprehensive Agreement.

5. TERMS AND TERMINATION

This Reburial Agreement shall become effective once fully executed by the Parties hereto and continue in perpetuity.

6. GENERAL PROVISIONS

- A. As a federal entity, USAG-HI neither objects to, nor endorses, any religious or ceremonial rituals that may be performed.
- B. The **[Name of NHO]** acknowledge that they have provided meaningful input for this Reburial Agreement. Any issues regarding this Reburial Agreement raised by other persons or entities may be considered and decided upon by USAG-HI, in consultation with the NHO.
- C. Nothing in this Reburial Agreement shall be construed as obligating the Army to the expenditure of funds or for future payments of money in excess of that which is contemplated by this Reburial Agreement, or otherwise required by law.
- D. Nothing contained in this Reburial Agreement shall be construed to entitle the NHO, individually or collectively, for any injury to or change in the Cemetery resulting from causes beyond their control, including without limitation, fire, flood, storm, earthquakes and earth movement, or from any prudent action taken by USAG-HI, the Hale Koa Hotel, or any of their representatives under emergency conditions to prevent, abate, or mitigate significant injury to the Cemetery.
- E. **Exhibit A** is made a part of this Reburial Agreement by this reference as though fully incorporated herein.

F. New supplements or amendments to this Reburial Agreement may be proposed in writing by any signatory and shall become effective only upon agreement and signature by of all Signatories.

IN WITNESS WHEREOF, the Parties hereto have executed this Reburial Agreement as of the latest date of USAG-HI signatures below:

ARMY:

By and on behalf of USAG-HI

COL Thomas J. Barrett
Commander
US Army Garrison, Hawaii

Date

NHOs:

[COMPLETE NHO NAME(S) – IN ALL CAPS]

[Name]

Date