



CROWE & DUNLEVY
ATTORNEYS AND COUNSELORS AT LAW
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Walter R. Echo-Hawk
Direct Tel: (918) 592-9874
Direct Fax: (918) 599-6307

walter.echohawk@crowedunlevy.com

November 11, 2010

Mr. David Tarler
Designated Federal Official, NAGPRA Review Committee
United States Department of the Interior
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240

RE: NAGPRA Dispute Hearing, November 17, 2010: Claimant Reply Briefs

Dear Mr. Tarler:

Please find enclosed the following documents for distribution to members of the NAGPRA Review Committee for their use in the two pending disputes that will be heard on November 17 in (1) Hoonah Indian Association and Huna Totem Corporation against the University of Pennsylvania Museum; and (2) Sealaska Corporation and Wrangell Cooperative Association against the Alaska State Museum:

1. CLAIMANTS' REPLY TO UPM'S LETTER OF OCTOBER 15, 2010, and certificate of service (for filing in the Hoonah Indian Association and Huna Totem Corporation dispute with the UPM); and
2. CLAIMANT'S REPLY TO ALASKA STATE MUSEUM'S MEMORANDUM IN DEFENSE OF ITS RIGHT OF POSSESSION TO THE TEEYHITTAAN HAT, and certificate of service, together with Exhibits 1-5 (for filing in the Sealaska Corporation and Wrangell Cooperative Association against the Alaska State Museum).

Thank you for your assistance in filing and providing a copy of these documents to the NAGPRA Review Committee members so that they may review them in advance of the November 17 hearing. This office will also send a copy each Review Committee member, as well.

Sincerely,

Elizabeth S. O. Gray
Legal Assistant to Walter Echo-Hawk,
Legal Counsel for the Claimants
in the Above Disputes

OKLAHOMA CITY
20 NORTH BROADWAY SUITE 1800
OKLAHOMA CITY OK 73102-8273
TEL 405 235 7700 • FAX 405 239 6651

TULSA
500 KENNEDY BUILDING
321 SOUTH BOSTON AVENUE
TULSA, OK 74103-3313
TEL: 918.592.9800 • FAX: 918.592.9801

NORMAN
THE H-POINT OFFICE BUILDING
2500 SOUTH MCGEE, SUITE 140
NORMAN, OK 73072-6705
TEL 405 321 7317 • FAX 405 380 4002



BEFORE THE REVIEW COMMITTEE

IN THE DISPUTE BROUGHT BY THE SEALASKA CORPORATION AND WRANGELL COOPERATIVE ASSOCIATION ON BEHALF OF THE TLINGIT TEEYHITTAAN CLAN AGAINST THE ALASKA STATE MUSEUM RELATIVE TO THE TEEYHITTAAN CLAN *YÉIL AAN KAAWU NAA S'AAXW* (LEADER OF ALL RAVEN CLAN HAT)

CLAIMANTS' REPLY TO ALASKA STATE MUSEUM'S MEMORANDUM IN DEFENSE OF ITS RIGHT OF POSSESSION TO THE TEEYHITTAAN HAT

This memorandum replies to the ALASKA STATE MUSEUM'S MEMORANDUM IN DEFENSE OF ITS RIGHT OF POSSESSION TO THE TEEYHITTAAN HAT, dated October 15, 2010 (hereinafter "ASM Brief"). This memorandum is limited in scope to addressing only the facts and arguments presented in the ASM Brief; and this memorandum does not address the eleventh-hour deposition of Frances Degermain which was recently taken on November 8, 2010, by ASM, because the undersigned counsel does not have the final transcript and new exhibits introduced at the deposition. Therefore, in the event that ASM offers all or part of the deposition (which is not part of the written material submitted to the Review Committee in this dispute), the claimants reserve their rights to present any objections, and to rebut or respond to the testimony with evidence of their own.

This is a dispute in a NAGPRA repatriation claim brought by the Sealaska Corporation and the Wrangell Cooperative Association ("WCA"), a federally recognized Indian tribe, on behalf of the culturally affiliated Teeyhittaaan Clan. The claim asks the Alaska State Museum ("ASM") to repatriate the Teeyhittaaan Clan *Yéil Aan Kaawu Naa S'aaxw* (Leader of All Raven Clan Hat). The claimants ask the Review Committee to issue findings supporting their "right of possession" to the clan hat within the meaning of NAGPRA.

On July 23, 2010, the claimants presented voluminous written material to the Review Committee to support the claim, including a MEMORANDUM OF LAW dated July 23, 2010 that identifies the dispositive facts (based primarily upon museum records) and documents the controlling legal standards for resolving the "right of possession" dispute.

That material is adopted and incorporated by reference.¹ The MEMORANDUM OF LAW reviewed the factual and legal bases asserted by the ASM for its “right of possession” claim as disclosed in the museum report entitled, “Assessment of a Repatriation Claim for the *Yéil Aan Kaawu Naa S’aaxw*, Leader of All Ravens Hat (H-B-209) in the Collection of the Alaska State Museum, filed on Behalf of the Teeyhittaan Clan of Wrangell by the Sealaska Corporation, August 13, 2008), March 8, 2009.”² That museum report contended that Mr. Paul conveyed ownership and right of possession of the hat to the museum. The claimants’ MEMORANDUM OF LAW dispelled that contention, because it (1) showed that the factual basis relied upon for ASM’s right of possession claim was sorely lacking and it failed to prove the museum’s right of possession or that Mr. Paul had secured the authority of alienation;³ (2) the memorandum documented tribal law in 1969 from authoritative tribal law experts, anthropologists, and court decisions that throughout the 20th century (before and after 1969) and found that Tlingit property law in effect at the time of the alleged donation granted only limited authority to caretakers of communally-owned clan ceremonial property (including *at.óowu*) as the trustees of that property and that such authority did not include the right to alienate that property except in very narrow circumstances, which are not present in this case, and then only with clan

¹ In addition, on August 13, 2010, the WCA joined as a co-claimant and party to the repatriation claim and dispute request. As explained *infra*, WCA is a federally recognized Indian tribe that is culturally affiliated with the Teeyhittaan Clan who had prior possession of the clan hat. *See*, attached Affidavits of John Martin (attached hereto as Exhibit 1) and Wilma Stokes (attached hereto as Exhibit 2) which are offered in reply to the standing issue raised by ASM.

² The claimants attached the Museum Report to the dispute letter material in Appendix H, pp. 60-83.

³ The MEMORANDUM OF LAW explains at 11-13 how ASM’s claim rests upon its interpretation of a vague and contradictory donation document that leaves its ownership and right of possession open to substantial doubt. It showed that ASM utterly failed to prove that Paul had authority to alienate the hat, as the only signature on the document is Paul’s and the document fails to disclose that Paul obtained the consent of the clan to alienate property interests in the hat. It pointed out that without providing a scintilla of evidence, ASM resorted to speculation in the Museum Report at page 20, which admits as follows:

[W]e do not know precisely what steps Paul took to assure that he had authority to donate the hat, but we infer that he acted within the constraints of Tlingit law as practiced at the time of alienation. [emphasis supplied.]

A bare inference falls short of sustaining the museum’s burden of proof under 43 CFR 10.10(1)(iv), but that assumption of unproven fact is the *only thing offered* in the Museum Report to substantiate ASM’s right of possession claim.

consent;⁴ and (3) the memorandum demonstrated that all of reasons advanced in the museum report to support ASM's ownership and right of possession claim utterly lacked merit.⁵

On September 7, 2010, the DFO's letter asked ASM to spell out the facts relied upon by the museum to support its right of possession claim. Four questions were posed.⁶ Specifically, the DFO asked whether the ASM proved by a preponderance of the evidence that:

1. William Paul consented to transfer the hat to the museum;
2. If so, that his consent voluntary;
3. If so, the culturally affiliated tribe authorized him to separate the hat from the tribe; and
4. If so, the tribe intended to give him authority to separate the hat from the tribe.

⁴ At pages 15-22, the MEMORANDUM OF LAW documented four general Tlingit property law rules from the claimants' material and uniform 20th century court decisions, which govern the ownership and alienation of clan ceremonial property (*at.óowu*), that were in full force and effect at the time of Paul's donation:

1. The clan is the owner of communal ceremonial property;
2. Caretakers of such property are fiduciaries who care for the property as trustees;
3. Caretakers do not have the authority to alienate that property, especially without clan consent;
4. No exceptions to the rule against alienation without clan consent apply to the museum donation.

⁵ At pages 22-24, each of the six reasons were examined and shown to be faulty. Specifically, (1) ASM did not establish that Tlingit law specifically allows for the alienation of clan ceremonial property to museums; (2) ASM's argument that clan property can be alienated without the consent of the entire clan is not helpful in this cases, because there is no evidence that Paul had permission from any clan member to donate the hat; (3) ASM advanced a novel "presumption of regularity" that Paul had the authority of alienation unless the clan proved that clan members made overt efforts to halt the transaction or punish Paul, which attempts to rewrite the burden of proof specified in 43 CRF 10.10 and the four step evidentiary process specified in those regulations; (4) ASM's argument that Paul's donation is a sanctioned exception to the tribal law against alienation because it was like a "gift to a sovereign" stretches the imagination too far; (5) ASM's contention that its burden of proof never arises unless the claimants offer additional proof that Paul was punished for his act is not the law; and (6) ASM advances a brand new theory of tribal law that Paul did not need the consent of anyone to donate the hat, which has never been the law and can not be taken seriously.

⁶ With due respect to the DFO, Questions 3 and 4 are somewhat inapt or are not artfully phrased. There is no dispute before the Review Committee over the cultural affiliation of the Hat. Moreover the claimant Sealaska Corporation was not in existence in 1969. However, the WCA is a federally recognized Indian tribe that is composed of members of the Teeyhitaan Clan and is culturally affiliated with the clan; and the WCA received its federal corporate charter in 1942 from the Bureau of Indian Affairs. *See*, Federal Charter (Exhibit 3); Affidavits of John Martin and Wilma Stokes (Exhibits 1-2). No documentation was provided in this dispute by ASM that shows the WCA was consulted or gave its consent to Mr. Paul's 1969 donation.

On October 15, 2010, ASM responded. Presenting no new evidence, ASM claimed that it has satisfactorily proved that: (1) Mr. Paul voluntarily consented to donating the hat;⁷ and (2) he had authority to donate the hat.⁸ This reply will assess the sufficiency of the evidence presented by ASM to prove that Paul had authority to donate the hat. As will be seen, none of the seven arguments presented in the ASM Brief establish a right of possession by a preponderance of the evidence.

ASM presented seven arguments. The first addresses DFO Question #3 whether ASM proved that Mr. Paul had authority to donate the hat. (ASM Brief at 18-20.) It lists 13 reasons why ASM believe Mr. Paul had that authority. None adequately satisfy ASM's burden of proof to establish Paul's authority of alienation or clan consent for the donation as is necessary to prove that ASM has the "right of possession," as will be shown in the next section of this memorandum. The remaining six arguments are: (1) Paul did not need clan permission to unilaterally alienate the hat (pp. 20-26); (2) Paul "most likely" complied with tribal law and the holdings in cases about Tlingit property law should not be followed in this case (pp. 26-32); (3) There is a supreme Tlingit "code" requiring Tlingits to "honor their ancestors" that is violated by the claim and the code bars the claim (pp. 32-33); (4) no consultation with the Teeyhittaan Clan or consent was required in 1969, because the Clan "most likely" had no "Clan Council," no elders "may" have been alive in 1969, and Paul did not have to consult with members younger than himself (pp. 33-34); (5) The Sealaska Corporation has no standing to bring the claim (pp. 34-35); and (6) even though Dr. Worl has been recused from the decision-making in this dispute, the Review Committee still should not hear this case, since she is a participant in the claim and dispute (pp. 35-36). As demonstrated next, none of these remaining arguments have merit and they should all be rejected by the Review Committee.

⁷ ASM Brief at 17-18.

⁸ ASM Brief at 18-20.

ARGUMENT

A.. None of the Answers Given to the Question #3 of the DFO are sufficient to Sustain ASM's Burden of Proving that Mr. Paul had Authority to Alienate the Clan Hat.

At pages 16-20 of the ASM Brief, the museum lists 13 reasons why it has proved, more likely than not, that Mr. Paul had authority to donate the hat to the museum. Those arguments, assumptions of presumed facts, and surmise do not convincingly address the central point asked by the DFO, nor establish by a preponderance of the evidence that Mr. Paul had consent from anyone to donate the hat in 1969. The claimants' reply to those points is summarized below, and elaborated in succeeding sections of this memorandum where pertinent to replying to other arguments made in the ASM Brief.

1. Item #3 summarily proclaims that "the evidence is *clear* that the Clan consented to Mr. Paul's grant of a right of possession to the Alaska State Museum" (emphasis supplied); however, this bald statement is completely unproven. As shown herein and in the claimants' MEMORANDUM OF LAW, Dispute Letter and attachments, ASM failed to sustain its burden of proof on this dispositive fact.
2. Items 1-2 assert that neither Sealaska nor the WCA existed in 1969, so that DFO Questions 3-4 are unanswerable and of no legal effect. However, the WCA received its corporate charter from the Bureau of Indian Affairs in 1942; and ASM presented no documentation that this federally-recognized Indian tribe gave Mr. Paul consent to donate the hat in 1969. *See*, Corporate Charter (Exhibit 3).
3. Items 4-6 construe the donation document to mean that the Clan may have lost physical possession of the hat by reason of the 1969 donation, but the Clan retained all non-material intellectual property rights associated with the hat. This novel interpretation of the vague museum donation document is clever, but the disingenuous argument misses the point: Mr. Paul never had authority to give any property interest to ASM, however described in its latest filing.
4. Item 7 claims Paul's donation is like a "gift to a sovereign" and should therefore qualify as a sanctioned exception to Tlingit property law. As explained in the claimants' MEMORANDUM OF LAW at 23, this far-fetched theory stretches the imagination too far to be taken seriously. In the facts of this case, the donation had nothing to do with international diplomacy conducted by the clan.
5. Item 8 claims that chiefs of small clans have extraordinary authority to donate *at.óowu*, limited only by the conditions that they act honorably, in public, and not for personal gain. No such fine distinctions are found in tribal law according to

the 20th century legal holdings cited in the claimants' MEMORANDUM OF LAW at 12-22; and ASM provides no tribal legal authority for this novel new rule.

6. Items 9-11 speculate that Paul had authority from the Teeyhittaan Clan to donate the hat, because (1) it is a small clan that "may not" have had a "Clan Council" or "any elders;" (2) that we should *presume* Paul followed tribal law, because he was a knowledgeable tribal leader; and (3) the museum function that took place 5 months after Paul donated the hat which celebrated various donations somehow "proves that the Clan consented to the transfer." This unsubstantiated speculation is simply a series of inferences built upon assumptions made by the museum, and upon not actual proof of any of the inferred facts. As a matter of fact, (1) there is no evidence in the record that Paul consulted with the clan; indeed, the accompanying affidavit of Richard Rhinehart, Sr. (attached hereto as Exhibit 3) states that Paul never informed him about his intent to donate the hat or secured his consent to the donation in 1969, although Paul had named Mr. Rhinehart as the successor caretaker of the hat; (2) the museum function does not give rise to any inferences about clan consent, since it occurred long after the donation, and was not a Teeyhittaan ceremony or some kind of tribal rite of transfer as characterized by ASM; nor can we infer that an after-the-fact newspaper article actually notified Teeyhittaan Clan members of the donation especially since the article and museum event focused primarily upon a museum exhibit of donated paintings, not the donation of the clan hat by Mr. Paul some months earlier; moreover, Rosita Worl's participation at the museum function as a young woman is not probative of Teeyhittaan Clan consent, since she is not a member of the Teeyhittaan Clan; and (3), finally, we simply cannot *presume* that Paul consulted with the clan and obtained consent for the donation in the complete absence of any evidence to that effect. Many Indians sold religious objects and cultural patrimony in American history without the authority of alienation. *See, e.g.,* Echo-Hawk and Trope, "The Native American Graves Protection and Repatriation Act: Background and Legislative History," 24 Az. S. L. Journal, No. 1 (Spring, 1992), 35, 43-44, 67-68. Congress was aware that objects were alienated by Natives who did not have ownership or the power of alienation, and the NAGPRA repatriation standards demand *proof* that they had the authority of alienation. *See, 25 USC 3005(c).*

9. Item 12 is a red herring which suggests that Tlingit law bars the claim, because the claimants are dishonoring William Paul. This is nonsense. To the contrary, the claim material avoids any personal attacks on Mr. Paul, focuses only on the facts in the record, does not speculate on his motives, and says nothing to disparage his character. It is *only* the ASM Brief that injects character issues into this case and engages in personal attacks upon the character of Tlingit elders. *See, ASM Brief at 5, 30, 31* (branding Mr. Paul as a "thief" and assailing the character of Dr. Worl).⁹ As such, Item 12 is nonsense and should be disregarded as having no

⁹ The ASM Brief actually chides the claimants for bringing this repatriation claim and accuses Dr. Worl of "conspiring" to dishonor Mr. Paul's memory. ASM Brief at 5, 30-32. We need not resort to hyperbole or unwarranted personal character attacks to resolve this dispute. The ASM's paternalistic argument is built

basis in Tlingit property law—otherwise, meritorious tribal claims would be barred whenever museums inject character issues into the case.

10. Item 13 is based upon two unproven assumptions of unproven fact: (1) though the museum held a public function to celebrate the donation that was reported in a Juneau newspaper, ASM assumes that all Teeyhitta Clan members were notified of the donation and none protested; and (2) ASM then further assumes that the presumed lack of protest “proves” that Paul had authority to donate the hat. First of all, as previously discussed, we cannot know as a matter of fact that one newspaper article published after-the-fact actually notified any, some, most, or all clan members of the donation, nor infer that no members were unhappy about the donation; nor can we presume that the assumed lack of protest proves that Paul secured the consent of the clan for the donation. The newspaper account deals primarily with an exhibition of paintings donated to the museum, and does not center upon Mr. Paul’s donation of the clan hat some months earlier; furthermore, the article was published well after the donation was made and we can only guess as to how many, if any, Teeyhittaans living in Wrangell, Alaska, which is located on an island many miles away from Juneau, actually knew about the Juneau museum event or the local article. Yet ASM presumes that the article would trigger a protest. This line of reasoning violates the rule of evidence that “one circumstantial inference may be based on another.” *See, McCormick on Evidence* (2nd Ed., 1972) at 791 n. 39. At some point in ASM’s long chain of assumptions, ASM must present a “fact;” otherwise the inferences to be drawn from the lone newspaper article become too remote and speculative to be given any probative value. This, ASM failed to do; and for lack of a single fact, ASM’s chain of indirect circumstantial evidence, speculation, and long-line of remote inferences do not amount to a “preponderance” of the evidence. ASM is left with its own museum accession records that show only that Paul acted alone.

B. Paul lacked authority to donate any property interest in the hat without clan consent.

Pages 20-26 of the ASM Brief repeats its argument that Mr. Paul had authority to donate a property interest in the hat to the museum, but again fails to present any new evidence of clan knowledge or consent to the donation. Instead, ASM baldly asserts that in smaller clans, leaders have more authority and, therefore, Paul could simply donate the hat *as he saw fit* without the need for any clan permission or consent. No legal authority is cited for this radical departure of tribal property law, and none exists. Nor can we presume that “it is more likely than not that Tlingit law permitted William Paul to donate

upon the faulty premise that the central purposes of the claim are to dishonor Mr. Paul and brand him as a “thief.” *Id.* This fundamentally mischaracterizes the claim and supporting materials because nothing therein personally attacks Mr. Paul, or his character and motives, nor does the material impute any particular motive for his conduct. The Tlingit People have ceremonies within and among clans to ensure proper respect for clan ancestors; and the Review Committee is obliged to follow NAGPRA when resolving repatriation disputes, not tailor its decisions according to ASM’s attempt to forbid this claim.

the Teeyhittaaan Hat to the Museum, while reserving rights for the Clan” based solely upon clan size, as suggested at 26. That rule would render tribal law a tattered and meaningless checkerboard of different legal standards on the alienation of clan property based upon the respective size of the 44 Tlingit Clans and serve to strip many smaller clans of the important safeguards built into tribal law to protect communally-owned ceremonial property and cultural patrimony. This odd rule is not the law.

C. ASM’s contention that Paul “likely” complied with tribal law is unsupported.

Pages 26-32 of the ASM Brief argue, once again, that Paul did not need clan permission to give a property interest in the hat to the museum; and, furthermore, it asserts that ASM does not need to provide *any* evidence of clan consent whatsoever. *See*, ASM Brief at 26-27. ASM complains there no existing evidence of clan consent would likely exist, since it would have been provided in the oral tradition. *Id.* If that is the case, it was incumbent upon museum fiduciaries in 1969 to consult directly with the clan to document the donor’s title and authority to make the gift, which the museum failed to do in 1969. As ASM admitted in its letter of June 2, 2007 (Appendix H at 39 in the Dispute Letter attachments):

If the museum was offered such a donation today, we would certainly undertake more consultation with the clan and make any resulting agreements more detailed.¹⁰

Having failed to undertake that investigation in 1969, the museum cannot be heard today to speculate that Paul “most likely” complied with tribal law without presenting any facts to support that speculation.

This section of the ASM Brief also asserts that the Review Committee should disregard the rules of Tlingit property law that were determined and applied in two 20th century court cases, following extensive fact-gathering trials on the nature of Tlingit property law, that recognize the rule that caretakers of communally-owned clan ceremonial property (*at.óowu*) cannot alienate such property entrusted to their care as trustees without the consent of the clan. Why? Because ASM contends the facts in those cases are somewhat different than the museum donation in this case. Nevertheless, the

¹⁰ Cited in claimants’ MEMORANDUM OF LAW at 11.

findings on tribal law made in those cases are applicable here, even if the circumstances in those cases are not identical. Any differences are immaterial, since those cases involved the alienation of cultural patrimony by persons in the 20th century who did not have the authority of alienation under tribal law because they acted without the consent of the Tlingit clan owners. That is precisely the fundamental problem in this dispute, as well. ASM's effort to avoid the dictates of tribal law as determined in those cases after extensive fact-finding hearings on the nature of extant tribal law in the 20th century is unpersuasive and lacks merit. At bottom, ASM asks the Review Committee to simply ignore tribal law and hold that Paul could dispose of important cultural patrimony as he saw fit. However, NAGPRA commands us to ascertain and apply tribal law at the time of the alienation in determining the right of possession.

D. The claim is not barred by tribal law requiring Tlingit people to honor their ancestors.

Pages 32-33 of the ASM Brief inject personal character issues into this case for the very first time to build a straw man, and then ASM asserts that the claim is barred by tribal law requiring the claimants to honor their ancestors, or should be denied by the Review Committee in order to honor those ancestors. We cannot take this paternalistic argument seriously. It should be summarily rejected by the Review Committee as nothing more than a red herring.

There is nothing in the claim or supporting materials that levels a personal attack upon Mr. Paul, speculates on his motives, or disparages his character. The claim focuses only on the facts in the record and the NAGPRA repatriation standards, including the parties' respective burdens of proof. It is only the excesses in found in the ASM brief that brand Mr. Paul a "thief" (pages 30-31), disparage the character of Tlingit elders (page 5, accusing Dr. Worl of "conspiring" to dishonor Paul's memory), and chide claimants for bringing this claim (page 31). After leveling these *ad hominem* character attacks, the ASM Brief then piously asks the Review Committee to deny the claim to honor, not shame, the memory of Mr. Paul. This desperate plea shows the great lengths that the museum has gone to cling to the clan hat. The Review Committee must apply NAGPRA, and the museum must produce evidence that it has a right of possession to the hat. The issues can be resolved on the evidence without attacking the character of anyone.

E. Mr. Paul was required to consult with the clan and obtain its consent to donate the hat; and that obligation is not obviated even if we assume that Paul was the oldest member in 1969.

At 33-34, ASM continues to argue that no clan consultation or permission was needed. No new fact or law is presented, other than several assumptions of unproven facts: (1) it is "more likely than not" that Paul consulted with the clan because "it is almost a certainty that he did so because he was faithful to his duty to follow Tlingit law" (page 33); (2) "no Teeyhittaan elders may have been alive at the time William Paul made the donation" (*Id.*); (3) as possibly the eldest clan member, Paul did not have to consult with any younger members of the clan. ASM concludes that these unproven assumptions prove that "he was not required to consult with any person before he placed the Hat in the permanent collection of the Museum." *Id.* at 34. Again no facts are presented.

However, to rebut this speculation, the claimants are providing the Review Committee with an affidavit from Richard Rinehart, Sr., who was the designated successor-caretaker of the clan hat in 1969. *See*, Exhibit 5 (attached hereto) It states that Paul never consulted him or obtained his consent for the donation in 1969. This affidavit bursts the bubble of speculation blown by the ASM Brief.

F. Sealaska had standing at the time it brought the claim and this dispute, even though its standing may now be in a state of flux; and ASM ignores the participation of the WCA as a culturally affiliated co-claimant and party to this dispute.

At pages 34-35, the ASM Brief raises a purely legal issue in arguing that Sealaska has no standing because it is not an Indian tribe. Assuming that the Review Committee wants to consider and decide purely legal questions (which is different from the fact issues and mixed questions of fact and tribal law that are properly before the Review Committee in this dispute), the claimants reply as follows.

The Review Committee need not reach or decide this legal question to decide this dispute, because the co-claimant Wrangell Cooperative is a federally recognized Indian tribe that is culturally affiliated with the Teeyhittan clan and clan hat, and this Indian tribe

is also a party to this dispute. The WCA joined the claim as a co-claimant and the dispute as a party on August 13, 2010, as noted in the DFO letter to ASM of September 7, 2010.

In arguing that these proceedings should not go forward, ASM ignores the presence of the WCA. As pointed out in the Affidavits of John Martin and Wilma Stokes (Exhibits 1 and 2), the WCA is (1) culturally affiliated with the Teeyhiittaaan Clan, (2) members of the clan belong to the tribe, and (3) the WCA received its corporate business charter from the Bureau of Indian Affairs in 1942. No record was presented by ASM that William Paul consulted with the WCA or obtained the consent of the WCA to donate the hat. Accordingly, the Review Committee may decide this dispute regardless of the question law regarding the standing of Sealaska, which need not even be reached.

It bears stating, however, that Sealaska clearly had standing to bring a NAGPRA claim at the time that it brought the claim and initiated this dispute, as the regulations specially allowed ANCSA corporations to bring NAGPRA claims. Indeed, 43 CFR 10.2(b)(2) (2010) reads as follows:

Indian tribe means any tribe, band, nation, or other recognized Indian group or community, including any Alaskan Native village or corporation as defined in or established by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary will make available a list of Indian tribes and Indian tribal officials for the purposes of carrying out this statute through the Manager, National NAGPRA Program.

Over the years, ANCSA corporations have been designated as eligible for many, many federal programs and services--just like Indian tribes *and* the Sealaska Corporation has been listed on the above-mentioned Secretary of the Interior list as well. That status may be in a state of flux pending the Secretary's final evaluation and implementation of the GAO Report referenced by ASM at n. 49 of its brief. However, this dispute may proceed pending the final resolution of Sealaska's eligibility issue by the Secretary, because regardless of the outcome, the WCA is a culturally affiliated, federally recognized Indian tribe that is a co-claimant and party to this dispute.

G. Since Dr. Worl is Recused, the Review Committee Can Properly Decide this Dispute.

Despite ASM's protestations at pages 35-36, Dr. Worl has been recused from participating with the Review Committee in deciding this dispute. Recusal is an effective

way to prevent biased decision making when courts and agencies have conflicts of interest in matters that come before them. Given its widespread use, ASM is entitled to nothing more. Since Dr. Worl is not participating in the decision-making process, the Review Committee may properly proceed free from any taints of bias.

Furthermore, it is appropriate for the Review Committee to consider any authoritative expert work on the nature of Tlingit property law concerning the ownership and alienation of communally-owned clan ceremonial objects, or *at.óowu*. Dr. Worl is a Tlingit anthropologist, scholar, and elder widely regarded as an authoritative expert in these matters; and she has served as a qualified and authoritative expert witness in federal court on the very points of tribal law that are now before the Review Committee. The Review Committee may properly consider her evidence on these issues as any other expert and grant it the appropriate weight that it is otherwise entitled to. It is enough that she is not participating in the decision-making process of the Review Committee in this dispute.

As a final note on reply, it is not appropriate for the Review Committee to consider Exhibit 4 to the ASM Reply Brief, because it is a draft operating agreement that is not intended by the Teeyhittaan Clan to have *anything* to do with this dispute, but rather merely seeks to provide guidelines on the custody of the hat pending a final resolution of this dispute and repatriation claim. Moreover, as stated in a recent email communicationr from the Clan to the Museum, the Clan does *not* agree to the draft as written, and has many changes to offer. *See*, Email from Richard Rinhart, Jr. and attached comments on draft operation agreement (attached hereto as Exhibit 4). Accordingly, as a the claimants object to the introduction and use of ASM's exhibit 4 on relevancy grounds as draft document on an unrelated matter, and request that it be disregarded by the Review Committee.

CONCLUSION

As claimants stated in their MEMORANDUM OF LAW at 3, the central issue in this dispute is this:

Did Mr. Paul have the "authority of alienation" under Tlingit law as the caretaker of clan property to unilaterally convey ownership of admitted clan religious property and cultural patrimony to the museum in 1969?

The claimants' MEMORANDUM OF LAW firmly establishes that ASM does not have a "right of possession" as defined by 43 CFR 10.10(2) (i.e., "possession obtained with the voluntary consent of an individual or group that had authority of alienation"), because under Tlingit law in effect throughout the 20th Century, the caretakers of communally-owned ceremonial property did not have authority to alienate that property as the trustees of that property, except in rare circumstances which are not present in this case, and then *only* with clan consent.¹¹ Under that rule of tribal property law, Paul lacked authority to donate the hat, because the only direct evidence in this case shows that he acted utterly alone and ASM failed to satisfactorily rebut that fact. On this record, the preponderance of the evidence firmly establishes that Mr. Paul did not secure clan consent to make the donation.

Claimants established their burden of proof specified by 43 CFR 10.10(a)(1)(i), (ii), (iii). There is no dispute that the hat is a "sacred object" and "cultural patrimony" within the meaning of NAGPRA. This was admitted to by ASM who also admitted the cultural affiliation of the object to the Sealaska Corporation.¹² Though ASM challenged the standing of Sealaska, it overlooked the fact that WCA is co-claimant; and the cultural affiliation of that federally recognized Indian tribe is established by Exhibit 1 (hereto). In addition, subsection (iii) requires claimants to make a *prima facie* case that ASM "does not have a right of possession" to the hat." ASM admitted that claimants made their *prima facie* showing on this point. *See*, Claimants MEMORANDUM OF LAW at 2-3 (citing AMS's Letter to DFO, April 20, 2009). Indeed, they have made a strong showing: After extensive research, the only hard and direct evidence on Mr. Paul's authority of alienation is the museum donation document.¹³ That evidence shows that he acted alone. The document bears only his signature, and contains no language suggesting that he consulted with the clan or obtained the consent of the clan for the donation. This evidence would support at finding the museum . . . does not have a right of possession" within the

¹¹ Claimants' MEMORANDUM OF LAW (July 23, 2010) at 4-5, 13-22.

¹² *See*, Claimants' MEMORANDUM OF LAW (July 23, 2010) at 2-3 (citing ASM responses to DFO letter). In addition, the cultural affiliation of the WCA to the object are established in Exhibits 1 and 2 to this Reply Memorandum.

¹³ The donor document is an ASM accession record which was produced by the claimants as Appendices G (Item #7) and H at 9 and it is analyzed in their MEMORANDUM OF LAW at 3, 11-12

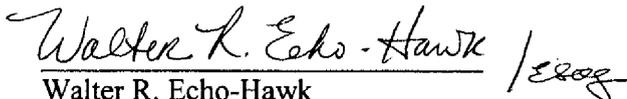
meaning of subsection (iii). In addition, the Affidavit of Richard Rinehart, Sr. (Exhibit 3), which is offered to rebut ASM speculation Mr. Paul “probably” consulted with the clan, further establishes that Mr. Paul did not consult with important clan members nor obtain their consent. In addition, the Claimants established that Tlingit tribal law in 1969 did not allow clan leaders or caretakers of communal clan ceremonial property (*at.óowu*) to alienate that property except in rare instances and then only with the consent of the clan, which was based upon evidence from knowledgeable tribal law experts, anthropologists and attorneys who studied Tlingit law from Tlingit informants, and court case decisions before and after 1969, all of which was scrutinized under the guidelines for determining points of tribal law on communally-owned cultural property by the authoritative hornbook on federal Indian law—*Cohen’s Handbook of Federal Indian Law*. The claimants therefore *amply* sustained their burden of proof under 43 CFR 10.10 (a)(1)(iii) and their evidence clearly amounts “evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the museum . . . does not have a right of possession to the object[.]” as was admitted by ASM.

Since the claimants met their burden of proof in this case, the burden now shifts to the museum under 43 CFR 10.10(a)(1)(iv) “to present evidence to the contrary proving that it does have a right of possession.” In the ASM Brief, the museum provided no new evidence on its right of possession or Mr. Paul’s authority of alienation to sustain its burden. Rather, its “right of possession” defense rests primarily upon its interpretation of the museum donation document, as the only piece of direct evidence. However, its interpretation of that accession record does not rebut the face of the document which shows that Paul acted alone. ASM presented no direct evidence to show that Paul secured authority to donate the hat from the clan. Indeed, there is a complete absence of proof that he consulted with the Teeyhittaán Clan, or obtained any member’s consent to donate the hat. Instead, we are asked to speculate that he “probably” complied with tribal law. Against that presumption, claimants have provided the Affidavit of Richard Rinehart, Sr. (Exhibit 3) that rebuts any surmise that he was consulted or gave his permission as an important clan member in 1969. As such, ASM failed to “present evidence to the contrary” as required by 43 CFR 10.10(a)(1)(iv). The museum’s list of indirect circumstantial evidence is insufficient to meet the burden of proof specified by 43 CFR §

10.10(a)(1)(iv), because at bottom the conjecture and assumptions presented are merely a makeweight argument that are not supported by any hard facts. This is merely an unpersuasive set of inferences with very little probative value. In short, ASM failed to prove that the Teeyhittaan Clan consent to the donation. The reason is simple: Clan consent was not obtained. Therefore, Mr. Paul did not have the authority to donate the hat under tribal law in 1969. ASM is left to argue that Paul *did not need clan permission* to donate its cultural patrimony to the museum, but that was not the law in 1969.

Respectfully submitted,

DATED: November 11, 2010.


Walter R. Echo-Hawk
Crowe & Dunlevy, P.C.
500 Kennedy Building
321 South Boston
Tulsa, OK 74103-3313
Email: walter.echohawk@crowedunlevy.com

ATTORNEY FOR THE CLAIMANTS

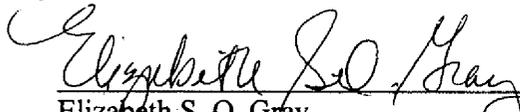
LIST OF ACCOMPANYING EXHIBITS

<u>DESCRIPTION</u>	<u>EXHIBIT NUMBER</u>
Affidavit of John Martin, November 2, 2010	1
Affidavit of Wilma Stokes, November 2, 2010	2
Corporate Charter of Wrangell Cooperative Association (April 30, 1942)	3
Email from Richard Rinehart, Jr. to Neil Slotnick (Nov. 4, 2010) and attached Teeyhittaan Clan comments on draft operating agreement	4
Affidavit of Richard Rinehart, Sr., November 2, 2010	5

CERTIFICATE OF SERVICE

On November 11, 2010, the undersigned deposited a true and correct copy of the foregoing CLAIMANTS' REPLY TO ALASKA STATE MUSEUM'S MEMORANDUM IN DEFENSE OF ITS RIGHT OF POSSESSION TO THE TEEYHITTAAN HAT, and accompanying Exhibits 1-5 were deposited in the U.S. first class mail, postage prepaid, and addressed to the following:

Stephen C. Slotnick
Assistant Attorney General
State of Alaska
Dimond Courthouse
P.O. Box 110300
Juneau, Alaska 99811



Elizabeth S. O. Gray
Legal Assistant to Walter R. Echo-Hawk

1. My name is John Martin and I am the current president of the Wrangell Cooperative Association (WCA) which is a federally recognized Indian tribe chartered in 1942.

2. The WCA is a co-claimant in the NAGPRA claim and dispute letter initiated by the Sealaska Corporation on behalf of the Teeyhittaen Clan involving ownership and the right of possession of the Teeyhittaen Clan's Crest hat.

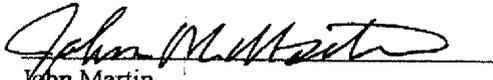
3. I have personal knowledge about the membership, traditional history, and cultural affiliations of the WCA.

4. There is a relationship of shared group identity between the WCA and the Teeyhittaen Clan, because members of the Teeyhittaen Clan belong to the WCA and the Teeyhittaen Clan is traditionally and historically associated with the WCA. As such, the WCA has a vital interest at stake in the proper resolution of this NAGPRA claim and dispute regarding the Teeyhittaen Clan hat.

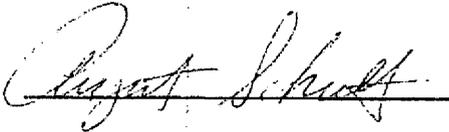
5. All of the above is true of my own personal knowledge.

Dated this 02 day of November, 2010.

Signed


John Martin

Notary Public:



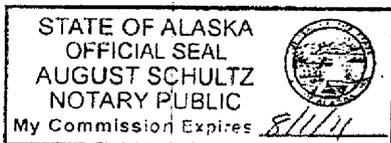


Exhibit
|

1. My name is Wilma Stokes and I am the current secretary of the Wrangell Cooperative Association (WCA) which is a federally recognized Indian tribe chartered in 1942.

2. The WCA is a co-claimant in the NAGPRA claim and dispute letter initiated by the Sealaska Corporation on behalf of the Teeyhitta Clan involving ownership and the right of possession of the Teeyhitta Clan's Crest hat.

3. I have personal knowledge about the membership, traditional history, and cultural affiliations of the WCA.

4. There is a relationship of shared group identity between the WCA and the Teeyhitta Clan, because members of the Teeyhitta Clan belong to the WCA and the Teeyhitta Clan is traditionally and historically associated with the WCA. As such, the WCA has a vital interest at stake in the proper resolution of this NAGRPA claim and dispute regarding the Teeyhitta Clan hat.

5. All of the above is true of my own personal knowledge.

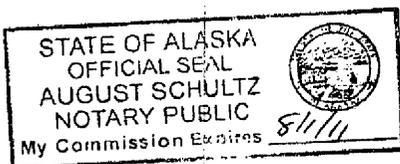
Dated this 7 day of November, 2010.

Signed

Wilma Stokes
Wilma Stokes:

Notary Public:

August Schultz



UNITED STATES
DEPARTMENT OF INDIAN AFFAIRS
BUREAU OF INDIAN AFFAIRS

CORPORATE CHARTER
OF THE
WRANGELL COOPERATIVE ASSOCIATION
ALASKA

APPROVED APRIL 30, 1942

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1950

CORPORATE CHARTER OF THE WRANGELL COOPERATIVE

Exhibit

3

ASSOCIATION, ALASKA

A FEDERAL CORPORATION CHARTERED UNDER THE ACT OF JUNE 18, 1934, AS AMENDED BY THE ACT OF MAY 1, 1936

Whereas, a group of Indians having a common bond of residence in the neighborhood of Wrangell, Territory of Alaska, seek to organize under Sections 16 and 17 of the Act of June 18, 1934 (48 Stat. 984), and Section 1 of the Act of May 1, 1936 (49 Stat. 1250), by ratification of the Constitution and By-laws and Charter approved by the Secretary of the Interior; and

Whereas, more than one-third of the adult members have petitioned that a charter of incorporation be granted to this group of Indians;

Now, therefore, I, W. C. Mendenhall, Acting Assistant Secretary of the Interior, by virtue of the authority conferred upon me by the above cited acts, do hereby issue and submit this charter of incorporation to the group of Indians organized as aforesaid, to be effective when duly ratified, provided that the said constitution and by-laws have been ratified by them.

Purpose and Existence.1. In order to further the economic development of the Indians residing in the neighborhood of Wrangell, Alaska, by conferring upon the Wrangell Cooperative Association corporate rights and powers; and to enable this Association and its members to undertake enterprises designed to secure for the members of the corporation an assured economic independence, the aforesaid Association is hereby chartered as a body corporate of the United States of America, under the corporate name of Wrangell Cooperative Association of Wrangell, hereinafter called the Association.

Perpetual Succession.2. The Association shall, as a Federal corporation, have perpetual succession.

Membership.3. The Association shall be a membership corporation. Its members shall consist of all persons now or hereafter members of the Association as provided by its duly ratified and approved Constitution and By-laws.

Management.4. The Council of the Association established in accordance with the said Constitution and By-laws of the Association, shall exercise all the corporate powers hereinafter enumerated.

Corporate Powers.5. The Association, subject to any restrictions contained in the Constitution and laws of the United States, or in the Constitution and By-laws of the said Association shall have the following corporate powers, in addition to all powers already conferred or guaranteed by its Constitution and By-laws:

- (a) To adopt, use, and alter a corporate seal.
- (b) To purchase, take by gift, bequest, or otherwise, own, hold, manage, operate and dispose of property of every description, real and personal, subject to the following limitations:
 - (1) No sale nor mortgage may be made by the Association of any land,

or interests in land, including water, fishing or mineral rights, held by the Association within any area which may be set aside by the Federal Government as a reserve for the use of the Association.

(2) No leases, permits (which terms shall not include land assignments or fishing privileges granted to members of the Association) nor timber sale contracts covering any land or interests in land held by the Association within any reserve set aside for the Association shall be made by the Association for a longer term than ten years and all such leases and permits except to members of the Association, and all such contracts must be approved by the Secretary of the Interior or by his duly authorized representative.

(c) To issue interests in corporate property in exchange for transfers of property by individual members of the Association.

(d) To borrow money from the Indian Credit Fund in accordance with the terms of Section 10 of the Act of June 18, 1934 (48 Stat. 984), or from any other source, and to use such funds directly for productive enterprises, or to advance money thus borrowed to individual members or groups of members of the Association for enterprises related to those of the Association.

(e) To engage in any business that will further the economic well-being of the members of the Association or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of this Charter.

(f) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this Charter, with any person, association, or corporation, with any municipality or with the United States or the Territory of Alaska, including agreements with the said Territory for the rendition of public services.

(g) To pledge or assign chattels or future corporate income due, or to become due to the Association; Provided, That such assignments of corporate income, other than assignments to the United States, shall not extend more than ten years from the date of execution.

(h) To deposit corporate funds, from whatever source derived, in any national or territorial bank to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, or to deposit such funds in the Postal Savings Bank or with a bonded disbursing officer of the Interior Department to the credit of the corporation.

(i) To sue and be sued in courts of competent jurisdiction within the Territory of Alaska or the United States.

(j) To exercise such further incidental powers, not inconsistent with law, as may be necessary to the conduct of corporate business.

Corporate Property.6. The individually-owned property of members of the corporation shall not be subject to any corporate debts or liabilities without such owners' consent.

Corporate Income.7. The Association shall, at the end of its fiscal year, apply its income in excess of operating expenses during such fiscal year, in the following order:

First: to payment of any due indebtedness.

Second: to creation of a fund for operation and for liquidation of indebtedness becoming due in the next operating period.

Third: to creation of a reserve for depreciation of the physical property of the Association, and for the undertaking, construction, operation and improvement of corporate enterprises.

Fourth: to utilization for such social, educational and relief purposes as the association may determine.

Fifth: to distribution as dividends to members of the Association.

Corporate Dividends.8. Dividends may be distributed to members of the Association on the basis of their patronage of the Association according to an equitable system set forth in the regulations of the Association.

Patronage shall include the sale of goods to, and the purchase of goods from, the Association and work done for the Association, but shall not include the salary paid to the manager nor business done with nonmembers of the Association. No dividends may be declared or paid while this corporation is indebted to the Indian Credit fund unless the operation and reserve funds provided for in section 7 are in an amount satisfactory to the Secretary of the Interior or his authorized representative.

Regulation of Payments.9. The Association may regulate the payment of dividends or other corporate property in order to safeguard the interests of any incompetent or disabled members, and of the dependents of members which might become a public charge, and of the heirs or devisees of deceased members.

Corporate Accounts.10. The officers of the Association shall maintain accurate and complete public accounts of the financial affairs of the corporation, which shall clearly show all credits, debts, pledges, and assignments, and shall furnish an annual balance sheet and report of the financial affairs of the corporation to the Principal Teacher in Wrangell for inspection and forwarding to the Juneau Office of the Office of Indian Affairs.

Amendments.11. This Charter shall not be revoked or surrendered except by act of Congress, but amendments may be proposed by resolutions of the Council or of the Association which amendments, if approved by the Secretary of the Interior, shall be effective when ratified by a majority vote of the adult members of the Association voting in a

popular referendum called for the purpose by the Secretary of the Interior, provided that at least 30 percent of the eligible voters vote at such election.

Ratification. 12. This Charter shall be effective from and after the date of its ratification by a majority vote of those entitled to vote who vote in an election called for the purpose by the Secretary of the Interior; provided that at least 30 percent of the eligible voters shall vote, and provided that the Association has ratified a Constitution and By-laws approved by the Secretary of the Interior. The ratification of the Charter shall be formally certified by the Election Board. The persons entitled to vote are those Indians entitled to vote on the Constitution and By-laws for this Association.

This Charter is herewith approved and issued by the Acting Assistant Secretary of the Interior and submitted for ratification by the group of Indians having a common bond of residence in the neighborhood of Wrangell, Territory of Alaska, in a popular referendum called and held under the Instructions of the Secretary of the Interior.

[SEAL]

W. C.

MENDENHALL,
Acting Assistant Secretary.

WASHINGTON, D. C., April 30, 1942.

RATIFICATION

Pursuant to an order, approved April 30, 1942, by the Acting Assistant Secretary of the Interior, the attached charter was submitted for ratification to the qualified voters of the Wrangell Cooperative Association, Wrangell, Alaska, and was on February 27, 1947, duly ratified by a vote of 61 for and none against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with the Alaska Act of May 1, 1936 (49 Stat. 1250), and Section 17 of the Act of June 18, 1934 (38 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

LOUIS WIGG,
Chairman, Election Board

PETER M. CASEY,
Secretary, Election Board.

EARL C. INTOLUBBE,
Government Representative.



Walter Echo-Hawk <wechohawk@gmail.com>

Fw: Draft Agreement - REVISED

2 messages

Richard Rinehart <richardjrinehart@yahoo.com>

Thu, Nov 4, 2010 at 10:52 PM

To: Neil Slotnick <neil.slotnick@alaska.gov>, Bob Banghart <bob.banghart@alaska.gov>
Cc: Jo Ann Rinehart <jrinehart@gci.net>, Ethel Lund <ethell@gci.net>, Debra OGara <debraogara@me.com>, Mikey Hoyt <mjhoyt@nnu.edu>, Jesse Archibald <jma99801@yahoo.com>, Ben Paul <paul8324@msn.com>

Neil,

I was very disappointed to see you used the draft agreement in your brief filed with the NAGPRA review committee. As you were aware we had not agreed to the DRAFT and requested time to review it with Clan members. There are so many changes required I feel it is misleading to give the committee the Draft, further it seems inappropriate to tie the Operating Agreement to the NAGPRA claim.

We have a number of changes to offer in our REVISED DRAFT (attached) of the Operating Agreement. Our edits and changes are in red line. Some of the global changes were to use the term 'Trustee' rather than 'Custodian' which is more in line with Tlingit custom. The other global change was to always say 'Teeyhíttaan Clan Hat' instead of 'Teeyhíttaan Hat'.

A major change was to also name the Teeyhíttaan Clan as a party to the agreement. We realize the Attorney General's office may not agree with this, but we felt it was important to include the whole clan and not just the Trustee in the agreement. We also changed the document in several places giving the Clan the right to use the hat, and not limiting it to the Trustee.

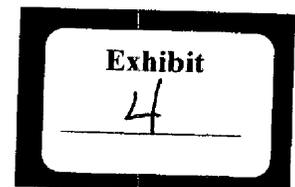
Finally, we added wording to paragraph 12 making it clear that nothing in this Operating Agreement will effect the Clan's NAGPRA claim regarding the right of possession and ownership.

Richard J. Rinehart, Jr.
Ph. (907) 209-9094
richardjrinehart@yahoo.com

This E-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. This information is confidential information and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited

----- Forwarded Message -----

From: Richard Rinehart <richardjrinehart@yahoo.com>
To: "Slotnick, Stephen C (LAW)" <neil.slotnick@alaska.gov>
Cc: "Banghart, Robert C (EED)" <bob.banghart@alaska.gov>
Sent: Wed, September 22, 2010 1:40:15 PM



Operating Agreement
Between the
Alaska State Museum, the Wrangell City Museum,
and Richard Rinehart, Sr. on behalf of the Teeyhíttaan Clan,
regarding the use of
***Yéil Aan Kaawu Naa s'aaxw*, Leader of All Ravens Hat**

The parties agree as follows:

1. This Agreement concerns the use of *Yéil Aan Kaawu Naa s'aaxw*, the "Leader of All Ravens Hat," a cedar crest hat of the Teeyhíttaan Clan. The Teeyhíttaan Clan Crest Hat is an at.óowu of the Clan and is a sacred and living object of Tlingit culture. The Teeyhíttaan Clan Hat is identified by the Alaska State Museum as catalog number **II-B-809**.

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2. The only parties to this Agreement are the Teeyhíttaan Clan, represented by Richard Rinehart, Senior (Tlingit name Yakook), the Alaska State Museum, and the Wrangell City Museum. Richard Rinehart, Senior, is a leader of the Teeyhíttaan Clan, and is the Trustee of the Teeyhíttaan Clan Hat (Trustee) who has entered into this agreement on behalf of the Teeyhíttaan Clan under traditional Tlingit law. The Alaska State Museum is a statutorily-created branch of the Alaska Department of Education and Early Development, located in Juneau, Alaska. The Wrangell City Museum is owned and operated by the City of Wrangell.

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3. The Teeyhíttaan Clan Hat is on display at the Wrangell City Museum, under the terms of a separate agreement (see attachment) regarding the display of the Hat.

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4. Under this Operating Agreement, the Trustee of the Teeyhíttaan Clan Hat has access to the Teeyhíttaan Clan Hat to provide for ceremonial and educational uses of the Hat.

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5. This Operating Agreement is premised upon the mutual respect and good will of the parties. The purpose of this Operating Agreement is for the parties to jointly establish an agreed-upon procedure they will follow when the Teeyhíttaan Clan takes, uses, and returns their Teeyhíttaan Clan Hat.

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6. To facilitate the Clan's use of the Teeyhíttaan Clan's Hat access to the Teeyhíttaan Clan Hat, the Museum will establish a two-lock system, and

provide the Trustee of the Teeyhittaam Clan Hat with a key to one of the locks. Here is how this system will work: Beginning ____, 2010, the Teeyhittaam Clan Hat will be displayed in a locked display box in the Wrangell Museum. The display box will be locked with two paddle locks, each with a separate key. The keys will be distributed as follows: The key to one lock will be retained by the director of the Wrangell Museum under the terms of a separate agreement; the key to the other lock will be provided to Richard Rinehart, Senior, the Trustee of the Teeyhittaam Hat. The Wrangell Museum will not have possession of a duplicate of the key that is in the possession of the Trustee of the Teeyhittaam Hat, and the Trustee of the Teeyhittaam Clan Hat will not have a duplicate of the key that is in possession of the Wrangell Museum. Both keys will be required to remove the Teeyhittaam Clan Hat from the box. For security purposes the Alaska State Museum will have a copy of both keys, but those keys will be kept in a locked box in Juneau by the Curator of the Museum.

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7. When the Trustee of the Teeyhittaam Clan Hat needs access to the Hat, the following process will occur:

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a. As a courtesy the Trustee of the Teeyhittaam Clan Hat will call or email the Chief Curator of the Alaska State Museum with as much advance notice as possible, before the Clan intends to remove the Teeyhittaam Clan Hat from the Wrangell Museum (Wrangell Museum would appreciate at least seven days notice);

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~~Deleted: custodian~~
~~Deleted: Teeyhittaam Hat~~

b. When giving notice to the Chief Curator, the Trustee of the Teeyhittaam Clan Hat may provide the following information, to keep the hat secure and safe during its time outside the locked display

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- i. the intended use of the Hat;
- ii. the names of the people who will have possession of the Hat;
- iii. whether the Hat will be transported out of Wrangell, and, if so, how the transportation will occur;
- iv. when the Hat will be returned;
- v. any special concerns that the Trustee of the Teeyhittaam Hat may have regarding the Hat, including security, transportation, or physical strain on the Hat;

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c. The State Museum will notify the Wrangell Museum of the pending removal;

d. The Trustee of the Teeyhittaam Clan Hat and the Wrangell Museum will set the time and date for removal of the Hat from the Wrangell Museum. On the appropriate day, the Trustee of the Teeyhittaam Clan Hat will take possession of the Hat by unlocking the display case with the key in his possession while the Wrangell Museum unlocks the other lock with the Museum's key;

~~Custodian~~
~~Teeyhittaam Hat~~
~~Custodian~~
~~Teeyhittaam Hat~~

e. The Trustee of the Teeyhittaam Clan Hat will fill out the Teeyhittaam Hat Withdrawal Form [Addendum B; which is attached to this Agreement and is incorporated by reference into this Agreement], present the form to the Wrangell Museum, and take possession of the Hat for the term specified on the Withdraw Form. The Trustee of the Teeyhittaam Clan Hat will maintain physical possession of the key that provides access to the Hat;

~~Custodian~~
~~Teeyhittaam Hat~~

~~Custodian~~
~~Teeyhittaam Hat~~

f. At all times during the Hat's removal from the Wrangell Museum's display case, the Trustee of the Teeyhittaam Clan Hat will personally protect the Hat from damage or theft. The Hat will be returned to the Wrangell Museum in the same condition it was in when it was removed;

~~Custodian~~
~~Teeyhittaam Hat~~

g. Upon return, the Hat will be put back in the display case and double-locked;

h. In the event of a deviation from the procedures described in this Agreement, the parties will confer and resolve the issue in a mutually acceptable manner.

8. If the Hat is to be transported out of Wrangell,

a. the State Museum will discuss the transportation with the Trustee of the Teeyhittaam Hat;

~~Custodian~~

b. the State Museum and the Trustee of the Teeyhittaam Clan Hat will agree on plan of transportation that minimizes the risk to the Hat, including minimizing

~~Custodian~~
~~Teeyhittaam Hat~~

~~November 4, 2010~~
~~November 1, 2010~~

1. the amount of time that the Hat is removed from a climate-controlled environment; and
2. the security risks to which the Hat is exposed;

c. if necessary, the State Museum may provide personnel to transport the Hat;

d. the State Museum may, at its expense, construct a crate for the protection of the Hat while it is being transported, and the crate will be used whenever transporting the Hat;

e. the Trustee of the Teeyhíttaan Clan Hat will pay the costs of the transportation that he might propose; however, if the parties agree to a different transportation plan as a result of a request from the State Museum, the State Museum will pay any additional transportation costs that are caused by the State Museum's request.

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9. Any party to this Agreement may revoke or request an amendment to the agreement for any reason by providing thirty days written notice to the other parties. No other written or oral promises or commitments have been made apart from this Agreement.

10. The parties acknowledge that the Trustee of the Teeyhíttaan Clan Hat will have a successor. The current Trustee may name his successor before he dies, or the Clan may choose a successor after the current Trustee dies. However a successor Trustee is chosen, they will be approved by the Teeyhíttaan Clan and validated by their opposite side (in this case the Eagle Clans) according to traditional Tlingit Law. The Teeyhíttaan Clan will provide notice to the State Museum and Wrangell Museum of the identity of the successor.

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11. The Alaska State Museum will consult with and receive agreement from the Trustee of the Teeyhíttaan Clan Hat before transporting the Teeyhíttaan Clan Hat out of Wrangell,

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12. Because this Operating Agreement is a limited-purpose agreement, and is premised upon the mutual respect and good will of the parties, this Agreement is not evidence of any enforceable contractual rights belonging to either party, and does not create any enforceable rights except as noted in this paragraph. Nothing in this Agreement may be construed to be direct or

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implied consent to the jurisdiction of any court or tribunal. This Agreement provides only that the Teeyhittaam Clan Hat may be released to the Trustee of the Teeyhittaam Clan Hat under the terms explained, and that the Trustee of the Teeyhittaam Clan Hat will return the Hat to the Museum. The parties expressly understand that a dispute currently exists between them over the ownership, right of possession, and control of the Teeyhittaam Clan Hat under the provisions of the Native American Graves Protection and Repatriation Act, and this Operating Agreement is not intended to affect or resolve that dispute. No other direct or implied enforceable promises, terms, or conditions of any kind are created.

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The signers of this document approve this operating agreement with the understanding that the sole purpose of the agreement is to ensure that the Trustee of the Teeyhittaam Clan Hat has access to the Teeyhittaam Hat, and that this agreement does not determine the rights of the parties or create or constitute consent to jurisdiction in any court or tribunal

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Accepted by the Alaska State Museum:

Dated: _____

By: _____
Robert Banghart
Chief Curator, Alaska State Museum

Approved by the Alaska Department of Law:

Dated: _____

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: _____
Stephen C. Slotnick
Assistant Attorney General

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Operating Agreement regarding the use of
Yéil Aan Kaawu Naa s'aaxw, Leader of All Ravens Hat

5
November 5, 2010

Accepted by Richard Rinehart, Senior:

Dated: _____

By: _____
Richard Rinehart, Senior

Accepted by the Wrangell City Museum:

Dated: _____

By: _____
Megan Clark
Director, Wrangell City Museum

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I am Richard Rinehart, Sr. my Tlingit name is Yakook (aka Yah-Koog, Yacook or Yéil Kook). I was born on August 31, 1926 in Wrangell Alaska. I am Tlingit, Teeyhittaan Clan, through my mother Jessie Bell Rinehart, Tlingit name Gei-gy. She was born and raised by her uncle on Lake Bay; in Tlingit it was known as Yuh-klah-ah, which means "this is the place" (this is the same place as the story of our clan crest hat's origin).

I had been made aware of our Teeyhittaan crest hat being placed on loan in the Alaska State Museum by my uncle William Paul over fifty years ago. I knew that I was to be the next custodian of our clan's crest hat after uncle Will passed away. We had discussed this when he stayed at my home in Wrangell while visiting, at ANB Conventions, and through letters he had sent me over the years.

I was 42 years old on March 10th, 1969; in all the conversations before and after that date I do not ever remember my uncle William Paul telling me he had donated or given our Teeyhittaan clan's crest hat to the museum. Nor did he ever ask for my permission or consult with me, or anyone else in my family, about making the loan into a permanent gift donation to the state.

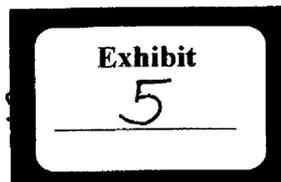
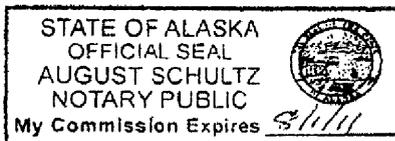
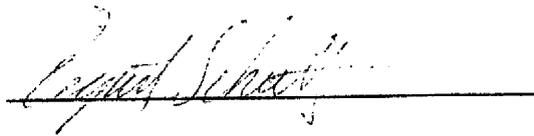
Dated this 2 day of Nov., 2010.

Signed



Richard Rinehart, Sr.

Notary Public:





Affidavit of Ethel Lund

My name is Ethel Lund and my Tlingit name is Aan wuu geex. I was born on November 4, 1931 in Wrangell Alaska. Currently I reside in Juneau, Alaska. I am Tlingit, Teeyhíttaan Clan, through my mother Martha Ukas and my grandmother, Josephine Lewis Ukas.

During the 1960's I lived in the Seattle area. My married name was Ethel Comer at the time. I knew William Paul and would visit with him on occasion. I moved back to Wrangell the summer of 1969, on March 10th, 1969, I was 37 years old.

I do not ever remember William Paul talking about our Teeyhíttaan Clan Crest Hat or telling me he had donated or given our Teeyhíttaan Clan's Crest Hat to the Alaska State Museum in Juneau. Nor, do I ever remember him asking for my permission or consulting with me, or anyone else in my family on the subject.

Dated this 11 day of November, 2010.

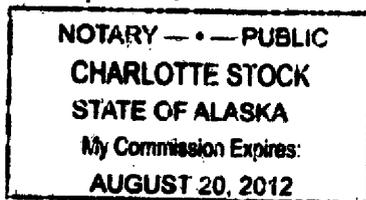
Signed

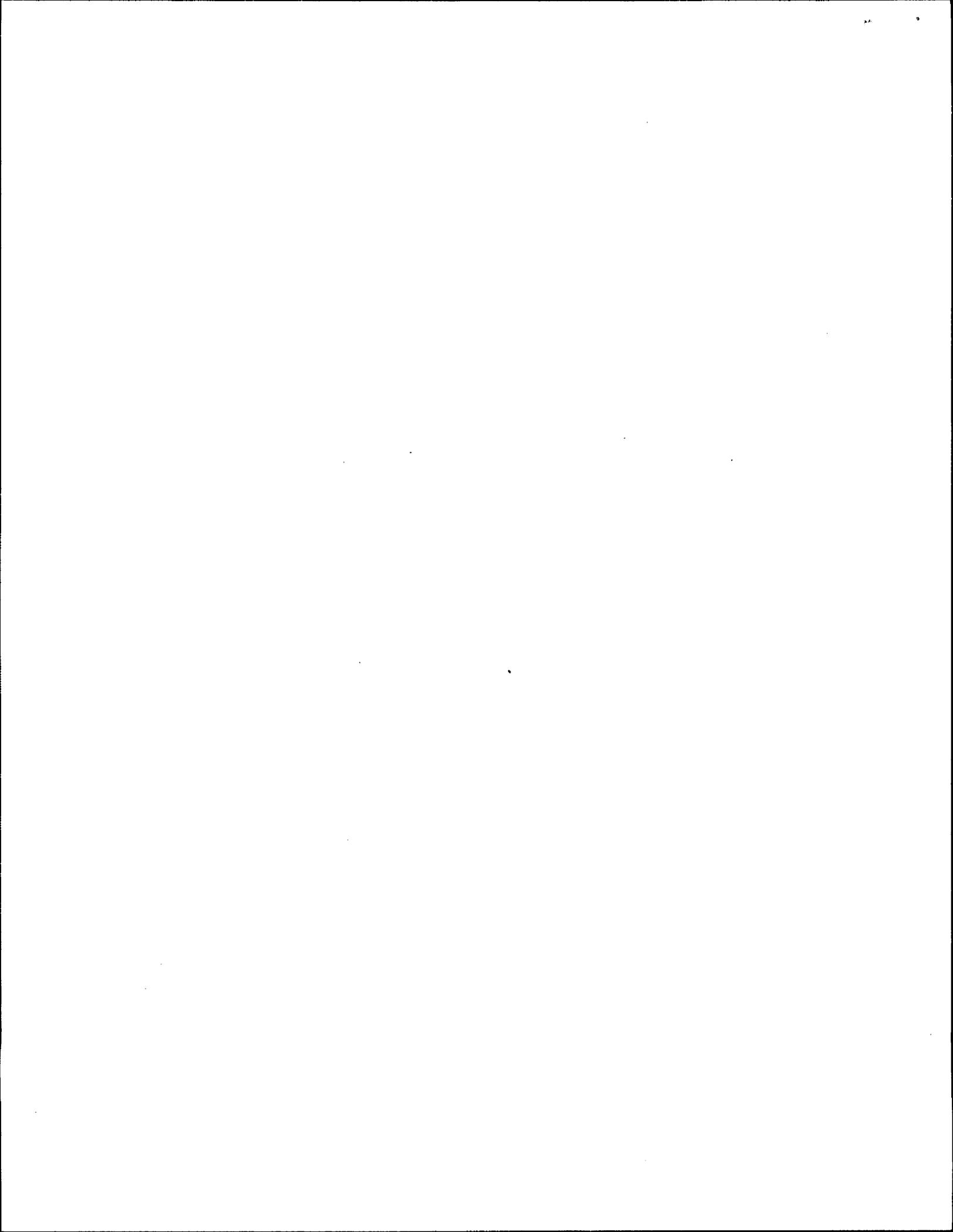
Ethel Lund

Ethel Lund

Notary Public:

Charlotte Stock
8/20/2012





Affidavit of Debra O'Gara

I am Debra S. O'Gara. My Tlingit name is Djik Sook. I was born on October 11, 1957 and currently reside in Juneau, Alaska. I am Tlingit, Teeyhittaan Clan. My mother is Carol O'Gara (Sheppard), Tlingit, Teeyhittaan Clan; her mother was Frances Bette Sheppard (Tamaree), Tlingit, Teeyhittaan Clan; and her mother was Matilda (Tillie) Paul Tamaree, Tlingit, Teeyhittaan Clan.

My mother was born on September 5, 1940 in Alaska. She was 29 years old in 1969 and living in the Seattle area. Her sister is Joan Baijot (Sheppard) who is also Tlingit of the Teeyhittaan Clan, and was born on March 6, 1938 in Alaska. She was 31 years old in 1969 and living in the Seattle area.

I recently spoke to both my mother (Carol) and my Auntie Joan and asked them if they remembered William Paul, Sr. telling them or announcing that he was giving the Teeyhittaan hat to the Alaska Museum. Both of them told me they do not recall William Paul, Sr. talking to either of them or making an announcement about donating or gifting the Teeyhittaan Clan hat to the State of Alaska or the State Museum.

Dated this 15th day of November, 2010.

Signed

Debra S. O'Gara

Debra S. O'Gara

Date: 11/15/2010

Notary Public:

Marilyn L. Peratrovich

