United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

H32(2253)

SEP 7 2010

Robert Banghart
Chief Curator
Alaska State Museums
395 Whittier Street
Juneau, AK 99801

Dear Mr. Banghart:

I am writing to you in my capacity as the Designated Federal Official to the Native American Graves Protection and Repatriation Review Committee (Review Committee), which is the Federal advisory committee created by the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3006). On July 23, 2010, Sealaska Corporation (Sealaska) sent me a request asking that, pursuant to NAGPRA, the Review Committee review and make findings of fact, and facilitate a dispute between Sealaska and Alaska State Museums (Alaska Museums) related to the request by Sealaska for the repatriation of an item in the possession of Alaska Museums. The item in question is "Yeil Aan Kaawu Naa s'aaxw" or "Leader of All Ravens Hat" (Hat), identified by Alaska Museums as catalog record number II-B-809. Subsequently, on August 13, 2010, the Wrangell Cooperative Association (Wrangell) was joined as a party to both the repatriation and dispute requests.

Upon the request of any affected party, the Review Committee is responsible for reviewing and making findings of fact related to the return of cultural items (25 U.S.C. 3006 (c)(3)). In addition, the Review Committee is responsible for facilitating disputes among Indian tribes and museums relating to the return of NAGPRA items, including convening the parties to the dispute (25 U.S.C. 3006 (c)(4)).

There is an issue of material fact between Sealaska and Wrangell, on the one hand, and Alaska Museums, as to whether Alaska Museums has proved that it has a right of possession to the Hat.[1] In 2008, Sealaska submitted to Alaska Museums a written request for the repatriation of the Hat. Sealaska identified the Hat as both a "sacred object" (25 U.S.C. 3001 (3)(C) and an object of

[1] The term *possession* means that a museum has physical custody of a cultural item with a sufficient legal interest to lawfully treat the object as part of its collection for purposes of NAGPRA. Generally, a museum would not be considered to have possession of a cultural item on loan from another individual (*see* 43 C.F.R. 10.2 (a)(3)(i)). The term *right of possession* means possession obtained with the voluntary consent of an individual or group that had authority of alienation (*see* 43 C.F.R. 10.10 (a)(2)).

"cultural patrimony" (25 U.S.C. 3001 (3)(D)). In its response, dated April 20, 2009, Alaska Museums denied the request. Alaska Museums admitted that the repatriation request satisfied the criteria for cultural affiliation and the identity of the Hat as both a sacred object and an object of cultural patrimony. Alaska Museums also admitted that the repatriation request presented evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that Alaska Museums does not have a right of possession to the Hat. The sole basis for Alaska Museums' denial was Alaska Museums' election to provide evidence which, it believed, proved that Alaska Museums has a right of possession to the Hat. Sealaska and Wrangell, on the other hand, believed, and continue to believe, that the information provided by Alaska Museums is insufficient to show that Alaska Museums has a right of possession to the Hat.

Based on the existing written record, the Review Committee has determined that a dispute exists, and has decided to convene Sealaska Corporation, the Wrangell Cooperative Association, and Alaska State Museums in order to make findings of fact and facilitate the resolution of the dispute. Consequently, the Review Committee will hear the dispute on Wednesday, November 17, 2010, in Washington, DC, and will consider the following questions:

QUESTION #1

In response to the request of Sealaska Corporation and the Wrangell Cooperative Association for the repatriation of the "Yeil Aan Kaawu Naa s'aaxw" or "Leader of All Ravens Hat" (Hat), identified by Alaska State Museums as catalog record number II-B-809, did Alaska State Museums prove that, more likely than not, the conveyor of the Hat consented to transfer possession of the Hat to Alaska State Museums? (The term *possession* means having physical custody of the Hat with a sufficient legal interest such that Alaska State Museums could lawfully treat the Hat as part of its collection for purposes of NAGPRA. Generally, a museum would not be considered to have possession of a cultural item on loan.)

QUESTION #2

If the answer to Question #1 is yes, did Alaska State Museums prove that, more likely than not, the consent of the conveyor to transfer possession of the Hat to Alaska State Museums was voluntary?

QUESTION #3

If the answer to Question #2 is yes, as Alaska State Museums has admitted that the Hat is an object of "cultural patrimony," did Alaska State Museums prove that, more likely than not, the Indian tribe culturally affiliated with the Hat explicitly authorized the conveyor of the Hat to separate the Hat from the tribe? (The term *cultural patrimony* means an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization, and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.)

QUESTION #4
If the answer to Question #3 is no, did Alaska State Museums prove that, more likely than not, the Indian tribe culturally affiliated with the Hat intended to give the conveyor of the Hat the authority to separate the Hat from the tribe?

I am enclosing with this letter a copy of the materials submitted to me by Sealaska Corporation and the Wrangell Cooperative Association in support of their request to the Review Committee. If Alaska State Museums wishes to provide the Review Committee with information relevant for answering the questions presented, please do so on or before October 7 (electronic format appreciated). If you have any questions about this matter, please contact me (202/354-2108; david_tarler@nps.gov).

Sincerely,

David Tarler

David Tarler
Designated Federal Official
Native American Graves Protection and Repatriation Review Committee

cc: Chris McNeil, President and CEO, Sealaska Corporation
Rosita Worl, President, Sealaska Heritage Institute
Wilma Stokes, President, Wrangell Cooperative Association

Enclosure: Sealaska Corporation and Wrangell Cooperative Association request for the NAGPRA Review Committee to consider a dispute and appended exhibits

A NATIVE CORPORATION
SEALASKA

13 August 2010

David Tarler, J.D.
NAGPRA Review Committee
1201 Eye Street, NW
8th Floor
Washington, DC 20005

Dear Mr. Tarler,

Please find enclosed two resolutions authorizing the Wrangell Indian Association to act as Co-Claimant with Sealaska Corporation in the repatriation claim and dispute for the *Yeil.Aan Kaawu Naa Shaadakoox'* on behalf of the Teeyhittaan Clan.

Sincerely,

SEALASKA CORPORATION

Chris McNeil, Jr.
President and CEO

Enclosures (2)

Cc: Dr. Rosita Worl, President, Sealaska Heritage Institute
Bob Banghart, Chief Curator, Alaska State Museums

Resolution -2010.66
WRANGELL COOPERATIVE ASSOCIATION

Title: Support of the Dispute Request to the NAGPRA Review Committee on behalf of the Teeyhittaan Clan the *Wrangell* Cooperative Association to Act as a Co-Claimant and Party to the Repatriation Claim with Sealaska Corporation

WHEREAS on July 23, 2010 Sealaska Corporation initiated a Repatriation Claim and Dispute Request to the NAGPRA Review Committee on behalf of the Teeyhíttaan Clan; and

WHEREAS the Wrangell Cooperative Association is the recognized tribe for the Stikine region Tlingit, Haida and other native peoples in the Wrangell area; and

WHEREAS the Teeyhíttaan Clan is a well known Tlingit clan traditionally and historically associated with Wrangell;

WHEREAS the Wrangell Cooperative Association is authorized to initiate repatriation claims pursuant to the terms of the Native American Graves Protection and Repatriation Act of 1990; and

WHEREAS clans are not authorized to initiate repatriation claims pursuant to the terms of the Native American Graven Protection and Repatriation Act of 1990; and

WHEREAS Clan *At.óowu* are the most prized treasures of the Tlingit, and Tlingit laws recognized that *At.óow* are owned by clans; and

WHEREAS the Teeyhíttaan Clan owns the *YéilAan Kaawu Naa Shaadakoox'* and that it is on loan to the Alaska State Museum while the Museum claims that it has title to the Clan Hat.

NOW THEREFORE BE IT RESOLVED That the Wrangell Cooperative Association shall join with Sealaska Corporation acting through the Sealaska Heritage Institute to seek the repatriation of the Teeyhíttan *YéilAan Kaawu Naa Shaadakoox'* on behalf of the Teeyhíttaan Clan which is held by the Alaska State Museum and as Party to a Dispute Request to the NAGPRA Review Committee with the recognition that title of the Clan Hat will be transferred to the Teeyhíttaan Clan.

Adopted this 5th day of August 2010, in Wrangell, Alaska.

John M. Martin — President
Name — Title

Delana Stokes — Sec

Resolution -2010 66
Teeyhíttaan Clan

Title: Authorizing *Wrangell* Cooperative Association to Act as a Co-Claimant with Sealaska Corporation in a Repatriation Claim and Party to Dispute Request to the NAGPRA Review Committee on behalf of the Teeyhittaan Clan

WHEREAS Wrangell Cooperative Association is authorized to initiate repatriation claims pursuant to the terms of the Native American Graves Protection and Repatriation Act of 1990; and

WHEREAS clans are not authorized to initiate repatriation claims pursuant to the terms of the Native American Graven Protection and Repatriation Act of 1990; and

WHEREAS Clan *At.óowu* are the most prized treasures of the Tlingit, and Tlingit laws recognized that *At.óow* are owned by clans; and

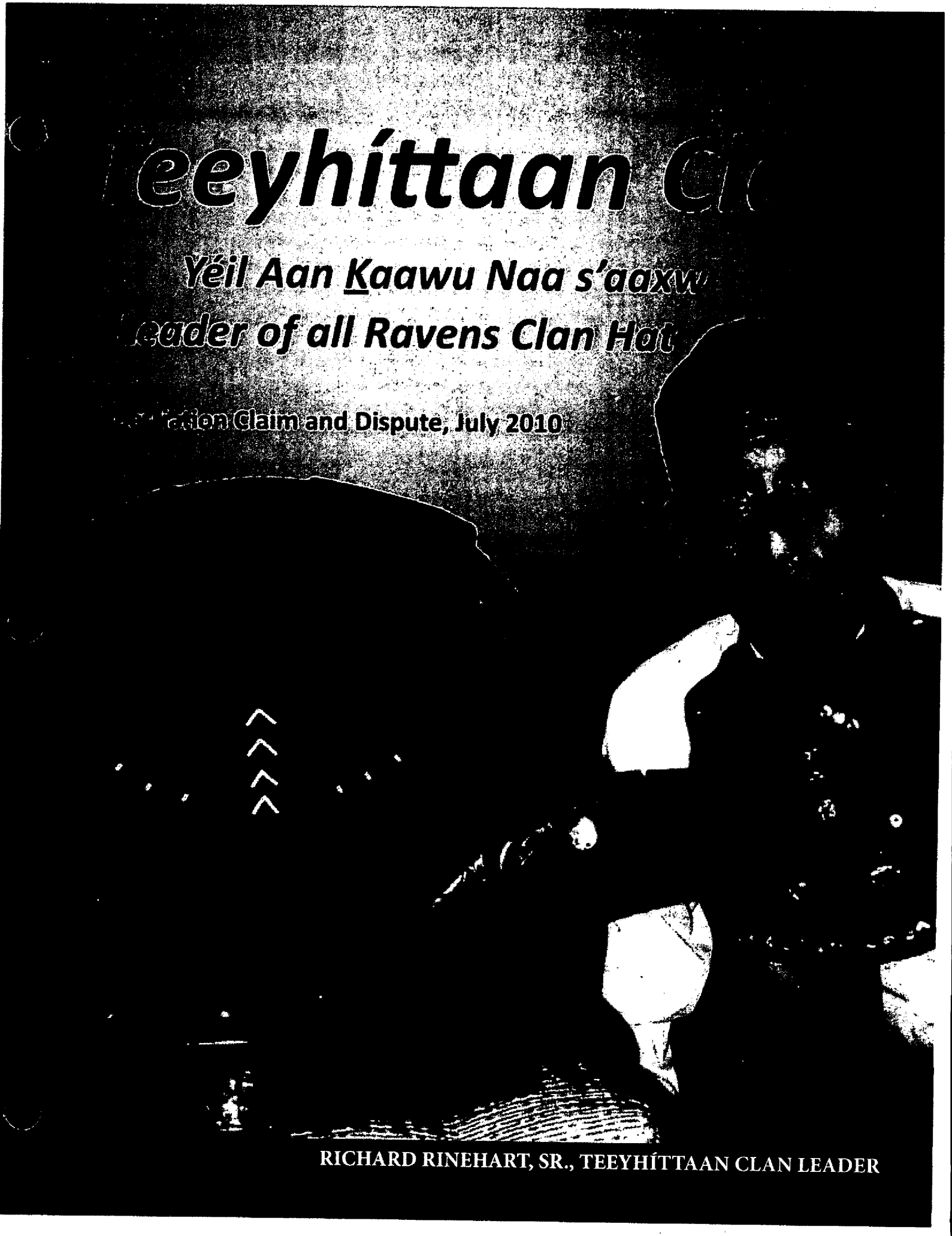
WHEREAS the Teeyhíttaan Clan owns the *YéilAan Kaawu Naa Shaadakoox'* and that it is on loan to the Alaska State Museum while the Museum claims that it has title to the Clan Hat.

NOW THEREFORE BE IT RESOLVED That the Teeyhíttan authorizes the Wrangell Cooperative Association at no cost to the Wrangell Cooperative Association to join with Sealaska Corporation acting through the Sealaska Heritage Institute to seek the repatriation of the Teeyhíttan *YéilAan Kaawu Naa Shaadakoox'* on behalf of the Teeyhíttaan Clan which is held by the Alaska State Museum and as Party to a Dispute Request to the NAGPRA Review Committee with the recognition that title of the Clan Hat will be transferred to the Teeyhíttaan Clan.

BE IT FURTHER RESOLVED That the signing of this resolution by the Teeyhíttaan Clan's custodian does not waive its rights and privileges afforded under the traditional Tlingít laws and or the laws of the United States, including NAGPRA.

Adopted this 4 day of 8-2010 in Wrangell Alaska.
99929

Richard Rinehart Sr.
Richard Rinehart, Sr.
Custodian of Teeyhíttan Clan Hat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Yéil Aan Kaawu Naa s'aaxw
eader of all Ravens Clan Hat
ation Claim and Dispute, July 2010
RICHARD RINEHART, SR., TEEYHÍTTAAN CLAN LEADER

A NATIVE CORPORATION
SEALASKA

July 23, 2010

David Tarler, DFO
National NAGPRA Program
National Park Service
1201 Eye Street, NW (8th Floor)
Washington, D.C. 2005

Re: Dispute Between Sealaska Corporation and Alaska State Museum Relative to the Teeyhíttaan Clan *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Hat)

Dear Mr. Tarler,

Pursuant to 25 U.S.C. 3006 (c), Sealaska Corporation, a federally-recognized tribe for the purposes of NAGPRA, respectfully requests the NAGPRA Review Committee to facilitate the resolution of a dispute between Sealaska Corporation and the Alaska State Museum (ASM).

The State of Alaska Department of Education and Early Development, which has departmental authority over the ASM, advised Sealaska Corporation on April 10, 2009 that it "**has concluded that it has a right of possession**" and "**the museum declines to repatriate "*Yeil Aan Kaawu Naa s'aaxw.*"**

Sealaska is requesting that the NAGPRA Review Committee hear this dispute between the Sealaska Corporation and the ASM and consider the question of whether the Teeyhíttaan Clan or the Alaska State Museum has the "right of possession."

a. Relevant Facts of the Dispute.

The ASM has denied the repatriation claim of Sealaska Corporation on behalf of the Teeyhíttaan Clan for the Teeyhíttaan Clan *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Hat and identified by the ASM Catalog number II-B-809).

The ASM denied Sealaska's repatriation claim on behalf of the Teeyhíttaan Clan on the assertion that it has the "right of possession." The ASM claims its right of possession derives from "the 1947 loan of the Clan Hat [that] was retired in 1969 when William Paul, the clan caretaker, transferred title to the hat to the ASM."

Sealaska asserts that the donation of the Clan Hat to the ASM by William Paul did not convey the right of possession to the ASM. The authority of the custodian/trustee does not include the right to sell or donate clan-owned items, clan items were not transferred out of clan ownership except under certain rare circumstances (such as in compensation to another clan or as a marriage gift in instances when a special clan relationship existed).

Sealaska maintains that no evidence exists which demonstrates the voluntary consent of the Teeyhíttaan Clan, which had authority of alienation at the time it was transferred to the museum, agreed to the donation. The ASM does not have the right of possession as defined at 25 USC 3001 Section 2 (13) and 43 C.F.R. Section 10.10(a)(2).

Sealaska Corporation, on behalf of the Teeyhíttaan Clan, asserts the "right of possession" pursuant to the terms NAGPRA and pursuant to ancient and customary Tlingit traditional laws and as codified in Tlingit Clan Trust Property Law and Dispute Resolution Section 1.08 (see Appendix E, enclosed).

Sealaska Corporation asserts that *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Hat) is a sacred object as defined at 25 U.S.C. 3001 (3)(c) and 43 C.F.R. 10.2 (d)(3) and is owned as an object of cultural patrimony as defined at 25 U.S.C. 3001 (3)(D) and 43 C.F. R. 10.2 (d)(4) and has ongoing, historical, traditional and cultural importance central to the Teeyhíttaan Clan and the Tlingit. The Clan Hat is owned collectively by the Teeyhíttaan Clan rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or

conveyed by any individual and was and continues to be considered inalienable by the Teeyhíttaan Clan at the time the Clan Hat was separated from the Teeyhíttaan Clan.

The ASM in its letter of April 20, 2009 to David Tarler, DFO, concedes that the Teeyhíttaan Clan Hat is a "sacred object;" is an object of "cultural patrimony;" and that Sealaska is culturally affiliated with the Clan Hat as the term "cultural affiliation is defined at 25 U.S.C. 3001 (2) and 43 C.F.R. 10.2 (c).

b. **Primary Documents Relevant to the Dispute.**

This claim is based upon the facts and law laid out in Appendices A-H, together with the accompanying Memorandum of Law, immediately following this letter, which are adopted and incorporated by reference herein.

Memorandum of Law

The Ownership and Stewardship of Clan Possessions (Appendix A)

Tlingit Property Law (Appendix B)

Museums that Filed Notices of Intent to Repatriate Objects of Cultural Patrimony to the Tlingit (Appendix C)

Notice of Intent to Repatriate a Cultural Item: Alaska State Museum February 25, 2008 (Appendix D)

Repatriation Petition from Sealaska Corporation to Alaska State Museum (Appendix E)

Cultural Context of *Haa At.óowu* (Appendix F)

Summary of the *Teeyhíttaan* Documents and Communication (Appendix G)

Documents Referenced in Summary (Appendix H)

c. Statement of Sealaska Corporation's Interpretation of Facts.

Sealaska Corporation maintains that the *Yéil Aan Kaawu* Clan Hat is a Tlingit *at.óowu* which is both a sacred object and an object of cultural patrimony, and that the Teeyhíttaan Clan owns the *Yéil Aan Kaawu* Clan Hat and has the right of possession.

Sealaska Corporation respectfully requests that the members of the NAGPRA Review Committee refer to the Sealaska repatriation claim to the ASM of August 13, 2008 (Appendix E) and the Cultural Context of *Haa At.óowu* (Appendix F) to obtain an understanding of the cultural context and meaning of the *Yéil Aan Kaawu* Clan Hat to the Teeyhíttaan Clan and to the Tlingit Indians of Southeast Alaska.

Sacred Object: The Tlingit *Yéil Aan Kaawu* Clan Hat is needed by Teeyhíttaan religious leaders, which in the case of the Tlingit are the clan leaders, for their use in funerals and memorial potlatches for the display of their trans-generational bond and to evoke the spirit of the clan ancestor, who was killed in the event giving rise to the hat, and the spirits of those clan members who commissioned the replacement hat and preserved it in subsequent generations (including its former custodians Charlie Yéil Kook and William Paul). The ceremonial use of the hat evokes the spirits of these ancestors so they can be present and receive the spiritual counterpart of the food and material goods that are distributed to the guests during a *ku.éex'* (memorial ceremony).

The Clan Hat is needed for the performance of mourning songs and oratory presented at Teeyhíttaan funerals and memorial ceremonies, and when the Teeyhíttaan are guests at traditional funerals and memorials for display and oratory to express comfort to the grieving clan and to "give weight" to their words. It is essential in our *ku.éex'* to ensure social and spiritual balance. It is needed so that it can be placed on a grandchild during a memorial potlatch to honor and unite that individual and the clan ancestors who owned the object in the past.

The *Yéil Aan Kaawu* Clan Hat is an object that was specifically devoted to traditional Tlingit funerary ceremonies and which has religious significance or function in the continued observance of these ceremonies. It is needed by

traditional religious leaders of the Teeyhíttaan clan for the continued practice of their traditional religion by the present day adherents, and for the renewal of these practices in Wrangell.

The Clan Hat plays a central role in our ideological construct of *Haa Shagoon* that binds us to our ancestors who obtained the Raven Crest and who made this Clan Hat and that binds us to future generations to ensure our cultural survival. Furthermore, the return of ownership of the Clan Hat is required to restore its spiritual sanctity.

Object of Cultural Patrimony: The Tlingit Teeyhíttaan *Yéil Aan Kaawu* Hat memorializes a significant event in the history of the clan, which has ongoing importance central to the cultural identity of the clan. The importance of the Clan Hat was demonstrated some 100 years ago when, after the original hat was damaged by fire, it was replicated and then dedicated (brought out and formally presented to the assembly) in a ceremony.

The continuing importance of the Clan Hat in the subsequent years was demonstrated by the actions of the clan custodian in seeking to preserve the object with the assistance of the museum, while maintaining the clan's custody of the item. The Clan Hat, and the Raven crest, name, story and spirits associated with it, are held in common by the Teeyhíttaan Clan and are *at.*óow of the Teeyhíttaan Clan.

As *at.óow*, the Clan Hat is a clan possession and was not alienable by an individual (in this case, the clan custodian) at the time it was acquired by the museum in 1969.

Right of Possession: The accompanying Memorandum of Law lays out the controlling legal standards that govern resolution of this dispute by the Review Committee in more detail.

Sealaska Corporation asserts the right of possession to the *Yéil Aan Kaawu* Clan Hat and Raven crest on behalf of the Teeyhíttaan Clan. The Clan Hat was held in common by our Teeyhíttaan ancestors and our tribal members, who collectively have sole authority to alienate ceremonial objects and regalia (*at.óowu*). *At.óowu* are considered inalienable, and clan custodians do not have the authority to transfer title to clan property or *at.óowu,* and no

evidence exists that the Teeyhíttaan Clan gave its authority to convey title to its Clan Hat.

The historical accounts, anthropological literature and federal and state court decisions uniformly report that the Tlingit had a well developed concept of land and property ownership and further report that land and property were held in common by the Tlingit clans. The literature also indicates that the clan leader acted as a trustee, who was not able to act independent of his/her clan or clan council.

In 1959, the U.S. Court of Claims in The Tlingit and Haida Indians of Alaska v. The United States No. 47900 opined that the clan was the primary property-claiming or owning group or entity and acknowledged that the clan chief did not have the power to dispose of property without the general consent of the clan members.

The ASM and other museums such as the National Museum of Natural History have suggested that a new body of common law arose as a result of clan leaders or individuals violating traditional Tlingit property law and selling clan property. Sealaska rejects this argument that ignores the evidence of continuity in traditional practices among those conservative people who maintained Tlingit customary law during the historical period. The contention that violations of traditional practices negate the validity of customary laws and justify the application of EuroAmerican standards is counter to the spirit and intent of NAGPRA.

The Tlingit remain steadfast in their contention that clan *at.óowu* remain the property of the clan and continue to assert the persistence of Tlingit law under which *at.óowu* is considered to be inalienable and further restricts a clan leader in his/her authority to alienate clan property except as it may have infrequently occurred with compensation for damages or as gifts in connection with marriages. However, the marriage gifts are assumed to have been made in cases in which the bride's father or paternal grandfather was a member of the same clan as her husband-to-be.

Sealaska notes that in forty-three Notices of Intent to Repatriate (Appendix D), seventeen different museums (some of these museums had multiple repatriation claims) repatriated forty objects of Tlingit clan *at.óowu* as "objects of cultural patrimony" that have ongoing historical, traditional, or

cultural importance central to the Native American group or culture itself, **rather than property owned by an individual.**

Of these Notices of Intent to Repatriate, six museums cited further language to note that a specific individual or clan leader identified in the repatriation claim did not have the authority to alienate clan objects. Significantly, the ASM in the repatriation case of the Kaagwaantaan Clan Multiplying Wolf Tunic recognizes the persistence of Tlingit law in 2008. In the Notice of Intent to Repatriate (Appendix D), the museum cited, "While at.oow is cared for by a clan leader it remains communal property." They reported that the wife of the caretaker, who belonged to another clan, sold the tunic to the museum. Under NAGPRA, cultural patrimony is applicable even in those instances "regardless of whether or not the individual [who alienated or conveyed an object] is a member of the Indian tribe" on in the instance of a different clan.
The officials of the ASM concluded that the Wolf tunic has ongoing, historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual and further determined that it did not have the right possession to the object of cultural patrimony.

The current trustee of the Teeyhíttaan Clan is Richard Rinehart, Sr. Mr. Rinehart, Sr., and the Teeyhíttaan Clan, supported by their clan children, claim the Clan Hat as the rightful property of the Teeyhíttaan Clan under Tlingit law. Pursuant to the terms of NAGPRA, Sealaska on behalf of the Teeyhíttaan Clan has the right of possession.

d. Statement Identifying Interested Parties and Requesting Party's Understanding of the ASM's Interpretation of the Facts.

Sealaska Corporation, representing the Teeyhíttaan Clan of Wrangell, and the ASM are the interested parties.

Sealaska Corporation believes that the ASM is asserting that the clan custodian had authority to donate the item to the museum, even in the face of evidence that he, William Paul, maintained the clan's custodianship over the item and notified the museum that the office of clan custodian would be passed to a successor at the time he signed the document of transfer.

Sealaska Corporation believes that the ASM is interpreting the facts based on Western law and principles and under the assumption that an individual has the right to alienate clan property.

Sealaska Corporation maintains that the ASM is erroneously claiming that traditional Tlingit law was negated as a result of some individuals selling clan objects while ignoring the fact that the Tlingit continued to hold and use their *at.óowu* in accordance with their traditional law and practices.

e. Summary of Consultation Record:

Consultation between the Teeyhíttaan Clan and ASM has been intermittent and ongoing over the last four years though meetings, phone calls and emails.

Please see the Summary of Teeyhíttaan Clan Hat Documentation and Communication beginning on page 23 through pages 29 that records two meetings and sixteen exchanges of emails between the State of Alaska and representatives of the Teeyhíttaan Clan and Sealaska. Additional meetings are referenced in the emails, but details of these meetings are not available.

f. Statement of Efforts to Resolve the Dispute.

In 2008, the Teeyhíttaan Clan was granted a temporary loan by the ASM to use the *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Hat) in a ceremonial event in Wrangell. Although tensions surrounded the loan transaction before, during and after the ceremony, the clan leader agreed to the terms of the loan in the hope that the ASM would witness and come to appreciate the importance of the Clan Hat as a Teeyhíttaan *at.óowu* and would be persuaded to acknowledge the validity of the repatriation claim. This was not the case.

On April 27, 2009, the Teeyhíttaan Clan Leader, Richard Rinehart, Sr., accompanied by his son, Richard Rinehart, Jr., and Sealaska Corporation, represented by Rosita Worl, met with the Alaska State Museum represented by Department of Education Commissioner, Larry LeDoux, in an attempt to resolve the dispute around the Clan Hat. The meeting did not result in resolution, but the parties agreed to continue working on a mutually acceptable Memorandum of Agreement.

Communication through a series of emails beginning after the April meeting through December 2009 continued without resolution. The ASM proposed to maintain ownership and control of the Clan Hat, but to allow the Teeyhíttaan Clan to withdraw the Clan Hat from the ASM to use in its ceremonial activities. The Clan continued to assert that it owns the Clan Hat, but proposed to leave the Clan Hat in the Wrangell Museum and to withdraw it for ceremonial activities. The ASM and Clan were not able to agree on who owns and controls the Clan Hat and communication has ceased.

The Teeyhíttaan Clan and the State of Alaska were unsuccessful in their attempts to resolve the dispute through the adoption of a Memorandum of Agreement. Both the Clan and the State of Alaska continued to assert right of ownership of the Clan Hat.

g. Proposed Solution.

Sealaska Corporation respectfully requests that the Review Committee adopts the following findings:

The Sealaska Corporation has standing as an Indian Tribe to submit this claim and to request the NAGPRA Review Committee to hear this dispute.

The cultural affiliation between Sealaska Corporation and the Teeyhíttaan Clan of the Tlingit Tribe of Wrangell and the earlier members of the Teeyhíttaan Clan who acquired the Clan Hat is established.

The *Yéil Aan Kaawu* Clan Hat is a sacred object belonging to Teeyhíttaan Clan that was and continues to be devoted to the *ku.éex* ceremony; that it has religious significance and function in the continuing observance or renewal of these religious ceremonies; that it continues to be used to evoke the return and presence of spirits of clan ancestors during the ceremonies; and that it is needed by the *Sháade háni* (Clan Leader), who serves as the traditional religious leader, for the practice of our traditional religion by current and future generations and to ensure social and spiritual balance within the Tlingit society and with our ancestors and spirits of our *at.óowu*.

The *Yéil Aan Kaawu* Clan Hat is an object of cultural patrimony which has ongoing historical, traditional and cultural importance central to the Teeyhíttaan Clan and the Tlingit people. It is central to the practice of

ceremonial activities; to unite trans-generations of Tlingit including our ancestors with the current generations and future generations to ensure our cultural survival through the transfer of clan *at.óowu* to our children and grandchildren and their children.

The *Yéil Aan Kaawu* Clan Hat is Teeyhíttaan *at.óowu* that is owned collectively by the clan rather than property owned by an individual and which therefore, cannot be alienated, appropriated, or conveyed by any individual.

The donation of the Clan Hat by William L. Paul, Sr. to the ASM did not convey the right of possession since *at.óow* are inalienable, and he did not have the authority to alienate the Clan Hat under Tlingit law. Therefore the Sealaska Corporation on behalf of the Teeyhíttaan Clan maintains the right of possession to the *Yéil Aan Kaawu Naa s'aaxw* under Tlingit law and pursuant to the terms of NAGPRA.

Sincerely,

Sealaska Corporation

Chris McNeil
President & CEO

Enclosures:

Memorandum of Law

The Ownership and Stewardship of Clan Possessions (Appendix A)

Tlingit Property Law (Appendix B)

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Summary of the *Teeyhíttaan* Documents and Communication (Appendix G)

Documents Referenced in Summary (Appendix H)

cc: Richard Rinehart, Sr. Teeyhíttaan Clan of Wrangell
The Central Council of Tlingit and Haida Indian Tribes of Alaska
Sealaska Heritage Institute
Alaska State Museum (to be sent by DFO)

BEFORE THE NAGPRA REVIEW COMMITTEE

IN THE MATTER OF THE DISPUTE BETWEEN SEALASKA CORPORATION AND ALASKA STATE MUSEUM RELATIVE TO THE TEEYHÍTTAAN CLAN *YEIL AAN KAAWU NAA S'AAXW* (LEADER OF ALL RAVEN CLAN HAT)

MEMORANDUM OF LAW

This memorandum of law is submitted by the Sealaska Corporation to provide controlling legal guidelines for resolving its dispute with the Alaska State Museum over the right of possession of the Teeyhíttaan Clan's Raven Crest Hat, known as *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Crest Hat). *See,* Dispute Letter (Letter of July, 2010 from Chris McNeil, President & CEO, Sealaska Corporation to David Tarler, DFO) and Appendices A-H. As will be shown, the Sealaska Corporation is entitled to the relief requested in the Dispute Letter.

This memorandum of law will identify the dispositive facts and law presented in Appendices A-H to the Dispute Letter. First, Section I will provide the background of this dispute, an overview of the parties' contentions, and a summary of Sealaska's argument. Next, Section II.A summarizes the facts leading to the purported conveyance in 1969. It will also (1) describe the clan property at issue in this dispute, the Teeyhíttaan Clan's Raven Crest Hat as a "sacred object" and "object of cultural patrimony" under NAGPRA; (2) analyze the 1969 donation document relied upon for the Museum's ownership claim, and (3) evaluate the factual basis for museum ownership asserted in the Museum Report to show that no facts were presented to substantiate the claimed authority of alienation Finally, Section II.B will summarize applicable tribal law set forth in Appendices A-H and the judicial interpretation of that law. The analysis will also explain why the Museum's novel discourse on tribal law is at odds with the judicial interpretation of Tlingit law and fails to present any basis for Mr. Paul's authority to alienate the clan's hat under the uncontroverted facts established in this case.

I. INTRODUCTION.

The events that bring this dispute to the Review Committee are as follows. On August 12, 2008, the Sealaska Corporation (hereinafter "Claimant") filed a repatriation

claim against the Alaska State Museum (hereinafter "Museum") on behalf of the Teeyhíttaan Clan of Tlingit Indians.[1] The claim asked the museum to repatriate the Teeyhíttaan Clan's Raven Crest Hat on the grounds that it is a "sacred object" and "object of cultural patrimony" held by the museum without a "right of possession" within the meaning of the Native American Graves Protection and Repatriation Act, 25 USC 3001 *et seq.* (hereinafter, "NAGPRA"). *See,* Appendix D (Repatriation Petition). The petition asserted that the tribal caretaker of clan property, Mr. William Paul, lacked legal authority under Tlingit law to alienate the hat to the Museum in 1969. The petition submitted voluminous documentary evidence supporting the claim that consisted primarily of Museum records; and it documented applicable Tlingit law. *See,* Appendices A, F and G.

On April 10, 2009, the Museum concluded that it has a "right of possession" and declined to repatriate the hat.[2] Shortly thereafter, the Museum significantly narrowed the disputed issues in a letter to the Review Committee DFO, David Tarler.[3] Specifically, the Museum's letter admits that Sealaska proved the following elements of the claim:[4]

1. The hat is a "sacred object" within the meaning of NAGPRA;[5]
2. The hat is an "object of cultural patrimony" within the meaning of NAGPRA;[6]
3. The hat is "culturally affiliated" with Sealaska under NAGPRA;[7] and

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[1] Under 43 CFR 10.2(b)(2), the Sealaska Corporation has standing to file NAGRPA repatriation claims as an Alaska Native Corporation established by the Alaska Native Claims Settlement Act, 43 USC 1601 *et seq.* The Teeyhíttaan Clan of Tlingit Indians (Raven Moiety) is one of many clans that comprise Tlingit society but is not itself a federally recognized tribe. The Clan authorized Sealaska to file this claim on its behalf by resolution. Teeyhíttaan Clan members of Wrangell, Alaska, are enrolled shareholders in the Sealaska Corporation.

[2] *See,* Appendices G (Item #39: Letter from Department of Education to Sealaska, April 10, 2009, and accompanying Museum Report) and H at 58-83.

[3] Appendices G (Item #40, Email from David Tarler to Rosita Worl & Bruce Kato, April 20, 2009) at H at 84.

[4] Appendices G (Item #43, Letter from Bruce Kato to Mr. Tarler, April 20, 2009) and H at 90.

[5] *See Also,* Museum Report, Appendix H at 71 (The hat is a "sacred object").

[6] *See also,* Museum Report, Appendix H at 71 (The hat is "cultural patrimony").

[7] *See also,* Museum Report, Appendix H at 69 ("{T]he preponderance of evidence demonstrates that the object is culturally affiliated with the Teeyhíttaan clan as represented by the Sealaska Corporation.").

4. Sealaska presented evidence which, standing alone before the introduction of evidence to the contrary, supports a finding that, more likely than not, the Museum does not have a "right of possession" to the hat; however, the Museum qualified this admission by asserting that William Paul effectively transferred ownership of the hat to the Museum in 1969.

The Museum's qualified admission on the "right of possession" gives rise to this dispute. The parties dispute the effect of William Paul's alleged donation of the hat in 1969 to the Museum. Relying upon its interpretation of a museum donor document, the Museum contends that Mr. Paul conveyed ownership of the clan property to the Museum; whereas, the Claimant asserts that regardless of the Museum's strained interpretation of the donor document, Paul lacked legal authority in 1969 to alienate that property under Tlingit law because he acted unilaterally without the consent of the Teeyhíttaan Clan.[8]

Since April of 2009, the parties have met and communicated on numerous occasions, but are unable to resolve their dispute over the Museum's claimed ownership of the hat.[9] Consequently, Sealaska requests that the Review Committee make the findings and determinations listed at pages 9-10 of the Dispute Letter to establish all of the criteria for repatriation under 43 CFR 10.10. Given the Museum's admissions, the "right of possession" element of the claim remains in dispute.

The central issue to be decided by the Review Committee is this: In the facts of this case, did Mr. Paul have the "authority of alienation" under Tlingit law as the caretaker of clan property to unilaterally convey ownership of clan religious property and cultural patrimony to the Museum in 1969?

This issue must necessarily be resolved by reference to Tlingit tribal property law. NAGPRA is a unique federal statute that requires museums to determine what is sacred from a Native American perspective and the "right of possession" and "authority of alienation" of cultural items must be determined according to tribal law.[10] Specifically,

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[8] The donor document is Appendices G (Item #7) and H at 9.

[9] *See,* correspondence and meeting notes documenting the parties' consultation efforts to resolve this ownership dispute in Appendices G (Items 49-64) and H at 98-135.

[10] *See, generally,* Trope and Echo-Hawk, "The Native American Graves Protection and Repatriation Act: Background and Legislative History," 24 Az. St. L. J., No. 1 (Spring 1992) at 68, 76-77.

the "right of possession" means "possession obtained with the voluntary consent of an individual or group that had authority of alienation." *See,* 43 CFR 10.10(2). The "authority of alienation" is determined by tribal law. As stated in *Cohen's Handbook on Federal Indian Law (2005 ed.),* §20.02[1][c] at 1240: "Whether an individual or group had authority to alienate an item necessarily requires an inquiry into tribal law at the time of alienation." [11]

In this case, the Tlingit have a well-developed body of indigenous property law that has been documented by anthropologists, studied by attorneys, and interpreted by the courts. That body of law can readily guide the resolution of this issue by the Review Committee. Tlingit property law, including ownership rules governing clan property and the limited rights of Tlingit caretakers of that property, is presented by the Claimant in the following documents: (1) Dispute Letter (pp. 3-7); (2) Repatriation Petition (Appendix D, pp. 8-10, 17-20, 22-26); (3) "Cultural Context of *Haa At.oowu*" by Dr. Worl (Appendix H); and Inalienable *At.oww* ("The Ownership and Stewardship of Clan Possessions in Tlingit Property Law" by Charles W. Smythe) (Appendix A). Importantly, the Claimant also submitted voluminous NAGRPA legal precedent in Appendices A and C for repatriating Tlingit clan property in similar circumstances, where museums have repatriated clan property as cultural patrimony that cannot be alienated by individuals under tribal law at the time the object was separated from the group (Appendix C), including a 2008 repatriation of Tlingit clan property by the Alaska State Museum which provides strong NAGPRA precedent for the claim in this case (Appendix D). In the 2008 case, the Alaska State Museum recognized the persistence of Tlingit law (as laid out by the Claimant in this case) and made the following determination in a Notice of Intent to Repatriate, Federal Register (Feb. 25, 2008, Vol. 73, No. 37):

> Under Tlingit law, the tunic is considered at.oow of the Wolf House of the Sitka Kaagwaantaan, and is by definition the property of the group. Based on Tlingit law, the tunic is an object of cultural patrimony and has ongoing importance to the clan. While at.oow is cared for by a clan leader it remains communal property. In this case, the tunic was alienated by the widow of the caretaker, Lily Yarkwan, who belonged to another clan. Officials of the Alaska State Museum have determined that, pursuant to 25 U.S.C. 3001(3)(D), the tunic has ongoing

[11] *Accord,* Trope and Echo-Hawk (1992), *supra* at 68 (tribal law or custom governs). *See also,* Museum Report, Appendix H at 12 ("Determining if a museum has a 'right of possession' for an object under NAGPRA hinges on whether the person or persons who alienated the object had the authority to do so.").

> historical, traditional or cultural importance central to the Native American group or culture itself, rather than the property owned by an individual. Officials of the Alaska State Museum also have determined that pursuant to 25 U.S.C. 3001 (13), the museum does not have the right of possession to the object of cultural patrimony.

In this case, the Alaska State Museum failed to apply the same principles of Tlingit property law, as will be explained in Section II, and proffered instead a novel and distorted view of Tlingit law of its own making that is at odds with the settled judicial interpretation of Tlingit property law, as well as the Museum's own application of that law in the Wolf House tunic case in 2008 (Appendix D).

A. Summary of Argument. The Museum bases its ownership claim in this case on the argument presented in the Museum report entitled "Assessment of a Repatriation Claim for the *Yeil Aan Kaawu Naa s'aaxw,* Leader of All Ravens Hat (II-B-209) in the Collection of the Alaska State Museum, filed on Behalf of the Teeyhíttaan clan of Wrangell by the Sealaska Corporation, August 13, 2008), March 3, 2009 (Appendix H, pp. 60-83) (hereinafter, "Museum Report"). The Museum Report contends that Paul conveyed ownership of the hat to the Museum. The factual case for this contention rests on one vague document with contradictory language that is open to various interpretations, surmise proffered by the Museum that Paul intended to convey ownership, and the Museum's unproven "assumption" that Paul secured the authority to alienate clan property under Tlingit law. The legal case for its ownership claim is based upon a novel interpretation of Tlingit property law at odds with court decisions on the subject and the interpretation of that law by authoritative sources. The Museum advanced six reasons to support its ownership and "right to possession" contentions; but none of its novel arguments have merit, as discussed in Section II.B, *infra.*

For the above reasons, the Museum's ownership claim is unproven and lacks merit under Tlingit law at the time of the alleged alienation. As will be shown in this Legal Memorandum, Mr. Paul did not have authority as the trustee of the Teeyhíttaan Clan to alienate clan religious property and cultural patrimony without clan knowledge or consent under Tlingit law. It is well-established that the general rule of Tlingit property law is that *at.óow* (clan property), such as the Teeyhíttaan Raven Crest Hat, is communal

property belonging to the Teeyhíttaan Clan; and Tlingit clan caretakers of such property are merely trustees of clan property for the clan membership and do not have the authority under Tlingit law to alienate that property without the consent of the clan, and then clan property can be alienated only in narrow circumstances prescribed by tribal law and custom. *See, e.g., Chilkat Indian Village, IRA v. Johnson, et. al,* No. 90-01 (Chilkat Tr. Ct., Nov. 3, 1993) (Slip Opinion) (Attached to this Legal Memorandum as "Exhibit 1") (Communal ceremonial property belonging to a Tlingit clan cannot be alienated by the caretaker or anyone else without consent of the clan); *Tlingit and Haida Indians v. United States,* 177 F. Supp. 452 (Ct. Cl., 1959) (There is no authority under Tlingit law in a clan or clan division to alienate or otherwise dispose of clan property, except under special circumstances).

The Claimant established a *prima facie* case through uncontroverted documentary evidence that Paul alienated the hat unilaterally, without the knowledge or consent of anyone. That purported conveyance violated tribal law, and the Museum has shown no exception to the Tlingit property law that is applicable to the facts in this case that would serve to cloth William Paul, as the Tlingit caretaker and trustee of clan property, with the authority of alienation. Thus, under the criteria for repatriation in 43 CFR 10.10(1) (i)--(iii), Claimant met its burden of presenting 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" hat. This was admitted by the Museum, as discussed above.

As a result, the burden of proof shifted to the Museum under 43 CFR 10.10(1) (iv) to present evidence proving that it has a "right of possession." The Museum failed to sustain its burden. As will become readily apparent in Section II, *infra*, the Museum Report presented no hard evidence to substantiate the Museum's suggestion that Mr. Paul secured the consent of the clan to alienate the hat. Surmise and speculation do not amount to proof. Furthermore, the Museum Report disclosed no valid "authority of alienation" for Mr. Paul's purported conveyance of the hat under Tlingit law. Accordingly, the Claimant is entitled to a ruling by the Review Committee that the repatriation claim satisfies all of the criteria for repatriation specified by 43 CRF 10.10 and repatriation of

the hat is mandated by federal law, as well as the other relief requested in the Dispute Letter.

II. ARGUMENT.

A. Summary of the Dispositive Facts under NAGPRA Repatriation Criteria.

The dispositive facts are summarized below. They are best considered within the context of the repatriation criteria set forth 43 CFR 10.10 (1). That criteria establishes the parties' respective burdens of proof and the elements of successful repatriation claims under NAGPRA in a four-step analysis. Under this criteria, a museum must repatriate a "sacred object" or "object of cultural patrimony" pursuant to the request of an Indian tribe or Alaska Native Corporation if all of the following facts are proven: (1) The object meets the definition of a "sacred object" or "object of cultural patrimony;" (2) the "cultural affiliation" of the object to the claimant is established by a preponderance of the evidence; and (3) the claimant presents a *prima facie* evidentiary case that the museum does not have "a right of possession" as defined by §10.10(a)(2).[12] Once a claimant surmounts these three hurdles, the fourth step places a burden upon the museum to prove that it has a "right of possession" to the object. *See,* 25 USC 3005(c); 43 CFR 10.10(1)(iv); Trope and Echo-Hawk (1992), *supra,* at 68. If the museum cannot prove a right of possession, the object must be repatriated. *Id.* As will be seen from the summary below, the Museum has admitted that Sealaska sustained its burden of proof under the first three steps, and the burden of proof shifted to the Museum in the fourth step to prove its right of possession, which it failed to sustain.

A summary of the dispositive facts are listed below. These are uncontroverted facts, unless otherwise indicated.

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[12] Section 10.10(a)(2) defines "right of possession" as:

> [P]ossession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American . . . sacred object, or object of cultural patrimony from an Indian tribe . .. with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession to that object.

As mentioned above, the "right of possession" and "authority to alienate" must be determined by reference to tribal law at the time of alienation. In passing NAGPRA, Congress sought to return massive amounts of cultural items that improperly left Native American hands in times past by various persons who did not have the authority under tribal law to alienate that material. *See,* Trope and Echo-Hawk (1992), *supra* at 43-45.

1. Once upon a time, a Tsimshian chief killed a Teeyhíttaan chief while hunting on Prince of Wales Island upon property owned by the Teeyhíttaan clan. In an attempt to settle the trouble peacefully, the Tsimshian chief placed his ceremonial hat on a raft with eagle down feathers and floated it up with the tide to the Teeyhíttaans at the upper lake. The Teeyhíttaan understood the significance of the act under tribal law and custom and accepted it as a peace offering between the Tsimshian tribe and the Teeyhíttaan clan of Tlingit Indians.[13] Thus, begins the story of the Teeyhíttaan Clan's Raven Crest Hat, known as *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Crest Hat), which became consecrated as *at.óowu* by the clan as a "sacred object" and "object of cultural patrimony" under Tlingit law and NAGPRA, and the subject of this dispute.

2. The Clan Crest Hat at issue in this case is a magnificent object. It is a Raven crest carved of cedar and beautifully decorated. *See,* drawings and photos of the hat in Appendix H at 13-15, 33, 68. The hat is not simply a work of art. It represents an important event in the foundational history of the Teeyhíttaan Clan. Through the hat, the Clan can evoke clan ancestors in religious ceremonies, preserve clan identity, and ensure continuity by unifying clan ancestors and living members with unborn generations.

3. As explained below, it is undisputed that the Clan Crest Hat is Tlingit *at.óowu* (communal property), and also constitutes a "sacred object" and "object of cultural patrimony" that is "culturally affiliated" with Sealaska within the meaning of NAGPRA.

4. The Clan Crest Hat is *at.óowu,* which is a form of Tlingit communal property title and an associated cultural concept that is well described by Dr. Worl (Appendix H) and the Repatriation Petition (Appendix D) at 3-5.[14] According to that evidence, *At.óowu* is tangible communal property owned by a Tlingit clan that is primarily used in ceremonial activities. An object becomes transformed into *at.óowu* through a process that begins with the acquisition of a crest, its incorporation onto a physical object, its ceremonial transformation into clan property by being formally presented at a ceremony and accepted by the clan as the legal validation of ownership by a clan. *See, e.g.,*

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[13] *See,* Appendix H, p. 3 (Museum Catalog Record, Jan. 7, 1959.

[14] Dr. Worl is a highly regarded Tlingit anthropologist who provided expert testimony on Tlingit property law in *Chilkat Indian Village, IRA v. Johnson, et al.* (Chilkat Tr. Ct., Nov. 3, 1993) (Slip Opinion) (attached hereto, as "Exhibit 1" for the convenience of the Review Committee). The court found her "to be a credible, informative, and well-prepared witness." Sip Opinion, Exhibit 1 at 10.

Museum Report, Appendix H at 11. According to clan history, all of the elements have been met to transform the hat at issue in this case into *at.óowu.* The hat is a replacement copy of the original that was made *circa* 1900 by a Tlingit caretaker and clan leader after the original hat was partially destroyed in a fire. After it was made, a clan feast was held in accordance with tribal law when the replacement hat was formally brought out and presented to the clan in place of the original, and accepted. *See,* Appendix D, page 2. The Museum does not dispute that the hat is *at.óowu. See,* Museum Report, Appendix H at 11-12.[15] As admitted by the Museum, "Tlingit clans maintain groups of objects called *at.óow* that generally speaking would fall within the definition of "Object of Cultural Patrimony." Museum Report, Appendix H at 10. In short, there is no dispute that the hat was Teeyhíttaan clan *at.óow* "at the time of its alienation" in 1969. *Id. at 12.* As will be explained *infra* in Section II.B, specific Tlingit property law principles govern the ownership, caretaking, and alienation of *at.óowu* that are determinative of this dispute as a matter of tribal law.

5. The Clan Crest Hat is a "sacred object" within the meaning of NAGPRA. As explained in the Repatriation Petition (Appendix D at 11-15) the hat is a "sacred object" used and still needed by clan traditional religious leaders for the practice of Tlingit religion in mortuary ceremonies by present day adherents, or for the renewal of ceremonies. Among other things, the hat is presented and displayed in mortuary ceremonies because it represents the spirit of a crest animal, it embodies the spirits of Teeyhíttaan clan leaders and caretakers of the past, and evokes those ancestral spirits during ceremonial presentations; and the hat gives "weight" to clan songs and stories in such ceremonies and provides the necessary spiritual balance to the equivalent objects displayed by opposite clans in the ceremonies that is required by religious tradition to

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[15] The Museum Report concedes that even though the object is a replacement hat made by the Teeyhíttaan caretaker, "due to culture change and the elasticity of Tlingit property law, the hat may have been acceptable as *at.óow* by the Tlingit culture by the time of alienation."). Appendix H at 12. The Report gives the following rational for that finding:

> The evidence shows that the hat exhibits attributes of *at.óow* and *shagóon*: traditional stories, songs, or personal names referring to the object; manufacture by the opposite moiety (or acquisition through war, trade, payment, or diplomacy from another clan or tribe); a formal name for the object; history of its dedication before members of the opposite moiety (or payment through death or sacrifice by a clan member); replacement of an older version of the object; and a history of being cared for by a clan or house leader on behalf of the group. *Id.* at 11

protect the people in the ritual evocation of ancestral spirits in a ceremonial setting. *Id.* The Museum admits that "the preponderance of the evidence shows that the hat is an object of cultural patrimony and sacred object under the terms of NAGPRA." Museum Report, Appendix H at 12.

6. The Clan Crest Hat is an "object of cultural patrimony" within the meaning of NAGPRA. *See,* Repatriation Petition, Appendix H at 16-20. The hat is a Raven crest that memorializes a major historical event of central importance to the Teeyhíttaan clan and Tlingit people; and it has been preserved to recount that history, provide clan identity, and strengthen future generations as Teehiittaan *at.óowu*, because it binds clan members to their ancestors and symbolizes a spiritual relationship to the Raven and clan ancestors that is manifested in ceremonies. The hat is of central importance because it provides a physical form for spiritual beings and embodies the history of the Teeyhíttaan. As *at.óowu,* the hat is, by definition, inalienable communal property. It is owned collectively by the clan, and not by any individual. *Id.* The Petition explains that a clan leader or caretaker, such as Mr. Paul, "serves as a trustee of clan *at.óow*, and according to Tlingit property law, he holds clan property in trust for the clan and does not have the authority to alienate clan property." *Id.* at 17-18. The Museum admits that the hat is *at.óow* and "the preponderance of evidence shows that the hat is an object of cultural patrimony and sacred object under the terms of NAGPRA." Museum Report, Appendix H at 12.

7. "As is typical of Tlingit clans, the Teeyhíttaan appoined a custodian (also referred to as a caretaker or steward) to oversee the preservation and use of clan *at.óow* (communally owned historical objects and crest objects)." Museum Report, Appendix H at 2. "In the 20th century, the Teeyhíttaan clan selected as caretaker a clan member who rose to prominence in government and tribal affairs: Willaim L. Paul (1885-1977)." *Id.* "By around 1942, Paul assumed the role of a leader of the Teeyhíttaan clan and custodian of the hat." *Id* at 3.

8. As the Teeyhíttaan caretaker of the Clan Crest Hat, Paul "loaned" the hat to the Museum on September 22, 1947. *Id.* at 4. The loan documents (Appendix H at 1 and 3) state the hat was "loaned" to the Musuem.

9. On November 4, 1964, Paul appointed Richard Rhinehart, Sr. as his successor as the Teeyhíttaan clan caretaker of the hat. Museum Report, Appendix H at 64. Paul's written statement on Museum letterhead states:

> Upon the death of William Paul, Sr., the crest hat . . . of the Tee hit ton Clan shall become the property of Richard Rhinehart, whose Tlingit name is "Ya Koog" of Wrangell, Alaska. The crest hat (H-B-809) is now on loan to the Alaska State Historical Society and Museum at Juneau, Alaska.

Appendix H at 4.

10. On March 10, 1969, William Paul signed a museum document that in pertinent part purports to "donate[]" the hat to the Alaska State Museum "except as noted" . . . "the current custodians name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Shquindy and Ka-xwan (Jack Frost). The next custodian will be Richard Rinehart, Tlingit name Yuh-Koog . . ." *See,* Appendix H at page 9. The meaning of this document is unclear. Museum records disclose no other document made by Paul that casts light on his intent; and without that evidence we are left to guess at what he intended by an unclear document that is obviously open to various interpretations. The Museum steadfastly asserts that the document proves that Paul meant to convey ownership of the clan hat to the Museum, along with the "right of possession" under NAGPRA, but it is hard pressed to explain the contradictory conditions that Paul placed on the donation for reasons known only to him. Confronted with vagueness and conflicting uncertainties in the face of the document, the Museum is forced to admit that the meaning of the document, the intent of the donor, and the respective rights of the caretaker, clan, and museum are not clearly delineated in the document:

> Unfortunately, we have no record that as to how the responsibilities and costs of preserving the hat was to be shared between the caretaker and the museum. . . . The need for a clear understanding of responsibilities is clear.[16]

Tellingly, the Museum also confesses:

> 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.[17]

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[16] *See,* Museum Letter, August 11, 1997, Appendix H at page 30.

[17] Museum Letter, June 7, 2007, Appendix H at 39.

Indeed, the conflicting language in the document appears to continue Teeyhíttaan trusteeship and clan property rights. Given these uncertainties, the Museum's insistence that the "the records are clear that the hat is no longer a loan" is not persuasive. *Id.* at 39. The document is far from "clear." In any event, Museum's strained interpretation is immaterial, because Paul lacked the authority of alienation in 1969 under Tlingit law, as discussed in Section II.B.

11. To substantiate its ownership claim, the Museum presents an argument built on surmise, presumptions, and assumptions, but offered no evidence of any kind to prove its "right of possession," other than the vague document described in paragraph 10. The Museum Report speculates about Paul's intent. It baldly asserts that Paul "knew" his donation would protect the hat from art dealers, deterioration, and fires, and intended to appoint a successor caretaker so the clan would have a diminished right to "some knowledge of and access to the hat." Museum Report, Appendix H at 66. None of this surmise is evinced in the document, which says nothing of the sort. Building upon this surmise, the long line of speculation continues: "He likely viewed the museum as a failsafe in the preservation of the hat in case the clan's population continued to dwindle or if they no longer wished to participate in the traditional culture." *Id.* at 78. In the absence of evidence on Paul's intent, the Museum's ownership claim rests solely upon one vague document that leaves its claim open to substantial doubt.

12. The Museum also failed to prove that Paul had authority to alienate the hat under Tlingit law at the time of the alleged alienation. The only signature on the donor document is Paul's. The document fails to disclose that Paul acted with the knowledge and informed consent of the clan. No other museum record shows that Paul obtained the consent of the clan to alienate its property. Without a scintilla of evidence, the Museum Report resorts to speculation:

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

Id. at 20. Speculation is no substitute for facts. The museum offered no evidence to prove Paul's authority to alienate the hat. A bare inference falls short of sustaining the Museum's burden to prove that it has a "right to possession" under 43 CFR 10.10(1) (iv),

but this assumption of unproven fact is the *only thing offered* to substantiate the Museum's "right to possession." On this record, the Museum's ownership claim is unsupported and should be rejected by the Review Committee for failure to sustain the burden of proof imposed by 43 CFR 10.10(1)(iv).

B. Paul Lacked the "authority of alienation" under Tlingit Property Law.

This section first summarizes applicable Tlingit property law at the time of alienation in 1969.[18] It will also show how the Museum's analysis distorts Tlingit property law in a search in vain to find a colorable exception to the rules that would support its ownership claim. *See,* Museum Report, Appendix H at 71-79.

At the heart of this dispute is a form of tribal property that is owned in common. As noted in *Cohen's* (2005 ed.), there is no analogous counterpart to communally owned tribal property in the Anglo-American concept of private property law:

> Tribal property is a form of ownership in common. It is not analogous to tenancy in common, however, or other collective forms of ownership known to Anglo-American private property law, because an individual tribal member has no alienable or inheritable interest in the communal holding. No tribal member has any vested property right that would permit claims to partition the tribal estate or to share pro rata in the proceeds of any sale. Absent contrary federal legislation vesting individual rights of ownership in tribal members, no tribal member can claim a federal right against the tribe to any specific part of the tribal property. Rather, tribal property interests are held in common for the benefit of all living members of the tribe, a class whose composition continually changes as a result of births, deaths, and other factors. The manner in which a tribe chooses to use its property can be controlled by individual tribal members only to the extent that the members participate in the governmental processes of the tribe.

Id., §15.02 at 966-67 [footnotes omitted]. The dispute over the ownership of the Teeyhíttaan Clan Crest Hat concerns the validity of the alienation of communal tribal property by an individual Indian who did not follow Tlingit law or processes.

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[18] As mentioned earlier, Tlingit law is presented by these Sealaska documents: (1) Dispute Letter (pp. 3-7); (2) Repatriation Petition (Appendix D, pp. 8-10, 17-20, 22-26); (3) "Cultural Context of *Haa At.oowu*" by Dr. Worl (Appendix H); and Inalienable *At.oww* ("The Ownership and Stewardship of Clan Possessions in Tlingit Property Law" by Charles W. Smythe) (Appendix A). Specific NAGRPA precedent for repatriating Tlingit clan property in similar circumstances is also presented, where museums have repatriated clan property as cultural patrimony that cannot be alienated by individuals under tribal law at the time the object was separated from the group (Appendix C), including a 2008 repatriation of Tlingit clan property by the Alaska State Museum which provides strong NAGPRA precedent for the claim in this case (Appendix D).

There are many forms of tribal property, including tribal land, tribal natural resources, tribal trust funds, and cultural property. Because the Clan Crest Hat is tribal cultural property, the general rule in federal Indian law about the alienability of tribal cultural property must be consulted. The general rule is expressed in *Cohen's* (2005):

> Tribal peoples' conception of "ownership" and "property rights" vary with each group's customs and traditions, policy choices expressed in tribal legislation and common law, and the type and use of property at issue. In general, however, as a matter of tribal law cultural property is not individually owned, but is held in trust by an authorized caretaker or often for the tribe as a whole. Traditional expert witnesses testify that caretakers or trustees generally have no right under tribal law to sell or dispose of cultural property in their care. [footnote 22 omitted, citing *Chilkat Indian Village, IRA v. Johnson,* 20 Indian L. Rep. 6127, 6131, 6134-6135 (Chilkat Tribal Ct. 1993). To the contrary, they testify that trustees have a duty to safeguard the property in particular locations and for particular uses, which are often ceremonial. To ensure that those duties are met, some tribal courts have named the tribal council itself as trustee when the traditional trustee is incapable of performing the trust duties.

Id. § 20.01[2] at 1231 [footnotes omitted.] This leading treatise also provides helpful guidelines for determining and applying indigenous property law on the ownership, control, transfer, and alienation of tribal cultural property:

> Tribal courts and traditional authorities have the power, authority, and expertise to identify and interpret tribal laws governing the definition, holding, use, and transfer of artifacts and resources within tribal land. Tribal courts generally reject the applicability of private property concepts with respect to the holding and transfer of cultural property, and instead engage in fact-finding to identify the group or subgroup with historical, ceremonial, and customary rights and responsibilities for the cultural property and the authorized individuals who act as trustees with respect to the property. If a tribal court has the requisite jurisdiction over the parties, disputes over the ownership of artifacts and resources found on tribal land are governed by the law of the tribe. Although state common law principles governing ownership of personal property have been applied in the past to artifacts and resources that had been removed from tribal lands, matters of cultural property should be determined according to tribal law regardless of the forum in which the case is heard.

Id. at 1232. Indeed, as discussed earlier NAGPRA necessarily requires that tribal law be consulted to determine ownership and "right of possession" disputes over "sacred objects" and "objects of cultural patrimony."

Accordingly, Tlingit law on the ownership and alienation of tribal cultural property will be examined next. From Sealaska's documentation of Tlingit law (*See*, footnote 18), four general rules emerge that govern the ownership and alienation of clan religious objects and cultural patrimony that is considered *at.óowu*:

1. The clan is the owner of that cultural property, which is communal tribal property;

2. Caretakers of that property are fiduciaries who care for such property as trustees;

3. Caretakers do not have authority to alienate that property, especially without clan consent; and

4. While various exceptions to the general rule against alienation allow the alienation of clan property with clan consent, none of those exceptions apply to the facts in this case where a caretaker unilaterally alienated *at.oowu* to a museum for reasons known only to him, and without the knowledge or consent of the clan.[19]

As discussed next, these four general rules were in effect at the time of Paul's alleged alienation in 1969, as is event from the judicial decisions of the era and the contemporaneous authoritative sources on Tlingit law that span the period beginning in 1946 to the present date.

(1.) <u>The General Rules of Tlingit Property Law Pertaining to the Ownership and Alienation of Clan Property, such as the Clan Crest Hat, do not allow Caretakers to Alienate Clan Property without the Consent of the Clan; and There Are No Exceptions to this General Rule that are Applicable To William Paul's Alienation of the Hat to the Museum.</u>

[19] To the limited extent that ceremonial clan *at.oowu* can be alienated, the permissible circumstances for alienating *at,óowu* are laid out in the Sealaska materials, (Appendix D at 10; Appendix F at 3; Appendix A) and they do not include the unilateral alienation of important clan property to a museum by a caretaker for reasons of his own without the knowledge or consent of the clan. The sanctioned circumstances include the formal transfers from on clan to another for payment of a clan debt, the indemnification for wrongdoing, and the settlement of legal disputes among clans, or for various gifts to other clans for diplomatic purposes among the clans. These customary and traditional transfers are exceptions to the general rule against alienation but do not invalidate the general rule against alienation that prevents caretakers, clan leaders, or individual clan members from alienating clan property without the consent of the clan.

The Tlingit retain a complex and well-developed body of traditional tribal property law governing the ownership and alienation of tribal cultural property. Under that body of law, Tlingit clans function as the main property owners in the culture and almost all of the formal property belongs to the clans, not individuals or caretakers of that property who administer clan property as trustees only. *See, e.g.,* Repatriation Petition at 8-10 (Appendix D) for an authoritative summary of Tlingit Law. *See also,* Appendix H at 2-3. That body of law has persisted into the present with surprising vitality, despite pressures placed upon the Tlingit culture by outside forces during the twentieth century, such as colonization, religious suppression, enforced government assimilation, and the conflicts between tribal and federal law.[20] During that process, Tlingit land rights and fishing rights were diminished by Supreme Court rulings, and Congress created a new statutory form of individual property rights for Tlingit Indians as shareholders in corporate assets paid to Alaska Natives in the settlement of aboriginal land claims and fishing rights.[21] Yet, despite these impacts on those forms of Tlingit property, tribal law governing cultural property survived largely intact, and persisted into the present. Indeed, since 1990 the federal law on Native American "cultural items" as defined by NAGRPA requires that ownership and right to possession determinations be made according to traditional tribal law applicable at the time the cultural property left Native American hands. As will be seen, Tlingit law on cultural property was in effect among the Tlingit clans in 1969 when William Paul attempted to alienate clan cultural property.

The general rules governing ownership and alienation of clan property were documented by authoritative sources in a landmark study in 1946 (shortly before Paul loaned the hat to the Museum). *See,* Walter R. Goldschimdt and Theodore H. Hass, "*Haa*

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[20] The impact of these forces upon Tlingit society and its largely successful efforts to resist them during the twentieth century and persist into the present is examined by Walter Echo-Hawk, *In The Courts of the Conqueror: The Ten Worst Indian Law Cases Ever Decided* (Golden: Fulcrum Publishing Co., 2010) at 205-214, 359-394.

[21] *See, e.g., Tee-Hit-Ton Indians v. United States,* 348 U.S. 272 (1955) (Teeyhíttaan aboriginal land rights were diminished by the doctrine of discovery as possessory rights that could be taken by the United States without the need to compensate the Teeyhíttaan); *Organized Village of Kake v. Egan,* 369 U.S. 60 (1962) (Tlingit aboriginal fishing rights are subject to state conservation laws); Alaska Native Claims Settlement Act, 43 USC 1601 *et seq.* (creating individual Tlingit shareholder interests in tribal settlement fund established by Congress); Alaska National Interest Lands Conservation Act, 16 USC 3101 *et seq.* (ANILCA) (federal protection of tradition Native subsistence practices).

Aani, Our Land: Tlingit and Haida Land Rights and Use" (1946) (reprinted by Sealaska Heritage Foundation, 1998). Haas was a lawyer who was Chief Counsel for the Bureau of Indian Affairs and Dr. Goldschmidt was an anthropologist. *Id.* at xxv. After a summer of field work among knowledgeable Tlingit informants in the Tlingit communities of Angoon, Haines, Hannah, Kake, Ketchikan, Klukwan, Juneau-Douglas, Saxman, Sitka, Wrangell, Yakutat, and the Haida community of Kasaan, the researchers published their landmark study on Tlingit possessory rights among the 44 Tlingit clans, including the Teeyhíttaan, to ascertain tribal land use rights in southeast Alaska. They noted that traditional Tlingit property law "was still poignant in memory and in the actions of the people of several communities" and "Native law remains a force in Tlingit and Haida daily life." *Id.* at 17. Their region-wide research documented that the "Tlingit had well defined conceptions of property and legal rights." *Id.* at 16. The researchers observed some weakening of Native culture due to the foreign influence of American customs over the past 80 years, but found that the influence "is not a denial of the old rights to land nor of the continued importance of these old rights" and that "the recognition of ancient clan rights to land, and the old status system based upon such ownership . . . are still poignant in the lives of the Natives of the southeastern portion of Alaska." *Id.* at 16-17. Thus, there is no doubt that the restrictions against alienation of clan property by caretakers under tribal law obtained when Paul loaned the hat to the Museum in 1947.

Goldschmidt and Haas (1946) found that the clans were the basic property-holding units in Tlingit society. They owned land and other valuable property. *Id. at 12.* Goldschmidt and Haas stated the general rule at 16:

> The clan or house is an economic group in Tlingit society which, like a corporation in western society, controls the use of certain lands and other valued properties. The head of the clan or house group is the person directly responsible for administering the property, but according to custom, his rights are subject to certain restrictions. The most important of these are that (1) he cannot sell the right—though it may be transferred in legal settlement to another group, and (2) he must allow the use to appropriate members of his group.

That rule was interpreted in 1959 by a federal court in *Tlingit and Haida Indians v. United States,* 177 F. Supp. 452 (Ct. Cl. 1959), where the Tlingit sought compensation for the taking of aboriginal land. In awarding over 7 million dollars in damages for the

taking of Tlingit aboriginal land in southeastern Alaska, the court found that the general rule of Tlingit law pertaining to clan land and natural resources was in effect at the time that the land was taken by the United States in the twentieth century: After extensive hearings on Tlingit culture and traditional property rights, the court found that clans own the property rights to land in Tlingit society, with significant restrictions against alienation. The court stated at 456:

> The modes of living and of dealing with property among these Indians were regulated by rigidly enforced tradition and custom, and except under special circumstances, there was no authority in a clan or clan division to sell, transfer, or otherwise dispose of, in whole or in part, any claimed area of land or water. [emphasis supplied.]

That the Teeyhíttaans subscribed to that tribal property law principle from the beginning of the twentieth century into the 1950s is evident from the clan's persistent efforts to protect Teeyhíttaan clan land rights in *Tee-Hit-Ton Indians v. United States,* 348 U.S. 372 (1955) (involving a taking of clan property by the Forest Service in 1952), and in the related land claims litigation carried on throughout the 1950's, including the *Tlingit and Haida* decision of 1959 (involving the taking of clan property beginning in 1907 to establish the Tongass National Forest).

Similarly, the clans also own tangible tribal cultural property known as *at.óowu,* which includes the Teeyhíttaan Clan Crest Hat, as discussed in the preceding section. *See,* Section II.A, paragraphs 2-7 (reciting the uncontroverted facts in this dispute). Consistent with the general federal Indian law property rules on cultural property described in *Cohen* (2005), *supra,* under Tlingit law, clan members own no individual property interest in ceremonial *at.óowu,* and they cannot devise, sell, transfer, or otherwise alienate that communal property, especially without the consent of other members of the clan. *See,* authorities discussed in footnote 18, *supra.* A Tlingit clan holds such cultural tribal property on behalf of future generations, which is a precept that is founded on the culture's notions that these clan objects (1) contain the spirits of ancestors, (2) are necessary to maintain the social and spiritual harmony of the clan through ceremonial display, and (3) clan survival depends upon continuity with future generations who will own and use that property. *Id.*

Importantly, the authority of clan caretakers of cultural property, or *at.óowu,* is carefully circumscribed by tribal law: The caretakers hold that property in trust with a fiduciary duty to use and protect the property for the benefit of clan members; and they lack the authority to alienate communally own tribal cultural property of the clan, especially when the consent of the clan is not obtained.[22] This restriction on the alienation of clan property obtains even if the caretaker desires to dispose of clan cultural property.

The general rules pertaining to cultural property are for all practical purposes the same as those that govern clan land rights, as seen in the protracted efforts by the Tlingit village of Klukwan to protect clan ceremonial *at.óowu* from unlawful alienation to art dealers, a legal struggle that spanned the 1970s to the 1993 tribal court decision in *Chilkat Indian Village, IRA v. Johnson, et. al,* No. 90-01 (Chilkat Tr. Ct., Nov. 3, 1993) (Slip Opinion) (Attached herto as "Exhibit 1").[23]

In this case, the court examined extant Tlingit property law in a four-week evidentiary trial on the subject that gathered extensive expert and traditional evidence about the ownership and alienation of clan cultural property. The evidence compiled shows the continuity of traditional Tlingit property beyond 1969, including the vitality of the principles relied upon by Sealaska in this dispute. The *Chilkat* decision involved the unlawful alienation of communally-owned clan ceremonial property by individual Tlingits. The court made several instructive findings and holdings. The property at issue in the case was similar to the Teeyhíttaan Clan Crest Hat in this dispute, since it was "'clan trust property' with great spiritual significance to the Ganexteidi Clan." Slip Opinion, Exhibit 1 at p. 6.[24] The court found that under tribal law, the duty of a caretaker

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[22] *See,* these authoritative sources for this rule: Goldscmidt and Haas, *supra* at 17 (a clan leader cannot sell clan property); George Emmons, *The Tlingit Indians* (Seattle: Univ. of Wash. Press, 1991) at 27, 39 (While clan leaders are highly respected, their actual authority is limited, and major decisions that involve the interest of the clan are subject to clan consent); R.L. Olsen, "Social Structure and Social Life of the Tlingit in Alaska," Anthropological Records, Vol. 26 (Berkeley: University of California Press, 1967) at 37 (the trustee alone does not have the authority to alienate clan property)

[23] The related string of litigation in this matter includes, *Chilkat Indian Village v. Johnson,* 643 F. Supp. 535 (D. Alaska, 1986), *aff'd in part, rev'd in part,* 870 F. 2d 1469 (9th Cir. 1989), as well as a village ordinance enacted in 1976 to codify tribal legal protections of clan property against alienation contrary to Tlingit law.

[24] Credible evidence explained how property "is confirmed as being clan trust property, which includes presenting it in a ceremony in which members of the opposite [clans or moiety] are invited, which completes the confirmation of the clan trust property." *Id.*

of that property is simply "to care for the property of the house and clan, and *has no right to sell or otherwise dispose of clan property.*" *Id.*[italics supplied]. Instead, the clan "as a whole would control decisions about the custody of the artifacts." *Id.* at 10. The court found that a caretaker does not have "the right to unilaterally dispose of clan crest objects." *Id.* Dr. Rosita Worl, "a noted Tlingit anthropologist" summarized the rule in her expert testimony, stating: "Under Tlingit law, such objects cannot be sold, unless for some reason (such as restitution for a crime) the entire clan decides to do so." *Id.* She added, "[t]he participants in a clan decision such as this would include all adult males, and high-ranking women." *Id.* at 10-11. The same principles of Tlingit property law established in this 1993 trial apply to the 1969 period when Paul allegedly attempted to alienate the Teeyhíttaan Clan Crest Hat to the Alaska State Museum.

Based upon these findings, the *Chilkat* court held that the individual Tlingit Indians violated a tribal ordinance that codified Tlingit law by removing the clan artifacts without permission and ordered them to return the *at.óowu* to the village on behalf of the clan. In so doing, the court rejected the defendants' defense—which is similar to the Museum's contention in this case—"that traditional Tlingit culture is dead, and thus tribal law is not valid." *Id.* at 19. In rejecting that defense, the court stated:

> The defendants' argument that Tlingit culture is essentially dead was unsupported by the trial evidence. While the culture has been under assault from non-Indian outsiders and institutions, the lengthy testimony of many credible witnesses at trial confirmed the validity of Tlingit culture at Klukwan, and the continuing, important role of traditional law. The court finds that the Chilkat Indian Village maintains and nourishes its culture—even though that culture, like any, is dynamic and ever-changing as a function of time and changed circumstances.[25]

Id. at 20. The findings and holdings of the *Chilkat* decision demonstrate that Paul lacked the authority to alienate the hat as a Tlingit caretaker in 1969 without the consent of the Teeyhíttaan clan under Tlingit property law, which continued its vitality and importance among the Tlingit clans through the end of the twentieth century and beyond.

The general rules of Tlingit cultural property law remained in effect among the clans during the twentieth century, along with rigorous restrictions on the right of

[25] This finding is consistent with and shows the continuity of the findings of Goldschmidt and Haas in 1946 that Tlingit property law remains important among the clans despite pressures from non-Indian outsiders and institutions.

caretakers or clan leaders to alienate that property. This fact is illustrated not only by the above cases, but also by the many successful Tlingit NAGPRA claims in similar situations, where "sacred objects" and "objects of cultural patrimony" were alienated during the twentieth century in violation of extant Tlingit law at the time of alienation. Appendix C shows over twenty such cases repatriating the cultural property of twelve clans. In these cases, seventeen different museums repatriated forty objects of Tlingit *at.óowu* as "objects of cultural patrimony," rather than property owned by a Tlingit individual or clan leader, because that person had no authority to alienate clan property under extant Tlingit law. Tellingly, the Alaska State Museum itself recognized the continuing validity of these same Tlingit legal principles in its 2008 repatriation of Wolf House *at.óowu* (Appendix D), and applied those rules to repatriate that "cultural patrimony," because that clan property was alienated in violation of Tlingit law. In so doing, the Museum correctly recognized the persistence of Tlingit law in the twentieth century. Its determination is summarized in the Notice of Intent to Repatriate, Federal Register (Feb. 25, 2008, Vol. 73, No. 37):

> Under Tlingit law, the tunic is considered at.oow of the Wolf House of the Sitka Kaagwaantaan, and is by definition the property of the group. Based on Tlingit law, the tunic is an object of cultural patrimony and has ongoing importance to the clan. While at.oow is cared for by a clan leader it remains communal property. In this case, the tunic was alienated by the widow of the caretaker, Lily Yarkwan, who belonged to another clan. Officials of the Alaska State Museum have determined that, pursuant to 25 U.S.C. 3001(3)(D), the tunic has ongoing historical, traditional or cultural importance central to the Native American group or culture itself, rather than the property owned by an individual. Officials of the Alaska State Museum also have determined that pursuant to 25 U.S.C. 3001 (13), the museum does not have the right of possession to the object of cultural patrimony.

In this case, the Alaska State Museum failed to apply the same principles of Tlingit property law and seeks to deny the Tlingit rules against alienation that were in place when Paul allegedly alienated the hat without obtained the consent of the Teeyhíttaan clan.

In sum, under the general rules of Tlingit property law governing the ownership and alienation of tribal cultural property, or *at.óowu*, William Paul, as caretaker of the Teeyhiittaaan Clan Crest Hat, did not have the authority of alienation in 1969 under extant tribal law, because the evidence in the record indicates that for reasons known only to him, Paul unilaterally alienated the hat and no evidence exists in the record that he sought or received the informed consent of the clan to alienate clan property. Consequently, Paul lacked authority to convey title to the hat. As discussed next, the Museum's effort to legitimize that alienation under Tlingit law lacks merit.

(2) The Museum failed to show the Existence of any Exception to the Tlingit Rule Against Alienation that applies to the Facts of this Case.

The Museum Report presents six arguments to support its ownership claim under Tlingit law and the "right of possession" standard of NAGPRA. *See,* Museum Report, Appendix G at 12-18. Each are addressed below, and none have merit.

1. Tlingit law allows the alienation of clan cultural property to museums. (Appendix G at 13). The Museum erroneously states that Sealaska contends that no alienation is ever allowed outside Tlingit culture under any circumstances under Tlingit law. This is not entirely true, as the legal authorities relied upon by Sealaska do recognize the transfer of clan ceremonial property under narrow circumstances sanctioned by Tlingit law; however, none of those circumstances allow the unilateral alienation of such property by a clan leader or caretaker to a museum for undisclosed reasons without the consent of the clan.[26] The Museum asserts that Tlingit law specifically allows the alienation of clan property by a clan leader to museums, citing a 1995 and 2001 resolution of the Central Council of Tlingit and Haida Tribes. *Id.* at 13. These resolutions were not Tlingit law in 1969 at the time of the alienation.[27]

2. Clan property can be alienated without the consent of all clan members. (Appendix H at 15). While the Museum spends several pages disputing a rule that Tlingit law requires *unanimous consent by all clan members* in order to alienate clan cultural property, that argument does not help sustain the Museum's ownership claim in this case,

[26] *See,* footnote 19, *supra.*

[27] Nor can they be read to state a new rule of museum property ownership.

because the evidence in the record in this dispute shows that Paul acted alone, without the consent of anyone. Hence, even assuming for the sake of argument that the Museum is correct, Paul still did not have the authority of alienation since no evidence exists in the record to show that he had the consent of any clan member.

3. There is a "presumption of regularity" unless clan members made overt efforts to halt the transaction or punish William Paul. (Appendix H at 16). The Museum is attempting to re-write the burden of proof specified in 43 CFR 10.10 and the four-step evidentiary process provided therein. The Claimant sustained its *prima facie* burden of proof that the museum lacks a "right of possession" under 43 CFR 10.10(1)(i)—(iii), based upon documentary evidence that Paul alienated the hat unilaterally. The burden then shifts to the museum to "present evidence to the contrary proving that it does have a right of possession." 43 CFR 10.10(1) (iv). Neither the regulations nor the statute contain a "presumption of regularity" that obviates the Museum's burden of proof under 43 CFR 10.10(iv), as suggested by the Museum. Though the Museum complains that it is difficult to know whether donors have the legal authority of alienation, that is the nature of any property transaction in American commerce, and the familiar general principle *caveat emptor* ("let the buyer beware") applies as much to museums as to any other party who without a warranty bears the risk of faulty title from a seller or donor. NAGPRA certainly grants no exception to this familiar rule to museums. On the contrary, NAGPRA sought to redress tribal people for the massive loss of cultural items alienated by Indians who improperly alienated cultural property without a legal right of alienation under tribal law. *See,* Trope and Echo-Hawk (1992), *supra,* at 43-45.

4. Paul's donation was a sanctioned exception to the rule against alienation, because it is like "a gift from the Clan to a sovereign," and consequently Paul needed no consent before making that gift. (Appendix H at 16). The Museum stretches the imagination too far with this novel theory. In the facts of this case, Paul's donation to the museum bears no resemblance to "a gift from the Clan to a sovereign," and it did not involve any international diplomacy at all; nor does the conveyance fall into any of the narrow circumstances sanctioned by Tlingit law for alienating clan property by a clan leader or caretaker. *See,* footnote 19, *supra.*

5. The Museum has no burden to prove that it has a "right to possession" unless Sealaska offers additional proof that Paul was punished by the clan, or that the clan contacted the museum to halt or protest the transaction. (Appendix H at 16). The Museum insists that Paul had clan consent to alienate the hat, but provided no evidence whatsoever to substantiate its surmise and speculation. Since it provided no proof that Paul had the authority of alienation, the Museum grasps at straws by manufacturing a "presumption of regularity" (see # 3 above), and asserting that it has no burden of proof after Sealaska has made a *prima facie* showing that the Museum does not have a right of possession under 43 CFR 10.10(1)(iii). The Museum's insistence upon further evidence from Sealaska is not the law.

6. Under a brand new rule of Tlingit Law of the Museum's own making, clan leaders and caretakers do not need <u>any</u> consent at all to dispose of clan property as they see fit. (Appendix H at 18). As a last resort, the Museum creates a brand new rule of Tlingit law in which caretakers in the twentieth century do not need the consent of anyone to alienate clan property, because they may dispose of such property as they see fit. This novel and radical departure from Tlingit law cannot be taken seriously. It have never been the law, especially in 1969, or now; and the Museum's novel notion is at odds with the twentieth century cases and NAGPRA repatriations that hold otherwise. The Museum's novel position seriously disserves the Tlingit people of southeastern Alaska by undermining important safeguards for tribal cultural property embedded in Tlingit law—namely, the requirement that caretakers of cultural property as trustees must have consent of the clan owner to alienate clan property. Without that legal safeguard, clan property would quickly be stripped clean by museums, art dealers, and others as done in the pre-NAGPRA era that Congress sought to rectify with the passage of NAGPRA.

CONCLUSION

For all of the above reasons, the Museum failed to establish its ownership claim and "right to possession" in this dispute. Sealaska is entitled to the relief requested in the Dispute Letter.

Respectfully submitted this 23rd day of July, 2010,

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Exhibit 1

Chilkat Indian Village, IRA v. Johnson, et al.

CHILKAT INDIAN VILLAGE TRIBAL COURT

CHILKAT INDIAN VILLAGE, IRA v. JOHNSON, et al.

No. 90-01 (Chilkat Tr. Ct., Nov. 3, 1993)

Summary

In an action brought by the Chilkat Indian Village, IRA against an individual and a corporation and individuals comprising the "Whale House Group" for the conversion of tribal trust property and violation of a tribal ordinance which prohibits the removal of such property from the village without prior notification of and approval by the Chilkat Village Council seeking declaratory and injunctive relief and monetary damages, the Chilkat Indian Village Tribal Court orders the return of artifacts and the payment of expenses for the artifacts' return as well as costs and fees of litigation.

Full Text

Before BOWEN, Tribal Court Judge

BOWEN, Tribal Court Judge

Decision

Background

This case involves the 1984 removal of four house posts and a rain screen, known as the "Whale House artifacts," from the Chilkat Indian Village in Klukwan, Alaska. The Chilkat Indian Village (village, tribe) filed this action in this court on January 8, 1990, against Michael R. Johnson, his corporation, and the individuals comprising the "Whale House Group."

The complaint sets forth two causes of action. First, the village alleges that defendants attempted to convert tribal trust property to their exclusive use and benefit. Second, the village alleges that defendants violated a tribal ordinance which prohibits removal of such property from the village without prior notification of and approval by the Chilkat Village Council, which is the tribe's governing body. The village seeks declaratory and injunctive relief, as well as money damages.

Following the resolution of procedural motions, as well as agreed continuances and stays in both tribal and federal district court, on January 2, 1992, defendants, through counsel Ms. Willard, filed answers generally denying the allegations in plaintiff's complaint, as well as alleging broad counterclaims (discussed below) against plaintiff.

A four-week court trial was completed on February 12, 1993. This matter is now ripe for decision. However, before addressing the merits of this tribal court case, it is useful to review related proceedings in federal court. As noted below, the federal district court (D. Alaska) retains jurisdiction of the related federal action in this matter in J84-024-CV (JAV).

After the 1984 removal of the artifacts from the village, the tribe filed an action in federal district court against Michael Johnson and his corporation (case no. J84-024 (D. Alaska)). Among other things, the federal court complaint

alleged violation of the 1976 Tribal Ordinance governing removal of artifacts from the village (discussed below), and sought injunctive and monetary relief. On November 21, 1984, the district court enjoined Johnson in his personal and corporate capacities from selling or disposing of the artifacts, arid ordered the tribe to join 14 individuals comprising the Whale House Group as named defendants. Following joinder of the Whale House defendants, and upon the tribe's October 22, 1985, summary judgment motion, the district court dismissed the tribe's claim that 18 U.S.C. §1163 (prohibiting embezzlement and theft from Indian tribes) created a private cause of action in federal court. *Chilkat Indian Village* v. *Johnson,* 643 F. Supp. 535 [13 Indian L. Rep. 3137] (D. Alaska 1986). In a separate memorandum and order, the district court ruled *sua sponte* that it lacked subject matter jurisdiction over the tribe's remaining claims. In so doing, the court held that the tribe's claim that the artifacts were communally owned mid defendants removed them without permission was a conversion claim arising under state rather than federal law. The district court further held that the tribe's 1976 Ordinance prohibiting removal without obtaining prior council approval did not arise under federal law for purposes of 28 U.S.C. §§ 1331 and 1362.

On appeal, the Ninth Circuit Court of Appeals affirmed the dismissal of claims against the Tlingit defendants and die dismissal of the claim founded on 18 U.S.C. § 1163. *Chilkat Indian Village v. Johnson,* 870 F.2d 1469, 1476 [16 Indian L. Rep. 2115] (9th Cir. 1989).[1] The court of appeals reversed, however, regarding the village's claim against Michael Johnson and his corporation, holding that the tribe's enforcement of its ordinance against those non-Indian defendants raised federal questions. *Id.* at 1475. The court observed that "the heart of the controversy over the claim will be the Village's power, under federal law, to enact its ordinance and apply it to non-Indians." *Id.* at 1474. Questions such as whether the village is a federally recognized tribe, whether it possesses general legislative powers, or jurisdiction over the artifacts and defendants in particular, and whether its fee lands constitute Indian Country, were noted and described by the Ninth Circuit as issues which "are not before us now, but they are federal questions and they lie at the heart of the Village's claim to enforce its ordinance." *Id.*

In remanding the case to the district court, the Ninth Circuit did not address the question, which it said was not discussed by the parties, whether the case was subject to requirements of exhaustion of remedies in tribal court under *National Farmers Union Ins. Cos. v. Crow Tribe,* 471 U.S. 845, 856-57 [12 Indian L. Rep. 1035] (1985). However the court did note that "[a]n earlier action arising out of this same controversy was dismissed partly because the issues might better be addressed in a tribal forum. *Johnson v. Chilkat Indian Village,* 457 F.Supp. 384 (D. Alaska 1978)." *Id.* at 1475 n.11.

On remand, Johnson moved for summary judgment on the basis that even if the tribe had the authority to enact the 1976 Ordinance and apply it to him, he did not violate it. On January 11, 1990, the district court rejected Johnson's argument, holding that if the village possessed sufficient attributes of sovereignty, then "the district court must abstain from hearing the suit until the parties have exhausted tribal remedies." Memorandum and order, slip op, at 9-10 (Jan. 11, 1990). The district court directed the parties to brief the threshold questions whether the village possesses the sovereign authority associated with tribal status and whether exhaustion is required. *Id.* at 11.

In its October 9, 1990 memorandum and order the district court granted the tribe's motion for summary judgment on the issues of tribal sovereignty and exhaustion. The court found that "acts of Congress and the executive lead this court to conclude that Chilkat Indian Village has been recognized as a tribe by the federal government." *Id.* at 12. The court noted the principle of federal Indian law that tribes possess retained civil regulatory and judicial authority in civil matters over non-Indians, and cited controlling language in *Montana v. United States,* 450 U.S. 544, 565 [8 Indian L. Rep. 1005] (1981) governing tribal civil authority over non-Indians. The district court then made the following significant holding.

> The court agrees with the plaintiff in that the power to pass the ordinance that is in dispute in this case was part of the retained, inherent power of the Chilkat Indian Village. In addition, it would appear that under its constitutional power, Chilkat Indian Village had the power to prevent the sale or disposition of any assets of the Village without the consent of the Council. The court further agrees that alleged acquisition by a non-Indian of the artifacts in question would constitute conduct that would have some direct effect on the welfare of the tribe.

Slip op. at 13-14 (Oct. 9, 1990).

On the subject of Indian Country as defined by 18 U.S.C. § 1151, the district court concluded that the village-owned fee lands at Klukwan, from where the artifacts were removed, constitute a "dependent Indian community" under that statute and applicable law, and thus are "Indian country." In rejecting defendants' argument that the Alaska Native Claims Settlement Act (ANCSA)[2] extinguished the village's authority over any defined territory, the court noted that "[a] fundamental canon of construction in Indian law is based on the principle that there must exist a 'clear and plain' intention to abrogate or limit an Indian right. *United States v. Santa Fe Pac. R.R.*, 314 U.S. 339, 353, 625. Ct. 248, 255 (1941)." Slip op. at 14. Finding that nothing in the ANCSA preamble "indicates a 'clear and plain' intention to *extinguish* Chilkat Indian Village's dependent status as it existed prior to the passage of ANCSA," the district court concluded "[t]herefore the status of the dependent Indian community was not extinguished by ANCSA." *Id.* at 15.

Finally, pursuant to the rules governing exhaustion set out in *National Farmers Union, supra,* and *Iowa Mutual Ins. Co. v. LaPlante,* 480 U.S. 9 [14 Indian L. Rep. 1015] (1987), the district court submitted all issues pending in the case, including challenges to tribal jurisdiction as well as the merits of the tribe's claims that Johnson and his corporation violated the tribal ordinance, to this tribal court.[3]

Returning to the pre-trial procedural history of this case in this tribal court, as noted above, the plaintiff filed its complaint in this tribal court on January 8, 1990. That same day, Joe Hotch and Ed Warren, the duly appointed chief judge and alternate judge of this court, recused themselves (both were witnesses at trial, as were many of the leaders of the small Indian village). Eventually the undersigned was appointed as special judge by Chilkat Indian Village Resolution No. 90-006. With the above-described proceedings continuing in federal court, the parties agreed to stay proceedings in this court-except for continuing efforts by plaintiff to accomplish service of process on all defendants-until such time as the federal district court completed its (potentially dispositive) rulings on issues related to tribal status and exhaustion.

Following the above-described federal court proceedings, and pursuant to an order of this court regarding the filing of potentially dispositive motions, on March 15, 1991, defendants filed a "motion to dismiss and motion for summary judgment on behalf of all potential defendants." Plaintiff filed an opposing brief and defendants filed a reply. This court's November 27, 1991 memorandum and order denied defendants' motion with respect to arguments dealing with the subjects of timely service, statute of limitations, real party in interest, standing, and indispensable parties. Pursuant to Fed. R. Civ. P. 12(d),[4] jurisdictional challenges were deferred so that additional and more complete evidence could be developed at trial.

A lengthy telephonic conference was conducted by this court on December 20, 1991, resulting in a comprehensive scheduling order dated January 15, 1992. On June 29, 1992, Donna Willard, attorney for all defendants, filed a motion for withdrawal for cause, citing irreconcilable conflicts.[5] Following an August 3, 1992 telephonic hearing on the motion and other matters, this court issued an order that same date granting her motion for withdrawal. The tribal court received copies of pleadings indicating that the federal district court granted a similar motion soon thereafter. Since that time, then, the defendants have represented themselves, including during trial.

In the months preceding trial, which commenced January 18, 1993, in the tribal court at Klukwan, Alaska, there were disputes regarding discovery motions, alleged noncompliance, and resulting orders. This court denied a motion by defendant Irene Rowan to continue the trial date for several months,[6] and ordered defendants Michael R. Johnson and his corporation to comply with plaintiff's disco very requests by January 8, 1993. This date extended the original deadline, with which defendants had still not complied, but rather had responded by requesting further delay in court-ordered deadlines based on unsubstantiated and, likely disingenuous reasons.[7] A final pretrial conference was telephonically conducted January 11, 1993. Consistent with the court's practice upon issuance of the order allowing defendants' counsel Donna Willard to withdraw, notice was provided to all named defendants. Electing to participate were plaintiff's counsel Joseph Johnson and defendants Irene Rowan, Ronald Sparks, and William Thomas noted in this court's order following final pretrial conference, dated January 13, 1993, "[d]efendant Michael Johnson received notice, and, according to Irene Rowan, Michael Johnson telephoned her the morning of the hearing, discussed certain substantive matters with her, but apparently decided not to participate." Order following final pretrial conference at 1.

Applicable Law

The law applicable in this tribal court action is tribal law, which is comprised of both written and unwritten, custom law of the village.[8] The written manifestations of applicable tribal law include the Constitution and By-Laws of the Chilkat Indian Village, as amended, Ordinance 80-001, establishing a Chilkat Indian Village trial and appellate court system, and what is perhaps the most significant written expression of tribal law applicable to this case, the Ordinance of May 12, 1976 (Artifacts Ordinance) which reads as follows.

> No person shall enter onto the property of the Chilkat Indian Village for the purpose of buying, trading for, soliciting the purchase of, or otherwise seeking to arrange a removal of artifacts, clan crests, or other traditional Indian art work owned or held by members of the Chilkat Indian Village or kept within the boundaries of the real property owned by the Chilkat Indian Village, without first requesting and obtaining permission to do so from the Chilkat Indian Village Council.
>
> No traditional Indian artifacts, clan crests, or other Indian art works of any kind may be removed from the Chilkat Indian Village without the prior notification of and approval by, the Chilkat Indian Village Council.[9]

As the district court noted in 1978 and again in 1990[10] when it referred this case to this court, article IV ("Powers of the Village") of the tribe's federally approved constitution and bylaws provides that the seven-member village council has the power to "prevent the sale, disposition, lease, or encumbrance of any land or waters, or other assets of the Village without the consent of the Council." Art. IV, §(l)(e). Under section (1)(n) of the same article, the council has the power to "preserve and cultivate the arts, crafts and culture of the Indians of this community and their customs..."

Ordinance 80-001 (Tribal Court Ordinance), which defines basic aspects of the tribal court system, was enacted on April 29, 1980, following discussions with officials of the Bureau of Indian Affairs (BIA), and amendment of the tribe's constitution (certified by the BIA's Area Director for Alaska). The constitutional amendment added a new section making it clear that the tribe had authority to "adjudicate matters of a civil and criminal nature, arising within the geographic limits of the real property owned by the Village. . . ." Art. IV, §1(0).

The Tribal Court Ordinance establishes trial and appellate courts of record, sets forth the qualifications of judges, provides for the appointment of judges *pro tem,* as was required in this case where the sitting judges might have had or be perceived to have a conflict, and addresses the law to be applied in cases brought in the court, including applicable Tlingit custom law. Article III includes a provision disclaiming any criminal jurisdiction. Article VII, § (l)(b) of the Ordinance provides that pending the adoption of tribal procedural rules, "the Federal Rules of Civil and Appellate Procedure, insofar as they are applicable and compatible with Tlingit custom and law, shall be followed in the Trial Court and Court of Appeals of the Chilkat Indian Village."

As is common in many tribal courts, strict rules of evidence applicable in state and federal court trials were not imposed by this court. The only rule of evidence at trial was relevancy.

Issues

Some of the threshold issues raised by defendants have already been decided. As noted above, this court adopted as a matter of tribal law the district court's holding that the village is a federally recognized tribe. *See* n.9, *supra.* This court's November 27, 1991 memorandum and order also held that the tribe has the authority to establish a tribal court as a function of its retained, inherent judicial powers. *Id.* at 6.

Additionally, this court adopts as a matter of tribal law the district court's holding quoted above (at 5-6) that the village had the authority to enact the Ordinance of May 12, 1976,[11] governing removal of artifacts, and that the "alleged acquisition by a non-Indian of the artifacts in question would constitute conduct that would have some direct effect on the welfare of the tribe.. .." Slip op. at 13-14 (Oct. 9, 1990).

There is no dispute about the basic facts surrounding the physical removal of the artifacts from the Whale House in Klukwan during April 1984.[12] Rather, the issues to be decided are: (1) whether the Whale House rain screen and four

house posts constitute "artifacts, clan crests, or other Indian art works" within the meaning of the relevant tribal ordinance; (2) whether the tribe has the power to enforce the ordinance against the defendants, including the non-Indian art dealer, Michael Johnson and his corporation; (3) whether any or all of the defendants violated the ordinance; (4) whether defendants have presented any defenses which preclude judgment against any or all of them; and (5) whether defendants can pursue counterclaims against the tribe, and if so, whether such counterclaims have been established. Finally, this court will determine the appropriate relief and other remedial orders which should issue.

Plaintiff must establish its claims by a preponderance of the evidence. The same standard applies to defendants' counterclaims. The following discussion is a chronological account of the testimony and documentary evidence presented at trial which is relevant to the above issues.

Discussion

The trial in this matter commenced January 18, 1993, and ended February 12, 1993. Before opening court, the court agreed to meet with the parties, and a number of procedural and special needs aspects were discussed. Defendants informed the court that all named Tlingit defendants would attend and participate, with the exception of Mia and Rochene Rowan. Their mother Irene Rowan informed the court that they were away from the area and that she would represent them. The trial schedule was discussed in light of such concerns as the special needs of defendant Margaret Thomas, who is diabetic and the oldest among all defendants. There was no problem reaching agreement as to the hours in which court would be held at Klukwan in order to accommodate special needs, as well as the expressed needs of defendants to caucus and otherwise prepare on a daily basis for trial.[13]

Particular concerns of several defendants regarding their rights at trial and Opportunity to present all aspects of their case were discussed, defined, and resolved. The Tlingit defendants made it clear that they were not representing defendants Michael Johnson and his corporation.

The parties were reminded that, while opening statements would not constitute evidence, the parties could use that avenue to state objections on the record, which the defendants had verbally raised in the off-record pretrial meeting.

The opening statement of plaintiff's counsel Joseph Johnson provided an overview of plaintiff's case, including a reading of the May 12, 1976 Ordinance, and what plaintiff expected to establish at trial. Among other things, attorney Joseph Johnson emphasized the role of art dealer Michael Johnson, beginning at least in 1971, in offering large sums of money in his quest to acquire the artifacts, and the effect of those efforts on the tribal community.

Defendants William A. Thomas, Jr. (Bill Thomas), Evans Willard, Clifford Thomas, David Light, Christine Thomas Martin, Margaret Thomas, and Irene Rowan all made opening statements. They all took the position that the tribal court lacked jurisdiction over them and the subject matter of the case, and emphasized that they appeared "under protest" in order to defend the good name of their family, including deceased relatives who had been accused of wrongdoing in connection with the removal of the artifacts. Defendants at trial were reassured that their objections were duly noted and preserved, and that the court subscribed to the general legal maxim that fundamental jurisdictional challenges are never waived.

Plaintiff called as its first witness Joe Hotch, President of the Chilkat Indian Village Council. Mr. Hotch, who was recalled to the stand three times during the trial, was at all times found to be a credible witness. He began his testimony by explaining the significance of the traditional regalia (headpiece and shirt) which he wore while testifying. He then provided some demographic information about Klukwan.

The village has a population which varies from 110-120 people in the winter, to 150-175 people in the summer. With the exception of about ten people, Mr. Hotch stated that all residents are Tlingit Indians. The tribe, which is organized and has a constitution and bylaws pursuant to section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, collectively owns all of the land in the village, including all of the real property on which all residences are situated.[14] Joe Hotch stated that the tribal council, of which he is president, is regarded by village members as the sole governing body. He stated that at various times some of the Tlingit defendants served as members of the council, including Evans Willard, David Light, Wes Willard, and Bill Thomas.

Mr. Hotch, whose parents were Victor and Annie Hotch, is a member of the Eagle (or Wolf) moiety, Eagle Clan, and Bear and Killer Whale houses. He is the caretaker, *i.e.*, "*hitsati*" of the Killer Whale House. He stated that his father Victor Hotch was a member of the Valley House (Ganexteidi Clan of the Raven moiety). Mr. Hotch emphasized that a *hitsati* has the duty under tribal law to care for the property of the house *and* clan, and has no right to sell or otherwise dispose of clan property.

Mr. Hotch's testimony addressed several aspects of Tlingit social structure, which is complex, and was covered in detail by other witnesses such as Rosita Worl, a highly regarded Tlingit anthropologist, whose testimony is discussed below. All Tlingits are either of the Raven or Eagle (also called Wolf) moiety, which exists primarily for marital purposes. Under Tlingit custom law one must marry only a member of the opposite moiety, regardless of the lack of blood relation of prospective marital partners of the same moiety.

Although identification by Tlingits as members of a particular village is very significant for many purposes, the clan is the primary and most important affiliation for Tlingits. While there are several clans within the Eagle moiety at Klukwan, perhaps conveniently, all Ravens in Klukwan are members of the Ganexteidi Clan. Finally, within each clan there are different house groups. Mr. Hotch listed all of the house groups in Klukwan. "Houses" in this context refer to physical structures, which traditionally housed nuclear families.[15] *See generally, G.* Emmons, *The Tlingit Indians* (edited with additions by Frederica de Laguna, 1991).

Regarding the four house posts (sometimes called poles or totems) and rain screen here at issue, Joe Hotch testified that they were "clan trust property," with great spiritual significance to the Ganexteidi Clan, which has primary custodial rights over them. Mr. Hotch and other witnesses explained that the tribe on the whole also has an interest in the artifacts because they have tremendous significance not just for Ravens, but for all Eagles in Klukwan as well.

Joe Hotch described in eloquent terms the healing quality which the artifacts assume. For example, when a member of an opposite clan (of the Eagle moiety) died, and a potlatch was held as a part of the progression of Tlingit funeral arrangements, members of the grieving clan would be brought before the rain screen and told that it constituted medicine which would relieve the loss of their clan member.

Mr. Hotch also provided detailed testimony regarding how certain property is confirmed as being clan trust property, which includes presenting it in a ceremony in which members of the opposite "tribe" *(i.e.,* in this case members of clans of the Eagle moiety) are invited, which completes the confirmation of the clan trust status of property such as the Whale House artifacts, which, according to Mr. Hotch, were subject to this process. Joe Hotch recalled attending many ceremonies at the Whale House in which the artifacts played a central role.

He also recalled the two unsuccessful attempts in the mid-1970s to remove the artifacts from the Whale House in Klukwan. He recalled that in 1976 Estelle DeHaven Johnson,. a Tlingit who was the granddaughter of "Chief Shotridge" of the Whale House, attempted to remove the artifacts with the backing of art dealer Michael Johnson. The attempt was thwarted when villagers (Victor Hotch in particular by some accounts) placed one or more skiffs (small vessels) in front of the door to the Whale House. Joe Hotch (and others) recalled that following the first unsuccessful removal attempt, Michael Johnson financed a federal court action to determine ownership of the artifacts. *Estelle Johnson v. Chilkat Indian Village, et at.,* 457 F. Supp. 384 [5 Indian L. Rep. F-194] (D. Alaska 1978), although the pendency of that action did not deter a second attempt to remove the artifacts later in 1976.[16] That second attempt was unsuccessful when the village siren was sounded, trees were felled blocking exits of the village, and members of the tribe acted together to prevent the removal. [17]

Joe Hotch identified plaintiff's exhibit (ex.) 6, which was admitted during Mr. Hotch's testimony. That document, dated October 7, 1976, was signed by Mr. Hotch's father Victor Hotch, and witnessed by Joe Hotch and Richard King. It reads:

> To Whom It May Concern:
>
> I, Victor Hotch, of Klukwan, Alaska, state that I no longer wish to be associated with any plan or option or agreement for the sale and removal of houseposts, screens, or other Tlingit Indian artifacts kept in the

Whale Clan House at Klukwan. By this letter I withdraw any permission which I have previously given to any person, including Michael and Sharon Johnson and the Northwest Historical Corporation for the sale and removal of the Whale House artifacts.

Plaintiff's ex. 6. According to Joe Hotch, his father executed this statement around the time that he had returned checks to Michael Johnson: one for $50,000, and another for $1,000, which had been tendered in an attempt to solicit Victor's support for the removal and sale of the Whale House artifacts. Joe Hotch testified that he and Richard King, members of the Eagle moiety, witnessed the document, which was significant because as members of an opposite clan of the Eagle moiety (Victor was a Raven), the appropriate "stamp" under Tlingit custom law was put on the document.

Joe Hotch testified that around the same time, *i.e.*, the Fall of 1976, a peace party was held in Klukwan, attended by representative clans of both moieties, for the purpose of confirming the position of the community on the whole that the Whale House artifacts should not be removed. The congregation was also intended to heal wounds resulting from contacts initiated by Michael Johnson with a number of village residents, which involved discussions about the possibility of removing the Whale House artifacts, which would then be sold on consignment by Michael Johnson.

Joe Hotch testified that he had taken it upon himself to earlier write to Michael and Sharon Johnson to express his objection to Mr. Johnson's offers of large sums to entice the sale of the Whale House and other artifacts. Mr. Hotch's May 27, 1975 letter to Michael and Sharon Johnson (who then resided in Seattle, Washington) reads in pertinent part as follows.

> I find it imperative to present my objection to your technique and tremendous dollar offers you present to gain possession of our artifacts here in Klukwan. These artifacts are a part of our Thlinget needs to retain, as they represent our past and our future within the art itself; for this reason they have been handed down generation after generation.
>
> ...
>
> A Thlinget selling its tribal artifacts is degrading its entire Clan, much more the Thlinget nation. ... We have gone on record year after year to protect our tribal artifacts. I'm sure our IRA president Dick Hotch made you aware of this by telephone previously, however I'm doing likewise, being that this affects many tribes in our Thlinget nation I'm sending copies to the newspapers listed below.

Plaintiff's ex. 10. Michael Johnson's June 6, 1975, in response, reads in relevant part as follows.

> I understand your fears for as well as your love of the objects which represent your fine heritage. There is no doubt that there is strong pressure from the non-native world regarding these objects. Tlingit art is now recognized by all the art authorities of the world as one of the greatest that ever existed and is important to the whole history of mankind.

Significantly, in the next paragraph, Michael Johnson assures Joe Hotch that:

> I would never... attempt to purchase objects from a clan keeper without the consent of the entire clan.

Plaintiff's ex. 11. Joe Hotch testified that the background to the letters quoted above included unsuccessful efforts by Michael Johnson to persuade his father Victor Hotch, who had been appointed caretaker *(hitsati)* of the Whale House, as well as Victor's sister Mildred Sparks, to accept large sums in exchange for agreeing to facilitate the removal and sale of the Whale House artifacts. Joe Hotch then testified that following unsuccessful attempts by Michael Johnson to persuade his father and aunt to sell the artifacts, Michael Johnson telephoned Joe Hotch, raising the ante a bit, offering him $75,000 if he would arrange for the sale of the rain screen and house posts to Michael Johnson.

Joe Hotch testified that he was saddened when around this same time (during the mid-1970s) Michael Johnson was ultimately successful in persuading Joe's brother Dick Hotch to sell a bear mask, which was lost to their Bear Clan forever. Joe Hotch testified that Michael Johnson furnished Dick Hotch with a replica of the bear mask which was intended to fool the community into thinking that the replica was the original. According to Mr. Hotch, that folly

proved fruitless and the replica was recognized as such.

This testimony by Joe Hotch laid the foundation for discussion of what is referred to simply as the Ordinance of May 12, 1976, quoted above, which prohibits removal from the village (without prior council approval) of "artifacts, clan [illegible]ests, or other Indian art works," which defendants are accused of violating. Mr. Hotch testified that by that time they had retained the services of attorney Linn Asper, who represented the tribe in its attempts to prevent removal of the artifacts by enacting the May 12, 1976 Ordinance to that effect, as well as defending the tribe in Estelle Johnson's federal action seeking to clarify ownership and control of the artifacts.

On May 6, 1976, the village sent a telegram to the BIA in Washington, D.C., requesting direct intervention to assist the tribe in preventing continuing attempts to remove artifacts, as well as recovering artifacts lost to date which had been removed without appropriate consultation and consideration by the entire clan, which properly exercised custody of artifacts under tribal law. The telegram informed the BIA's Commissioner Morris Thompson that "[o]n April 26, 1976 members of Chilkat Indian Village unanimously voted never to sell our artifacts and to protect those within our possession. The tremendous dollars offered for these artifacts are turning our Tlingets against one another." Plaintiff's ex. 13. Joe Hotch testified that six days later, upon proper notice, the ordinance prohibiting removal of artifacts (without first requesting and receiving council approval) was passed unanimously. He and others testified that the ordinance was thereafter conspicuously posted in the village.

Mr. Hotch also explained that the tribe was the plaintiff in this and the related federal court action (J84-024) because Martha Willard requested the assistance of the IRA § 16 tribal government in recovering the artifacts after the 1984 removal. Mrs. Willard, a leader of the Ganexteidi Clan, had previously rejected Michael Johnson's proposals regarding the sale of the artifacts, and was the person who contacted state troopers, alleging that a criminal theft of the artifacts had occurred.

Judge Linn Asper provided lengthy, credible testimony which covered his legal representation of the village from 1976-1980, including the establishment of this tribal court through amendment of the tribe's constitution, and then enactment of Ordinance 80-001. Prior to holding his current position as a state court judge in Haines, Alaska, Mr. [illegible]per was a state district court judge for several years in Juneau, Alaska.

Judge Asper testified that he was originally retained to assist the village in getting back the "Frog House" [18] property, and then became general counsel to the tribe, handling all of its legal affairs. He stated that one week after the Frog House property was removed, he was arranging to get an affidavit from a truck driver involved in removal of the Frog House property. That truck driver informed Mr. Asper that he could not talk with him just then because he had to go to Klukwan to pick up another load of artifacts. Mr. Asper notified Joe Hotch at Klukwan, and the members of the village prevented the trucks from removing the Whale House artifacts.

The dispute over control of the Whale House artifacts resulted in the *Estelle Johnson* litigation in federal court, mentioned above. Linn Asper represented the village, which was one of the defendants, and Robert E. Giles of the Seattle firm of Perkins, Coie *et al.* represented the plaintiff. According to Judge Asper, Michael Johnson financed plaintiff's action, and sought a declaration by the federal court that he had the right to purchase and remove the artifacts from Klukwan. Michael Johnson was unsuccessful with respect to that relief. Judge von der Heydt's September 27, 1978 memorandum and order, 457 F. Supp, 384 (D. Alaska 1978), held that the defendant village had sovereign immunity, was an indispensable party, and dismissed the case without prejudice on that basis. 457 F. Supp. at 389. Judge von der Heydt's order clearly reflects the federal court's expectation and preference that the dispute be resolved by a tribal court at Klukwan according to Tlingit law. *Id.*

In response to a question from plaintiff's counsel, Judge Asper stated that the 1976 Ordinance prohibiting removal was a central part of the federal court action, and that Michael Johnson clearly was aware of it. Numerous exhibits were received into evidence from that period reflecting the ongoing wrangling of the parties and their attorneys over this dispute, which still has finally to be resolved.

[illegible] state and federal governments were brought in as well. For example, as early as August 25, 1975, the BIA's Area Director for Alaska memorialized the following observations.

> We made a trip to Klukwan on August 21st. While we were up there the Village Council expressed some concern they had about a man who, continually comes to Klukwan in order to attempt to purchase ceremonial regalia and other original artifacts. Several members of the Council have confronted this individual and indicated they don't like him coming around and making these attempts. His solicitations are of a serious nature insofar as he has offered as much as $500,000.00 for some items.

Plaintiff's ex. 31. The same Area Director's June 14, 1978 letter to Linn Asper reads: "Your question relating to recognition of Chilkat Indian Village as it is currently organized is an unequivocal yes."[19] Plaintiff's ex. 33.

The witness also testified that during the pendency of the earlier federal action a second attempt was made during early morning hours to remove the artifacts from the Whale House. According to Judge Asper, the locks to the Whale House were broken, but villagers managed to stop the removal before the truck could be loaded and driven away. Judge Asper testified that it was thereafter discovered that Michael Johnson had rented the truck which was used in that attempt.

On the subject of Michael Johnson's involvement with the attempt to remove the artifacts during the pendency of the *Estelle Johnson* case, Judge Asper recalled:[20] "Michael Johnson had invoked the jurisdiction of the federal court and at the same time he was asking the federal court to do these things for him [allow for sale and removal of the artifacts] he was financing the operation to steal them, the way we saw it."

Judge Asper also provided answers and insights (under both direct and cross-examination) regarding the Tribal Court Ordinance (80-001), including the intent behind the ordinance, and the intended meaning of particular provisions. For example, he stated that article III, § 4(2), which asserts jurisdiction over "Decedents Estates," was specifically drafted to empower the tribal court to hear disputes such as the instant matter. Judge Asper also explained that the ordinance was enacted in response to the federal court's ruling in the *Estelle Johnson* case, which concluded with the expectation that a tribal forum would be established to resolve the dispute. He stated that the ordinance was intended to confer tribal court jurisdiction over a non-Indian such as Michael Johnson, who had visited the village several times during the early 1970s, and had established a pattern of contacts designed to facilitate his commercial dealings with members and property within the village.

Tlingit elder George Stevens, Sr., born in 1916, provided credible and compelling testimony at trial. Mr. Stevens., like other Tlingit elders, such as Cyrus Peck, Sr., began his testimony by making a statement in Tlingit. That statement was then translated (by Anna Katzeek), and the witness was then subject to direct and cross-examination. Mr. Stevens stated that he is a member of the Valley House (of the Ganexteidi Clan of the Raven moiety). He then stated that his mother's English maiden name was Sarah Kladoo, and that Maggie Hotch was her blood sister. The witness next responded "right" when asked if Maggie was the mother of Mildred Sparks, Victor Hotch, and Clarence Hotch.[21]

Mr. Stevens provided the court with his knowledge of the background to the building of the current, cement Whale House, and his view of the significance of the artifacts. He recalled the 1937 payoff potlatch for his maternal grandmother, and the purchase of cement in Juneau by his mother, transferred by his father to Klukwan, resulting in the rebuilding of the Whale House, now known as the cement Whale House in Klukwan. Mr. Stevens emphasized that his mother's people (Ganexteidi Clan) and other tribal members were motivated in significant part to construct the present cement Whale House to preserve[22] the artifacts:

> The reason why my mother helped on that house at that time. . .is to preserve that wall screen, and the totem poles, wormdish, whatever they had in there. They wanted to preserve it and save it. During the payoff there was nothing said about selling it-no!

Mr. Stevens stated that he felt compelled "to testify against your group [the Tlingit defendants]. I have to, I'm not going to sit back. I'm honoring my mother's words."

The witness then recalled that just before his mother died in 1968, she summoned him and expressed concern over the fate of the artifacts. Mr. Stevens was instructed by his mother that if he was ever approached on the subject of removing the artifacts, not to take part in it. Expressing himself in Tlingit, Mr. Stevens's translated testimony was as

follows.

> My mother said the poles in. the house, and the screen, there's something happening with them in the wrong way. There's a story on the screen and our respect is on it. Without this screen and the corner posts, this house is going to be like a house with ghosts-a weird place. That's what she said to me.

George Stevens stated that Victor Hotch advised him to be courageous in resisting any attempts to sell the artifacts, saying "don't let anything happen to our artifacts." The witness testified that as a matter of tribal law, no one individual could sell the artifacts, and that the artifacts represent the history of the Ganexteidi Clan.

Under cross-examination, Mr. Stevens reiterated that Victor Hotch told him several times never to take part in selling the artifacts.

Anna Katzeek testified at length about the history and significance of the artifacts. Mrs. Katzeek is the widow of George Katzeek, who was a member of the Ganexteidi Clan. She was privy to many conversations over the years regarding the artifacts. She recalled that Mary Williams gave Victor Hotch the key to the Whale House around 1950, with the understanding that the totems would be preserved so that future generations could view their history through the artifacts. Mrs. Katzeek was definite in saying that Victor Hotch was a member of the Valley House.

Mrs. Katzeek said that the rightful heirs of the Whale House today would be Martha Willard's children, and the descendants of female children. However, under tribal law, even if the rightful heirs of the Whale House could be determined (which would not include the Tlingit defendants), it is still the Ganexteidi Clan as a whole which would control decisions about the custody of the artifacts. Mrs. Katzeek said it was "unthinkable" to her husband and his clan, as well as to herself, that the artifacts could be sold. The artifacts tell the story of the clan and must remain with the clan, she said.

David S. Case, the author of *Alaska Natives and American Laws* (1984), testified about his role in the Interior Department's Regional Solicitor's Office from 1978-1982, and certain advice he gave the BIA regarding Klukwan's Constitution and the requirements for enacting ordinances. In particular, Mr. Case testified that there was no need for the BIA to approve Klukwan's Tribal Court Ordinance.

Elder Annie Hotch, the widow of Victor Hotch (they were married in 1915), testified that her husband knew that the artifacts were not to be sold, and gave his brother Clarence the key to the Whale House with this understanding.

Noted Tlingit writer and scholar Andrew Hope III provided the court with useful testimony covering details of Tlingit social structure, and the meaning of "clan crest objects." Mr. Hope explained that such objects, which include the artifacts here at issue, have gone through a ceremonial process, such as a potlatch in which the objects are dedicated. The spirits of ancestors are honored, and those spirits are warmed and like to be around clan crests such as the Whale House artifacts, according to Tlingit belief.

On the subject of ownership and sale of crest objects, Andy Hope expressed his view that such objects, which can include songs and stories, cannot be "owned;" there is no way to put a price on spirits, and certainly no *hitsati, i.e.*, caretaker of a tribal house, has the right to unilaterally dispose of clan crest objects. Mr. Hope offered his view that the artifacts should remain in the village, and that the spirits will feel better upon the return of the artifacts to the Tlingit community in Klukwan.

Rosita Worl, who is Tlingit, is a social anthropologist with roots in Klukwan. She received her M.S. degree from Harvard in 1975, and has submitted a draft thesis for her Ph.D. at that institution. She testified about Tlingit social structure, clan crests, and related subjects of tribal law. This court found her to be a credible, informative, and well-prepared witness, who provided direct answers to the questions presented to her.

Ms. Worl testified that the Whale House artifacts are crest objects which are owned by the Ganexteidi Clan on the whole. They were commissioned in the traditional way and brought out in a potlatch, in which members of the opposite side (Eagles) played a central role. Under Tlingit law, such objects cannot be sold, unless for some reason (such as restitution for a crime) the entire clan decides to do so. The participants in a clan decision such as this would

include all adult males, and high-ranking women. The witness testified that the traditional penalty for an individual selling artifacts in violation of tribal law was death.

Ms. Worl explained that Tlingit society traditionally is a "meritocracy," where one achieves high status not through physical wealth, but rather through good deeds. It is not a caste system, as one can change his or her status through the nature of their deeds. A 15-year-old could achieve high status, according to Ms. Worl.

Like other witnesses, Ms. Worl was asked if one must automatically follow the directives of an uncle.[23] She responded that an adult would not automatically follow a directive from someone like a maternal uncle, but rather would exercise independent judgment to assess the directive.

Rosita Worl stated that the Whale House has tremendous significance for all members of the Ganexteidi Clan, as well as the village generally. Many bodies laid in state at the Whale House. She added that any member of the Ganexteidi Clan has the right under tribal law to use the Whale House for certain purposes.

The next witness at trial was Charles Smythe, who received a Ph.D. in cultural anthropology from the University of Oregon in 1978. Dr. Smythe testified at length about the history of the Whale House artifacts and the genealogy of the Whale House of Klukwan and its members.

Dr. Smythe testified that establishment of the Whale House goes back to around 1830, and was the idea of a respected Ganexteidi leader named Xetsuwu. He was concerned that many Ganexteidi were marrying below their status, and that establishing a new house could bring together several groups which would not only have higher status than any of the previous house groups standing alone, but would also enhance their security.

Dr. Smythe subscribes to the view that Xetsuwu then commissioned the house posts from the Old Wrangell area of southeast Alaska. While there is a difference of opinion over who actually carved the house posts, a number of scholars attribute Xetsuwu himself with creation of the rain screen.[24]

Dr. Smythe utilized charts showing family trees to support his conclusion that the Tlingit defendants are not members of the Whale House, but rather are members of the Valley House of Klukwan. Further, he stated that he found no connection between the Whale and Valley houses.

A nexus of sorts is evident however, from the testimony of Dr. Smythe and others that Mary Williams, a member of the Whale House, made the decision to give the key to the Whale House to Victor Hotch, despite the fact that Victor was a member of the Valley House. (This figurative and literal giving of the key, making Victor caretaker of the Whale House, undoubtedly contributed to the apparent good faith belief of the Tlingit defendants that they are members of the Whale House.) Dr. Smythe also testified that Estelle Johnson and her children are the sole surviving members of the Whale House of Klukwan. [25]

Under effective cross-examination by defendant Irene Rowan, Dr. Smythe stated that he had spent about 75 days researching the history of the Whale House, yet he admitted that he had not interviewed any of the Tlingit defendants, apparently because he thought they might be hostile.

Ms. Rowan also asked Dr. Smythe who were the current leaders of the Ganexteidi Clan in Klukwan. He answered that such leaders would include George Stevens, Chief William Johnson, [26] Ruth Kasko, James King, Jones Hotch, Jr., and perhaps others.

Plaintiff called as its next witness Roger McCoy, a retired Alaska state trooper, who was contacted by Martha Willard in June 1984 to report the theft of the artifacts some two months earlier. There was no question who the principal players in the removal were, and the troopers and the state prosecutor proceeded to investigate the removal of the artifacts in order to determine if a state crime had occurred. While Trooper Roy Holland went to Seattle to interview Michael Johnson and others, Trooper McCoy drove to Klukwan to view the alleged crime scene and interview witnesses there.

Trooper McCoy confirmed the removal of the artifacts by four or five men in April 1984 around Easter. He said that he spoke with Clarence Hotch, Bill Thomas, Irene Rowan, and others, such as complainant Martha Willard. Trooper McCoy testified that he next gathered facts indicating that the artifacts had been ferried to Seattle, and that Michael Johnson, whose residence was in Seattle at that time, acted in concert with the removers and likely oversaw the removal of the artifacts from Klukwan while he (Michael Johnson) was just 22 miles away at the nearest city of Haines, Alaska, when it took place.

Trooper McCoy stated that as a result of his investigation, he concluded that some art dealers make a living by persuading Indians to sell their artifacts. He also testified that because of the cloud over ownership of the artifacts, the district attorney declined to prosecute the removal as a criminal theft.

Plaintiff's witness David Katzeek is a Tlingit born in Klukwan (Thunderbird Clan, Eagle moiety) who, like his mother Anna Katzeek, is familiar with Tlingit tribal law, including applications of tribal law within the village, and is generally regarded as having such expertise. His testimony included his statement that applicable tribal law in this case prohibits the removal and consigned sale of the Whale House artifacts by a group such as the Tlingit defendants.

Mr. Katzeek was asked by plaintiff's co-counsel Ms. Perlmutter to explain the historical significance of the Whale House artifacts, and then whether there is a spiritual significance to the artifacts. His answers were as follows.

> The primary significance is knowing who you are... with us, these particular artifacts tell a story.... When you're selling an artifact. . . you're not only getting rid of a piece of wood... you're getting rid of the music, the song, the dance, and the good, the bad, and the ugly.
>
> ...
>
> The worm dish story of a young woman nursing a worm as a pet which became a threat to the entire community... is right up there in the 21st century. If the problem was not resolved it would have ended in the destruction of not just the clan that was involved, but the entire community.... A similar thing 2,000 years later is happening. Is that of the mind? Is that just happening within the intellect? It doesn't involve the soul and the spirit? A script could be written: 'Wormdish Revisited, the Community of Chilkat, 2,000 years later.' This is why we need to keep these things here; this is why we sing the song, and this is why we need them for our ceremonial parties. That's the significance of the artifacts.

Ed Warren was plaintiff's next witness at trial. The court observed that he clearly was well-informed with respect to the subjects he addressed during direct and cross-examination, and presented a calm and credible demeanor. Mr. Warren, a Tlingit who was born, raised, and continues to reside in Klukwan, emphasized that the IRA § 16 tribal government, which is the plaintiff in this action, is the proper party under the circumstances of this dispute to civilly prosecute this case on behalf of the Whale House and the Ganexteidi Clan, and to oversee the return and custody of the artifacts, which he characterized as clan trust property. Mr. Warren noted that the Chilkat Indian Village Tribal Council is the singular governing body in Klukwan, and that members of the village organized the tribal government pursuant to IRA § 16 with the confidence that the council would take ultimate responsibility for protecting tribal resources, which encompasses the artifacts.

Ganexteidi Clan member Ruth Kasko compared the artifacts with the American flag, rhetorically asking, "where are you without it?" She recalled that her father Daniel Katzeek (Killer Whale) and her oldest brother George helped to build the current cement Whale House for the Ganexteidi. He wasn't concerned about not being paid for this labor, Mrs. Kasko testified, because he knew that his children were Ganexteidi and felt that his efforts were to their behalf. Mrs. Kasko, a leader of the Ganexteidi and current member of the tribal council, stated that the 1976 ordinance was intended to protect tribal property such as the artifacts.

Evelyn Hotch's deceased father Clarence Hotch was a principal participant and on the scene director of the 1984 removal of the artifacts which gave rise to this litigation. Her testimony reflected an abiding feeling that her father's ultimate decision to cooperate in a commercial dealing with Michael Johnson to remove the artifacts was dead wrong under tribal law, and that she never forgave him for that.

Mrs. Hotch recounted a history dating back to the 1970s of visits to Klukwan by the non-Indian defendant Michael Johnson, during which she observed systematic and calculated attempts by Michael Johnson to "butter them up." Mrs. Hotch cited offers by Michael Johnson to arrange and finance trips to Seattle for her father, and others who were seen as potential players in a deal to sell and remove the Whale House artifacts.

Subsequent to the removal of the artifacts by her father and other defendants, Evelyn Hotch testified that she asked her father how he could do such a thing, which contravened not only tribal customs and written tribal law (the 1976 Ordinance) which she knew her father was aware of, but also the explicit directive of her Uncle Victor Hotch to his brother Clarence to make sure to reject all efforts by outsiders to purchase and remove the artifacts. Mrs. Hotch sighed that her father had no answer to this question, and simply told her to mind her own business.

Other witnesses called by plaintiff included Don "Bosch" Hotch, Judson Brown, and Jones Hotch, Jr. A common theme of their testimony was that removal of the artifacts violated applicable tribal law, and that the remedy for the violation should include the return of the artifacts to Klukwan.

Jones Hotch, Jr. testified that he is a member of the Whale House, but was never consulted regarding the removal of the artifacts (and never would give such consent). The witness stated that "our artifacts are on foreign soil. We want them brought back to home soil."

Defendant Bill Thomas was called by plaintiff, and was the only defendant to testify. Plaintiff's attorney Ms. Perlmutter was allowed to conduct her questioning of Mr. Thomas in the form of cross-examination. A lot of ground was covered and facts regarding his knowledge of events regarding the 1984 removal of the artifacts and Michael Johnson's role were effectively elicited.

Ms. Perlmutter began by confirming that Mr. Thomas first talked with Michael Johnson about the artifacts in 1983. She then asked if Michael Johnson was the one who initiated the contact, *i.e.,* "he made the first phone call to you?" Bill Thomas answered that yes, he thought that was the case. Plaintiff's ex. 82 was then discussed. That document is a copy of a March 14, 1984 letter from Michael Johnson addressed to "Chief" Clarence Hotch and Mr. Bill Thomas. It reads as follows.

> I do want you to know that Estelle Johnson will not be coming up there. I have too much money, time, and emotion invested in this thing to let her interfere. You must remember that her Uncle and Mother built the Whale House building, and that we will need her to be on our side later. That is why I am talking to her now. You and Clarence will not have to deal with her. I will.
>
> I expect to come to Haines to meet with everyone April 23 or 24. We can discuss the contracts we already have as well as how to handle this thing in the future.
>
> If you decide to take the artifacts out before then call me... and I will come right up. Be assured that I will get you the best price for it.
>
> P.S. Why don't you call Martha and Rose and try to reach an understanding with them. Perhaps they would like me to sell their things for them and you could help each other move the things out of the Village.

Plaintiff's ex. 82.

Mr. Thomas testified that prior to the removal he and Clarence Hotch met with Michael Johnson at the Thunderbird Motel in Haines, and discussed the anticipated removal of the artifacts. Bill Thomas stated that during that meeting Michael Johnson presented him with the consignment agreement. Plaintiff's ex. 84. That agreement is signed by Michael Johnson and Bill Thomas. Mr. Thomas signed on behalf of "the Whale House Group," whose members are listed in an appendix. The consignment agreement, which is dated May I, 1984,[27] guarantees that the Tlingit defendants will receive a minimum of $1 million from the sale of the artifacts.

The members of the "Whale House Group" listed in the appendix to the consignment agreement are the Tlingit

defendants in this case. All of them signed a document titled "Power of Attorney and Confirmation of Ownership" in early May 1984 appointing Bill Thomas as their agent regarding the sale of the artifacts through dealer Michael Johnson. Plaintiff's ex. 85. That document provides that if Bill Thomas dies or becomes disabled, Irene Rowan is appointed in his place.

A separate contract was executed on July 25, 1984, by Michael Johnson, and Estelle Johnson and Shirley Cunningham. That document acknowledges that Michael Johnson was attempting to sell the artifacts at that time; that the women claim an interest in the artifacts; and that in exchange for Michael Johnson paying Shirley Cunningham $10,000 and Estelle Johnson $50,000, the women agree to:

> release any interest they may have in any other Artifacts from the village of Klukwan, Alaska, that are not in the possession of the undersigned and any interest they may have in the cement structure situated in Klukwan, Alaska, known as "The Whale House."

Plaintiff's ex. 86.

Mr. Thomas recited the basic facts involving the actual removal of the artifacts in late April 1984, about which there is virtually no dispute. Clarence Hotch came to Bill's house in Klukwan and told him the time had come to act to remove the artifacts. Bill called his brother Clifford, who brought a truck from his residence in Haines. Buzzy and Vincent Hotch also assisted, according to Bill Thomas. Clarence opened the door to the Whale House, they removed the artifacts (except the worm dish, which was too fragile and old to even be carried), loaded them onto three trucks, and transported the artifacts to the Haines Motel where Michael Johnson was staying, so that he could inspect the property. After being stored in the garage of Defendant Evans Willard for a few days, Michael Johnson and Bill Thomas arranged for and effected transportation of the artifacts to Seattle by ferry.

Bill Thomas stated that he currently feels at times that the removal was wrong. He said that in large part he felt obliged to participate in the removal because his uncle, Clarence Hotch, desired it.

Mr. Thomas also discussed the current rift between the Tlingit defendants and Michael Johnson. Mr. Thomas testified that the Tlingit defendants no longer consider the consignment agreement to be binding; that the artifacts are not for sale; and that they should be returned to Klukwan.

Bill Thomas explained that the rift with Michael Johnson was inevitable upon the Tlingit defendants' decision to fire attorney Donna Willard during the spring of 1992, at which time they also informed Michael Johnson that the artifacts were no longer for sale. Mr. Thomas stated that Michael Johnson responded with a threatening letter, saying he was not going to "get shafted." Bill Thomas then emphasized to the court that the Tlingit defendants were not present at trial for the purpose of defending Michael Johnson, who Bill Thomas said took advantage of an elder: his uncle Clarence Hotch.

Conclusions

I. The Whale House Rain Screen and House Posts as Artifacts, Clan Crests, and Indian Art Within the Meaning of the Ordinance

The artifacts consist of four elaborately carved wooden posts (made of spruce and over nine feet high) and a wooden partition (made of thin cedar boards) called a rain screen. George Emmons [28] wrote that they are "unquestionably the finest example of native art, either Tlingit or Tsimshian, in Alaska, in boldness of conception-although highly conventionalized in form-in execution of detail, and in arrangement of detail."[29] The record indicates that if the artifacts were sold on the open market they would likely reap a price of several million dollars.

The artifacts were created around 1830. A prominent leader in Klukwan, Xetsuwu, resolved to build a new house (Whale House) in order to unify certain existing house groups of the Ganexteidi Clan. He commissioned the house posts from a famous carver who resided, in the Stikine River area, near what is currently referred to as Old Wrangell,

Alaska. The name of that artist remained unknown until 1987, when a written account was discovered which identified his name as Kadjisdu.axtc. [30] The artist, who made detailed sketches while being told about the clan's stories during the canoe trip to Klukwan, is said to have resided in Klukwan for one year while carving the posts. By some accounts he was paid 10 slaves, 50 dressed moose skins, and several blankets.

The four posts represented the four groups that were brought together to form the new Whale House. The posts and rain screen tell stories of the clan; not just of the Whale House. The artifacts and the Whale House itself were created and dedicated in the traditional manner. The Ganexteidi hired Eagles to construct the original house. The Eagles were then repaid in a traditional "payback party," [31] and the property was brought out in a potlatch and dedicated as clan property.

As Dr. Smythe noted, Xetsuwu's vision to unify the Ganexteidi under a new house with these clan crests was successfully implemented. The clan, as well as the Chilkat Indians generally, became a strong and powerful people. They maintained control of valuable trade routes to interior Alaska, and became quite prosperous.

The historical resistance by members of the clan to a series of efforts by outsiders to purchase these great works is testimony in itself of the clan crest nature of the artifacts, which are held in trust by the clan.

Around 1899, Yeilgooxu (whose English name was George Shotridge), *hitsati* of the Whale House, organized the construction of a new Whale House because the original one was in disrepair. Although a mudslide destroyed it before completion, the artifacts were rescued. Yeilgooxu refused the offers of his friend George Emmons to acquire the artifacts. Following the death of Yeilgooxu, Yeilxaak, who was *hitsati* of the Raven House, was chosen to be *hitsati* of the Whale House, in part because of his close ties with the Whale House.

Louis Shotridge, the son of Yeilgooxu, caused a furor in the tribal community when he attempted to purchase the Whale House artifacts for the University of Pennsylvania's University Museum. In 1922 he arranged a meeting of Ganexteidi leaders, and offered $3,500 for the artifacts. Although that was a tremendous amount of money at that time and place, the clan turned him down.[32]

As a function of the matrilineal nature of Tlingit social structure, Louis Shotridge, like his mother, was a member of the Kaagwantan Clan of the Wolf moiety-the opposite side of his father's clan (Ganexteidi) and moiety (Raven) affiliations. His disingenuous [33] claims to the property under Western inheritance law were rejected by the village. Shotridge became obsessed with acquiring the artifacts, continued his efforts during the 1920s and 1930s, but was never successful. While working for the territorial government in 1937 as a stream guard Louis Shotridge suffered a mysterious death. A schoolteacher found him near his cabin south of Sitka, Alaska. He had laid there several days with a broken neck, and died an agonizing death 10 days later.

Obsession with acquiring the Whale House artifacts did not end with Louis Shotridge. Defendant art dealer Michael Johnson has also been obsessed with the artifacts' acquisition, and his actions in this respect have caused tremendous conflicts and ill will at Klukwan. While the Tlingit defendants cooperated with him to remove the artifacts in 1984, the evidence brought out at trial leads this court to conclude that they seem to regret their 1984 actions in concert with Michael Johnson. Their spokesman Bill Thomas expressed such regret, and all of the Tlingit defendants now want the artifacts returned to Klukwan, and want nothing more to do with Michael Johnson and his attempts to sell the artifacts.

This court concludes that, inexorably, the Whale House property at issue constitutes "artifacts, clan crests, or other Indian art works" within the meaning of the tribe's 1976 Ordinance prohibiting removal of such property without first obtaining the consent of the council at Klukwan.

II. Power of the Village to Enact the Ordinance and Enforce it Against the Defendants

Defendants have challenged the tribe's authority to enact and apply its 1976 Ordinance. The assertion directly raises two issues going to the heart of this dispute. First, does the Chilkat Indian Village have the power to enact this legislation? [34] If so, may it lawfully apply the ordinance to some or all of the defendants? Answers to these dual questions require a two-tiered analysis.

A. The Tribe's Power to Enact the 1976 Ordinance

In *Chilkat Indian Village v. Johnson, et al.*, 870 F.2d 1469 (9th Cir. 1989), the court assumed-without deciding-that the Chilkat Indian Village had the power to enact the challenged ordinance in the first instance. But to prevail on this claim, the court held that the tribe must establish its authority "under federal common or statutory law...." 870 F.2d at 1474, n.9.

The village has consistently maintained that it has the authority to enact the ordinance under *both* federal common and statutory law. At the same time during this epic litigation, defendants have maintained that the tribe lacks the sovereign capacity to enact the ordinance. Just before trial, which commenced January 18, 1993, defendants cited a recently issued Solicitor's opinion in support of their position. Solicitor's Opinion, *Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers* (Jan. 11, 1993) (Sol. Op.) During the course of the four-week trial in this matter the parties requested-and were granted-the opportunity to present oral arguments on this issue.

Because it is the policy of the tribe to develop tribal law in a manner consistent with applicable decisions of the federal courts, the starting point in determining the tribe's legislative powers under federal common or statutory law is applicable decisions of the United States Supreme Court.

In *New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324 [10 Indian L. Rep. 1028] (1983), the Court evaluated a dispute between the Mescalero Apache Tribe and the state of New Mexico over hunting and fishing rights on the reservation [35] by nonmembers. The Court noted the state's concession that "the Tribe exercises exclusive jurisdiction over hunting and fishing by members of the Tribe and may also regulate the hunting and fishing by nonmembers." 462 U.S. at 330 [footnote omitted]. The Court then addressed competing state and tribal interests. While that recurring conflict of federal Indian law is not at issue in this tribal court action, the Court's "broad considerations," quoted below, which guided its assessment of federal and tribal interests, are equally applicable to the Chilkat Tribe's power to regulate, through enactment and enforcement of its 1976 Ordinance, the use and control of tribal resources such as the artifacts, whose situs for over 150 years was Klukwan (in houses affiliated with the Ganexteidi Clan) prior to their 1984 removal.

> We have stressed that Congress' objective of furthering tribal self-government encompasses far more than encouraging tribal management of disputes between members, but includes Congress' overriding goal of encouraging "tribal self-sufficiency and economic development." In part as a necessary implication of this broad federal commitment, we have held that tribes have the power to manage use of their territory and resources by both members and nonmembers.

462 U.S. at 334-35 [citations and footnotes omitted]. This court construes the "broad federal commitment" recognizing the power of tribes to manage the use of their "resources by both members and nonmembers" as encompassing the Chilkat Tribe's power here to regulate the conditions under which the Whale House artifacts can be removed from the village. *Id.*

This conclusion is compelled from an examination of the tribe's federally recognized authority under federal statutes and common law,[36] as well as the "Indian country" status of the contiguous 897.4 acres owned in fee title by the tribe, which comprise the Chilkat Indian Village, and define the boundaries of its territorial jurisdiction. See Chilkat Ordinance 80-001, art. III, § 5.

Federal common law includes recognition by the federal courts of tribes' inherent legislative powers. In referring this case to this tribal court, the district court noted and rejected defendants' argument that the power to enact civil legislation such as the ordinance at issue is restricted to tribes occupying "reservations":

> This argument avoids the principle that those powers lawfully vested in an Indian tribe are generally not 'delegated' powers granted by Congress. but rather are "inherent powers of a limited [sovereign] which [have] never been extinguished." *United Slates v. Wheeler,* 435 U.S. 313, 322, 98 5. Ct. 1079, 1086 (1978)... Tribes exercise power "over both their members and their territory." *Mazurie,* 419 U.S. at 557, 95

5. Ct. at 717. This power includes the power to legislate and adjudicate matters within tribal territory.

Slip op. at 12 (Oct. 9, 1990). Citing controlling language in *Montana v. United States,* 450 U.S. 544, 565 (1981) *(Montana),* Judge von der Heydt then concluded that "the power to pass the ordinance that is in dispute in this cas was part of the retained, inherent power of the Chilkat Indian Village." Slip op. at 13. *See also* F. Cohen, *Handbook of Federal Indian Law* (1982 ed.) at 252-57, 342-43 (Cohen). ("Under the principle that tribal sovereignty is retained where not ceded to or restricted by federal authority, tribal court civil jurisdiction is very broad." [37] *Id.* at 342.)

This court concludes, then, that the Chilkat Tribe had authority to enact the 1976 Ordinance based on federal common law, the village's IRA constitution, as well as its retained, inherent authority.

B. The Tribe's Authority to Enforce the Ordinance

In *Chilkat Indian Village v. Johnson, et al.,* 870 F.2d 1469, 1474 (9th Cir. 1989), the court held that "[i]n our case the state of the law is such that the heart of the controversy over the claim will be the Village's power, under federal law, to enact its ordinance and apply it to non-Indians [footnote omitted]." With respect to enforcement against the Tlingit Indian defendants, however, the court held that no federal issue was raised, and that enforcement against the Tlingit defendants [38] raised "issues of tribal law. . . [which] are the staple of the tribal courts." 870 F.2d at 1475-76.

The Supreme Court's 1981 language in *Montana* remains the basis under federal law to evaluate tribal civil jurisdiction over non-Indians. The *Montana* Court held that the two circumstances in which tribes retain inherent sovereign power to exercise civil jurisdiction over non-Indians are:

> [1] A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the Tribe or its members, through commercial dealing, contracts, leases, or other arrangements.
>
> [2] A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

450 U.S. at 565-66. *See also Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation,* 492 U.S. 408, 109 S. Ct. 2994, 3007, 3018 [16 Indian L. Rep. 1044] (1989); *Duro v. Reina,* 110 5. Ct. 2053, 2061 [17 Indian L. Rep. 1025] (1990); *FMC v. Shoshone-Bannock Tribes,* 905 F.2d 1311, 1314-15 [17 Indian L. Rep. 2093] (9th Cir. .1990); *Morongo Band of Mission Indians v. Rose,* 893 F.2d 1074, 1078 [17 Indian L. Rep. 2035] (9th Cir. 1990) *(Morongo); Knight* v. *Shoshone & Arapahoe Indian Tribes,* 670 F.2d 900 [9 Indian L. Rep. 2043] (10th Cir. 1982); *Confederated Salish & Kootenai Tribes v. Namen,* 665 F.2d 951, 964 [9 Indian L. Rep. 2009] (9th Cir. 1982).

There is no dispute that defendant Michael Johnson (and his corporation) entered into contractual relations with the Tlingit defendants regarding the removal and sale of the Whale House artifacts. The evidence at trial revealed Michael Johnson's extensive history of dealing with tribal members. Those dealings finally bore fruit in 1984 when defendant Bill Thomas, a tribal member residing in Klukwan, signed the consignment agreement with Michael Johnson on behalf of all of the Tlingit defendants. These facts meet the first basis of the *Montana* Court set forth above. This court holds that the tribe has the authority to regulate these consensual relations, and that it has jurisdiction in this respect over non-Indian defendants Michael Johnson and his corporation.

The trial evidence convincingly demonstrated the continuing importance of the artifacts to the tribe. As such, this court concludes that the removal of the artifacts from Klukwan had a direct effect on and posed a distinct threat to the political integrity, health, and welfare of the tribe. This court heard extensive, credible testimony about the significance of the artifacts to the welfare of the Ganexteidi Clan as well as the entire tribe. All members of the village continue to rely on the artifacts for essential ceremonial purposes. The artifacts embody the clan's history. Just as earlier attempts to remove the artifacts caused injury to the tribe through friction and clashes among tribal houses and clans, *a fortio* the 1984 removal in violation of the tribe's 1976 Ordinance had a direct effect on the health and welfare of the tribe. This court finds that under the second basis of the *Montana* Court, the tribe retains inherent power to exercise authority

over the conduct of Michael Johnson, who conspired with the Tlingit defendants to remove the artifacts from the village in violation of the 1976 Ordinance.

The Ninth Circuit stated that the issue of Indian Country must be addressed when assessing the village's claim to enforce its ordinance. 870 F.2d at 1474. In referring the case to this court, the district court did so. It held that "if Chilkat had governmental power under its status as a reservation, it appears that ANCSA did nothing to extinguish those powers." Slip op. at 11 (Oct. 9, 1990). Although ANCSA extinguished the tribe's reservation, Judge von der Heydt held that Indian Country continued to exist after passage of ANCSA, because nothing in ANCSA explicitly terminates Chilkat's powers, including its territorial jurisdiction. "Therefore, the status of the dependent Indian community was not extinguished by the passage of ANCSA." Slip op. at 15.

Nonetheless, defendants continue to argue that the village does not constitute Indian Country within the meaning of the applicable federal statute. 18 U.S.C. § 1151. Defendants offered a single piece of evidence: the above-mentioned U.S. Solicitor's opinion which issued in the last days of President Bush's administration. Plaintiff argues that the Solicitor's opinion ignores controlling law governing the effect of ANCSA; that even if the Solicitor's pinion were correct, it does not apply to the Chilkat Indian Village; and that the evidence demonstrates that the Chilkat Indian Village is a "dependent Indian community." This court agrees.

The village holds its former reservation lands in fee title. The Solicitor's opinion noted as follows.

> Although ANCSA did revoke the reservation for the Natives of the Village at Klukwan, the reservation lands were not conveyed to the ANCSA corporation for the Village of Klukwan. Instead, Klukwan became a special case during ANCSA's implementation when Congress amended § 16 of ANCSA in 1976 by adding §16(d), 43 U.S.C. § 1615(d). As a result, the IRA-chartered "Chilkat Indian Village" organized in 1941 by the Natives of Klukwan, ended up holding fee title to the 897.4 acres of its prior statutory reservation.

Sol. Op. at 108 n.271. Defendants argue that the Solicitor's opinion must be construed as concluding that those village lands do not constitute Indian Country. According to the Solicitor, although there are tribes in Alaska, various provisions of ANCSA implicitly extinguished tribal territorial powers. Sol. Op. at 130.

This court finds that the Solicitor opinion's most glaring omission on this issue is its failure to even mention the one judicial decision squarely on point: the district court's ruling in this case. Slip op. at 15 (Oct. 9, 1990). As noted above, the district court held that ANCSA did not extinguish the dependent Indian community (Indian Country) land status in Klukwan. Because the Solicitor's opinion is just that: an *opinion,* this court continues to subscribe to the view expressed in the decision of the federal district court, which constitutes binding authority on the federal question of tribal territorial jurisdiction over non-Indians.

Plaintiff also argues that even if the Solicitor's opinion were correct, it does not apply to the Chilkat Indian Village. Plaintiff points out that the Solicitor considers Klukwan a "special case," as quoted above. The Solicitor's finding that ANCSA "lands and village-owned fee lands in Alaska do not as a general rule qualify as dependent Indian communities," Sol. Op. at 117, is not inconsistent with an additional finding that the "special case" of Klukwan falls outside of this "general rule," and that the Chilkat Indian Village's lands constitute a dependent Indian community, and thus Indian Country.

Finally, plaintiff argues that the evidence establishes that the Chilkat Indian Village is a dependent Indian community. In this respect, plaintiff asserts that the federal courts have adopted standards for determining the existence of Indian Country which apply to tribes in Alaska. In *Alaska v. Venetie,* 856 F.2d 1384, 1390 [15 Indian L. Rep. 2123] (9th Cir. 1988), the court of appeals adopted the criteria in two other federal appellate decisions. *United States v. Martine,* 442 F.2d 1022 (10th Cir. 1971); *United States v. South Dakota,* 665 F.2d 837 (8th Cir. 1981).

The relevant criteria involve consideration of (1) the nature of the area, (2) the relationship of the area inhabitants to Indian tribes and the federal government, (3) the established practice of government agencies toward that area, (4) the degree of federal ownership and control over the area, *(5)* the degree of cohesiveness of the area inhabitants, and (6) the extent to which the area was set aside for the use, occupancy, and protection of dependent Indian peoples. *Alaska v.*

Venetie, 856 F.2d at 1391. While a full discussion of plaintiff's extensive briefing on this issue is beyond the proper scope of this decision, which incorporates the district court's holding on this question, this court agrees with plaintiff that the evidence presented at trial supports the conclusion that Klukwan meets the standards of a dependent Indian community set forth above.

III. Violation of the Ordinance by Defendants

There is abundant evidence in the trial record establishing that all of the defendants, including Michael Johnson, violated the 1976 Ordinance. The Tlingit defendants did not counter any of the evidence regarding their role with Michael Johnson, as well as the actual removal. Neither did Michael Johnson, who elected to not attend the trial, offer any such evidence. This court finds that the Tlingit defendants violated the tribe's 1976 Ordinance.

If any defendant can be singled out as the architect of the removal it is Michael Johnson. He began his quest in the early 1970s when he first visited Klukwan. He returned regularly, systematically dealing with different clan and house members in his efforts to acquire the artifacts. Johnson at first focused on Martha Willard, telling her in 1975 that he had found documents confirming her title to the artifacts. When she resisted his attempts, Michael Johnson turned to Estelle DeHaven Johnson.

When Estelle's attempt to remove the artifacts (paid for by Mr. Johnson) was unsuccessful, Michael Johnson financed a lawsuit in federal court to determine ownership of the artifacts. Yet that pending lawsuit did not deter Michael Johnson from financing a second attempt to remove the artifacts. Michael Johnson admitted to this in a 1977 sworn statement. Plaintiff's ex. 131 at 97-98. A third attempt by Johnson was unsuccessful because Wackenhut, a security service, declined his offer to pay them to enter the village and remove the artifacts.

After the federal case was dismissed, Michael Johnson directed his efforts to Victor Hotch, Clarence Hotch, and Mildred Sparks, sending checks to all of them. The evidence showed that Victor, at least, returned the checks and declined to complete any agreement for the sale of the artifacts. Michael Johnson finally persuaded Clarence Hotch, acting in concert with the Tlingit defendants, to remove the artifacts so that the defendants now before this court co profit from selling the Whale House artifacts.

The preponderance of evidence at trial leads this court to conclude that Michael Johnson, as well as some of the Tlingit defendants, was aware of the 1976 Ordinance. [39] Nonetheless, neither Michael Johnson or any other defendant requested the permission of the council before removing the artifacts.

The fact that Michael Johnson was 22 miles away in the town of Haines during the physical removal of the artifacts does not absolve him from culpability for violating the ordinance. This court agrees with plaintiff that, just as the driver of a getaway car is guilty of a bank robbery committed by his partners, Michael Johnson is as responsible for the removal of the artifacts as if he had been among the men who performed the physical removal that April night in 1984.

Defendant Michael Johnson conducted an obsessive campaign to acquire the artifacts. He dealt with any and all people in the village who might assist him to remove the artifacts. Acting through his corporation, he played village members off against each other, while making inconsistent representations to them. The evidence at trial uniformly established that Michael Johnson conspired with the Tlingit defendants to remove the artifacts, and that he aided and abetted the actual physical removal of the artifacts. [40] This court finds that Michael Johnson and his corporation violated the tribe's 1976 Ordinance.

IV. Defendants' Defenses

Even though Bill Thomas was the only defendant (called by plaintiff) to testify at trial, it was apparent from the questions posed by various defendants, as well as the full record (including the closing remarks of the Tlingit defendants), that the defendants intend to rely primarily on two defenses: (1) that under Tlingit custom, they had no choice but to obey their uncle, Clarence Hotch, and (2) that traditional Tlingit culture is dead, and thus tribal law is not valid. The incompatibility of these mutually exclusive assertions has not escaped notice by this court.

As to the first assertion, there was a wealth of testimony at trial that the Tlingit defendants, as adult members of their clan, certainly did have the right to question a directive by their uncle which contravened established customs of the village-in this case that the artifacts could not be sold by a caretaker of one house, but rather were subject to the control of the entire Ganexteidi Clan (and regulated through ordinance by the tribal government).

Additionally, in order to obey their uncle Clarence Hotch, the Tlingit defendants necessarily had to disobey a contrary directive by their uncle Victor Hotch. The evidence at trial showed that while Victor may have waffled in some years during the 1970s, by 1980 he had clearly expressed his disapproval of Michael Johnson's efforts, and instructed that the artifacts were not to be sold. The family understood that Victor had willed his stock in Klukwan, Inc. to Clarence pursuant to their agreement that Clarence would use this asset to preserve the artifacts.

The defendants' argument that Tlingit culture is essentially dead was unsupported by the trial evidence. While the culture has been under assault from non-Indian outsiders and institutions, [11] the lengthy testimony of many credible witnesses at trial confirmed the vitality of Tlingit culture at Klukwan, and the continuing, important role of traditional law. This court finds that the Chilkat Indian Village maintains and nourishes its culture-even though that culture, like any, is dynamic and ever-changing as a function of time and changed circumstances.

Defendants' counterclaims include a claim for aliquot credits in ownership, and the claim to legally own the artifacts. To the extent that these claims may really be in the nature of affirmative defenses, this court finds that they are unsubstantiated by the evidence at trial.

Based on the evidence at trial, and the full record, this court concludes that no legal defense has been established by defendants.

V. Defendants' Counterclaims

Defendants asserted several counterclaims[12] in their initial pleadings in this court. The defendants did not pursue these counterclaims at trial. Plaintiff argues that the counterclaims are barred by the tribe's immunity from suit, and, in any event, were not proven. Based on a review of applicable law, and the obvious lack of any evidence to support the counterclaims, this court rules for plaintiff on this issue.

This court's review of applicable federal law shows that the primary source of tribal counterclaim immunity law is *United States* v. *United States Fidelity & Guaranty Co.,* 309 U.S. 506, 5 12-13 (1940) *(USF&G).* The Court in that case held:

> These Indian nations are exempt from suit without congressional authorization (footnote omitted]. It is though the immunity which was theirs as sovereigns passed to the United States for their benefit.... Possessing this immunity from direct suit, we are of the opinion it possesses a similar immunity from cross-suits.

309 U.S. at 512-23.

Citing this 1940 case, the Court more recently affirmed tribal immunity from counterclaims in *Oklahoma Tax Comm 'n v. Citizen Band Potawatomi Tribe of Oklahoma,* _____ U.S. _____, Ill S. Ct. 905, 112 L.Ed.2d 1112 [18 Indian L. Rep. 1006] (1991). In *Oklahoma* the tribe filed a suit to enjoin collection of $2.7 million in cigarette taxes for sales made to non-Indians on tribal property. [13] The state counterclaimed, asking the federal court to enforce its assessment, and to enjoin the tribe from selling cigarettes in the future without collecting and remitting state taxes to the state. The tribe moved to dismiss the counterclaims based on sovereign immunity.

While acknowledging the general concept of tribal sovereign immunity, the state argued that the tribe waived its immunity when it sought an injunction. It also argued that to the extent that its counterclaims were compulsory under Fed. R. Civ. P 13(a), the federal court did not need an independent basis to hear those claims. The Court rejected the state's arguments, noting that it had "rejected an identical contention over a half-century ago in" *USF&G.,* 112 L.Ed. 2d at 1120. The Court stated: "We held that a tribe does not waive its sovereign immunity from actions that could not

otherwise be brought against it merely because those actions were pleaded in a counterclaim to an action filed by the tribe." *Id.* at 513. The Court went on to hold: "Petitioner does not argue that it received congressional authorization to adjudicate a counterclaim against the tribe, and the case is therefore controlled by Fidelity & Guaranty. We uphold the Court of Appeals' determination that the Tribe did not waive its sovereign immunity merely by filing an action for injunctive relief." *Id.*

The Ninth Circuit Court of Appeals issued what is perhaps the leading federal case on the subject of tribal counterclaim immunity outside of the Supreme Court's decisions. *Chemehuevi Indian Tribe v. California State Board of Equalization,* 12757 F.2d 1047 [12 Indian L. Rep. 2057] (9th Cir. 1985), *rev'd in part on other grounds,* 474 U.S. 10 [12 Indian L.Rep. 1077] (1985) *(Chemehuevi).* The *Chemehuevi* court held that tribal sovereign immunity bars counterclaims brought directly against a tribe. *Id.* at 1052. Distinguishing *United States v. Oregon,* 657 F.2d 1009, 1014 [8 Indian L. Rep. 2171] (9th Cir. 1981), the court held that entry into a lawsuit may constitute express consent, "but only if, when entering the suit, the tribe explicitly consents to be bound by the resolution of the dispute ordered by the court." *Id.* at 1053 n.7.

Pursuant to tribal policy discussed above, this court incorporates the above federal law as a matter of tribal law. Defendants' counterclaims, which were not factually established, are dismissed as a matter of law.

Relief and Order

In fashioning the appropriate relief in this tribal court case, this court first recognizes that the artifacts are currently stored in a Seattle warehouse pursuant to an injunction of the federal district court in J84-024 (JAV). Therefore, plaintiff, as the prevailing party in this action, is directed to make appropriate application to the district court to enforce necessary aspects of this court's order; principally for a modification allowing for the return of the artifacts to the Whale House at Klukwan.

This court is convinced that as a matter of tribal law the artifacts must be returned to Klukwan. Placing them in the Whale House will return the parties to the status that existed before the illegal 1984 removal. [44] In other words, it will reinstate the pre-litigation status quo. This court also recognizes that there may be a lack of adequate custodial capacity of the Whale House, and possibly the Ganexteidi Clan as a whole in Klukwan. After all, the clan, through its leaders, requested that the village (which enacted the 1976 Ordinance) bring this action enforcing the ordinance, and seek the return of the artifacts to the village on its behalf. Accordingly, this court hereby makes it clear that plaintiff Chilkat Indian Village, in consultation with the Ganexteidi Clan, has ultimate authority to enforce its ordinance, effect the return of the artifacts to Klukwan, and otherwise exercise all necessary custodial responsibility in overseeing the care and future custodial arrangements of the Whale House artifacts.

Plaintiff has sought an award of unspecified actual and punitive monetary damages against defendants. Its request for actual damages is against all defendants jointly and severally. Its request for punitive damages is requested in separate unspecified amounts against (1) the Tlingit defendants, and (2) Michael Johnson and his corporation. Plaintiff cites several factors which it believes justify a separate award of punitive damages against Michael Johnson and his corporation. Those factors are consistent with this court's findings regarding Michael Johnson's pernicious role in this matter discussed above.

On the subject of damages under tribal law, this court finds that the evidence presented at trial compels a fundamental distinction between the Tlingit defendants and Michael Johnson and his corporation-even though no legal rationale was established for the 1984 actions of any of the defendants. Although the Tlingit defendants were undoubtedly motivated in part by greed, they also believed-mistakenly as it turns out-that as members of the Whale Houses [45] they had a right to assume custody of the artifacts. The bad faith conduct of their uncle Clarence Hotch and Michael Johnson contributed to their incorrect assumption-as of 1984-that they had the right to take the actions resulting in violation of the tribe's ordinance. They appeared at trial, attempted in good faith to justify their actions, but also expressed responsibility for their actions. The Tlingit defendants, in their own way, expressed regret, and all of them now want the artifacts returned to the village.

Michael Johnson, on the other, hand remains relentless in his efforts to acquire the artifacts, which he intends to sell to

the highest bidder. He is unremorseful, and has become vindictive regarding the prospective outcome of these proceedings. He chose to not participate in the trial, and was likely disingenuous about his reasons for not attending. He declined to participate even by telephone. [46] The evidence unequivocally established that he exercised bad faith in his matter from the beginning. [47] As Judge Linn Asper testified: "Michael Johnson had invoked the jurisdiction of the federal court [to clarify ownership], and at the same time he was... financing the operation to steal them..."

Order

Under these circumstances, and upon due deliberation under tribal law, this court orders the following: The artifacts are to be returned to the Whale House in Klukwan. Plaintiff shall make appropriate application to the federal district court to accomplish this as soon as possible. Michael Johnson (and his corporation) are to pay for all expenses required to return the artifacts to the Whale House at Klukwan. Additionally, defendants Michael Johnson and his corporation are responsible to plaintiff, as the prevailing party, for costs and fees in this tribal court action. Plaintiff is ordered to submit a bill of costs and a statement of its attorneys' fees within 30 days of receipt of this decision. Michael Johnson (and other defendants) shall have 30 days after service of said bill and statement to file an objection. No other actual or punitive damages are awarded.

Counsel for plaintiff Carol H. Daniel, Joseph D. Johnson, and Mary Ann Kenworthy, Anchorage, Alaska; Willa Perlmutter, Juneau, Alaska

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Notes:

[1] *"We reach a different conclusion with regard to the claim seeking to enforce the Village's ordinance against its own members or others whose Indian status may subject them to the internal jurisdiction of the Village.... In the overwhelming majority of instances, a tribe's enforcement of its ordinances against its members will raise no federal questions at all. E.g., Doe* v. *Fort Belknap Indian Community,* 642 F.2d 276 [8 Indian L. Rep. 20691 (9th Cir. 1981). Such cases primarily raise issues of tribal law, and they are the staple of the tribal courts.... We conclude, therefore, that the Village's claim for enforcement of its ordinance against its own members does not arise under federal law within the meaning of 28 U.S.C. §§ 1331 and 1332." 870 F.2d at 1475-76.

[2] Act of December 18, 1971, P.L. 92-203, 85 Stat. 689, 43 U.S.C. §1601 *et seq.,* as amended.

[3] Upon reconsideration, the district court noted that in referring the case to tribal court it "retained no issues to itself except to retain jurisdiction." Memorandum and order at 2 (Dec. 19, 1990). Following certification of its October 9, 1990 decision, as modified, for immediate appeal pursuant to 28 U.S.C. § 1292(b), on February 21, 1991, the court of appeals denied defendants' petition for appeal. As such, the above-outlined issues are now plainly before this court.

[4] Chilkat Indian Village Ordinance No. 80-001, art,. VII, § 1(b) provides that until such time as the tribal council may adopt procedural rules, the Federal Rules of Civil Procedure apply to the extent that such rules are compatible with Tlingit custom and law.

[5] The principal spokesman among the Tlingit defendants had earlier verbally informed the tribal court clerk that the Tlingit defendants had fired Ms. Willard.

[6] By letter to the court dated December 9, 1992, defendant Irene Rowan requested that the trial be postponed from January until June or July 1993, in order to facilitate settlement negotiations, and to become familiar with court procedures and possibly retain a new lawyer. This request was denied for the obvious reasons that plaintiff did not

embrace the need for delay based on negotiations, and Ms. Rowan and the other defendants had been on notice and expressly advised to obtain new counsel by their former attorney Donna Willard since June 25, 1992.

[7] On January 5, 1993, the court received cover letters dated December 30, 1992, from Sharon and Michael Johnson with a brief enclosed narrative requesting a two-month delay to respond to this court's December 23, 1992 order compelling defendants Johnson and his corporation to comply with plaintiff's discovery request. Michael Johnson's unsworn statement claimed that he was scheduled for surgery January 6, 1993, which was stated to take two hours, and would require one or two months' recovery. He claimed that his physical condition would prevent him from conducting the search necessary to comply with the discovery request. He provided no other details regarding the operation, such as what it was for, did not indicate whether it was elective or otherwise, and offered no sworn information by anyone pertinent to the procedure and how he may have been restricted thereby. Nonetheless, it was evident from the testimony and documentary submissions of the other defendants during trial, which began January 18, 1993, that Michael Johnson and his wife conducted searches and reviews of documents in their possession relevant to plaintiff's discovery request, and selectively faxed and otherwise made certain documents available to the other defendants.

[8] This court is also mindful of (and has in many instances applied) federal statutory and case law; especially that which has been applied to this dispute by the district court and court of appeals. This court's November 27, 1991 memorandum and order at 5-6 expressly adopted the district court's October 9, 1991 holding that plaintiff Chilkat Indian Village has been recognized by the federal government as a federally recognized tribe. As discussed below, nothing in the federal trial and appellate court decisions respectively authored by Judge James A. von der Heydt and Judge William C. Canby, Jr., a distinguished Ninth Circuit judge who published *American Indian Law,* (2d ed. 1988), is inconsistent with the conclusions of tribal law enunciated below. Therefore, to expressly confirm conformities between tribal and federal legal applications, as well as a matter of comity, the federal court rulings to date are hereby adopted as a matter of tribal law.

[9] In discussing the village's power to enforce the ordinance against non-Indians, the court of appeals wrote that "[i]ndeed. the meaning of the ordinance is barely open to dispute, but the Village's power under the federal statute common law to enact and apply it is open to immense dispute." 870 F.2d at 1474.

[10] *Estelle Dehaven Johnson* s'. *Chilkat Indian Village, et al., 457* F. Supp. 384, 386 (D. Alaska 1978); slip op. at 10 n.20 (Oct. 9, 1990).

[11] Since the district court's most recent holding in this matter, there has been a refinement of federal case law on the definition of Indian Country, and a clarification by the Interior Department regarding its view of tribal powers in this state. *Oklahoma Tax Commission v. Sac and Fox Nation,* (No. 92-259) _____ U.S. _____ [20 Indian L. Rep. 10201 (1993) issued by the Court on May 17, 1993. That decision emphasized in part that "Congress has defined Indian country broadly to include. . .dependent Indian communities *Id.* at. (The question of Indian Country at Klukwan is discussed below as it relates to the tribe's authority to enact and enforce the Artifacts Ordinance which prohibits removal "from the Chilkat Indian Village.")

Additionally, during Assistant Secretary of the Interior Ada Deer's recent visit to Alaska (October 1993), she released a list of federally recognized tribes in this state which broadly defines the listed tribes' powers, and includes the Chilkat Indian Village of Klukwan. While the current Interior Department's policies covering all of the issues of this case have not as yet been fully fleshed out, recent pronouncements not only confirm that tribes such as the Chilkat Indian Village are federally recognized; there is also evident a clear trend towards viewing such tribes as having all of the attributes of sovereign status of tribal governments in the 48 contiguous states.

[12] Defendants William Thomas and Clifford Thomas, together with their uncle, Clarence Hotch (since deceased), and Buzzie and Vincent Hotch performed the actual removal while non-Indian art dealer Michael Johnson (who had travelled several hundred miles from Seattle, Washington) waited 22 miles away in Haines, Alaska. The artifacts were taken to Haines, where the men picked up Michael Johnson, and temporarily stored the artifacts in defendant Evans Willard's garage. William Thomas and Michael Johnson then discussed arrangements to ship the artifacts to Seattle, where they have since remained in a warehouse pursuant to the federal court's injunction.

[13] The defendants attending trial were housed at Haines. Alaska, 22 miles by road from Klukwan. Some of the defendants permanently reside at Haines, a city with a number of hotels, which is accessible by land and air, as well as by ferry (the Alaska Marine Highway). In this respect defendant Michael Johnson's protest that trial at Klukwan during the winter somehow posed difficulties preventing one's ability to attend is regarded as disingenuous.

[14] *See* discussion *infra* regarding the land status of Klukwan (unique status of current tribal ownership of exact boundaries of former reserve). Unlike many other Native villages in Alaska, which have both IRA tribal governments and state-chartered municipal governments. at Klukwan the only government is the plaintiff in this action-the IRA tribal government. It provides all necessary services, such as fire, water, electricity, garbage collection, etc.

[15] Traditionally, as a function of the matrilineal nature of Tlingit social structure and practice, Tlingit males moved to the house of their maternal uncle around the age of 8-12 years of age, where they were thereafter raised and received instruction about their clan and tribal law generally. *(E.g.,* testimony of Rosita Worl.) While this practice is less common today, many witnesses, especially elders, were raised in this manner.

[16] Alaska State Judge Linn Asper, who was counsel to the tribe in 1976, testified that he was incredulous that Michael Johnson financed a second attempt to remove the artifacts in 1976 at the same time that he was financing the federal suit to clarify ownership of the artifacts.

[17] Testimony of Judge Asper, Evelyn Hotch. and Jones Hotch, Jr.

[18] That dispute arose when a Canadian art dealer purchased certain property which the tribe felt was communally owned, and could not be sold by the individuals who dealt with the art dealer. Judge Asper stated that the Frog House matter was settled just prior to trial.

[19] Judge Asper testified that the special relationship between Klukwan and the federal government included factors such as Klukwan having comprised the only reservation in southeast Alaska other than Metlakatla, and the iron ore business undertaking at Klukwan which the Interior Department, with the village as a de facto partner, managed during the 1970s.

[20] At this and other points Judge Asper clearly recalled his recollections and feelings as an *advocate* for the village while he was their counsel. The court particularly noted his indignation at this juncture of his testimony.

[21] This simple accounting of the witness's matrilineal background is significant within the context of this case because it logically follows that he would consider the Tlingit defendants, descendants of Mildred Sparks and Clarence Hotch, to be members of the Valley House; not the Whale House.

[22] The prior Whale Houses were made of wood, and were therefore subject to burning-which threatened the destruction through burning of artifacts kept therein.

[23] The Tlingit defendants argue that they were duty bound to follow the directive of Clarence Hotch to sell the artifacts.

[24] *See, e.g.,* Emmons "The Whale House of Chilkat," *Raven's Bones* (Andrew Hope III, editor 1982) at 81 *et seq.* Anna Katzeek testified that she understood the artifact known as the rain screen to depict the "rains-the falling of the rains in the great flood which covered the earth, which the Tlingit people witnessed."

[25] Dr. Smythe noted that Estelle Johnson has resided away from the village for about 40 years, does not relate as a member of the village, and actually "sold" her interest in the Whale House to Michael Johnson for $60,000.

[26] According to Chief William Johnson, the word "chief" in his name holds no significance regarding a title, and is simply a part of his name in Klukwan.

[27] Bill Thomas testified that he signed the agreement at the office of Michael Johnson's attorney in Seattle after the artifacts had been shipped there.

[28] Witness Rosita Worl, who the court finds provided the best expert testimony at trial, was asked by the court who, among several published ethnographers and anthropologists on the subject of Tlingit culture, best reported the culture. She provided helpful analyses of several works, and singled out Emmons as the most accurate. Emmons's copious notes while living among the Tlingit during the 1880s and 1890s are included in a highly regarded and informative book which was published two years ago. G. Emmons, *The Tlingit Indians* (edited with additions by Frederica de Laguna 1991). *See Id.* at 60 *et seq.* (Whale House of Klukwan).

[29] *See* n.24, *supra. See generally* Enge, "Treasure of the Tlingit," *Anchorage Daily News,* April 4-8, 1993, at A1 (five-part series on the history of the Whale House artifacts) (Enge).

[30] Enge, part 2 at 4.

[31] In referring to ceremonies, "party" is synonymous with "potlatch."

[32] New York anthropologist Edmund Carpenter, who in 1975 published an essay about Louis Shotridge and the artifacts, is quoted as saying: "There wasn't 35 bucks in the whole of Klukwan at the time and they turned it down. That's style." Enge, part 3 at 6.

[33] He wrote a letter to the museum in Pennsylvania confessing that "as one who had been trained to be a true Kaguanton, in my heart I cannot help but have the feeling of a traitor who has betrayed confidence." *Id.*

[34] Despite the prior holdings of this court and the federal district court that the village did have authority to enact th ordinance, the issue is revisited by this court in light of the evidence established at trial.

[35] "Reservation" is a term of art, and is a part of the federal definition under 18 U.S.C. § 1151 of "Indian Country," which includes "dependent Indian communities," such as the lands owned in fee by the Chilkat Indian Village. *See* Judge von der Heydt's slip op. in J84-024 at 15 (Oct. 9, 1990).

[36] As noted above, both sources of federal law were addressed by the federal district court in its 1978 and 1990 holdings recognizing the powers of the tribe under its IRA § 16 constitution to prevent the sale of village assets without council approval, and to preserve the arts, crafts, and culture of the Indian village.

[37] Cohen n.103 at this juncture cites *United States v. Wheeler,* 435 U.S. 313 [5 Indian L. Rep. A-33] (1978), and 55 Interior Dec. 14 (1934) (Powers of Indian Tribes). This tribal court also subscribes to the analysis of tribal powers contained in *Hepler* v. *Perkins,* 13 Indian L. Rep. 6011, 6014 (Sitka Tr. Ct. 1986).

[38] The tribe's constitution, art. II, § 2 provides that under certain circumstances loss of membership can occur. No evidence at trial was presented establishing that any of the Tlingit defendants has at any time taken the affirmative steps provided for in the constitution to become nonmembers of the village. Joe Hotch testified that some of the Tlingit defendants have at various times served on the village council (which requires membership). The evidence did confirm that Bill Thomas, the only defendant to testify, was a member and resided in the village at the time of the 1984 removal. After trial, this court provided all parties with the opportunity to address the question whether any or all of the Tlingit defendants are currently members of the village. No response was received by any party.

[39] As noted above at 27, Judge Asper testified that the tribe's 1976 Ordinance was a central part of the initial *Estelle Johnson* federal court litigation (financed by Michael Johnson) in this matter, and that therefore Michael Johnson wa certainly aware of the tribe's 1976 Ordinance when the 1984 violation of the ordinance occurred.

[40] The record in federal court on this issue was sufficiently established to allow the court of appeals to explain in the *Morongo* case: "In Chilkat, the non-Indian had caused the artifacts to be removed from the Village; the subject of the regulation was clearly internal." *Moron go Band of Mission Indians v. Rose,* 893 F.2d 1074, 1078 (9th Cir. 1990).

[41] As the federal courts are acutely aware, the interests of tribes and states frequently collide. It is no surprise that the state of Alaska intervened in the federal action in this matter, and argued against recognizing tribal authority.

[42] Those counterclaims are intentional and malicious interference with contract rights; deprivation of due process, equal protection and just compensation; a claim for aliquot credits on ownership; negligence; breach of fiduciary trust obligation; libel; that defendants are the legal owners; and a claim for all fees and costs.

[43] The tribal property had the same Indian Country status as the land owned by the village in this case.

[44] This remedial action should also promote healing of the most recent wounds suffered by the tribal community (including the Tlingit defendants) by the continuing efforts by outsiders to use tribal members to purchase and remove the Whale House artifacts from Klukwan.

[45] The evidence at trial established that the Tlingit defendants are not, as they had honestly thought, members of the Whale House. They are members of the Valley House. Of course, under tribal law, even if they were members of the Whale House. other members of the Whale House, as well as the Ganexteidi Clan at Klukwan, would need to be consulted before the artifacts could be taken out of the cement Whale House building in the village. Then, pursuant to the 1976 Ordinance, council permission would need to be received.

[46] Telephonic testimony is allowed and is common in state and tribal courts in Alaska.

[47] For example, his May 28, 1975 letter addressed to "Tlingit Friends" confirms his understanding that: "All people volved in this know the Whale House is clan material."

Appendix A

The Ownership and Stewardship of Clan Possessions

The Ownership and Stewardship of Clan Possessions in Tlingit Property Law

Charles W. Smythe

> "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, ...
> (NAGPRA Regulations 43 CFR 10.10(a)(2))

The purpose of this paper is to discuss whether a Tlingit individual (specifically a clan leader or custodian) has the right to alienate objects regarded as clan property (*at.óowu*) under Tlingit legal traditions, and to present evidence of the traditions that were practiced in the late 19th and early 20th centuries. It will describe customary Tlingit practices associated with the ownership of clan and house property, with particular attention to the questions of what are the duties and responsibilities of the clan custodian or trustee, do these individuals have the right to dispose of clan property and, if so, under what conditions may this take place. This question has become key to this and other repatriation cases as it bears on the right of possession as defined at 43 CFR 10.10(a)(2), and because at least three institutions have asserted that the experience of culture contact effectively ended traditional cultural practices related to the ownership and stewardship of clan property and enabled individuals to sell such items to agents of these institutions and other collectors. The prevailing view among certain museums is that some time after American civil and religious authority was imposed on the Tlingit people after 1880, Tlingit individuals gained the authority to alienate such items, thus giving the right of possession to the institutions that acquired them regardless of their continuing cultural importance and sacred value to the Tlingit clans. This paper will show that traditional cultural practices relating to clan property have been exercised continuously since the contact period, and continue to be followed today by clans in Southeast Alaska[1].

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[1] For a comprehensive review of Tlingit property law, please refer to Tlingit At.óow: Tangible and Intangible Property, 1998 Ph.D. Dissertation by Rosita Worl. This study reveals the complexity of Tlingit law as it operates within the cultural context of Tlingit society and examines its application in several case studies, some of which are cited in this paper.

However, to frame the discussion in terms of customary practices of property ownership, inheritance, succession and decision-making would be inadequate, since objects that are in the category of clan *at.óowu* are more completely understood as components of a larger system of ceremonial prerogatives that include songs, stories, names, designs, landscape features and sites, animals, spirits, shaman's spells, etc. --- the collectivity of material and immaterial representations of a clan's ancestors and the events and occurrences with which they were involved that give identity to the group today. This is what traditional Tlingit people such as Richard Dalton and Anna Katzeek called "history." It is expressed most fully through social action, during clan ceremonies (most notably the ku.éex'), when the items representing the clan's identity are brought out, displayed, acknowledged and validated by members of opposite clans in a process that can best be described as an exchange among closely related clans of opposite moieties.[2] The larger framework encompasses the events that gave rise to the clan's identity; the spirits of clan ancestors and of the entities encountered by them that are believed to be inside the objects, or evoked by their use; the locations on the sea and land where these events were emplaced; certain spirits, animals and other resources found there; and the essential continuity between the past, the present and future generations of clan members (Haa Shagóon). Interactions with other clans and tribes are also included in the framework. Each clan has a unique history that distinguishes it from the others, and through the distinctive social exchange that occurs during Tlingit ceremonials the clan displays and reveals its essential identity that place it in association with, but distinct from, the other clan groups comprising their social world. "It's like the skin on your face," when you show your artifacts, in front of everybody (Kasko 1993: Interview Notes).

The discussion of clan property must be positioned in relation to the encompassing set of cultural practices and understandings that defines the meanings of clan *at.óowu*. In this framework, clan *at.óowu* are the inalienable possessions presented to other clans during ceremonies as exchange items of special value, in a form of giving among people (opposite clans) who are equivalent to each other. Clans can expect that they will eventually be "reciprocated" with a display of their *at.óowu* and clan ritual knowledge from those to whom they have given. The value of an item grows as it is exchanged symbolically between clans, through successive displays and validations in ceremonies, and its spiritual connection to the clan is brought forward from past generations to the present and future ones. Such objects have great significance not just for the clan and moiety, but for members of the opposite moiety as well, that collectively comprise the wholeness of Tlingit society.

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[2] This is a reciprocal or "balanced" exchange referred to as "wooch yax", since members of opposite clans will also bring out prerogatives of equal weight (importance) in a ritualized response to the displays of the hosting clan.

Ownership and Stewardship of Clan Property

Since before the turn of the 20th century, anthropologists have noted that the Tlingit have highly developed concepts of property rights (see Krause 1956:115; Swanton 1908:428). Following fieldwork conducted in the 1940s, Goldschmidt and Haas provided this summary:

> ... the Tlingit had well defined conceptions of property and legal rights to territory. The clan or house group is an economic group in Tlingit society which, like a corporation in western society, controls the use of certain lands and other valued properties. The head of the clan or house group is the person directly responsible for administering the property, but according to custom, his rights are subject to certain restrictions. The most important of these are that (1) he cannot sell the right---though it may be transferred in legal settlement to another group, and (2) he must allow the use to appropriate members of his group. The fact of ownership is publicly announced at the dramatic potlatches in which the new owner----whether by inheritance or other legal means---establishes his title. These potlatches involve the whole tribe, and often members of neighboring tribes, and are such outstanding events in the lifetime of the individual that they are graven permanently upon the memory of the people. ... Nowhere among unlettered peoples in North America was there so clear a recording of property ownership as among these Northwest Coast people.
> (Goldschmidt and Haas 1978:16)

All of a clan's material and immaterial possessions, including ceremonial objects that are frequently the subject of claims under NAGPRA, are the common property of all members of the clan. This clan property right arises from being born into the clan, so even a baby will have part ownership in whatever the clan has. This right is not lost or extinguished through death, for the Tlingit believe that deceased persons travel to another world "where they're going to meet their own on the other side" (A. Katzeek 1985:4). The spirits of the dead remain associated with clan territory, as they are believed to live in clan hunting and fishing grounds, coming to the village on ceremonial occasions to participate in clan potlatches (Oberg 1973:64). Today, clan property rights extend mainly to clan houses and ceremonial objects and prerogatives, but in the past the common property of clans and house groups included large canoes, important arms, trade goods and many of the utensils found therein (Oberg 1973:30, 62), as well as economic rights to natural resources within the clan's territory, such as fish, game, firewood and springs.

Each house had a leader, or "keeper of the house" (Hit s'áatí) who served as the custodian or "trustee" of clan property. "The house chief, or yitsaati ("keeper of the house") does not own the house nor the ceremonial articles but holds them in

trust for the others" (Oberg 1953:30, also see pp 46, 52). Olson (1976:37-38) refers to his role as a trustee and a custodian of the property. Emmons (1991:35, writing about the period prior to the turn of the century) also describes his role as a custodian of property: "although the hats themselves descended from the clan chief to his successor, the chief was only the custodian, and the hats were actually the property of all the clan." Since houses within a clan were ranked, the head of the leading house was recognized as the clan leader (Sháade háni). This anthropological evidence describes Tlingit customs practiced during the period under discussion, from the late 19th to the mid 20th centuries, and documents that the house or clan leader does not own the house or the ceremonial articles but holds them in trust for the use of the group as a whole or one of its members.

The crucial questions here are the following: in the role of trustee or custodian, does the house or clan leader have the authority to sell or otherwise transfer what are considered to be inalienable clan possessions, and was this a traditional right recognized in Tlingit custom in the late 19th and early 20th centuries when such items were acquired in significant numbers by museums and other collectors (such as in 1925 when Louis Shotridge claimed he purchased the Snail House/Mt. Fairweather House collection in Hoonah). The authority to sell (or to gift or donate) clan possessions, particularly to EuroAmerican collectors and institutions, relates specifically to the issue of "authority to alienate" as used in the Native American Graves Protection and Repatriation Act definition of right of possession. Other traditional forms of transfer will be discussed at another point in this paper, in relation to this same provision.

Ethnologists have stressed the limited authority of the clan or house leader, emphasizing that he did not have exclusive rights over clan property and that he was primarily a ceremonial leader, representing the clan to other clans during ceremonies, and to outsiders, but who led by consensus and made decisions collectively with the participation of clan members (Oberg 1973:30-31, 42; Goldsmith and Haas 1978:16; Olson 1976:37; Emmons 1991:39-40). Ceremonial items belonging to the clan were kept under his care in the house, and he was responsible for making them available to clan members for ceremonial use after which they were returned to the house. Olson, who uses the present tense to describe contemporary practices he recorded from multiple locations in southeast Alaska between 1933 and 1954, states, "... in many cases [trustees] cannot sell or otherwise dispose of such things without the consent of others" (Olson 1976:37).

Emmons, writing primarily about his observations in the 1880s and 1890s, described the limitations to a leader's authority in making decisions in clan councils:

> Although the office of chief was the most honorable among the Tlingit, the holder was possessed of limited authority. His power was more moral than real, for the people constituted the governing body. He presided over them in council and represented them in dealing with outsiders, but he governed only through their consent.

...

> Councils were not assembled at fixed times, but were called by the chiefs when the occasion required. They were presided over by him, and were attended by the subchiefs and other household heads in his clan. After discussing the subject and agreeing upon a course to pursue, a general meeting of all the adult males of the clan was called and the proposition stated. Every person present had an equal right to speak, and the sentiment of the majority was followed, but generally the prior decision of the house heads was accepted. (Emmons 1991: 39-40)

Traditional and historical information confirms that clan councils have been and remain a critical component of collective decision-making on the part of Tlingit clans relating to clan property. In a letter written in 1982, leaders of the Klukwan Shangukeidí clan referred to a decision by the "Thunderbird Eagle Council" made generations ago granting permission to use the clan's Thunderbird crest to a grandson who belonged to another clan (Letter from Sha'an-gu-Kei-De'e --- Thunderbird Tribe to Judge Walter L. Carpeneti, Sept. 2, 1982). Decisions about entrusting clan property to the next generation also took place in clan councils. Olson (1967:38) related the process by which a decision was reached among the Haines Lukaax̲.ádi concerning a Chilkat robe then in the care of the clan leader:

> Thus a certain [Chilkat] blanket is in the charge of Chief Danawak. But he is old and recently called in several close kin for their advice as to the disposal of the trusteeship. It was decided that the blanket should pass to the eldest surviving male of the house Hink!ahit (house by the stream).

Olson is careful to describe this occurrence as a transfer of the "trusteeship," or the office of custodian, rather than simply a transaction involving property, the blanket. In clan actions relating to the succession of a clan leader or custodian, the clan passes on the responsibility for the care for clan property, designated by the title of Hit s'áatí or Sháade háni, not the property itself, because the property remains in the ownership of the entire clan (see also Oberg 1973:42).[3] More recently, the Haines Lukaax̲.ádi Clan formalized a similar procedure in their clan trust to preserve and manage clan property. A process of public decision-making involving clan elders is described in the Trust document as necessary for making decisions about certain transfers of clan property in the future (see below).

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[3] The formal installation of a successor was achieved only in potlatch, when he was brought out before opposite clans and important items of clan atóowu were placed on him, signifying the transfer of the office of Hit S'aati (or Shaadeihani). This public presentation and validation by the opposite clans is a fundamental component of Tlingit ceremonials, which cannot be practiced without the possession and proper handling of clan atóowu and other clan prerogatives.

Clan Wills and Trusts

During the 20th century, some house and clan groups developed wills and clan trusts as a means to codify traditional Tlingit legal customs related to clan ownership and succession issues. These instruments are a direct response to pressures to sell such items and efforts by institutions, collectors and dealers to buy them. By these instruments, clan custodians adopted civil procedures from the EuroAmerican legal system to formalize customary and traditional Tlingit practices to protect their clan possessions. Annie Hotch (Klukwan Kaagwaantaan Clan) said (in 1989), "Right now we are making a will, a promise, that these *at.óowu* will not be sold. This is why I am talking about this, the Brown Bear House" (Annie Hotch Notes, 1993). She explained that the purpose of the will is to follow the practices of their elders and to "handle" things properly:

> What I'm going to tell you about our things as told to me by my clan elders. Just as they promised how they will handle things, or how to go about it. That's the way we are going to handle it. There are only a few of us. We treasure our *at.óowu*. We have younger children growing up. Our ancestors have passed on from these things. And this, our Brown Bear House, and Killer Whale and the screen. This is our thoughts, we do not want to see these things to be objects of disagreement or dispute or to be mishandled. This is what this tape is for. Nothing should cause us to be disagreeable or dispute pertaining to these artifacts.
> (Hotch 1989)

The prescription to keep clan possessions in the village has been particularly salient in Klukwan throughout the 20th century. Martha Willard (Klukwan Gaanaxteidí, Raven House) recalled when, as a young girl, her grandfather, Chief Yéil xáak (Klukwan Gaanaxteidí, Raven House), told her that the artifacts (referring to those from the Whale House, which had come into his possession as caretaker) should remain in the Raven House --- meaning that they should not be removed from the village. She related a story how her grandfather and Matthew Johnson of Frog House decided that no more items would leave the village:

> A long time ago people were encouraged by the missionaries to get rid of all the artifacts. Lots of people sold their artifacts or totems because of this. Finally, my grandfather Yéil xáak and Matthew Johnson of the Frog House saw that we were losing our history and our culture. They realized how important the artifacts were and decided that the village would not let anything else go. A canon was fired three times in front of all the people in Klukwan. The artifacts were to remain in Klukwan and be our landmark.
> (Martha Willard Deposition, Whale House Case)

The introduction of civil government under territorial laws in Southeast Alaska villages introduced another authority that decreed the termination of Tlingit ceremonials and indirectly sanctioned the sale of clan property. Newly formed city councils in southeastern communities such as Klukwan and Hoonah passed ordinances which prohibited the practice of Tlingit ceremonials within their territorial limits. Annie Hotch related how the people of Klukwan abolished their city council after they realized what was happening:

> The selling started when Klukwan had a city council. People started selling things at that time --- the city council said that anyone that does any tradition will be put in jail, and that's why they got rid of city council. Party at Four-Mile [a former village situated between Haines and Klukwan], they took two of them to jail for participating in potlatch. When they got out, they said they ate well. There was a log cabin in Klukwan that was the jail, and the clan leaders got rid of the city council after that.
> (Hotch 1989)

Clan members and elders might engage in "interventions" when a clan member or leader made attempts to sell items, but such activity would be personally costly since intense feelings of shame, disgrace and perceptions of personal entitlements and superiority were embedded in such confrontations --- emotions that traditional Tlingit sought deeply to avoid in regular social interchange. Annie Hotch (Klukwan Kaagwaantaan Clan) related one such experience involving her brother:

> The cannery was running, Haines Packing. My mother was working and I was working, people were working. Someone came to tell her that Xaal Tsuw came up to Klukwan, he came up to get *at.óowu*, like the Killer Whale house artifacts from the house is what he wanted, the Brown Bear jacket. Then my mother went to see the Cannery Superintendent. She said, you as a white man have a lot of respect for the flag of the country. That is how we are, it is like the way the flag means to you is the way we feel about our artifacts. I just received news that someone is up there (Klukwan) to obtain these things. I am here for you to excuse me from work. He answered, go right ahead. Mrs. Lee, when you return you will go right to work [meaning she would not lose her job]. So they went my mother and [name] (Mrs. Willard Lani Strong) went, she accompanied her to Klukwan.[4]
>
> So there were three of them and they talked with him. My mother was the last one to speak here is what she said to him (the one who came

[4] This interchange with the cannery superintendent shows the changed economic circumstances of the Tlingit, who were engaged in wage work away from their villages, but more importantly it reveals the power relationships that such bosses exercised in the everyday lives of Tlingit people.

to get the artifacts). Yes, my son, my son. I don't want this to go.... These belong to our grandfathers: they have all passed on. I do not want this to leave or sent away. The person who brought them in his car was also Kaagwaantaan, his name is Keit xootch is his name. He is also paternal grandson of Kaagwaantaan. It is whom that brought up to Klukwan.

When he came into the house, my mother said to him, go sit on that box, sit on it. You are not going to get off that box until it is left to us. That's what my mother was saying. My mother was the last to talk after the other ladies talked with him. Your sister has four children, referring to her grandsons (who are Annie Hotch's sons). Four of them have grown up. Which relatives or nephews do you want to send this to? This is the place for it here. Your nephews, referring to her grandsons. There are others only mine are four that are grown up.

He was very quiet, then he said, "Mom, I will not take them. I will leave it in your hands, you will take care of this for my sister's sons, you will be the one to care for this." This is the way it is, they (my sons) do not take things and act like it rightfully belong to them, the rightful owners have willed the things they have. These three ladies returned to their jobs. The cannery owner was so good to them. This is why the things are still here, the house. This is how they become owners of the artifacts and the house. They didn't run there and take over on their own. Those that were the owners gave it to them. (Hotch 1989)

There are not many descriptive accounts such as this that can be offered by Tlingit tribes to satisfy evidentiary requirements imposed by certain museums in order to demonstrate that clan members asserted their collective right of possession, and thus that traditions of Tlingit property law were practiced, at the time such items were acquired by a collector. This standard of evidence presumes that clans either had prior knowledge of such acts or that the sales of items occurred in public, without secrecy or subterfuge. The availability of such evidence for particular historical objects is an exceedingly high standard of proof that cannot, in most cases, be met. The outcome of a recent (2001) crisis in Angoon can be used to support the contention that customary Tlingit concepts of communal ownership are evident in the contemporary period. When it was learned that the Trustee or House Leader of a Deisheetaan house was said to have agreed to the sale of clan *at.óowu* to a collector, members of the clan went to his home to discuss the matter with him. Later, in a clan meeting, he agreed to a decision by the clan not to sell the items (Rosita Worl 2010: Personal Communication).

The custodian of the Klukwan Gaanaxteidí Whale House *at.óowu* was among the first to prepare a will, in 1922, to designate his successor. This occurred while

Louis Shotridge was making determined efforts to convince the owners (and the communities in Klukwan and Haines) that it would be better for the clan to acknowledge that the old ways have passed and to put these things into a museum for safekeeping and to show the world the glories of Tlingit culture. At this time he was serving as an agent of the University of Pennsylvania Museum, seeking to acquire clan possessions ("heirlooms") for the museum's collections, and he held a community meeting to discuss his proposal to buy the items. When he was unsuccessful in persuading the community to sell the objects, he asserted a claim through his patrilineal relationship and enlisted the aid of his father's brother, a man who had been passed over for the position of clan leader, to intervene on his behalf.

Chief Yéil xáak's will, certified on Oct. 24, 1922 by Sol Rapinsky, Probate Judge in Haines Precinct, says:

> After my demise. First I appoint my nephew, Jim Young of Juneau Territory of Alaska. To come to Klukwan and take charge of My House and all my native curious [curios] but not to dispose. or sale any of my stuff. all to be kept and not to be removed to any other place.[5]
> (Alaska State Library Historical Collection, Ms 107, Box 62, Fldr 13)

By this means Chief Yéil xáak designated a successor custodian of clan property and sought to ensure that such property will never be sold or otherwise disposed of, nor removed from the clan house in Klukwan.

In 1923, Yéil xáak posted a paper notice on the house where the items were stored saying that he and his nephew, Jimmie Young, were the caretakers, which served to discourage Shotridge who had arrived in Klukwan to remove the items. On July 14, 1923, James Wickersham, a former judge and Territorial Representative to the U.S. Congress, sent the following night letter to from Juneau to Henry Phillips, Native, Sitka, Alaska:

> There is trouble between Jim Young and Louis Shotridge about Klukwan property. Important that you should come and go Haines with Jim Young and get papers signed before old chief at Klukwan dies. Lloyd Winter says come.
> (Alaska State Library Historical Collection, Ms 107, Box 62, Fldr13)

Ultimately unsuccessful, Shotridge abandoned his quest for these *at.óowu*, and in 1925 he sponsored a formal peace ceremony in Haines to repair the enmities he had unleashed and restore harmony between those who wanted to sell and those who wished to retain the items (see Shotridge Papers; Milburn 1997; Worl 1998).

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[5] There follows a list of clan property including 8 totem poles (house posts), 4 hats, 3 masks, 1 basket (Mother Basket), 3 dishes, 1 apron, 2 Native War Guns, 1 breast plate, 1 rattle, 3 Russian cannons.

Thirty-five years later, another custodian (Mary Williams) developed an instrument that identified persons who would become the custodians of the Raven and Whale House *at.óowu*. Entitled, "Assignment of Guardianship over Tribal Possessions and Relics, in Case of Death," the document was witnessed by six clan members, in addition to the typist who appears to have been an employee of the BIA (dated April 27, 1956). Five clan members (both men and women) are appointed as "Guardians and Advisors ... over my Tribal Possessions and Relics contained in the Raven Tribal House, Klukwan," and there followed a list of the clan's possessions. In addition, the document directed that these persons "shall be or act as Guardians over" certain members of the Chilkat Raven Clan, who are listed by name. Ms. Williams also identified four house posts in the Concrete House (successor to the wooden Whale House), placing three under the guardianship of named individuals: "The following Totems [house posts] ... shall not be moved and are under the Guardianship and protected by the persons named." She specified that the fourth house post, along with the Woodworm Dish, shall remain there and be possessions of the Raven Clan of Klukwan."

This instrument specified the principles of clan property ownership and explained the customary restrictions on the authority of the keeper(s) and how the property can be used, providing a crucial description of Tlingit traditions as articulated by this clan in the mid-1950s. It is a clear statement that no one in the clan has the authority to sell clan possessions.

> The Raven Tribal House which stand in Klukwan, Alaska shall remain a Community House for the Chilkat Raven Clan and will be under no one persons' jurisdiction, but only a possession of the Ravens as a Clan. This Raven Clan will be only the Raven Clan of Klukwan, Alaska. None of the items listed above as being in the Tribal Raven House in Klukwan, Alaska shall be given by me or any other persons as personal possessions but persons named above will only be appointed as Guardians and [of] same articles and will not have the power to remove them except in the case of a Benefit Ceremonial Dance. They will not be offered for sale by anyone. The possessions of the Raven Tribal House in Klukwan shall not be moved from their Tribal House except on above mentioned occasion and shall be returned to the same Tribal House immediately after use for this purpose. They must stay in their original Raven House immediately after use for this purpose. They must stay in their original Raven Tribal house in Klukwan, Alaska and may not be moved to another Tribal House at any time.

Additional statements referred specifically to the totem poles (house posts) in the Raven House and the Concrete Community House, and include instructions that they shall remain in their respective places and not be moved or disturbed, and be the possessions of the entire Raven Clan in Klukwan.

Lukaax̲.ádi Clan Trust

The Lukaax̲.ádi Clan Trust is the most comprehensive and thoroughgoing effort to use the Euro-American legal system to codify traditional Tlingit legal practices. In the form of a charitable trust, the Lukaax̲.ádi clan defines the primary responsibilities of the Chilkoot (Haines) Raven House Leader (Hit s'áatí) as protecting and preserving clan property, and identifies and charges his successors (a "Board of Hit s'áatí Trustees," comprised of three named individuals) with carrying out the purposes of the trust following his death. In this instrument, the Chilkoot Lukaax̲.ádi Clan affirms that in the Tlingit legal system, there is no authority for an individual to sell or otherwise dispose of clan property without the consent of clan elders given in a public meeting.

During the Wooshkeetaan case, which entailed an investigation of traditional Tlingit legal practices (discussed below), the State of Alaska formed the opinion that the court must apply Tlingit law and customs to some form of communal ownership recognizable under Anglo-American law (Svobodny 1985:17). It then proceeded to review several models including a trust:

> A trust creates a right in the trustee for the benefit of another. A fiduciary relationship is created between the trustee and trustor, cestui que trust, which requires the trustee to deal with the property for the benefit of the trustor. If there exists a trust relationship in this case between either the Woosh-ke-taan clan or the Thunderbird House there would appear to be, under a trust theory, an inability to alienate the property.
> (Svobodny 1985:18-19)

The State then identified a legal problem with the trust model, which given the communal nature of clan property would violate the rule against perpetuities, and introduced the idea of a "charitable trust" to get around this problem.

> A charitable trust is a trust which the performance of will, in the opinion of a court of equity, accomplish a substantial amount of social benefit to the public or some reasonably a large class thereof the public. Specifically, charitable trusts have been found for religious purposes and for the maintenance of monuments, which may fit the facts of this case. ... In this instance a charitable trust would seem to fit most of the facts of the evidence presented to this court and it would not violate the rule against perpetuities. [6]

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[6] The State continued this discussion by offering the court a viable alternative that fit the facts of the case regarding Tlingit property law: "If the court were to accept the trust model and find that the sale of the artifact would be a violation of the fiduciary duty and if the court accepted the charitable trust model, the State of Alaska through its museum would be willing to maintain the artifact in trust

(Svobodny 1985:19)

Interestingly, the Wooshkeetaan case provided some legal support for the charitable trust model that was adopted a year later by the Lukaax̲.ádi Clan. Through a charitable trust, the clan has developed procedures to protect and preserve clan property, while also restricting its sale or disposal to transactions that would benefit the clan as a whole.

The purpose of the trust is described in Article II:

> The purpose of the Lukaax̲.ádi Clan Trust is for the protection and preservation in perpetuity of clan property in the collective ownership of clan member beneficiaries for the benefit and education of clan generations with residual benefits to the public. The trust converts traditional clan property obligations into trust provisions enforceable under Western and Tribal courts of law. Protection and preservation of clan properties is well established in the Tlingit legal tradition expressed in the well defined, and commonly understood rules and obligations for the care of clan property. Codification of the Tlingit oral tradition of clan property law into a charitable trust provides the legal mechanism for preventing the sale, theft, wrongful inheritance, or alienation of clan property. The Lukaax̲.ádi Clan Trust expresses the sprit of the Tlingit tradition in western legal terms thereby rendering it clear and enforceable in Western courts or Tribal tribunals. It is also the purpose of this trust to receive and collect additional clan property that has been validated at a potlatch as part of the Lukaax̲.ádi Clan property.
> (Hammond 1986:1-2)

This statement indicates that the fundamental purpose of the Clan Trust is to formalize and make enforceable traditional Tlingit legal practices in Euro-American law for future generations. With this early statement, the Trust refers to the traditional restrictions placed on the Hit s'áatí regarding the sale of clan property and clearly says that the Hit s'áati does not own clan property, but he shares a vested ownership in the clan property with all the other members of his house group. Subsequently, the document describes the position, duties and authority of the Hit s'áati as "the traditional elder who is bestowed with the honor and responsibility of care of the clan property of a house group, and who represented the house group on formal occasions (ritual, political, economic)" (Hammond 1986:19).

Under the terms of the trust, the sale or transfer of clan possessions is permitted under certain circumstances, but only if the decision is made with the

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for the owners." As described above, the court did not respond to this suggestion, deciding in favor of the Plaintiffs in 1986, and the screen was eventually sold to a private collector.

consent of clan elders. The decision must be made in public and for a purpose that does not serve the financial interests of an individual clan member.

> Transfer of clan property by sale has been covertly practiced by self-interested Tlingits since European contact. This practice is not openly discussed among clan elders or hit s'áati because it is commonly understood to be in direct violation of Tlingit property law. There are special circumstances where transfer or sale may legitimately occur. It must be undertaken for the purposes of non-monetary gain for any of the members of the house group or clan, must be decided upon publicly, and the decision must involve the elders of the clan. An example of such a sale is expressed in the decision of a house group to sell one piece of clan property in order to raise funds to restore a clan house. Covert or self-interested sale is in direct violation of Tlingit property law.
> (Hammond 1986:17)

While this statement acknowledges that sales or transfers of clan property occurred in the past, it explains that they were carried out by individuals who acted in private, without the knowledge of the clan, most often for personal gain, and these transactions were not sanctioned under traditional Tlingit clan property law. The Lukaax̲.ádi Clan trust uses principles of traditional Tlingit property law, expressed in an instrument of Anglo-American law, to prevent such illegitimate practices from occurring the future.

Court Cases

The earliest property disputes among Tlingit clans that were brought into American courts occurred more than 100 years. One well-known case involving competing claims to the frog crest by two Sitka clans has been described and analyzed in detail by Worl (1998:158-182; see also de Laguna 1972:288-91). There are two recent cases that went to trial, one in state court and one in tribal court --- both of which provide further evidence of the contemporary practice of Tlingit legal traditions at the close of the 20th century. These are commonly referred to as the Wooshkeetaan case and the Whale House case.

State of Alaska v. George Jim, et al. (1986) (The Wooshkeetaan Case)[7]

This case was brought by the State of Alaska for the purpose of determining whether the Wooshkeetaan clan custodian had the sole authority to sell a highly valuable item of clan property (a house screen) that was then on loan to the Alaska State Museum, and which the custodian wished to sell. The issues regarding the authority of the custodian to sell the object, and the need for prior consent of clan members, were fundamental in this case. The court heard testimony on April 25,

[7] An extended discussion of the various issues raised in this case is presented in Worl 1998:191-202.

1984, that under Tlingit law or tradition, the Wooshkeetaan screen is owned in common by all members of either the Wooshkeetaan clan or the Thunderbird House (for which the screen had been made). Ownership in common means that all the members of the house or clan must agree before a sale can be made. However, George Jim, for the plaintiffs, claimed that the custodian had the authority to alienate the screen without the consent of the clan, and if the house members needed to be consulted, they had forfeited their rights by not making contributions to the care of the previous custodian. While the State reported that the totality of evidence presented to the court was mixed as to whether clan property could be alienable, reflecting statements made by Plaintiffs and others, it summarized the evidence of traditional Tlingit law regarding the fundamental issue of alienation as follows:

> "The evidence in regard to Tlingit law and custom, at least by some witnesses, is that the Wooshkeetaan screen is not alienable without the active participation of the entire clan or house" (Svobodny 1985:19, 20).[8]

One clan member, Ms. Martin, said the penalty for an individual selling a clan artifact was automatic loss of clan membership (banishment).

David Katzeek (Klukwan Shangukeidí Clan (Thunderbird), who later became clan leader, testified that a caretaker was responsible for the preservation of artifacts and that the caretaker was not the owner since there was no individual ownership of ceremonial property in Tlingit custom and law (Svobodny 1985:4, 21). Mr. Katzeek focused on the objectives of stewardship (preservation) and the absence of individual ownership, indicating that there was no individual right to sell or dispose of a clan possession entailed in the position. In response to a series of questions about the sale of clan property, Anna Katzeek (Mr. Katzeek's mother) suggested that the item could not be sold under Tlingit law. Asked whether clan property may be sold or disposed of by the clan, Ms. Katzeek replies, "No. They're not supposed to sell it." A short time later she is asked the same question in relation to the Wooshkeetaan Screen (which at this time was being offered for sale by the custodian), "Does any one person have authority to sell that Wooshkeetaan Screen?" Ms. Katzeek replied, "No they don't have an authority to sell it at all, especially if it's a big item like that." Following up again, the lawyer asks, "Does a small group of people, say two or three people, have any authority to sell that screen," to which she answers, "...in the olden days there was no such authority. I don't know about today." Ms. Katzeek's testimony has been described as indicating that a custodian may sell clan property with the consent of the clan (Alaska State Museum 2009).[9] Ms. Katzeek offered similar testimony in the Whale House case in 1993, saying it was "unthinkable" that the artifacts could be sold --- the artifacts tell the history of

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[8] The witnesses who testified in favor of this view were Anna Katzeek, Marie Olson, Carolyn Martin, Bessie Vaasa, and Albert Wallace (who later recanted his testimony).

[9] This conclusion was based on an interpretation of her qualifying statements in answers to these questions, when she said, "They're not supposed to sell it" and "I don't know about today."

the clan and must remain with the clan (Bowen 1993:6134). She also stated at that trial that the clan as a whole controls decisions about the custody of artifacts.

In the Wooshkeetaan case, Ms. Katzeek referred to another component of permission that was related to this specific case, in her extended answer to the second question presented above. This screen, which is painted in the design of her own clan, the Klukwan Shangukeidí (Thunderbird), was constructed after a Wooshkeetaan grandchild asked permission of his Shangukeidí grandfather to use the crest for this purpose. In her response during testimony, Ms. Katzeek explains that "if the person who originally asked to use the design was alive and was wanting to sell, he would have to come and ask permission of his grandfather's (turning tape over) concern it would be a disgrace because he was given permission to show to the people who he is, this is my identity, this is where I come from" (A. Katzeek 1982:10).[10] Since the person who made the original request has been deceased for a long time, this is a Tlingit way of saying that the sale of the item is illegitimate in her view. But her answer also reflects the knowledge that her ancestor is the one being dishonored in this way.

The impropriety of selling the screen was also expressed in a 1982 letter written to the judge in this case by the Shangukeidí Clan Leader and his designated successor (Joseph White and David Katzeek).

> If the Court elects to proceed, we can only hope that you take into account the way property such as the Thunderbird Screen was treated in traditional Tlingit culture. Such property was always treated as communal property. Even though the Thunderbird Eagle Clan does not assert a direct ownership interest in the Screen, we believe that one of our members gave permission to use our crest with the understanding that the screen would forever remain with the Woosh-ki-ton people in the memory of a great Thunderbird Eagle. It certainly has not been our custom to allow the use of our crest for personal gain and profit. We are deeply saddened by the action taken by the Woosh-ki-ton people and trust you will allow us to resolve our differences in our own way.
> (Letter to The Honorable Judge Walter L. Carpeneti from Joseph A. White and David G. Katzeek, September 2, 1982)

The major thrust of the letter was to recommend that the determination of ownership of the screen should be resolved traditionally in a clan or tribal council, rather than in his court. But the issue of personal gain and profit was an important consideration in this case, since the person claiming to be the Wooshkeetaan custodian was also claiming that he had the right to sell the screen on the basis of individual ownership.

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[10] Unfortunately, in the transcript submitted to the court, some words were lost from her statement while the tape was being turned over.

Since there was no tribal court in existence in Juneau at this time, the court proceeded to issue a judgment. The court acknowledged the significance of this case in Tlingit cultural tradition: "This action involves rights to the control, possession, use and disposition of an artifact which finds its origin deep within Tlingit culture, custom and law." However, through a formal process of default, a legal concept or process which in all likelihood was not known to the Tlingit, all those who came forward initially were eventually disqualified for lack of participation in the case, and the court ordered that no other parties than the sellers have rights to the screen. The order of the court was the stipulation put forward by the plaintiffs, that they possessed sole ownership of the screen with a right of alienation and that the screen was to be sold. However, in an addendum, the judge offered the following comments:

> The court enters this order with reluctance. This disposition appears not to comport with traditional Tlingit law and custom, which this court felt should be looked to "closely" in adjudicating this case. ... Moreover, it seems unlikely to be the outcome which a tribal court, were there such a court in existence to which this case could have been referred ..., would have reached after considering the facts. (Carpeneti 1986:3-4)

The next case to be discussed was decided in tribal court.

Chilkat Indian Village, IRA v. Johnson, et. al (1993) (The Whale House Case) [11]

The facts of this case and the testimony of witnesses provide additional evidence of the exercise of Tlingit traditional legal practices in the late 20th century and the efforts of clans and tribal villages to enforce them. This case revolved around the removal of clan *at.óowu* from the Whale House of the Klukwan Gaanaxteidí Clan by descendants of another clan house (Valley House), and their attempted sale to an art dealer named Michael Johnson. It was heard in tribal court in Klukwan over a period of one month in January and February, 1993. There are several points that are noteworthy for the purpose of this discussion.

Background

In 1976-77, there were two unsuccessful attempts to remove highly valued clan property (the four house posts and screen) from the Whale House (Klukwan Gaanaxteidí Clan) in order to sell them to an art dealer, to which villagers responded with physical force. At the time, Estelle DeHaven Johnson, the sole remaining lineal

[11] For a detailed description of the historical events surrounding this case, and an extensive analysis of the multiple dimensions of the proceedings, see Worl 1998:202-23.

descendant of the Whale House and granddaughter of Chief Shotridge, had agreed to sell the artifacts to a collector, Michael R. Johnson. She arranged for the house to be opened and a truck was sent to remove the objects, but villagers were alerted and felled trees across the two entrances to the village. A second attempt was prevented when the village a siren was sounded, and villagers confronted Ms. Johnson and her husband and physically prevented them from removing the artifacts (see Worl 1998:212; also see Bowen 1993:6131-32).[12] On April 26, 1976, in response to the efforts of art dealers to acquire artifacts from the community, village members "unanimously voted never to sell our artifacts and to protect those within our possession" (Telegram to BIA Commissioner Morris Thompson, in Bowen 1993:6132). Then, on May 12, the village council unanimously passed the Artifacts Ordinance which prohibited the removal of clan artifacts owned by tribal members without the permission of the Chilkat Indian Village Council.

As in the 1920s, when a peace ceremony was conducted in Haines to restore harmony after the disruptions resulting from Louis Shotridge's efforts to acquire these same objects, a peace ceremony was held in Klukwan attended by representative clans of both moieties in the fall of 1976. According to Joe Hotch, its purpose was to confirm the community's position that the Whale House artifacts should not be removed, and it was intended to heal the wounds resulting from contacts with villagers initiated by the art dealer Michael Johnson who sought to acquire the artifacts on consignment (Hotch Testimony, summarized in Bowen 1993:6132). In October of that year, the custodian of the Whale House, who at the time was Joe Hotch's father, wrote a letter to whom it may concern, stating that he no longer wished to be associated with any plan or agreement for the sale and removal of the Whale House artifacts, and withdrew the permission he granted earlier to any person (Michael Johnson) for such activity.

In 1984, the objects were successfully removed by members of a different Gaanaxteidí clan house, the Valley House, and transported to Seattle where they were to be turned over to the same dealer. Learning too late that the items had been removed, the village sought an injunction which prevented the sale, and the items were enjoined to remain in a storehouse in Seattle until the dispute could be settled. It was this action which led to the tribal court proceeding in 1993, referred to here as the Whale House case.

Testimony Related to Tlingit Property Law

There were many statements about the history and significance of the objects, which Joe Hotch referred to as "clan trust property" with great spiritual significance to the Gaanaxteidí Clan (Bowen 1993:6131). The testimony by Anna Katzeek has been described above, in relation to the Wooshkeetaan case, that there

[12] Estelle de Haven Johnson brought suit against the village but the case was dismissed on the grounds that the village government, as a sovereign entity, could not be sued without its consent (Johnson v. Chilkat Indian Village, 457 F. 2d 384 (D. Alaska 1978)).

was no authority under traditional Tlingit legal practices to sell such artifacts. In the trial, this position was first discussed by Joe Hotch, who "emphasized that that a *hit-s'áati* has the duty under tribal law to care for the property of the house *and* clan, and has no right to sell or otherwise dispose of clan property" (Bowen 1993:6131). In deposition, another Klukwan Kaagwaantaan, Jennie Thlunault, was very explicit with regard to the limitations on the authority of the keeper: "A caretaker's job is to protect the house and keep the artifacts safe, not to sell them."

There was testimony by numerous witnesses that no one individual or group (such as the defendants), including the Hit s'áatí or caretaker, has the right to unilaterally sell or dispose of clan property, and such objects cannot be sold although under certain circumstances (such as in restitution for a crime) it might be possible if the entire clan decides to do so (Testimony of George Stevens, Anna Katzeek, Andy Hope, Rosita Worl and David Katzeek, as described in Bowen 1993). Such objects, which can include prerogatives such as songs and stories, cannot be "owned" (Andy Hope). Anna Katzeek said that "the clan as a whole" controls decisions about the custody of artifacts, referring to the process of decision-making in clan councils regarding caretaker succession. According to Worl, the participants in a clan decision such as this would include all adult males and high-ranking women.

Legitimate Transfers and the Concept of Alienation

There are certain exceptions to customary rules under which clan property may be transferred temporarily to and sometimes acquired permanently by members of another clan or tribe. Thus, for example, Swanton (1908:415) reported that a man of high caste might borrow a crest object from his brother-in-law (opposite moiety), but he was not permitted to retain it. Such inter-group transfers are customary and traditional, and they do not invalidate the larger system in which highly valued clan possessions and prerogatives are maintained in the custody of matrilineal localized clan groups as inalienable clan possessions. Over time, it is inevitable that some inalienable prerogatives are lost, and new ones gained; this is simply a fact of human life and does not signify that a cultural system is broken down or has undergone a transformation.

Such transfers may include gifts, indemnity payments, capture in war, and items bestowed on clan children and grandchildren. These exceptions have been discussed most directly by de Laguna (1979:458-61). She holds that clans sold their property, and in support of this statement she mentions that the sale of land occurred, but there is only one example in the literature, an account reported in a myth (Swanton 1909). It is difficult to evaluate this transaction due to the lack of information about the circumstances and the reason it was memorialized in this story. On the other hand, it is documented that clans purchased items that rose to the importance of clan *at.óowu* through continued ceremonial use and display. During the fur trade, some clans climbed to eminence as their new wealth enabled them to build new houses and acquire and display new crest regalia (de Laguna

1972:458). Some items in the collection of the Snail House/Mt. Fairweather House of the Hoonah T'akdeintaan clan might have been purchased with such new wealth, probably acquired after sea otter pelts grew in value. Indeed, the Wrangell Naanyaa.aayí, perhaps the most wealthy of Tlingit clans during the fur trade period, "were so rich that they could use anything" as a crest (Swanton 1908:415). Through continued use in ceremonials, such purchased things would gain in value and become an heirloom possession. "Any heirloom (....., or "ownerless thing"), even though it does not carry the representation of the crest, may, through display at potlatches, become valuable and function as a crest object (See Oberg 1973:44-45; de Laguna 1972:450-61)" (de Laguna, in Emmons 1991:33).

Clan a*t.óowu* have been passed between clans and from Tlingit clans to other tribes in the form of gifts. They may be potlatch or marriage gifts, or presented to cement special relationships between groups, or to recognize a special deed that a clan members performed in aid of another. The anthropologist de Laguna (1972:458-9) reports that clans have given *at.óowu* to an opposite clan as part of a payment (bride price) for the privilege of receiving a bride, and described three cases. de Laguna did not identify all the clans identified in the exchanges, but more than likely the bride and groom had a special clan relationship that the Tlingit recognize in which the bride may have been a "child" or a "grandchild" of her spouse's clan and which such clan relationships warranted the bestowal of gifts. In one case, the Kaagwaantaan obtained a Tsimshian song, given by the girl's father to her husband. In the following two examples, the items (clan *at.óowu*) originally belonged to clans related to bride, and the transactions were to be a kind of restoration. In another case a Yakutat Shangukeidí house clan leader offered the parents of a potential bride a considerable amount of money, many blankets, a bearskin and a Bear Headdress (shakee.át). The girl's father's side tried to force her to accept the marriage, because "they wanted to get back some of this stuff" (the Bear headdress), but their efforts were ultimately unsuccessful. In the other case, a Teikweidí woman was given in marriage for a Killerwhale Drum. The drum given to the Teikweidí was the most important heirloom of the Bear House Teikweidí, but it had been captured in some way by the clan of the husband to be. "It's a great thing when they got that [Killerwhale Drum] back through my sister" (de Laguna 1972:459). In these two cases, we see evidence of the cultural imperative on clans to recover items of clan property that once belonged to them, but had been lost in circumstances the knowledge of which has been lost (or was not talked about).

The T'akdeintaan Clan of Hoonah has in their possession a personal name that is Tsimshian in origin (*Tikata*), which was given to them by a Tsimshian chief as a special honor. In the past, this group of Tsimshian came regularly to their territory to hunt sea otter, and a special relationship between the groups developed over time. The name memorializes this relationship. In another example, a woman took special care of a member of another clan who was sick for many years. After she passed, the sick woman's daughter presented her with a Chilkat robe in recognition of the care she had bestowed on her mother. The robe is now in the possession of the caregiver's son, Dr. Walter Soboleff. Its acquisition by a member of

the L'eeneidí was as a gift presented in recognition of his mother's care and the special relationship between the clans of the caregiver and the sick person and is personal property until such time as a ceremonial presentation should occur.

If a member of a clan caused the injury or death of a member of another clan, whether accidental or intentional, the responsible person and his immediate family was expected to provide compensation in the form of property to the clan of the injured party. If the person or family were unable to make the appropriate payment, the entire clan was held responsible. In the case of a death, the life of a person of equivalent status as the deceased was demanded. Occasionally, clan prerogatives were substituted for payments in kind (that is, execution). In the case related by de Laguna (1972:458), the Yakutat Shangukeidí clan acquired songs from a Yukon chief who was believed responsible for the loss of those who were coming at his invitation, even if their deaths were accidental. Such transfers of prerogatives are inter-clan (or inter-tribal) exchanges for the purpose of paying an indemnity. A similar process occurred as part of a peace settlement.

If a crest was seized in a dispute, the original owners would feel an absolute obligation to redeem it.

> If the clan of the murderer refused to pay the amount demanded, then the injured clan could "take" one of the emblems (crests or totems) of the guilty clan. This they would carve on some object and claim it as their own crest until payment was made. In such a case the price would be paid to get the crest back. The native view is that *they could not do otherwise*, the crest *must* be redeemed.
> (Olson 1976:72)

Olson provided the following example dated 1933: after the murder of a Gaanaxteidí man, the Gaanaxteidí asked for money which they planned to use for the funeral potlatch and covering the grave, but the guilty clan did not pay. After two years passed, a member of the Gaanaxteidí clan mounted a skull of a wolf [the crest of the guilty clan) on his wall. "Now they have *got* to pay. ... This will *force* them to pay." The imperative for clans to recover items of clan property lost to another clan was evident in the cases of bride price described above.

Clan *at.óowu* were sometimes seized in war, for non-payment of debt, or in response to an insult. Adoption of another clan's crest was seen as stealing, which was a cause for war or violence between clans. The following examples of clan objects taken as a result of war were mentioned by de Laguna (1972:458): capture of a Wolf Post and the subsequent erection of house of same name; a crest hat displayed to Malaspina; the Angoon Beaver crest; and a facial design originally worn by Wrangell man and adopted by his slayer (in Swanton 1908: pl. LV, h). Russian muskets taken in war were given crest names. The appropriation of another clan's crest was carried out in response to an insult by the other clan. There are numerous examples of items from the U.S. military that were adopted as prerogatives such as

personal names and military hats and uniforms, signifying that debts were left unpaid or other forms of insult occurred. Occasionally a clan would assume a prerogative of another clan because of an insult or wrongdoing as an indemnity against the (future) reparation that is owed. In some cases the aggrieved clan would publicly display the crest it had taken in this way, as a means of social ridicule, but in others the clan would keep the object out of sight; in both cases there was the expectation that the offending clan would eventually redeem the item.[13]

The most common form of transfer of clan *at.óowu* occurring today occurs when a grandparent wishes to honor his grandchild. A special relationship is recognized to exist between a person and his or her grandchild who is a member of a different clan than that of his or her grandfather. During a ku.éex', a grandchild may be "recognized" by the grandfather who may call his grandchild forward to give her or him a name, or to place an object of his clan's *at.óowu* on this person. This distinction recognizes the special relationship between them and confers an honor on the grandchild. Sometimes a clan name is given to a person from another clan in this manner; in such cases the name will be used for the lifetime of the individual, but will be returned to the donor clan after the death of the individual who received the name. Of course, human nature being what it is, a personal name bestowed on a grandchild sometimes leads to the name being retained in the recipient's clan.

A grandchild may request the use of a prerogative (such as a clan object or a song) and can expect to be granted the right to use the item in a ceremony. Most often, the right to use of a song or artifact is temporary, granted for a single occasion such as a memorial. Instances of a longer period of use have been reported; for example that a man might "borrow" a crest from another moiety (that of his father or grandfather) for his use during his lifetime, and the use of the crest was sometimes retained by the man's clan after his death (Olson (1976:37). This occurred in the case of the Wooshkeetaan Thunderbird House screen, a design belonging to a Thunderbird grandfather of the individual who asked permission to make a house screen in this design, in honor of his relationship to the grandparent; the screen remained in the house after the death of the grandchild although Thunderbird crest and name remained the property of the Shangukeidí and not the Wooshkeetaan clan.

The ceremonial use of a prerogative belonging to one's grandfather is based on the special relationship that is believed to exist between a grandparent and her/his grandchild. One may be the recipient of an honor originating with a grandfather, or one may make a request to the grandfather to use an item, who usually grants the wish. Public display of the prerogative, usually in the form of a crest object such as a blanket or headdress, shows people the history, that the

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[13] According to Lily and Jake White, the object would not be used or displayed by the clan who has taken possession of it, as if it were theirs. "But the family [that] received it, they won't use it. The just put it away. They don't put it on anybody to dance or anything. They just keep it" (Lily White Interview, August 26, 2005).

individual is the grandchild of a person from such and such a clan. It is a public display of one's pride of having a certain grandchild, or of being the grandchild of a certain person. Just as with clan *at.óowu*, the use of such items "show[s] to the people who he is, this is my identity, this is where I come from" (A. Katzeek 1985:10).

Alienation

Today, clan possessions are primarily devoted to the ceremonial life of the clans. The traditions and customs of property ownership and intergenerational transfer of the rights and duties of stewardship, while subject to manipulation by individuals during the historical period, have been retained by traditional Tlingit clans and groups throughout the 20th century, as indicated in historical documents, anthropological literature, court cases and efforts by clans and communities to enforce traditional Tlingit property laws. The manipulation of the traditional rules, particularly by those who claimed the individual right to sell or dispose such items, was facilitated at various times by the efforts of religious, educational, civic, economic and even indigenous institutions, and was abetted by social and economic patterns of prejudice and discrimination. Indeed, the cumulative effects of these forces on Tlingit clans and communities cannot be denied, given the large numbers of clan possessions that were sold to outsiders, and the rationales given by some Tlingit people and even custodians for participating in these efforts.

The sanctioned exceptions to the standard rule of non-transferability, as described above, are a fraction of the totality of Tlingit social actions employing ceremonial objects. Although these practices have been described by earlier anthropologists (notably de Laguna) as instances of "alienation" of clan property, this framework is inadequate inasmuch as it ignores the social fact that such transactions are expressive of societal wholeness in an organization of exchange, which the Tlingit often refer to as "balance" or "wooch.yax̲." The items are objects of high value and the transactions most often occur in the context of exchanges between clans. Furthermore, the objects often remain in circulation among the clans and may carry on their historical associations with the donor clans, along with that of their new owners. That can be seen in the keenly felt obligation to redeem and recover items that have been seized as indemnification for personal injury, a debt or an insult, which may be accomplished through an exchange of other types of property. Some items have been transferred in place of taking the lives of clan members, and are a special form of exchange. In rare cases of bride gifts, a material object may actually be exchanged in the marriage transaction between clans. The same principle of exchange was evident in certain inter-tribal exchanges, such as between Tlingit and Haida or Tlingit and Tsimshian, which are structurally similar to inter-clan transfers since the transactions involve two localized clan groups that are engaged in relationships of social, ceremonial and economic exchange. It was with similar expectations (of developing a mutually beneficial relationship) that Tlingit clans sometimes presented items of value to members of foreign (European

and American) governments. There was an expectation of return of some sort, and that the gifted objects would retain their value.

The exceptions to the rule of inalienability are different from alienation, because they are often a form of "keeping while giving." Alienation occurs when objects are sold to collectors and art dealers, to museums and institutions, and they are completely removed from the arena of social action that gives them meaning. As defined by Thomas (1991:39, in Milburn 1997:180): "The alienation of a thing is its disassociation from producers, former users, or prior context." In Tlingit tradition, there was no regular and recurring practice or customary rule of alienation, in this sense, of a crest design or object in the way, for example, a Plains Indian could sell a design representing a vision received in a dream that gave protection, up to four times (or enabled him to sell the shield on which the original was painted), for some horses.

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Appendix B

Tlingit Property Law

Principles of Tlingit Property Law and the dispute settlement process

Tlingit Property Law

Principles of Tlingit Property Law and the Dispute Settlement Process[1]

Rosita Worl, Ph.D.

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1 Abstracted from:

Worl, Rosita. 1994. *Principles of Tlingit property law and case studies of cultural objects.* Report prepared for the National Park Service, Alaska Region. Juneau, Alaska.

Worl, Rosita. 1999. *Tlingit At.oow: tangible and intangible property.* Ph.D. Thesis. Harvard University, Cambridge.

Principles of Tlingit Property Law and the Dispute Settlement Process

Property includes two essential aspects:

> -the object itself (tangible and intangible),
> -the web of social relations that define the relationship between individuals and the object or the use and disposition of the object (Hoebel 1972:58).

Property held by the Tlingit formerly included land, physical structures including houses and facilities where food processing occurred, warriors' armor and weaponry, ceremonial including shamanic objects, utilitarian objects and equipment and clothing, as well as intangible property including songs, stories, names and crests all of which were subject to Tlingit property law.

The 1867 Treaty of Cession abolished aboriginal title of Alaska Native lands and removed land in Southeastern Alaska from Native ownership and the jurisdiction of Tlingit law.

The Tlingit also held slaves, who played an important role in both the economic and ceremonial spheres, as property until 1900 (de Laguna 1972:470).

Another form of property included *at.óow*. Objects were transformed into *at.oow* through a process that began with the acquisition of a crest, its incorporation onto a physical object, its ceremonial transformation into property and its legal validation of ownership by a clan.

Once an object transformed into property including *at.óow*, a complex of behavior then governed the non-property holder's relationship to the property-holder.

Violation of that behavior or social norm was the basis of conflict and resulted in legal action and occasionally supernatural repercussions as well.

Tlingit Property Law

The legal principles governing *at.oow* are multiple and complex. A clan object can possess two distinct, and sometimes three, proprietary interests including ownership, use, and indemnification rights.

Under Tlingit law, two clans may have an ownership interest in an *at.oow*. The *Wooshkeetaan* screen, which was located in Juneau and which was the subject of a legal dispute provides an illustration of this principle.

> -The *Wooshkeetaan* maintained an ownership interest in the screen and a usufruct right of the Thunderbird crest.
>
> -The *Shangukeidi* hold ownership of the Thunderbird crest on the screen and the name of Thunderbird that was used to identify the screen and the house. This ownership right persisted in the duplicate that was made of the original screen.

Anthropologists uniformly concur that the Tlingit have a complex form of property ownership.

Goldschmidt and Haas (1946:17), who studied the possessory land rights of the Tlingit likened their organization and law to Western corporate institutions and law:

> ...the Tlingit had well defined conceptions of property and legal rights to territory. The clan or house group is an economic unit in Tlingit society, which, like a corporation in western society, controls the use of certain land and other valued properties....

While these laws were not codified, the rules governing Tlingit relations with each other and the legal expectations towards property were nevertheless known and well established throughout the society and acknowledged by neighboring tribes.

The dispute settlement process maintained by the Tlingit applied only in those instances in which two clans were involved, but it did not apply to the

internal affairs within a clan. Tlingit law was enforced whether the conflict was between two clans within the same moiety or clans from opposite sides. This principle is significant in that the settlement process did not apply to internal affairs of one clan. The dualism that dominates Tlingit society and culture is essential in the dispute settlement process. The objective of the dispute settlement process was to restore social balance and harmony between Eagle and Raven clans.

Conflicts between individuals within a clan were private affairs and not subject to Tlingit law. **A clan was free to settle internal infractions of the law as it saw fit.**

Intra-clan conflicts occurred, and the inability to apply the law to the internal affairs of a clan and to enforce the laws through sanctions may have been a contributing factor to the separation and migration of house groups from the parent clan.

Nader and Todd (1978:9) have suggested that avoidance, which "entails withdrawing from a situation or terminating a relationship", may serve as a sanction in itself. The result of the inability to apply any mechanism of redress often resulted in a complete break in social relations as a means to seek a solution.[2] Conflicts and movement of groups from their parent clans are extensively reported in the ethnographic literature.

The inability to apply laws to individual rights or property also supports the notion that private property did not exist in Tlingit society.

The legal system transformed tangible and intangible objects into property and conferred the rights of ownership to clans, but there was no comparable process or protection for individual rights and property.

The ethnographic literature has suggested that personal clothing and utilitarian objects were individual property, however, this concept of

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It was conceivable, and more than likely as the oral traditions suggest, that the migrant group might establish itself as separate and independent, and at such time would then have access to the law.

individual property is not apparent in the social, economic and legal systems as they traditionally operated.

The material for personal clothing and basic utilitarian objects were derived from clan-owned resources which supports the notion that a clan's interest dominated over an individual's persona and that individual property was not recognized.

Utilitarian objects could rise to significance and become clan property or an *at.óow.* An example of such as case is evidenced in the case of *K'alyaan's* hammer.

K'alyaan served as the battle leader in the 1804 war between the Tlingit and Russians. He had taken a hammer from a Russian blacksmith in an 1802 encounter to avenge the death of a *Kiks.adi* woman. He used the hammer as a weapon in this encounter in which they destroyed the first Russian settlement in the Sitka.

Later he shortened the handle and attached a rawhide thong to it that allowed him to tie the hammer in the same way that warriors tie their daggers to their wrist. **He is described going into battle** (Kuehn 1972), "*K'alyaan,* who was **dressed in full Tlingit armor with his Raven war helmet[3] and armed with his hammer,** surprised the Russians during the initial attack." (Kuehn 1972).

K'alyaan's hammer, which carried the name *Kaalshax'kayee,*[4] took on special significance to the *Kiks.adi.* The death of the *Kiks.adí* woman at the hands of the Russians purchased the right of the *Kiks.adí* to own the hammer

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3

Other oral accounts report that his father had requested that *K'alyaan* wear his Eagle war helmet in the 1804 battle.

4

This name was given to the first hammer which *K'alyaan* made out of copper. It was made with a knob in the middle of hammer head for the purposes of puncturing the skull which thus gave rise to its name, *Kaalshax'kayee.*

as clan property. Its presentations during ceremonies when great sums of money were distributed[5] transformed the hammer into *at.óow.*
Tlingit law is applied at the group rather than the individual level, and thus clans were held responsible and liable for a wrongful act of its individual members.

Injurious deed precipitating legal action applied to both voluntary and involuntary acts. Clans were obligated to pay for damages whether the misdeed was intentional or accidental.

An example of the application of this tenet is evident in the case in a *Lukaax.adi* woman who had been invited to dinner by a *Kaagwaantaan* of the *Gaaw Hit* (Drum House) of Klukwan.

The *Lukaax.adi* woman died after eating a meal. Although one individual had invited her to dinner and her death was accidental since it was assumed she had died of food poisoning, the *Kaagwaantaan* clan as a whole was held responsible for her accidental death. The *Kaagwaantaan* compensated the Chilkoot *Lukaax.adi* with a *tinaa* or copper shield which now hangs on the wall in the *Yeil Hit* (Raven House) in Haines.

These two principles were basic to Tlingit law and applied even in cases in which a father was responsible for an injurious act to his own child. A father's child is a member of a different clan.

In one such case, a clan was held liable for the death of one of their clan member's son. The son drowned while accompanying his father on a trip.[6] The father's clan was required to compensate the clan of which his wife and son were members.

5

A duplicate of the original Russian hammer was reportedly made for the Sitka 1904 potlatch. This reflects another legal precept that duplicates remain clan property.

6

Recall in Tlingit society, boys are raised and trained by their maternal uncle rather than their fathers.

The accidental death of the *Deisheetaan* shaman in the Angoon Bombardment case is another example of a conflict and liability created through an involuntary act.

Clans as Property Holders

The clan was traditionally the basic unit that held all property in Tlingit society. Today, the clan remains as the body that holds clan ceremonial property. Clans also continue to assert ownership of their traditional lands despite not having legal title to their lands.

Ownership resides within the clan as a unit rather than within its individuals. Clan objects are owned at once by all its members and by none of its members individually. This principle remains in force and individual clan members have no private property interests in objects that have been validated as clan property in ceremonial activities.

The basic rule recognizes clans as the property-holding unit. However, property interests vary within the same clans that are dispersed through two or more communities. Localized clans hold the primary ownership of physical property within their community. Members of the same clan that are associated with different communities have a secondary interest and must request permission to use property of the localized clan.

A clan dispersed through several communities, collectively holds intangible property, such as crests, stories, songs, and names clans irrespective of their locations. All members of a clan theoretically hold ceremonial property because the entire membership irrespective of their residence are expected to render support to a localized clan when it commissions and validates new clan objects as property.

Patty Paul, a former clan leader of the *Kaagwaantaan* in Sitka reiterated this principle when he stated that *Kaagwaantaan* from all communities in Southeast Alaska contributed money for the expense associated with the construction of the duplicate Wolf posts that were validated as clan property in a 1904 ceremony. All Kaagwaantaan thus had an ownership interest in them.

The localized clan is presumed to have a greater interest in property they commissioned and constructed, which is evident in the assumption that the property should remain in the community of the localized clan.

This expectation is apparent in an ongoing conflict in which a *Kaagwaantaan* clan leader entrusted clan objects to a *Kaagwaantaan* originating from another community prior to his death. The *Kaagwaantaan* members within the community of the deceased clan leader where the clan objects originated are pressuring the non-resident *Kaagwaantaan* member to turn the property and custodianship over to them.[7]

Utilitarian property and land held by localized clans are treated differently than crests and ceremonial property. Localized clan owned utilitarian property and land within a community and its territorial boundaries, and members of the same clan originating from other communities had to acquire the permission of the localized clan to utilize their equipment and to hunt and fish on their land and waters.

Ownership of clan property is acquired through **membership** within a clan. In Tlingit society, an individual's right to share, own or use property is a matter of birth into a clan. One gains access to property by virtue of the fact that he or she is born into a clan and is a member of the group.

An infant has all the attendant power to use and own clan property in his or her own right. The child does not acquire this prerogative through inheritance of an estate from his or her parents. Descendible ownership or transference of property rights between generations is absent within the Tlingit legal system.

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In actuality, the objects are in the possession of the deceased *Kaagwaantaan* clan leader's grandson who is a member of another clan (the non-resident *Kaagwaantaan* placed the objects with the grandson, but maintains authority over the objects). The clan to which the grandson belongs is also urging the return of the clan objects to the *Kaagwaantaan* because of the high number of deaths within their clan. The deaths are viewed as supernatural sanctions since their clan is holding property which belongs to another clan.

The ngit form of commu l ownership was studied by Felix Cohen (198 who was a recogniz l expert on Indian law as it was developed by the l ted States governme in its relationship to Indian tribes. He disc ed communal owner ip in his monumental work, *Handbook of Fed l Indian Law,* and ci l the opinion rendered by the Supreme Court in the c of *Journeycake v. erokee Nation and the United States* that defin communal property

he distinctive chara eristic of communal property is that very member of the mmunity is an owner of it as such. He oes not take as heir, purchaser, or grantee. If he dies his ght of property doe ot descend; if he removes from the ommunity it expires f he wishes to dispose of it he has othing which he ca nvey; and yet he has a right of property l the land as perfect that of any other persons; and his hildren after him w njoy all that he enjoyed, not as heirs but s communal owner

Com nal law, as describ y Cohen, applies to Tlingit law. No desc ible or alienable rig accrue to individual members of the tribe at the t the property vests he method of transfer stipulates that no conv nce is permissible ess all members of the tribe or clan agree.

Indi al clan members ha no individual property interest in ceremonial objec and they cannot de e, sell or transfer them. Under this form of unita ownership, member f a clan cannot deprive other members of his or he terest should they consent to the alienation of clan property.

The r erence to the loss of operty interests and rights "if he removes from the c munity" in the *Jour ycake v. Cherokee Nation and the United State* oes not apply to the ingit. I have noted clans maintain an interest in int gible property and a condary interest in tangible property should they ve away from the p nt clan.

How r, the loss of proper interest and rights applies in those instances in whic sub-unit of a clan le ves its parent clan and establishes itself as a separ clan. Should the p nt clan acquire new property, the offshoot has no int sts or rights in the r w property acquired by its parent clan.

However, offshoot clan maintains an interest in crests that were acquired prior to its departure, but none in new crests acquired by the parent clan after its departure.

A clan holds property that it received from its ancestors, and on behalf of its future generations. This legal precept is embedded in the religious and cultural values of *at.oow* or *Haa Shagoon*. These values acknowledge that

> -spirits of ancestors remain with clan objects,
> -social and spiritual harmony are maintained through the use and display of the ceremonial objects between the moieties, and
> -survival of the clan is dependent on its future generations who will also hold and utilize the ceremonial properties.

The pre-imminence of the clan in Tlingit law was noted in the *Kiks.adi* and *L'uknax.adi* competing claims to the Frog crest. Both parties made claims to the Frog as clans, and not as sub-units or houses. In the Angoon Bombardment case, the *Deisheetaan* clan pursued the claims against the commercial whaling company rather than the house of which the deceased shaman was a member.

The initial conflict in the *Wooshkeetaan* case was between the *Wooshkeetaan* clan members and three members of a house group. Recall that Tlingit law did not apply to the internal affairs of a clan. However, the clan would have had the full authority to dispose of the conflict in the way that they saw fit.

The ability to argue the individual rights was allowed only in a western court. The court was apparently aware that its decision in favor of the defendants rather than the clan was contrary to Tlingit law and was based on American jurisprudence.

The court noted that it rendered its decisions with reluctance and awarded the screen to the estate of one of the defendants and the surviving wife of the other defendant who died before the decision.

The Whale House case also demonstrated the primacy of the clan over its house units or groups of its members. The conflict was between members of the *Gaanaxteidi* clan. The village presented evidence to show that the defendants, who identified themselves as members of the Whale House, were actually members of the Whale and Valley Houses, and this evidence was not refuted by the defendants.

The judge ruled in favor of the *Gaanaxteidi* rather than any segment of the clan.

Possessory Rights of Houses

Houses, as sub-units of clans, have an ownership interest in clan property. Houses also have the primary possessory rights of clan objects that the house commissioned and produced. However, the clan retains residual ownership rights.

Clans own crests, and as members and a unit of a clan, houses have the right to utilize clan crests in the production of new objects. The Whale House Case provides an illustration of the utilization of the several *Gaanaxteidi* crests in the rain wall screen, the four posts and the Woodworm feast dish by a house unit.

Duplicate *Kaagwaantaan* Wolf poles were made for three different houses in Sitka also illustrate this principle.

The segmentation of houses and clans indicates that new houses were constructed as the population was expanding during the prehistoric period. In such instances, clan members claimed house membership in their old as well as in the newly constructed house.

Clan objects were also transferred between houses without concern for divested ownership. In a case study of the transference of the office of clan leader through nine generations illustrates that property that were divided between two brothers who are presumed to have lived in two different houses.

The Whale House Case also provides an illustration of clan objects that were moved between the Whale and the Raven Houses.

Dual membership in houses also demonstrates that houses hold possessory rights and clan retains the residual ownership rights in house property.

An example dual membership is noted in the *Shangukeidi's* construction of a new house in Klukwan in 1971. The Klukwan *Shangukeidi* claim membership in the House Lowered from the Sun and the old Thunderbird House.

They maintained a property interest in both houses by claiming ownership of the house names, ceremonial objects, and the physical structures themselves (the older house burned shortly after the construction of the new clan house, but the *Shangukeidi* maintained their intangible property interests in the Thunderbird House, i.e., its name and oral traditions).

While it is evident that property moved between houses, this pattern may have intensified as the Tlingit began to abandon the traditional communal houses and move into nuclear family houses. Clans began to consolidate their ceremonial property that had been originally dispersed among different houses into their remaining clan houses in the early to mid-1900s.

The Sitka *Kaagwaantaan* provide an example of this consolidation pattern. Swanton (1908:405) identified 14 *Kaagwaantaan* houses in Sitka at the turn of the century, but this number began to decline after this period.

The Park Service records indicate that on February 7, 1959, the *Kaagwaantaan* moved three totem poles from the Wolf House, which was also identified as the *Woosh-gee-tan [Wooshkeetaan] Hit,* to the *Kaagwaantaan* Community House and several other objects to the *Aanyadi Hit.*

The Wolf House had been damaged by fire some 15 years earlier and was soon to be demolished. The *Kaagwaantaan* leader, Alex Andrews, whose Tlingit name was *Koox'ishch',* was serving as the custodian for the clan collection that was originally in the Wolf House and his own, *Ch'aak' Kudee Hit* or Eagle Nests House.

Alex Andrews and George Hall of the Park Service searched the Wolf House before its destruction, and found a large bentwood box and the front design board from Chief *Anaaxoots'* House.[8] These objects are presumed to have been placed in the *Kaagwaantaan* Community House along with the three poles from the Wolf House. The Community House also contained four other old house poles that were hidden from the missionaries who had told them to destroy their old idols.

A ceremonial Bear staff that was originally in the *Xoots Hit* or Bear House was transferred to the *Kook* Hit. The record reveals that the *Kaagwaantaan* moved their clan property freely between the different houses since they were obviously viewed as clan property.

The distinction between possessory rights of a house and the ownership rights of clans is evident in the legal process in which an object is transformed into property and its ownership is validated by a clan. Under this process, property interests accrue to the clan, and house members have ownership interests as a clan member.

A critical fact that supports the legal notion that a house unit does not have absolute ownership independent of the clan is reflected in that a house unit does not hold ceremonies independent of the clan unless a house unit is synonymous with a clan.

A house may initiate the commissioning and production of a new object, but its full clan membership is expected to support the production costs and

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In 1963, Alex Andrews placed this bentwood box in the Sitka National Park. In 1970, the next caretaker, Bill Peters, along with three other *Kaagwaantaan* members signed a formal loan agreement with the Park which stated that they would never sell, dispose or allow the collection to leave Sitka. According to an internal Park Service memo, sometime after the 1970 agreement had been signed, Bill Peters wanted to renew the agreement, "Just do it again, to make him feel good." This suggests he was re-validating clan ownership much in the same way as it occurred in ceremonies. The Park also received on a loan basis another *Kaagwaantan* collection from another leader, Patty Paul. These two *Kaagwaantaan* collections formerly had been held by a single custodian before they were separated between Alex Andrews and Patty Paul.

ceremonial expenses in which the object is ritually presented and thus share in its ownership.

The house unit in this case, like the localized clan described above, maintains the primary possessory right to new ceremonial objects which it commissioned for production over other house groups within the clan.

Usufruct Rights of Clan Children and Grandchildren

Tlingit law allows an individual to assign property rights to another individual who is a member of different clan than the granting clan. This right is designated as a usufruct right.

Usufruct rights allow "the use and advantage of another's property short of destruction or waste of its substance" (Gluckman 196 :357). A father and grandparent may grant a **usufruct** or **use right** of a crest or ceremonial regalia to a child and grandchild of his or her clan.

When the usufruct right has been conveyed, the child or grandchild may use the crest or the ceremonial regalia, but the right is limited to use and is not an ownership right. In some instances, the father or grandfather may extend use rights for a specific occasion or a limited period, while in others the use right may be for an extended period.

The child or grandchild does not possess the authority to transfer this use right to another individual. It exists only during the lifetime of the child or grandchild who received the right and cannot be assumed by the offspring of the child or grandchild.

The use right of a crest or clan regalia cannot be taken as a liability payment by another clan. The use right ends with the death of the child or grandchild.

The use of a grandparent's or clan father's regalia is also governed by rules. Someone of the opposite moiety from the child or grandchild ceremoniously puts the grandparent's or father's regalia on the child or grandchild.

The father or grandfather acknowledges the relationship to the child or grandchild and through the act announces the extension of the usufruct right.

Should the child or grandchild use the regalia in the absence of the father or grandparent, he or she must tell the history of the item and to whom it formerly belonged and acknowledge their father's or grandfather's clan to indicate that the crest remains the property of the granting clan.

The *Wooshkeetaan* case provides an example of a paternal grandparent granting his grandson the right to use the Thunderbird crest. The complexity of this case was compounded by the placement of the grandfather's crest on a permanently-fixed ceremonial object rather than ceremonial regalia which is the norm.

The Shangukeidi also stressed that a use right had been granted, but they maintained ownership of the Thunderbird crest. This case also exemplifies the dual nature of property interests in an object including the extension of a use right of the crest by one clan and the ownership of the object or screen by a second clan.

Authority of Clan and House Leaders

The *shaadeihani,* the clan leader, and *hits'aati,* the keeper of the house, hold property in trust for their members. Under Tlingit law, a trust relationship exists between the clan and house leader as the trustee and their members as the trustors.

The clan and house leaders have a fiduciary duty to use and protect the property for the benefit of their members. Under this trust, a right of property and unitary ownership exist on behalf of the clan and house members.

The clan and house leaders enjoy a special status, responsibilities, and privileges, but they lack the authority to dispose of communally-held property.

> -Emmons (1991:27, 39): Clan and house leaders are highly respected, but their actual authority is limited, and major decisions that involve the interest of the clan are subject to clan consent.

-Goldschmidt and Haas (1946:17): Clan leader's right to property are subject to restrictions. "He cannot sell the right [to property] though it may be transferred in legal settlements to another group...."

-Olson (1967:37) affirms this legal tenet that the trustee alone did not have the authority to sell or otherwise dispose of clan property.

-During the May 1994 Clan Conference in Juneau, a caretaker discussed the limitation of his authority regarding the disposal of clan property. He reported that he wanted to sell two clan objects in order to secure funds to renovate his clan house. He had been offered $250,000 and duplicates to replace the two objects that he wanted to sell, but not all members agreed to the sale. He indicated that he disagreed with the decision of his clan members, but intended to comply with their wishes.

The authority of a trustee to alienate clan property was one of the questions in the Whale House case. The trustee asserted he possessed the right to sell six clan objects without the express approval of the members of the *Gaanaxteidi* clan, and he directed that his nephews to remove the objects from the clan house.

The judge ruled in this case that the objects belonged to the clan that had denied the legitimacy of the trustee's act to alienate clan property.

In the *Wooshkeetaan* case, two Tlingit maintained that the house leader had limited rights. They asserted that the house leader had the authority to sell the screen, but they supported the communal ownership of the screen and maintained that the trustee would have to share the proceeds from the sale of the screen with members of the clan.

The communal claims of ownership in the case studies and the ultimate resolution in three of the cases affirm that individual members, including the clan and the house leader, lack the authority to dispose of clan property.

Validation of Property Rights and Trustees

Goldschmidt and Haas (1946:15-16) cite an unpublished manuscript of Viola E. Garfied that describes the legal functions of the potlatch in validating both property rights and the succession of an incumbent to the office of clan or house leader:

> Both the Tlingit and Haida utilize the potlatch as a vehicle for the public proclamation of claims, and to keep their property rights and prerogatives a matter of public record. This is especially true of the potlatch given by the successor to a house head. In fact, he cannot legally hold the position until the potlatch has been give, at which he settles up the estate, as it were, listing the property belonging to the house group and acknowledging the debts which have been incurred.

The legal role of the Tlingit moiety system is evident in the requirement to have clans from opposite moieties present during ceremonial activities in which the ownership to property is announced and validated and in which an individual assumes the leadership position.

Two processes occur in the ceremonial context to make the transaction legal and to validate the ownership of property:

-a ritualized presentation of the object by one clan
-a public acknowledgment by an opposite clan.

The ceremonial process can be simple or elaborate, but these two components are essential.

In the presentation ceremony, the name and history of the clan, crest, object, and associated song and names may be recited and recalled. It also includes a payment to the guests, or in an earlier period, the sacrificing of slaves. In response, the guest clan or clans also engage in speech-making, singing, and dancing. The presence of the opposite clan and their response to the hosting clan ensure the legality of the transaction.

The same basic process applies to the validation of a new clan or house leader.

-The new leader is ritually dressed in ceremonial regalia that his predecessor had held in trust by members of the opposite clan.
-He addresses the guests and recounts the life of his predecessor and distributes gifts and money to the opposite clan.
-The guests, in turn, respond with an acknowledgment and thus validate his new position.

During the 1981 Tlingit Property Law Forum, tribal scholars drew a parallel between the transformation of an object into property and parliamentary procedures. Under Robert's Rules of Order, an individual offers a motion. If no one seconds the motion, it dies. If the motion is seconded, it becomes the property of the corporate body. Only the body has the right to dispose of the motion through such action as adopting, rejecting, deferring or tabling it.

Validation of Ownership or Action

Tlingit Law	**Roberts Rules of Order**
-ritual presentation	-making a motion
-response by the opposite clan	-seconding of a motion
-ceremonial action	-disposal of the motion

The offices of *shaadeihani* and *hits 'aati* are considered apart from the particular person who occupies the position.

The Tlingit use a phrase to describe the succession process:

l s'aati at toodei nagutch--stepping into the masterless things, or literally, stepping into his brother's or his uncle's role

Under this process, the succession is to a position of *shaadeihani* or *hits 'aati,* and it is directly linked to clan property through a trust relationship.

Alienation of Property

Tlingit law imposes rigorous restrictions on the alienation of clan property even if its clan leader desires to dispose of property.

Tlingit law readily allows for the voluntary and involuntary transfer of a clan's most prized possessions when a transgression has been committed against another clan and a debt is encumbered.

A clan can lose rights to its tangible and intangible property through this indemnification process if it fails to meet its legal obligation to another clan. An injured clan can confiscate physical property or the crest of an offending clan without repercussion and assume ownership of the object or replicate a crest on its ceremonial objects if its claim is not satisfied.

> -The *Kaagwaantaan's* seizure of the Wolf Post from the *Teikweidi,* which was is a clear example of involuntary loss and the taking possession of *Teikweidi* tangible property.
>
> -The *Kiks.*adi's duplication of the *L'uknax.adi* Sleeping Man crest provides another illustration of an involuntary loss and the confiscation of intangible property-- a crest by a clan whose debts have not been satisfied.
>
> -The *Deisheetaan, Kaagwaantaan,* and *Shangukeidi's* adoption of the military uniform for unsatisfied debts are examples of the application of this tenet to social entities outside of Tlingit society.

A clan may choose to voluntarily surrender its crest or property for the payment of a debt before a claim is initiated by an aggrieved clan. An example of the voluntary relinquishment of property is evidenced in the case of the *Yaxtehittan* who assumed responsibility for the death of three young *Kaagwaantaan* men of the Box House.[9]

[9]According to Cecilia Kuntz, who told me this story, two of their names were *Kaakayeik* and *Kaanaxtee Eesh,* but she was unable to recall the third name.

A young man of the *Yax̲tehittan* had robbed a liquor store, and its owner set out to look for the thief. He found three *Kaagwaantaan* men camping and accosted them with a club. During the scuffle, the store owner was killed.

The White settlers came after the three men and hung two of them. Before they could hang the third *Kaagwaantaan,* a naval officer from the warship *Jamestown* rescued the *Kaagwaantaan* who was named *Kaakayeik.* He was taken to jail, but managed to escape. He ran with his ball and chain to the Dipper House where he sawed off the ball and chain.

When the settlers learned of his escape, they rushed to the Auk village. The young *Kaagwaantaan* told the other Tlingit that too many Tlingit had already been killed by the White men.

He insisted that he be allowed to fight the settlers alone. *Kaakayeik* emerged from the house and ran towards the settlers howling like a Wolf, the crest animal of the *Kaagwaantaan.*

He wrestled a hatchet from one of the settlers, and before he hit him he shouted, "We will now feed you dry bread and water," which had been his fare while he was incarcerated.

Rather than dying at the hands of the White men, the young *Kaagwaantaan* killed himself with his pistol. Later the grieving uncle of the three *Kaagwaantaan* went down to the tideland flats and cried, "Let the tide come over me, my nephews are gone."

Two men went to the beach and brought the uncle to the Dipper House. The *Yax̲tehittan* told the uncle that they assumed responsibility for the deaths of his three nephews, and gave the *Kaagwaantaan* land around Gold Creek and *Eech' Shaa Nax.*[10] The *Kaagwaantaan* also took possession of the ball and chain as a crest.[11]

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[10] *Eech,* which means crystal or area that shines, in this case, with gold, suggests that the site may have been Perseverance Valley

[11] Jake Williams was the first caretaker of the ball and chain. After his death it was transferred to Billy Johnson, but when he died the ball and chain were buried with him.

A conflict that occurred shortly after 1867 and a settlement made with the issuance of a promissory note for the settlement of a debt provide another example. The case involved two clans from opposite moieties in which a daughter was held responsible for the death of her father and his friend.

Her clan conceded that it was responsible for their deaths. Her clan sponsored a ceremony and acknowledged that they were too impoverished to pay their debt to the opposite clan, but they offered them their greatest possessions.

They placed a large rock on a table and said that it symbolized their land. They then placed on the table a bundle of short sticks tied together by a fish line, and they said that it represented their clan houses. Finally, they presented another bundle of sticks tied together by a strip of calico that represented blankets and symbolized wealth.

The clan acknowledged they would repay their debt "stick, by stick." The mortgage held by the aggrieved clan has not yet been repaid, and it has been a source of tension between the two clans.[12]

In some cases, the death of a member of a clan that deprived another clan of property may satisfy a debt. Such a case was exemplified when the village of Hoonah burned down in the mid 1940s.[13] A group of *T'akdeintaan* women were smoking fish underneath their house (which was built on

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This tension erupted into a conflict nearly one hundred years after the initial dispute over the name given to a public facility. The clan, which holds the mortgage to the land on which the facility sits, gave the building one of its house names. This upset the clan which is recognized as the traditional owner of the land, but which has not yet repaid its debt. They boycotted the activities celebrating the opening of the facility and refused to visit the facility for another five years until a negotiating process was initiated in the late 1960s.

13

The Bureau of Indians Affairs conditioned their financial aid to the community on the requirement that only nuclear family houses be built rather than the communal clan houses.

pilings). The canvas they used to enclose the area caught on fire and spread throughout the village.

An old, blind man had refused to leave the *T'akdeintaan* house when it began to burn. He told his clansmen, who tried to persuade him to leave, that he intended to die. His kinsmen acceded to his wishes and put their clan regalia around him.

As the house burned, the *T'akdeintaan* elder was heard barking like their Dog Spirit which was associated with the *Shaatukwaan Keidli at.oow* (Mountain Dog Hat). The *T'akdeintaan* were held responsible for the fire, but the other clans did not initiate any claims for the loss of their property since a *T'akdeintaan* had sacrificed his life in the fire.[14]

Intangible Property[15]

Tlingit legal constructs include intangible property, such as crests, names, song, sounds or cries of crests, and oral traditions. At present, the Tlingit also assert that intangible property includes intellectual knowledge which reflect the collective cultural knowledge of the Tlingit such as that pertaining to the Chilkat weaving, ceremonial dancing, and the production of medicinal and spiritual plants, and other traditional biological remedies.

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His death did not appease the anger of at least one clan which likened a dog and fish in two of their crests to *T'akdeintaan* crests. While the two objects with the dog and fish were not originally made as ridicule objects, they were used to express their ill feelings towards the *T'akdeintaan* for the loss of their property.

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This thesis has made no distinction between tangible and intangible property since no differentiations are made between them in Tlingit law. However, the Tlingit legal system governing ownership of intangible property is not generally known or understood, and it is briefly reviewed here to highlight the Tlingit concepts of ownership of intangible property. Intangible property rights have become an issue among the Tlingit as they see the wholesale expropriation of their crests, which are viewed as part of the public domain and apparently outside of the protection of existing Western laws. Crests are also treated as art and commercialized in the non-Indian community (and by a significant number within the Tlingit community as well).

The Tlingit legal regime makes no distinction between tangible and intangible property. Intangible property is treated the same as tangible property in terms of its ceremonial transformation into property, the validation of ownership, and the dispute settlement process.

Both the *Kiks.adi/L'uknax̲.adi* and *Wooshkeetaan* case studies involved issues surrounding intangible property or crests. The Angoon case reflects a conflict in which the naval uniform was confiscated as a crest of the *Deisheetaan*. The adoption of the name of *Schwatgi* by the *Shangukeidi* for the failure of the naval Lt. Schwatka to pay his debt represents another appropriation of intangible property.

In the minds of the Tlingit, claims of ownership to intangible property extend to communities outside of Southeast Alaska and also to the non-Natives. They attempted to protect their claims of ownership to intangible property throughout the 1800s and well into the 1900s.

In one incident, a television station showed, *The Alaskan,* which played two Tlingit songs as background music for a scene. A clan recognized one of the songs as their own, and they retained a lawyer to assert their ownership. They discovered that a teacher recorded the songs at a ceremony that was held in Hoonah a few years earlier.

In another case involving both tangible and intangible property, a totem pole was taken from Old Port Tongass to Seattle in the early 1900s. Fifty years later the Tongass Tlingit demanded restitution stating that the pole had been removed without their knowledge or permission.

The result was that the City of Seattle had to pay the Tlingit for the poles 50 years after its illegal seizure (Corser:n.d.). The claim continued when the Tlingit learned that the reproduction of the pole was planned, and the Tlingit initiated an intellectual property claim.

Tlingit legal precepts extend clan ownership of crests to all forms of reproduction. The *Kaagwaantaan* have placed restrictions on the photographing of their objects stored in the Sitka Park. They also signed a formal agreement with the park to share in the profits from the sale of postcards of their totem and screen.

The Chilkat Tlingit purchased the art of Chilkat weaving from the Tsimshian Indians, and they have claimed it as their own art form. In 1993 a group of five indigenous weavers gathered in Hoonah and adopted a statement reasserting ownership of Chilkat and a form of geometric weaving, known as the Raven's Tail, and declared the following:

> We declare our indigenous rights and privileges according to traditional law. In recent times, many of our arts were laid aside because we were taught that our arts were valueless, evil, crude, and only belonged in the hands of museums and collectors as mementos of a dying culture. At one time our art defined and interpreted who are were as Nations, Clans, Families and Individuals and set the boundaries for our jurisdiction over the land....We pledge to uphold the wishes of our ancestors and living elders to regain ownership of our traditional art forms and pledge to strengthen our roles as teacher, artist, and interpreter of our art forms through future gatherings and expanding the circle of weavers....

Dispute Settlement Processes

According to the oral traditions of the Tlingit, the dispute settlement process had its beginnings in the supernatural world. The first settlement occurred between a brown bear and dog salmon. To record his promise that he would no longer bother the dog salmon, the bear painted red stripes on the dog salmon that appear when the dog salmon enters fresh water.

The general ethnographic literature depicts the Tlingit as a warring society, but it has directed little attention to its mechanisms to maintain social order and harmony. The Tlingit traditional dispute settlement processes, prior to the introduction of the western judicial system, involved both formal and informal procedures.

Disputes are social processes embedded in social relations (Nader and Todd, Jr. 1978:16), and the Tlingit, in their desire to preserve a valued, and necessary relationship, will seek a settlement procedure that promotes reconciliation.

The objectives of dispute settlements:

-to rectify the situation by some regularized procedure in the public arena;
-to restore the rights that were affected by a grievous act;
-to ensure freedom from further infringement; and
-to obtain compensation for damages.

Dualism is embedded in Tlingit legal and judicial processes, and to ensure that an act is legal, the presence and participation of opposing clans are essential in all of the legal processes (the dispute settlement process may also be used between two clans within the same moiety). Dualism is a dominant organizing principle in the following processes:

-gathering raw materials to manufacture ceremonial and other objects
-preparing the raw material for production
- producing objects and building houses
-transforming objects into property
- validating claims of ownership
-extending use rights
- appointing new clan and house leaders
-settling disputes.

A clan may have a grievance against another clan for the violation of a law that requires that damages be paid to the aggrieved clan. The preconflict stage refers to a condition in which one clan perceives an action to be unjust and grounds for a complaint, and verbalizes expectation of compensation for damages.

The offending clan may elect to immediately compensate the aggrieved clan for its wrongful act. In this case, no dispute exists.

A disagreement between two clans enters the conflict stage should damages not be paid for a complaint. A clan escalates a dispute by making it public and noticing the intent of doing something about a desired claim. At this point the clans traditionally opted for one of the following processes:

Informal Dispute Settlement Processes

The Tlingit employed a number of informal processes to exert public pressure on clans to resolve disputes and meet their legal responsibilities. Public opinion serves as a legal device when the defendant recognizes and accepts that the plaintiff claims are correct, the settlement or punishment is accepted as sound, and the wrongdoer accedes to the settlement because he feels he must yield.

The action of the plaintiff and the supporting public opinion constitute a rudimentary sort of "court," and the procedure is inescapably legal.

One such rudimentary court utilized by the Tlingit to persuade a clan to settle a dispute and meet its obligation was through the display of an object that is known as a ridicule or shame pole or mask.

Should a clan commit an offense and fail to meet its debt, the aggrieved clan might commission a mask to be made of the offender, and then publicly display the mask or pole. The honor of the offending clan is impugned and its members may be coerced into meeting their debt.

The Lying Woman's mask is an example of a ridicule mask that was employed to seek resolution to a conflict. In this case, a high status woman in Wrangell gained notoriety for gossiping. She greatly offended her husband's clan when she began to tell lies about her husband.

The husband's clan had a ridicule mask made of the wife which was then prominently displayed. The wife's clan was greatly humiliated by the mask, and immediately compensated the husband's clan. The clan took additional action to ensure that the wife did not continue this practice.

Another informal method was employed by an individual of an aggrieved clan in which he or she danced with a grandchild in a public place. This act conveyed a silent message to the guilty clan that unless a payment was made, the aggrieved clan would make the offense public.

The same message could be conveyed by beating a drum throughout the day in the town center. To avoid public disclosure and open ridicule, the guilty party usually made the payment.

Supernatural Sanctions

Several references have been made to supernatural sanctions as a means to control social behavior. de Laguna (1972:455) and others have reported how crests may be used to maintain peace. Supernatural sanctions sometimes prompt and accompany legal action.

The coercive powers of the supernatural sanctions lie in the belief that spirits are associated with tangible and intangible property, and that they interact with their living counterparts. The misuse of property or inappropriate behavior in the presence of *at.oow* can lead to harmful consequences.

This ideology holds that the natural world is patterned after the supernatural world, and the human kin of the spirits are required to adhere to supernatural rules that govern the use and ownership of property.

These rules dictate the interactions between clans, and require specific treatment of ceremonial objects. Violations of these norms can subject the wrongdoer to the wrath of spirits associated with ceremonial objects as in the instance in which members of one clan hold property that legally belongs to another clan.

The spiritual forces embodied within an object are directed against the clan illegally holding the object. In one such case, several members of a clan are perceived to have died as a result of supernatural sanctions.

Formal Dispute Settlement Processes

Informal methods were employed to pressure clans to meet their obligations without necessarily publicly disclosing a crime. In other processes, the dispute became public and often involved a third party.

One method involved the entry of a third party into a dispute. In this process, a third clan paid the damages to a claimant clan.

The motives may not be benevolent. Emmons (1991:355-356) provides an illustration of the entry of a third party into a conflict.

In this case, an Angoon clan held the Sitka *Kiks.adi* responsible for the death of one of their clansmen. The *Kiks.adi* did not accede to the Angoon clan's demand for payment. Before the dispute could escalate into a war, a third clan, the *L'uknax.adi,* interceded and paid the *Kiks.adi's* debt to the Angoon clan. In this instance, the conflict with the *Kiks.adi* shifted to the *L'uknax.adi.*

The public confiscation of a crest, which as noted earlier is the one of the most prized possessions of a clan, by an aggrieved clan from a clan which has failed to meet its obligations is another dispute settlement mechanism to restore social order.

A debt is owned, and a payment is taken such as in the case in which the *Kiks.adi* confiscated the Sleeping Man Crest from the *L'uknax.adi.* This legal process also allows a clan to repurchase its crest from the clan which took the crest to satisfy a debt.

The Peace Ceremony Settlement Process

The settlement process referred to as the peace ceremony,[16] was basically a mechanism of negotiation. Nader and Todd (1978:10) have described the negotiation procedure as one in which two principal parties are the decision makers, and the settlement of the dispute is one to which both parties agree, without the aid of a third party.

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According to Tlingit oral traditions, the peace ceremony was introduced by the Tree People who came from an unknown area in the south. They were not Tlingit, and it is not known whether they were humans or spirit people. The Tree People taught the Tlingit how to conduct the peace ceremony, which was first held in Hoonah. They were instructed to be sensitive in their words and actions and to cleanse their mind and bodies. Their diet was restricted, and they were forbidden to eat certain foods, such as seaweed.

However, the peace ceremony, has a component which likens it to a procedural model involving adjudication or the presence of a third party who has the authority to resolve a dispute (ibid.:11). In its outward appearance the peace ceremony is a reconciliation ritual between two clans, but viewed within its entirety, it is a legal institution, which as described by Bohannan (1967:46), is one through which the people of a society settle disputes that arise between one another and counteract any gross and flagrant abuses of the rules.

de Laguna (1972:592) summarizes the peace ceremony process:

> ...the making of peace was equivalent to making a legal settlement that would eliminate all causes for conflict; the original reason for the fighting and all the ensuring injuries were treated as if they were issues in a case at law. Restitution or recompense had to be given for what had been seized or destroyed; for human lives lost equivalence had to be surrendered. Thus, paradoxically the victors in battle were theoretically the losers in peace. Ideally, peace was made when an equal number of persons, of matching rank, had been killed on both sides. Payment of damages in the form of such property as coppers, blankets, slaves, or other valuables, might be accepted in order to equalize the score of deaths. Property was also given to redeem captives and crest objects, or these might be exchanged.
>
> Most important of all, making peace involved the holding of a peace ceremony, with elaborate symbolism to testify that grudges were buried and with magico-relgious sanctions to guarantee amicable behavior.

The peace settlement process is sometimes initiated after a third party, a council of house leaders, enters a dispute and urges the disputing clans to resolve their differences. The process may begin with localized clan-wide meetings of house leaders to discuss and seek resolution of a conflict.

The house leaders discuss and agree on a course of action. They then convene a clan council meeting in which every adult male of the clan has an equal right to voice his opinion.

Majority rule prevails, and in most cases, the decisions made by the house leaders are adopted (Emmons 1991:40). Older women of high rank, also had considerable influence in political and economic actions affecting the clan (de Laguna in Emmons 1991:40). The council meetings made decisions about the terms of peace.

The next phase is a formal request for peace. A *Nakaani* (brother-in-law) from each of the disputing clans is appointed to represent the respective clans. He cannot be a member of either clan since he acts as a third-party mediator and as the moderator of the ceremonies.

Each *Nakaani* confers with its respective clan, and then the two *Nakaanis* meet to negotiate the terms of peace. Finally the accord is brought to each of the clan councils and together they settle on the appointment of acceptable hostages who will be exchanged between the disputing clans.

The *Nakaani* also has the authority to conduct searches for weapons at the onset of the peace ceremony.

The ceremony begins with one of the disputing clan arriving and singing their songs and bearing eagle feathers on a staff or the masthead of canoes, which are the signs of peace and which possess supernatural powers. If the clan is not a resident of the community, the visiting clan canoes approach the village in a single column and stop just short of reaching the village.

The visiting clan chief calls the names of the opposing clan leaders. He then recounts the events leading to the conflict, the losses they incurred, their demands for payments, their desire for peace, and finally offers their hostages, which may number up to eight, to the resident clan.

The resident clan leader responds, invites the visitor to land, and his clansmen rush forward and carry the hostages into the clan house (Emmons 1991:352).

In some instances, a mock war is held between the two clans. The warriors, including women, approach each other with their weapons poised as if they are going to attack.

The face of each hostage is painted with his crest, and he has two feathers in his hair. He stands among his clansmen and then advances toward the enemy. The warriors from the other clan seize the hostage, and with shouts of joy, lift him to their shoulders and carry him into the village.

Each clan had the option of killing its hostage, but if he were allowed to live, he would find the weapons that had been used in the conflict and throw them into areas identified as Deep Salt Water.

Emmons (1991:329) reports when someone was called upon to offer his life for his clan, even if it were for an act that he himself had not committed, he did so willingly. If the hostage had a younger brother, he stepped forward to offer himself in lieu of his older brother.

The hostage is carried to a place of honor in back of the clan house where he is placed on a stack of furs, and is symbolically transformed into a deer, a peaceful animal and a symbol of peace. From this point, he is identified as a peacemaker.

The captor clan provides him with the finest regalia, including the Chilkat blankets that he will wear throughout his captivity, and the attendants, who are assigned to care for him, put eagle down into his hair. Throughout his captivity, the attendants feed, dress, and paint the peacemaker's face with his crest. They respond to his every wish, and also assist him to assure that he does not violate any of the multiple taboos to which he is subject. They also prevent any attempts by the peacemaker to escape.

The *Guwakan* cannot use his right hand since it is the hand that symbolically committed the crime for which he is being held. The first three fingers of his right hand are bound together.

The reasons for some of the taboos are unknown such as the requirement for him to sleep on his left side. His attendants watch him throughout the night to ensure that he does not roll over onto his right side.

The peacemaker, who was given an honorific name[17] at the beginning of the ceremony, must conduct himself at all times in a peaceful manner. He maintains peace within the clan by invoking supernatural sanctions against anyone violating the peace.

He can draw the two eagle feathers from his head to invoke peace should any sign of conflict develop, and this act ensures immediate compliance. The peacemaker is required to watch for any incidents that might violate the peace.

He is also viewed as a source of good luck. The peacemaker is an honored person among the captor clan, and he is addressed as *"Ax̲ Guwakaani"* (My Deer).

At the end of a year, the peacemaker is officially freed in a ceremony which is divided into two segments that continue over several days. It begins with the peacemaker and his attendants fasting for two to four days to cleanse their minds and bodies.

The deer can drink only a little salt water in the early morning, "before the Raven cries" (Emmons 1991:352). At the close of the fourth day, the deer is taken by his attendants into the woods. He is washed and dressed in clean clothing. Rocks are placed under the peacemaker to ensure that he has a long life.

The first four days of the peace ceremony are similar to a mourning period and sorrow ceremony in which each of the disputing clans sings its own mourning songs and recount their clan histories.

If the terms of the peace settlement include payment of property, it is made before the feast. If a clan does not have sufficient property to meet its obligations, the last resort is to offer land.

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Examples of peace names include Hummingbird Deer, Mountain Deer, Abalone Deer, Kicking-in-the-Sky Deer. The peacemaker imitates through his movements and dance the animal after which he was named. These names become the property of his clan and are given to clan members in succeeding generations.

The *Lukaax.adi* are said to have obtained portions of their land in the Chilkoot area from the *Chookaneidi* in this manner.

The peacemaker dances with the captor clan rather than his own. Those who were involved in the dispute are not allowed to dance. The final dance begins with the entry of the dancers stomping their feet.

According to Tlingit beliefs, ill feelings are stored in the heels, and they follow one around. The stomping signifies that the clan is stomping their ill feeling into the ground.

The peacemaker enters with his two attendants and dances with his right arm extended and his hand, which has now been untied, open. He dances to the songs that had been composed for him, and he imitates the movement of the deer name that had been given to him.

Each captor clan carries its peacemaker on their shoulders and then the hostages are exchanged. The last ceremony is described, "They are shouted out," just as they were "shouted in" when the hostage first came to the captor clan. With the exchange of hostages, the peace ceremony is complete.

The peace settlement process was used until this middle of this century as a dispute settlement process. The last traditional peace ceremony was held in the late 1950s.

In 1992 discussions were initiated to hold a peace ceremony to resolve a dispute. In this case the dispute occurred between two communities rather than clans over proposed governmental boundaries. Each believed that the other was infringing on its traditional land use and occupancy area or those associated with the geographical boundaries of the traditional _____*kwaan.*

The issue was resolved to the satisfaction of both sides without the benefit of a peace ceremony.

A widely publicized peace ceremony that was intentionally not completed was held along the Chilkoot River by the *Lukaax.adi* in 1980. The *Lukaax.adi* wanted to make public their claims against the State of Alaska.

Daanaawaak, the clan leader, stated that the peace ceremony would not be completed until the state and federal government addressed their concerns:

-the removal of a fish weir, which the clan leader believed affected the salmon population in the Chilkoot River,
-the cessation of sports fishing in the Chilkoot River,
-the further disposal of their traditional lands under a governmental land lottery program, and
-conveyance of land to landless ANCSA villages

The state moved to settle some, but not all of the claims, and legislation that would convey lands to Haines, which is one of the villages that did not receive land, is still pending in Congress.

Technically, the peace settlement is a mediated negotiation process in which terms of a settlement are discussed and agreed upon. The settlement terms are settled prior to the ceremony. The peace ceremony is a means to ensure the maintenance of harmonious relationships between the disputing clans throughout the year.

The Hoonah Clan Conference, which addresses various cultural issues during its annual meetings, has indicated that it will be discussing the application of the Peace Ceremony as a dispute settlement mechanism for contemporary circumstances.

Western Legal Systems and Tribal Courts

One of the first acts of the Tlingit in the American legal system was to hire a lawyer. A council of clan leaders convened for several sessions to discuss the sale of Alaska to the United States by the Russians in 1867.

Some of the leaders favored war to drive the Americans out, but a prominent leader from Chilkat argued against this action pointing out the vulnerability of the coastal villages from attacks by the United States war vessels.

Instead the Tlingit adopted a diplomatic stance and advised the United States officials that they owned Alaska, that Russians had lived in Alaska only with their permission, and that the United States should give them the money if they wished to purchase Alaska.

Frustrated over a lack of response from the United States government, the Tlingit hired a lawyer in 1890 to make its claim of land ownership (*The Tlingit and Haida Indians of Alaska v. The United States* 1959).

The Tlingit, particularly in Sitka, which was the seat of government, were using the Western legal systems in the late 1800s while they were still employing the traditional dispute resolution processes.

One of the first cases in an American court was the *Kach-koo-tay, et.a., vs. Daniel Benson* which was part of the extended *Kiks.adi* and *L'uknax.adi* conflict over the claims of ownership of the Frog crest. The case was brought to the District Court for the District of Alaska in January 1899.

Its decision did not resolve the issue; instead, the conflict intensified and evolved into further disputes. The news accounts indicate that the court and non-Indian community did not understand the complexity of the conflicts. Ultimately, the disputes between the two clans were settled through traditional processes.

The Tlingit utilize both traditional and American legal systems to resolve disputes. Negotiated agreements between disputing clans have been made and validated by American legal institutions.

One such example exists of an agreement signed by the clan leaders of the *Kaagwaantaan* and the *Kiks.adi* before the U.S. Commissioner on January 5, 1899.

Although vague in its wording, the agreement, which was signed with "x" marks by Anna Hootz [*Anaaxoots*] and Kat tlan [*K'alyaan*] and witnessed by

four individuals, presumably representing both clans, proposes that each will not interfere in the affairs of the other, "we will adhere to our own tribal dances and not attempt to infringe or interfere in each others dances or any of their tribal customs."

The Tlingit began to use Western courts in earnest beginning in the mid 1970s. The conflicts, which appear to coincide with the appearance of art collectors who were purchasing clan ceremonial objects, centered on the rights of a caretaker or a segment of a clan to sell clan property.

Both state and federal courts appear to have recognized the conflicts between Tlingit and American law and searched with little success for case law that could be applied to the Tlingit cases based on the traditional customs of property ownership.

Both the *Wooshkeetaan* and the *Gaanaxteidi* cases, discussed in Chapter Five, referenced the *Demmert v. Demmert* case which applied the concept of "communal ownership" as a basis of attempting to understand Tlingit law, but even this case was unable to address the complexities and differences in Tlingit law.

The most successful model, which is based on a western judicial institutional form, appears to be tribal courts that acknowledge traditional Tlingit law and the laws adopted by tribal governments such as is evident in the Whale House Case.

Several tribal governments in Southeast Alaska have established their own courts and have adopted statutes that recognize traditional property law in the ownership of cultural objects and crests. The statutes apply to both tangible and intangible property such as ceremonial regalia, sacred, funerary, and utilitarian objects, clan songs, stories, names and houses within their jurisdiction.

Currently a number of ongoing conflicts over ceremonial property are evident in the Tlingit community.

In one case, the disputants are attempting to utilize a negotiated settlement process between one clan and two individuals who represent two different

clans. In addition, the clan of one of the members is pressuring for resolution because of the number of deaths in their clan which they perceive to be supernatural sanctions because one member of its clan, who is a party to the dispute, is holding property which is owned by another clan.

The Convergence of Communal and Individual Property

Tlingit ownership of property is governed by two antithetical universes of thought, and these mutually irreconcilable ideologies are on a collision course. On the one hand, the Tlingit live in a world in which their ancient teachings place paramount values on the group and communal ownership of property. Tlingit law does not recognize or protect the interests of individuals apart from their clan. On the other hand, the Tlingit are enmeshed in a modern society in which the preeminent values are placed on individualism, private property and the right of unencumbered alienability of property. The modern legal regime does not recognize the communal nature of Tlingit laws nor that property might contain spiritual beings and supernatural dimensions.

Paradoxically, the collision course was set in motion, in part, by the Tlingit themselves who embraced the new economic opportunities brought with American enterprise and who pursued the settlement of their land claims under a corporate model rather than the reservation system under which most all other American Indian tribes hold their lands. This conflict is most clearly epitomized by the creation of a new classification of Tlingits, the New Native. The New Natives include all of the Natives who were born after December 17, 1871 and who are not members of ANCSA corporations.[18] They represent as estimated 12,000 Southeast Alaska Indians, and they have no ownership interest in land to which they would have had a propriety interest under traditional Tlingit law had land remained in clan ownership.

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The ANCSA allowed only those Natives who were alive on December 17, 1971 to enroll as shareholders in the Native corporations. Natives born after this date may inherit shares, and a later amendment to ANCSA granted parents and grandparents the right to immediately give or "gift" stock to New Natives.

The Tlingit responded to the opportunities presented by the explorers and traders who first reached their shores by engaging in economic relations with them and incorporating the new material culture they brought into their own system, but the world of the Tlingit began to change with the arrival of the first permanent settlers. If one were bold (or foolish) enough to point to a precise period and set of circumstances that served as the catalyst for further changes within Tlingit society, one might cite the process leading to the emergence of the nuclear family unit which became evident in 1881. This change was significant enough for Commander Henry Glass to comment in his official report to the Secretary of the Navy of June 6, 1881. He commented on "the breaking up of the communal system of living...," and reported that the Tlingit had build seven single family houses in Sitka since March of that year.

While the movement into nuclear family dwellings did not signify the demise of the communal system of property ownership, it marked the emergence of the differentiation of property and property-holders and the advent of individualism. Prior governmental reports had noted that Tlingit lifestyles and customs had undergone little change since contact with the Europeans and Americans. During the first fifteen years of American occupation, the military did little to promote change within Tlingit culture, and had, in fact, used Tlingit law and customs to maintain peace between the Tlingit and the Whites. (*Tlingit and Haida Indians of Alaska v. The United States* 1959).

The transformation in Tlingit society was facilitated by changes in land ownership and the movement of the Tlingit into the capital economy. Income opportunities were made available by the expropriation and transfer of land from Native ownership into the public domain, and its transformation into what has been classically described as a commodity. Until this period, land and the resources derived from it were owned by clans, and the fruits of the land supported the Tlingit physically and spiritually. Use of the land reinforced the social bonds among clan members. The interrelationship among the Tlingit and their relationship to the land and its beings were the underpinnings of their culture.

The changes within Tlingit society were made possible with the enactment of the 1884 Organic Act and the arrival of American developers. With these two events, land was wrenched from clan ownership and was transformed into a discrete form of property. The process of separating the Tlingit from land and nature commenced. Karl Polanyi's thesis that economic activities are embedded in the social fabric of society became readily apparent in the transformation of Tlingit society. As the Tlingit abandoned their traditional economic system, the house as a social and economic unit collapsed, and the clan survived as a reflection of the traditional religious life of the Tlingit. Individualism and individual ownership rights had entered the world of the Tlingit.

Individual Tlingits enjoyed the benefits of the new economy, but the clans did not quietly acquiesce to the loss of their lands. They attempted to maintain ownership of their traditional land base, even to the point of one clan bringing its claims of ownership all the way to the Supreme Court, but clan ownership of land was never recognized under Western law. Occasionally small tracts or lots were conveyed to individuals,[19] but this was under the new social and legal regime. Goldschmidt and Haas (1946:18), who as noted earlier studied the possessory rights of Southeast Alaska Indians, reported on the emergence of individual land ownership and introduction of inheritance rights:

> It is interesting to note that once land becomes the right of a native recognized by American law in the form of a patent or a permit, then transfer of that land tends to follow a patrilineal inheritance in accordance with American custom. The implications of this are that, while native law remains a force in Tlingit and Haida daily life, these people are not adverse to the adoption of American customs. It also, of course, creates some confusion in the tenure system and social patterns--the short of confusion that is generally attendant upon the adoption of a foreign civilization by a native culture.

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With the enactment of ANCSA in 1971 approximately 600,000 acres were conveyed to the regional and village Native corporations in Southeast Alaska.

Individualism and private property were incorporated into Tlingit ideology and society through the changes in land ownership patterns, the appearance of nuclear families, the entry into the capital economy, and by the missionaries who touted, with the forceful hand of civil authorities, the wisdom of individualism and the Christian work ethic. One clan leader urged his kin to adopt the new ways and suggested that they might go to the White man's heaven, but he added that for himself he would not abandon his ancestors.

While the Tlingit used their income to maintain their individual households, they continued to share their resources and support the ceremonial activities of their clans. Kamenskii (1985:41) reports that the *L'uknax.ai* distributed $18,000, instead of the several slaves that would have traditionally been killed, during its 1899 potlatch to ceremonially bring out the contested Frog sculpture. This amount of money is significant based on Drucker's (1972 or 1973:65) report that the standard daily wages paid to the Tlingit in 1882 ranged from $1 to $2 per day. The rate of pay that a Tlingit was able to earn during this period and the amount of cash distributed at this and other potlatches, suggest that clan members were continuing to contribute significant portions of their earnings from their new productive activities to support their clan's ceremonial activities. This is a pattern that persists in the present period, and perhaps surprisingly, has been enhanced with ANCSA corporate dividends. As noted earlier, as much as $70,000 is now distributed in ceremonies along with other goods totally an additional several thousands of dollars. Money and blankets replaced blankets and furs as the riches to be distributed at potlatches to validate the ownership of ceremonial property and appointment of new clan leaders.

The transformation and the elements that persisted within the clan, property ownership, and laws were also described by Goldschmidt and Haas (ibid.):

> As a result of nearly 80 years of American administration and close contact with white miners, traders, missionaries, school teachers, canners and government officials, the old legal system of the Tlingit and Haida has been greatly altered. Yet there remains a surprising continuity in their customs, attitudes and patterns of behavior where these were not in direct conflict with

> Christian ethics and American law. Slavery, the potlatch as a legal expression, old shamanistic rites, the secret societies, are no longer found. The sanctity of the clan and the identification of the individual with the clan of his mother, the recognition of ancient clan rights to land and old status system based upon such ownership and the status of earlier clans; the rules against intermarriage within clans---all these are still poignant in the lives of the natives of southeastern portion of Alaska.

Goldschmidt and Haas also commented on the increasing individualization of households in place of the large communal houses and the growing prominence of the village organization that were evident in 1946. The movement away from a strict clan-based society and towards a village organization was further strengthened with the establishment of municipal and tribal governments, the organization of village corporations and their receipt of 23,000 acres of land under ANCSA that were formerly owned by clans.

Clan houses began to disappear as the nuclear family gained in prominence, and a process of transferring and consolidating clan property into one or more houses occurred. Occasionally, clan collections were transferred to two or more trustees who lived in nuclear family houses. Other clans placed their property in museums on long-term loans.

The adoption of Christianity was sometimes accompanied by the destruction of clan collections as was reported by one *Kiks.adi* who lamented that her clan burned their ceremonial objects in response to pressure from the missionaries. Christianized Tlingit also sold their clan objects or as one dismayed clan leader described this phenomenon, "They sold their sins."

The separation of *at.oow* from its social context and its transformation into an art form and commodity led to the sale of clan ceremonial objects. Regrettably, many clan items were sold by individual clan members or by surviving spouses or their children who had no property interests in their deceased spouses' or parent's clan property. Other clan objects were stolen outright, sometimes even from graves.

The responsibilities and status of clan leaders diminished with the loss of the clan land base and wealth and the emerging status of individuals who earned higher incomes in the capital economy. The ceremonial role of clan leaders waned under the unrelenting attacks of missionaries and civil authorities, but never disappeared completely. Today their responsibilities lie within the ceremonial sphere and in the care of clan ceremonial property or *at.oow*. In some instances, the leadership and trustee functions have been separated into two offices. If a clan leader left his traditional community, as was often the case in villages which lacked income opportunities, a caretaker was appointed to oversee the clan property and the uninhabited clan house. In some cases, a clan leader took the ceremonial objects with him, but this is greatly resented by members of the clan who continue to reside in their traditional communities. Some clans failed to appoint new clan leaders while others have not formally validated those who have been appointed to this office. Accompanying these changes within the Tlingit world was the growing significance of women which led to the formal recognition and appointment of "clan mothers." Occasionally women temporarily assume the clan leadership office until their sons become of age to assume the position. The *Yax̲tehittan* reported that they will officially validate the appointment of a woman who now holds the position of clan leader in the summer of 1998.

The absence of a designated formal clan leader does not imply that a clan ceases to function. For example, the *Lukaax̲.adi* do not have a clan leader although three individuals trustees were named by the late Austin Hammond, *Daanaawaak,* to serve in the capacity of co-successor *Hits'aati.* This Board of *Hits'aati* Trustees serve as caretakers of clan property. They do not function as ceremonial leaders, but they remain active in ceremonial activities. *Daanaawaak* also tried to meld Tlingit and American law and transferred clan property to a charitable trust organization formed under American law which, however, would be governed by traditional property law.

Although the potlatch was not outlawed in Alaska, as it was in Canada in 1884, missionaries and civil authorities actively discouraged participation in ceremonial activities. As reported in Chapter Four, Governor Brady tried to ban the 1904 Sitka *Kaagwaantaan* potlatch. Some communities complied with such demands. One village sponsored a ceremony in 1920 in which

they symbolically buried their culture in a coffin, but in 1970, this same community reversed their position and resurrected their culture with the raising of a totem pole. More often the potlatches went underground and were held in secret or disguised in Alaska Native Brotherhood and Alaska Native Sisterhood ceremonies, but the ceremonial activities, particularly those surrounding memorial ceremonies, never ceased.

Despite the overwhelming pressures for change, the clan and the ideologies of communal property persist along with the incorporation of private property doctrines. The convergence of these competing beliefs are clearly exemplified in the wills left by several clan leaders. In these documents, the clan leaders distinguished between clan and personal property.[20] The clan property is conveyed to an identified successor, who is selected according to the traditional pattern which is usually a younger brother or maternal nephew, while private property is left to the surviving spouse and children. In some instances, a clan leader has conveyed an oversight interest to the property he held in trust to his children which is contrary to Tlingit law or at best may represent an attempt to propose new Tlingit law. Eric Morrison, a Tlingit and lawyer, explains his rationale for the extension of such proprietary rights. His argument is not based on Western laws of inheritance, but proposes that biological children have an interest to safeguard their father's clan property because of their clan relationship under the sociological classification, "child of a clan."

In 1981 a group of elders met to discuss the status of the cultures of the Southeast Alaska Indians. They likened their culture to a blanket which they said they had been holding onto, but now their hands were becoming weak and tired. They charged the region-wide ANCSA corporation, Sealaska, to take the leadership role in preserving and maintaining the traditional culture. From this directive, the Sealaska Heritage Foundation was founded. A concerted effort to revitalize the clan structure began in the early 1990s with a series of clan conferences at the regional and village level. Sealaska

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A few elders have abided by the traditional laws and make no claim to clan property as well as the house, clothing, and personal items of their deceased spouse which are all returned to their spouses' clans.

Corporation is now examining the possibility of returning trust oversight of the historical and sacred sites to the clan leaders.

In a discussion of the changing role of clan leaders, one of the clan mothers lamented that she had to apologize to the spirit in the clan hat, which she is holding in trust for her clan. She noted that she was unable to bring the hat out because she was not assured that another hat from an opposite moiety would be present to ensure spiritual balance. Another clan leader crystallized their overall task with the statement, "They must restore the social and spiritual balance of the Tlingit."

Remarkably and to their credit, the Tlingit have managed to maintain ownership of clan ceremonial objects without the protection of a legal system that recognizes communal ownership of property. They have accomplished this in the face of economic need coupled with tremendous pressure to sell their remaining clan objects to unscrupulous art dealers who covet their ancient objects and have appeared uninvited at doors flashing thousands of dollars. The offers for the Whale House objects reportedly went as high as $6 million.

On the other hand, the Tlingit have met with little success in protecting their intangible property, most notably their crest and spirit designs which have been transformed into art forms and art objects. They have been powerless to protect their intangible property represented by the crest designs which continue to be expropriated by non-Tlingit and transformed into a multi-million dollar industry whose benefits primarily accrue to the non-Tlingit. Their art forms, which to most Tlingit are imbued with spiritual attributes, are viewed as public domain to which the public has unfettered access and complete freedom to use. Whitt (1998:148) asserts that by declaring intellectual and cultural properties of indigenous people to be in the public domain, which in essence means that these properties belong to everyone, sets the stage for their conversion into private property. Her legal theory of cultural acquisition begins with the premise that property belonging to no one is the functional equivalent of the premise of property belonging to everyone. These postulates facilitate the conversion process that results in the transfer of indigenous intellectual property into the public domain followed by the privatization of property.

In a paper discussing the communal property rights in cultural objects and the difficulties Native Americans have in adjudicating their claims in a legal system that is fundamentally incompatible with Native Americans, Byrne (1993:120-121) wrote:

> The lack of legal recognition of communal rights in cultural property combines with a well-developed bias in Anglo-American law against Native American cultural views. Since legal systems are, first and foremost, reflections of the religious and social values of the dominant culture, our legal system is inextricably linked with Judeo-Christian values, which in turn are strongly rooted in capitalism....Although recognition of cultural communal property conflicts with established tenets of Western law regarding cultural objects, the recurrence of disputes based upon communal property claims has made it hard to suppress the concept....

Byrne also proposes that the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), although inherently flawed, represents the first legislative recognition of communal property rights. NAGPRA provides for the protection of Native American burial sites and the possible return of human remains, funerary objects, sacred objects and objects of cultural patrimony or communally-owned objects from museums and other institutions which receive federal funding. The Tlingit have already successfully used this law to press for the return of clan objects. It is also significant to note that in their petitions to museums, they claim ownership of both tangible and intangible property or the clan object itself as well as the crest depicted on the object.

Although disputes over clan property continued, the Tlingit appeared to have reconciled the competing ideological systems recognizing both communal and individual property rights until they implemented the ANCSA. Recall that the Tlingit discussed the expulsion of the Americans after they purchased Alaska from Russian, but their resolve waned as they began to enjoy the new economic opportunities. They took this new found knowledge and pursued the settlement of their land claims under a corporate model rather than the reservations system that characterized the system

adopted by most other American Indian tribes. Their experience with the Bureau of Indian Affairs (BIA) under the Indian Reorganization Act left them with little regard for government oversight. Their attempts to enter the commercial fisheries industry were constrained by government bureaucrats who controlled their funds and business decisions. The leaders were loath to accept the idea that the BIA might have trust responsibilities over their lands under the reservation model. The Tlingit sought full control and unrestrained ownership of their land, and the answer appeared to be in the corporate model.

In the 26 years the Southeast Alaska Indians have operated corporations that were created under ANCSA, they have had varying success. Sealaska, the region-wide ANCSA corporation, became an almost immediate success joining the ranks of the Fortune 1000 corporations only to fall to near bankruptcy a few years later, and then to regain financial success. Its 1997 net earnings for a nine month period were reported at $26 million on revenues of $140 million. In the same year, Sealaska distributed nearly $10 million to its 16,000 shareholders. While financial success is important to the Southeast Alaska Indians, most feel that their corporations should be more than business institutions and their corporations should respond to their social and cultural needs including the protection of their subsistence hunting and fishing rights.[21] Alaska Natives went to Congress repeatedly to amend ANCSA to allow them to implement programs which other business corporations do not ordinarily address. The Southeast Indians have been fairly successful in changing the corporate model to accommodate their needs. For example, in addition to its financial dividends and the employment opportunities it provides to Alaska Natives, Sealaska awarded $630,000 to 480 students in scholarships and heritage study grants and distributed $2,000 to 109 elders in 1997. During the same year, Sealaska expended $2.2 million on other educational and cultural projects including support of the Sealaska Heritage Foundation which is focusing on language development programs and curriculum. The Southeast Alaska ANCSA corporations have also been engaged in the struggle to protect the subsistence hunting and fishing lifestyle of their villages. The Native

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The corporation has conducted longitudinal studies of its shareholders who consistently support the allocation of resources to support educational and cultural issues.

corporations are different from other business corporations in other ways, notably the congressional mandate that the 12 regional ANCSA corporations in Alaska distribute 70 percent of their profits to other ANCSA corporations throughout Alaska. For Sealaska this revenue sharing has translated into nearly $9 million in 1997 or a total of $215 million since its inception.

Although ANCSA has generally been successful in Southeast Alaska, it contained a major flaw that would ultimately lead to conflicts between communal and individual ideologies. It failed to provide a mechanism to allow for the enrollment of its New Natives. Alaska Natives, who adhered to the belief that their culture and society depend on the assurance of a perpetual membership and who believed that Native children have a right to share in the ownership and benefits of their ancestral lands, went back to Congress to amend ANCSA in the late 1980s to allow them to enroll New Natives. When Congress was enacting ANCSA it 1971, it did not consider the perpetual enrollment of New Natives or the perpetuation of tribal groups. ANCSA, with corporations, land, and money that would be held by individual shareholders, was viewed as the vehicle for the economic assimilation of Alaska Natives. Rather than amending ANCSA to allow for the perpetual enrollment of New Natives, in the compromise that was adopted, each Native corporation would have to vote to allow New Natives to enroll in the corporations. It was assumed that corporations would readily admit the New Natives. However it was the very financial success of the Southeast Alaska ANCSA corporations and their abilities to distribute significant dividends[22] that fueled the opposition to the enrollment of New Natives. Land and resources or the financial benefits derived from the development of the land were no longer viewed as communal property or that children had rights to land as they had under the traditional forms of property ownership. The competing ideologies of communal and individual rights and property are evident in the two advisory votes held by Sealaska

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In Southeast Alaska, the dividends were significant due, in part, to an unanticipated tax benefit that brought nearly a half billion dollars into the Southeast ANCSA corporate coffers. In addition, the village corporations with small shareholder populations were able to make sizable distributions from their earnings with cumulative dividends to date averaging between $20,00 to nearly $100,000 per shareholder, and at least one corporation has paid even higher dividends.

Corporation in which the Indians of Southeast Alaska were equally divided between those who opposed and supported the enrollment of New Natives. The Sealaska surveys of its shareholders indicate that Native people believe that New Natives should benefit from ANCSA corporations, but they differ on how this should be accomplished. Even those who are adamantly opposed to their enrollment support special endowments such as the $4 million scholarship fund that benefits nearly 500 New Natives annually. The Southeast Natives continue to address how they are going to deal with the New Native issue, but at this time it remains unresolved.

In summary, Tlingit property law remains in force insofar as it applies to traditional ceremonial property or *at.oow*. The region-wide tribal government and several of the village tribal governments have adopted laws that formally recognize Tlingit property law and prohibit the removal of clan artifacts, crests, or other traditional Indian art work from a community without the approval of the tribal government. As indicated in the discussion of the Whale House case, adoption of a law allowing the tribal government to govern clan property represents the first new law adopted under the traditional legal regime. The process in which this new law was enacted involved a request by clan leaders, a unanimous vote by the village population, and adoption of the law by the tribal government. The case studies also include references to other changes to Tlingit law that have been proposed, such as the loss of property rights in the face of not fulfilling clan responsibilities and greater authority of clan leaders in disposing of property, but these proposals have not been pursued beyond advancing the argument.

The adoption of the western style court as another mechanism in the dispute settlement process is exemplified in the Whale House case. In this case, the federal district court clearly recognized the fundamental problems in implementing communal law under American law and the complexities of Tlingit law. It referred the case to a tribal court which it acknowledged was best suited to handle the case and complied with its rule not to interfere with the internal workings of Indian tribes. Evidence of traditional sanctions to restore order also appear to remain in effect coupled with a process of negotiation between disputing clans.

Tlingit society is characterized by two competing ideological systems, one in which individuals are interdependent and property is held in common by its

mem rs, and the other in ich individualism and individual property are
para unt. These two ide gies have conflicted in the corporate arena
creat under ANCSA. Ne rtheless, the Tlingit are engaged in a complex
proc of attempting to tra form the individualistic corporate model,
whic olds portions of the ancestral land, to one that serves its communal
need protect and perpet e Tlingit values and culture.

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Appendix C

List of Museums that Filed Notices of Intent to Repatriate Objects of Cultural Patrimony to the Tlingit

July 8, 2010

The significance of these repatriation claims is that the museums have determined that these Tlingit objects have ongoing historical, traditional or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which therefore, **cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native American organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.**

List of Museums Repatriating Objects of Cultural Patrimony to the Tlingit [1]

July 8, 2010

Clan	Museum	Citation
Yanyeidí	Anchorage Museum of History and Art*	59 FR 34862 (July 7, 1994)
Kaagwaantaan	Eiteljorg Museum of American Indians and Western Art	61 FR 29142 (June 7, 1996)
Dakl'aweidí	Seattle Art Museum*	61 FR 58422 (November 14, 1996)
Dakl'aweidí	Denver Museum of Natural History	61 FR 60303 (November 27, 1996)
Kaagwaantaan	Anchorage Museum of History and Art	64 FR 17410 (April 9, 1999)
Deisheetaan	American Museum of Natural History	64 FR 37567 (July 12, 1999)
Neix.adi	Cornell University	66 FR 32373 (June 14, 2001)
Teikweidí	Logan Museum of Anthropology	67 FR 45995-45996 (July 11, 2002)
Deisheetaan	Hood Museum of Art	67 FR 55422 (August 29, 2002)
Teikweidí	University of Northern Colorado	67 FR 57627 (September 11, 2002)
Ganaax.adí	Minnesota Museum of American Art	67 FR 57840 (September 12, 2002)
Kiks.ádi	Sitka National Historical Park	68 FR 11139-11140 (March 7, 2003)
Kiks.ádi	American Museum of Natural History	68 FR 11135 (March 7, 2003)
Kaagwaantaan	Field Museum of Natural History	69 FR 46566 (August 3, 2004)
Kaagwaantaan	Phoebe A. Hearst Museum	70 FR 31530 (June 1, 2005)
n/a	University of Alaska Museum of the North*	70 FR 31531 (June 1, 2005)
Dakl'aweidí	Denver Museum of Nature and Science	71 FR 5363-5364 (February 1, 2006)
Deisheetaan	Denver Museum of Natural History*	72 FR 48671-48672 (August 24, 2007
Naanyaa.aayí	Denver Museum of Nature and Science*	72 FR 48671 (August 24, 2007)
Deisheetaan	Denver Museum of Nature and Science	72 FR 61668-61669 (October 31, 2007)
Kaagwaantaan	Denver Museum of Natural History*	72 FR 61669 (October 31, 2007)
L'ukaax.ádi	Denver Museum of Nature and Science	72 FR 71946-71947 (December 19, 2007)
Kaagwaantaan	Alaska State Museum Juneau*	73 FR 10051 (February 25, 2008)
Deisheetaan	American Museum of Natural History	73 FR 40362 (July 14, 2008)
Gaanaxteidí	Denver Museum of Nature and Science*	73 FR 50987-50988 (August 29, 2008)
n/a	Western Reserve Historical Society	75 FR 14459-14460 (March 25, 2010)

[1] These museums have determined that the objects of cultural patrimony have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. six of the museums (identified by the asterisks above) include additional language determining that specific individuals or clan leaders do not have the authority to alienate clan objects.

Appendix D

Notice of Intent to Repatriate a Cultural Item: Alaska State Museum

February 25, 2008

The Alaska State Museum recognizes the persistence of Tlingit law in 2008 and makes the following determinations:

"Under Tlingit law, the tunic is considered at.oow of the Wolf House of the Sitka Kaagwaantaan, and is by definition the property of the group. Based on Tlingit law, the tunic is an object of cultural patrimony and has ongoing cultural importance to the clan. While at.oow is cared for by a clan leader it remains communal property. In this case, the tunic was alienated by the widow of the caretaker, Lily Yarkwan, who belonged to another clan. Officials of the Alaska State Museum have determined that, pursuant to 25 U.S.C. 3001 (3) (D), the tunic has ongoing historical, traditional or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Alaska State Museum also have determined that pursuant to 25 U.S.C. 3001 (13), the museum does not have the right of possession to the object of cultural patrimony."

National NAGPRA
National Park Service

FR Doc E8-3457[Federal Register: February 25, 2008 (Volume 73, Number 37)]
[Notices]
[Page 10051]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr25fe08-99]

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Alaska State Museum, Juneau, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Alaska State Museum, Juneau, AK, which meets the definition of "object of cultural patrimony" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is the Woodzix[eacute]edi Gooch Naazein Kud[aacute]s' or Multiplying Wolf Tunic (ASM catalogue number II-B-1356). The tunic is woven in the Chilkat technique, made by an unknown weaver in the style common in the late 19th century. The one-piece, sleeveless tunic is worn draped over the shoulders and over other clothing by both men and women. It has a figurative design of wolves woven on the front and geometric designs on the back. One side of the tunic is permanently closed, while the other side closes with leather ties. The tunic is hand woven from cedar bark, mountain goat wool, and commercial wool, and the design figures are dyed black, blue, and yellow, on a natural white background.

The "multiplying wolf" design depicted on the tunic is a primary crest of the Wolf House of the Kaagwaantaan clan of Sitka, AK. The ceremonial use of the tunic by members of the Wolf House is documented in photos from the late 19th century to early 20th century. Several images show the tunic being worn by Jake Yarquan (Yaak waan), a leader of the Wolf House who was most likely the caretaker of the tunic. Following Mr. Yarquan's death, the tunic was purchased from his widow, Lily Yarkwan, by the Historical Library and Museum Commission, and donated to the Alaska Historical Library and Museum, Territory of Alaska (now known as the Alaska State Museum).

Under Tlingit law, the tunic is considered at.oow of the Wolf House of the Sitka Kaagwaantaan, and is by definition the property of the group. Based on Tlingit law, the tunic is an object of cultural patrimony and has ongoing cultural importance to the clan. While at.oow is cared for by a clan leader it remains communal property. In this

case, the tunic was alienated by the widow of the caretaker, Lily Yarkwan, who belonged to another clan. According to museum records, Mrs. Yarkwan presented herself as legal owner of the tunic to museum officials, who subsequently purchased it in good faith. There is no evidence that the Wolf House itself was directly involved in the alienation or that the transaction was handled in accordance with Tlingit law.

The Alaska State Museum has received claims for this object by the Central Council Tlingit & Haida Indian Tribes (on behalf of Mr. Andrew Gamble, a leader of the Wolf House), and by the Sitka Tribe of Alaska (on behalf of Mr. Herman Kitka, a clan leader of the Wolf House). During consultation with the tribes and clan officials, the parties presented similar information on the details, meaning, and history of the tunic, as well as traditional Tlingit law, but differed regarding the present leadership of the Wolf House. All parties agreed that the tunic is an object of cultural patrimony and was alienated without the consent of the Wolf House.

Officials of the Alaska State Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the tunic has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Alaska State Museum also have determined that, pursuant to 25 U.S.C. 3001 (13), the museum does not have right of possession to the object of cultural patrimony. Lastly, officials of the Alaska State Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Central Council of the Tlingit & Haida Indian Tribes and Sitka Tribe of Alaska, both acting on behalf of leaders of the Wolf House of the Sitka Kaagwaantaan clan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the object of cultural patrimony should contact Mr. Bruce Kato, Chief Curator, Alaska State Museum, 395 Whittier Street, Juneau, AK 99801-1718, telephone (907) 465-2901, before March 26, 2008. Repatriation of the object of cultural patrimony to the Central Council of the Tlingit & Haida Indian Tribes and/or Sitka Tribe of Alaska, on behalf of the Wolf House of the Sitka Kaagwaantaan clan, may proceed after that date if no additional claimants come forward.

Dated: January 22, 2008
Sherry Hutt,
Manager, National NAGPRA Program.
[FR Doc. E8-3457 Filed 2-22-08; 8:45 am]

BILLING CODE 4312-50-S

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Appendix E

Repatriation Petition from Sealaska Corporation to Alaska State Museum

Enclosures:

1. Teeyhíttaan Resolution 01-08 authorizing Sealaska Corporation to initiate repatriation claims on behalf of the Teeyhíttaan Clan.
2. Tlingit Property Law and Dispute Resolution adopted by the NAGPRA Regional Tribal Meeting.

August 13, 2008

Bruce Kato, Chief Curator
State of Alaska
Department of Education & Early Development
Division of Libraries, Archives & Museums
Alaska State Museums
395 Whittier
Juneau, AK 99801

Re: Repatriation Petition Pursuant to the Native American Graves Protection and Repatriation Act

Dear Mr. Kato:

Please consider this a formal request for the repatriation of the Teeyhittaan Clan *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Ravens Clan Hat); ASM catalog number II-B-809). Sealaska Corporation, on behalf of the Teeyhittaan Clan of Wrangell, seeks the repatriation of the Teeyhittaan *Yéil Aan Kaawu Naa s'áaxw* as a Sacred Object and also as an Object of Cultural Patrimony pursuant to the terms of Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (25 U.S.C. 3001 et seq.).

Sealaska Corporation is submitting this claim as a federally-recognized Indian Tribe for the purposes of NAGPRA. This claim provides the following information in compliance with the repatriation standards as set forth by NAGPRA:

1. Sealaska Corporation is a Tribe under NAGPRA
2. The Clan Hat is a Sacred Object
3. The Clan Hat is an Object of Cultural Patrimony
4. Cultural Affiliation with the Teeyhittaan Clan
5. The Tribe's Right of Possession

Prior to discussing these elements, Sealaska Corporation will present information to identify the object and its ongoing cultural importance to the Tribe, and to describe the cultural context of this repatriation claim.

The Clan Hat

The crest hat, *Yéil Aan Kaawu Naa s'aax,w,* or Leader of all Ravens Clan Hat, was presented to the Teeyhíttaan Clan by the Tsimshian as compensation for the death of a Teeyhíttaan clan leader in order to maintain peace. This event happened sometime prior to 1900, although just how long ago is not known. The hat is carved in the design of a Raven crest. It represents an important event in the history of the clan in which the former clan leader lost his life. It memorializes his sacrifice and the compensation by the Tsimshian to the Teeyhíttaan Clan for their loss.

The hat is a copy of an older one that was partially destroyed by fire in about 1900 while it was in the care of *Gush*, the head of the Teeyhíttaan Clan at the time. The original hat had abalone eyes whereas the existing one has copper disks. According to clan history, *Gush* had the replacement made in secrecy, since it was disgraceful that the original hat was destroyed while in his care. When it was finished, a feast was given during which the replacement hat was brought out and presented to the gathering in place of the original.

The hat is a crest hat of the Teeyhíttaan Clan that has been handed down in the clan for at least 100 years. Carved in the design of a Raven, it signifies an event in the history of the clan in which a leader gave his life and the clan was compensated by the Tsimshian for the death of their clan leader. The crest hat has been used and preserved as clan *at.óow* since it was acquired from the Tsimshian. It has been the property of the Teeyhíttaan Clan and among the clan's ceremonial prerogatives for all of the intervening years. It was held by clan heads and custodians until 1947, at which time its clan-designated custodian, William L. Paul, Sr., loaned it to the Alaska State Museum for safekeeping. The hat was an object devoted to traditional Tlingit religious (mortuary) ceremonies at the time it was loaned to the museum. It has been continuously referenced in museum correspondence since 1947 as a clan crest hat in the keeping of the Teeyhíttaan Clan custodian. It is only recently that the museum has claimed ownership of the item.

Cultural Context of Repatriation Claim

To understand the foundation of Sealaska Corporation's claim for the Teeyhíttaan Clan Hat, we will provide a description of our traditional cultural values, principles and practices that are germane to this claim. We will discuss three integrated and inter-related concepts, *At.óow, Haa Shagóon* and *Ku.éex'*. We will also provide a review of Tlingit property law to demonstrate that the Clan Hat is an Object of Cultural Patrimony and to substantiate our Right of Possession.

At.óow

Tlingit clans acquired their sprits and crests through ancient encounters that occurred between a clan ancestor and a supernatural entity which appeared usually in the form of a bird, animal or fish. Their right to depict the visual representation of this encounter (as a crest or emblem) and to claim a spiritual relationship with the supernatural entity, which is recognized as an ancestor, often involved the loss of life and was "purchased" with the life of a clan ancestor. Other occurrences, such as tragic events or shamanic experiences that were significant in the clan's history, are also memorialized in crests. The ancient spiritual encounter or event is often depicted through a visual representation on a physical object.

The term *at.óow* refers to the ancient historical event as well as to tangible and intangible objects that represent it, such as names, songs, stories and designs. It also refers to the supernatural entity that was involved and to the place at which the event occurred. *At.óow* includes the crest art design and the physical object on which it is depicted. It includes the spirits of both the human ancestor and the supernatural entity involved in the legendary event. It includes real property such as significant natural features that played a role in the ancient event as well as the site at which the event occurred. Since the events depicted in crests are also emplaced on the landscape, our elders have referred to *at.óow* as our "title," in a Western sense, as well as our history.

Dauenhauer and Dauenhauer (1990:14) have translated *at.óow* as "an owned or a purchased thing." They note that *at.óow* may be land, a heavenly body, a spirit, personal name, an artistic design or other "things." They indicate that the ownership of *at.óow* is transferred to the descendants of the clan.

All of the tangible and intangible representations of the original encounter with a clan ancestor are preserved and passed down through the clan from generation to generation. When the condition of an object that was *at.óow* deteriorated and could no longer be used, it was burned and mourned as if it were a human who had died and was cremated. The name of the crest would be transferred to a new object or replica. Sergei Kan (1989), who researched Tlingit mortuary practices and beliefs, reports that crests remain immortal and survive their temporary representation in physical objects in the same manner as a person's spirit survives its body and is reincarnated.

Newly created objects depicting crest designs are transformed into *at.óow* when they are formally "brought out" in a ceremony (*ku.éex'*, see below). As the object is brought out and presented to the assembly in subsequent ceremonies, it increases in value and significance while continuing to represent

the spirits of clan ancestors.

The crest designs that appear on our *at.óow* are owned by moieties and clans. They are held in perpetuity by the matrilineal descendants of the person who originally acquired it. Clans were willing to go to war to protect their ownership of crests. Anthropologists who have studied Tlingit culture and memorial ceremonies emphasize that the most important symbols of the matrilineal group, as well as its most guarded possessions, were its crests (see deLaguna 1972:451 and Kan 1989:69). Their findings confirm an earlier study by Emmons (1907:347), who also acknowledged that the crest is a birthright as real as life itself.

Crests serve multiple spiritual and social purposes. They identify and unify moiety and clan members. They distinguish moiety and clan members from others and define their relationships with other Tlingit. Crests chronicle the origin, supernatural encounters and other events significant in the history of the clan. They serve as title to the object on which it is placed and to the site or geographic region where the event occurred. The crest embodies the spirit or being depicted in the crest as well as the spirits of ancestors associated with the *at.óow* down through the generations since it was first acquired (especially the clan ancestor who first acquired the crest, and all subsequent descendants who served as the keeper or steward of the crest object). Crests symbolize the special relationship each clan member has to the animal or entity depicted on the crest. They also serve to identify common membership in a clan. Crests, and the associated oral traditions, songs and names, represent intellectual property and are owned by clans. In the recent period, clans have demanded and received payment for the duplication of objects depicting their crests by westerners (such as the totem pole in Seattle's Pioneer Square), or succeeded in preventing their further use.

Tlingit society is divided between Eagle and Raven moieties, which are further sub-divided into clans. Only those individuals who are members of a moiety and clan are entitled to use their respective moiety and clan crests. Under tribal custom, crests belonging to one clan could occasionally be taken by (or granted to) another clan to signify liability claims (or compensation) between clans, for wrongful acts committed by members of one clan against those of another. Crests were sometimes taken by force in inter-clan wars to assert a liability claim. Clans could also demand payment or even the death of an individual who illegally used their clan crests, and in the past such disputes sometimes led to inter-clan wars.

Tlingit traditions also allow for the use of crests by members of another clan under certain circumstances, when there is a grandparent-grandchild relationship between the individuals involved and the grandparent wishes to extend a special privilege to a particular grandchild. Underscoring the special

relationships that exist between grandparents and their grandchildren, a grandparent may, under certain circumstances, let one of their grandchildren who is not a clan member use a crest object or design. These usufruct rights are granted for designs placed on ceremonial regalia or jewelry, but customarily do not apply for use on major objects such as screens, poles, or clan hats (although exceptions are known, such as in the case of the Wooshkeetaan house screen). Furthermore, the use is limited to the lifetime of the individual (grandchild), and the grandchild does not have the legal authority to extend use or ownership rights to any other individual. Such rights are granted in recognition of a special kin-based relationship that occurs between clans, and they cannot be claimed by the grandchild's offspring, or by members of another clan to satisfy a liability claim that the grandchild or his clan may incur.

The lifetime grant of the use of another clan's crest occurs very infrequently. More often, the special relationship is acknowledged in the course of a mortuary ceremony, during which the grandparent may extend the privilege to a grandchild as an act of special recognition. This occurs when the grandparent "brings out" the grandchild before the assembly and publicly places the clan *at.óow* on the individual, and thus publicly honors the grandchild in front of the assembly. No ownership rights are granted, and the use of the item by the grandchild does not extend beyond the conclusion of the ceremony. Such expressions of honor and respect occur regularly in the *ku.éex'*.

At.óow are central to our belief of *Haa Shagóon,* which binds current generations to our ancestors and to future generations and thus ensure our survival as Tlingit people.

Haa Shagóon

Haa Shagóon embodies the clan and unites past, present and future generations in one concept. It includes our ancestors including our animal kin, to whom we may refer as *Haa Shagóon* or *Haa Shuká.* It is the spiritual threads that unite the living and bind us to our ancestors and with future generations who will continue to be shaped by the events in our history. A clan's *Shagóon* is translated as both its "origin' or "heritage" (referring to its ancestral past), and its "destiny" or "fate" as embodied in future generations. Austin Hammond, the now deceased Sháadei háni of the Lukaax̲.ádi of Chilkoot, described *Haa Shagóon* this way: "it is what we are now, what we have been since the beginning, and everything that our children must become. Haa shagóon --- that is the way with us" (in Thornton 2004:370). It has been described by one anthropologist as "the root concept in Tlingit culture" (Kan 1989:58).

The concept of *Haa Shagóon* is made tangible through our *at.óow.* In the

Tlingit world view, the ancestral past and the clan's destiny are one, imbued with sacredness, and connected through living clan members and their *at.óow*, which bind the present generation to the past as well as the future. *At.óow* displayed at memorial ceremonies are the symbols of a clan's Shagóon and its ancestors, including those who were involved in the acquisition of the crest as well as those who have used and preserved its material representation(s) down through the generations.

The concept of *Haa Shagóon* continues to have relevance and application in the lives of modern-day Tlingit within the traditional ceremonies and cultural practices. It also shapes the interpretation of new events. For example, the Tlingit applied the concept of *Haa Shagóon* in their decision to initiate DNA testing of the 10,000 year old human remains found in a cave on Prince of Wales Island. The Tlingit believed that there was a purpose in the discovery of this individual, and that their ancestor gave himself to provide us and future generations with knowledge about our heritage and past. One Elder commented that he gave himself to us to prove that the Tlingit have lived in Southeast Alaska since time immemorial. This cultural concept was also embodied in a corporate resolution allowing for the enrollment of those Tlingit who were born after 1971 into Sealaska Corporation as shareholders. Under the terms of Alaska Native Claims Settlement Act (ANCSA) adopted by Congress to settle the aboriginal land claims of Alaska Natives, only those Native who were alive in 1971 were authorized to become shareholders. This restriction on future enrollment violated Tlingit laws which held that membership in a clan bestows ownership of clan property including land. The affirmative vote of the shareholders demonstrated the persistence of the value of *Haa Shagóon* among the modern-day Tlingit and extended the property rights of those who were born after 1971.

Ku.éex'

The memorial *ku.éex'*, or potlatch, is the central ritual in our ceremonial life. The ceremony unites the living with our ancestors. The use of *at.óow*, which has been described above, is fundamental to these religious ceremonies and is the principal context for their cultural presentation. The major religious ceremonies of the tribe are associated with the funereal and memorial rites that begin with the death of a clan member (the funeral) and culminate with a much larger ceremony (the *ku.éex'*) a year or more after the death. They are also held for other purposes such as resolving conflicts between clans or for the construction of a new house or building. New clan leaders may be appointed during these ceremonies.

The *ku.éex'* is scheduled a year or more after a death, and after a great deal of assistance and exchanges centering on funeral duties and memorial activities has been provided to the deceased family and clan by close affinal

relatives of "opposite" clan(s). The *ku.éex'* requires the participation of both Eagle and Raven clans. The interrelationships and interactions between these "opposite" clans during these ceremonies serve to restore and ensure spiritual and social balance and harmony among the clans, and unify the Tlingit.

During a *ku.éex'* ceremony, clans ritually present their *at.óow* to those in attendance. The clan which acts as the host first brings out their at.óow and displays them on tables set up for this purpose. During the ceremony, clan members recount the names and stories giving rise to the crests, and sing the songs recalling the events behind the crests and *at.óow*. The most sacred of clan songs, the mourning songs, are presented at this time. This is followed by a reciprocal display and presentation of *at.óow* by the guest clans, which are of the opposite moiety, and speeches of condolence are delivered to the host clan. The presentations of *at.óow* evoke the spirits of clan ancestors involved in the acquisition of the crest, those of the crest animal, as well as those clan ancestors who preserved and used the *at.óow* in subsequent generations down to the present. The spirits of their forbears are intentionally called forth through the use of *at.óow* and associated oratory to "give weight" to the proceedings.

The response and acknowledgement by the guest clan or clans of the opposite moiety validates each of the host clan's objects with its crest design and associated property, such as a name and other prerogatives, as *at.óow*. During later stages of the memorial, the host clan "kills money" (formerly slaves), which is called *Daana ak gwa jaak*, by distributing it to the guest clans. The acceptance by the guest clans of the ritual presentation and distribution of cash, food and gifts by the host clan, also provides validation of the host clan's prerogatives as *at.óow*

As described above, the citation of clan names, the recounting of the stories, singing of the songs and presentation of the physical *at.*óow all serve to call forth the spirits of the ancestors associated with them. These ritual actions, including the presentation of food, gifts and the "killing" of money, enact a fundamental principle of spiritual balance. The ritual use of *at.óow* by the mourning clan, which entails reciprocal displays and responses involving the *at.óow* of "opposite" clans, ensures that spiritual balance and harmony are maintained during the ceremony. The presentations of *at.óow* by "opposite" clans avoid potential harm to the group well-being that can result from "unanswered" displays.

According to Tlingit beliefs, the display of clan crests and objects by one clan demands a reciprocal display by an opposing clan. The spirit of one object must be greeted by another. The spirits must always be in balance. When the object and crest are displayed in ceremonial settings, a clan emblem from the opposite clan must also be brought forward. The same principle operates with

respect to spirit songs, which are special songs that evoke shamanic spirits associated with crests belonging to the clan. The Tlingit liken it to humans as if the two will hold hands. An opposing clan must respond with an address and a like spirit song lest the spirit of the host clan object wander aimlessly which may then result in ill fortune. Our ceremonial practices require the presence of both Eagle and Raven clan objects each with their respective clan crest in order to maintain the spiritual balance and the well-being of the Tlingit People.

The *k̲u.éex'* is also a legal transaction in which title to *at.óow* is validated as the property of the host clan. The presence of the guest clan from the opposite moiety validates the host clan's ownership of the *at.óow* in the same way that a deed of title is recorded in western or American systems. This same ritual and legal process is repeated generation after generation. The sacred significance of the *at.óow* is reaffirmed and the clan ownership is re-validated within each succeeding ceremony, and continuity is maintained as the trusteeship or custodianship of *at.óow* transfers from one generation to the next from uncle to maternal nephew.

The persistence of the cultural values, beliefs and practices, which are associated with the *k̲u.éex'*, have been cited by academic scholars as core cultural elements that have contributed to the survival of Tlingit culture. The Tlingit continue to hold their *k̲u.éex'* ceremonies primarily during fall months after the major hunting and fishing activities have ended. In recent years, calendars compiled by the Central Council of Tlingit and Haida Indian Tribes of Alaska reflect that more than a dozen major ceremonies are held each year. The numbers in attendance at these events range from two to three hundred members of host and guest clans. Tlingit from outside of the communities where the *k̲u.éex'* are held often travel from other communities, or from outside of the region and the Lower Forty-Eight states to attend these ceremonies. The distribution of cash contributions ranging in amounts from $12-20,000 are not unusual at these ceremonies and may even go as high as $75,000.

In the contemporary period, the Tlingit may also sponsor other ceremonial activities which contain spiritual and religious rituals that were formerly only conducted in the formal *k̲u.éex'*. The Alaska Native Brotherhood and Alaska Native Sisterhood memorial rites often include traditional practices, such as the display of *at.óow* with the deceased. Although the sponsors of the biennial Celebration held by Sealaska Heritage Institute request that traditional rites not be held during this largely secular event, this request is often ignored and certain ceremonial rites are held.

Tlingit Law

Clans are the basic property holding units in Tlingit society. An

individual acquires property rights through his or her birth into a clan. A Tlingit infant acquires property rights by virtue of his or her **membership** in a clan rather than through inheritance from his or her mother or parents. Under Tlingit law, no descendible or alienable rights accrue to an individual. Inheritance rights as recognized under American law do not exist in Tlingit law.

All members of a clan collectively own their *at.óow*. They own the intellectual property represented by the crest art, the names, stories and songs in the same way that they hold their tangible property. Anthropologists, legal theorists and early observers of Southeast Alaska including the noted scholar, de Laguna (1972), Emmons (1991) in his study of the Tlingit, Goldschmidt and Haas (1946), who conducted a study of the possessory rights of the Tlingit, as well as decisions rendered by various courts, have uniformly recognized the group property rights of the Tlingit.

The communal ownership of property was affirmed in a Tlingit tribal court in the landmark case known as Chilkat Indian Village, I.R.A. vs. Michael R. Johnson (1993). In this case, several members of a clan attempted to sell the "Whale House artifacts". Based on his interpretation of Tlingit property law, Judge Bowen ruled that the Gaanaxteidí clan has the ultimate authority to exercise all custodial responsibility over the artifacts. The court also recognized the binding force of traditional and customary Tlingit law despite the fact that it was not codified as is Western law. It also acknowledged that the Tlingit legal system operated within the context of ceremonial activities. This case also affirmed that individuals cannot alienate objects and that clan members who are opposed to alienation cannot be deprived of their property interest.

The basic tenets of Tlingit property law are outlined by Rosita Worl (1998) in her study entitled, At.óow Tangible and Intangible Property. Dr. Worl is a Harvard-trained anthropologist and a Tlingit tribal member. This study along with other scholarly publications affirm the communal property ownership by clan under Tlingit law and further that crests serve as deeds of title to the objects on which they are depicted. The Sealaska Heritage Institute Council of Traditional Scholars, whose members are traditional leaders with a deep knowledge of Tlingit culture, adopted a resolution (enclosed) in 2007 and revised in 2008, which outlines the basic tenets of Tlingit Property Law.

Title to property is held in trust by the head person (*Sháade háni* or *Lingít Tlein*) or House Leader (*Hit s'aatí*) of a clan and house. Tlingit law is unequivocal in that these individuals act as trustees, caretakers or custodians and hold clan property in trust for its membership. Trustees cannot make independent decisions to dispose of or alienate clan property.

Anthropologists, who have studied Tlingit property, (Goldschmidt and

Haas 1946; Olson 1967) uniformly concur that the trustee does not have the authority to sell or dispose of clan property. Emmons (1991), who conducted extensive ethnographic studies among the Tlingit, emphasizes that the clan leader is highly respected, but his authority is limited and major decisions that involve the interest of the clan are subject to clan consent. The office of *Shàade hàni* or *Hit s'aatí* is transferred through generations within the clan and house according to defined rules.

The concept of individual or personal property traditionally applied to relatively few objects such as personal daily clothing. Only in the very recent period did Tlingit adopt the concept of individual property and extend it to newly-produced ceremonial regalia and objects. However, the Tlingit have continued to produce new ceremonial objects and transfer them to clan ownership.

In some instances, anthropologists have suggested that objects interred with deceased shamans are individual property. However, other observations dismiss such interpretations since it is well established that Tlingit clans continue to assert an overriding ownership interest in shamanic objects (Some Tlingit who have become Christians have elected not to be associated with shamanic objects). Only members of the clan to which a shaman belonged are allowed to handle his or her objects, and only his or her clan members can receive the spirits embodied in the objects interred with the shaman remains irrespective of the period lapsed since the time of the burial.

Property cannot be transferred, conveyed, or alienated unless all members of the clan agree. If any clan member should refuse to relinquish title to a clan object, then he or she cannot be deprived of his or her interest by an act of others, and the clan is required to maintain its ownership.

Ceremonial or clan property cannot be transferred to a spouse or claimed by a surviving spouse because he or she is a member of another clan. In fact, if a woman's husband dies, and if she were living in her husband's clan house and does not re-marry someone else in his clan, she is required to leave her husband's house and live elsewhere.

Sealaska's Council of Traditional Scholars in discussing and codifying Tlingit property law into a resolution debated whether the concept of "alienation" existed within Tlingit traditional laws. They maintained that the transfer of a*t.óow* from one clan to another was possible in the settlement of legal disputes, but they did not feel that the concept of "alienation" was the correct term or designation of this form of payment. The Council affirmed that a clan could not alienate their clan property except in this finite case to pay a clan debt.

1. Standing as an Indian Tribe

Sealaska Corporation submits this claim as a recognized tribe under NAGPRA on behalf of the Teeyhittaan Clan of Wrangell, Alaska. Under the definition of Indian tribe in NAGPRA regulations (Section 10.2(b)(2)), Sealaska Corporation is a federally-recognized Indian Tribe authorized to seek repatriation claims under NAGPRA. This claim is further initiated in accordance with Tlingit traditional property laws, as authorized by the enclosed resolution from the Wrangell Teeyhittaan Clan, and in accordance with the Repatriation Procedures adopted by the Sealaska Heritage Institute Council of Traditional Scholars.

2. Sacred Object

This section of the claim presents information establishing that the requested item is a sacred object as defined in NAGPRA. Sec. 2(3)(c) defines sacred objects as

> specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.

NAGPRA regulations provide further clarification of the definition of sacred objects. Under Sec. 10.2(d)(3), the term 'sacred objects' is

> specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony.

Furthermore, the regulation also specify that

> The term traditional religious leader means a person who is recognized by members of an Indian tribe as:
>
> i) being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe, or
> ii) exercising a leadership role in an Indian tribe based on the tribe's cultural, ceremonial, or religious practices.

This definition can be divided into three components which are addressed in this section, that the requested object

1) was devoted to a traditional Native American religious ceremony; and

2) has religious significance or function in the continuing observance or renewal of these ceremonies; and
3) is needed by traditional religious leaders for the practice of this traditional religion by present day adherents.

1) The requested object was devoted to a traditional Native American religious ceremony.

The *Yéil Aan Kaawu Naa s'aax,w,* or Leader of all Ravens Clan Hat, is a crest hat belonging to the Teeyhíttaan Clan. The original hat in this design was presented to the Teeyhíttaan Clan by the Tsimshian as compensation for the killing of a Teeyhíttaan clan leader, and to make peace. This occurred sometime prior to 1900, although how long ago is not known. The crest represents an important event in the history of the clan in which the former clan leader lost his life. It memorializes his sacrifice, as well as the compensation by the Tsimshian to the Teeyhíttaan Clan for their loss. It has remained among the clan's possessions since it was acquired from the Tsimshian.

The existing clan hat was made as a replacement for the original hat which was partially destroyed by fire in about 1900. It was commissioned by the Teeyhíttaan Clan leader at the time. When it was completed, a feast was given and it was brought out and presented to the gathering as *at.óow* of the Teeyhíttaan Clan.

The hat is a crest hat of the Teeyhíttaan Clan. It represents a Raven crest given to the clan by the Tsimshian in compensation for the death of a Teeyhíttaan clan leader. It represents an event in the history of the clan in which a clan leader lost his life. According to oral tradition, the original hat with this crest design was among the clan's possessions held by the clan leader in about 1900, at the time it was substantially damaged by fire. The current hat was first brought out at a ceremony a short time later, when a replacement was made. It has been among the clan's ceremonial prerogatives for more than 100 years. It has been held and used continuously by clan heads and custodians until its clan-designated custodian, William L. Paul, Sr., loaned it to the Alaska State Museum for safekeeping in 1947.

This history indicates that the crest has been used and preserved as clan *at.óow* since it was acquired from the Tsimshian, and that as such the hat was an object specifically used in and preserved for traditional Tlingit religious (mortuary) ceremonies at the time it was loaned to the museum. It has been continuously referenced in museum correspondence since 1947 as a clan crest hat in the keeping of the Teeyhíttaan Clan custodian. As described above, such items were devoted to Tlingit religious ceremonies, specifically the *ku.éex'* and other funerary rituals, and other related ceremonies.

2) The requested object has religious significance or function in the continuing observance or renewal of these ceremonies.

The *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Ravens Clan Hat) is *at.óow* of the Teeyhíttaan Clan. The contextual discussion given above presents information about the religious significance and functioning of Tlingit crests and the objects which represent them (*at.óow*) in Tlingit mortuary ceremonies. This included a brief discussion of the meaning and significance of *at.óow,* their relationship to the fundamental Tlingit spiritual concept of *Haa Shagóon,* and their central role in mortuary ceremonies to which these objects are devoted. The ceremonial practices associated with the Tlingit mortuary complex, specifically the funeral and *ku.éex'* (memorial potlatch), are the fundamental ritual components of the traditional Native American religion of the Tlingit Indians.

To summarize, the requested object represents a highly significant event in the history and identity of the clan which is presented and displayed to members of other clans and moieties during Tlingit mortuary ceremonies. The clan hat represents the spirit of a crest animal that was given by the Tsimshian as compensation to the Teeyhíttaan Clan for causing the death of their clan leader. The hat embodies the spirit of the Teeyhíttaan Clan Leader whose sacrifice is memorialized in the object, and the spirits of all subsequent caretakers who have preserved the crest and its physical representation and have used it in religious ceremonies since it was first acquired by the clan. During ceremonies hosted by the Teeyhíttaan Clan, these spiritual entities are evoked during the ceremonial presentations of the hat, and it is believed that they receive the spiritual essence of the food and material possessions that are distributed by the host clan. When the object is used and displayed by the clan in association with clan songs and oratory, it contributes "weight" to their words and ensures there is spiritual balance in response to the equivalent displays and oratory of opposite clans. Such balance benefits the assembly as a whole by protecting them from the consequences of a disparity in ritual evocation of ancestral spirits. Without the ability to use the requested object in this manner, opposite clans will be constrained from bringing out their own *at.óow.*

Whether the clan employs the item in their role as host or as a guest, its use contributes substantially to the religious significance and function of ritual acts performed by clan members. Its use ensures the clan has continued opportunities to honor and pay respect to their clan ancestors. In addition, the object embodies the present and future clan members who have been (or will be) shaped by the events depicted in the crest hat, collectively uniting them with their ancestors.

A great deal of anthropological literature has been developed over the

past one hundred and fifty years that supplements our statements made on behalf of the Teeyhíttaan Clan. References of this well-known material can be provided upon request. Attendance at any contemporary traditional Tlingit funeral and observations of the religious practices associated with the memorial potlatch will demonstrate the continuing religious uses and functions of crest objects (and other ceremonial items) in contemporary Tlingit religious practices. Crest objects such as the *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Ravens Clan Hat) have a religious significance and function in the continued observance of Tlingit mortuary ceremonies.

For a period of time in the 20th century, the participation of Wrangell people in traditional memorials declined significantly. However, some residents continued to participate in traditional ceremonial life through their attendance at the ku.éex' in other communities. Others continued to adhere to the traditional spiritual beliefs including relationship to animals, the ancestors and environment (including shamanism). In Wrangell, ceremonial practices diminished and probably disappeared completely for a period, but have been revived over the past 20 years or so. Wrangell clans are now sponsoring ceremonies in a process of deliberate religious renewal. Mr. Rinehart, the current Teeyhíttaan clan leader, had the hat transferred from the Alaska State Museum in Juneau to Wrangell so he could bring it out during a naming ceremony a few years ago. He also requested that the hat be retained in the community and kept in the Wrangell Museum for safekeeping, and the Alaska State Museum has loaned the hat to the Wrangell Museum for the present. The ceremonial function of the hat, embodying spirits of ancestors (including that of its previous custodian, William Paul, Sr.), is evident. This hat is needed to ensure the return and participation of the ancestral spirits in these ceremonies.

3) The requested object is needed by traditional religious leaders for the practice of this traditional religion by present day adherents.

The Tlingit people consider clan and house leaders to be their 'traditional religious leaders' as defined in NAGPRA regulations. These individuals are "responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe," and they exercise "a leadership role in an Indian tribe based on the tribe's cultural, ceremonial, or religious practices" (43 CFR Part 10, Section 10.2(d)(3)). For the Teeyhíttaan Clan, this individual is: Richard Rinehart, Sr. He serves as Teeyhíttaan Sháade háni (Clan Leader), Spokesman, and Custodian of Teeyhíttaan *at.óow*. Mr. Rinehart is responsible for performing, conducting and managing cultural duties relating to the ceremonial and religious traditions of the Teeyhíttaan Clan from the village of Wrangell, Alaska.

The Leader of all Ravens Clan Hat is needed by the Teeyhíttaan religious

leader and custodian for ceremonial use and function in funerals and memorial potlatches. It is needed for the display of the clan's history and identity and to evoke the spirits of clan ancestors associated with it. It is needed for use during the performance of mourning songs and oratory presented at Teeyhíttaan funerals and memorial potlatches, and for display and oratory offered to express comfort to the grieving clan and to "give weight" to their words when they are guests at traditional funerals and memorials. Its use will benefit all of those in attendance at such ceremonies by ensuring that spirits evoked during the ceremonies are properly balanced and will not cause misfortune due to the lack of an appropriate response. It is needed so that it can be placed on a grandchild during a memorial potlatch to honor that individual and the clan ancestors who owned the object in the past.

The Tlingit Teeyhíttaan *Yéil Aan Kaawu Naa s'áaxw* has religious significance and is needed by its leader and custodian, clan members, and *Teeyhíttaan yatx'éi* (Children of Teeyhíttaan or those individuals whose fathers are member of the Teeyhíttaan) in Wrangell for the observance and renewal of its ancient ceremonial practices. Its use will benefit all participants attending our *ku.éex'*, whether they are members of the host or mourning clan or are invited guests from the opposite side. The Clan Hat is imbued with sacredness and the spirits of our ancestors, and it is needed by the Teeyhíttaan clan leader in the practice of our *ku.éex'* and other ceremonial activities as described above.

With the presence of *Yéil Aan Kaawu* in our ceremonies, the Teeyhíttaan will be reunited with *Haa* Shagóon and *Haa Shuká* (the spirits of our ancestors and of Raven), including the Teeyhíttaan Clan Leader who paid with the loss of his life for the Teeyhíttaan to acquire the original Clan Hat, the Teeyhíttaan clan member who made the Clan Hat which is the subject of this claim *(Yéil Kook), Shquindy* (William Paul, Sr.) and other ancestors who served as custodians of this Clan Hat (such as *Gush*), and *Yéil* (The Leader of all Ravens), which is a significant crest of the Teeyhíttaan. The spirits of our ancestors will be able to reunite with their descendants and will be honored. The Teeyhíttaan have not been in spiritual balance. With the return of our at.óow and with the attendance of *Haa Shagóon* and *Haa Shuká* in a ceremonial observance, we will be able to restore our spiritual and social balance.

Summary

The Leader of all Ravens Clan Hat is an object that was specifically devoted to a traditional Tlingit religious ceremony --- as *at.óow,* it was used by the Teeyhíttaan Clan to represent the clan (including its ancestors and future clan members) and the clan's unique history in Tlingit mortuary ceremonies. It has religious significance or function in the continued observance of the ceremony --- its ceremonial use evokes the spirits of those clan members

associated with it who are believed to receive the spiritual essence of the food and gifts distributed during a memorial, and calls forth these spirits in response to similar displays by opposite clans to ensure there is spiritual balance during memorial ceremonies. It is needed by the traditional religious leader of the Teeyhíttaan Clan for the continued practice of traditional religion by present day adherents --- the Teeyhíttaan Clan leader needs the object to fulfill the Clan's ceremonial roles and functions described above.

Our ceremonial practices require the presence of both Eagle and Raven clan objects with their respective clan crests in order to maintain the spiritual balance and the well-being of the Tlingit People. Our *at.óow* are necessary for the continued observance of religious ceremonies, rituals and traditions conducted by our clan leaders and custodians. For the Teeyhíttaan Clan, this also involves the renewal of the clan's ceremonial practices.

3. Object of Cultural Patrimony

This section of the claim presents information establishing that the requested item is an object of cultural patrimony as defined in NAGPRA. Sec. 2(3)(d) defines cultural patrimony as

> an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

1) The requested object has ongoing historical, traditional and cultural importance central to the Native American group.

The *Yéil Aan Kaawu* Clan Hat memorializes a major historical event in the life of our clan, in which a clan leader was killed and compensation was given for his life. Besides Raven, the hat represents his spirit on whose behalf the hat was presented to the clan. It memorializes the ultimate sacrifice made by him on behalf of the clan and its future members. It has been preserved by clan leaders to signify the importance of this event in the history of the clan, to honor the spirit of this chief whenever it is brought out in a *ku.éex'*, and to provide strength to future generations of clan members whose character and spirit continue to be shaped by this occurrence. The Raven hat and spirit was transferred to the clan and became Teeyhíttaan *at.óow*, and it represents a significant historical event that is an ongoing component of the clan's identity.

This hat has central and ongoing historical, cultural and traditional importance to the clan.

The Tlingit place great significance on our *at.óow* including the *Yéil Aan Kaawu* Clan Hat and Raven Crest which are the subject of this claim. The Clan Hat represents our clan and is used to recount our clan history. It serves to unify Teeyhíttaan clan members and identify the group as Tlingit People and members of the Teeyhíttaan Clan. Our *at.óow*, the *Yéil Aan Kaawu* Clan Hat, binds us to our ancestors and symbolizes a spiritual relationship to the Raven and to our ancestors. It provides a physical form in which spiritual beings that have a special relationship to our clan, and our clan ancestors, manifest their presence during clan ceremonies. The story associated with the origin of this clan crest can be re-told by our clan leader and custodian and significant elders during our gatherings and ceremonies, thereby re-affirming and validating our clan ownership and the spiritual relationship to our ancestors and to the being manifest by the crests depicted on the Clan Hat.

The *Yéil Aan Kaawu* Clan Hat and Raven have taken on a new dimension of significance in the present-day period. In a recent region-wide meeting, our clan leaders claimed that many of the social illnesses afflicting our society are due, in part, to the alienation and mistreatment of our *at.óow*. They contend that while we are able to heal our physical diseases with modern medicine, we are unable to resolve the social ills afflicting Tlingit people. They expressed the concern that we must repossess our *at.óow* to restore our spiritual balance and social harmony. Their statement underscores the central cultural importance of our *at.óow*.

The *Yéil Aan Kaawu* Clan Hat and Raven Crest is an *at.óow* of the Teeyhíttaan Clan and of the Tlingit Tribe. It embodies the history of the Teeyhíttaan and it has spiritual dimensions associated with the Teeyhíttaan *Shagóon* and *Shuká*. This specific *at.óow* is central to our belief of *"Haa Shagóon"* as it represents our ancestors, our clan members of the present day period, our future generations and thus our survival as Teeyhíttaan clan members and as Tlingit people.

2) ... rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe.

The *Yéil Aan Kaawu* Clan Hat is our *at.óow* and belongs to the Teeyhíttaan Clan of the Tlingit Tribe. The hat, like other *at.óow*, is owned collectively by a clan and was not ever owned by an individual. A clan leader serves as trustee of clan *at.óow*, and according to Tlingit property law, he holds clan property in trust for the clan and does not have the authority to alienate

clan property. The *Yéil Aan Kaawu* Clan Hat was acquired by transfer from another tribe, the Tsimshian, as compensation for the death of a Teeyhittaan clan chief. It was given to the clan, not to an individual, and it has been passed down traditionally since that time through a line of clan leaders. At one time (in about 1900), the hat was damaged by fire and a new hat was made; this hat was also preserved and passed down traditionally through the line of clan leaders until the time it was deposited on loan in the Alaska State Museum.

In our Tlingit tradition, objects that are *at.óow* were occasionally conveyed from one clan to another as compensation or restitution for a serious offense, which would include the death of a clan member. The customary rule for compensating a clan for an injury was "an eye for an eye." Unlike Western law, the "perpetrator" was not the responsible party; it was the clan as a whole which was accountable and would be required to provide compensation. Just compensation was a crucial element in the settlement of disputes, and the amount of compensation considered equitable would depend upon the social rank of the injured party. For the death of a chief, such as in the Teeyhittaan case, the life of a man of equal rank would be the expected compensation.

On occasion, clans would negotiate an alternative settlement. Such apparently occurred between the Teeyhittaan and the Tsimshian clan involved in the death, and a crest object belonging to the Tsimshian was transferred to the Teeyhittaan. This was a rare occurrence, but it did happen. The point we are making is that the object was not conveyed from one individual to another, but it was a transaction between clans. At the time the *Yéil Aan Kaawu* Hat was acquired from the Tsimshian, it belonged to the clan as a whole. It continued to be held in the clan as a communally owned object (*at.óow*) down through the years.

Museum documents indicate that it was communally owned at the time its caretaker first deposited it in the Alaska State Museum in 1947.

> William L. Paul loaned to the Territorial Museum
> An old Tee-hit-ton Crest, raven copper disks and abalone eyes.
> This hat belonged to William Paul's ancestors and has been
> handed down to him, who is now the Custodian of the Crest hat.
>
> He was given a receipt for the hat with the assurance that the hat would have the same care in the museum as is given to other exhibits, and that it will be returned to him on application.
>
> (Document entitled "Loan" signed by Josephine White, Sept. 22, 1947)

3) ... and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

The Museum claims that it acquired ownership of the hat in 1969, when Mr. William Paul, Sr., donated the item to the museum as a gift. At this time, the object was *at.óow* and thus inalienable by the Teeyhittaan clan and the Tlingit tribe. Mr. Paul himself provides evidence for this, by designating himself as custodian and identifying others to serve in this capacity after him in the donation documents. Mr. Paul provided statements to the museum about who would serve as custodian in 1954, 1962, 1964, 1967 and lastly 1969, at the time of the donation (see below, Right of Possession).

During this period, ceremonial practices were diminishing in Wrangell. This trend was evident to Mr. Paul, who indicated that he felt the Tlingit traditions were dying. For example, in a letter to Richard Rinehart dated July 21, 1954, he stated, "I recognize that the Indian style of inheritance will die with my generation and so I would approve of a roll that would include all of the modern Teehitton, their wives and children..." Yet, in the same letter, he explains that in his view Richard Rinehart is the one to provide clan leadership: "The tribal hat, I have put in the Terr. Museum here and shall make some worthy member of the tribe its custodian (I think you are the one to keep our name respectable and provide the formal leadership)..."

While Mr. Paul could be faulted for acting without the involvement of the clan, in his own way he was trying to preserve the clan's *at.óow* by donating it to the Museum. It is apparent he was conflicted, since he kept asserting there would be a custodian to succeed him. What led him ultimately to change the status of the hat from a loan to a gift in 1969 cannot be explained. According to his son (Fred Paul), he did so as an act of spite, yet it is known that he and his son did not get along so perhaps this is not an accurate explanation. In any case, the evidence indicates that he acted on his own and did not do this with the knowledge and consent of the clan. Moreover, there is nothing that occurred between 1947 and 1969 that indicates the clan began to believe that this item was no longer an inalienable clan possession.

There are four copies of the museum donation form in the file, three of which identify successors in interest to the hat. The second and third copies dated March 10, 1969, include a statement about custodianship: "the current custodians name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Skquindy and Ka-Xwan (Jack Frost). The next custodian will be Richard Rinehart, Tlingit name Yuh-Koog', if he survives me, otherwise a male person to be designated." The fourth copy includes the following statement regarding heirs:

> My sister's son William Paul Sheppard is closer to me as an heir if he had an interest. Marjorie Klingman.....is Will Paul's lst counsin and so her son could be a successor to the hat if something happened to Rinehart. Marjorie's mother was a sister of Kah-lyudt (Matilda Paul-Tamaree).

Thus, while purportedly making this donation to the museum, he also identifies custodians and heirs of the item which indicates that he believed the clan retained an interest in the hat. Indeed, his multiple statements affirm that there are (and would be) other individuals who have an interest in the item on behalf of the clan. This is consistent with Tlingit traditions that the custodian of *at.óow* cannot transfer ownership rights under these circumstances, that there will be successors to the office of steward of clan possessions, and that ownership is retained by the clan through succeeding generations. We also conclude that the museum is unethical in claiming ownership to an item on the basis of clouded title, by accepting a gift from a donor who openly expressed that the responsibility of custodianship was retained by himself and was to be transferred in future not to the museum but to individuals serving in that capacity on behalf of the clan.

To summarize, William Paul notified the Alaska State Museum in writing in 1964, 1967 and in 1969, that he was the custodian of the hat, and that he would be succeeded by Richard Rinehart in that capacity. Richard Rinehart had been informed of this, as well. Under Tlingit customary law and practices, the custodian is a keeper of clan property and serves on behalf of the clan to preserve inalienable possessions (*at.óow*). William Paul's statements about custodianship represent these values and beliefs. At the time the clan hat was donated to the museum, it was considered an inalienable heirloom that belonged to the clan as a whole, and Mr. Paul did not have the authority of alienation.

4. Cultural Affiliation with the Teeyhíttaan Clan

This section will establish there is a relationship of cultural affiliation between Sealaska Corporation, a present-day Indian tribe for the purposes of NAGPRA, and the Teeyhíttaan clan of the Tlingit tribe in Wrangell. As defined in NAGPRA,

> "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

Since the Museum claims that ownership was transferred from the Teeyhíttaan

clan custodian in 1969, this claim will demonstrate there is a relationship of shared group identity between Sealaska Corporation and the Teeyhittaan clan of Wrangell which was in existence in 1969 and earlier.

Sealaska Corporation was formed as the regional Native corporation for Southeast Alaska under the Alaska Native Claims Settlement Act of 1971 (ANCSA). This act awarded land and monetary compensation for the taking of aboriginal lands in Alaska, and extinguished aboriginal claims throughout the state of Alaska. Today, Sealaska shareholders number more than 19,000 individuals of primarily Tlingit, Haida and Tsimshian descent, the majority of which are Tlingit. Under the terms of ANCSA, the Native residents of southeast Alaska and others who originated from Southeast Alaska were entitled to enroll in Sealaska Corporation as shareholders. Residents of 12 named communities and numerous other communities that were not specified under ANCSA did so during the enrollment process that followed passage of the land claims act.

Wrangell residents were enrolled in Seaslaska as "at-large" shareholders. The enrollment policies and procedures for Wrangell and the other unlisted villages were the same as for the 12 Southeast communities that were specified in ANCSA. According to final enrollment data provided by the Bureau of Indian Affairs, 747 persons from Wrangell were eligible to enroll in Sealaska Corporation as of 1971. Wrangell enrollees represented the fifth largest community of shareholders enrolled under the act (following Juneau, Ketchikan, Sitka and Hoonah), out of 38 Southeast Alaska communities (ISER 1994:81).

Included in the Wrangell enrollees were the members of the Teeyhittaan Clan. This clan has a long association with the Wrangell area that was continuous through 1969, and continues to the present day. The existence of the clan and its association with Wrangell is documented in numerous sources. Clan members are noted in historical sources beginning in the second half of the 19th century. Emmons' sketch map of Wrangell n.d., in Emmons 1991:25) shows the location of clan houses on the inner harbor of the town. Swanton, who conducted fieldwork in Wrangell in 1904, includes the Teeyhittaan Clan in his enumeration of Stikine (Wrangell) clans. The clan's territory was documented by Goldschmidt and Haas (1998 (1946)). Indeed, the Teeyhittaan Clan Custodian, William L. Paul, Sr., provided corrections and additional information about Teeyhittaan lands in the year following publication of this 1946 report. The clan is also well documented in legal proceedings, most notably in *Tee-Hit-Ton Indians v. United States* (the 1955 U.S. Supreme Court decision that implied the existence of unextinguished aboriginal title, a case initiated by William Paul), as well as in the Tlingit and Haida land claims proceedings decided in 1959.

The Teeyhittaan Clan is a well-known clan traditionally and historically

associated with Wrangell. Teeyhíttaan clan members were enrolled to Sealaska Corporation pursuant to ANCSA. Teeyhíttaan Clan members were enrolled based on their residence or association with Wrangell in 1971, and they and their descendants continue to be Sealaska shareholders at the present time. This information demonstrates that there is a relationship of cultural affiliation between Sealaska Corporation, a Tlingit tribe under NAGPRA, and the Teeyhíttaan Clan of Wrangell.

5. The Tribe's Right of Possession

Yéil Aan Kaawu Naa s'áaxw is owned collectively by the Teeyhíttaan clan and is not property owned by an individual Native American or Tlingit, and therefore no single individual can legally alienate or convey title to this Clan Hat irrespective of whether or not the individual is a member of the clan or Indian Tribe.

The Teeyhíttaan Clan Hat requested in this claim is approximately 110 years old. It replaced an older hat which was given to the Teeyhíttaan Clan by the Tsimshian as compensation for killing a Teeyhíttaan chief. The Clan Hat is owned collectively by the Teeyhíttaan Clan. William L. Paul, Sr., who was serving as the clan custodian, loaned the hat to the Alaska State Museum in 1947.

Museum documents indicate that William Paul then changed the terms of the loan into a gift on March 10, 1969, while still serving as clan custodian. Mr. Paul as clan custodian did not possess the authority to alienate clan property or its *at.óow* since the Teeyhíttaan Clan is the owner of the hat.

Museum records, as outlined below, provide documentation that a clan custodian of the hat was designated continuously from 1947 to the present, indicating that property rights (ownership) were never in fact relinquished or transferred to the museum, and the museum's claimed title is not valid. This is consistent with Tlingit customary law and practices, under which ownership remains with the clan and custodians do not have the right to transfer ownership of *at.óow* independent of the clan.

On September 22, 1947, according to a museum record of the loan,

> William L. Paul loaned to the Territorial Museum an old Tee-hit-ton Crest, raven copper disks and abalone eyes. This hat belonged to William Paul's ancestors and has been handed down to him, who is now the Custodian of the Crest hat.

In a letter to Richard Rinehart, Sr., dated July 21, 1954, William Paul made reference to the hat having been placed in the museum and

indicates that he, Richard Rinehart, is worthy to be the next custodian:

> The tribal hat, I have put in the Terr. [Territorial] Museum here and shall make some worthy member of the tribe its custodian (I think you are the one to keep our name respectable and provide the formal leadership)—I am not sure if I have the right son of Jessie's in mind, but you will know if you are worthy.

A museum catalog record for the hat dated January 7, 1959, refers to the loan and to its present custodian, William Paul, Sr. On October 30, 1962, William Paul, Sr. directed that his son, Frederick Paul, be listed as custodian after his death. Then, on November 6, 1964, William Paul made the following statement to the museum:

> Upon the death of William Paul, Sr. the crest hat "Yethl-Ankow-oo" of the Tee-hit-ton Clan shall become the property of Richard Rinehart, whose Tlingit name is "Ya koog" of Wrangell, Alaska. The crest hat (II-B-809) is now on loan to the Alaska Historical Library and Museum at Juneau, Alaska.

The succession of Richard Rinehart as custodian was attested again in 1967, evidenced in a letter from Letter from Jane Wallen, Asst Director Alaska State Museum to William Paul, Sr., dated November 24, 1967:

> .....One such subject was the chief's hat which you have placed on loan to this Museum. You have indicated that you wish the hat to be passed on to the custodianship of Richard Rinehart....upon your death.
>
> I believe the most effective means of adding this clause to the loan agreement now in effect between you and this museum would be through the receipt of such a statement from you.....

The next record identifying the next custodian to succeed William Paul, Sr., appears in the museum records of the gift on March 10, 1969, which provides detailed information about the custodianship of the hat:

> It is further agreed that the current custodians name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Skquindy and Ka-Xwan (Jack Frost). The next custodian will be Richard Rinehart, Tlingit name Yuh-Koog', if he survives me, otherwise a male person to be designated.

Two signed copies of the March 10, 1969 document by William L. Paul and Jane Wallen are in the museum files. The first copy contains the above

information relating to the custodians. The second copy contains additional information, which was apparently added to the copy. The first addition is a hand written notation "47-113 Loan #," and then the following information is appended:

> The name "Shquindy" is shortened from Shkooni-da-ti-yi-kah means "Too proud to do anything dishonorable and so wont [won't].
>
> My sister's son William Paul Sheppard is closer to me as an heir if he had an interest. Marjorie Klingman (R.1. Box 273) of Anacortes, Wn. is Will Paul's lst cousin and so her son could be a successor to the hat if something happened to Rinehart. Marjorie's mother was a sister of Kah-lyudt (Matilda Paul-Tamaree).

The concluding statement of the March 10, 1969 document with the signature of William Paul and Jane Wallen is as follows:

> Conditions regarding Gifts
>
> It is hereby agreed that the above items [Crest hat of the Tee-hit-ton] are donated to the Alaska State Museum as free and unrestricted gifts "except as noted herein."

The museum's records of the "donation" of the hat indicate that William Paul did not relinquish the custodianship of the hat, and also that this right would be transferred to another clan member upon his death. In effect, he reserved the right for a future custodian to reclaim the hat at any time, as part of the package of rights entrusted to one to keep property. While the record of the gift indicates that William Paul attested to his donation of the Teeyhittaan Clan Hat, the full documentation shows that he reserved the rights of custodianship and thus did not, in fact, convey ownership or title.

Questions about the conveyance were raised by William Paul's son and also by Richard Rinehart, the clan's custodian, following William Paul's death in 1977. According to notes in the file, Fred Paul visited the museum on or about August 13, 1989, and saw the hat on exhibit. He expressed the belief that the clan hat belongs, or is on loan from, his family, and requested confirmation of its status. At about this time, Richard Rinehart, Sr., was becoming active as the clan's custodian. In response to information provided about the hat by Rinehart, Fred Paul wrote Rinehart a letter dated August 31, 1993, and commented about seeing a video produced by Sealaska Heritage Foundation (now Institute) in which the hat appeared. He asked Richard "...if you or any authorized person gave permission for such use."

On April 19, 1996, Richard Rinehart wrote an open letter explaining that he was the designated successor of William Paul:

> To [whom]ever is concerned my Uncle – William Paul Sr. on my mother's side of the Tee-ha-ton clan of Tlingit Indians of Wrangell, Alaska – Southeast AK – Jessie Bell Rinehart – left me – Ya Kook – my Indian name in charge of the Crest Hat at the Alaska State Museum – 910 - 11-B – 809 – Northwest Coast.
>
> My uncle passed away a few years back in Seattle Wash. Where he made his home away from – Wrangell, AK. I've got a letter signed by William Paul Sr., that I Richard R. Rinehart Sr. will be the head and spokesperson for the Tee-Ha-Ton tribe after he's gone. And also in charge of the Crest Hat.

Apparently this was also communicated to the Alaska State Museum, which is acknowledged in a letter from Steve Hendrickson, Curator of Collections, to Richard Rinehart dated the same day (April 19, 1996):

> Thank you for letting us know your concerns about the hat "Chief Of All Ravens" from the Teeyhittan clan, donated by your uncle William Paul, Sr. in 1969....

Mr. Rinehart replied by letter on April 26, stating again that he had been designated the custodian of the hat --- and the spokesperson for the Teeyhittaan Clan --- by William Paul. He indicated that he did not know the hat had been in the possession of the museum.

Additional correspondence in the museum's files describes the chain of custodianship through which the hat has been held in the clan. In a Letter to the Editor in Sealaska Shareholder News, July 1997, Richard Rinehart, Sr., wrote,

> I was named after my mother's uncle, Charlie Yacook (Yéil Kook). Charlie Yacook was William Paul, Sr.'s clan uncle. Charlie passed on custodianship to William Paul, Sr.....Shiquindy [William Paul, Sr.] was my clan uncle, and he passed on custodianship for our crest hat on to me – Richard Rinehart Sr.

In this letter, he went on to designate his son, Richard J. Rinehart, Jr., as his successor due to the low number of Teeyhittaan clan members and his view that none of them have "the qualification of leadership, knowledge of tribal and clan history, and responsibility to take over custodianship when I am gone." Subsequent correspondence from Richard J. Rinehart, Jr., clarifies that he, Richard Rinehart, Jr., does not claim to be the clan leader and that

should a qualified Teeyhittaan leader someday be appointed he and his father (Richard Sr.) would transfer custody of the hat to that person (letter from Richard J. Rinehart, Jr., to Frances Paul Germain dated August 5, 1997).

In 2003, acting as custodian, Richard Rinehart, Sr. authorized the Alaska State Museum to release the hat to his nephew for the purpose of bringing it to Wrangell so it could be used in a naming ceremony. He added, "By my signature I am releasing you of any responsibility for the Tee-hit-ton Crest hat and I now take responsibility for its care." The hat has been on loan from the state museum to the Wrangell Museum since that time.

On April 14, 2006, Richard Rinehart, Sr. advised the Alaska State Museum that he was rescinding the loan of the clan hat. At the request of Richard Rinehart, Sr., the Sealaska Heritage Institute wrote to the State Museum on May 25, 2007, requesting a response to Richard Rinehart's letter rescinding the loan.

On June 7, 2007, the State Museum responded to the Sealaska Heritage Institute that they had explained to Mr. Rinehart that the 1947 loan of the hat was retired in 1969 when William Paul transferred title to the hat to the Alaska Sate Museum. The museum concedes that Richard Rinehart Sr. was designated as the next caretaker, "but does not outline the authority and responsibilities of each party under the agreement. Barring more information about the 1969 agreement, or a successful NAGPRA claim, we are not able to return the hat."

The Tlingit Tribe, acting through Sealaska Corporation, maintains that ownership of the hat was not legitimately transferred to the museum in 1969 and, in fact, the Teeyhittaan Clan has maintained ownership of the clan hat through its designated custodian. As clan custodian, William Paul did not possess the legal authority under tribal law to donate the clan hat.

Summary

Sealaska Corporation asserts that the right of possession of the Teeyhittaan Clan Hat is retained by the Teeyhittaan Clan and that the "donation" of the hat by William Paul was invalid because it was made in violation of traditional customary law and practice. Furthermore, it did not convey the right of possession since he asserted that he was the custodian of the hat and that these right and duties would be passed on to his successor(s). William Paul was one in a line of custodians, which can be traced from his maternal uncle, Charlie Yacook (Yéil Kook), to himself, and then to his successor (and current custodian) Richard Rinehart, Sr.

Summary of Claim

We believe that we have provided the information to meet the standards under NAGPRA to repatriate the Teeyhittaan Clan Hat.

1. Recognized Tribe: Sealaska Corporation is a Tribe authorized to seek repatriation under NAGPRA.

2. Sacred Object: The Tlingit *Yéil Aan Kaawu* Clan Hat is needed by Teeyhittaan religious leaders for their use in funerals and memorial potlatches for the display of their identity, and to evoke the spirit of the clan ancestor who was killed and of those who commissioned the hat and preserved it in subsequent generations (including its former custodians Charlie Yéil Kook and William Paul, Jr.). The ceremonial use of the hat will evoke the spirits so they can be present and receive the spiritual counterpart of the food and material goods that are distributed to the guests. It is needed for the performance of mourning songs and oratory presented at Teeyhittaan funerals and memorial potlatches, and when they are guests at traditional funerals and memorials for display and oratory to express comfort to the grieving clan and to "give weight" to their words. It is essential in our *ku.éex'* to ensure social and spiritual balance. It is needed so that it can be placed on a grandchild during a memorial potlatch to honor that individual and the clan ancestors who owned the object in the past. The *Yéil Aan Kaawu* Clan Hat is an object that was specifically devoted to traditional Tlingit funerary ceremonies and which has religious significance or function in the continued observance of these ceremonies. It is needed by traditional religious leaders of the Teeyhittaan clan for the continued practice of their traditional religion by the present day adherents, and for the renewal of these practices in Wrangell.

The Clan Hat plays a central role in our ideological construct of *Haa Shagoon* that binds us to our ancestors who obtained the Raven Crest and who made this Clan Hat and that binds us to future generations to ensure our cultural survival. Furthermore, the return of ownership of the Clan Hat is required to restore its spiritual sanctity.

3. Object of Cultural Patrimony: The Tlingit Teeyhittaan *Yéil Aan Kaawu* Hat memorializes a significant event in the history of the clan, which has ongoing importance central to the cultural identity of the clan. The continuing importance of the hat was demonstrated some 100 years ago when it was replicated after the original hat was damaged by fire and dedicated in a ceremony. Its continuing importance in the intervening years was demonstrated by the actions of the clan custodian in seeking to preserve the object with the assistance of the museum, while maintaining the clan's custody of the item. The Clan Hat, and the Raven crest, name, story and spirits associated with it, were held in common by the Teeyhittaan Clan and are

at.óow of the Teeyhíttaan Clan. As *at.óow*, the hat is a clan possession and was not alienable by an individual (in this case, the clan custodian) at the time it was acquired by the museum in 1969.

The Clan Hat was held in common by our Teeyhíttaan ancestors and our tribal members, who collectively have sole authority to alienate ceremonial objects and regalia (*at.óow*). No evidence exists that demonstrates that the Teeyhíttaan Clan members gave their voluntary consent or grant of permission to William L. Paul, Sr., to donate the Clan Hat. Museum documents indicate that at the time William Paul, Sr. signed the document in which he donated the clan hat to the museum, he, as the clan custodian, did not relinquish the clan's custodianship of the object.

4. Cultural Affiliation: The membership of Sealaska Corporation includes all the clans of Southeast Alaska, among which are the Tlingit Teeyhíttaan Clan of Wrangell. Members of the Teeyhíttaan Clan of Wrangell were enrolled as shareholders in Sealaska Corporation pursuant to ANCSA. They, and their descendants who have inherited shares, continue to be Sealaska shareholders. There is a relationship of cultural affiliation between Sealaska Corporation and the Tlingit Teeyhíttaan Clan of Wrangell.

5. Right of Possession: Sealaska Corporation has presented evidence that establishes its right of possession to the *Yéil Aan Kaawu* Clan Hat and Raven crest on behalf of the Teeyhíttaan Clan. Clan custodians do not have the authority to transfer title to clan property or *at.óow*, and no evidence exists that the Teeyhíttaan Clan gave its authority to convey title to its Clan Hat. At the time the hat was acquired by the museum, the clan custodian did not indicate that the clan relinquished its custodianship, as evidenced by his statements about who was custodian at the time and who would be his successor. Sealaska Corporation further asserts that the current custodian of the Teeyhíttaan Clan is Richard Rinehart, Sr.

Should you have questions relative to Sealaska Corporation as an Indian Tribe for purposes of NAGPRA, cultural affiliation, the object as a Sacred Object and as an Object of Cultural Patrimony, or Right of Possession, please do not hesitate to contact us. We respectfully request that you act expeditiously on this matter.

We furthermore assert that the above information contains sacred, cultural, and intellectual knowledge. No copies, reproductions, or publication are authorized unless for the sole purpose of evaluating and processing the repatriation claim. This authorization is void upon completion of repatriation of this Clan Hat. Nothing in this claim shall be construed as waiving the future rights and privileges afforded the Sealaska Corporation under traditional, federal, and state laws.

Contaminants

We further request that you advise us whether the Teeyhittaan Clan Hat was treated with known pesticides or contaminant agents. Please advise us how the museum intends to minimize or eradicate any adverse effects and the possible effects in handling or using this object.

Sincerely,

Sealaska Corporation

Chris McNeil,
President & CEO

Encls. Teeyhittaan Resolution
Tlingit Property Law and Dispute Resolution

cc: Richard Rinehart, Sr. Teeyhittaan Clan of Wrangell
The Central Council of Tlingit & Haida Indian Tribes of Alaska
Sealaska Heritage Institute
David Tarler, NAGPRA Designated Federal Officer

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Resolution 01-08
Teeyhíttaan Clan

Title: Authorizing Sealaska Corporation to Initiate Repatriation Claim on behalf of the Teeyhittaan Clan

WHEREAS Sealaska Corporation is authorized to initiate repatriation claims pursuant to the terms of the Native American Graves Protection and Repatriation Act of 1990; and

WHEREAS clans are not authorized to initiate repatriation claims pursuant to the terms of the Native American Graven Protection and Repatriation Act of 1990; and

WHEREAS *At.óow* are the most prized treasures of the Tlingit, and Tlingit laws recognized that *At.óow* are owned by clans; and

WHEREAS Sealaska Corporation established the Sealaska Heritage Institute to Preserve and Protect the Tlingit, Haida and Tsimshian Cultures; and

WHEREAS the Council of Traditional Scholars adopted a Repatriation Procedures that govern the action of Sealaska and Sealaska Heritage Institute in initiating repatriation claims to ensure compliance with Tlingit traditional laws.

WHEREAS the Teeyhíttaan Clan owns the *YéilAan Kaawu Naa Shaadakoox'* and that it is on loan to the Alaska State Museum while the Museum claims that it has title to the Clan Hat.

NOW THEREFORE BE IT RESOLVED That the Teeyhíttan authorizes Sealaska Corporation acting through the Sealaska Heritage Institute to seek the repatriation of the Teeyhíttan *YéilAan Kaawu Naa Shaadakoox'* on behalf of the Teeyhíttaan Clan which is held by the Alaska State Museum with the recognition that title of the Clan Hat will be transferred to the Teeyhíttaan Clan.

BE IT FURTHER RESOLVED That the signing of this resolution by the Teeyhíttaan Clan's custodian does not waive its rights and privileges afforded under the traditional Tlingít laws and or the laws of the United States, including NAGPRA.

Adopted this _____day of _____ in _____, Alaska.

_____
Richard Rinehart, Sr.
Custodian of Teeyhíttan Clan Hat

Tlingit Clan Trust Property Law and Dispute Resolution

Article I
Tlingit Clan Trust Property Law

This ordinance codifies Tlingit traditional and customary law that has governed clan property since time immemorial. It further outlines a dispute resolution process based on traditional practices with Eagle and Raven clan representation.

1.01 Purpose and Construction

The purpose of this chapter is to codify the principal tenets of traditional Tlingit clan property laws in order to:

(1) restore and promote balance and continuity in traditional Tlingit culture;
(2) maintain clan ownership of clan property;
(3) encourage healthy succession of leadership within clans; and
(4) foster improved relations among and within clans.

The provisions of this chapter shall be liberally construed in accordance with tribal custom in order to achieve the purposes identified above.

1.02 Definitions

1. 'At.óow' ('*that which is paid for, including with a life*') is a clan-owned tangible object and associated intellectual property and land that includes the following elements:
    a. A supernatural event, or an event important (formative), including clan migration stories in a clan's history (and identity);
    b. The ancestors, spirits, names, songs, and stories associated with the event;
    c. The site at which the event occurred;
    d. The visual representation of the event (or the associated spirit, ancestor or place) commonly referred to as a crest or spirit; and
    e. The physical object on which the event is recorded and which is given a formal name.

    In this section, the terms 'at.óow' and 'clan trust property' are used interchangeably.

2. 'Sháade háni' or 'Lingít Tlein' is a clan leader.

3. 'Hit s'áatí' is the keeper of the house.
4. 'Ku.éex' is a ceremonial or memorial event.
5. 'Jin da.aadí' is when clan members of the same moiety provide support to a host clan during a clan ceremonial event.
6. 'Guneit kunaayí' is the opposite clan.
7. 'Trustee' is a person who holds property for the benefit of his or her clan.

1.03 Validation of Clan Trust Property (At.óow)

In order for something to become clan property and to be imbued with a spirit, it must be acquired and presented in a clan ceremony by one clan with an appropriate payment of gifts to the opposite clan (*guneit kunaayí)* and acknowledged by an opposite clan (*guneit kunaayí*). Once the object is validated, the names, songs, stories, spirits and crests associated with the supernatural event also become property of the host clan.

1.04 Ownership of Clan Trust Property (At.óow)

Clan trust property is owned equally and in common by every member of the clan.

1.05 House Unit's Right of Possession

The house that commissioned the clan object retains the primary right of possession of the object, while the entire clan holds a residual ownership right.

1.06 Ownership of Ixt' (shamanic) Objects

All Ixt' instruments, clothing and spirits (the spirits associated with the Ixt') are owned by the clan.

1.07 Use Rights in Clan Trust Property

A father or male grandparent may grant to his child or grandchild the right to use a clan crest, clan name or clan-owned regalia or at.óow. This use right may be for a limited occasion or an extended period. At most, it exists only during the lifetime of the child or grandchild and the grantee does not have any authority to transfer the clan property.

Proper use of the regalia includes someone of the opposite moiety placing the object on the child or grandchild, while the father or grandfather acknowledges the special relationship he has with the child or grandchild and announces the usufruct right he has granted.

If the child or grandchild uses the at.óow in the absence of the father or grandfather, he or she must acknowledge proper clan ownership and note that he or she has received use rights.

1.08 Alienation of Clan Property

Clan trust property cannot be alienated. No clan leader or an individual independent of the clan membership has the authority to alienate clan property.

Instances may exist when clan property can be held by another clan, e.g. allowing use of at.óow for indemnification for wrongdoing. However, ownership of clan property cannot be transferred outside of Tlingit society[1].

1.09 Replicas and Duplicates

The ownership of clan trust property extends to replicas and duplicates of the clan property.

1.10 Authority of the Clan Leader (Sháade háni or Lingít Tlein) and House Leader (Hit s'aatí)

Clan leaders (Sháade háni) and house leaders (Hit s'aatí) hold clan property in trust for their members. They do not have the authority to sell, give away, destroy, or otherwise alienate clan property.

1.11 Authority of Trustees or Caretakers

Trustees, caretakers or clan members holding clan trust property or at.óow are responsible for preserving the clan objects for the benefit of the entire clan. They do not have the authority to sell, give away, destroy, or otherwise alienate clan property. A clan may have multiple trustees, caretakers, or stewards.

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[1] Tlingit society is defined as the indigenous population living in Southeast Alaska who share common traditional customs and practices, kingship system, values and language.

1.12 Group Liability

The entire clan is liable for any act by one of their members that brings harm to another clan, irrespective of the perpetrator's intent.

1.13 Clan Leader (Sháade háni or Lingít Tlein) Succession

Clan leaders are selected by members of the clan. Clan members must collectively agree upon the appointment of an individual to the office of clan leader. The selection of clan leaders is made according to Tlingit protocol and is duly noted in a clan ceremony when the clan hat or regalia is placed on the new leader and is witnessed by members of the opposite clan.

A clan leader cannot designate the next clan leader independent of the clan members.

The new clan leader assumes trusteeship of the clan at.óow.

Article II
Resolution of Clan Trust Property Disputes

2.0 Resolution of Clan Trust Property Disputes

The Council of Traditional Scholars respectfully request that disputing parties meet in an attempt to resolve their differences.

In the event that disputing parties cannot resolves their differences, clan trust property disputes between individuals within a clan or between clans may be brought before a Clan Dispute Resolution Board upon petition by one or more of the parties who are directly involved in the dispute.

The Clan Dispute Resolution Board shall consist of individuals who are knowledgeable of Tlingit Clan Trust Property Law, who are not party or related to the disputants or case, and one of the following:

-four Eagles in a dispute involving Eagles; or
-four Ravens in a dispute involving Ravens; or
-two Eagle and two Ravens in a dispute involving both Eagle and Raven clans, and

as authorized in a resolution adopted by the tribal council or the Council of Traditional Scholars. Board members shall not be affiliated with the clan or clans in dispute.

The final resolution of the dispute shall be acknowledged in a document signed by the parties involved and or in a clan ceremony, e.g. ku.éex'. The resolution of the dispute shall further be signed by the opposite clan [s] or validated in a clan ceremony by an opposite clan.

2.02 Procedure

(a) Any clan member who wishes to use this dispute resolution process shall send a written request (petition) to the Council of Traditional Scholars asking for assistance in resolving a dispute. The request must include:

(1) a Statement of Facts, including a description of the property in dispute, identification of the respondent and all potentially interested parties (including their clan affiliations) and a sequence of events;
(2) request for relief (or proposed remedy);
(3) arguments in favor of the petition; and
(4) supporting documents.

(b) The chairperson shall review the petition to determine whether there is enough evidence in the record to establish a dispute resolution board. The chairperson shall make this determination and notify the petitioner in writing within 10 working days.

(c) Once the chairperson determines there is enough evidence for a hearing, the CTS shall forward a copy of the petition to the respondent and recommend the appointment of appropriate members as outlined in paragraph 2.01 Clan Dispute Resolution Board to hear the case.

The primary parties to the case must approve of the four members on the board in writing before the board convenes. Objections to one or more of the board members can be submitted in writing or by withholding approval of the recommendation.

The parties shall work together in good faith to seat a board. If agreement is not reached within 60 days, the CTS is authorized to deny the petition.

(d) All materials related to the case are to be distributed to the board members once they sign an agreement acknowledging their service on the DRB.

(e) A hearing is to be scheduled within 30 days after all four board members are seated.

(f) All four board members and both parties must be present at the hearing, in person or by phone or video conferencing. During the hearing, the parties will respond to questions from the board members.

(g) Following the hearing, the DRB shall deliberate until they agree on the outcome or result. The deliberation need not be recorded. However, a written opinion shall be issued to the parties no later than 10 days after the hearing.

(h) The board's written opinion shall be considered a final disposition of the case. However, neither party is precluded from filing a claim in a tribal or federal court, notwithstanding the board determination.

Adopted April 22, 2008

NAGPRA Regional Tribal Meeting

Appendix F

Cultural Context of *Haa At.óowu*

Sealaska Heritage Institute Cultural Context of *Haa At.óowu*

SHI outlines three inter-related Tlingit cultural tenets and practices and the principals of Tlingit property law to substantiate repatriation claims.

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April 15, 2009

Cultural Context of Haa At.óowu

Haa at.óowu, Haa Shagoon, and *Ku.eex'* and the principles of Tlingit property law

By
Rosita Worl, Ph.D.

To substantiate repatriation claims for *haa at.óowu* as a Sacred Object and an Object of Cultural Patrimony, three inter-related Tlingit cultural tenets and *practices--Haa At.óowu, Haa Shagóon, and Ku.éex'* and the principles of Tlingit property law will be outlined.

Haa At.óowu

Haa At.óowu is sacred tangible and intangible property owned by a clan that is used primarily in ceremonial activities.

The crest depicted on a *haa at.óowu* often derives from an encounter between a clan ancestor and a supernatural entity that appeared in the form of a bird, animal or fish.

The right to depict a visual representation (a crest) of this encounter on a ceremonial object and to claim a spiritual relationship and kinship with the supernatural entity is generally associated with the loss of life of a clan ancestor.

The term *haa at.óowu* encompasses all of the following:

-a legendary event
-the spirits of human ancestors and supernatural entities that were involved in a legendary event
-the site at which the event occurred and associated natural features
-the visual representation or crest symbolizing the event
-the physical object on which the crest is depicted
-the stories, names and songs associated with the event
-clan ancestors, who used and preserved the *haa at.óowu* in subsequent generations

Crests embody the spirit or being depicted in the visual representation and the spirits of clan ancestors associated with the *haa at.óowu.*

Crests symbolize the special relationship and kinship clan members have to the animal or entity depicted on the crest.
The crests depicted on the *haa at.óowu* serve to identify and unify clan members and define their relationships with other Tlingit.

Haa at.óowu are among the most prized possessions of a clan, and clans were willing to go to war, or to court in the present day period, to protect their ownership of *haa at.óowu.*

Haa at.óowu serve as "legal title" to the geographical site where the event occurred. *Haa at.óowu* are transferred within the clan through the generations in perpetuity. When a *haa at.óowu* deteriorates and can no longer be used, it is burned and mourned as if it were a human who had died and was cremated.

Haa at.óowu are immortal and survive their temporary representation in physical objects in the same manner as a person's spirit survives its body and is reincarnated into an infant or a newly made *haa at.óowu.*

Haa Shagóon

Haa Shagóon embodies the clan and spiritually

unites past, present and future generations. It represents our ancestors including our animal kin. It is the spiritual thread that unites the living and binds us to our ancestors and to future generations.

A clan's *Shagóon* is translated as both its "origin" or "heritage" (referring to its ancestral past), and its "destiny" or "fate" (referring to its future generations).

Haa Shagóon is represented by our material and immaterial *haa at.óowu* that spiritually unite the present generation to the past and to the future.

Haa At.óowu displayed at ceremonies represent a clan's *Shagóon,* connecting those present with all those who came before, and those yet to come in the future.

Ku.éex'

The *ku.éex',* commonly called "potlatch", is the central religious ritual in Tlingit ceremonial life.

In the *ku.éex'*, the living members of a clan are united with their ancestors through the use of *haa at.óowu.* The *ku.éex'* is the principal context for the cultural presentation of a *haa at.óowu* and the evocation of spirits.

The religious rituals associated with the *ku.éex'* include the **death** rite; the **funeral;** and the **departure of the deceased's spirit from the natural world,** culminating in the larger ceremony, the *ku.éex'*.

Ceremonies are also held for the construction of new houses and to settle conflicts through the peace ceremony.

The *ku.éex'* is scheduled a year or more after the death of a clan member and is called a "payback" in recognition of the ceremonial services provided to the family and clan of the deceased by relatives of "opposite" clans.

The *ku.éex'* requires the participation of both Eagle and Raven clans. The interrelationships and interactions between these "opposite" clans during these ceremonies serve to restore spiritual and social balance and harmony that had been disrupted with the loss of a clan member.

During a *ku.éex',* the bereaved clan, which acts as the host, ritually presents their *haa at.óowu* to the opposite clan, recounts the names and stories giving rise to the crests, and sings the songs recalling the events behind the *haa at.óowu.* The most sacred of clan songs, the mourning songs, are presented at this time.

In response, guest clans engage in a reciprocal display and presentation of *haa at.óowu,* and speeches of condolence are delivered to the host clan.

During the *ku.éex'* the presentation of *haa at.óowu* serve to evoke the spirits of clan ancestors involved in the acquisition of the crest, the spirits of crest animals and ancestors who preserved and used the *haa at.óowu* in the following to the present generations. They are believed to receive the spiritual essence of the food and gifts that are given to the opposite clans by the bereaved.

The response and acknowledgement by the guest clan of the opposite moiety validates the *haa at.óowu* and ownership of each of the host clan's objects with their crest designs and other prerogatives.

During later stages of the *ku.éex',* the host clan "kills money" (formerly slaves), which is called *Daana ak gwa jaak,* by distributing it to the guest clans. The cash, food and gifts given by the host clan and their acceptance by the guest clan further validate the host clan's prerogatives associated with its *haa at.óowu.*

Tlingit Law

Clans are the basic property-holding units in Tlingit society.

A Tlingit infant acquires property rights through his or her birth into a clan and by virtue of his or her **membership** in a clan rather than through inheritance from his or her mother or parents.

Under Tlingit law, no descendible or alienable rights accrue to an individual, and inheritance rights as recognized under American law do not exist in Tlingit law.

All members of a clan collectively own their *haa at.óowu*. They own the intellectual property represented by the crest art, the names, stories and songs in the same way that they hold their tangible property.

Title to property is held in trust for clan members by the head person *(Sháade háni* or *Linít Tlein)* or House Leader *(Hít s'aatí)* of a clan and house. Trustees cannot make independent decisions to dispose of or alienate clan property.

The office of *Sháade háni* or *Hít s'aatí* is transferred through generations within the clan and house according to defined rules. The clan leader is highly respected, but his authority is limited and major decisions that involve the interest of the clan are subject to clan consent.

Property cannot be transferred, conveyed, or alienated unless all members of the clan agree. If any clan member should refuse to relinquish title to a clan object, then he or she cannot be deprived of his or her interest by an act of others, and the clan is required to maintain its ownership.

Sanctioned transfers of *haa at.óowu* between clans may be made to satisfy a clan's liability to another clan or indemnification for wrongdoing.

Contrary to American law, ceremonial or clan property cannot be transferred to a spouse or claimed by a surviving spouse because he or she is a member of another clan.

The concept of individual or personal property traditionally applied to relatively few objects such as personal daily clothing.

Anthropologists, legal theorists and early observers of Southeast Alaska (Emmons 1991; Goldschmidt and Haas 1946 & 1998; Olson 1967) and federal and tribal courts in the Whale House case (1993 Village Tribal Court No. 90-01 Decision), have uniformly recognized the group or clan property rights of the Tlingit and have consistently concurred that trustees do not have the authority to sell or dispose of clan property or *haa at.óowu*.

The Tlingit concede that many of their *haa at.óowu* were alienated from their society during the late 1800s and early 1900s and that one or more individuals may have been party to the alienation. The Tlingit, maintain, however, that such alienation was in violation of Tlingit law.

In an attempt to foreclose the alienation of *haa at.óowu* outside of the sanctioned transfer of *haa at.óowu* between clans, the Chilkat Indian Village adopted a tribal ordinance that prohibited the alienation of clan objects without the permission of the village council. The assumption is made that the council would approve of an alienation made in concurrence with Tlingit property law.

In 2007, the SHI Council of Traditional Scholars, whose members are traditional leaders with a deep knowledge of Tlingit culture, discussed the tenets of Tlingit law and adopted the Tlingit Property Law and Dispute Resolution and amended in 2009, which have been outlined above.

Appendix G

Summary of the *Teeyhíttaan* Documents and Communication

Summary of Teeyhíttaan Clan Hat Documents and Communication

1. September 22, 1947 — Document entitled "Loan" II-B-809 signed by Josephine White.

   "William L. Paul loaned to the Territorial Museum An old Tee-hit-ton" Crest, raven copper disks and abalone eyes. This hat belonged to William Paul's ancestors and has been handed down to him, who is now the Custodian of the Crest hat.

   He was given a receipt for the hat with the assurance that the hat would have the same care in the museum as is given to other exhibits and that it will be returned to him on application." (Appendix H, p. 1)

2. July 21, 1954 — Letter from William L. Paul Sr. to Richard Rinehart

   Paragraphs 1, 2, and 3 reference the Tee-Hit-Ton [land claims] Case in the Court of Claims.

   Paragraph 4: "I recognize that the Indian style of inheritance will die with my generation and so I would approve of a roll that would include all of the modern Teehitton, their wives and children.....

   Paragraph 5: As for future leadership, it should go into the most capable hands....So I would have the tribe elect my son William or Fred, and would enjoin on them the duty of carrying out the traditions of our tribe....

   Paragraph 6. The tribal hat, I have put in the Terr. Museum here and shall make some worthy member of the tribe its custodian (I think you are the one to keep our name respectable and provide the formal leadership)—I am not sure if I have the

right son of Jessie's in mind, but you will know if you are worthy. (Appendix H, p. 2)

3. January 7, 1959 — Museum Catalog Record No. II-B-809
Loan. Present custodian William Paul Sr.

Notation added to Catalog Record:
Donated May 1969
See File Folder with Notice of Donation.
(Appendix H, p. 3)

4. October 30, 1962 — William Paul, Sr. directed that his son, Frederick Paul, be listed as custodian after his death. (Appendix H, p. 3)

5. November 6, 1964 — Statement signed by William Paul, Sr. on Alaska Historical Library and Museum Letterhead:

Upon the death of William Paul, Sr. the crest hat "Yethl-Ankow-oo" of the Tee-hit-ton Clan shall become the property of Richard Rinehart, whose Tlingit name is "Ya koog" of Wrangell, Alaska. The crest hat (II-B-809) is now on loan to the Alaska Historical Library and Museum at Juneau, Alaska.
(Appendix H, p. 4)

6. November 24, 1967 — Letter from Jane Wallen, Asst Director Alaska State Museum to William Paul, Sr.

.....One such subject was the chief's hat which you have placed on loan to this Museum. You have indicated that you wish the hat to be passed on to the custodianship of Richard Rinehart....upon your death.

I believe the most effective means of adding this clause to the loan agreement now in effect between you and this museum would be through the receipt

of such a statement from you.....
(Appendix H, p. 5)

7. March 10, 1969 — Alaska State Museum Form. Note file includes four different documents with the same date, but with additional information on each document:

First Copy dated March 10, 1969.

RECEIVED FROM William Paul, Sr.

Description of Object

1 Crest hat of the Tee-hit-ton tribe of Wrangell, Raven phratry.

It is agreed that the Museum will have woven at least three rings of spruce-root basketry to be placed on the hat. This will be accomplished to the satisfaction of Mr. William Paul, Sr. and will be done as soon as necessary arrangements can be made.

Second and Third Copy dated March 10, 1969 appear to be first handwritten and then typed to include the following additional information:

For additional information see Frances Paul's description in her book.

In Mrs. Paul's description the locale referred is Lake Bay (Yei-klah-ah, which means "this is the place") Mrs. William Paul will send information on names of the two chiefs referred to.

It is further agreed that the current custodians name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Skquindy and Ka-

Xwan (Jack Frost). The next custodian will be Richard Rinehart, Tlingit name Yuh-Koog', if he survives me, otherwise a male person to be designated.

Conditions regarding Gifts
It is hereby agreed that the above items ` [Crest hat of the Tee-hit-ton] are donated to the Alaska State Museum as free and unrestricted gifts "except as noted herein."

Third copy is signed by William Lewis Paul and Jane Wallen (Appendix H, pp. 7-8)

Fourth Copy the same as above with the following additions:

Number 47-113
"Loan #"

The name "Shquindy" is shortened from Shkooni-da-ti-ye-kah means "Too proud to do anything dishonorable and so won't.

My sister's son William Paul Sheppard is closer to me as an heir if he had an interest. Marjorie Klingman.....is Will Paul's lst cousin and so her son could be a successor to the hat if something happened to Rinehart. Marjorie's mother was a sister of Kah-lyudt (Matilda Paul-Tamaree). (Appendix H, p. 9)

8. No date

William L. Paul Hand-Written note which may have been attached to the third copy above:

The next custodian will be Richard Rinehart Tlingit name Yuh-Koog', if he survives me otherwise a male person to be designated.

Signed William L. Paul, Sr. (Appendix H, p. 10)

9. May 27, 1969 — Letter to Mr. and Mrs. William Paul, Sr. from the Alaska State Museum

Expressing appreciation of Raven Crest Hat, "which had been on loan...."
(Appendix H, p. 11)

10. No Date [1969?] — Juneau Empire Article on Alaska State Museum exhibit opening on Frances Paul "Tlingit and Haida Crest Hat Paintings" and 8 crest hats belonging to the Museum of which was donated by William Paul, Sr.
(Appendix H, p. 12)

11. August 21, 1969 — Ketchikan Daily News
Photo and Article with caption, "William L. Paul, Sr., holding a Tlingit crest hat which he recently donated to the Alaska State Museum in Juneau.
(Appendix H, p. 13)

12. September 5, 1969 — Tundra Times News Article Headline
"Pauls Donate Paintings, Crest Hats to Alaska State Museum
(Appendix H, p. 14)

13. No Date — Drawing of Crest Hat with Following Description and Notation:

This hat is named Yehl-An-kow-oo [Yéil Aan Kaa.wu] or Chief-of-all-Ravens. This particular one is about 70 years old. It is a copy of a former one which was partially destroyed by fire. The original one had abalone shells where this one has copper disks. It was a great disgrace that the hat should have been destroyed, so the fact was hidden and a new was carved in secret by a nephew of Gush, the head-chief. When it was finished a feast

was given and the substitution made. Ordinarily such work was done by a member of the opposite phratry, but due to the wish for secrecy a member of their own family did the carving.
Hand written note by William Paul:

"Hat from Wrangell Loaned by William L. Paul Sr."

Hand written notation:

"Tee-hit-ton Crest hat – Raven copper disks – abalone eyes.
(Appendix H, p. 15)

14. No Date

In ACC Folder 69-2

"1. Crest hat of the Tee-hit-ton tribe of Wrangell. Raven phratry. It remains the property of the original owners, is now on loan to the Alaska Historical Museum...."

Lists six additional references donated by Mrs. William Paul, Sr. and describing clan hats [which may be referring to paintings].
(Appendix H, p. 16)

15. August 14, 1989

Note re: Fred Paul thinks that the Eagle hat in the Tlingit display...belongs to him and is on loan from his family...

Hand written note: "Jenna gave the information to Steve. Steve will give Bruce a memo. Steve believes Museum staff must handle. Fred Paul is an attorney who lives in Seattle. He visited the ASM on Sunday. He will contact Karen Price Wed, 8/16, when he returns to Juneau to establish ownership of the hat.

Steve/Judy "I think he is looking at clarifying ownership. He did not get along with his father".

He felt his father donated materials (?) to museum in spite. Bruce
(Appendix H, p. 17)

16. August 31, 1993 — Letter from Frederick Paul to Richard Rinehart
Second paragraph:

I notice that you mentioned the Tee-hit-ton crest now at the Juneau museum. The other night, by happenstance, I was watching our public TV station, when, to my surprise, there was the hat, although it was not identified as Tee-hit-ton. Apparently, the Sealaska Heritage produced a seven minute show telling the story of how Raven brought the stars, the moon, and the sun to the people. It was beautifully done.

But, I am curious if you or any authorized person gave permission for such use.

Just to show you that I know who you are and who I am, I sign off as Your brother-in-law /s/ Fred Paul. (Appendix H, p. 18)

17. April 19, 1996 — Letter from Richard John Rinehart Sr.

"To ever is concerned, my Uncle – William Paul Sr. on my mother's side of the Tee-ha-ton clan of Tlingit Indians of Wrangell, Alaska – Southeast AK – Jessie Bell Rinehart – left me – Ya Kook – my Indian name in charge of the Crest Hat at the Alaska State Museum – 910 - 11-B – 809 – Northwest Coast.

My uncle passed away a few years back in Seattle Wash. Where he made his home away from – Wrangell, AK. I've got a letter signed by him

William Paul Sr., that I Richard R. Rinehart Sr. will be the head and spokesperson for the Tee-Hit-Ton tribe after he's gone. And also in charge of the Crest Hat. (Appendix H, p. 19)

18. April 19, 1996

Letter from Steve Henrickson, Curator Collections To Richard Rinehart Sr.

Thank you for letting us know your concerns about the hat "Chief Of All Ravens" from the Teeyhíttaan clan, donated by your uncle William Paul, Sr. in 1969....

You apparently mentioned to Donna Baron, registrar for the museum, that you had heard a rumor that someone may be asking to borrow the hat for Celebration '96 in June. To my knowledge, no one has yet asked to borrow it, but if someone does I'll mention that you have asked that it not be taken out.

We have an arrangement with the Kiks.ádi and Kaagwaantaan clans of Sitka that allows them to "check out" regalia from the museum when it is needed for ceremonies. Prior to checking things out, we negotiate formal agreement with the clan so that each side knows its rights and responsibilities. Furthermore, it allows us to know that the clan custodian or leader have given their written consent to allow the objects to be used. If anyone ever comes here to take the raven hat out, I will contact you to discuss whether this should be allowed.

Fourth paragraph references history of original hat "that the original hat came from the Tsimshian, and was given to the Teeyhittan clan as a peace offering to pay for the killing of a Teeyhíttaan chief." ....

Fifth paragraph references stack of spruce root "potlatch" rings that once sat atop the hat before it came to museum on loan in 1947. The rings were believed to be in the Walter Waters collection in Wrangell, which was sold to the Burke Museum and the Denver Art Museum.
(Appendix H, p. 20-21)

19. April 26, 1996

Letter from Richard J. Rinehart Sr. to Alaska State Museum.

Thank you for your letter dated April 19, 1996 – about the Tee – Hit – ton, crest hat, that my uncle, William Paul Sr. made me the custodian of.

I've tried at different time to get some one, at the museum, to tell me what happened to it.

So now I know. Thank you again for this information. Uncle William Paul Sr. told me some thing about the hat a long time ago. And that after his death that I'll be [in] custodianship of the hat, and also speak for the Tee-Hit-ton – tribe of Wrangell in his Behalf. I remember very little of the hat store's [stories] – only that there were some parts of it some place else.

Maybe his daughter Frances Paul – De Germain 1521 – 16th East, Seattle, Wash. 98112-2806 can help as she wrote to me after Fred Paul, her brother passed on. That she was trying to write a book, with what papers he Father William Paul Sr. left.

Fred Paul and I wrote to each other a few times before his death a few years ago. We wrote about the Tlingit people and his father.

Fred was a lawyer [too], he does have another Brother a lawyer, but I never got to know him much, just Fred. He was 82 years old when he

passed on about the same age as his Father William Paul Sr. when he left us to the Happy Hunting Grounds.

I'm named after another of my mother's uncles – Charles Ya Kook who was a great hunter trapper and food gather. I'm Raven of the Wrangell tribe Tee-hit-ton on my Mother Jessie Bill Rinehart['s] side. I'm of the Tlingit people. My white man's name on my father's side is Richard John Rinehart (Sr.) now – and my Indian name is – Ya-Kook.

Thank you again for your letter to me, and I hope to meet you [too].

I'll decide who will be the next caretaker of the Hat some time soon now that I really know.

Sincerely Richard J. Rinehart Sr.
(Appendix H, pp. 22-23)

20. July 1997

Letters to the Editor in Sealaska Shareholder News

Teeyhíttaan Crest Art

Written by Richard Rinehart in which he notes he is "the custodian of the Teeyhíttaan clan crest hat that is on display at the Alaska State Museum....This crest hat is the at.óow of the Teeyhíttaan clan. It is called the Yéil-Aankáawu (Chief-of-all Ravens hat)....I was named after my mother's uncle, Charlie Yacook (Yéil Kook). Charlie Yacook was William Paul, Sr.'s clan uncle. Charlie passed on custodianship to William Paul, Sr.....Shiquindy [William Paul, Sr.] was my clan uncle, and he passed on custodianship for our crest hat on to me – Richard Rinehart Sr.,

As a custodian of the Teeyhittan crest hat I have a great responsibility. First, I need to be sure the hat

is properly taken care of and stored. Twenty-eight years ago the hat was placed on loan with the Alaska State Museum by William Paul, Sr. Uncle Will believed then, and I still agree –today this is the best place. But if Wrangell ever builds a new museum I want the hat to come back home to Wrangell where it belongs.

Second, I have to be sure the hat is only used in a proper and appropriate manner. Therefore, I have instructed the museum that no one is to be allowed to use the hat for any reason without my written approval.

Finally, I have to find a successor custodian. When William Paul passed custodianship on to me he knew I have no clan nephews. There are very few Teeyhíttaan alive today, and I don't know of any Teeyhíttaan with the qualification of leadership, knowledge of tribal and clan history, and responsibility to take over custodianship when I am gone.

Therefore, I am going to name my son, Richard Rinehart, Jr., as the next custodian of the Teeyhíttaan clan crest hat. Although he is not Teeyhíttaan he is a Kiks.ádi from the Gagaan Hit (Sun House). The Teeyhíttaan were originally part of the Kiks.ádi clan, and could be considered a House of the Kiks.ádi clan. Anyone who knows my son Richard knows he is very knowledgeable in our history, tradition and customs, and has the necessary qualities of leadership and responsibility to be a good custodian for the crest hat –Yéil-Aankáawu. Richard Rinehart, Sr. Sealaska Shareholder. (Appendix H, pp. 24-25)

21. August 1, 1997 — Letter from Frances Paul DeGermain to Richard Rinehart Jr.

Notes that her father, William Louis Paul, initially put crest hat in the Alaska State Museum as a loan, but then made it a gift as he was concerned by qualified leader who could be trusted with the hat.

Notes that brother, Fred, expected to inherit the hat, "But William didn't think that was right although Fred was his heir white man style. But sons do not inherit Indian style, nephews do. Besides which, Fred was Nahn-ya-ahyi, not Tee-hit-ton. Dad never passed custodianship of the hat to your Father.

She asserts that her father did not designate Richard Rinehart, Sr. as successor to the position of "chief."

She asserts that you can't have it both ways, Indian style and whiteman style.

She asserts Richard Rinehart, Jr. not a Tee-hit-ton "so you have no right."

She acknowledges that there is an effort to try to reinstate the old culture, but too much has been forgotten and it is too late to go back. (Appendix H, p. 26)

22. August 5, 1997 — Letter from Richard J. Rinehart, Jr., to Frances Paul DeGermain

Responds to Frances' letter of August 1, 1997 in which he details the successive custodianship of the clan hat from Charlie Yakook to William Paul, Sr., to Richard Rinehart, Sr. and then to designate Richard J. Rinehart, Jr.

Mr. Rinehart acknowledges that he is not claiming to be the clan leader and that conceivable that a qualified Teey Hit Taan clan leader could be

selected some day at which time his father or himself would transfer custodianship of the clan hat would be transferred to this person. (Appendix H, pp. 27-29)

23. August 11, 1997 — Letter from Steve Henrickson, Curator of Collections to Richard J. Rinehart Jr.

Second paragraph: Our records indicate that the hat was donated to the museum by William Paul in 1969, with the notation that our father would serve as the next caretaker. Unfortunately, we have no record as to how the responsibilities and costs of preserving the hat were to be shared between the caretaker and the museum. Since this issue has recently been brought before us, this might be a good time to try to define in writing the responsibilities of the museum and caretaker.

Third paragraph: The need for a clear understanding of responsibilities is clear, and a good example is in the case of the hat being used in the "Box of Daylight" video produced by Sealaska. This video was produced prior to your father giving us any protocol to follow when we had request to use images of the hat in videos. In this case the museum authorized Sealaska to use the video footage, since they were using it for non-profit and educational purposes, and the use seemed appropriate. We never realized that your father felt he should also authorize such activities in his role as caretaker, and I'm embarrassed to learn that Fred Paul was concerned about the lack of authorization from the caretaker. In the interest of avoiding such situations in the future, I suggest we clarify the respective duties and outlined them in a formal agreement.

Fourth paragraph: The Alaska State Museum has given a good home to the hat for nearly thirty

years, has treated it with great respect, and has provided proper climate conditions and security precautions to ensure its preservation. Additionally, we commissioned an expensive set of spruce root basketry "potlatch" rings to go with the hat, as we agreed to do in the donation agreement. Over the years, the care we have provided amounted to many thousands of dollars, and I believe that Mr. Paul originally placed it here because we could offer a high level of protection for the hat. In short, I think we have acted in good faith and in accordance with Mr. Paul's wishes.

Personally, I feel that museums and Tlingit clans can work together towards goals of mutual interest, and in this case everybody seems to agree that the hat should be preserved as long as possible. With some clans, the Alaska State Museum has gone a step further by facilitating the use of certain clan at.óow in museum collection for potlatching by the appropriate clan members. This arrangement provides for the best level of care and security, and allows for the artifacts to remain an active part of traditional culture---the best of both worlds. Working together, this kind of thing is possible, but only with mutual respect and understanding. (Appendix H, pp. 29-31)

24. August 15, 2003 Letter from Richard Rinehart to Steve Henderson,

I, Richard Rinehart, custodian of the Tee-hit-ton Crest hat – Raven that was placed on loan to the Museum, give my permission to release it to Albert Rinehart (my nephew).

Albert Rinehart will [then] bring it to Wrangell so that we can use it in a naming ceremony.

By my signature I am releasing you of any responsibility for the Tee-hit-ton Crest hat and I

	now take responsibility for its care. (Appendix H, p. 32)
25. October 8, 2004	Alaska State Museum Collection Search ASM II-B-809: crest hat-Tlingit-wood; Red Cedar (Appendix H, pp. 33-34)
26. April 13, 2006	Letter from Rosita Worl, Sealaska Heritage Institute to Mr. Hendrickson, Alaska State Museum At the request of clan member, SHI inquires about the status of clan hat on loan. (Appendix H, p. 35)
27. April 14, 2006	Letter from Richard Rinehart, Sr. to Bruce Kato, Director Alaska State Museum Richard Rinehart rescinds Loan # 47-113 dated March 10, 1969 (Appendix H, pp. 36-37)
28. May 25, 2007	Letter from Rosita Worl, President Sealaska Heritage Institute to Bruce Kato, Alaska State Museum Requesting status of response to Richard Rinehart, Sr.'s request return of loan of clan hat. (Appendix H, p. 38)
29. June 7, 2007	Letter from Bruce Kato to Rosita Worl References contact with Mr. Rinehart and Museum explanation to him that the 1947 loan of the hat was retired in 1969 when William Paul, the clan caretaker, transferred title to the hat to the Alaska State Museum on behalf of his clan.....Mr. Paul named Richard Rinehart Sr. as the next caretaker, but does not outline the authority and responsibilities of each party under the agreement. Barring more information about the 1969

agreement, or a successful NAGPRA claim, we are not able to return the hat.

The Alaska State Museum asserts that the records are clear that the hat is no longer a loan and that by naming a caretaker for the hat; Mr. Paul clearly wanted to ensure a role for the clan in the preservation of the hat.

The Hat has been placed on temporary loan to the Wrangell Museum at the request of Mr. Rinehart. (Appendix H, p. 39)

30. August 29, 2008 — Letter from Alaska State Museum to Sealaska

Acknowledges receipt of Sealaska repatriation claim of August 13, 2008 and advises that the museum will research the claim and will prepare a report on the claim and recommend a course of action. (Appendix H, p. 40)

31. December 31, 2008 — Letter from Alaska State Museum to Sealaska Corporation.

Advises Sealaska Corporation that draft report of ASM initial findings submitted to the State Attorney General's office for review.

Advises that A.G.'s confirmation of ASM findings is anticipated in January 2009. (Appendix H, p. 41)

32. February 15, 2009 — Letter from Richard Rinehart to ASM sent via email.

Richard Rinehart, Jr. inquires if decision by Attorney General's confirmation of ASM findings, which was to be made in January, has been made. Advises that Sealaska and Teeyhíttaan Clan considering "formalizing a dispute between the State Museum and Sealaska" to meet requirements

	of NAGPRA Dispute procedures that require submission by February 23. Advises that if Attorney General has found in favor of Teeyhíttaan, dispute request would not proceed. (Appendix H, pp. 42-43)
33. February 20, 2009	Letter from Chris McNeil, President & CEO Sealaska Corporation to David Tarler, DFO Sealaska requests the NAGPRA Review Committee to facilitate the resolution of a dispute between Sealaska Corporation and the ASM. (Appendix H, pp. 44-50)
34. March 12, 2009	Letter from ASM to Richard Rinehart, Jr. Bruce Kato advises Mr. Rinehart, Jr. that the attorney general's office is still reviewing the claim and assures Mr. Kato that response will be forthcoming in next few weeks. (Appendix H, p. 51)
35. March 31, 2009	Email from David Tarler to Chris McNeil Mr. Tarler advises Sealaska that the ASM letter of June 7, 2007 cannot be construed as a response to Sealaska's repatriation claim and thus the issue of whether the Museum has the right of possession to the Clan Hat cannot be framed as a dispute. Mr. Tarler suggests that if Sealaska is agreeable, the Review Committee could be asked to answer if the Clan Hat is a "sacred object," an object of "cultural patrimony," that Sealaska is culturally affiliated with the Clan Hat and whether the Museum does not have "a right of possession." (Appendix H, pp. 52-53)
36. March 31, 2009	Email from Rosita Worl to David Tarler

Ms. Worl advises that she is responding on behalf of Mr. McNeil. She advises that Sealaska has framed the dispute on the ongoing assertion by the ASM that it owns the Clan Hat based on its donation to the ASM by Mr. William Paul and the failure of the ASM and the State of Alaska Attorney General to act on the formal repatriation claim of August 13, 2008. (Appendix H, p. 54)

37. March 31, 2009 — Email from David Tarler to Bruce Kato

Mr. Tarler advises that Sealaska has requested the NAGPRA Review Committee to make findings of fact and recommendations to Sealaska's unanswered request to the ASM to repatriate the Clan Hat.

Mr. Tarler asks the ASM if it wishes to provide the Review Committee with information relevant for answering the questions presented as to whether the Clan Hat is a "sacred object," an object of "cultural "patrimony," that Sealaska is "culturally affiliated" with the Clan Hat, and whether the Museum does not have a "right of possession. (Appendix H, pp. 55-56)

38. April 9, 2009 — Email from David Tarler to Rosita Worl

Mr. Tarler advises Worl that "the Review Committee will hear Sealaska's request for findings of fact and recommendations related to Sealaska's as-yet unanswered written request to the Alaska State Museum for repatriation of the Teeyhíttaan Clan of the Leader of all Raven Clan Hat. (Appendix H, p. 57)

39. April 10, 2009 — Letter from Department of Education & Early Development to Sealaska

Commissioner LeDoux invites Sealaska and interested persons to meet "to see if we can work out mutually-agreeable answers to the questions about the ownership of *Yeil Aan Kaawu Naa s'aaxw.*

Commissioner LeDoux advises Sealaska that the museum has concluded that "it has a right of possession" and "the museum declines to repatriate *Yeil Aan Kaawu Naa s'aaxw.*

The Commissioner, however, advises that it would be premature to consider it a final decision and requests to meet to try to find common ground.

A report entitled, "Assessment of a Repatriation Claim for the *Yeil Aan Kaawu Naa s'aaxw,* Leader of All Raven Hat (II-B-809) in the Collection of the Alaska State Museum, Filed on Behalf of the Teeyhíttaan clan of Wrangell by the Sealaska Corporation, August 13, 2008" is enclosed with the letter. (Appendix H, pp. 58-83)

40. April 20, 2009

Email from David Tarler to Rosita Worl & Bruce Kato

Mr. Tarler references Sealaska's request to the Review Committee to make findings related to Sealaska's request to ASM dated August 13, 2008 for the repatriation of the Teeyhíttaan Clan Hat.

Mr. Tarler notes that the Review Committee agreed to review Sealaska's request during the May 2009 meeting to answer the questions whether the Clan Hat is a "sacred object," an object of "cultural patrimony," whether Sealaska is "culturally affiliated" with the Clan Hat, and whether the Museum does not have the "right of possession."

Mr. Tarler notes that at the time Sealaska made its request to the Review Committee, the ASM had not responded to the to Sealaska's repatriation claim. However, on April 13, 2009, the DFO and Chair of the Review Committee received a copy of the ASM response to Sealaska's repatriation claim.

Mr. Tarler notes that he must reassess Sealaska's request to the Review Committee and Ms. Worl's and Mr. Kato's response to his questions will inform his decision.

Mr. Tarler asks Ms. Worl if Sealaska had received ASM's response dated March 3, 2009 to their repatriation claim.

Mr. Tarler asks Kato whether the ASM answers to the questions whether the Clan Hat is a "sacred object," and an object of "cultural patrimony," and if Sealaska is "culturally affiliated" with the Clan Hat are "yes."

Mr. Tarler then asks Mr. Kato whether the museum's answer to the question that the museum does not have a right of possession is "yes."

Mr. Tarler then notes that if Sealaska has received the ASM responses to its repatriation request, and if the ASM answered all four questions in the affirmative, then the Review Committee will not address these four questions because Sealaska and the ASM will have agreed on the answers and the issues will have been resolved.

Mr. Tarler concludes that the Review Committee will not address the question of whether or not the ASM has shown that, more likely than not, the Museum has the right of possession to the Clan Hat. He advises that Sealaska and the ASM may request the Review Committee to make findings to

facilitate the resolution of a dispute. (Appendix H, pp. 84-86)

41. April 20, 2009 — Email from Rosita Worl to David Tarler & Bruce Kato

Ms. Worl requests a copy of the ASM letter of March 3, 2009 as Sealaska has not record of receiving the letter. Ms. Worl notes that Sealaska has not received a response from Mr. Kato or the AG's decision. (Appendix H, pp. 87-88)

42. April 20, 2009 — Email from Bruce Kato to Rosita Worl

Mr. Kato forwards a copy of the ASM findings for the *Yeil Aan Kaawu Naa s'aaxw,* Leader of all Ravens Hat and advises that a hard copy will also be sent via postal service.

Mr. Tarler had erroneously identified the date of the ASM letter as March 3, 2009. The correct date was April 10, 2009. Sealaska did not receive until this letter until April 20, 2009. (Appendix H, p. 89)

43. April 20, 2009 — Letter from Bruce Kato to Mr. Tarler

Mr. Kato thanks Mr. Tarler for his response to him and Dr. Worl and his in-depth analysis of the Museum's response to the Sealaska claim and Mr. Tarler's willingness to remove the claim from the agenda.

Mr. Kato responds to the four questions posed by Mr. Tarler to the ASM.

He answers, "yes" to the questions whether the Clan Hat is a "sacred object," an object of "cultural patrimony," and that Sealaska is "culturally affiliated" with the Clan Hat.

He answers a "qualified yes" to the question, did Sealaska Corporation present evidence, which standing along before the introduction of evidence to the contrary, would support a find that, more likely than not, the Museum does not have a right of possession to the Clan Hat.

Mr. Kato clarifies that he qualifies his answer that Sealaska has included in its claim evidence and arguments about the Museum's right of possession. He notes that the Museum disagrees with Sealaska's assertion that the 1969 donation of the Clan Hat by William Paul was not effective to transfer a right of possession to the Museum.

Mr. Kato suggests the question should be rephrased as follows:

> Setting aside all evidence and arguments regarding the 1969 donation of the Clan Hat by the Clan to the State of Alaska, has Sealaska presented evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that, more likely than note, the Museum does not have a right of possession to the Clan Hat?"

Mr. Kato answers this question, "yes."

Mr. Kato suggests that the effect of the 1969 donation is a legal issue, not a factual issue.

Mr. Kato suggests resolution should occur in negotiation with the Clan.
(Appendix H, pp. 90-91)

44. April 23, 2009 — Email from Rosita Worl to David Tarler and Dan Monroe

Ms. Worl points out that the ASM letter of April 20 erroneously states that the donation was made by the "Clan."

Ms. Worl references that the ASM and Sealaska are not in agreement (about the right of possession).

Ms. Worl requests that the Review Committee hear this case in its next meeting noting that Mr. Rinehart is over 80 years of age and would like to have this issue resolved in his lifetime. (Appendix H, pp. 92-93)

45. Undated

Memo from Bradley J. Fluetsch, CFA and ANB Grand President to Rosita Worl

Mr. Bradley provides a report of a discussion he held with Wayne Anthony Ross, Attorney General of Alaska regarding the Teeyhíttaan Clan Hat on April 15, 2009.

Mr. Ross asks if the State and Alaska Natives could work together.

Mr. Bradley provides an account of the tensions surrounding the request to the ASM to use the Clan Hat in a ceremony.

Mr. Ross notes that documentation exists that Mr. Paul gave the hat to the State.

Mr. Fluetsch notes that no individual can give away clan artifacts and that Mr. Paul did not have the authority to give the hat to the State and that he was aware of the "edits" on the page outlining the transfer from Mr. Paul to the State.

Mr. Ross expressed a concern for the object and was curious if the State was to relinquish it would

it be cared for? Mr. Fluetsch noted that it would most likely remain in the Nolan Center [Museum] in Wrangell and emphasized that it was the Clan's responsibility to ensure that the hat was cared for.

Mr. Ross noted that the use of the Clan Hat in traditional ceremonies added tremendous value to the object. (Appendix H, p. 94)

46. April 23, 2009 — Email from Richard Rinehart to Larry LeDoux

Mr. Rinehart requests a meeting to discuss resolution of the Clan Hat as requested by Commissioner LeDoux in his letter of April 10, 2009. (Appendix H, p. 95)

47. April 24, 2009 — Email from David Tarler to Rosita Worl, et al.

Mr. Tarler reviews the material relating to the dispute request by Sealaska and the decisions made by the DFO, Counsels, and National NAGPRA Program that no dispute existed between Sealaska and ASM as of the required date of February 23, 2009. He outlines the four questions he had drafted for Sealaska and ASM to answer and to be considered by the Review Committee.

He notes that the ASM letter of April 20, 2009 constituted an admission that Sealaska's repatriation request had satisfied the criteria for such a request. He notes that the Review Committee need not address the issue and that he has removed the matter from the Review Committee May agenda.

Mr. Tarler then notes that Rosita Worl and Dan Monroe wrote that they believe a dispute does exist over the issue of the ASM "right of possession. He notes that even if a dispute does

exist, the dispute did not arise until April 20, 2009. He adds that to schedule a dispute for the May 23-24 Review Committee meeting would be unfair and that the parties should be afforded the opportunity to discuss the right of possession issue evidence that the ASM believes will satisfy its burden. He notes that up until April 20, the burden had been on Sealaska.

He concludes that the Review Committee should not consider the dispute during its May meeting, but that Sealaska or the ASM may address the Review Committee during the public comment period, but hopes that the parties would not introduce information from which the Review Committee might be asked to find facts during future disputes as this information might possibly be seen as prejudicing the Review Committee, and might possibly preclude their hearing such a dispute. (Appendix H, pp. 96-97)

48. April 27, 2009

Notes of the Teeyhíttan Clan Hat Meeting with the State of Alaska, Clan and Sealaska represented by Commissioner Larry LeDoux, Linda Thibideau, Richard Rinehart, Sr., Richard Rinehart, Jr., Rick Huetson and Rosita Worl

Richard Rinehart, Jr. opened the discussion by referencing the ASM letter of April 10th in which it declined to repatriation the Clan Hat and cited its right of possession. He conveys that they are trying to do the right thing. His father began discussions with ASM 13 years ago about the loan. He wanted to ensure that the Clan Hat was available for ceremonial use while the museum's responsibility related to "curatorship."

Commissioner LeDoux responded that they are doing the right thing in honoring the clan and

culture and maintaining a relationship with the clan and indigenous people.

Richard Rinehart, Sr recounts that the Clan Hat was turned over to his care by his uncle. He reports that he followed the Native way-of-life and that he was an ANB officer. He reports that he wanted to use the Clan Hat in a ceremony, but the museum said, "no." The museum said that they would have to have to send someone to Wrangell; to take the Hat out of the safe and to keep it in a glass case during the ceremony.

Commissioner DeDoux notes that William Paul was an extraordinary person to put the Clan Hat in the museum. He recognized that museum's job is "to protect" the Clan Hat and not sell it.

Richard Rinehart, Sr. recounts that Tillie Paul was raised at Lake Bay, which is the center of Teeyhíttan homeland and the site of the Cedar Bar House. He says that the Clan Hats belongs in its homeland. He then recounts the war between the "Frogs," referring to the Teeyhíttaan and the group with whom they warred, which both have the Frog Crest, He reports that members of the Teeyhíttan Clan were killed at Lake Bay, which resulted in their acquisition of the Clan Hat.

Commissioner LeDoux suggests that the concern is not "ownership," but protection of the Clan Hat and to ensure that it is preserved and not sold.

The meetings ends with the proposal that the Clan and State would work on a Memorandum of Agreement to resolve the dispute.
(Appendix H, pp. 98-99)

49. April 28, 2009 — Email from Richard Rinehart to Neil Slotnick, State of Alaska Attorney General Office

Mr. Rinehart forwards a Memorandum of Agreement Between the Teeyhíttaan Clan and the ASM (Appendix H, pp. 100-108)

50. May 5, 2009 — Email from Richard Rinehart to Stephen Slotnick

Mr. Rinehart asks if the AG has reviewed the MOA (Appendix H, p. 109)

51. May 5, 2009 — Email from Stephen Slotnick to Richard Rinehart

Mr. Slotnick advises he will have reply by May 8. (Appendix H, p. 110)

52. May 11, 2009 — Email from Stephen Slotnick to Richard Rinehart

Mr. Slotnick forwards MOA with proposed State changes (Appendix H, pp. 111-122)

53. May 15, 2009 — Email from Richard Rinehart to Stephen Slotnick

Mr. Rinehart forwards a revised MOA to the State's proposed changes (Copy unavailable).

Mr. Rinehart notes that ultimately the MOA is about ownership and control of the Clan Hat and advises that in these areas the Clan is not open to a lot of compromise. (Appendix H, pp. 124-125)

54. May 20, 2009 — Email from Stephen Slotnick to Richard Rinehart

Mr. Slotnick forwards a new draft. He reports that a section called "dispute resolution" is pending review by the department of law (Copy unavailable). (Appendix H, p. 126)

55. June 2, 2009 — Email from Stephen Slotnick to Richard Rinehart

Mr. Slotnick forwards an updated version with a dispute-resolution clause. (Appendix H, p. 127)

56. June 9, 2009 — Email from Richard Rinehart to Stephen Slotnick

Mr. Rinehart advises that the Teeyhíttaan Clan are unanimous in opposition to excluding language about ownership and title. The Clan believes that the Clan owns the Hat.

Mr. Rinehart outlines a number of concerns and concludes that they do not like the new proposed agreement. (Appendix H, p. 128-129)

57. July 20, 2010 — Email from Richard Rinehart to Stephen Slotnick

Mr. Rinehart notes that six weeks have lapsed and no response to the June 9, 2010 email has been received. (Appendix H, p. 130)

58. October 7, 2009 — Email from Stephen Slotnick to Richard Rinehart

Mr. Slotnick advises that he had not contacted Mr. Rinehart pending the hiring of a new chief curator.

Mr. Slotnick indicates that at a minimum an operating agreement needs to be in place to have protocols in place so that the Clan can use the Clan Hat. (Appendix H, p. 131-132)

59. October 9, 2009 — Email from Richard Rinehart to Stephen Slotnick

Mr. Rinehart agrees that an operating agreement may be useful, but emphasizes that the Clan will not sign anything that acknowledges the state's claim to ownership of the Clan Hat. (Appendix H, p. 131)

60. December 7, 2009 — Email from Stephen Slotnick to Richard Rinehart

Mr. Slotnick refers to his email of October 5 asking him about the drafting of an "operating agreement" that would outline procedures to allow his father to obtain the Clan Hat from the Wrangell Museum when he needed it for ceremonies. (Appendix H, p. 133-134)

61. December 7, 2009 — Email from Richard Rinehart to Stephen Slotnick

Mr. Rinehart responds to Mr. Slotnick that the Clan would be interested in an operating agreement if it does nothing to restrict or less the ownership rights of the Clan. (Appendix H, p. 133)

62. January 7, 2010 — Email from Richard Rinehart to Rosita Worl

Mr. Rinehart advises that the Clan wishes to be on the November NAGPRA Review Committee meeting agenda and to resubmit the necessary paperwork on behalf of the Teeyhíttaan Clan. (Appendix H, p. 135)

Appendix H

Documents Referenced in Summary

P. O. BOX 2051

Alaska
Historical Library and Museum
Juneau, Alaska

Sept. 22, 1947

Loan:

William L. Paul loaned to the Territorial Museum an old Tee-hit-ton Crest, raven copper disks and abalone eyes. This hat belonged to William Paul's ancestors and has been handed down to him, who is now the Custodian of the Crest hat.

He was given a receipt for the hat with the assurance that the hat would have the same care in the museum as is given to other exhibits, and that it will be returned to him on application.

Signed

Josephine White

ALASKA HISTORICAL
LIBRARY AND MUSEUM

II-B-809

OFFICES OF

WILLIAM L. PAUL SR.

BOX 81 JUNEAU, ALASKA PHONE 1168

JULY 21, 1954

My dear Newphew Richard;--

I have noted the members of our tribe that belong on our census. The future of our land claims (as with others) is still in dispute, and while I cannot predict a certain outcome, it is in capable hands.

If we win (and all my studies indicate that we will) our tribe will come into a great deal of money. The next fight will be "who will constitute the roll" and "who will make it up".

I am for doing it ourselves.

I recognize that the Indian style of inheritance will die with my generation and so I would approve of a roll that would include all the modern Teehittton, their wives and children. That would take care of my brothers, their wives and descendants even if they don't live in Alaska; also your sisters and their descendants; also the wife, and future wives of yourself and brothers; and the same for other Teelitton.

As for future leadership, it should go into the most capable hands 1) because that would obviate a fight with the Indian Office, and 2) we would serve our own best interests thus. So I would have the tribe elect my son William or Fred, and would enjoin on them the duty of carrying out the traditions of our tribe a) to see that each member promote his own development to the credit of him(her)self and the tribe; 2) that none shall be in want.

The tribal hat, I have put in the Terr. Museum here and shall make some worthy member of the tribe its custodian (I think you are the one to keep our name respectable and provide the formal leadership)--I am not sure if I have the right son of Jessie's in mind, but you will know if you are worthy.

Yours faithfully, William L. Paul Sr.

ALASKA HISTORICAL LIBRARY & MUSEUM

MUSEUM CATALOG RECORD

CATALOG NO. II-B-809

ACC'N. NO. 47-113

ORIGINAL NO. Lc#39

DATE OF ENTRY 1/7/59

LOCATION Exhibit N.W. Coast Art 6/87 M.W.

NUMBER OF SPECIMENS, NAME, DESCRIPTION:

1 Crest hat. "Yethl-Ankow-oo" (Chief of the Ravens)
Tee-hit-ton (Bark House People)
28 cm. --- width of crown
31.3 cm. - length of crown
56.7 cm.--- total length beak tip to tail
8 copper discs set in each wing and one on each side of breast.
Abalone eyes.
Three tufts of human hair on raven's head. Tail joint carved as face.
Red cedar.
Beak, wings black accented with red. Pale blue-green outlines wings, eyes. neg

COLLECTOR William Lewis Paul, Sr.

WHERE COL: Donated May, 1969 See file folder with notice of Wrangell

WHEN COL: Donation II-B-809 c1869 - date of manufacture

REC'D FROM ~~Loan. See remarks.~~ Donated ——, 1969. (JW) see also 69-2

REMARKS, REFERENCES, CORRESPONDENCE: (1) 8 x 10 B&W
Loan. Present custodian William Paul Sr. who placed it in museum. Copy of original which was accidentally burned. This hat said to be 70 yrs. old in 1939. The joints are missing from this hat.
Photo appears in Barbeau, Haida Myths p.178 fig.145
5-15-74 - II-B-1738-4 basketry rings added over

On October 30, 1962 William Paul Sr. directed that his son, Frederick Paul of 6810 31 N.E. Seattle, Washington be listed as custodian of the hat after the death of William Paul Sr.

Mrs. Francis Paul on May 22, 1969, donated a water color painting ofthe hat to the museum. In the notes accompaning the painting, she says the hair is"from slaves either freed or killed at the hat's dedication feast....This hat is named 'In place of Town Prince Raven hat.'...The first hat was originally owned by a Tsimshian chief who killed a Tee-hit-ton chief while hunting on Prince of Wales Island on property owned by the Tee-hit-tons tribe. In an attempt to settle the trouble peacefully, the Tsimshian chief placed his ceremonial hat on a raft with eagle down and floated it up with the tide to the Tee-hit-tons at the upper lake. The Tee-hit-ton understood the significance of the act and accepted it as a peace offering." See accession 69-2

6/20/84 Nina Paul of Seattle, daughter of Frederick Paul visited the museum and requested info.
8-13-89 Fred Paul of Seattle (father of Nina?) checked on the hat - see file

1980

Alaska
Historical Library and Museum
Department of Education
Juneau, Alaska

November 6, 1964

Upon the death of William Paul, Sr. the crest hat "Yethl-Ankow-oo" of the Tee-hit-ton Clan shall become the property of Richard Rinehart, whose Tlingit name is "Ya-kooq'u" of Wrangell, Alaska. The crest hat (II-B-809) is now on loan to the Alaska Historical Library and Museum at Juneau, Alaska.

William Paul, Jr.

William Paul, Senior.

II-B-809
47-113

Pouch F
Alaska Office Bldg.

24 November 1967

William Paul, Sr.
1521 16th Avenue East
Seattle, Washington 98102

Dear Mr. Paul:

During my visit to the recent Alaska Native Brotherhood Convention in Ketchikan, I had the pleasure of discussing several subjects of mutual interest with you. One such subject was the chief's hat which you have placed on loan to this Museum. You have indicated that you wish the hat to be passed on to the custodianship of Richard Rinehart, Box 548, Wrangell, upon your death.

I believe the most effective means of adding this clause to the loan agreement now in effect between you and this museum would be through the receipt of such a statement from you.

I am quite willing and ready to begin work on your manuscripts—I shall do my best. It will mark my entry into a new field of endeavor, and so you must be patient!

Please come to the Museum when you are next in Juneau; we shall be in the new museum building by year's end and I should like to personally acquaint you with our new facilities.

Most sincerely,

(Mrs.) Jane Wallen
Assistant Director
Alaska State Museum

NUMBER: _____

ALASKA STATE MUSEUM
Pouch FM, Subport
Juneau, Alaska 99801

DATE March 10, 1969

RECEIVED FROM William Paul, Sr.

ADDRESS 1521 16th Avenue East

Seattle, Washington 98102

ITEM	DESCRIPTION OF OBJECTS
1	Crest Hat of the Tee-hit-ton tribe of Wrangell, Raven phratry.
	It is agreed that the Museum will have woven at least three rings of spruce-root basketry to be placed on the hat. This will be accomplished to the satisfaction of Mr. William Paul, Sr. and will be done as soon as necessary arrangements can be made.

Conditions regarding Gifts

It is hereby agreed that the above items are donated to the Alaska State Museum as free and unrestricted gifts, offered without limiting conditions unless specifically stated herein.

Donor _____

Accepted by _____

ACCESSIONED _____

NUMBER: _____

ALASKA STATE MUSEUM
Pouch FM, Subport
Juneau, Alaska 99801

DATE March 10, 1969

RECEIVED FROM William Paul, Sr.

ADDRESS 1521 16th Avenue East

Seattle, Washington 98102

ITEM	DESCRIPTION OF OBJECTS
1	Crest Hat of the Tee-hit-ton tribe of Wrangell, Raven phratry.

locale: Lake Day (Yek - Klah - ak)
where they were camped. Meaning:
Thus is the place.

It is agreed that the current custodian's name shall be displayed on the hat, at this time he is William Lewis Paul whose Tlingit names are Shquindy and Ka-xwan (Jack Fox)

for additional info. see Frances Paul's description. Mr. Paul will send info on names of the two chiefs.

It is agreed that the Museum will have woven at least three rings of spruce-root basketry to be placed on the hat. This will be accomplished to the satisfaction of Mr. William Paul, Sr. and will be done as soon as necessary arrangements can be made.

Conditions regarding Gifts

It is hereby agreed that the above items are donated to the Alaska State Museum as free and unrestricted gifts, offered without limiting conditions unless specifically stated herein.

Donor _____

Accepted by _____

ACCESSIONED _____

NUMBER: _____

ALASKA STATE MUSEUM
Pouch FM, Subport
Juneau, Alaska 99801

DATE 10 March 1969

RECEIVED FROM William Paul, Sr.

ADDRESS 1521 16th Avenue East

Seattle, Washington 98102

ITEM	DESCRIPTION OF OBJECTS
1	Crest hat of the Tee-hit-ton tribe of Wrangell, Raven phratry. For additional information see Frances Paul's description in her book of paintings of hats. In Mrs. Paul's description the locale referred to is Lake Bay (Yei-yuh-klah-ah, which means "this is the place".) Mr. William Paul will send information on names of the two chiefs referred to. It is agreed that the Museum will make every effort to have woven at least three rings of spruce root basketry to be placed on the hat within a reasonable time all things considered. It is further agreed that the current custodians name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Shquindy and Ka-xwan (Jack Frost). The next custodian will be Richard Rinehart, Tlingit name Yuh-koog', if he survives me, otherwise a male person to be designated.

Conditions regarding Gifts except as noted

It is hereby agreed that the above items are donated to the Alaska State Museum as free and unrestricted gifts, ~~offered without limiting conditions unless specifically stated~~ herein.

Donor William Lewis Paul

Accepted by _____

ACCESSIONED _____

NUMBER: 47-113
Loan

ALASKA STATE MUSEUM
Pouch FM, Subport
Juneau, Alaska 99801

DATE 10 March 1969

RECEIVED FROM William Paul, Sr.

ADDRESS 1521 16th Avenue East

Seattle, Washington 98102

ITEM	DESCRIPTION OF OBJECTS
1	Crest hat of the Tee-hit-ton tribe of Wrangell, Raven phratry. For additional information see Frances Paul's description in her book of paintings of hats. In Mrs. Paul's description the locale referred to is Lake Day (Yuh-klah-eh, which means "this is the place".) Mr. William Paul will send information on names of the two chiefs referred to. It is agreed that the Museum will make every effort to have woven at least three rings of spruce root basketry to be placed on the hat within a reasonable time all things considered. It is further agreed that the current custodians name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Shquindy and Ka-xwan (Jack Frost). The next custodian will be Richard Rinehart, Tlingit name Yuh-koog, if he survives me, otherwise a male person to be designated, The name "Shquindy" is shortened from Shkooni-da-ti-yi-kah means "Too proud to do anything dishonorable and so wont. My sister's son William Paul Sheppard is closer to me as an heir if he had an interest. Marjorie Klingman (R. 1, box 273) of Anacortes, Wn. is Will Paul's 1st cousin and so her son could be a successor to the hat if something happened to Rinehart. Marjorie's mother was a sister of Kah-lyudt (Matilda Paul-Tamaree.

Conditions regarding Gifts

It is hereby agreed that the above items are donated to the Alaska State Museum as free and unrestricted gifts, ~~offered without limiting conditions unless specifically stated herein.~~

Donor William Lewis Paul

Accepted by [illegible]

ACCESSIONED _____

The next custodian will be Richard Rinehart, Tlingit name Yuh-koog', if he survives me, otherwise a male person to be designated -

William L. Paul Sr

1st name -

Alaska State Museum
Pouch FM

May 27, 1969

Mr. and Mrs. William Paul, Sr.
1521 - 16th Avenue East
Seattle, Washington 98102

Dear Mr. and Mrs. Paul:

I would like to express my sincere appreciation to you for your recent donations to the Alaska State Museum.

Mrs. Jane Wallen, the Museum Director, has told me of the Raven Crest Hat, which had been on loan to the Museum during years past. I am deeply pleased that this hat, one of the most outstanding pieces in the Museum collection, will now, as a result of your donation, remain as a permanent addition to the Historical and cultural treasures which so eloquently tell the story of Alaska.

Mrs. Paul's collection of paintings of crest hats constitutes a unique documentation of the many art treasurers which were an integral aspect of traditional Tlingit ceremonial life; they are thus uniquely significant, not only as art, but also, as an historical record.

I am pleased to tell you that Mrs. Paul's paintings will form the nucleus for an exhibit of Tlingit and Haida ceremonial pieces which will be featured at our State Museum this summer. Mr. Paul's hat will be one of the principal pieces in that exhibit.

My sincere thanks for your donations, and for your continuing interest in the Alaska State Museum.

Sincerely,

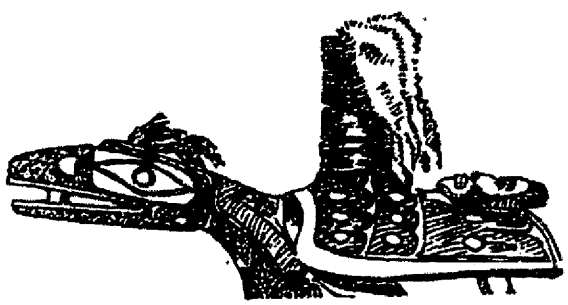
A LIVELY EVENING A

TOTEMIC SETTING—The crest hat paintings were complimented with Tlingit and Haida house posts as well as southeast Alaska greenery in a setting designed and executed by Museum staffer, Larry Matheny. (Empire Photo)

Opening nights are catching on! Each successive special exhibit has brought a larger attendance, with the most recent opening of the Frances Paul "Tlingit and Haida Crest Hat Paintings" bringing nearly 400 visitors and residents to the event.

On hand for the opening and reception was the guest of honor, Frances Paul, who with her husband William Paul, Sr. had flown to Juneau from their home in Seattle for the event. The Marks Trail Dancers, a group of local Tlingit Indians, danced and sang, and the Museum staff served punch and cookies.

The exhibit, which will continue through Sept. 14, is made up of 46 crest hat paintings donated to the Museum by the artist, as well as 8 crest hats belonging to the Museum. Each is a work of artistry and was donated to the Museum by William Paul, Sr. A contemporary exhibit of original wood-cut prints by Dale DeArmond of Juneau will follow the Paul exhibit. The DeArmond show will include nearly all the prints the artist has made since she started working in that medium nine years ago, and is made up of 90 original works.



Ketchikan
Daily News
Ketchikan, Alaska

AUG 21 1969

34

Tlingit, Haida Crest Hats Featured Summer Exhibit

WILLIAM L. PAUL, SR., holding a Tlingit crest hat which he recently donated to the Alaska State Museum in Juneau.

Mr. and Mrs. William L. Paul Sr., former Alaskans who now live in Seattle, are largely responsible for the featured summer exhibit in the Alaska State Museum, Juneau.

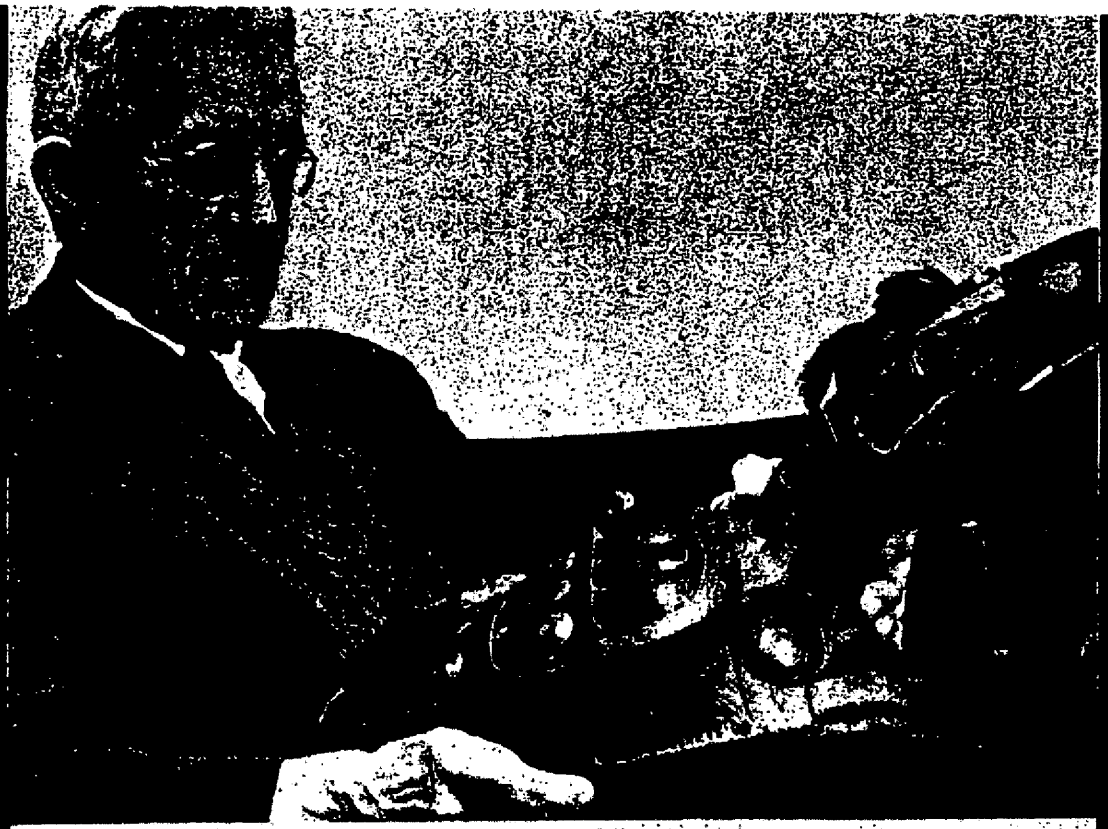
The exhibit, "Tlingit and Haida Crest Hat Paintings," is based on a series of 46 paintings executed by Mrs. Paul which she donated to the muuseum.

Also on display are eight examples of crest hats — one the Tee-hit-ton hat which Mrs. Paul's husband gave to the museum.

Jane Wallen, museum director, said, "Mr. and Mrs. Paul have made invaluable contributions to this museum. The paintings constitute an historical documentation of traditional Tlingit and Haida art, and the Tee-hit-ton hat is one of the finest pieces in the collection. These objects are more than fine art— effectively interpreted they represent the total traditional social structure of the Tlingit people." The exhibit will continue through Sept. 15.

The catalog of Frances Paul's paintings includes the note that she has been studying the history and legends of the Tlingit people since she came to Alaska in 1920.

Of her paintings, Mrs. Paul says they are "not meant to be works of art, but are to be considered documentary."



CREST HATS—William L. Paul, Sr., one of the original founders of Alaska's oldest native organization, the Alaska Native Brotherhood, is holding a Tlingit crest hat, one of eight he and Mrs. Paul donated to the Alaska State Museum. Paul is the longtime champion of the native people of Alaska.

Pauls Donate Paintings, Crest Hats to Alaska State Museum

Mr. and Mrs. William L. Paul, Sr., former Alaska residents now living in Seattle, Wash., are largely responsible for the featured summer exhibit at the Alaska State Museum.

The exhibit, Tlingit and Haida Crest Hats Paintings, is based on a series of 46 paintings which were executed by Mrs. Paul. She recently donated them to the museum.

Also on display are eight crest hats. One is the Tee-hit-ton crest hat which Mrs. Paul's husband presented to the museum.

Mrs. Jane Wallen, director of the State Museum, commented on the donations:

"Mr. and Mrs. Paul have made invaluable contributions to this museum. The paintings constitute an historical documentation of traditional Tlingit and Haida art, and the Tee-hit-ton hat is one of the finest pieces in the collection.

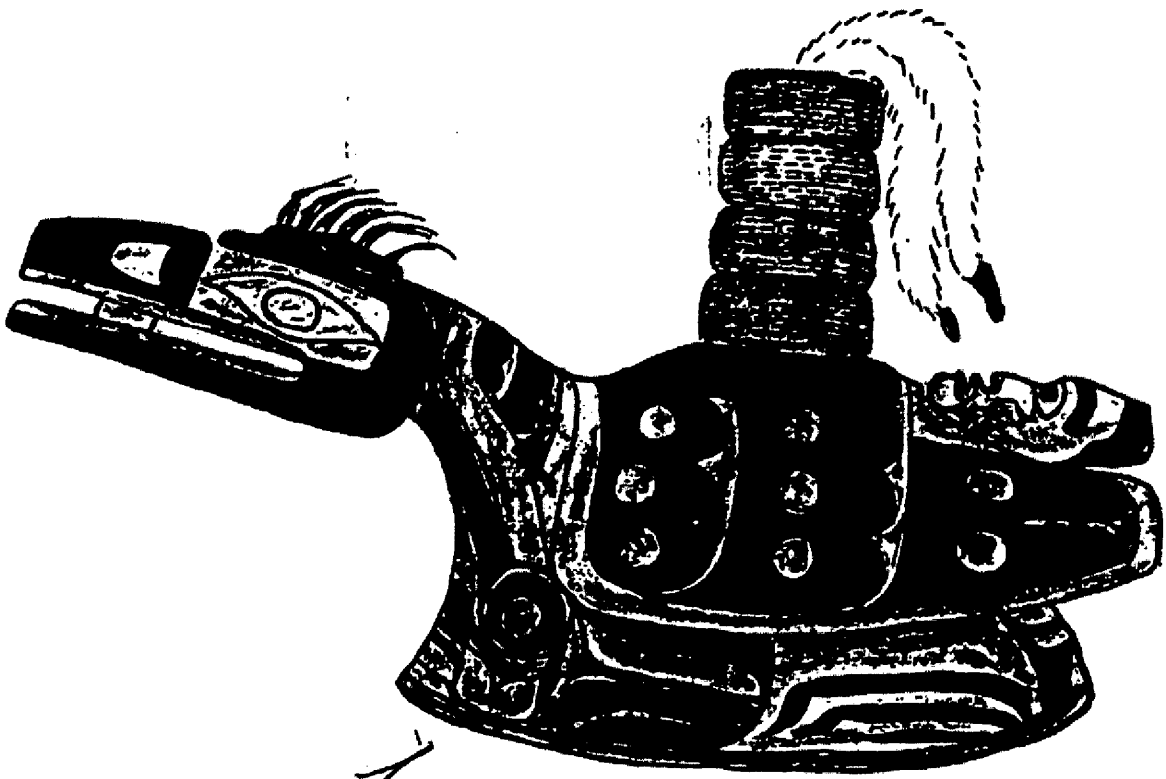
"It is through donations of this sort that we are able to return to the people of Alaska actual products of the State's traditional cultures. These objects total traditional structure of the Tlingit people."

The exhibit is in progress at this time and will continue through September 15 in the Juneau Museum.

Tundra Times, Friday, September 5, 1969

(1939)

This hat is named Yehlh-An-kow-oo, or Chief-of-all-Ravens. This particular one is about 70 years old. It is a copy of a former one which was partially destroyed by fire. The original one had abalone shell where this one has copper disks. It was a great disgrace that the hat should have been destroyed, so the fact was hidden and a new was was carved in secret by a nephew of Gush, the head-chief. When it was finished a feast was given and the substitution made. Crdinarily such work was done by a member of the opposite phratry, but due to the wish for secrecy, a member of their own family did the carving.



Hat from Craigell
Loaned by Vincent Paul Sr.

Tee-hit-ton Crest hat - Raven
copper disks - abalone eyes.

1. Crest hat of the Tee-hit-ton tribe of Wrangell, Raven phratry. It remains the property of the original owners, is now on loan to the Alaska Historieal Museum. It is ornamented with native copper disks and abalone shell and has seven tufts of hair from slaves either freed or killed at the hat's dedication feast. It replaces an earlier hat badly burned in a fire. THis hat is named "In place of Town Prince Raven hat."

The first hat was originally owned by a Tsimshian chief who killed a Tee-hit-ton chief while hunting on Prince of Wales Island on property owned by the Tee-hit-ton tribe. In an attempt to settle the trouble peacefully the Tsimshian chief placed his ceremonial hat on a raft with eagle down and floated it up with the tide to the Tee-hit-tons at the upper lake. The Tee-hit-ton understood the significance of the act and accepted it as a peace offering.

2. Raven design, property of the Duk'dehn--ton tribe of Hoonah in the 8th generation. It is made of wood, with copper inlay and banding. It last appeared in a dance exhibition staged by the Hoonah people at Juneau in 1940. It was destroyed in the fire that swept Hoonah shortly afterward.

3. Double headed Raven, very realistic, Day-she-ton tribe of Angoon, Raven phratry, privately owned. It is ornamented with abalone shell with a top stock in 4 segments.

4. This hat is known as the "Barbequing Raven helmet" and com--memorates the episode of the lengthy Raven legend where the Raven deceived the hungry little birds by devouring the whole barbequed salmon himself while they were gathering leaves with which to wrap the salmon for the barbeque.

The hat was made by the Hlook-na-uddy tribe of Chilcat which migrated from Yakutat. Its making caused a 30-year war with its rival, the Gannuk-tady tribe of Chilcat, each claiming exclusive right to the Raven. For this reason the hat is called a helmet. Time, intermarriage and ceremonials ended the war and each tribe recognized the reciprocal right of the other to use the Raven.

The hat is carved of wood with painted walrus hide wings and some copper inlays. The topstock was never finished, probably because the Hlook-na-uddy never amassed enough wealth for later feasts. The hat is now in the U. of Pa. Museum. It is a small hat and in poor condition now.

5. This hat is also the former property of the Hlook-na-uddy of Chilcat and is now in the U. of Pa. Museum. It is woven of spruce roots in basketry patterns with a wooden beak inlaid with abalone. The design is painted on.

6. Raven phratry, GAnnuk-tady tribe, privately owned in Juneau. Raven is shown holding the "box of power" that contained the sun. It is topped with a circle around a small mirror, with flicker feathers and sea lion whiskers and a fall of ermine down the back.

7. Raven design, still privately owned in Juneau. It is hel--met shaped and may have been originally a warrior's helmet. There is a border of swan's down around the back and a fall of many ermine skins. The ears are large in proportion with many tufts of human hair.

Karen Price in today at 1:00p
→ docent yesterday (Sun, 8/13/89)
Fred Paul, Juneau family,
question of ownership of the
eagle hat in the Tlingit display.
He believes it belongs to him & it is
only on loan ~~only~~ to the Museum.

Is this correct?

8/14/89 - Janna gave the information to
Steve.
Steve will give Bruce a memo.
Steve believes Museum staff must handle.

So
Fred Paul is an attorney who lives in Seattle. He visited
the ASM on Sunday. He will contact Karen Price
Wed, 8/16, when he returns to Juneau to establish
ownership of the hat.

STEVE / JUDY -
I THINK HE IS
LOOKING AT
CLARIFYING OWNERSHIP
HE DID NOT GET
ALONG WITH HIS
FATHER -

HE FEEL HIS
FATHER DONATED
MATERIALS TO
MUSEUM IN SPITE.

Bruce -

CATALOG
ACC'N. N
ORIGINAL
NUMBER OF SPECIMENS. NAME, DESCRIPTION:
1 Crest hat. "Yethl-
Tee-hit-ton (Bark H
28 cm. -- width of
31.3 cm. - length
55.7 --
COLLECT
WHERE CO
WHEN COL.
REC'D FROM
Jerry Hall

Frederick Paul
Lawyer
1201 Westlake Center
1601 Fifth Avenue
Seattle, Washington 98101

Telephone
(206) 623-4382

Facsimile:
(206) 224-4895

August 31, 1993

Richard Rinehart
P.O. Box 548
Wrangell, AK 99929

Dear Richard:

It is good to hear from you. Sorry I cannot help you on the Jim Gillan problem. It is possible that my Father's files contain some information about that family; however, my sister (who had custody of them) donated them to the University of Washington archives several years ago. They are not indexed very well, so that it would be an enormous task to locate what you are looking for if anything, in fact, exists.

I notice that you mentioned the Tee-hit-ton crest now at the Juneau museum. The other night, by happenstance, I was watching our public TV station, when, to my surprise, there was the hat, although it was not identified as Tee-hit-ton. Apparently, the Sealaska Heritage produced a seven minute show telling the story of how Raven brought the stars, the moon, and the sun to the people. It was beautifully done.

But, I am curious if you or any authorized person gave permission for such use.

Just to show you that I know who you are and who I am, I sign off as

Your brother-in-law,

Fred Paul

cc: Central Council of the Tlingit
and Haida Indians of Alaska
Andrew Hope Building
320 West Willoughby Ave., Suite 300
Juneau, AK 99801-9983

Sealaska Heritage Foundation
Sealaska Plaza
Juneau, AK 99801

April 19 - 1996

I'm Richard John Rinehart Sr.
P.O. - Box 548
Wrangell Alaska - 99929
Phone - 907 - 874 - 2209

To ever is concered my Uncel - William Paul Sr. on my Mothers side of the tee-ha-ton-clan of Tlingit indians of Wrangell Alaska - Southeast A.K. - Jessie Bell Rinehart -

Left me - Ya-Kook - my Indian - name - in charge of the Crest Hat - at the Alaska State Museum 910 - 11-B - 809 - Northwest Coast.

My Uncel passed away a few years back in Seattle Wash. where he made his Home away from - Wrangell, A.K.

I'd got a letter singed by he William Paul Sr. that I Richard J. Rinehart Sr. will be the head and spoke person, for the tee-ha-ton trits after his gone, and also in charge of the Crest Hat.

TONY KNOWLES, GOVERNOR

DEPARTMENT OF EDUCATION

DIVISION OF LIBRARIES, ARCHIVES & MUSEUMS

ALASKA STATE MUSEUM
395 WHITTIER STREET
JUNEAU, ALASKA 99801-1718
PHONE: (907) 465-2901
FAX: (907) 465-2976

Karen R. Crane, Director

April 19, 1996

Richard John Rinehart Sr.
P.O. Box 548
Wrangell AK 99929

Dear Mr. Rinehart:

Thank you for letting us know your concerns about the hat "Chief Of All Ravens" from the Teeyhittaan clan, donated by your uncle William Paul Sr. in 1969. I've heard that this hat is a copy of an older hat named "In Place of Town Prince Raven Hat," which was accidentally destroyed by fire. The original donation form in our files names you as the next custodian of the hat, and I'm glad to make contact with you.

You apparently mentioned to Donna Baron, registrar for the museum, that you had heard a rumor that someone may be asking to borrow the hat for Celebration '96 in June. To my knowledge, no one has yet asked to borrow it, but if someone does I'll mention that you have asked that it not be taken out.

We have an arrangement with the Kiks.adi and Kaagwaantaan clans of Sitka that allows them to "check out" regalia from the museum when it is needed for ceremonies. Prior to checking things out, we negotiate a formal agreement with the clan so that each side knows its rights and responsibilities. Furthermore, it allows us to know that the clan custodian or leaders have given their *written* consent to allow the objects to be used. If anyone ever comes here to take the raven hat out, I will contact you to discuss whether this should be allowed.

I have heard some elders say that this has originates in the Ketchikan area. There is a short history of the hat in our files that explains that the original hat came from the Tsimshian, and was given to the Teeyhittaan clan as a peace offering to pay for the killing of a Teeyhittaan chief. Could you please write down the history of the hat as you know it, and send it to us for our files? I'm trying to make sure that we have the right history on the hat, so when it is on display the label will be accurate.

Re - Tsimshian crest Hat @ ASM

Do you have any idea what happened to the stack of spruce root "potlatch" rings that once sat atop the hat? When the hat came to us on loan in 1947, the rings were missing. There is a note saying that the rings were believed to be in the Walter Waters collection in Wrangell, which was eventually sold to the Burke Museum in Seattle and the Denver Art Museum. We might be able to find the rings at one of these museums, and then arrange for the rings to be placed together with the hat.

Thank you for your concern and help, and I hope to meet you in person one of these days. Please try to come by the museum again the next time you come through town.

Sincerely yours,

Steve Henrikson
Curator of Collections

enclosures

Alaska State Museum
395 Whittier Street
Juneau, Alaska - 99801-1718

Richard J. Kinehart Sr.
Box 548
Wrangell, A.K. 99929
April 26, 1996

Dear Mr. Steve Henrikson;

Thank you for your letter dated April 19, 1996 - about the Tee-Hit-ton crest hat, that my uncle, William Paul Sr. made me the custodian of.

I've tryed at different times to get some one, at the museum, to tell me what happened to it.

So now I know. thank you again for this information. Uncle William Paul Sr. told me some things about the hat a long time ago. And that after his death that I'll be the custodianship of the hat, and also speek for the Tee-Hit-ton - tribe of Wrangell in his Behalf. I remember very little of the hat story - only that there where some parts of it some place else.

Maybe his daughter Frances Paul-De Germain 15-21 - 16th East, Seattle Wash. 98112-2806 - can help as she wrote to me, after Fred Paul, her brother passed on. That she was trying to write a book, with what papers her Father William Paul Sr. left.

Fred Paul and I wrote to each

when a few times before his death a few years ago. We wrote about the Tlingit people and his father.

Fred was a lawyer too, he does have another Brother a lawyer but I never got to know him much, just Fred. He was 82 years old when he passed on, about the same age as his Father William Paul Sr. when he left us to the Happy hunting Grounds.

I'm named after a brother of my mother's uncles - Charles Ya-Kook.. who was a great hunter trapper and food gather. I'm known of the Wrangell Tribe Tei-hi-tan on my Mother Jessie Bell Kinehart side. I'm of the Tlingit people. My white man's name on my father's side is Richard John Kinehart (Sr.) now - and my Indian name is - YA-Kook.

Thank you again for your letter to me and I hope to meet you to.

I'll decide who will be the next care taker of the Hat some time soon now that I realy know. Sincerely Richard J. Kinehart Sr.

Did you know?

- Sealaska has received title to 87 cemeteries and historical sites throughout southeast Alaska.
- Sealaska is a major land holder with title to almost 270,000 acres of land in Southeast. These lands were selected when Congress approved the rights to select land in the Tongass National Forest in 1979.
- The Sealaska Plaza office building opened in 1977, which houses Sealaska employees and other commercial businesses, and acts as a museum that displays the artistic treasures of our people.
- Sealaska's subsurface resources include gold, silver, copper, lead, zinc, calcium carbonate, and other industrial minerals. This summer, Sealaska will begin mining calcium carbonate, also known as limestone, on Prince of Wales Island.
- Sealaska helped the State of Alaska enact the State's Forest Practices Act in 1979. Sealaska also later recommended that this act be amended in 1988, to include mandatory buffers on fish streams, and better management practices to improve fish habitat and water quality protection. The Act was amended in 1990 to provide these protections.

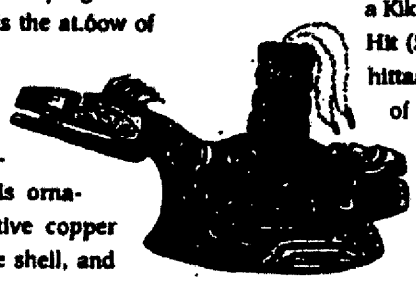
Job announcement
GIS Forester/specialist

Sealaska Timber Corporation is recruiting for a GIS Forester/ Specialist located in its Ketchikan,

Letters to the Editor

[illegible] yoo xat duwasáakw (my name is Raven Box). I am the custodian of the Teeyhittaan clan crest hat that is on display at the Alaska State Museum in Juneau. It could also be seen at the beginning of Sealaska Heritage Foundation's award winning video production The Box of Day Light.

This crest hat is the at.óow of the Teeyhittaan clan. It is called the Yéil-Aankáawu (Chief-of-all-Ravens) hat. It is ornamented with Native copper disks and abalone shell, and has seven tuffs of hair from slaves that were either freed or killed at the hat's dedication. It replaced the clan's original crest hat that was badly burned in a fire. The original hat, In-Place-of-Town-Prince-Raven-Hat, had abalone where this one has Copper disks. The first hat was originally property of a Tsimshian chief who killed a Teeyhittaan chief while hunting near Lake Bay, on the north east end of Prince of Whales Island, which was Teeyhittaan land. In an attempt to settle the trouble peacefully the Tsimshian chief placed his ceremonial hat on a raft with eagle down and floated it up with the tide to the Teeyhittaan at the upper lake.



I was named after my mother's uncle, Charlie Yacook (Yéil Kook). Charlie Yacook was William Paul, Sr.'s clan uncle. Charlie passed on custodianship to William Paul, Sr. Although most people knew him as Shiquindy, which is short for Shkooni-Da-Ti-Yi-Kah (Too-Proud-To-Do-Anything-Dishonorable) uncle Will had several other Tlingit names. Shiquindy was my clan uncle, and he passed custodianship for our written approval.

Finally, I have to find a successor custodian. When William Paul passed custodianship on to me he knew I have no clan nephews. There are very few Teeyhittaans alive today, and I don't know of any Teeyhittaan with the qualities of leadership, knowledge of tribal and clan history, and responsibility to take over custodianship when I am gone.

Therefore, I am going to name my son, Richard Rinehart, Jr. as the next custodian of the Teeyhittaan clan crest hat. Although he is not Teeyhittaan he is a Kiks.ádi from the Gaagaan Hit (Sun House). The Teeyhittaan were originally part of the Kiks.ádi clan, and could be considered a House of the Kiks.ádi clan. Anyone who knows my son Richard knows he is very knowledgeable in our history, tradition and customs, and has the necessary qualities of leadership and responsibility to be a good custodian for the crest hat - Yéil-Aankáawu.

Richard Rinehart, Sr.
Sealaska shareholder

Chilkoot brown bear clan seeks family

The Chilkoot Kaagwaantaan Clan of the Chilkoot Brown Bear House is taking an active role in cultural activities and taking actions which will impact our Native way of life.

The clan, in good faith to the clan families, is developing family trees. Therefore, the clan is seeking to locate members of the Chilkoot Brown Bear House and requests any Tlingit who is a descendant of the Chilkoot Brown Bear House, to please write to:

Richard Young
P.O. Box 1554
Haines, AK 99827
or call (907) 766-2952

See next page - 19b

Specialist located in its Ketchikan, Alaska office. This position requires a degree in forestry or a

and he passed custodianship for our crest hat on to me - Richard Rinehart. Sr.

As custodian of the Teeyhittaan crest hat I have a great responsibility. First, I need to be sure the hat is properly taken care of and stored. Twenty-eight years ago the hat was placed on loan with the Alaska State Museum in Juneau by William Paul, Sr. Uncle Will believed then, and I still agree - today this is the best place. But if Wrangell ever builds a new museum I want the hat to come back home to Wrangell where it belongs.

Second, I have to be sure the hat is only used in a proper and appropriate manner. Therefore, I have instructed the museum that no one is to be allowed to use the hat for any reason without my

return 19a

Sealaska website temporarily down

Sealaska's new internet website www.sealaska.com is temporarily down. The site is under reconstruction and will be back up in operation in about two months, according to Ross Soboleff, Webmaster. "We are working now to put up our own server, and we hope to go back 'on the air' when that system is up and running properly," he said. " We apologize for any inconvenience this causes."

[redacted]

1 Aug. 1997

Richard Rinehart Jr.
2069 N.E. Hollow Tree Lane
Bend OR 97701

Dear Richard,

I am very sorry you were not able to stop and see me on either your trip north or south. Perhaps we could have talked about the "Teeyhittaan" Crest Hat. I saw your Father's letter in the Shareholder.

You see, my Father, William Louis Paul, deposited the hat in the Alaska State Museum, at first, only on loan. Then, as he got older he worried about who should have it, who was left, who had the powers of leadership, who had character, who could be trusted to cherish the hat, and he decided to make it a gift, which he did in a letter. My brother Fred was very upset, he had expected to inherit the hat. But William didn't think that was right although Fred was his heir white man style. But sons do not inherit Indian style, nephews do. Besides which, Fred was Nahn-ya-ahyi, not Tee-hit-ton. Dad never passed custodianship of the hat to your Father.

Dad did ask your Father to act for him in the election of a new Shaksh when the need arose. He did not designate your Father as his successor to the position of "chief" of the Tee-hit-ton Nah. There has not been a chief since my Father died. The "chief" before Dad was an alcoholic. By then the qualifications for "chief" had eroded. You can't have it both ways, Indian style and whiteman style. Besides, you are not Tee-hit-ton so you also have no right. I realize there is an effort to go back in time, to try to reinstate the old culture. Those fatefull years before the missionaries and government teachers taught that "old" customs were evil and best be forgotten are too far gone from when history was known, too much forgotten, too much ignored, too many tribes decimated, too many artifacts lost down the "collector" or the whiskey trail. It is too late to go back. Some of those who would like to renew the past are depending on books by early white men - scholars, or anthropologists, or some sort of scientist - men who struggled with the language and interpreters who had associated with miners or traders, uninterested in culture. My Grandmother was an expert translater, but she was taught English by Dr. S.Hall Young, a Presbyterian missionary. Her childhood had been spent around fires in the log houses.

I have incorporated my Father's notes on genealogy into some sort of order and have asked for assistance from relatives or knowledgeful people to confirm, to correct, to add to from those Tee-hit-tons still alive, but nobody will answer my letters. The people of the rank expected to learn the past are all long gone. Dad was 91 in 1977, and it is now 1997. One would think I was trying to make money out of my studies. Well, I am not, in fact, it costs me money - the reproduction etc. So be it.

Sincerely yours,

Frances Paul DeGermain

cc: Richard Rinehart Sr.
Wrangell, AK 99929

Alaska State Museum
395 Whittier St.
Juneau, AK 99801

Sealaska Corp., Shareholder
1 Sealaska Plaza, Suite 400
Juneau, AK 99801-1276

RICHARD J. RINEHART, Jr.
2069 NE Hollow Tree Lane
Bend, Oregon 97701
(541) 382-9318

August 5, 1997

Frances Paul DeGermain
1521 – 16th Ave. E
Seattle, WA 98112-2806

Dear Frances,

I received your letter dated August 1st today. I am sorry you were so upset by my father's letter in the *Shareholder* last month. You talk about the old Tlingit ways versus the new "whiteman style" and how we can never go back. I am going to try to explain to you how the old ways have not, could not and should not be used in this case, and I am going to prove to you that under the new ways what my father did was and is proper.

A long, long time ago – before the white men came, before small pox – there were many Tlingit clans some with several houses (family sub-divisions). Some of these house sub-divisions were so large that they formed their own clans. The Teey-Hi't-Taan were a house of the Kiks.a'di clan in the Stikine quon. "In those days, each "nah" (which the white man now calls a "tribe") had its own head man (shah-dy-hun-kaw) which the white man calls "chief"."[1] I believe your father, William L. Paul, Sr., was widely recognized and generally accepted as the chief of the Tee-Hi't-Taan nah. He inherited this recognition, and custodianship of the clan's crest hat, from his tribal Uncle Charlie Yakook. When he was getting up in his years he needed to find a successor custodian, and he chose my father – his tribal nephew. He did not pass along the title of chief to my father, nor did they pass the custodianship by way of a potlatch. If things had been done in the old ways there would have been a potlatch, a new ring would have been added to the hat, and many important leaders would have been invited to the ceremony to witness the succession. So you see, although, Charlie Yakook was Wm. L. Paul's uncle, and Mr. Paul was my fathers tribal uncle the old customs still had not been followed in the old ways of succession.

In the old ways, titles and custodianship were passed from uncles to their sister's son. My father's sisters have no sons. He has no tribal nephews to bestow custodianship of the Teey-Hi't-Taan clan crest hat. He doesn't even know of any Teey-Hi't-Taan that were either born or raised in Wrangell, where he has lived his whole life, who he can pass on the custodianship. Unfortunately, because of the small pox epidemic there are very few Teey-Hi't-Taan alive today. Originally there were nine nah in the Stikine quon, around the time I was born the original nine had been reduced to seven, and today I fear there are even fewer. Therefore, as you can see the old ways of succession could not be followed.

[1] Letter dated 7/7/55 from Wm. L. Paul, Sr. to James Bradley.

As I have shown you the old ways were not totally followed by your father, and could not be followed by my father. Now I want to tell you why these old ways should not be followed today. My father has no tribal nephews. If there is no custodian for the Teey-Hi't-Taan clan crest hat, Ye'il-Aanka'awu, the Alaska State Museum will have full control of the hat. The clan, the Stikine quon and the Tlingit people will lose control of another part of their heritage. The atu' of the Teey-Hi't-Taan clan could be lost forever.

Under the new way or the whiteman's ways we pass on legal title and privilege through inheritance, and we document those wishes through letters, wills and contracts. Your father passed custodianship on to my father, and this intent has been well documented.

First, I believe your father intended to pass this privilege/responsibility on to one of his tribal nephews. He chose my father because he believed he had shown the qualities of respect and leadership necessary for this honor. In a letter from William L. Paul, Sr. to my father[2] he says "My Dear Nephew Richard, ... The tribal hat, I have put in the Terr. Museum here and shall make some worthy member of the tribe its custodian (I think you are the one to keep our name respectable and provide the formal leadership) – I am not sure if I have the right son of Jessie's in mind, but you will know if you are worthy." So even in 1955 nearly twenty-three years before his death your father was considering my father to be the hat's next custodian. A little over nine years later, while the hat was on loan to the state museum, he made his decision. Mr. Paul wrote, "Upon the death of William Paul, Sr. the crest hat "Yethl-Ankow-oo" of the Tee-hit-ton Clan shall become the property of Richard Rinehart, whose Tlingit name is "Ya-Koog" of Wrangell, Alaska. The crest hat (II-B-809) is now on loan to the Alaska Historical Library and Museum at Juneau, Alaska."[3] At that time the hat was simply on loan to the museum, and willed to my father should William Paul die. Two and a half years later in a gift statement to the Alaska State Museum (copy enclosed) your father put the following condition into the statement "The next custodian will be Richard Rinehart, Tlingit name Yuh-koog', if he survives me, otherwise a male person to be designated." In a letter from the State Museum, Jane Wallen the assistant director wrote "You have indicated that you wish the hat to be passed on to the custodianship of Richard Rinehart, Box 548, Wrangell, upon your death."[4] So you see even the museum recognized your father had intended to pass custodianship to my father.

To further prove the intent to pass on the authority of custodian to my father I want to refer you to a letter from your brother Fred Paul dated August 31, 1993 (copy enclosed). In this letter Fred is telling my father how he had seen the Teey-Hi't-Taan crest hat on a video produced by the Sealaska Heritage Foundation. He asks "I am curious if you or any authorized person gave permission for such use." He sent copies of the letter to the Central Council of the Tlingit and Haida Indians of Alaska and to the Sealaska Heritage Foundation. Even your brother Fred recognized my father's authority and custodianship bestowed upon him by your father.

I hope this letter and the enclosed documents prove to you that your father did in fact pass the rights, responsibilities and authority of custodianship for the Teey-Hi't-Taan clan crest hat, Ye'il-Aanka'awu, on to my father. Under our new ways, and as nearly as possible, under our old ways he is the current custodian.

---

[2] Letter from William L. Paul, Sr. to Richard Rinehart dated 07/21/54 (copy enclosed).
[3] Letter on Alaska Historical Library and Museum letterhead dated 11/6/64 (copy enclosed)
[4] Letter from the Alaska State Museum to William Paul, Sr. dated 11/24/64 (copy enclosed).

Because my father is the authorized, and I believe recognized, custodian of the Ye'il-Aanka'awu hat he has certain responsibilities, which I believe he addressed in his letter last month. Like your father, thirty and forty years ago, my father is getting old – he will be seventy-one this month, and he needs to insure there will be a responsible custodian to take his place when he dies. I believe he stated his reasons for selecting me in his letter. No where in the letter does he claim to be the Teey-Hi't-Taan chief. As I stated above I believe your father was widely recognized as the chief of his clan, and I agree with you he was the last chief of his clan. No one can be appointed chief or just claim the title by right of inheritance. This title is only bestowed on those who are widely recognized and accepted as their clan leader their head man or shah-dy-hun-kaw. It is conceivable the Teey-Hi't-Taan could select a new chief some day. This person would have to be well versed in our old ways, traditions and custom as well as a recognized leader capable of functioning in our modern ways. They will have to posses a verifiable lineage. If there is such a person let them come forward, and claim their intent to be chief. Let them gather all of the Teey-Hi't-Taan together in Wrangell. Let them put on a potlatch and invite all the necessary people for proper recognition. And if they are accepted by my father, his sisters and brothers and all the other Teey-Hi't-Taan as their new chief, then I am sure my father would pass custodianship on to this person (I would do the same if my father is not able).

Because there is no one we know of who can meet these requirements, and because we believe it would be a big mistake to let the hat go on without an appointed custodian my father passed the right on to me, and for those same reasons I accepted the responsibility. I will be the next custodian of the hat. I am not nor do I claim to be the "chief" of the Teey-Hi't-Taan. I knew the responsibility I was accepting when I told my father I would accept the honor. I also knew there would be people who will speak against us for the break in tradition. However, as you know the old ways are gone forever. I will bear this responsibility until a worthier custodian comes along, or until I appoint a successor custodian some day.

I hope this letter clears things up for you, and you now understand why my father did what he did.

Respectfully,

Richard J. Rinehart, Jr.

Cc: Richard Rinehart, Sr.
PO Box 548
Wrangell, AK 99929

Alaska State Museum
395 Whittier St.
Juneau, AK 99801

Sealaska Shareholder
One Sealaska Plaza, Suite 400
Juneau, AK 99801

STATE OF ALASKA

DEPARTMENT OF EDUCATION

DIVISION OF LIBRARIES, ARCHIVES & MUSEUMS

TONY KNOWLES, GOVERNOR

ALASKA STATE MUSEUM
395 WHITTIER STREET
JUNEAU, ALASKA 99801-1718
PHONE: (907) 465-2901
FAX: (907) 465-2976

August 11, 1997

Richard J. Rinehart Jr.
2069 NE Hollow Tree Lane
Bend, OR 97701

Dear Mr. Rinehart:

I am the Curator of Collections of the Alaska State Museum, and have been in communication with your father and Mrs. DeGermain over the years, and have read the exchange of letters of which you have kindly sent copies to the museum. We have placed them in our permanent file for the crest hat.

Our records indicate that the hat was donated to the museum by William Paul in 1969, with the notation that your father would serve as the next caretaker. Unfortunately, we have no record as to how the responsibilities and costs of preserving the hat was to be shared between the caretaker and the museum. Since this issue has recently been brought before us, this might be a good time to try to define in writing the responsibilities of the museum and caretaker.

The need for a clear understanding of responsibilities is clear, and a good example is in the case of the hat being used in the "Box of Daylight" video produced by Sealaska. This video was produced prior to your father giving us any protocol to follow when we had requests to use images of the hat in videos. In this case, the museum authorized Sealaska to use the video footage, since they were using it for non-profit and educational purposes, and the use seemed appropriate. We never realized that your father felt he should also authorize such activities in his role as caretaker, and I'm embarrassed to learn that Fred Paul was concerned about the lack of authorization from the caretaker. In the interest of avoiding such situations in the future, I suggest that we clarify the respective duties and outlined them in a formal agreement.

The Alaska State Museum has given a good home to the hat for nearly thirty years, has treated it with great respect, and has provided proper climate conditions and security precautions to ensure its preservation. Additionally, we commissioned an expensive set of spruce root basketry "potlatch" rings to go with the hat, as we agreed to do in the donation agreement. Over the years, the care we have provided has amounted to many thousands of dollars, and I believe that Mr. Paul originally placed it here because we

could offer a high level of protection for the hat. In short, I think we have acted in good faith and in accordance with Mr. Paul's wishes.

Personally, I feel that museums and Tlingit clans can work together towards goals of mutual interest, and in this case, everybody seems to agree that the hat should be preserved as long as possible. With some clans, the Alaska State Museum has gone a step further by facilitating the use of certain clan *at.oow* in the museum collection for potlatching by the appropriate clan members. This arrangement provides for the best level of care and security, and allows for the artifacts to remain an active part of traditional culture--the best of both worlds. Working together, this kind of thing is possible, but only with mutual respect and understanding.

I appreciate your efforts to keep us informed, and please consider what I've proposed as to formally defining the responsibilities of the museum and caretaker. If you wish to discuss this further, my number is (907)465-4826.

Sincerely yours,

Steve Henrikson
Curator of Collections

08/15/03

To Steve Henderson,

I Richard Rinehart, custodian of the Tee-hit-ton Crest hat – Raven that was placed on loan to the Museum, give my permission to release it to Albert Rinehart (my nephew).

Albert Rinehart will then bring it to Wrangell so that we can use it in a naming ceremony.

By my signature I am releasing you of any responsibility for the Tee-hit-ton Crest hat and I now take responsibility for its care.

Thank You,

Richard Rinehart

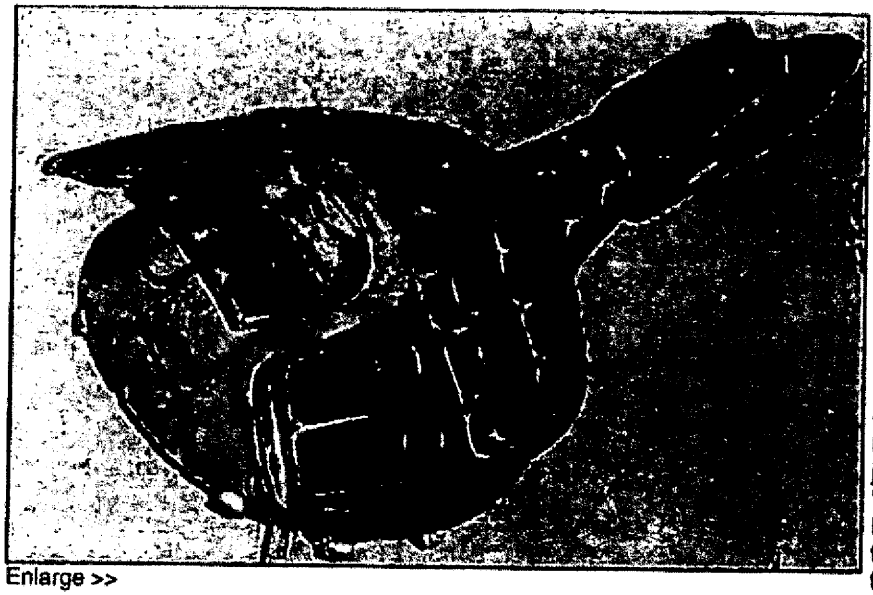
Richard Rinehart
P.O. Box 548
Wrangell, Alaska 99929

907 874-3739

Alaska State Museum II-B-809: crest hat - Tlingit - wood; Red Cedar; copper; abalone; human hair; paint; carved; painted; inlaid - raven - Wrangell

Enlarge >>

Object Name: crest hat
Accession Number: 47-113
Description: wood; Red Cedar; copper; abalone; human hair; paint; carved; painted; inlaid
Descriptive Narrative: Crest hat carved from a single piece of western red cedar in the form of a raven, decorated with black, red, and blue-green paint, human hair, and inlays of abalone shell and copper discs. Hat has the overall shape of an inverted bowl, from which protrudes the head/neck, wings, and tail of the raven. Circular platform (3 5/8" diameter) on the top was for a stack of four basketry rings (rings were missing prior to acquisition by museum). The platform has a hole drilled at the center, presumably for a cord to fasten the rings in place. The outside of the brim has a slight ridge carved into it, and the area between the ridge and the edge of hat painted vermillion. Sculpture and shallow relief carving influenced by "formline" style of art common on the northern Northwest Coast, as used in the late 19th and early 20th centuries. Head and neck: protrudes from front of hat approximately 12", head itself is 9" long. Head is 2.5" thick with fairly flat sides. "Split U-form" at top (probably representing head feathers), with a groove running down midline, from which brown human hair is mounted and pegged into four holes. One side of "split-U" has been chipped off with the grain of the wood and is missing (two pegs in holes at this spot indicate an old repair that has failed). Beak is carved open, with space between upper and lower beak, with a rectangular block left in the middle connecting upper and lower beak. A chip of wood is missing from upper beak, split with the grain, painted over with black. Series of holes pressed into the wood at the tip of the beak. Head slightly hollowed from below the lower beak, forming a triangular recess about 7/8" deep, painted vermillion red. Sides of head decorated in two-dimensional formline style, carved in shallow relief. Primary formlines in black, with "U-form" on beak, an ovoid-shaped eye socket, a negative circle below the socket, and long lower beak. The inner part of the "U-form" on beak painted blue-green. Eye socket painted blue-green, eyelid line carved and painted black, pupil inlaid with disk of abalone shell (probably the red abalone). Inlay on both sides of head has hole drilled through at bottom, probably from their original use as a button or pendant. Beak is lined with vermillion red, as is the negative space of the "split-U" atop head. The neck is gracefully sculptured to merge with the main part of helmet, and covered with formline shapes shallowly carved and painted black, blue-green, and vermillion red. Top of neck has eight "U-forms" in two rows-probably representing feathers--painted black outlined in vermillion in the surrounding carved areas. This section of feathers is surrounded by formlines painted blue green and outlined in red. Sides and bottom of neck decorated with pair of ovoids, connected to head by primary formlines, all painted black with vermillion in recessed outlines. Inside of ovoid inlaid with hand-formed domed copper discs (approximately 1 1/8" in diameter). Area between ovoids covered with black and blue-green "U-forms," outlined with



Enlarge >>

vermillion in recesses. Wings: Wings carved from both sides of round platform at top, draped over sides of hat and protruding along the leading, side, and back edges. Wings outlined with broad formlines painted blue-green (edged in vermillion). Surface within decorated with black "U-forms" (representing feathers) in three rows, painted vermillion in the recesses between and around. The "U-forms" closest to the sides of hat are inlaid with sixteen hand-formed domed copper discs (approximately 1 1/8" in diameter). The pair of "U-forms" in the row closest to the back of hat are elongated. Just below wing on the sides of the hat are formlines painted black and blue-green, some outlined in red, and some on bare wood. Some of these represent the leg and foot of the raven. Two holes drilled in side of hat for attachment of chin strap. Tail: Protrudes from hat between the two wings. Tail join represented by a humanoid face carved in shallow relief, facing front, with series of "U-forms" running across forehead representing tail feathers. Eye sockets of face and area below chin painted blue green. Nostrils, pupils, blows, and "U-forms" painted black. Lips and grooves between "U-forms" painted vermillion. The back of hat, below tail, painted in black primary formlines on bare wood. A pair of ovoids probably represents leg joints, to which are attached legs which lead to pair of feet painted on the sides. The "U-form" between ovoids may be another representation of the tail. Inside of hat: hollowed using adze and crooked knife (marks visible). A slight ridge is carved on the inside, running all the way around, approximately two inches inside of the end of the brim. Leather thongs run through a pair of holes on both sides of the hat, and are knotted on the outside, forming a "V" configuration upon which a chin strap would have once been fastened. At the rear of the hat on the inside is inscribed "W L Paul." An oval, red-bordered label marked "47-113" is glued to the inside of the hat (referring to the original loan number used by the Alaska Territorial Museum). Maximum length: 22 5/16" Max. height: 9 ¾" Max. width: 10 ¾" Brim, length (outside): 12 3/8" Brim, width (outside): 11 1/8"

Culture: Tlingit

Found: Wrangell

Gloss: Crest hat called Chief of the Ravens (Yéil Aankáwu) by the Teeyhíttaan Clan of Wrangell. Accn Book notes [9/22/1947] read: "Tee-hit-ton (bark house people) Crest hat named "Yethl-Ankow-oo" or "Chief of the Ravens"..... Said to be 70 years old in 1939 [made circa 1869]. Duplicate of original which was burned accidentally. William Paul, Sr. is present custodian of this crest hat."

Label: Dating from the late 19th century, this hat replaces an older version that was accidentally destroyed by fire. The original hat was a peace offering to the Teeyhíttaan clan from a Tsimshian chief, following the accidental killing of a clan member. The hat was sent to the clan on a raft covered with eagle down, a symbol of peace. This hat is now missing a stack of four basketry rings once mounted atop the circular platform. William Paul, prominent Alaska Native civil rights attorney, was caretaker of the hat on behalf of his clan, the Teeyhíttaan of Wrangell. Concerned that the hat be properly preserved, he donated it to the museum in 1969, and appointed Richard Reinhard Sr. to succeed him as caretaker on behalf of the clan. -- SEH 4/2004

Subject: raven

Photo: 35mm slide; negative, black and white; Publication Quality

Collection Name: Ethnology

Sealaska Heritage Institute
One Sealaska Plaza, Suite 301 • Juneau • Alaska • 99801-1249 • (907) 463-4844
www.sealaskaheritage.org • www.alaskanativeartists.com • Fax (907) 586-9293

13 April 2006

Alaska State Museum
Attn: Steve Hendrickson, Curator of Collections
395 Whittier Street
Juneau, Alaska 99801

Dear Mr. Hendrickson,

We are writing to inquire about the status of an item in your collection, the Teeyhíttaan Crest Hat Yéil Aankáwu "Chief of all Ravens." We understand it is currently on display on loan at the Nolan Museum in Wrangell.

It is our understanding that this hat was placed on loan at the Alaska State Museum in 1969 by the clan caretaker at that time, William Paul, Sr. with specific understanding that it remained the property of his clan [Loan #47-113]. The clan ownership of this hat is noted in documents in your accession folder #69-2, which state "It remains the property of the original owners and is now on loan to the Alaska Historical [State] Museum." This clan retained ownership was further confirmed by the listing and acceptance of the successors of this clan owned hat by the previous caretakers and the Alaska State Museum over the last 30 years.

Recently, several clan members have come to us with concerns about the status of this hat...

Sincerely,

Rosita Worl, Ph.D.
President

Richard Rinehart, Sr.
P.O. Box 548
Wrangell, Alaska 99929

April 14, 2006

Bruce Kato, Director
Alaska State Museum
395 Whittier Street
Juneau, AK 99801

Re: Crest Hat of the Tee-Hit-Ton Tribe of Wrangell
Loan # 47-113 dated March 10, 1969

Dear Mr. Kato,

I would like to thank the Alaska State Museum for its excellent care of the referenced object, at.óow of the Tee-Hit-Ton Clan.

At this time, as the named custodian of the referenced crest hat, I am rescinding the referenced loan. It is my intent to place the Tee-hit-ton crest hat on loan in the Wrangell Museum in Wrangell, Alaska.

On November 6, 1964, William L. Paul, Sr. signed a document stating that upon his death, the crest hat "Yethl-Ankow-oo" (Yéil Aankáawu) of the Tee-Hit-ton Clan shall become the property of Richard Rinehart. The statement noted that the crest hat (II-B-809) is now on loan to the Alaska Historical Library and Museum at Juneau, Alaska.

On November 24, 1967, Mrs. Jane Wallen, Assistant Director of the Alaska State Museum wrote to William Paul, Sr. acknowledging her discussion with Mr. Paul in which he conveyed his wish that the hat be passed on to the custodianship of Richard Rinehart. Mrs. Wallen suggested that the most effective means of adding this clause to the loan agreement would be through a statement from Mr. Paul to the museum.

On March 10, 1969 Mr. Paul signed a receipt Loan Number 47-113 for the crest hat of the Tee-hit-ton tribe of Wrangell with Mrs. Jane Wallen accepting the hat on behalf of the museum. The loan document included a reference entitled, Conditions regarding Gifts, followed by the statement, "It

is hereby agreed that the above items are donated to the Alaska State Museum as free and unrestricted gifts." This statement conflicts with the reference to the loan identification and following documents and statements by both Mr. Paul and Mrs. Wallen clarified that the crest hat was a loan and not a gift.

The undated accession folder 69-2 clarifies that the crest hat is a loan with the statements that the "Crest hat of the Tee-hit-ton tribe of Wrangell, Raven phratry. It remains the property of the original owners, is now on loan to the Alaska Historical Museum."

A second undated document portrays a drawing of the Tee-hit-ton crest hat and includes a hand written statement by William L. Paul, Sr., "Hat from Wrangell Loaned by William L. Paul, Sr."

As you are aware, custodians---as was the esteemed William L. Paul, Sr., serve as trustees of clan at.óow and have no authority independent of the clan to alienate clan at.óow. Mr. Paul was a strong advocate of Native law and sought heroically to protect the ownership of Native property including our land.

I trust that you will honor the terms of the loan agreement and recognize that it is the Tee-hit-ton clan at.óow and that I am its custodian. Again, may I express our deepest appreciation on behalf of the Tee-hit-ton and the Children of the Tee-hit-ton for the excellent care you have extended to our crest hat.

Sincerely yours,

Richard Rinehart Sr.

Richard Rinehart, Sr.

Cc: Wrangell Museum
Sealaska Heritage Instit
Richard Rinehart, Jr.

Sealaska Heritage Institute
One Sealaska Plaza, Suite 301 • Juneau • Alaska • 99801-1249 • (907) 463-4844
www.sealaskaheritage.org • www.alaskanativeartists.com • Fax (907) 586-9293

25 May 2007

COPY

Bruce Kato, Director
Alaska State Museum
395 Whittier Street
Juneau, Alaska 99801

RE: Loan #47-113, March 10, 1969

Dear Mr. Kato

It has been brought to our attention that Richard Rinehart, Sr. requested the return of the long-standing loan of the Teeyhíttaan Crest Hat "Yéil Aankáawu" [II-B-809] in April of 2006. He has not yet received any response from your museum regarding this issue, and has asked us to inquire on the status of this return.

If we can do anything to facilitate his request, please do not hesitate to contact us.

Sincerely,

Rosita Worl

Rosita Worl, Ph.D.
President

Cc: Richard Rinehart, Sr.
Richard Rinehart, Jr.

STATE OF ALASKA

Department of Education & Early Development
Division of Libraries, Archives & Museums

Kay Shelton, Director

Sarah Palin, GOVERNOR

Alaska State Museums
395 Whittier
Juneau, Alaska 99801
(907) 465-2901
(907) 465-2976 Fax

June 7, 2007

Received By
Sealaska Heritage Institute
JUN 1 0 2007

Rosita Worl, Ph.D.
President
Sealaska Heritage Institute
One Sealaska Plaza, Suite 301
Juneau AK 99801-1249

RE: Response to your letter dated May 25

Dear Dr. Worl:

We have been in contact with Mr. Rinehart on several occasions over the past twenty years and have provided him with copies of the documents from our files pertaining to the Teeyhíttaan crest hat *Yéil Aankáawu* (ASM catalog number II-B-809).

As we have previously explained to Mr. Rinehart, the 1947 loan of the hat was retired in 1969 when William Paul, the clan caretaker, transferred title to the hat to the Alaska State Museum on behalf of his clan. Since then, it has been listed as part of our permanent collection. On the donation form, Mr. Paul named Richard Rinehart Sr. as the next caretaker, but does not outline the authority and responsibilities of each party under the agreement. Barring more information about the 1969 agreement, or a successful NAGPRA claim, we are not able to return the hat.

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. However, in spite of the lack of specificity in this case, the records are clear that the hat is no longer a loan. By naming a caretaker for the hat, Mr. Paul clearly wanted to ensure a role for the clan in the preservation of the hat. However, Mr. Paul was purposeful in donating (rather than loaning) the hat to the museum, ensuring that the museum would also play a future role.

Though the files lack details as to the structure of the relationship, we hope to learn more through consultation, and again extend an invitation to Mr. Rinehart and the Teeyhíttaan people to meet with us to work out formal terms of curation and ceremonial use. In the meantime, at Mr. Rinehart's request, we have placed the hat on temporary loan to the Wrangell Museum at our own expense.

I have enclosed copies of the museum's documentation on the hat.

Sincerely,

Bruce Kato
Chief Curator

cc: Richard Rinehart, Sr.
Richard Rinehart, Jr.

Printed on recycled paper

STATE OF ALASKA

Sarah Palin, Governor

Alaska State Museums
395 Whittier
Juneau, Alaska 99801
(907) 465-2901
(907) 465-2976 Fax
bruce.kato@alaska.gov
www.museums.state.ak.us

Department of Education & Early Development
Division of Libraries, Archives & Museums
Kathryn H. Shelton, Director

August 29, 2008

A NATIVE CORPORATION
SEALASKA

SEP 4 2008
RECEIVED
BELLEVUE, WA

Chris McNeil
President and CEO
Sealaska Corporation
One Sealaska Plaza, Suite 400
Juneau AK 99801-1276

Dear Mr. McNeil:

We have received your letter of August 13, 2008 regarding the Sealaska Corporation's repatriation claim for an object in the collection of the Alaska State Museum—the Raven hat of the Teeyhíttaan Clan of Wrangell (II-B-809)—under the terms of the Native American Graves Protection and Repatriation Act.

In the months to come, the museum staff will research the claim which will involve a search for any additional information and records and possibly interviews with former staff members or other knowledgeable persons.

Following the research, we will prepare a report on the claim and recommend a course of action. A decision to return the object must also, under state law, be approved by the Museum Collections Advisory Committee, with final approval from the Office of the Attorney General.

Your letter states that it may not be copied or published except for the purpose of evaluating the claim. However, certain correspondence sent to state agencies becomes a public document, and the letter may be subject to disclosure under Alaska's Public Records Act (AS 40.25.100-220).

If you have any questions, please contact me at (907)465-4866, or email at bruce.kato@alaska.gov.

Sincerely,

Bruce Kato
Chief Curator

STATE OF ALASKA

A NATIVE CORPORATION
SEALASKA

JAN 05 2009

RECEIVED
BELLEVUE, WA

Department of Education & Early Development
Division of Libraries, Archives & Museums
Linda Thibodeau, Director

Alaska State Library
395 Whittier
Juneau, Alaska 99801
(907) 465-2901
(907) 465-2976 Fax

December 31, 2008

Chris McNeil
President and CEO
Sealaska Corporation
One Sealaska Plaza, Suite 400
Juneau AK 99801-1276

Dear Mr. McNeil:

Regarding the Sealaska Corporation's August 13, 2008 repatriation claim for an object in the collection of the Alaska State Museum—the Raven Hat of the Teeyhittaan Clan of Wrangell (II-B-809)—under the terms of the Native American Graves Protection and Repatriation Act, we have submitted a draft report of our initial findings to the State Attorney General's Office for review. We have based our preliminary findings on the evidence provided in the claim as well as a review of museum files and other pertinent historical and anthropological sources.

We understand your desire for expediency, and hope to have the A.G.'s confirmation of our findings in January. If you have any questions, please contact me at (907) 465-4866, or email at bruce.kato@alaska.gov.

Sincerely,

Bruce Kato
Chief Curator

From: Richard Rinehart
Sent: Sunday, February 15, 2009 12:20 PM
To: Bruce Kato (bruce.kato@alaska.gov)
Cc: 'jrinehart@gci.net'; Chris McNeil; Rosita Worl
Subject: Teeyhíttaan Hat

Contacts: Bruce Kato
Attachments: AK State Museum 2-15-09.docx

Dear Mr. Kato,

Mr. McNeil advised my father that you would have the Attorney General□s confirmation of your findings relative to the Teeyhíttaan Hat in January. I write to inquire as to whether a decision has been made. We are weighing the possibility of formalizing a dispute between the State Museum and Sealaska on behalf of the Teeyhíttaan. The NAGPRA Dispute procedures require that we submit a request by February 23. If the Attorney General□s office should find in favor of the Teeyhíttaan, we would not proceed with the dispute request.

We look forward to your timely response.

Sincerely,

Richard Rinehart, Jr.

Mr. Bruce Kato
Chief Curator
Alaska State Museums
395 Whittier
Juneau, AK 99801

February 15, 2009

Dear Mr. Kato,

Mr. McNeil advised my father that you would have the Attorney General's confirmation of your findings relative to the Teeyhíttaan Hat in January. I write to inquire as to whether a decision has been made. We are weighing the possibility of formalizing a dispute between the State Museum and Sealaska on behalf of the Teeyhíttaan. The NAGPRA Dispute procedures require that we submit a request by February 23. If the Attorney General's office should find in favor of the Teeyhíttaan, we would not proceed with the dispute request.

We look forward to your timely response.

Sincerely,

Richard Rinehart, Jr.

Cc: Chris McNeil, Jr.
Rosita Worl
Richard Rinehart, Sr.

A NATIVE CORPORATION
SEALASKA

February 20, 2009

David Tarler, DFO
National NAGPRA Program
National Park Service
1201 Eye Street, NW (8th Floor)
Washington, D.C. 2005

Re: Dispute Between Sealaska Corporation and Alaska State Museum Relative to the Teeyhíttaan Clan *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Hat)

Dear Mr. Tarler,

Pursuant to 25 U.S.C. 3006 (c), Sealaska Corporation, a federally-recognized tribe for the purposes of Native American Graves Protection and Repatriation Act, respectfully requests the NAGPRA Review Committee to facilitate the resolution of a dispute between Sealaska Corporation and the Alaska State Museum (ASM).

As of the date of this letter, we are awaiting notice from the State of Alaska Attorney General's office as to the State's findings on our repatriation claim. This issue has been ongoing for several years and previous action by the ASM on June 7, 2007 claimed that it has title to the referenced clan hat. In anticipation of the State's findings and in order to meet your office's deadline to address dispute cases for the May 2009 NAGPRA Review Committee meeting, we are requesting that the Review Committee hear this dispute. Should the State find in our favor, we will advise you immediately.

a. Relevant facts of the dispute.

One Sealaska Plaza, Suite 400 • Juneau, AK 99801-1276 • Phone (907) 586-1512 • Fax (907) 586-2304

The ASM has denied the repatriation claim of Sealaska Corporation on behalf of the Teeyhíttaan Clan for the Teeyhíttaan Clan *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Hat and identified by the ASM Catalog number II-B-809).

The ASM denied the claim based on the assertion of the "right of possession," and that the ASM obtained possession of the clan hat with the voluntary consent of the Teeyhíttaan Clan which had authority of alienation at the time it was transferred to the museum, pursuant to 25 USC 3001 Section 2 (13).

The ASM claims that "the 1947 loan of the referenced hat was retired in 1969 when William Paul, the clan caretaker, transferred title to the hat to the ASM."

The ASM reports that Mr. Paul named Richard Rinehart, Sr. as the next caretaker, but does not outline the authority and responsibilities of each party.

Sealaska Corporation, on behalf of the Teeyhíttaan Clan, asserts the "right of possession" pursuant to the terms of 15 USC 3001 Section 2 (13) and pursuant to ancient and customary Tlingit traditional laws and as codified in Tlingit Clan Trust Property Law and Dispute Resolution Section 1.08.

Sealaska Corporation asserts that *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Hat) is a sacred object (Sec. 2(3)(C)) and is owned as an object of cultural patrimony (Sec. 2(3)(D)) and has ongoing, historical, traditional and cultural importance central to the Teeyhíttaan Clan and the Tlingit and is owned collectively by the Teeyhíttaan Clan rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual and was and continues to be considered inalienable by the Teeyhíttaan Clan at the time the hat was separated from the Teeyhíttaan Clan.

Sealaska Corporation asserts that a Sháade háni (clan leader) does not have the authority to transfer title to *at.óow* (highly valued clan-owned object(s) inherited from previous generations) independent of a clan.

b. **Primary documents Relevant to the Dispute.**

Pleased find attached an Inventory of Teeyhíttaan Crest Hat Documentation and inventoried documents.

c. Statement of Sealaska Corporation's Interpretation of Facts.

Sealaska Corporation maintains that the *Yéil Aan Kaawu* Clan Hat is an *at.óow* which is both a sacred object and an object of cultural patrimony, and that the Teeyhíttaan Clan owns the *Yéil Aan Kaawu* Clan Hat and has the right of possession. Sealaska Corporation respectfully requests that the members of the NAGPRA Review Committee refer to the August 13, 2008, repatriation claim to the ASM to obtain an understanding of the cultural context and meaning of the *Yéil Aan Kaawu* Clan Hat to the Teeyhíttaan Clan and to the Tlingit Indians of Southeast Alaska.

Sacred Object: The Tlingit *Yéil Aan Kaawu* Clan Hat is needed by Teeyhíttaan religious leaders for their use in funerals and memorial potlatches for the display of their unique identity, and to evoke the spirit of the clan ancestor who was killed in the event giving rise to the hat, and the spirits of those clan members who commissioned the replacement hat and preserved it in subsequent generations (including its former custodians Charlie Yéil Kook and William Paul, Sr.). The ceremonial use of the hat will evoke the spirits of these ancestors so they can be present and receive the spiritual counterpart of the food and material goods that are distributed to the guests during a *ku.éex'* (memorial potlatch). It is needed for the performance of mourning songs and oratory presented at Teeyhíttaan funerals and memorial potlatches, and when they are guests at traditional funerals and memorials for display and oratory to express comfort to the grieving clan and to "give weight" to their words. It is essential in our *ku.éex'* to ensure social and spiritual balance. It is needed so that it can be placed on a grandchild during a memorial potlatch to honor that individual and the clan ancestors who owned the object in the past. The *Yéil Aan Kaawu* Clan Hat is an object that was specifically devoted to traditional Tlingit funerary ceremonies and which has religious significance or function in the continued observance of these ceremonies. It is needed by traditional religious leaders of the Teeyhíttaan clan for the continued practice of their

traditional religion by the present day adherents, and for the renewal of these practices in Wrangell.

The Clan Hat plays a central role in our ideological construct of *Haa Shagoon* that binds us to our ancestors who obtained the Raven Crest and who made this Clan Hat and that binds us to future generations to ensure our cultural survival. Furthermore, the return of ownership of the Clan Hat is required to restore its spiritual sanctity.

Object of Cultural Patrimony: The Tlingit Teeyhíttaan *Yéil Aan Kaawu* Hat memorializes a significant event in the history of the clan, which has ongoing importance central to the cultural identity of the clan. The continuing importance of the hat was demonstrated some 100 years ago when, after the original hat was damaged by fire, it was replicated and then dedicated (brought out and formally presented to the assembly) in a ceremony. Its continuing importance in the intervening years was demonstrated by the actions of the clan custodian in seeking to preserve the object with the assistance of the museum, while maintaining the clan's custody of the item. The Clan Hat, and the Raven crest, name, story and spirits associated with it, were held in common by the Teeyhíttaan Clan and are *at.óow* of the Teeyhíttaan Clan. As *at.óow*, the hat is a clan possession and was not alienable by an individual (in this case, the clan custodian) at the time it was acquired by the museum in 1969.

Right of Possession: Sealaska Corporation has presented evidence that establishes right of possession to the *Yéil Aan Kaawu* Clan Hat and Raven crest on behalf of the Teeyhíttaan Clan. The Clan Hat was held in common by our Teeyhíttaan ancestors and our tribal members, who collectively have sole authority to alienate ceremonial objects and regalia (*at.óow*). Clan custodians do not have the authority to transfer title to clan property or *at.óow*, and no evidence exists that the Teeyhíttaan Clan gave its authority to convey title to its Clan Hat. At the time the hat was acquired by the museum, the clan custodian did not indicate that the clan relinquished its custodianship, as evidenced by his statements about who was custodian at the time and who would be his successor. Thus, the museum's documents indicate that at the time William Paul, Sr., signed the deed of gift to the museum, he, as the clan custodian, did not relinquish the clan's custodianship of the object. Sealaska Corporation further asserts

that the current custodian of the Teeyhíttaan Clan is Richard Rinehart, Sr.

d. Statement Identifying Interested Parties and Requesting Party's Understanding of the ASM's Interpretation of the facts.

Sealaska Corporation, representing the Teeyhíttaan Clan of Wrangell, and the Alaska State Museum are the interested parties.

Sealaska Corporation believes that the ASM is asserting that the clan custodian had authority to donate the item to the museum, even in the face of evidence that he, William Paul, maintained the clan's custodianship over the item and notified the museum that the office of clan custodian would be passed to a successor at the time he signed the document of transfer.
Sealaska Corporation believes that the ASM is interpreting the facts based on Western law and principles.

Sealaska Corporation maintains that the ASM is interpreting the facts under the assumption that individuals have the right to alienate clan property.

Although some staff members of the ASM participate in Tlingit social and ceremonial life, Sealaska believes that as an institution the ASM does not fully comprehend the Tlingit world view, cosmology and values.

e. Summary of Consultation Record:

Consultation between the Teeyhíttaan Clan and ASM has been ongoing for the last three years though meetings, phone calls and emails. The Inventory of Teeyhíttaan Crest Hat Documentation and inventoried documents outlines the communication between the two entities.

f. Statement of Efforts to Resolve the Dispute.

In 2008, the Teeyhíttaan Clan was granted a temporary loan by the ASM to use the *Yéil Aan Kaawu Naa s'aaxw* (Leader of all Raven Clan Hat) in a ceremonial event in Wrangell. Although this resulted in much awkwardness before, during and after the ceremony, the clan

leader agreed to these terms in the hope that the ASM would witness the importance of the clan hat as a Teeyhíttaan *at.óow* and would be persuaded to acknowledge the validity of the repatriation claim. This unfortunately was not the case.

g. Proposed Solutions.

Sealaska Corporation respectfully requests that the Review Committee adopts the following findings:

The Sealaska Corporation has standing as an Indian Tribe to submit this claim.

The cultural affiliation between Sealaska Corporation and the Teeyhíttaan Clan of the Tlingit Tribe of Wrangell and the earlier members of the Teeyhíttaan Clan who acquired the Clan Hat is established.

The *Yéil Aan K̲aawu* Clan Hat is a sacred object belonging to Teeyhíttaan Clan that was and continues to be devoted to the *k̲u.éex* ceremony; and that it has religious significance and function in the continuing observance or renewal of these religious ceremonies; and that it is needed by the *Sháade háni* (Clan Leader) who serves as the traditional religious leader for the practice of our traditional religion by current and future generations.

The *Yéil Aan K̲aawu* Clan Hat is an object of cultural patrimony which has ongoing historical, traditional and cultural importance central to the Teeyhíttaan Clan and the Tlingit people.

The *Yéil Aan K̲aawu* Clan Hat is Teeyhíttaan *at.óow* that is owned collectively by the clan rather than property owned by an individual and which therefore, cannot be alienated, appropriated, or conveyed by any individual.

The museum documents relative to the transfer of possession to the museum indicate that custodianship of the item was maintained by the clan leader at the time of transfer, and other documents identify a successor who would continue to serve as custodian of the clan's possession indicating that the clan's custodianship would be maintained indefinitely into the future.

Sincerely,

Sealaska Corporation

Chris McNeil
President & CEO

Enclosure: The Inventory of Teeyhíttaan Crest Hat Documentation and inventoried documents

cc: Richard Rinehart, Sr. Teeyhíttaan Clan of Wrangell
The Central Council of Tlingit and Haida Indian Tribes of Alaska
Sealaska Heritage Institute
Alaska State Museum

One Sealaska Plaza, Suite 400 • Juneau, AK 99801-1276 • Phone (907) 586-1512 • Fax (907) 586-2304

STATE OF ALASKA

Sarah Palin, Governor

Department of Education & Early Development
Division of Libraries, Archives & Museums

Linda S. Thibodeau, Director

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Juneau, Alaska 99801
(907) 465-2901
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bruce.kato@alaska.gov
www.museums.state.ak.us

March 12, 2009

A NATIVE CORPORATION SEALASKA

MAR 20 2009

RECEIVED
BELLEVUE, WA

Richard Rinehart, Jr.
Vice President and Chief Financial Officer
Sealaska Heritage Institute
One Sealaska Plaza, Suite 400
Juneau, AK 99801

Dear Mr. Rinehart,

To follow up on your recent letter and e-mail correspondence regarding the status of the repatriation petition for the Yeil Aan Kaawu Naas'aaxw (Leader or All Ravens Hat):

At this time, the attorney general's office is still reviewing the claim and assures me that a response will be forthcoming within the next few weeks. If in the meantime you have any questions, please contact me at (907) 465-4866 or bruce.kato@alaska.gov.

Sincerely,

Bruce Kato
Chief Curator

cc: Chris McNeil, Jr.
Rosita Worl
Richard Rinehart, Sr.

printed on recycled paper

Rosita Worl

From: David_Tarler@nps.gov
Sent: Tuesday, March 31, 2009 7:48 AM
To: Chris McNeil
Cc: Rosita Worl; Carla.Mattix@sol.doi.gov; carlamattix@aol.com; Stephen.Simpson@sol.doi.gov; envirodad@comcast.net; Sherry_Hutt@nps.gov; dan_monroe@pem.org
Subject: Re. Sealaska's request that, pursuant to 25 U.S.C. 3006(c)(4), the Native American Graves Protection and Repatriation Review Committee facilitate a dispute among Sealaska and the Alaska State Museum relating to the return to the Teeyhittaan Clan of the Ye

Mr. McNeil:

On February 20, 2009, Sealaska Corporation sent me, as the Designated Federal Officer for the Native American Graves Protection and Repatriation Review Committee. a request that, pursuant to 25 U.S.C. 3006(c)(4), the Review Committee facilitate a dispute among Sealaska and the Alaska State Museum relating to the return to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, during its meeting on May 23-24, 2009, in Seattle, Washington. Sealaska bases the dispute on the Museum's statements, contained in a letter dated June 7, 2007, that "the 1947 loan of the hat was retired in 1969 when . . .the clan caretaker transferred title to the hat to the Alaska State Museum on behalf of his clan," and that "[b]arring more information about the 1969 agreement, or a successful NAGPRA claim, we are not able to return the hat." As Sealaska frames the dispute, the Museum and Sealaska disagree over whether the Museum has a right of possession to the Clan Hat, with Sealaska asserting that the Museum does not have a right of possession and the Museum asserting that it does.

The Alaska State Museum's letter preceded Sealaska's written request to the Museum, dated August 13, 2008, for repatriation of the Clan Hat pursuant to the Native American Graves Protection and Repatriation Act. Consequently, the Museum's 2007 letter cannot be construed as a response to Sealaska's request for repatriation through the NAGPRA process, as set out at 43 C.F.R. 10.10. Further, as the Museum has not yet responded to Sealaska's request, the Museum has not yet disagreed with Sealaska over whether the Museum has a right of possession to the Clan Hat. Thus, at this time, the issue of whether the Museum has the right of possession to the Clan Hat cannot be framed as a dispute.

Although at this time there is no dispute to be resolved pursuant to 25 U.S.C. 3006(c)(4), the Review Committee may make findings of fact related to Sealaska's unanswered written request to the Museum for repatriation of the Clan Hat, and it may do so pursuant to its responsibilities under 25 U.S.C. 3006(c)(3). If Sealaska is agreeable, the Review Committee could be asked to review Sealaska's August 13, 2008, written request to the Alaska State Museum for repatriation of the Clan Hat, and answer the following questions:

In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, did Sealaska Corporation show that, more likely than not, the Clan Hat is a "sacred object," as defined at 25 U.S.C. 3001

(3)(C) and 43 C.F.R. 10.2 (d)(3)?
In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, did Sealaska Corporation show that, more likely than not, the Clan Hat is "cultural patrimony," as defined at 25 U.S.C. 3001 (3)(D) and 43 C.F.R. 10.2 (d)(4)?
In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, did Sealaska Corporation establish that, more likely than not, Sealaska is culturally affiliated with the Clan Hat, as the term "cultural affiliation" is defined at 25 U.S.C. 3001 (2) and 43 C.F.R. 10.2 (e)?
In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, did Sealaska Corporation present evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that, more likely than not, the Museum does not have a right of possession to the Clan Hat, as the term "right of possession" is defined at 25 U.S.C. 3001 (13) and 43 C.F.R. 10.10 (a)(2)?

At your earliest convenience, I would appreciate Sealaska's letting me know whether or not you would like these questions presented to the Review Committee during its May 23-24, 2009 meeting in Seattle, Washington. Thank you.

David Tarler, J.D.
Enforcement and Training Coordinator and Designated Federal Officer, NAGPRA Review Committee National Park Service National NAGPRA Program (2253)
1201 Eye Street, NW
8th Floor
Washington, DC 20005
202/354-2108 voice
202/371-5197 fax

Rosita Worl

From: Rosita Worl
Sent: Tuesday, March 31, 2009 10:40 AM
To: David_Tarler@nps.gov
Cc: Carla.Mattix@sol.doi.gov; carlamattix@aol.com; Stephen.Simpson@sol.doi.gov; envirodad@comcast.net; Sherry_Hutt@nps.gov; dan_monroe@pem.org; Richard Rinehart; Chris McNeil
Subject: RE: Re. Sealaska's request that, pursuant to 25 U.S.C. 3006(c)(4), the Native American Graves Protection and Repatriation Review Committee facilitate a dispute among Sealaska and the Alaska State Museum relating to the return to the Teeyhittaan Clan of th

Re: Teeyhittaan Clan of the Yéil Aan Kaawu Naa s'aaxw

Dear Mr. Tarler,

I am responding on behalf of Mr. McNeil, President & CEO of Sealaska Corporation. Sealaska has delegated NAGPRA operational responsibilities to its affiliate, the Sealaska Heritage Institute (SHI). SHI is charged with meeting the educational and cultural responsibilities of Sealaska and to perpetuate and enhance the cultures of the Tlingit, Haida and Tsimshian. I serve as the senior executive of SHI and as the Vice Chair of the Board of Directors of Sealaska Corporation.

Sealaska has framed the dispute on the ongoing assertion by the Alaska State Museum that it owns the referenced at.óow, hereinafter referred to as Clan Hat, by way of a donation from Mr. William Paul, Sr., and on the failure of the Alaska State Museum and the AG to act on the formal repatriation claim of the Clan Hat, which was submitted in August 2008.

Sealaska is agreeable to have the Review Committee review Sealaska's August 13, 2008, written request to the Alaska State Museum for repatriation of the Clan Hat to answer the questions relative to the Clan Hat as a sacred object; the Clan Hat as an object of cultural patrimony; the cultural affiliation of Sealaska and the Teeyhittaan Clan to the Clan Hat; and that the Museum does not have right of possession.

For your information, we have continued to press the Museum to respond and act on our repatriation claim without success. We will continue to do so until the actual Review Committee meeting in May 2009.

Thank you for your consideration.

Rosita Worl Ph.D.
Vice Chair - Sealaska Corporation

Rosita Worl

From: David_Tarler@nps.gov
Sent: Tuesday, March 31, 2009 12:26 PM
To: Bruce.Kato@alaska.gov
Cc: Sherry_Hutt@nps.gov; Carla.Mattix@sol.doi.gov; carlamattix@aol.com; Stephen.Simpson@sol.doi.gov; envirodad@comcast.net; dan_monroe@pem.org; Linda.Thibodeau@alaska.gov; Rosita Worl
Subject: Re. Sealaska's request to the Native American Graves Protection and Repatriation Review Committee concerning the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat

Mr. Kato:

Sealaska Corporation has requested that the Native American Graves Protection and Repatriation Review Committee make findings of fact and recommendations related to Sealaska's as-yet unanswered written request to the Alaska State Museum, dated August 13, 2008, for repatriation of the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat. Pursuant to its responsibilities under the Native American Graves Protection and Repatriation Act (25 U.S.C. 3006(c)(3)), the Review Committee has agreed to Sealaska's request. During its meeting on May 23-24, 2009, in Seattle, Washington, the Review Committee will review Sealaska's August 13, 2008, written request to the Alaska State Museum for repatriation of the Clan Hat, and answer the following questions:

1. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, did Sealaska Corporation show that, more likely than not, the Clan Hat is a "sacred object," as defined at 25 U.S.C. 3001 (3)(C) and 43 C.F.R. 10.2 (d)(3)?

2. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, did Sealaska Corporation show that, more likely than not, the Clan Hat is "cultural patrimony," as defined at 25 U.S.C. 3001 (3)(D) and 43 C.F.R. 10.2 (d)(4)?

3. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, did Sealaska Corporation establish that, more likely than not, Sealaska is culturally affiliated with the Clan Hat, as the term "cultural affiliation" is defined at 25 U.S.C. 3001 (2) and 43 C.F.R. 10.2 (e)?

4. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of all Raven Clan Hat, did Sealaska Corporation present evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that, more likely than not, the Museum does not have a right of possession to the Clan Hat, as the term "right of possession" is defined at 25 U.S.C. 3001 (13) and 43 C.F.R. 10.10 (a)(2)?

If the Alaska State Museum wishes to provide the Review Committee with information relevant for answering the questions presented, please do so on or before April 23 (electronic format is appreciated). Likewise, if the Alaska State Museum wishes to make an appearance before the Review Committee, either in person or by telephone, please let me know at your earliest convenience (david_tarler@nps.gov). Thank you.

David Tarler, J.D.
Enforcement and Training Coordinator and Designated Federal Officer, NAGPRA Review Committee National Park Service National NAGPRA Program (2253)
1201 Eye Street, NW
8th Floor
Washington, DC 20005
202/354-2108 voice
202/371-5197 fax

Rosita Worl

From: David_Tarler@nps.gov
Sent: Thursday, April 09, 2009 9:17 AM
To: Rosita Worl
Subject: Re. Sealaska's request to the Review Committee

Follow Up Flag: Follow up
Flag Status: Red

Rosita,

After consultation with Dan Monroe, I'm writing to let you know that, on the morning of May 23, the first day of the NAGPRA Review Committee meeting, the Review Committee will hear Sealaska's request for findings of fact and recommendations related to Sealaska's as-yet unanswered written request to the Alaska State Museum for repatriation to the Teeyhittaan Cla of the Leader of all Raven Clan Hat. The Review Committee will deliberate the matter on the same day, during the afternoon session.

I would appreciate your providing me with the names and titles of the presenters. Also, could you give me your best guess at the length of your presentation to the Review Committee? Thanks.

I have not yet received a response from the Alaska State Museum to my notice that the matter would be heard by the Review Committee. Have they been in contact with you?

David

David Tarler, J.D.
Enforcement and Training Coordinator and Designated Federal Officer, NAGPR
Review Committee National Park Service National NAGPRA Program (2253)
1201 Eye Street, NW
8th Floor
Washington, DC 20005
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STATE OF ALASKA

Department of Education & Early Development

Office of the Commissioner

SARAH PALIN, GOVERNOR

Goldbelt Place
801 West Tenth Street, Suite 200
P.O. Box 110500
Juneau, Alaska 99811-0500
(907) 465-2800
(907) 465-4156 Fax

April 10, 2009

Chris McNeil
President and CEO
Sealaska Corporation
One Sealaska Plaza
Suite 400
Juneau, Alaska 99801-1276

Dear Mr. McNeil:

I am writing to you for two purposes. First, to send you a response to your letter of August 13, 2008, to Bruce Kato, Chief Curator of the Alaska State Museum, and second to invite you and other interested persons to meet with me, Bruce, and others, to see if we can work out mutually-agreeable answers to the questions about the ownership of *Yeil Aan Kaawu Naa s'aaxw*.

Your letter of August 13 requested repatriation of *Yeil Aan Kaawu Naa s'aaxw* under the Native American Graves Protection and Repatriation Act. As you will see in the attached response, the museum has carefully researched the issue, and has concluded that it has a right of possession. Therefore, in the attached response, the museum declines to repatriate *Yeil Aan Kaawu Naa s'aaxw*.

As Commissioner, however, I am the head of the agency, and, although I agree with the response, I think that it would be premature to consider it a final decision of the agency. We still have unanswered questions, and we want to respect the rights of the Teeyhittan Clan. In my view, this matter is better resolved by discussion and agreement than by exchanges of documents.

To that end, I would ask that we meet and try to find common ground. If possible, I would very much like to meet and hear from the current head of the Teeyhittan Clan, Richard Rinehart Sr. I would also like to hear from any others whom you think should attend.

If you think this meeting is something that you would be interested in, I would be happy to attend a meeting in your facilities in Juneau, or host it in my Department's offices in the Goldbelt

Building. I can be prepared to meet with you as soon as you like. If you are interested, just let me know where and when, and I will make the arrangements.

Thank you for your consideration.

Sincerely,

Larry LeDoux

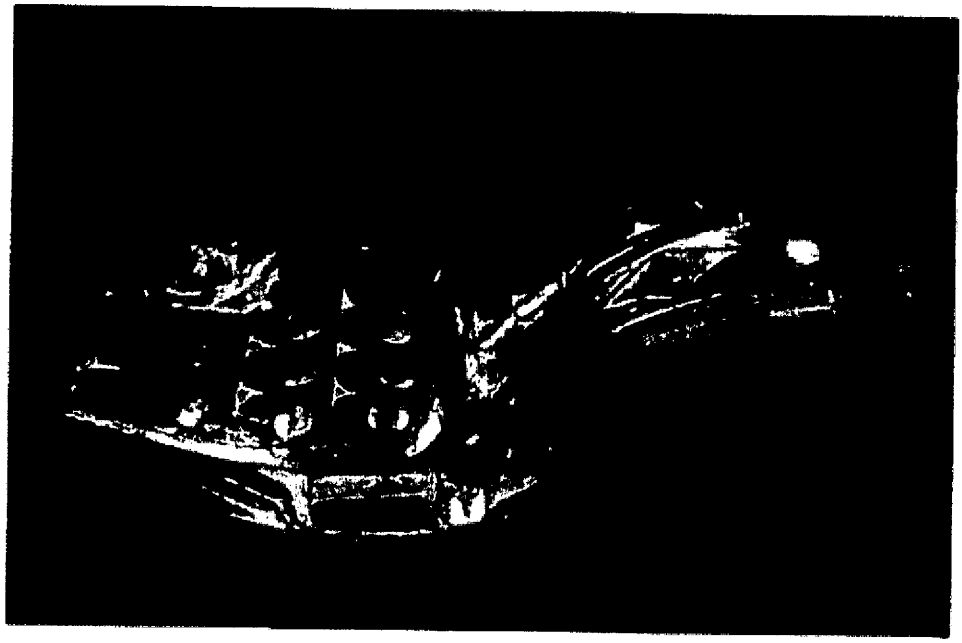
Larry LeDoux
Commissioner

Attachment

cc: Bruce Kato, Alaska State Museum

Assessment of a Repatriation Claim for the *Yéil Aan Kaawu Naa s'aaxw*, Leader of All Ravens Hat (II-B-809) in the Collection of the Alaska State Museum, Filed on Behalf of the Teeyhíttaan clan of Wrangell by the Sealaska Corporation, August 13, 2008

Alaska State Museum
395 Whittier Street
Juneau AK 99801-1718
March 3, 2009



The *Yéil Aan Kaawu Naa s'aaxw* (Leader of All Ravens Hat), identified by the Alaska State Museum catalog number II-B-809, is the subject of a claim presented to the museum by the Sealaska Corporation, dated August 13, 2008, under the terms of the Native American Graves Protection and Repatriation Act. The claim, authorized by leader of the Teeyhíttaan Clan of Wrangell, identifies the hat as an Object of Cultural Patrimony and Sacred Object, and requests repatriation under the terms of the act.

HISTORY

The repatriation claim submitted by the Sealaska Corporation documents the Teeyhíttaan clan's history of the hat, which corresponds to information in museum files obtained from William L. Paul, former clan custodian of the hat, who first loaned and then donated the hat on behalf of his clan. The accounts in the museum, however, add some additional historical details not included in the claim. Frances Paul, wife of William Paul, made

several drawings of the hat which are labeled with notes about the history of the hat. One of the descriptions reads:

> Crest hat of the Tee-hit-ton tribe of Wrangell, Raven Phratry. It remains the property of the original owners, is now on loan to the Alaska Historical Museum. It is ornamented with native copper disks and abalone shell and has seven tufts of hair from slaves either freed or killed at the hat's dedication feast. It replaces an earlier hat badly burned in a fire. This hat is named "In place of Town Prince Raven Hat." The first hat was originally owned by a Tsimshian chief who killed a Tee-hit-ton chief while hunting on Prince of Wales Island on property owned by the Tee-hit-ton tribe. In an attempt to settle the trouble peacefully the Tsimshian chief placed his ceremonial hat on a raft with eagle down and floated it up with the tide to the Tee-hit-tons at the upper lake. The Tee-hit-ton understood the significance of the act and accepted it as a peace offering (F. Paul n.d.).

The other description states:

> This hat is named Yehlh-An-kow-oo, or Chief-of-all-Ravens. This particular one is about 70 years old ["1939"]. It is a copy of a former one which was partially destroyed by fire. The original one had abalone shell where this one has copper discs. It was a great disgrace that the hat should have been destroyed, so the fact was hidden and a new [one] was carved in secret by a nephew of Gush, the head-chief. When it was finished a feast was given and the substitution made. Ordinarily such work was done by a member of the opposite phratry, but due to the wish for secrecy, a member of their own family did the carving (F. Paul ca 1939).

Another reference to the hat, written by William Paul himself, states that the first hat, the one destroyed by fire, was named "Ahn-yuddy-yeil-gowx", the replacement hat as carved by Nah-gun-nah-aht, and the new hat was named "Uh-ity-gowx", meaning "in Place of." The hair attached to the head of the raven was obtained from manumitted slaves (presumably released when the hat was dedicated and bought out as clan at.óow) (Paul 1995:40).

As is typical of Tlingit clans, the Teeyhíttaan appointed a custodian (also referred to as a caretaker or steward) to oversee the preservation and use of clan *at.óow* (communally-owned historical artifacts and crest objects). The responsibility of custodianship usually falls to the *hit s'aati* ("house master"), the head of the clan house, and their duties include guarding against the loss or sale of the *at.óow* for personal gain, and ensuring proper use and protocol of the *at.óow* during ceremonies. A custodian's final duty is to identify and train a qualified and responsible successor (Lukaax̲.adi Clan 1986:19, Dauenhauer and Dauenhauer 1994:23).

In the 20th century, the Teeyhíttaan clan selected as caretaker a clan member who rose to prominence in government and tribal affairs: William L. Paul (1885-1977). Paul was a

seminal figure in the Alaska Native civil rights movement, and as a mediator between the Tlingit tribe and the government. In 1920, Paul became the first Native admitted to practice law in Alaska, and for the next two decades, became one the most important leaders of the Alaska Native Brotherhood—the oldest Native American civil rights organization in the United States. Paul was also the first Alaska Native elected to the Territorial House of Representatives, and served two terms (1925 and 1927).

With the help of his brother Louis, he "molded the ANB into a potent political and social force, a focal point for Alaska Native concerns and interests, and an effective body advocating and securing recognition of Alaska Native equality and rights" (Haycox 1994:502). Through the ANB, the Paul brothers helped achieve Native voting rights, successfully arguing against rules that prohibited Natives from voting unless they proved they were leading "a civilized life." In the 1930s, they organized the Native vote to counter, among other things, the ruinous commercial exploitation of salmon by powerful commercial interests. William Paul helped initiate the land claims suit against the federal government, and fought for the rights of clans to enter into the suit in a case settled by the US Supreme Court, *Tee-Hit-Ton v. US* (1959). In the later years of his life, William continued activity with the ANB into the 1970s, and devoted time to writing a book on Tlingit history (Paul 1995) and an article on the famous Tlingit totem pole with a likeness of Abraham Lincoln (Paul 1971). Paul "remained an important and respected Native leader throughout the post-war period and the land claims struggle in Alaska....[and] ended his life widely honored and revered, a modern tribal elder among his people, and a major figure in modern Alaska history" (ibid 505).

William Paul with the Leader of All Ravens Hat, circa 1945, William Paul collection

By around 1942, Paul assumed the role of a leader of the Teeyhittaan clan and custodian of the hat. According to Paul (1995:170), he was formally introduced into that position by Julia Yowdat (Kuh-daysh-kuh-hadt), a Naa Tlaa (clan mother). The setting was atypical: on the floor of the Wrangell courthouse during a hearing of *Tee-hit-ton v US* . Paul recounted that the incident "...was not understood by the U.S. Attorney, but that [it] marked the passing of one 'chief' and the 'elevation of another'" Yowdat, described by Paul as "a sort of 'mother-in-Israel'," was a powerful force in the clan who had helped install William Paul's predecessor, a man called Gush-X, who replaced his uncle in the position of leader around 1882 (Paul 1995:170).

The hat came into the possession of the Alaska Historical Library and Museum (now Alaska State Museum) in 1947 as a loan from William L. Paul. A letter to the file, signed by museum assistant Josephine White (1947), reads:

> William L. Paul loaned to the Territorial Museum an old Tee-hit-ton Crest, raven, copper disks and abalone eyes. This hat belonged to William Paul's ancestors and has been handed down to him, who is now the Custodian of the Crest hat. He was given a receipt for the hat with the assurance that the hat would have the same care in the museum as is given to other exhibits, and that it will be returned to him on application.

It is likely that William Paul was motivated to place the hat at the museum due to the risk of loss or damage due to fire. At the time, towns in Alaska were filled with old, wooden-framed buildings heated by wood or coal. Fire had already consumed the original hat, and it was Paul's responsibility to protect the replacement hat from a similar fate. In 1939, the hat was miraculously spared when the Paul family home in the Goldstein Apartments burned to the ground. In 1944, the Tlingit town of Hoonah was destroyed, causing the loss of many sacred clan artifacts. The museum was located in the Federal and Territorial building, a modern office building of steel and concrete that was likely the most secure building in Juneau at that time. It is clear that William Paul regarded the museum as a safe and secure repository for the hat.

Aftermath of the Hoonah fire, 1944. Photo by Trevor Davis. Alaska State Library PCA 97-867

While the hat was physically relocated to the museum, Paul ensured that his clan would maintain access to it in the future. Thinking into the future, he wanted to make sure that

the museum had instructions as to who would succeed him as a custodian. In 1954, he wrote to Richard Rinehart Sr., a clan member, stating that he would "...make some worthy member of the tribe its custodian (I think you are the one to keep our name respectable and provide the formal leadership)—I am not sure if I have the right son of Jessie's in mind, but you will know if you are worthy." (William Paul 1954:1)

However, in 1962, Paul added a notation to the museum's catalog card for the hat, stating that "...William Paul Sr. directed that his son, Frederick Paul of 6810 31 N.E. Seattle, Washington be listed as custodian of the hat after the death of William Paul Sr." Under normal conditions, custodians were selected from the clan membership—and Fred Paul was not of the Teeyhíttaan clan. Perhaps, due to declining clan membership or their relative youth, Paul felt that no clan member at the time could meet the responsibility required of a clan custodian. Succession was and continues to be a problem in many cases for custodians of *at.óow*, and sometimes the only solutions have no precedent in Tlingit traditional law, which assumes stability and not assimilation.

Within two years, William Paul decided that Richard Rinehart Sr. had proven himself a suitable successor from within his clan—and his selection would be more in keeping with traditional practice. He wrote a memo to the museum stating that "Upon the death of William Paul Sr, the crest hat "Yethl-Ankow-oo" of the Tee-hit-ton Clan shall become the property of Richard Rinehart, whose Tlingit name is "Ya-Koog" of Wrangell, Alaska" (William Paul 1964). This change indicates that Richard Reinhart Sr., a clan member in good standing, had by then proven himself worthy of appointment. Frances Paul DeGermain, daughter of William Paul, later wrote about her father's selection of Mr. Reinhart:

> My brother Fred was very upset, he had expected to inherit the hat. But William didn't think that was right although Fred was his heir white man style. But sons do not inherit Indian style, nephews do. Besides which, Fred was Nahn-ya-ahyi, not Tee-hit-ton (DeGermain 1997).

In 1969, William Paul contacted the museum and asked to change the loan to a gift to the museum. In a letter to Mr. and Mrs. Paul, Alaska Governor Keith Miller acknowledged the gift:

> I am deeply pleased that this hat, one of the most outstanding pieces in the Museum collection, will now as a result of your donation remain as a permanent addition to the historical and cultural treasures which so eloquently tell the story of Alaska. (Miller 1969).

William Paul signed the hat over to the museum using the standard donation form, reading: "Conditions regarding Gifts: It is hereby agreed that the above items are donated to the Alaska State Museum as free and unrestricted gifts, offered without limiting conditions unless specifically stated herein." On the museum's copy of this form, William Paul lined out "offered without limiting conditions unless specifically stated

herein" and wrote in "except as noted"—referring to two conditions that he added to form under "Description of Objects."

One condition was that the museum would "....make every effort to have woven at least three rings of spruce root basketry to be placed on the hat (within a reasonable time all things considered" (this was completed in 1973 when the museum commissioned Ida Kadashan of Hoonah to weave a set of four rings to replace the missing original). The other condition stated that:

> ...the current custodian's name shall be displayed with the hat; at this time he is William Lewis Paul, whose Tlingit names are Skquindy and Ka-xwan (Jack Frost). The next custodian will be Richard Rinehart, Tlingit name Yuh-koog', if he survives me, otherwise a male person to be designated.

William Paul with the Leader of All Ravens Hat at the museum, 1969. Museum photo.

DeGermain (1977), again recounting her father's actions, wrote:

> You see, my Father, William Louis [sic] Paul, deposited the hat in the Alaska State Museum, at first, only on loan. Then, as he got older he worried about who should have it, who was left, who had the powers of leadership, who had character, who could be trusted to cherish the hat, and he decided to make it a gift, which he did in a letter.

In the 1960s and 70s, art dealers from the lower 48 states frequently traveled through Alaska Native villages and offered to pay cash for artifacts. This resulted in many pieces of clan-owned *at.óow* being sold for personal gain by individuals who had access to the

objects but who lacked the authority under traditional law to sell. William Paul was undoubtedly aware of the monetary value of the hat within the art market, and likely became concerned that if the clan continued to suffer from low numbers and inactivity in cultural affairs, sooner or later the hat would be sold. By donating that hat to the museum, Paul knew that it would be protected from damage, deterioration, as well as improper sale. Given Mr. Paul's longstanding knowledge of tradition and support of the clan structure, it seems understandable that he would appoint a clan custodian caretaker to ensure the clan would have some knowledge of and access to the hat.

With the death of William Paul in 1977, Richard Rinehart Sr. became the custodian of record for the hat. There is no record of contact between the museum and Rinehart until about 1992, when he stopped by the museum and introduced himself as the hat's custodian. In 1996, he left a note at the museum stating that his uncle William Paul had left him in charge of the hat, and further, in a letter in his possession, his uncle appointed him "the head and spokesperson for the Teeyhittaan tribe after he is gone, and also in charge of the crest hat" (Rinehart Sr. 1996:1). In reply to Rinehart Sr.'s 1996 note, Steve Henrikson, Curator of Collections, stated that the museum recognized Rinehart as caretaker, and that the museum wanted to formalize an agreement with the clan that outlined the mechanisms whereby authorized clan members could take the hat out of the museum for ceremonial use. (Henrikson 1996:1-2)

In 1997, Richard Rinehart Sr., in a letter published in the *Sealaska Shareholder* newsletter, wrote that as caretaker of the hat he was struggling to find a successor custodian: "There are very few Teeyhíttaans alive today, and I don't know any Teeyhíttaan with the qualities of leadership, knowledge of tribal and clan history, and responsibility to take over custodianship when I am gone"(Rinehart Sr. 1997:2). These are some of the same problems faced by William Paul in identifying a successor twenty five years earlier—and Mr. Rinehart's decision mirrors Paul's initial response—to appoint his son, a member of another clan, as caretaker of the Teeyhíttaan hat. Rinehart reasons that his son, Richard Rinehart Jr., is from a clan that is ancestral to the Teeyhíttaan, and that he is very knowledgeable in Tlingit history and customs, and a good and responsible leader.

As it is generally accepted that under traditional Tlingit custom, a caretaker must be a member of the clan that owns the artifact, this public announcement was met with some opposition from within the clan. Responding to the notice of Rinehart's appointment, Frances Paul DeGermain wrote to Richard Rinehart Jr. stating that because he was not Teeyhíttaan, he had no right to serve as caretaker (DeGermain 1997:1). Rinehart Jr. replied that he would "try to explain to you how the old ways have not, could not and should not be used in this case, and I am going to prove to you that under the new ways what my father did was and is proper." (Reinhart Jr. 1997:1). Rinehart continued:

> When he [William Paul Sr.] was getting up in his years he needed to find a successor custodian, and he chose my father—his tribal nephew. He did not pass along the title of chief to my father, nor did they pass custodianship by way of a potlatch. If things had been done in the old

> ways there would have been a potlatch, a new ring would have been added to the hat, and many important leaders would have been invited to the ceremony to witness the succession. So you see, although Charlie Yakook was Wm. L. Paul's uncle, and Mr. Paul was my father's tribal uncle the old customs still had not been followed in the old ways of succession.
>
> In the old ways, titles and custodianship were passed from uncles to their sister's son. My father's sisters have no sons. He has no tribal nephews to bestow custodianship of the Teey-Hi't-Taan clan crest hat. He doesn't even know of any Teey-Hi't-Taan that were either born or raised in Wrangell, where he has lived his whole life, who he can pass on the custodianship. Unfortunately, because of the small pox epidemic there are very few Teey-Hi't-Taan alive today....Therefore, as you can see the old ways of succession could not be followed (ibid 1997:1).

Rinehart further explained:

> Now I want to tell you why these old ways should not be followed today. My father has no tribal nephews. If there is no custodian for the Teey-Hi't-Taan clan crest hat, Ye'il-Aanka'awu, the Alaska State museum will have full control of the hat. The clan, the Stikine quon and the Tlingit people will lose control of another part of their heritage. The atu' [*at.óow*] of the Teey-Ht't-Taan clan could be lost forever. (ibid 1997:2)

In the same correspondence, Rinehart Jr. states that he intends to accept the position of caretaker:

> Because there is no one we know of who can meet these requirements, and because we believe it would be a big mistake to let the hat go on without an appointed custodian my father passed the right on to me, and for those same reasons I accepted the responsibility. I will be the next custodian of the hat. I am not nor do I claim to be the 'chief' of the Teey-Hi't-Taan....as you know the old ways are gone forever. I will bear this responsibility until a worthier custodian comes along, or until I appoint a successor custodian some day (ibid 1997:3).

In 2003, Richard Rinehart Sr. wrote to the Alaska State Museum stating that the hat was a loan to the museum, and that as the hat was needed for a naming ceremony in Wrangell, he was releasing the museum from any responsibility for the hat, and asked the museum to release it to Albert Reinhart. Steve Henrikson, Curator of Collections, informed Mr. Reinhart that while the hat was initially loaned to the museum in 1947, it had been donated to the museum in 1969. Mr. Henrikson acknowledged that Mr. Reinhart was named on the donation form as the next custodian, but the form did not outline in detail the responsibilities or authorities of either party. Henrikson invited Mr. Rinehart to work with the museum to clarify the relationship.

Since 1984, the museum, in partnership with several Tlingit tribes and the Kiks.ádi clan, has pioneered a ceremonial use program designed specifically for Tlingit *at.óow* under the ownership of the museum. The program features a procedure for clans to safely and securely remove their *at.óow* from the museum when needed for traditional ceremonies. When the clan is not using the *at.óow*, the objects remain in the museum. The program has been employed successfully for twenty five years, and has been refined over time. The museum is confident that such a mechanism could be used in the case of the Teeyhíttaan hat in a way that would seem to fulfill William Paul's original intent.

In 2004, completion of a new museum in Wrangell offered a safe place for the hat to be displayed and accessed by Richard Rinehart Sr. At its own expense, the Alaska State Museum staff removed the hat from display in Juneau and transported it by courier to Wrangell, and made arrangements to keep the hat on loan to the Wrangell Museum, where it has been ever since. Because the hat was moved to Wrangell, it was available for use by Mr. Rinehart and his clan at the dedication of the Wrangell Museum in 2004, and again in 2008 for a ceremony. In this way, honors what seems to be the intent of Mr. Paul's donation—that the museum protect and preserve the hat, while clan maintains ceremonial access to it.

Richard Rinehart Sr. (far right), wearing the Leader of All Ravens hat, stands with members of the Kiks.ádi clan at a ceremony in Wrangell, November 2008. The frog hat (middle) is part of the museum's ceremonial use program. Photo by S. Henrikson

In May 2007, Rosita Worl, President of the Sealaska Heritage Institute, inquired as to the status of Mr. Rinehart's request for the return of the loaned hat. Bruce Kato, Chief Curator, explained that the hat was not loaned, but had been donated in 1969 and listed since that time as property of the State of Alaska. While the museum could not release the hat to Mr. Rinehart (barring new information or a successful repatriation claim), the museum invited Mr. Rinehart and the clan to negotiate with the museum to work out the formal terms of the relationship concerning the preservation and ceremonial use of the hat. In August 2008, the Alaska State Museum received a claim for the hat from the Sealaska Corporation under the terms of the Native American Graves Protection and Repatriation Act of 1990.

ISSUES AND DISCUSSION:

Affiliation:
Federally recognized Indian Tribes or "other organized groups" may file claims under NAGPRA. While the Sealaska Corporation and other ANCSA corporations are not federally recognized Indian tribes, the NAGPRA regulations promulgated by the National Park Service makes Alaska Native corporations eligible to file claims. In this case, the Sealaska Corporation is acting on behalf of the Teeyhíttaan clan of Wrangell, as authorized by Richard Rinehart Sr., a clan leader who was named custodian of the hat by William L. Paul. Thus, the preponderance of evidence demonstrates that the object is culturally affiliated with the Teeyhíttaan clan as represented by the Sealaska Corporation.

NAGPRA Category:
The hat is claimed as an "Object of Cultural Patrimony" and "Sacred Object" as defined by NAGPRA.

Object of Cultural Patrimony: The law requires that a preponderance of evidence shows the object to have "..ongoing historical, traditional, or cultural importance central.." to the Native American group or culture. In other words, the object must have been of central importance in the past as well as in the present. Secondly, the object must be communally owned—not the property of an individual Native American that could be alienated, appropriated, or conveyed by any individual tribal member. Finally, the evidence must show that the object was considered inalienable by the group at the time it was alienated.

Tlingit clans maintain groups of objects called *at.óow* that generally speaking would fall within the definition of "Object of Cultural Patrimony." *At.óow* ("an owned or purchased thing") may include songs, stories, geographical features, names, ancestors, designs, spirits, and a variety of other things. *At.óow* may include both the tangible and intangible—an artifact, its design, and history. Through purchase by an ancestor, the object becomes owned by his or her descendants. The purchase in this case may come as

a result of sale, trade, collateral, peacemaking, through personal action or the loss of life (Dauenhauer and Dauenhauer 1990:14-15). While *at.óow* may include both tangible and intangible, NAGPRA is concerned primarily with human remains and tangible objects.

Several sources describe the attributes of *at.óow*, including Dauenhauer and Dauenhauer (1994), Kan (1989), de Laguna (1972), Littlefield and Littlefield (1980), Lukaax̲.ádi Clan (1986:14-15), and Worl (1998). The 1995 Statute Code of the Central Council of Tlingit and Haida Indian Tribes of Alaska (Chapter 3, Section 11.03.014) summarized the main elements of *at.óow* as criteria in determining if an object is communal property: *at.óow* must be a) made by the opposite moiety: b) publicly validated and named ("brought out") before members of the opposite moiety; and c) paid for by sacrifice or through a ceremonial payment to those witnessing the validation. *At.óow* may be physically indistinguishable from property owned by individuals, but only *at.óow* would have ongoing historical significance that would be known to clan members.

Haa shagóon is a reference to past generations of ancestors who owned the *at.óow*. *At.óow* that was owned by an ancestor (*shagóon*) may also be referred to as *shagóon*—meaning that the ancestors or their spirits are embodied by the *at.óow* (Dauenhauer and Dauenhauer 1990:19). The traditional categories of *at.óow* and *shagóon* in Tlingit society mirror the NAGPRA category of are the closely aligned to the NAGPRA category of "Object of Cultural Patrimony."

The claim presents evidence that the The *Yéil Aan K̲aawu Naa s'aaxw* (Leader of All Ravens Hat) falls under the NAGPRA categories of "Object of Cultural Patrimony" and "Sacred Object," in part by showing it is considered *at.óow* and *haa shagóon* by the Teeyhittaan clan. The evidence shows that the hat exhibits attributes of *at.óow* and *shagóon*: traditional stories, songs, or personal names referring to the object; manufacture by the opposite moiety (or acquisition through war, trade, payment, or diplomacy from another clan or tribe); a formal name for the object; history of its dedication before members of the opposite moiety (or payment through death or sacrifice by a clan member); replacement of an older version of the object; and a history of being cared for by a clan or house leader on behalf of the group.

The hat seems to exhibit the major features of *at.óow* with one possible and important exception. One account of the hat's history (Frances Paul: ca 1939) states that the present version of the hat was made around 1870 by a member of the Teeyhíttaan clan in order to conceal that the original hat was partially destroyed by fire. Traditionally, *at.óow* must be commissioned of the opposite moiety in order for it to be properly paid for and validated (Lukaax̲.adi Clan 1986:14-15). While the original hat was given by the Tsimshian tribe as restitution for a wrongful debt, the manufacture of later replicas made to replace the damaged original would have likely been done by the opposite moiety. As anthropologist Frederica de Laguna (1972:457-458) put it: "To have any value at all for expressing rank, a crest object had to be manufactured by a man's opposite...In addition, to validate the worth of this crest item, it had to be displayed at a potlatch in front of those opposites who manufactured it." At the time of manufacture (ca 1870), this requirement was likely mandatory, but by the mid-1900s, manufacture of *at.óow* by the owning clan was

becoming more acceptable under certain circumstances (Dauenhauer and Dauenhauer 1994:17). Thus, due to culture change and the elasticity of Tlingit property law, the hat may have been acceptable as *at.óow* by the Tlingit culture by the time of its alienation.

Sacred Object: The claim also presents evidence that the hat is needed by a Native American religious leader for sacred ceremonies such as the *k̲oo.éex* (memorial feast), and as a result is considered a Sacred Object under NAGPRA. This information is consistent with information contained in museum files, published sources, historical evidence and oral tradition. Thus, the preponderance of evidence shows that the hat is an object of cultural patrimony and sacred object under the terms of NAGPRA.

Right of Possession:
NAGPRA section 7(c) states "If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony....and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects."

Alienation of At.óow: Generally, NAGPRA describes cultural patrimony as inalienable by any individual who lacks the authority to alienate. Determining if a museum has a "right of possession" for an object under NAGPRA hinges on whether the person or persons who alienated the object had the authority to do so (Echo-Hawk 2002:124-5).

This claim contends that the museum cannot have a right of possession to the hat because Tlingit property law does not recognize the alienation of *at.óow* outside the Tlingit culture. The Sealaska Heritage Institute's Council of Traditional Scholars feels that "alienation" never existed in the Tlingit culture except in cases where *at.óow* was transferred from one clan to another to settle legal disputes or pay a debt, and that no other removal of clan property was possible. The document attached to the claim, entitled "Tlingit Clan Trust Property Laws and Dispute Resolution" also states that ownership of clan property can not be transferred outside of Tlingit society.

However, historical sources and case law clearly shows that Tlingit clan property of central importance, including *at.óow,* may be alienated outside the clan for many reasons, usually by voluntary consent but sometimes involuntarily through warfare. Property could also be alienated through sale, dept payment, compensation for injury or death, bride price, war trophy or peace settlement. The property might pass between clans, moieties, or even tribes (De Laguna 1990:213).

One clan, the Lukaax̲.ádi, has formally codified their standards and procedures relating to alienation of at.óow:

> "Transfer of clan property by sale has been covertly practiced by self-interested Tlingits since European contact. This practice is not openly discussed among clan elders or hits'aati because it is commonly understood to be in direct violation of Tlingit property law. There are special circumstances where transfer or sale may legitimately occur. It must be undertaken for the purposes of non-monetary gain for any of the members of the house group or clan, must be decided upon publicly, and the decision must involve the elders of the clan. An example of such a sale is expressed in the decision of a house group to sell one piece of clan property in order to raise funds to restore a clan house. Covert or self-interested sale is in direct violation of Tlingit property law." (Lukaax̲.adi Clan 1986:17)

Further, the clan states that all forms of transfer require three essential elements:

> 1. The transfer must be made in public. 2. The decision for the transfer involves the elders or hits'aati of the house groups of a given clan who claim ownership of the property; and 3. The transfer is only honorable if it is not undertaken for the purpose of monetary gain for any member(s) of the house group or its mother clan." (Lukaax̲.ádi Clan 1986:15-16)

Generally, the alienation of *at.óow* by a clan leader to museums outside the Tlingit culture is legal under tribal law. The Central Council of Tlingit and Haida Indian Tribes of Alaska has formalized various statutes and resolutions pertaining to some of the issues raised by this claim (CCTHITA 1995, and 2001). One resolution states that, referring to the removal of *at.óow* "with the exception of those clan objects which are held in museums with the express permission of clan leaders and trustees acting on behalf of their clan and house members, all such removals were illegal" (CCTHIA Feb 14, 2001:14).

Determining the legal standards in place within the community and clan at the time an object was separated from the group is important in deciding if an object was properly alienated. In tribal societies, writes anthropologist Bronislaw Malinowski (1961:xxlviii):

> "...we find everywhere that rules of behavior and principles of law or call it custom if you like cannot be rigid, since they act rather as elastic forces of which the tension decreases or increases; they cannot be absolute since they have always qualifications codicils and riders; they cannot be automatic, since non-compliance with one rule can usually be justified by another rule of tribal law."

After trade with non-Natives became prevalent among the Tlingit, a tremendous quantity of material was exchanged, including many items that were likely considered *at.óow*. There is no historical evidence that alienation of *at.óow* to non-Natives was not recognized by the Tlingit culture. The huge volume of material traded or sold during the

20th century suggests that the law was not uniformly followed or enforced across Tlingit country. Each clan governed its own affairs and imposed their own standards and customs that while similar to those of other clans often showed variability across clan, village, and regional lines.

Tlingit property law has, in the 19th and 20th century, exhibited a significant degree of elasticity that accelerated over time as Tlingit culture underwent significant changes due to the adoption of many non-Native concepts and practices. In the later 20th century, attempts have been made to solidify code and statute to protect Tlingit artifacts as their market value increased. Some clans may have adopted unanimous consent as a higher standard to protect *at.óow* from being removed. Also, the Chilkat Indian Village Artifacts Ordinance requires that the village must approve any sale of artifacts by Klukwan clans—this statute was upheld in tribal court in the case of *Chilkat Indian Tribe v. Johnson* (Chilkat Indian Village 1976). Such recent measures, while unprecedented under traditional Tlingit property law, have proven effective in stemming the sale of cultural objects—but they do not completely prohibit their transfer to outsiders.

Decisions by Council, Consensus, or Unanimous Consent: The historical literature refers to decision-making by councils made up of leaders and "high caste" members. Clan leaders were not powerless, and their influence over the council depended on wealth, status, ability, and personality. In the most detailed historical account, Emmons (1991:39-40), describes the relationship between the clan leader and clan councils":

> Councils were not assembled at fixed times, but were called by the chiefs when the occasion required. They were presided over by him, and were attended by the subchiefs and other household heads in his clan. After discussing the subject and agreeing upon a course to pursue, a general meeting of all the adult males of the clan was called and the proposition stated. Every person present had an equal right to speak, and the sentiment of the majority was followed, but generally the prior decision of the house heads was accepted.

Emmons (1991:40) states that only adult males took part in decisions, and Litke (1987:92) agrees that "Women are not admitted to any political gatherings; all plans and all arrangements of this kind are carefully concealed from them." This is also confirmed by Kamenskii (1985:34):

> To elect a clan *taion* all the elders of the village [clan?] gather for a council. Important councils among the Indians always take place in the dead of night. In these instances, noise and publicity are avoided. Neither women nor teenagers are allowed to attend.

The duties of the clan council included naming new leaders (Kamenskii 1985:34), settling internal disputes (Oberg 1973:43), and deciding the fate of slaves (Veniaminov 1984:423), protocols for using *at.óow* (Dauenhauer and Dauenhauer 194:23), and other matters of importance (Kan 1989:84).

Historical and anthropological sources also show that clan leaders represented their clans in trade, diplomacy, and other matters of importance. While the destruction or alienation of *at.óow* was among the most important matters a clan faced, there is no evidence from the early 20th century or before that this required the unanimous approval of the group members. There is little historical evidence describing the exact process in detail, but the absence of evidence cannot serve as evidence that Tlingit law and custom in place at that moment was not followed.

Tlingit leader William Wells' account of an 1877 potlatch in Sitka provides a rare account of the ceremonial destruction of a *tin.aa* (copper plate): "Two men took up the copper plate and started rubbing it on the foreheads of those receiving the honor. Altogether there were twenty of them standing in a row....Then the chief ordered it dropped into the deep sea....This is a sign of great respect and high honor" (Wells 1969:63). The leader ordered the destruction of a valuable piece of clan property, and it is assumed that the leader was following the consensus the clan council—though no evidence of his compliance or noncompliance with Tlingit law is available.

Together, the historical and anthropological sources offer a rational model of decision-making among Tlingit clans: clan and house leaders had limited authority and could not make unilateral decisions on important matters without gaining consent. Leaders met with councils (made up of elders, house leaders and/or heads of households) to discuss issues and make decisions. The decision was announced to male clan members at large, and they were free to speak on the matter, "and the sentiment of the majority was followed, but generally the prior decision of the house heads was accepted" (Emmons 1991:40). Emmons (1991:22) also states that within the clan, an "...act of one is accepted by all...", and Dauenhauer and Dauenhauer (1994:22) agrees that "Once the decision is reached, all clan members are expected to be supportive..."

The claim asserts that "Property cannot be transferred, conveyed, or alienated unless all members of a clan agree. If any clan member should refuse to relinquish title to a clan object, then he or she cannot be deprived of his or her interest by an act of others, and the clan is required to maintain its ownership." There is no historical evidence showing that clan members had an equal voice in decisions, that unanimous approval of all members was required, or that this standard applied at the time the hat was alienated.

Clan and house leaders—then and now—represent their clans in negotiations (CCTHITA 2001:11). The Sealaska Heritage Foundation, Central Council of Tlingit and Haida Indian Tribes of Alaska, and village tribal councils often seek the counsel and participation of clan leaders as clan representatives. In come cases, clan leaders have signed contracts with governments and tribes as representatives of their clans. NAGPRA requires museums to consult with federally recognized tribes, but even prior to passage of the statute in 1990, the Alaska State Museum routinely worked with clan leaders whenever possible when clan-owned materials were being considered for acquisition.

Following the lead of the Native organizations, the museum recognizes the clan leader (who is usually custodian of *at.óow*) as a group representative. It is not possible or appropriate for the museum to directly observe clan business to ensure that leaders comply with traditional laws and codes of conduct, but there is a presumption of regularity unless clan members with some authority make overt efforts to halt a transaction or replace or otherwise punish their leaders. Today, as in the past, documentation of clan business is not accessible to outside clans or institutions, so detecting evidence of impropriety is next to impossible unless clan members step forward.

Moreover, the donation of this hat may be seen as a gift from the Clan to a sovereign, and when the gift was made, it was acknowledged by a letter to the Clan from Governor Keith Miller (Miller 1969). A review of the historical and anthropological record demonstrates that Tlingit culture permitted the alienation of *at.óow* to other sovereigns or among Clans. Too, given the documented existences of Tlingit class structure, there is little evidence that clan leaders of the nobility had to gain the unanimous consent of all clan members before making gifts to a sovereign or in the conduct of international diplomacy. The payment or exchange of *at.óow* between and among clans (as represented by their leaders), has been a part of Tlingit culture since time immemorial. The practice of giving of opulent gifts to establish and maintain diplomatic and trade relations extended to non-Natives beginning in the 1780s, as shown in the historical record. European officials, scientists, and traders carried gifts specifically for presentation to Alaska Native leaders. These gifts—garments, hats, medals, and other items—were given openly at a public event and subsequently worn and prominently displayed by the leaders (in some cases for many years after). Fine gifts of Native manufacture were given in return to the non-Native officials, and ultimately returned to the mother country and housed in the national museums.

Authority of William Paul to Alienate At.óow: The claim states that William Paul, clan leader and custodian of the hat "...could be faulted for acting without the involvement of the clan, in his own way he was trying to preserve the clan's *at.óow* by donating it to the museum....The evidence indicates that he acted on his own and did not do this with the knowledge and consent of the clan." Evidence that Paul acted alone, without the clan's knowledge or consent—is not provided in the claim. There no evidence that the clan punished Paul for alienating the object or that clan members contacted the museum to protest or halt the donation.

Some contemporary sources state that for an alienation to be considered legal by traditional Tlingit standards, *all* members of the group (house or clan) must unanimously agree, or that only that adult males and high-ranking females must agree. Some sources state that title to property is held in trust by the *Naa Shaadeihâni* (Clan Head) and/or the *Hit s'aatí* (Housemaster), and that the leader acts as a trustee, property administrator or custodian on behalf of group members and cannot make independent decisions to dispose or alienate clan property (Goldschmidt and Haas 1946; Olson 1967). Many historical sources confirm that the power of leaders was limited (but not entirely absent), and some

sources characterize decision-making as governing through consent (Emmons 1991:39), but not necessary by unanimous consent.

The authority of leaders varied over time and according to his status and personality. Emmons (1991:39) states that in traditional times "...the chief exercised more authority than he did after the arrival of Europeans." Emmons (1991:27) states that, "While the house chief was accorded much respect and represented the communal body at all functions, his authority was very limited. His power depended more upon his personality and strength of character than on his own position." Krause (1956:77) agrees that:

> The power of the chief is very limited and the direction which it takes depends on the personality of the individual. Only in cooperative undertakings and in council is he a leader; in everything else every family head is entirely free to do anything which is not counter to custom and which does not infringe on the rights of others.

Kan (1989:83) states that:

> The wealth and status of a leader added to his authority. A social divide existed between the nobility and common members of a clan: clan and house leaders were from the noble class and wielded more influence in clan decisions.

At Sitka in 1827, Litke (1987:85) wrote that "the more descendants [the chief] has, the richer he is, the more slaves he owns and the more consideration he is accorded." Oberg (1973:41) states that:

> This clan solidarity is more apparent than real, for the element of rank is so strong that out of it crystallizes definite classes, the *anyeti* or noble clan and the *xetaxua* or commoner class....These class lines fan across clan and phratry and form a unit probably stronger than the clan itself...A member of the *anyeti* often ignores a clansman of low rank and does not speak of him as a brother, but as a man of such-and-such house.

Oberg (1934:146) adds that some leaders used their power to decide legal issues to their advantage at the expense of lower-ranking clan members.

Emmons and other sources point out that while the leader may have limited powers, he represented his group in ceremonies, trading, and in negotiations with other clans as well as with non-Natives (Kan 1989:84, Emmons 1991:39). This responsibility extends to recent times: many clans are regularly represented by their leaders in meetings and ceremonies, and the leaders may sign agreements on behalf of their clans with outside organizations. The *Lukaax.adi* clan trust (1986:19), for example, states that the housemaster is "...bestowed with the honor and responsibility of care of the clan property of a house group, and who represented the house group on formal occasions (ritual, political, or economic)."

Certainly Tlingit leaders would discuss matters of importance with others in the group, but, prior to the mid 20th century, no sources confirm that important decisions must have unanimous consent, or that all members of the group, regardless of their social position, have an equal voice in decision making. Whatever process was used, the group leader presided and served as spokesman, following an example cited in Oberg (1973:81):

> When the old house threatened to become uninhabitable, the old men of the house began to talk about building a new one. The matter was later fully discussed, not only by the people of the Frog house, but by the whole clan division of the village. When it was finally agreed that the resources of the Frog house people were sufficient to warrant a new house, the *yitsati* came out through the ceremonial opening in the screen before the back wall and announced to the gathered clansmen that a new house was to be built.

Given the rapid pace of culture change in the 20th century, caretakers may not have been able to strictly follow the traditional procedures when new conditions arose that went beyond what was codified in traditional laws and practices. For example, clan leaders may not have consulted every house leader or member if they were not knowledgeable in Tlingit traditions, were very young, few in number, or living far from Alaska. Using tradition as a starting point, leaders likely relied on reason and judgment to find new solutions as demanded by new circumstances. Since these new measures address new conditions beyond the realm of traditional laws, they are not expressly legal or illegal. Over time, however, they formed a body of Tlingit common law.

Some past clan leaders have unilaterally decided to be buried with the object to prevent clan members from fighting over the object, or if no one in the clan was considered worthy enough to inherit custodianship (de Laguna 1972:460, *State of Alaska v. George Jim et al.* case). Another possible solution to this dilemma was to transfer the object to a museum, to ensure its physical preservation and access by the public. In some cases, clan leaders sold the objects, and the funds generated returned to their clans. Wealth accumulated through the actions of leaders in trading or diplomacy was used by those leaders to sponsor feasts, which in turn transferred the wealth to the opposite side on behalf of their clan (Kan 1989:85).

Implications of Appointment of New Custodian in Donation Contract: The claim argues that the museum's instrument of donation did not convey legal title to the hat. While William Paul signed the museum's standard donation form, the claim implies that by appointing his successor in the donation document, Paul opened the door for the donation to be rescinded at any time by his successor.

William Paul's intent was for the hat to be preserved and secured in the museum, while guaranteeing that the clan could maintain a connection to it through their custodian. While Richard Rinehart Sr. is named, his responsibilities and duties relative to those of the museum are not specified. It is unlikely that William Paul intended for the new custodian to have the right to permanently remove the hat in the future, as there would

have been no point to the donation—Paul would have simply renewed his loan of the hat to the museum, as he had done several times since 1947.

As a lawyer, William Paul undoubtedly recognized that by signing the donation form with no explicit mechanism for the donation to be withdrawn, the hat would stay at the museum. He likely viewed the museum as a failsafe in the preservation of the hat in case the clan's population continued to diminish or if they no longer wished to participate in the traditional culture. Had Paul stated that his intention was for future custodians to withdraw the hat from the museum on demand, museum officials would have recognized that what he offered was not a donation but rather a loan.

There is no evidence that traditionally, decisions of importance made by a clan, as represented by its caretaker, were reversible by every succeeding generation of clan members. If such had been the case in the past, diplomacy would have practically impossible, yet Tlingit history is full of accounts of peacemaking and trade agreements among clans and between clans and non-Tlingits that lasted for generations. Today, clan leaders are routinely entrusted by tribes and governmental organizations to represent their clans in signing agreements and in consultations and business dealings.

The claim states that the museum acted unethically in "...claiming ownership to an item on the basis of clouded title, by accepting a gift from a donor who openly expressed that the responsibility of custodianship was retained by himself and was to be transferred in [the] future..." Museums may ethically accept gifts with significant restrictions—including partial ownership. Ideally, such restrictions are very explicit and are documented in a contract. By identifying himself as caretaker and naming a successor, Mr. Paul did augment the language printed on the museum's form, it does not cloud title or violate any applicable code of ethics.

The claim states that "it is only recently that the museum has claimed ownership of the item." The hat has been listed as state property in the public record since 1969 when it was donated on behalf of the clan by William Paul. The donation was publicly announced and reported, together with a photo of Mr. Paul holding the hat, in the *Southeast Alaska Empire* (July 31, August 10 and 21, 1969), the largest newspaper in southeast Alaska. The story was distributed by wire service and was also published in the *Tundra Times* (Sept 5, 1969), *Ketchikan Daily News* (August 21), and likely other Alaskan newspapers. The hat has been exhibited at the museum continually since 1969, and its label naming its donor and the current caretaker. The museum staff has consistently stated to clan members in contact (including Fred Paul and Richard Reinhart Sr.) that the hat was donated.

William Paul was the acknowledged spokesman of the clan, and over the course of several decades, established trust with the museum representatives. As an expert in both Tlingit and western law, he knew the legal implications of the donation, and designed a unique arrangement that would give the hat all the benefits of protection by the museum while allowing the clan continued access. While the structure of the donation was not defined in detail, its acceptance reflects an understanding by museum director Jane

Wallen of the special significance of *at.óow* and perhaps need for a new kind of relationship between clans and museums.

SUMMARY:

The museum finds by a preponderance of evidence that the Teeyhíttaan clan and Sealaska are affiliated with the hat, and that the hat is both an Object of Cultural Patrimony and a Sacred Object as defined by NAGPRA, and that the museum has a right of possession to the hat.

The requirements of Tlingit law that applied to William Paul in his alienation of the hat in 1969 can not be known with certainty. There are four possible alternatives:

- Paul had authority as custodian of the hat and clan leader to alienate the hat to the museum in the best interest of the clan, given their small and scattered membership, and due to the risk of sale for personal gain into the art market.
- Paul, as leader and custodian, could alienate the hat after consultation with the clan council unless the council vetoed the donation.
- Paul, as leader and custodian, could alienate the hat after consultation with the clan council and if the council was in consensus that the donation could occur.
- Paul, as leader and custodian, could alienate the hat only if the clan membership gave its unanimous approval.

After the close examination of reliable and available sources, we conclude that any of the first three alternatives listed above are plausible, and the last alternative is unlikely. The claim as presented does not provide evidence that Paul violated Tlingit law, while there is, rather, historical evidence suggesting that Paul was acting within his proper authority. Specifically, we do not know precisely what steps William 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. William Paul was a recognized expert in Tlingit law and conscientious about complying with it. Further, he was extremely careful and thoughtful regarding the terms of the loan and eventual donation of the hat, and is entitled to a presumption that he was acting within Tlingit law. The donation was well-publicized and no members of the clan raised any contemporaneous objection or alleged that Paul lacked the authority to alienate the hat.

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-----Original Message-----
From: David_Tarler@nps.gov [mailto:David_Tarler@nps.gov]
Sent: Monday, April 20, 2009 4:51 AM
To: Rosita Worl; Bruce.Kato@alaska.gov
Cc: Carla.Mattix@sol.doi.gov; carlamattix@aol.com;
Stephen.Simpson@sol.doi.gov; envirodad@comcast.net; Sherry_Hutt@nps.gov;
dan_monroe@pem.org; Chris McNeil; neil.slotnick@alaska.gov;
larry.ledoux@alaska.gov
Subject: FOR YOUR IMMEDIATE ATTENTION AND REPLY: Re. the NAGPRA Review Committee's making findings related to Sealaska Corporation's written request to the Alaska State Museum for repatriation of the Leader of All Raven Clan Hat

Ms. Worl and Mr. Kato:

Upon the request of any affected party, the Review Committee created by the Native American Graves Protection and Repatriation Act is responsible for making findings related to the identity or cultural affiliation of cultural items, or the return of such items (25 U.S.C. 3006(c)(3)). As you know, Sealaska Corporation requested that the Review Committee make findings related to Sealaska's written request to the Alaska State Museum, dated August 13, 2008, for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat. As you also know, the Review Committee agreed to review Sealaska's request during its meeting on May 23-24, 2009, in Seattle, Washington, and answer the following questions:

1. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat, did Sealaska Corporation show that, more likely than not, the Clan Hat is a "sacred object," as defined at 25 U.S.C. 3001 (3)(C) and 43 C.F.R. 10.2 (d)(3)?

2. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat, did Sealaska Corporation show that, more likely than not, the Clan Hat is "cultural patrimony," as defined at 25 U.S.C. 3001 (3)(D) and 43 C.F.R. 10.2 (d)(4)?

3. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat, did Sealaska Corporation establish that, more likely than not, Sealaska is culturally affiliated with the Clan Hat, as the term "cultural affiliation" is defined at 25 U.S.C. 3001 (2) and 43 C.F.R. 10.2 (e)?

4. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat, did Sealaska Corporation present evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that, more likely than not, the Museum does not have a right of possession to the Clan Hat, as the term "right of possession" is defined at 25 U.S.C. 3001 (13) and 43 C.F.R. 10.10 (a)(2)?

At the time of Sealaska's request to the Review Committee and the Review Committee's decision to answer the four questions, above, the Alaska State Museum had not responded to Sealaska's August 2008 written request for repatriation and, consequently, the Museum had not answered those questions. Then, on April 13, 2009, the Chair of the Review Committee and I received a copy of the Alaska State Museum's response to Sealaska's repatriation request.

In light of the Alaska State Museum's response to Sealaska's repatriation request, I must reassess Sealaska's request to the Review Committee. Your responses to my questions will inform my decision.

First, I ask Rosita Worl, on behalf of Sealaska Corporation, did Sealaska receive the Alaska State Museum's response, dated March 3, 2009, to their written request for repatriation of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat?

Second, I ask Bruce Kato, on behalf of the Alaska State Museum, is the answer to questions 1, 2, and 3, above, yes?

I preface my next question, to Bruce Kato, on behalf of the Alaska State Museum, by noting that almost the entire response to Sealaska's request consists of the Museum's case that it has a right of possession to the Leader of All Raven Clan Hat, as the term "right of possession" is defined by NAGPRA (43 C.F.R. 10.10 (a)(2)). A museum presents evidence proving that it has the right of possession to a cultural item only after the requesting party, in addition to satisfying the other criteria for a request, presents evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that, more likely than not, the museum does not have a right of possession to the item (for the requesting party's initial burden, see 43 C.F.R. 10.10 (a)(1)(iii), and for the burden shifting to the museum once the requesting party meets its initial burden, see 43 C.F.R. 10.10(a)(1)(iv)). Consequently, the Alaska State Museum's assertion of its right of possession to the Leader of All Raven Clan Hat, contained in its response to Sealaska's repatriation request, implies that the answer to question 4, above, also is yes. Nevertheless, I ask Bruce Kato, is the answer to question 4, above, yes? Answering yes to this question does not prejudice the Alaska State Museum's assertion regarding its right of possession to the Leader of All Raven Clan

Hat.

If Sealaska has received the Alaska State Museum's response to their repatriation request, and if the Alaska State Museum answers all four questions, above, in the affirmative, then the Review Committee will not address these four questions as a 25 U.S.C. 3006(c)(3) matter because Sealaska Corporation and the Alaska State Museum will have agreed on the answers and these particular issues will have been resolved. Should either Sealaska or the Alaska State Museum still wish to address the Review Committee on some aspect of this matter, they always could do so during the time reserved for public comment.

At this time, the Review Committee is not addressing the question of whether or not the Alaska State Museum has shown that, more likely than not, the Museum has the right of possession to the Leader of All Raven Clan Hat, as the term "right of possession" is defined in NAGPRA. In the future, should Sealaska Corporation or the Alaska State Museum decide that a dispute exists as to this question, they may ask the Review Committee, either separately or together, to convene the parties, make findings, and facilitate the resolution of the dispute pursuant to 25 U.S.C. 3006(c)(4). If they wish to do so, and if they wish the Review Committee to convene the parties during the October 30-31, 2009 meeting in Sarasota, Florida, then I will need to receive their request and supporting documents on or before June 29, 2009.

I request that you reply to this message no later than 11:00 p.m. EDT on Tuesday, April 21. Thank you.

David Tarler, J.D.
Enforcement and Training Coordinator and
Designated Federal Officer, NAGPRA Review Committee
National Park Service
National NAGPRA Program (2253)
1201 Eye Street, NW
8th Floor
Washington, DC 20005
202/354-2108 voice
202/371-5197 fax

From: Rosita Worl
Sent: Monday, April 20, 2009 9:05 AM
To: David_Tarler@nps.gov; Bruce.Kato@alaska.gov
Cc: Carla.Mattix@sol.doi.gov; carlamattix@aol.com; Stephen.Simpson@sol.doi.gov; envirodad@comcast.net; Sherry_Hutt@nps.gov; dan_monroe@pem.org; Chris McNeil; neil.slotnick@alaska.gov; larry.ledoux@alaska.gov; Richard Rinehart
Subject: RE: FOR YOUR IMMEDIATE ATTENTION AND REPLY: Re. the NAGPRA Review Committee's making findings related to Sealaska Corporation's written request to the Alaska State Museum for repatriation of the Leader of All Raven Clan Hat

Mr. Tarler, Mr. Kato,

Would you be so kind as to forward me a copy of the Alaska State Museum letter of March 3, 2009. As of this writing, we have no record of a March 3, 2009 letter, but will continue to search.

Would also advise if the April 13, 2009, communiqué to the Chair of the Review Committee and yourself is the same as the March 3, 2009 which you cite in your email below as the Alaska State Museum's response to Sealaska's repatriation request.

We are in receipt of a copy of an **Alaska State Museum letter of March 12, 2009**, to Mr. Rinehart, Jr., advising him that

> ***"At this time, the attorney general's office is still reviewing the claim and assures me that a response will be forthcoming within the next few weeks."***

Mr. Rinehart Jr., contacted Mr. Kato on March 20, asking if he had heard anything back from the AG's office.

Mr. Kato responded on the same day advising that after meeting with Assistant Attorney General Stephen Slotnick, he indicated that he should have a decision within a few weeks, no longer than mid-April.

On March 24, Mr. Rinehart contacted Mr. Kato asking for the letter with the Museum's recommendation to the AG's office or if the letter was not available, could he advise as to the findings the Museum made on the repatriation claim.

We have not received a response from Mr. Kato or the AG's decision as of this date.

Thank you,

Rosita Worl Ph.D.
Vice Chair □ Sealaska Corporation
President □ Sealaska Heritage Institute
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Sealaska Heritage Institute
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From: Kato, Bruce H (EED)
To: Rosita Worl
Cc: David_Tarler@nps.gov ; Slotnick, Stephen C (LAW)
Sent: Mon Apr 20 10:48:00 2009
Subject:
Hello Ms. Worl,

Attached is a copy of the Alaska State Museum findings for the Yéil Aan Kaawu Naa s'aaxw, Leader of All Ravens Hat.

A hard copy of the findings is also in route to you via postal service.

Sincerely,

Bruce

Bruce Kato
Chief Curator
Alaska State Museums

Alaska State Museum
395 Whittier Street
Juneau. Alaska 99801
Telephone: (907) 465-4866
Fax: (907) 465-2976
http://www.museums.state.ak.us

From: Rosita Worl [mailto:rosita.worl@sealaska.com]
Sent: Monday, April 20, 2009 9:05 AM
To: David_Tarler@nps.gov; Kato, Bruce H (EED)
Cc: Carla.Mattix@sol.doi.gov; carlamattix@aol.com; Stephen.Simpson@sol.doi.gov; envirodad@comcast.net; Sherry_Hutt@nps.gov; dan_monroe@pem.org; Chris McNeil; Slotnick, Stephen C (LAW); Ledoux, Larry S (EED); Richard Rinehart
Subject: RE: FOR YOUR IMMEDIATE ATTENTION AND REPLY: Re. the NAGPRA Review Committee's making findings related to Sealaska Corporation's written request to the Alaska State Museum for repatriation of the Leader of All Raven Clan Hat

STATE OF ALASKA

Sarah Palin, Governor

Alaska State Museums
395 Whittier
Juneau, Alaska 99801
(907) 465-2901
(907) 465-2976 Fax
bruce.kato@alaska.gov
www.museums.state.ak.us

Department of Education & Early Development
Division of Libraries, Archives & Museums

Linda S. Thibodeau, Director

April 20, 2009

David Tarler
Designated Federal Officer
NAGPRA Review Committee
National Park Service
National NAGPRA Program (2253)
1201 Eye Street, NW, 8th Floor
Washington, D.C. 20005

Dear Mr. Tarler:

Thank you for your response to me and Dr. Worl, and for your in-depth analysis of the Museum's response to Sealaska claim. I appreciate your willingness to remove the claim from the agenda of the May 23-24 meeting of the Review Committee.

You have asked me to address the following three questions:

1. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat, did Sealaska Corporation show that, more likely than not, the Clan Hat is a "sacred object," as defined at 25 U.S.C. 3001 (3)(C) and 43 C.F.R. 10.2 (d)(3)?

2. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat, did Sealaska Corporation show that, more likely than not, the Clan Hat is "cultural patrimony," as defined at 25 U.S.C. 3001 (3)(D) and 43 C.F.R. 10.2 (d)(4)?

3. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat, did Sealaska Corporation establish that, more likely than not, Sealaska is culturally affiliated with the Clan Hat, as the term "cultural affiliation" is defined at 25 U.S.C. 3001 (2) and 43 C.F.R. 10.2 (c)?

The answers to each of these three questions is yes.

You have also asked me to address whether:

4. In their written request to the Alaska State Museum for repatriation to the Teeyhittaan Clan of the Yeil Aan Kaawu Naa s'aaxw, or Leader of All Raven Clan Hat, did Sealaska Corporation present evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that, more likely than not, the Museum does not have a right of possession to the Clan Hat, as the term, "right of possession" is defined at 25 U.S.C. § 3001(13) and 43 C.F.R. § 10.10(a)(2)?

The answer to this question is a qualified yes.

The reason I must qualify my answer is that Sealaska has included in its claim evidence and argument about the Museum's right of possession. The Museum disagrees with Sealaska's assertion that the 1969 donation of the Clan Hat by William Paul was not effective to transfer a right of possession to the Museum.

In my view, I think we could rephrase the question you ask to the following, without affecting the issue:

> Setting aside all evidence and argument regarding the 1969 donation of the Clan Hat by the Clan to the State of Alaska, has Sealaska presented evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that, more likely than not, the Museum does not have a right of possession to the Clan Hat?

To this question, I answer yes.

In short, although the parties have no dispute of facts, the parties do not have agreement at this time regarding the effect of the 1969 donation. This issue, however, is a legal issue, not a factual issue. Given the respect and standing of William Paul, the leader of the Clan, and the desire to honor his memory, and at the same time, to acknowledge the needs of the Clan, we believe that the resolution of this issue should occur in negotiations with the Clan.

I believe this letter answers your questions, and that, therefore, this matter will not be on the Review Committee' agenda for Seattle. I believe that this action by you sets the stage for amicable discussions of this matter with the Clan, and I am confident that the parties can reach agreement. If we need the assistance of the Review Committee in this endeavor, we may be contacting you again.

If you have any additional questions for me, I will address them as soon as I receive them.

Bruce Kato
Chief Curator
Alaska State Museums

From: Dan Monroe [dlmpem@attglobal.net]
Sent: Thursday, April 23, 2009 1:02 PM
To: Rosita Worl
Cc: David_Tarler@nps.gov; Sherry_Hutt@nps.gov; Richard Rinehart
Subject: Re: Re. Sealaska at the Review Committee meeting in Seattle

Thank you Rosita! I will let David reply. In my judgment, a dispute exists and it is only a question of timing as to when the Review committee will undertake a review of the dispute and make a finding. All best,

Dan

On Apr 23, 2009, at 4:08 PM, Rosita Worl wrote:

Dear David and Dan,

I have reviewed the Alaska State Museum letters of April 10, April 20 and the Report dated March 3, 2009.

In its April 10 letter, the Alaska State Museum clearly asserts that the **Museum has a right of possession** and **declines to repatriate** the Clan Hat.

In its April 20 letter, the Alaska State Museum concedes that Sealaska had the right of possession until the 1969 donation of the Clan Hat by William Paul, Sr. to the Alaska State Museum. I might point out that the ASM letter of April 20 erroneously states that the donation was made by the "Clan."

The Alaska State Museum agrees that Sealaska had a right of possession to the Clan Hat until 1969.

The Alaska State Museum maintains that **Sealaska does not have a right of possession beginning in 1969 until the present day period.**

The Alaska State Museum wishes to impose its "ceremonial use program" or loan program on the Teeyhíttaan Clan as stated in its March 3 report and referenced in its April 20 letter. As previously reiterated, this loan program is not acceptable to the Teeyhíttaan.

The Alaska State Museum and Sealaska/Teeyhíttaan Clan are not in agreement.

I would respectfully request that the Review Committee hear this case in its next meeting. As we indicated, Mr. Rinehart, Sr. is over 80 years of age, and he would like to have this issue resolved in his lifetime.

Rosita Worl Ph.D.
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President - Sealaska Heritage Institute
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-----Original Message-----
From: David Tarler@nps.gov [mailto:David Tarler@nps.gov]
Sent: Thursday, April 23, 2009 9:04 AM
To: Rosita Worl
Cc: dan monroe@pem.org; Sherry Hutt@nps.gov
Subject: Re. Sealaska at the Review Committee meeting in Seattle

Rosita,

I received your message of April 21, requesting one and a half hours for
the presentation of the dispute involving the Huna Totem Corporation and

Alaska Native Brotherhood
Grand Camp

TO: **Dr. Rosita Worl**
Sealaska Heritage Institute

From: **Bradley J. Fluetsch, CFA**
ANB Grand President

On April 15, 2009 I met with Wayne Anthony Ross, Attorney General of Alaska regarding my testimony on his upcoming confirmation vote. In our discussion William Paul Sr. came up which lead into our conversation on the Teeyhittaan Clan hat.

Mr. Ross wanted to know if this was an issue where the State and Alaska Natives could work together?

I related the story of why the issue came up in the first place. The appropriate Clan member requested to use the hat for an upcoming ceremony. An employee of the State declined the request for use by the Clan member saying it was the property of the State and they would not authorize it. After the Clan member raised a small ruckus, the State relinquished and said the hat could attend the ceremony, but it could not be worn. At this time I told him it was my cousin that requested the hat and was denied its use, but I was sure he or his father wore it at the recent Flotilla Robe repatriation in Wrangell.

Getting to the point from the States' perspective, Mr. Ross said there is documentation that Mr. Paul gave the hat to the State. I pointed out that to my knowledge no individual can give away Clan artifacts, and in fact Mr. Paul did not have the authority to give the hat to the State, if that was the case in the first place. I told Mr. Ross I was aware of the "edits" on the page outlining the transfer from Mr. Paul to the State.

Mr. Ross expressed a concern for the object and was curious if the State was to relinquish it would it be cared for? I told him it would most likely stay right where it is, the Nolan Center in Wrangell, (which Mr. Ross expressed relief) but it was the Clans' responsibility to insure that the hat was cared for.

On a closing thought, Mr. Ross relayed that the hat was still in use in traditional ceremonies added tremendous value to the object.

Rosita Worl

From: Richard Rinehart
Sent: Thursday, April 23, 2009 2:25 PM
To: 'Larry.LeDoux@alaska.gov'
Cc: Rosita Worl; 'jrinehart@gci.net'; Chris McNeil
Subject: NAGPRA Repatriation Claim for the Teeyhittaan Clan Crest Hat
Importance: High

Dear Mr. LeDoux,

I would like to schedule a meeting with you, as you requested in your letter dated April 10, 2009. I understand that you are traveling this week, and I have left you messages at your office and on your voice mail. We would like to attend to this matter as soon as possible and we are hoping you could meet with us early next week. My father will be passing through Juneau on Sunday, on his way home to Wrangell, and it may be possible to meet with him in person on Monday.

Please let us know your availability for a meeting by responding to this e-mail or calling me at (907) 209-1073.

Thank you and have a good day,

Richard Rinehart, Jr.

Rosita Worl

From: David_Tarler@nps.gov
Sent: Friday, April 24, 2009 9:46 AM
To: Rosita Worl; dan_monroe@pem.org; dlmpem@attglobal.net; Carla.Mattix@sol.doi.gov; carlamattix@aol.com; Stephen.Simpson@sol.doi.gov; envirodad@comcast.net; Sherry_Hutt@nps.gov; bruce.kato@alaska.gov; neil.slotnick@alaska.gov; larry.ledoux@alaska.gov; Chris McNeil
Subject: Re. the Sealaska Corporation-Alaska State Museum matter

The Federal Register notice of December 31, 2008, announcing the May 23-24 meeting of the Native American Graves Protection and Repatriation Review Committee in Seattle, Washington, said that the Review Committee would consider requests to hear a dispute that were received on or before February 23, 2009. Following the receipt of Sealaska Corporation's request, Counsel Carla Mattix and Stephen Simpson, National NAGPRA Program Manager Sherry Hutt, and I unanimously agreed that, as of February 23, no dispute existed between Sealaska Corporation and the Alaska State Museum.

That was not the end of the matter, though. We did agree, unanimously, that the issue of whether Sealaska's repatriation request more likely than not satisfied the criteria for such a request was ripe for consideration by the Review Committee, not as a dispute, but as a matter falling under 25 U.S.C. 3006(c)(3). Consequently, I drafted four questions on this issue for the Review Committee to answer during the May meeting, pursuant to their authority under 25 U.S.C. 3006(c)(3).

Then, the posture of the matter changed. On April 20, the Alaska State Museum sent Review Committee Chair Dan Monroe and me a letter. After reading it, Carla, Stephen, Sherry, and I unanimously agreed that the Alaska State Museum's letter constituted an admission that Sealaska's repatriation request had, in fact, satisfied the criteria for such a request.

As Sealaska and the Alaska State Museum agree that Sealaska's request for repatriation satisfies the criteria for such a request, the Review Committee need not address this issue. Consequently, I have removed this 25 U.S.C. 3006(c)(3) matter from the Review Committee's May agenda.

Rosita Worl, on behalf of Sealaska Corporation, and Dan Monroe have written that they believe a dispute now exists between Sealaska Corporation and the Alaska State Museum over the issue of the Alaska State Museum's "right of possession." Even if a dispute does exist, the dispute did not arise until April 20, 2009, at the earliest. At this time, to schedule a dispute for the May 23-24 Review Committee meeting which did not arise before April 20, would be fundamentally unfair. In addition, the parties should be afforded the opportunity to discuss the right of possession issue evidence that the Alaska State Museum believes will satisfy its burden. Up until April 20, the burden had been on the requesting party, Sealaska Corporation.

I believe the Secretary of the Interior would not be well-served by the scheduling of a dispute between Sealaska and the Alaska State Museum during the May 23-24 meeting of the Review Committee, and that the Review

Committee should not consider such a dispute during that meeting. Also, at this time, neither Sealaska nor the Alaska State Museum would be prejudiced should one or both of the parties request that the Review Committee convene them to a dispute during the October 30-31 meeting of the Review Committee.

Sealaska Corporation and the Alaska State Museum may address the Review Committee at the May meeting, during the time set aside for public comment. Carla, Stephen, Sherry, and I hope that a Sealaska or Alaska State Museum comment would not introduce information from which the Review Committee might be asked to find facts during a future dispute, as this information might possibly be seen as prejudicing the Review Committee, and might possibly preclude their hearing such a dispute.

David

David Tarler, J.D.
Enforcement and Training Coordinator and Designated Federal Officer, NAGPRA Review Committee National Park Service National NAGPRA Program (2253)
1201 Eye Street, NW
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202/354-2108 voice
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April 27, 21009

Meeting Notes and Summary of Statements

Re: Teeyhíttaan Clan Hat Mtg
Commissioner Larry LeDoux, Linda Thibideau, Richard Rinehart, Sr., Richard Rinehart, Jr., Rick [Huetson], Rosita Worl

Richard Rinehart, Jr.
References April 10 letter
Right of Possession
Trying to do the right thing
Loan
Father started 13 years ago
MOA Clan & ASM
Possession by Clan
Clan – Ceremonial Use
Museum –Curatorship

Richard Rinehart, Jr. opened the discussion by referencing the ASM letter of April 10th in which it declined to repatriation the Clan Hat and cited its right of possession. He conveys that they are trying to do the right thing. His father began discussions with ASM 13 years ago about the loan. He wanted to ensure that the Clan Hat was available for ceremonial use while the museum's responsibility related to "curatorship."

Commissioner:
Doing the right thing
Honoring the clan, culture
Relationship to the clan, indigenous people

Commissioner LeDoux responded that they are doing the right thing in honoring the clan and culture and maintaining a relationship with the clan and indigenous people.

Richard Rinehart, Sr.
Turned over to take care by my uncle
Followed Native way-of-life
ANB officer
Wanted to use – they [museum] said, "no."
Have to send someone down to take out of safe
Put in glass during ceremony

Richard Rinehart, Sr. recounts that the Clan Hat was turned over to his care by his uncle. He reports that he followed the Native way-of-life and that he was an ANB officer. He reports that he wanted to use the Clan Hat in a ceremony, but the museum said, "no." The museum said that they would have to have to send someone to Wrangell; to take the Hat out of the safe and to keep it in a glass case during the ceremony.

Commissioner
One of the question I have
William Paul – Extraordinary – put in museum
Museum job is to protect
William Paul – Protect, not sell

Commissioner DeDoux notes that William Paul was an extraordinary person to put the Clan Hat in the museum. He recognized that museum's job is "to protect." William Paul wanted to protect the Clan Hat and not sell it.

Richard Rinehart, Sr.
Lake Bay
Tillie Paul raised there
Center of Teeyhíttan land
Cedar Bark House
The hat belongs where the land is into his homeland
War between Frogs
Members of Teeyhíttan killed at Lake Bay

Richard Rinehart, Sr. reports that Tillie Paul was raised at Lake Bay, which is the center of Teeyhíttan homeland and the site of the Cedar Bar House. He says that the Clan belongs in its homeland. He then recounts the war between the "Frogs" referring to the crest of the Teeyhíttaan and the group with whom they warred, He reports that members of the Teeyhíttan Clan were killed at Lake Bay, which resulted in their acquisition of the Clan Hat.

LeDoux
Concern, let's say not "ownership"
But it was protection – Preserved
The rule of law – not sold

Commissioner LeDoux suggests that the concern is not "ownership," but protection of the Clan Hat and to ensure that it is preserved and not sold.

The meetings ends with the proposal that the Clan and State would work on a Memorandum of Agreement to resolve the dispute.

From: Richard Rinehart
Sent: Tuesday, April 28, 2009 11:51 AM
To: 'Neil.Slotnick@alaska.gov'
Cc: 'linda.thibodeau@alaska.gov'; 'larry.ledoux@alaska.gov'; Rosita Worl; 'jrinehart@gci.net'
Subject: Memorandum of Agreement

Neil,

It was a pleasure speaking with you this morning. I am glad to hear we are so close on this agreement I am confident we can finalize it in the near future. I am attaching the document in Word format. Please make your proposed revisions with Track Changes (should already be on) so I can see what you edit, and return to me.

Thank you and have a nice day,

Richard

Memorandum of Agreement
Between the
Teeyhíttaan Clan of Shx' at' Kwáan
and the
Alaska State Museum

This agreement is entered into by the **Teeyhíttaan Clan of Shx' at' Kwáan** (located near present day Wrangell, hereinafter referred to as "Clan") and the **Alaska State Museum** (hereinafter referred to as "Museum") to specify necessary measures for the use, care, control and protection of the ***Yéil Aan Kaawu Naa s'aaxw*,Leader of All Ravens Hat** (Name of the Haa at.óowu — that includes the clan object itself including the crest/spirit design depicted on the object, stories, songs and names associated with the Haa at.óowu) (hereinafter referred to as "Teeyhíttaan Hat"). Museum catalog number **II-B-809**.

WHEREAS, all parties acknowledge the Teeyhíttaan Hat is the Haa at.óowu of the Clan; and

WHEREAS, all parties acknowledge the Teeyhíttaan Hat is a sacred object of the Clan; and

WHEREAS, all parties acknowledge the Teeyhíttaan Hat is cultural patrimony of the Clan; and

WHEREAS, all parties acknowledge the Teeyhíttaan Hat is culturally affiliated with the Clan; and

WHEREAS, the Clan has and retains full legal title to its Teeyhíttaan Hat under traditional, tribal, federal, state and local laws (emphasis added); and

WHEREAS, all parties believe that the Teeyhíttaan Hat should be protected and available to the Clan for traditional and ceremonial uses including the ku.éex'; and available to the Museum for research, exhibition and educational purposes subject to the approval of the Clan; and

WHEREAS, the Museum has the appropriate facilities to protect, preserve and curate the Teeyhíttaan Hat; and

WHEREAS, the Clan and Museum wish to maintain a collaborative and mutually beneficial relationship; and

WHEREAS, the Clan and Museum believe the following measures will adequately provide for the use, care, control, and protection of the Teeyhíttaan Hat:

The Parties Therefore Mutually Agree to the following:

I. Title to the Teeyhíttaan Hat

1.1 The Clan retains full legal title to it's Teeyhíttaan Hat under traditional, tribal, federal, state and local laws.

1.2 All parties acknowledge that legal title to it's Teeyhíttaan Hat will remain with the Clan.

1.3 The Shaade háni (Clan Leader) or designated Trustee shall act in behalf of the Clan in all transactions with the Museum.

1.4 The Clan voluntarily agrees to allow the Museum to serve as the temporary repository of the Teeyhíttaan Hat. Consent under this subsection does not affect legal title and the rights otherwise provided for in this agreement to use the Teeyhíttaan Hat in ceremonial and cultural activities.

II. Use, Care, Control and Protection of the Teeyhíttaan Hat

2.1 All parties agree to observe the following necessary measures for the use, care, control and protection of the Teeyhíttaan Hat:

2.2 The Clan shall:

A. Provide collaboration and approval to the Museum in determining appropriate research, exhibition and educational use of the Teeyhíttaan Hat.

B. Research and document the history of the Teeyhíttaan Hat, and deposit the data for permanent preservation with the Museum.

The Clan retains full title to this intellectual knowledge. The Clan through its Shaade háni or designated Trustee shall approve the use of such intellectual knowledge.

C. The Clan allows the Museum to exhibit and use the Teeyhíttaan Hat for educational and research programs under such conditions and terms approved by the Shaade háni or designated Trustee.

D. The Clan through its Shaade háni or designated Trustee shall identify in writing a person or persons officially authorized to withdraw the Teeyhíttaan Hat from the Museum for traditional and cultural functions, and upon the death or removal of the authorized individual(s) communicate the designation of a successor to the other parties. The Clan through its Shaade háni or designated Trustee shall:

1. Make best effort to provide the Museum with a minimum of fourteen (14) days advance notice prior to any withdrawal of the Teeyhíttaan Hat.

2. Pay all transportation costs, if any, associated with the transportation of the Teeyhíttaan Hat to and from traditional or cultural events.

3. The authorized individual withdrawing the Teeyhíttaan Hat must complete a copy of the Withdrawal Agreement (Addendum A) and provide proof of authorization to the Museum (which may, at its discretion, seek to verify this authorization with the Clan).

2.3 The Museum shall:

A. Be the repository for the Teeyhíttaan Hat and care for the Teeyhíttaan Hat to assure its preservation, protection, and use in a manner consistent with Clan protocols and traditions, including use for the purposes of research and education.

B. Be liable for any loss or damage to the Teeyhíttaan Hat while it is in its custodianship.

C. Maintain insurance that is adequate to protect the Teeyhíttaan Hat from risk or loss and is comparable to coverage of other Teeyhíttaan Hat of similar significance in the Museum's collection.

D. Maintain the Teeyhíttaan Hat at the Museum's facility unless the Clan agrees to loan the Teeyhíttaan Hat for educational/exhibition purposes to other museums (the Teeyhíttaan Hat is currently, at the time of singing, on loan to the City of Wrangell Museum at the Nolan Center in Wrangell, AK) or the clan withdraws the Teeyhíttaan Hat for ceremonial or cultural purposes.

E. Perform restoration or conservation treatments on the Teeyhíttaan Hat in consultation with the other parties as necessary which are consistent with generally accepted museum practices.

F. Make the Teeyhíttaan Hat available for priority use and benefit of the Clan and allow the Teeyhíttaan Hat to be withdrawn by persons specifically authorized by the Clan to act on its behalf.

1. Construct a secure and safe crate for transportation of the Teeyhíttaan Hat to and from traditional and cultural events.

2. Offer instruction to the person or persons designated by the Clan to withdraw the Teeyhíttaan Hat on the handling, transportation, and security of the Teeyhíttaan Hat when the Teeyhíttaan Hat is away from the Museum building.

G. Exhibit and use the Teeyhíttaan Hat for educational and research programs in such a manner that is respectful and sensitive to the Clan, Native people and their culture; accurately portrays the significance of the Teeyhíttaan Hat; and properly cites the Clan ownership of the Teeyhíttaan Hat.

H. Protect the cultural and intellectual property rights of the Clan.

1. Any photograph, slides, videos, CD-ROM usages or reproductions of the Teeyhíttaan Hat are to be made with express prior written approval from the Clan. In all instances Clan ownership of the Teeyhíttaan Hat and the Crest Design shall be acknowledged.

2. Pay the Clan two-thirds of the profits made from any sale of photographs or slides of the Teeyhíttaan Hat by the Museum or its associate organization(s).

3. Pay $500 to the Clan for each photographic reproduction in scientific, educational, or art publications. The Clan may agree to waive this fee for worthwhile/scholarly publications.

4. No reproductions are authorized for commercial ventures.

This agreement takes effect on the last date set out below and is subject to amendment at any time.

CLAN

Dated: _____ By: _____

Dated: _____ By: _____

MUSEUM

Dated: _____ By: _____

Dated: _____ By: _____

Memorandum of Agreement
Between the
Teeyhíttaan Clan of Shx' at' Kwáan
and the
Alaska State Museum

Addendum A

Withdrawal Agreement

In consideration for permission of the **Teeyhíttaan Clan of Shx' at' Kwáan** (hereinafter referred to as "Clan") and the **Alaska State Museum** (hereinafter referred to as "Museum"), to withdraw the ***Yéil Aan Kaawu Naa s'aaxw*,Leader of All Ravens Hat** (Name of Haa at.óowu) (herein after referred to as "Teeyhíttaan Hat"), museum catalog number **II-B-809**, I, _____ of _____, Alaska, agree on behalf of myself and the Clan as follows:

1. The Teeyhíttaan Hat will be used in the following koo.eex' or cultural event (Name and Address):
   _____
   _____
   _____
   _____
   _____.

2. On behalf of the Clan, I will withdraw the Teeyhíttaan Hat from the museum on this date of _____, and will return it to the Museum on the date of _____.

3. The Teeyhíttaan Hat will be cared for according to the instruction which has been received from the Museum and in accordance with the guidelines (if any as provided by the Clan or Museum) attached to this agreement.

4. I assume full responsibility for the care and return of the Teeyhíttaan Hat and agree that both I and the Clan will be individually and collectively liable to the Clan and Museum for any loss or damage to the Teeyhíttaan Hat which occurs during the period of withdrawal.

This agreement takes effect on the last date set out below and is subject to amendment at any time.

Dated: _____

By: _____
(Signature)

_____
(Printed Name)

Address:

_____

_____

_____

Home Phone:

_____

Work Phone:

_____

Contact Phone at Ceremonial Site:

_____

CLAN

Dated: _____
By: _____

Dated: _____
By: _____

MUSEUM

Dated: _____
By: _____

Dated: _____
By: _____

WITNESSED BY ME

THIS DAY OF _____ By: _____

From: Richard Rinehart [mailto:Richard.Rinehart@sealaska.com]
Sent: Tuesday, May 05, 2009 11:57 AM
To: Slotnick, Stephen C (LAW)
Subject: RE: Memorandum of Agreement

Good morning Neil,

Have you had a chance to review this document yet? I would like to get your proposed edits or revisions this week so we can keep this on track to hopefully have something workable prior to the NAGPRA hearing on the 23rd.

Thank you and have a great day,

Richard Rinehart, Jr.

From: Slotnick, Stephen C (LAW) [mailto:neil.slotnick@alaska.gov]
Sent: Tuesday, May 05, 2009 1:04 PM
To: Richard Rinehart
Subject: RE: Memorandum of Agreement

Richard, I was tied up all last week, but I was working on it this morning. I have a meeting with the Museum set up for tomorrow to go over it, and then Friday with the Commissioner.

I told everyone that I promised you a reply no later than Friday, May 8. So this matter is top of my list, and I'll do everything I can to have something to you by Friday.

Neil

From: Slotnick, Stephen C (LAW) [mailto:neil.slotnick@alaska.gov]
Sent: Monday, May 11, 2009 3:15 PM
To: Richard Rinehart
Cc: Ledoux, Larry S (EED); Thibodeau, Linda S (EED); Kato, Bruce H (EED)
Subject: Edited MOA

Richard, here is a copy of a proposed agreement between the Clan and the Museum, sent to you in track changes mode. I started with what you sent me and, as you can see, I have several suggestions.

First, I apologize again for not getting this to you on Friday. The more we worked on it, the more issues we had to consider, so it got delayed.

My goal in working on this was to be very clear about what we wanted. I also tried to see things from your perspective. Some of the changes I suggest provide more protection for the Clan.

Not everything in this proposal is written in concrete ! I included some provisions just for your consideration. How to deal with the issue of photographs, for example, really is the Clan's call. What I was trying to do was come up with something workable for both the Clan and Museum. Let me know if this works for you or if you need changes.

Some of the provisions I've included here are a result of the Museum's experience with other objects. For example, sometimes it works better for the Museum staff to transport the object because the Clan member isn't going directly to the ceremony. Other times, the Clan member just transports the object. What we're trying to do is make it clear that the Agreement is flexible and we'll work out how to get the Hat to where it needs to be.

Feel free to call me to discuss this. We can also include Bruce Kato, the Commissioner, your father, your pro bono or in-house attorneys, other Clan members, or anyone else.

Thanks again for your patience. I think we're making good progress and I look forward to discussing this with you.

Neil

Memorandum of Agreement
Between the
Teeyhittaan Clan of Shx' at' Kwáan
and the
Alaska State Museum

This agreement is entered into by the **Teeyhittaan Clan of Shx' at' Kwáan** (located near present day Wrangell, hereinafter referred to as "Clan") and the **Alaska State Museum** (hereinafter referred to as "Museum") to specify necessary measures for the use, care, control and protection of the ***Yéil Aan Kaawu Naa s'aaxw*,Leader of All Ravens Hat** (hereinafter referred to as "Teeyhittaan Hat"), Museum catalog number **II-B-809.**

WHEREAS, all parties acknowledge the Teeyhittaan Hat is the at.óowu of the Clan; and

WHEREAS, all parties acknowledge the Teeyhittaan Hat is a sacred object of the Clan; and

WHEREAS, all parties acknowledge the Teeyhittaan Hat is cultural patrimony of the Clan; and

WHEREAS, all parties acknowledge the Teeyhittaan Hat is culturally affiliated with the Clan; and

WHEREAS, in 1969, William Paul, the Shaade hani (Clan Leader) of the Clan at that time, made a limited donation of the Teeyhittaan Hat to the Alaska State Museum while retaining significant interest in the Hat for the Clan; and

WHEREAS the Clan and the Museum want to honor, clarify, and affirm the intent of William Paul and clarify the rights of the Museum and the Clan; and

WHEREAS, the Clan has and retains ownership rights to its Teeyhittaan Hat under traditional, tribal, federal, state and local laws; and

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WHEREAS, the Museum has and retains rights to have the Teeyhíttaan Hat in its permanent collection and to display, protect, care for, and educate the public about the Teeyhíttaan Hat; and

WHEREAS, all parties believe that the Teeyhíttaan Hat should be protected and available to the Clan for traditional and ceremonial uses including the ku.éex'; and available to the Museum for research, exhibition and educational purposes subject to the approval of the Clan; and

WHEREAS, the Museum has the appropriate facilities to protect, preserve and curate the Teeyhíttaan Hat; and

WHEREAS, the Clan and Museum wish to maintain a collaborative and mutually beneficial relationship; and

WHEREAS, the Clan and Museum believe the following measures will adequately provide for the use, care, control, and protection of the Teeyhíttaan Hat:

The Parties Therefore Mutually Agree to the following:

I. Title to the Teeyhíttaan Hat

1.1 The Clan retains ownership rights to the Teeyhíttaan Hat under traditional, tribal, federal, state and local laws.

1.2 All parties acknowledge that ownership rights to the Teeyhíttaan Hat will remain with the Clan.

1.3 The Shaade háni (Clan Leader) or designated Trustee shall act in behalf of the Clan in all transactions with the Museum.

1.4 The Clan agrees that the Museum shall serve as the repository of the Teeyhíttaan Hat, and acknowledges the right of the Museum to use the Teeyhíttaan Hat for appropriate research, exhibition, and education purposes as allowed under this Agreement and subject to (a) the priority right of the Clan to use the Teeyhíttaan Hat for ceremonial and cultural activities, and (b) the Museum's duty to protect the Teeyhíttaan Hat and to acknowledge that the Clan has ownership rights to the Teeyhíttaan Hat. Consent under this

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subsection does not affect the rights otherwise provided for in this Agreement.

II. Use, Care, Control and Protection of the Teeyhíttaan Hat

2.1 All parties agree to observe the following necessary measures for the use, care, control and protection of the Teeyhíttaan Hat:

2.2 The Clan shall:

A. Provide collaboration and approval to the Museum in determining appropriate research, exhibition and educational use of the Teeyhíttaan Hat.

B. Research and document the history of the Teeyhíttaan Hat, and deposit the data for permanent preservation with the Museum.

C. Retain full title to all non-physical attributes associated with the Teeyhíttaan Hat, including its image and the crest spirit design depicted on the object, stories, songs and names associated with the Haa at oowu.

D. Approve or disapprove the use of the image, crest spirit design depicted on the object, stories, songs and names associated with the at oowu; the Clan does not assert a right to restrict the Museum's use of information about the Teeyhíttaan Hat that is in the public domain, historical facts, or independent knowledge or research of the Museum.

E. Allow the Museum to exhibit and use the Teeyhíttaan Hat for educational and research programs under such conditions and terms of this Agreement approved by the Shaade háni or designated Trustee.

F. Through its Shaade háni or designated Trustee shall identify in writing a person or persons officially authorized to withdraw the Teeyhíttaan Hat from the Museum for traditional and cultural functions, and upon the death or removal of the authorized individual(s) communicate the designation of a

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successor to the other parties. The Clan through its Shaade háni or designated Trustee shall:

1. Make best effort to provide the Museum with a minimum of fourteen (14) days advance notice prior to any withdrawal of the Teeyhíttaan Hat.

2. Pay all transportation costs, if any, associated with the transportation of the Teeyhíttaan Hat to and from traditional or cultural events.

3. The authorized individual withdrawing the Teeyhíttaan Hat must complete a copy of the Withdrawal Agreement (Addendum A) and provide proof of authorization to the Museum (which may, at its discretion, seek to verify this authorization with the Clan).

4. Be responsible for any loss or damage to the Teeyhíttaan Hat while it is in its custodianship

E. Ensure that this agreement is affirmed by the Clan at any ku éex' or other ceremony necessary for this Agreement to have binding effect under Tlingit tradition; and so that the Museum will not be subject to competing or multiple claims under this Agreement.

F. Ensure that any successor Shaade háni or trustee is authorized to speak and act on behalf of the Clan according to Tlingit tradition.

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2.3 The Museum shall:

A. Be the repository for the Teeyhíttaan Hat and care for the Teeyhíttaan Hat to assure its preservation, protection, and use in a manner consistent with Clan protocols and traditions, including use for the purposes of research and education.

B. Be responsible for any loss or physical damage to the Teeyhíttaan Hat while it is in its custodianship.

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C. Maintain insurance that is adequate to protect the Teeyhíttaan Hat from loss or physical damage and is comparable to coverage of other objects of similar significance in the Museum's collection.

D. Maintain the Teeyhíttaan Hat at the Museum's facility unless the Clan and the Museum agree to loan the Teeyhíttaan Hat for educational/exhibition purposes to other museums (the Teeyhíttaan Hat is currently, at the time of signing, on loan to the City of Wrangell Museum at the Nolan Center in Wrangell, AK) or the clan withdraws the Teeyhíttaan Hat for ceremonial or cultural purposes. The Museum recognizes that Wrangell is a preferred location at this time for the Clan, as long as the Teeyhíttaan Hat can be protected from harm. The display of the Teeyhíttaan Hat at any Museum, cultural center, or other institution must meet generally accepted standards for the safety and protection of objects like the Teeyhíttaan Hat.

E. In consultation with the Clan, perform restoration or conservation treatments on the Teeyhíttaan Hat as necessary that are consistent with generally accepted museum practices.

F. Make the Teeyhíttaan Hat available for priority use and benefit of the Clan and allow the Teeyhíttaan Hat to be withdrawn by persons specifically authorized by the Clan to act on its behalf.

1. Construct a secure and safe crate for transportation of the Teeyhíttaan Hat to and from traditional and cultural events.

2. Provide instruction to the person or persons designated by the Clan to withdraw the Teeyhíttaan Hat on the handling, transportation, and security of the Teeyhíttaan Hat when the Teeyhíttaan Hat is away from the Museum building.

3. To better protect the Teeyhíttaan Hat while in transit, the Museum may, when appropriate, arrange for transportation by the most direct and expedient method the Museum will pay any additional cost if the

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Museum's method is more expensive than that proposed by the Clan), or, if necessary, have a Museum employee accompany the Teeyhittaan Hat while the Hat is in transit

G. **Exhibit and use the Teeyhíttaan Hat for educational and research programs in** collaboration with the Clan and shall **properly cite the Clan ownership of the Teeyhíttaan Hat.**

H. **Protect the rights of the Clan** to the Teeyhittaan Hat.

1. The Clan owns all non-physical attributes of the Teeyhíttan Hat, including its image, and the Museum will refer to the Clan all requests from a third party to make any use of the image or other attribute of the Teeyhittaan Hat, including any request by a Museum patron or other person to make a high-quality photographic or other reproduction of the image. The Clan may allow or disallow any proposed use of the image and may charge a fee for any proposed use

2. Unless instructed otherwise by the Clan, the Museum may (i) permit Museum patrons to take typical snapshots of the Teeyhíttan Hat to the same extent as it allows patrons to take snapshots of other items on display at the Museum; (ii) permit Museum staff to take photographs of the Teeyhittan Hat for normal recordkeeping, including historical, archive, or insurance purposes; and (iii) use existing photographs of the Teeyhittaan Hat in the public domain for routine, non-commercial, educational projects, including brochures, lectures, publications, videos, and websites, with a caption properly crediting the Clan as owner of the at oowu. Any other proposed use of the image by the Museum may only be pursued with permission of the Shaade hani or designated Trustee of the Clan

3. In the event that a physical use of the Teeyhíttan Hat is proposed, and that use is not provided for in this Agreement, the parties will confer. The Clan may object

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to a proposed use not provided for in this Agreement for any reason. The Museum may object to the proposed use if the use interferes with the Museum's right to display or educate the public about the Teeyhittan Hat or with the Museum's duty to protect the Teeyhittan Hat from harm.

I. Recognize and acknowledge the importance of the cultural leadership provided by the Shtaade hani, and other Clan elders and leaders.

III Destruction, Harm, or Alienation of the Teeyhittan Hat

3.1 No party shall destroy, harm, or alienate the Teeyhittan Hat as those terms are used and understood under Western law. This means that no party has the right to physically harm, physically destroy, or sell an interest in the Teeyhittan Hat. The Clan, however, retains the right to alienate the non-physical attributes of the Teeyhittan Hat (a Tlingit concept that cannot be adequately described here).

3.2 If the Clan determines that the Teeyhittan Hat is no longer the Clan's at.óow then the Hat will become the property of the Museum.

3.3 The Museum cannot transfer its rights and responsibilities under this Agreement. If the Museum determines that it can no longer fulfill its responsibilities under this agreement, then all rights and responsibilities to the Teeyhittan Hat will revert to the Clan.

IV. Resolution of Issues

4.1 The parties acknowledge the Clan's priority right to use the Teeyhittan Hat for cultural purposes and the Museum's paramount responsibility to protect the Teeyhittan Hat. Sometimes these rights and duties may be mismatched. If a conflict should occur, the parties will meet, review this Agreement, and work out a solution that is satisfactory to each side. If the Clan and the Museum cannot resolve the issue, the

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¶
<#>Pay the Clan two-thirds of the profits made from any sale of photographs or slides of the Teeyhittaan Hat by the Museum or its associate organization(s). ¶
¶
<#>Pay $500 to the Clan for each photographic reproduction in scientific, educational, or art publications. The Clan may agree to waive this fee for worthwhile/scholarly publications.¶
¶
<#>No reproductions are authorized for commercial ventures. ¶

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Shaade háni will meet with Commissioner of Education and Early Development to resolve the matter.

4.2 If the parties are unable to agree on an issue arising under this Agreement, the parties will submit the issue either to binding arbitration under AS 09.43, or to a different dispute resolution process, including mediation, to which both parties have agreed.

4.3 No dispute resolution process other than those provided for in paragraphs 4.1 and 4.2 may be invoked under this Agreement unless both parties agree to the process in writing.

V. Loss or Damage

5.1 In the event of loss or damage to the Teevhittaan Hat, the party who had possession of the Teevhittaan Hat at the time of the loss or damage shall be responsible for the loss or damage, without regard to fault, and damages shall be limited to a duty to restore, repair, or create a physical replica of the Teevhittaan Hat. The parties shall consult and collaborate on any restoration, repair, or replication, and the Museum shall ensure that it is consistent with the standards for conservation of artifacts. Each party is individually responsible to provide its own insurance protection for the Teevhittaan Hat.

5.2 The parties agree that each party under this agreement holds an insurable ownership interest in the Teevhittaan Hat.

This agreement takes effect on the last date set out below and is subject to amendment only by the written mutual consent of the parties.

CLAN

Dated: _____ **By:** _____

Dated: _____ **By:** _____

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MUSEUM

Dated: _____ By: _____

Dated: _____ By: _____

Memorandum of Agreement
Between the
Teeyhíttaan Clan of Shx' at' Kwáan
and the
Alaska State Museum

Addendum A

Withdrawal Agreement

In consideration of the Agreement between the **Teeyhíttaan Clan of Shx' at' Kwáan** (hereinafter referred to as "Clan") and the **Alaska State Museum** (hereinafter referred to as "Museum"), for the Clan to withdraw the ***Yéil Aan Kaawu Naa s'aaxw*, Leader of All Ravens Hat** (Name of Haa at.óowu) (herein after referred to as "Teeyhíttaan Hat"), museum catalog number **II-B-809**, from the Museum, I, _____ of _____, Alaska, agree on behalf of myself and the Clan as follows:

Deleted: for
Deleted: permission
Deleted: of

1. The Teeyhíttaan Hat will be used in the following koo.eex' or cultural event (Name and Address):
   _____
   _____
   _____
   _____
   _____.

2. On behalf of the Clan, I will withdraw the Teeyhíttaan Hat from the museum on this date of _____, and will return it to the Museum on the date of _____.

3. The Teeyhíttaan Hat will be cared for according to the instruction which has been received from the Museum and in accordance with the guidelines (if any as provided by the Clan or Museum) attached to this agreement.

4. I assume full responsibility for the care and return of the Teeyhíttaan Hat and agree that both I and the Clan will be individually and collectively liable to the Clan and Museum for any loss or damage to the Teeyhíttaan Hat which occurs during the period of withdrawal.

This agreement takes effect on the last date set out below and is subject to amendment at any time.

Dated: _____
By: _____
(Signature)

_____
(Printed Name)

Address:

_____
_____
_____

Home Phone:

_____

Work Phone:

_____

Contact Phone at Ceremonial Site:

_____

CLAN

Dated: _____
By: _____

Dated: _____
By: _____

MUSEUM

Dated: _____
By: _____

Dated: _____
By: _____

WITNESSED BY ME

THIS DAY OF _____ By: _____

---------- Forwarded message ----------
From: "Richard Rinehart" <Richard.Rinehart@sealaska.com>
To: "Slotnick, Stephen C \(LAW\)" <neil.slotnick@alaska.gov>, "Ledoux, Larry S \(EED\)" <larry.ledoux@alaska.gov>, "Thibodeau, Linda S \(EED\)" <linda.thibodeau@alaska.gov>, "Kato, Bruce H \(EED\)" <bruce.kato@alaska.gov>
Date: Fri, 15 May 2009 12:53:16 -0900
Subject: RE: Edited MOA, revised

Neil,

I have attached a revised version of the proposed agreement, also done with track changes. You will see we have made many changes to your suggestions; I also included several comment boxes to explain the reasoning for making the changes.

In some cases you will see we reinserted language you had taken out. In many areas we revised your wording, or simply added or deleted a single word. Since we are in agreement on a number of the issue this is ultimately about ownership and control of the Clan's Haa at.óowu, and in these areas you will see we are not open to a lot of compromise. However, that being said we are willing to allow the Museum to exhibition and educational uses and we share the state's concern for preservation and protection of the Teeyhíttaan Hat.

We are very concerned with a couple of the edits or suggestions you made. When the state crosses out the phrase "~~a manner that is respectful and sensitive to the Clan, Native people and their culture~~", then adds in a phrase about having a Museum employee accompany the Hat while it is being transferred to a cultural event, and couple that with the Museum claiming a right to object to a proposed use and their duty to protect. – we grow very concerned. We are concerned this is setting up the Museum to act just as they did last fall in Wrangell when the Shaade háni wanted to use the Teeyhíttaan Hat in a cultural ceremony to welcome back the Killer Whale Flotilla Robe of the Naanyaa.aayí clan. In that example, the Alaska State Museum made the Shaade háni and the Teeyhíttaan people feel they were somehow inferior to the State when it came to use and control to the Hat. This is an action we must prevent in the future, and it is one we are not willing to compromise.

You will see we have reworked the area of dispute resolution. We are not willing to enter into binding arbitration under Alaska state law; you will see our suggestion for alternative dispute resolution in the attached document.

This should be viewed as a working draft, nothing should be considered final and we reserve the right to delete, add, amend or change any part or portion we may have previously submitted until a final agreement is signed.

I know the revisions are many and will take some time to review, but if you could look at your calendar and let us know when you have time available to meet we would be willing to meet with you sometime early next week if you are available.

Thank you I look forward to hearing from you,

Richard Rinehart, Jr.

From: Slotnick, Stephen C (LAW) [mailto:neil.slotnick@alaska.gov]
Sent: Wednesday, May 20, 2009 3:57 PM
To: Richard Rinehart
Cc: Kato, Bruce H (EED)
Subject: New Agreement.doc

Richard:

Here is a new draft. As I mentioned yesterday, I'm starting a new draft without redlining, but much of this is copied over from the earlier drafts.

All of the first couple of pages is brand new. Those pages are based on the conversation that we had yesterday.

As you will see when you get the end, I made a space for a section called "dispute resolution" but I left it blank -- I just noted "pending review by dep't of law," because my colleagues and supervisors will be addressing this section for the State, not me. I don't expect to be able to get you anything on this issue until next week, and I didn't want to hold up your review of the rest of the document.

I'm going to be buried in other work until Thursday or Friday of next week, but I'm hoping we're close. Let me know your thoughts and if I don't talk to you before Friday, have a good holiday weekend.

Neil

From: Slotnick, Stephen C (LAW) [mailto:neil.slotnick@alaska.gov]
Sent: Tuesday, June 02, 2009 3:40 PM
To: Richard Rinehart
Cc: Kato, Bruce H (EED); Thibodeau, Linda S (EED)
Subject: complete agreement

Hi Richard:

I am sending you an updated version of the same draft agreement I sent you a little over a week ago. The only difference is that this version has a dispute-resolution clause. So that you can see what the clause looks like, I've also attached a document that is a stand-alone version of the dispute-resolution clause. I think this dispute-resolution mechanism gets at what we were discussing.

I think overall this agreement is good for the Clan and the Museum. Let me know what your father's views are, as well as those of any other Clan members with whom you share it.

Hope you're in town to enjoy this weather.

Thanks,

Neil

From: Richard Rinehart
Sent: Tuesday, June 09, 2009 5:25 PM
To: 'Slotnick, Stephen C (LAW)'; Kato, Bruce H (EED); Thibodeau, Linda S (EED)
Cc: 'jma99801@yahoo.com'; 'Ethel Lund'; 'jrinehart@gci.net'; 'Debra O'Gara'; Rosita Worl
Subject: RE: complete agreement

Neil,

I have spoken with members of the Teeyhíttaan Clan and they are unanimous in opposition to excluding the language about ownership and title. They all feel the Hat is the Haa at.óowu of the Clan, therefore, any agreement should be very clear on the matter of ownership and control belonging to the Clan. The "dilemma" (as you stated in your latest proposed agreement) is really about ownership of the hat and the Clan believes the bottom line is that the Clan owns the hat and we would like to request the museum assist us with keeping it safe and in exchange we may allow the museum to use the hat for exhibit, education, research, etc.....

The language that makes this a part of the Museum's permanent collection also has raised some concerns. This makes it sound like the Museum has a more permanent and lasting right or claim to the Hat then the Clan.

In the dispute resolution section you bring up binding arbitration again. The Clan would prefer the federal court or appeal process.

The language about the hat being housed in Wrangell under certain "conditions" is not adequate to insure the hat will be housed there. Who determines whether the Wrangell museum is a secure facility? That should be a part of the agreement now, not later (as to whether the Wrangell is a secure facility).

Those are the concerns. In general we do not like the new proposed agreement and feel it is too vague.

Please discuss this with Bruce, Linda, Larry and others you need to at the State and let us know if you are willing to concede on any of these key issues.

Richard

---------- Forwarded message ----------
From: "Richard Rinehart" <Richard.Rinehart@sealaska.com>
To: "Slotnick, Stephen C \(LAW\)" <neil.slotnick@alaska.gov>, "Kato, Bruce H \(EED\)" <bruce.kato@alaska.gov>, "Thibodeau, Linda S \(EED\)" <linda.thibodeau@alaska.gov>, <larry.ledoux@alaska.gov>
Date: Mon, 20 Jul 2009 15:17:31 -0900
Subject: Teeyhittaan Clan Hat

Neil,

It has been six weeks and I still have not received a response to this e-mail. Have you had a chance to discuss it with the Museum or others in the Department of Education, Division of Libraries, Archives, and Museums?

Richard

Rosita Worl

From: Richard Rinehart
Sent: Friday, October 09, 2009 11:54 AM
To: 'Slotnick, Stephen C (LAW)'; Thibodeau, Linda S (EED); 'larry.ledoux@alaska.gov'
Cc: 'jma99801@yahoo.com'; 'Ethel Lund'; 'jrinehart@gci.net'; 'Debra O'Gara'; Rosita Worl; 'richardjrinehart@yahoo.com'
Subject: Teeyhittaan Clan Hat

Neil,

Thank you for keeping the lines of communication open. I would agree that an operating agreement may be useful, however, the clan will not sign anything that acknowledges the state's claim to ownership in any way. If such an agreement can be drafted we would like to review it.

Thank you for your help and have a nice day,

Richard Rinehart, Jr.

PS. Please use my personal e-mail address, richardjrinehart@yahoo.com , for all future correspondence.

From: Slotnick, Stephen C (LAW) [mailto:neil.slotnick@alaska.gov]
Sent: Wednesday, October 07, 2009 4:38 PM
To: Richard Rinehart
Cc: Thibodeau, Linda S (EED)
Subject: Your discussion w/ Larry

Hi Richard:

Hope things are going well for you.

Commissioner LeDoux mentioned to me a couple weeks ago that he had run into you in Fred Meyer and that you were expecting to hear more from us regarding the Cedar Hat. I've been putting off contacting you, hoping that the Museum would have a new chief curator hired, but Linda tells me that the hiring has been delayed and won't occur until November.

I still think it's worthwhile for us to keep talking. At a minimum, we need an operating agreement in place so that when the Clan wants to use the hat we have protocols in place to make that happen smoothly.

What I want to make sure of is that if your dad needs the hat, he is not hassled. If he is going to need the hat before we get an operating agreement in place, please contact me or Linda beforehand so that we can make sure everything goes smoothly.

Meanwhile, once the chief curator comes on board, Linda and I will brief him or her on this issue and we'll be contacting you again, to see what your thoughts are.

Let me know if this plan makes sense.

Neil

From: Richard Rinehart [richardjrinehart@yahoo.com]
Sent: Monday, December 07, 2009 3:06 PM
To: Stephen C (LAW)Slotnick
Cc: jma99801@yahoo.com; jrinehart@gci.net; dogara@ccthita.org; ethell@gci.net; Rosita Worl
Subject: Re: Teeyhitaan Hat
Neil,

I actually live out in the country and my commute is no worse than it was coming into Juneau on North Douglas Highway - if you can believe that.

I am glad to hear the new curator is on board and that he is positive. The clan would be interested in an operating agreement only as long as it does nothing to restrict or lessen the ownership rights of the clan.

Thank you for keeping the communication open; we look forward to what you come up with.

Richard

Richard J. Rinehart, Jr.
richardjrinehart@yahoo.com
http://www.linkedin.com/in/richardjrinehartjr
mobile: (907) 209-1073

Want a signature like this?

--- On **Mon, 12/7/09, Slotnick, Stephen C (LAW)** ***<neil.slotnick@alaska.gov>*** wrote:

From: Slotnick, Stephen C (LAW) <neil.slotnick@alaska.gov>
Subject: Teeyhitaan Hat
To: richardjrinehart@yahoo.com
Cc: "Banghart, Robert C (EED)" <bob.banghart@alaska.gov>, "Thibodeau, Linda S (EED)" <linda.thibodeau@alaska.gov>, "Cook, Glenn S (EED)" <glenn.cook@alaska.gov>
Date: Monday, December 7, 2009, 9:53 AM

Richard:

I hope things are well in Seattle , that you are settling in at your new job, and enjoying being stuck in traffic jams.

In my last email I asked you about whether we could draft an "operating agreement" that would outline procedures so that your father could obtain the hat from the Wrangell Museum when he needed it for ceremonies with a minimum of red tape. You indicated that the Clan would be

interested in such an agreement.

I met with the new curator, Bob Banghart, and he was very positive and had some good ideas about how we can facilitate your father's access to the hat. Once we get the necessary approvals, we'll get to work on drafting something up and involving the Wrangell Museum . I'll keep you informed about our progress.

In the meantime, if your father needs access to the hat for a ceremony, please let me, Linda, or Bob know and we'll work to make sure that he has access and that it goes smoothly.

Neil

---------- Forwarded message ----------
From: "Richard Rinehart" <richardjrinehart@yahoo.com>
To: "Rosita Worl" <rosita.worl@sealaska.com>, <seagulls@acsalaska.net>, "CHARLES SMYTHE" <cwsmythe@verizon.net>, "Jo Ann Rinehart" <jrinehart@gci.net>
Date: Thu, 7 Jan 2010 08:53:49 -0900
Subject: Re: NAGPRA Review Committee Meeting
Good morning Rosita,

I just spoke with my Dad and we definitely want to be on the docket for the November NAGPRA Review Committee meeting. Please advise the Designated Federal Official and submit/re-submit necessary paperwork on behalf of the Teeyhíttaan Clan.

Thank you for your continued help with this very important matter.

Richard