

**Pa'ararákuupha: Karuk Law for Collection Management**  
Karuk Protocols and Best Practices for Managing Karuk Collections

Jane: preface

## **Article 1. Purpose and Intent**

The purpose of **Pa'ararákuupha: Karuk Law for Collection Management (Pa'ararákuupha)** is to protect the Karuk Tribe's inherent rights to reestablish, perpetuate and protect individual and collective material culture and intellectual property. As a result of acts of misrepresentation and appropriation of cultural, intellectual, religious and spiritual property taken without respect to their free, prior and informed consent or in violation of their laws, traditions and customs, the Karuk Tribe has developed this **Pa'ararákuupha**<sup>1</sup> specifically for all projects and activities that involve collaboration, consultation and engagement with the Karuk Tribe.

The intent of **Pa'ararákuupha** is to protect the rights of past, present and future generations of the Karuk People, as well as tangible and intangible embodiments of its cultural heritage, and to recognize the inherent tribal sovereignty that the Karuk Tribe asserts over all tribal knowledge, heritage and cultural resources. **Pa'ararákuupha** is to be implemented in all future authorized collaborations.

The Karuk Tribe shall be recognized and consulted as the primary legal and cultural custodians in any projects or activities that involve tangible and intangible embodiments of its cultural heritage (property). These projects will be reviewed and approved by the Karuk Resources Advisory Board (KRAB) prior to the permit process, release of information, and other contractual agreements.

The Karuk Tribe does not seek to commoditize or commercialize its cultural heritage. Further, the Karuk Tribe asserts its age-old tradition of reserving certain domains of knowledge for rightful and culturally appropriate owners, as well as restricting access to this knowledge during certain chronological periods, or to community's deemed ineligible, as dictated by time honored Karuk Law.

## **Article 2. Policy of Free Access; Policy of Restricted Access**

### **1. Policy of Free Access**

The Karuk Tribe's People's Center Museum and Tribal Libraries, including the Sípnuuk Digital Library, Archives and Museum, holds private and public collections. It is the Karuk Tribe's policy under **Pa'ararákuupha** to grant any person, agency or institution permission to access, share or handle materials and knowledge held by or pertaining to the Karuk Tribe that are not classified as culturally sensitive. The Karuk Tribe may

require viewing/handling materials in the presence of Karuk Tribal staff and/or prohibiting photographing of the materials.

2. **Policy of Restricted Access**

However, in recognition that these Karuk Tribal entities hold some materials that have legal restrictions or that are culturally sensitive, and in recognition of the Karuk Tribe's inherent right to keep its culture sacred, the Karuk Tribe will follow these protocols in classifying materials and in honoring requests for viewing, handling, sharing, reproducing, or publishing materials that have been classified as either culturally sensitive or whose classification is yet undetermined. Additionally, the Karuk Tribe will enter into discussions and written understandings and/or agreements with other Tribal or non-Tribal governments, agencies and/or institutions regarding materials collections pertaining to Karuk cultural patrimony.

### Article 3. Definitions of Terms

1. **Karuk Tribe** includes Karuk individuals – members and/or descendants, families, villages, communities, Karuk Tribal government and the Karuk People as a whole.
2. **Agreement** is a formal written document between two parties, e.g. an individual and the Karuk Tribe, or an institution and the Karuk Tribe, which may or may not be binding regarding a course of action or activities.
3. **Community** is a term used here broadly to include
4. **Cultural Patrimony** describes any property (tangible or intangible) that the Karuk Tribe recognizes as being owned by the Karuk Tribe as a whole, or by a group which holds such property in trust for an associated individual or community. Cultural Patrimony is, always has been, and always will be inalienable except by community consent, and which may be a fundamental element of a community's cultural identity and heritage.
5. **Culturally Responsive** describes the tailored actions demonstrating awareness and appreciation of the needs of the Karuk Tribe as a whole, or any associated particular group or community, and recognizes the Karuk Tribe's inherent right to keep its cultural heritage sacred.
6. **Culturally Sensitive** describes tangible and intangible property and knowledge which pertains to the distinct values, beliefs and life-ways of the Karuk Tribe. Property and knowledge considered culturally sensitive are **generally** not intended to be shared outside the community of origin or outside of specific groups within a community. Examples include but are not limited to: any materials that depict a Karuk tribal spiritual or religious place, object, belief or activity; any spiritual or religious activities, such as prayers, ceremonies, burials, songs, dances, healings, and medicine rituals. The Karuk

Comment [LisaH1]: Should I leave this out?

Tribe maintains the right to make the final decision on the designation of “culturally sensitive.”

7. **Projects and/or Activities** include, but are not limited to, repatriation efforts, publications, collections management, cultural heritage representations, and implementation of cultural protocols.
8. **Karuk Resources Advisory Board** serves as the primary advisor to the Tribal Historic Preservation Office and all matters relating to the protection, preservation, and perpetuation of Karuk cultural, spiritual and natural resources. The KRAB reviews and preapproves plans, policies, and documents on behalf of tribal departments and recommends policy amendments and/or publications; collaborations with individuals, institutions and agencies; and legal proceedings approvals to the Karuk Tribal Council. The KRAB reserves the right to grant co-ownership of Karuk Intellectual Property.
9. **Karuk Traditional Knowledge and Cultural Heritage** includes beliefs, knowledge, (agricultural, technical, medicinal, ecological and artistic), movable and immovable cultural properties, customary laws, traditions, human and genetic resources, seeds, medicines and knowledge of the properties of fauna and flora, arts and artistic works, and other forms of cultural expression, handed down through the generations.<sup>ii</sup>
10. **Property** is anything that can be possessed or disposed of in a legal manner.
  - a. **Karuk Intellectual Property** is the information, practices, beliefs and philosophy that are unique to the Karuk Tribe.
  - b. **Personal property** is used here to define tangible objects identified as affiliated with the Karuk Tribe and cultural heritage.
11. **Intellectual Property Products** includes all original and replicated materials reflecting or containing Karuk Intellectual Property produced by and for the Karuk Tribe including but not limited to physical and virtual items representing cultural heritage, such as regalia, baskets, tools, written materials, transcriptions, photographs, recordings collected, managed or produced by individuals and/or funding institutions pursuant to this **Pa'ararákuupha**. These are considered to be the inherent property of the Karuk Tribe as the primary legal and cultural owners and custodians. Therefore they shall remain the sole property of Tribe unless otherwise specified in any agreement (see Procedure 1.a.). In many instances, the KRAB will grant access, co-ownership and/or appropriate licenses to the requester for future access, use, and/or management including research, education and publication.
12. **Repatriation** is the transfer of all legal rights to and physical custody of Native American cultural materials to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.

13. **Restricted** is a term used to describe access to, use and sharing of materials or knowledge in accordance with Karuk Tribal laws, traditions and customs. Access to, use and sharing of tangible and intangible materials may be restricted because they are *seasonal*, e.g. recounting Karuk origin stories; *men's*, e.g. practicing traditional fishing at Karuk sacred fisheries; *women's*, e.g. reciting certain prayers and formulas; *family*, e.g. gathering cultural materials at specific sites; or *sacred*, e.g. handling specific regalia items.
14. **Review Committee** refers to the authoritative body making decisions about materials with regard to their culturally sensitive classification. This eight member body, two of which are Tribal Council members, is selected from the Karuk Tribal Membership on the merits of their cultural knowledge, traditional and/or academic education, and ceremonial leadership. The Review Committee has submitted an application to the Karuk Human Resources Director, may require recommendation by the Karuk Resources Advisory Board, and are formally appointed by the Karuk Tribal Council.
15. **Sacred** is a term used to describe information, materials or knowledge belonging to the Karuk Tribe as a whole or to an associated community that is kept from general public knowledge and is held in trust or owned by individuals or groups within the community.
16. **Tribal Sovereignty** is the inherent right and authority of the Karuk Tribe to exercise self-government, define its membership, manage its property, and regulate its business and domestic relations.
17. **Traditional Knowledge** is the living and storied body of knowledge passed down from generation to generation of Karuk people; individually or communally owned in accord with established community rules of ownership; often sacred or sensitive and requiring specialized training or status for inheritance or use; often held in trust for a community by an individual; may include songs, oral traditions, customs, and specialized knowledge; and forms an integral part of the Karuk Tribe's cultural and spiritual identity.

#### **Article 4. Categorization of Karuk Materials and Knowledge**

1. **Materials/Knowledge with Legal Restrictions** do not require further categorization as they already have restrictions on viewing, handling, sharing, reproducing or publishing. The Karuk Tribe will comply with these restrictions, as long as they do not conflict with the Karuk Tribe's **Pa'ararákuupha** and comply with the wishes of the Karuk Tribal Council.
2. **Materials/Knowledge Already Categorized as Culturally Sensitive** have already been recognized and categorized as culturally sensitive Karuk materials and/or traditional knowledge.

3. **Materials/Knowledge not yet Categorized as Culturally Sensitive** will be reviewed by the Karuk Tribe's appointed administrative staff, who will ideally be versed in Karuk laws, protocols and traditions as Karuk Tribal Members or Descendants. These will be trained in recognizing materials for the potentially culturally sensitive nature, and will attach restrictions on access to or further handling of such materials until review by the relevant Karuk Tribal Council appointed Review Committee.

The Karuk Tribe may consult with and coordinate the categorization of materials in possession of external parties that originate or were collected from or which depict the culture of the Karuk Tribe. Consultation and coordination may occur with the religious or traditional leaders of, or persons designated by, the Karuk Tribe. If in such projects of activities the Karuk Tribe has informed such parties that specific materials held in their possession originate with or was collected from the Karuk Tribe or depicts the its culture and is "culturally sensitive", the Karuk Tribe recommends that they do any of the following:

- a. Where the Karuk Tribe determines that specific materials/knowledge contain both culturally sensitive information and information that is not culturally sensitive, e.g., audio recordings, dictionaries, reference books, academic articles, or parts of a collection, the party may designate only a part of the materials as "culturally sensitive."
- b. The Karuk Tribe may enter into written understandings and/or agreements, e.g., Confidentiality Agreement: Culturally Sensitive Information pertaining to Karuk Intellectual Property, or Memorandums of Understandings/Agreements, with a specific individual, agency or institution regarding the access to; viewing, handling, reproduction or publication of Karuk materials and/or knowledge.

## **Article 5. Viewing, Handling of and Access to Karuk Materials and Knowledge**

The Karuk Tribe's policy under Pa'ararakuupha to grant any person, agency or institution permission to access, share or handle materials/knowledge held by or pertaining to the Karuk Tribe that are not classified as culturally sensitive. For materials/knowledge classified as culturally sensitive, the following restrictions shall apply:

1. If an item is categorized as "materials/knowledge with legal restrictions", the Karuk Tribe and any culturally responsive party will comply with the legal restrictions, including restrictions on viewing or reproduction of the materials.
2. If an item is not categorized as "culturally sensitive", the Karuk Tribe will allow the access to, sharing, viewing and handling of the materials/knowledge and may reproduce the materials/knowledge and make accessible to any person or publish the materials/knowledge.
3. If an item is categorized as "culturally sensitive", the materials/knowledge may be accessed, viewed, and handled by any person belonging to the relevant restricted community, or with a legitimate need and authority, by submitting a request to the

Karuk Tribe. As appropriate, the Karuk Tribe will refer to the Karuk Enrollment Officer and/or the Tribal Historic Preservation Office to verify entitlement. The request may be subject to the recommendation of the Karuk Resources Advisory Board and/or the Karuk Tribal Council. Upon approval, the party may be required to sign and submit a formal agreement with the Karuk Tribe, such as a Memorandum of Understanding/Agreement, or the *Confidentiality Agreement: Culturally Sensitive Information pertaining to Karuk Intellectual Property*.

4. In some cases, the Karuk Tribe may have an agreement, as described above. In this case, the requester may be granted permission to access the respective materials/knowledge. Should the request be denied, or should there remain a question of the requester's applicable affiliation or legitimacy, the materials/knowledge will not be released.
5. When the Karuk Tribe has provided consent for accessing, viewing, handling, copying, or publication of materials/knowledge to tribal representatives or specific individuals, all culturally responsive parties will make all reasonable attempts to determine that the person requesting access is a tribal representative or the specific person who has consent. In doing so, these parties may contact the Karuk Tribe for verification, if needed.
6. If an item is potentially culturally sensitive, all culturally responsive parties will attempt to follow the Pa'ararakuupha procedures, and will not reproduce the materials/knowledge or give permission for the materials/knowledge to be accessed, handled, shared, or reproduced in any format unless they have received written Karuk Tribal consent.
7. If an individual, agency or institution receives a request to access, handle or reproduce materials that is potentially culturally sensitive, a culturally responsive party will make an effort to contact the Karuk Tribe to assist in determining whether the materials/knowledge are culturally sensitive, and if so, to obtain the Karuk Tribe's consent.
8. A culturally responsive party will inform a person, agency or institution making such a request of the categorization of the materials/knowledge and that they are required to obtain and provide proof of Karuk Tribal consent.
9. If an individual, agency or institution is notified by a patron, scholar, or tribe that certain materials/knowledge, not yet identified as culturally sensitive, should be reviewed, a culturally responsive party will pursue the categorization of the materials as set forth in Article 4 above

## **Article 6. Procedure for Collections Management**

**Indian Preference:** According to our TERO Ordinance<sup>iii</sup>, in all phases of any project or activity, including both on and off Aboriginal Territorial phases, the order of priorities in Indian Preference shall be:

1. **Karuk Tribal Member,**

2. **Karuk Tribal Descendant,**
3. **Spouse or Parent of dependent Karuk Tribal Member,**
4. **Other Indians,**
5. **Other Persons**

**Sovereign Immunity: Pa'ararakuupha** is not intended nor will it be so interpreted to be a waiver of Sovereign Immunity of the Tribe, or their employees, officials and agents. Nothing in **Pa'ararakuupha** subjects or limits the sovereign rights of the Tribe.

Project Collaborator, Signature: \_\_\_\_\_

Project Collaborator, Name Printed: \_\_\_\_\_

Date: \_\_\_\_\_

**Pa'ararakuupha** Agreement Number: \_\_\_\_\_

Note: **Pa'ararakuupha** is not intended nor will it be so interpreted to be a waiver of Sovereign Immunity of the Tribe, or their employees, officials and agents. Nothing in **Pa'ararakuupha** subjects or limits the sovereign rights of the Tribe.

These protocols pertain to:

- Sacred Materials
- Men's Material
- Women's Materials
- Seasonal Material
- Family Materials -

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<sup>i</sup> **Pa'ararakuupha** borrows language from many sources, among others the American Philosophical Society's Protocols for the Treatment of Indigenous Materials. <https://amphilsoc.org/library/protocols-for-indigenous-materials> (retrieved February 11, 2017).

The Karuk Tribe would like to extend its gratitude to Dr. Jane Anderson at New York University for her guidance and valued contributions.

<sup>ii</sup> Definition adapted from: *Intellectual and Cultural Property Rights of Indigenous and Tribal Peoples in Asia* (page 3); <http://www.refworld.org/pdfid/469cbf970.pdf> (retrieved February 11, 2017).

<sup>iii</sup> The Karuk Tribe's Tribal Employment Rights Ordinance (TERO) is a tribal law that requires Indian preference and specifically Karuk preference in employment and contracting. The full text can be accessed here: [http://www.karuk.us/images/docs/tero/TERO\\_Ordinance\\_06-08-15.pdf](http://www.karuk.us/images/docs/tero/TERO_Ordinance_06-08-15.pdf)