

**NWX-DEPARTMENT OF INTERIOR-NBC**

**Moderator: Jennifer Romero**  
**October 27, 2015**  
**2:00 pm CT\***

Coordinator: Welcome and thank you for standing by. At this time all participants are in a listen-only mode until the Question and Answer session of today's conference. At that time to ask a question please press Star 1 on your touchtone phone and record your name at the prompt.

This call is being recorded. If you have any objections please disconnect at this time.

I would now turn the call over to your host (Kris Serry). You may begin.

(Kris Sarri): Good morning and Aloha from Washington, DC. Welcome to the Native Hawaiian organization's teleconference on the proposed rule entitled Procedures for Establishing a Formal Government to Government Relationship with a Native Hawaiian Community. I'm (Kris Sarri) from (unintelligible) Deputy Assistant Secretary for Policy Management and Budget and I want to thank you very much for joining us this morning.

*\*Caller names were transcribed phonetically. We regret any spelling inaccuracies.*

Before we open up the lines for comment on the proposed rule and start the clock for our three hour session today I'd like to introduce the Department of Interior's officials who are sitting in Washington, DC. We have Jody Cummings who is Deputy Solicitor and Jennifer Romero who is Senior Advisor to the Office of the - to the Secretary.

To begin the call we thought it would be helpful to provide a substantive overview of the proposed rule. Jody will provide that overview now.

Jody Cummings: Thank you (Kris). Good morning everyone. To start with I'll provide a quick summary of the department's notice of proposed rulemaking. I won't be able to cover everything contained in the notice of proposed rulemaking so I encourage everyone to read that document. It's available on the department's Web site if you search for Office of Native Hawaiian Relations online. It is also available at [www.regulations.gov](http://www.regulations.gov) by searching for the term Native Hawaiian.

The native Hawaiian community has one of the largest indigenous populations in the United States. But unlike more than 500 federally recognized native communities on the continent native Hawaiians lack both an organized government and a formal government to government relationship with the United States. In response to requests from the native Hawaiian community the department published an advanced notice of proposed rulemaking in June 2014.

That document solicited public comment regarding whether the department should assist with first reorganization of a native Hawaiian government and second reestablishment of a formal government to government relationship with the native Hawaiian community. The department conducted a total of 15 public hearings in Hawaii and received over 5,000 public comments. The

department greatly appreciated the strong public interest and response to the advanced notice.

Following review of these comments the department determined that it would not propose a rule that attempted to involve the department with organization of a native Hawaiian government or setting the form or structure of that government. The native Hawaiian community itself should determine whether and how to reorganize a government.

The department has proposed a more limited rule creating a process that the Secretary of Interior would use to determine whether to reestablish a formal government to government relationship if the native Hawaiian community forms a government that then seeks such a relationship with the United States.

The proposed rule explains that a formal government to government relationship would allow the United States to more effectively implement and administer the special political and trust relationship that Congress has already established with the native Hawaiian community by enacting more than 150 federal statutes over the last century. The proposed rule involves a multi-step process. First the native Hawaiian community would draft a constitution or other governing document. The community would then vote on the constitution and a ratification referendum.

If the constitution is approved the community would elect leaders of the new government then the new government could if it decided to do so submit it to the Secretary of the Interior a request to reestablish a government to government relationship applying specific criteria set forth in the proposed rule the Secretary would decide whether to grant or deny the request.

The native Hawaiian community's government to government relationship with the United States would then be the same under the US constitution and federal law and that of any federally recognized tribe in the continental United States and the native Hawaiian government would be recognized as having the same inherent sovereign governmental authorities subject to Congress' plenary authority.

I emphasize that the community would make all of the key decisions in this process. The community would draft a governing document ratify that document elect leaders and decide whether to seek a formal relationship with the United States. The federal government's role would be limited to receiving your request for the new government and deciding whether the request meets the criteria of the proposed rule.

An important thing we heard in previous public comments is that those native Hawaiians who are eligible for benefits under the Hawaiian Homes Commission Act were concerned about protection of their rights. The proposed rule contains language explaining that it does not affect the rights of beneficiaries. The rule also provides that the ratification vote would have to be supported by a majority of the HHCA beneficiaries who vote as well as a majority of native Hawaiian's generally.

Again this has just been a short overview of the proposal. I encourage everyone to read the proposal itself. Thanks (Kris).

(Kris Sarri): Thank you very much Jody. Now I'll provide some guidelines for the call. Today's call is scheduled for three hours however if all callers testify and have no further remarks before the three hour mark we will conclude our call. The call will be recorded and transcribed for the record. The written transcription of this call will be available for review on the Office of Native

Hawaiian Relations' Web site which is at [www.doi.gov](http://www.doi.gov) back slash ohr. And that will be available within a few days.

Please check the Web site regularly for updates. We urge you to be specific explain the reasoning behind your comment and address the proposed rules. We are very interested in hearing your concise comments on the procedures and criterias that is set out in the proposed rules for reestablishing a formal government to government relationship between United States and the Native Hawaiian community. While there is no time limits for your remarks today please be respectful of other callers by being as distinct as possible in your testimony.

In addition to your oral testimony provided today written comments on the proposed rules may be submitted at any time until December 30, 2015. Instructions for submitting written comments can be found on Page 59114 of the Federal Register Notice. Let me say that one more time Page 59114 of the Federal Register Notice announcing the proposed rule. And that is available at [www.federalregister.gov](http://www.federalregister.gov) or again on the Web site for the Office of Native Hawaiian relations.

This call is being facilitated by an Operator (Victor). He will manage the time and patch speakers through to the panel when it is their time to speak. All callers are able to listen. Callers do not have to testify for the record you may just listen in. Unfortunately we are unable to provide translation services today so if you would like to testify in your native language please provide a translation for us during your allotted speaking time so that we too can understand the meaning of your comment.

Finally some guidance on our process. For many proposed rules the only way to comment is to submit a comment in writing. But for this proposed rule we

are hosting teleconferences such as this one to accommodate speakers who would like to make oral comments for the record. As I mentioned earlier these comments will be transcribed and made available for review on our Web site. Comments made on this call and on the following calls related to the proposed rule will be treated exactly the same as written comments.

The department will collect all comments categorize them and then summarize in order to undertake its analysis. If a final rule is issued we will provide our responses to the comments in writing in the federal register. This is the standard process for federal rule making by any federal agency. That is why today the federal panel is in listening mode only. We will not respond to any substantive comments or questions today since the focus of this call is to hear testimony and the proposed rule.

We tried to anticipate frequently asked questions related to the proposed rule in a document that is available on the Office of Native Hawaiian relations Web site. The text of the proposed rule also contains answers to questions we received during the advanced notice of proposed rulemaking days of this rule making. Again today's meeting is an opportunity for you to make official public comments on the proposed rule without having to put pen to paper and without having to type out an email.

We very much value your comments and I want to thank you very much for understanding their process. With that let's take the first caller. Thank you.

Coordinator: For any questions over the phone lines please press Star 1 on your touchtone phone unmute your phone and record your name at the prompt. Once again for any questions comments or statements please press Star 1 on your touchtone phone and record your name at the prompt.

Our first question comes from Kawika Riley your line is open.

Kawika Riley: Aloha (unintelligible) Aloha to everyone Mahalo or thank you for the opportunity to comment on whether the Obama administration should provide equal treatment to native Hawaiian's as indigenous people through this rule making. My name is Kawika Riley and I'm the Chief Advocate for the Office of Hawaiian Affairs. In that capacity I am pleased this morning to provide the following administrative testimony.

Allow me to note at the onset that it is OHA's intention to provide a thorough detailed written comment at future date after that comment received a vote from OHA's Board of Trustees. That written comment will be the official position of the agency. And it has for years OHA stands in strong support of the federal rule or the taking of other federal actions that would reestablish a government to government relationship with the official native Hawaiian government upon that government's affirmative request for such a relationship.

OHA's unwavering support springs from our Board's determination that the reestablishment of a government to government relationship with the United States is the most viable action that could be taken to protect and expand the native Hawaiian rights resources and opportunities under federal law. OHA takes seriously its position as the fiduciary of native Hawaiian assets as well as its role as an advocate for native Hawaiians both of which compel the agency to speak on this issue.

OHA believes that at a minimum given the United States role in denying native Hawaiian's (unintelligible) the nation for well over a century. The proposed rule should not include requirements or thresholds that are more restrictive or burdensome than what is applied to other indigenous people. In

addition OHA contends that any such burdens or restrictions must be justified in the context of the special legal and political relationship the congressional policy has long since established between the federal government and the native Hawaiian people.

In our written comment OHA intends to be specific in any concerns as they are determined by our Board and in each instance where a concern is raised with the language and the proposed rule. We intend to propose alternatives for the department to consider. Once again we stand in strong support of establishing a final rule and urge the Obama administration to carefully consider that as it creates this important needed path that it is the best path possible and one that fairly acknowledges and respects the inherent sovereignty of the native Hawaiian people. Thank you.

Coordinator: Our next comes from Paul Richards. Your line is open.

Paul Richards: Thank you very much. Aloha. My name is Paul Richards. I have been asked by the leadership of Waimanalo Hawaiian Homes Association to speak on their behalf. We appreciate the opportunity and more so we acknowledge the hard work that the Department of Interior has placed in formulating the proposed rules. After careful consideration the Association continues to support federal recognition.

However with the recent (unintelligible) (Nai Aupuni) and other elections which is currently ongoing as part of the Native Hawaiian Roll Commission we have noticed that there is a confusion between the state recognition and federal recognition in particular with the second section of the proposed rules of the number 10 where it addresses the issues concerning proposed rules of the use of the rule certified by the Native Hawaiian Roll Commission.

We support the proposal that the Department of Interior is suggesting more so with regards to the thresholds and the requirements which are to protect the beneficiaries of the Hawaiian Homes Commission Act. We do intend to submit written comments and also we are going to be doing an initiative for community outreach so that we can be able to better educate our home fitters and non-home fitters those who are actually on the waiting list and eligible Hawaiian homes commission act eligibility with regard to the definition that's provided in the proposal.

We appreciate all the information however we do know that it is a lot to take into account but hopefully that we could be able to pursue this and get this as well as other home fed associations as well as the beneficiaries to participate in the process. Again thank you very much for the opportunity providing for testimony.

Coordinator: Once again for any further questions or comments over the phone lines please press Star 1 on your touchtone phone and record your name at the prompt. There are no comments at this time. Once again for any questions comments on the conference please press Star 1 on your touchtone phone and record your name at the prompt.

Our next question comes from (Charlene Chun Lum). Your line is open.

(Charlene Chun Lum): Mahalo. This is (Charlene Chun Lum) from Papa Ola Lokahi and I appreciate again the thought that went into preparing this document on the federal register. I have a question that relates to Paul Richards' question which is the public meetings by teleconference are only two that I see here one being one that was conducted yesterday and the other being one that's coming up on Saturday. However I'm not sure how many people in other communities know

about this and I'm not sure if you're intending to increase the number of calls or opportunities for public meetings by teleconference.

That would be my suggestion because I don't know that there's enough time for everyone to know to be on the call on November 7. So Papa Ola Lokahi will be submitting written testimony in the future subject to approval from our Board. But thank you for this opportunity to raise these questions. Mahalo.

Coordinator: And our next statement comes from (Kanoë Cheek). Your line is open.

(Kanoë Cheek): Oh gosh. My name is (Kanoë Cheek) I'm with (Unintelligible). I guess my concern is I just heard of this meeting yesterday is the first time I received an email and I downloaded the 20 pages of these changes which I've tried to go through since last night. My concern is you're not dictating how we the Hawaiians would form their own government but you're dictating how the government is going to communicate with the United States.

I'm just not sure if this is jumping the gun because the government isn't even formed yet and they haven't even made any statement what they want as a form of government. So I guess I'm just not understanding this process. But I want to make sure that I'm notified on any other meetings or telephone conferences there are so that I can at least, you know, follow this through. We will be - I will be submitting written comments. Aloha.

Coordinator: Once again for any questions comments or statements please press Star 1 on your touchtone phone and record your name at the prompt. And again for any comments questions or statements please press Star 1 on your touchtone phone and record your name at the prompt. There are no comments at this time.

Next comments come from (Marilen Lenomecan) your line is open.

(Marilyn Leimomi Khan): Yes Mahalo (unintelligible). My name is (Marilyn Leimomi Khan) I am the President of the (Unintelligible) Hawaiian Civic Club. We support an administrative rule to facilitate the reestablish about (unintelligible) government to government relationship with the native Hawaiian community to more effectively implement the special political and trust relationship that Congress has established between native Hawaiians in the United States.

What we like about the proposed rule is that it does not attempt to reorganize our native Hawaiian government or draft our constitution nor does it dictate the form or structure of our government. Having said that you know that we are in the process of electing delegates (Unintelligible) that hopefully will lead to some type of governing document to be ratified by the native Hawaiian people. We support this proposed rule as an option and option for consideration by our people.

We do not believe that it's in our best interest to close any pathway but to choose (unintelligible) to the best pathway and by having this federal rule in effect at some point in time it will allow the option to our people to seek federal recognition if it so desires. So (Unintelligible) for that. Also our club will be providing some specific comments related to the federal register. We have some concerns about the threshold but we are, you know, we're still redoing that and the logic that is contained in the Federal Register Notice.

Thank you again for your work on this proposed rule it is written very clearly and so simply and we appreciate this effort. Aloha and have a nice day.

Coordinator: Again the floor is open to comments. If you would like to make any comments on the call please press Star 1 on your touchtone phone and record

your name at the prompt. Our next comment comes from Michelle Kauhane.  
Your line is open.

Michelle Kauhane: Aloha thank you. This is Michelle Kauhane with the Council for Native Hawaiian Advancement. We want to thank the US DOI for the rule. We are definitely in support of the rule and we'll provide written comments for the record. But at this time I just wanted to ask the Department of Interior that one of the sections of the rule that we would like reconsideration is the issue on land into trust that we would support land into trust. Again we would submit thorough written comments on our concerns but would like for the record for the DOI to consider that. Mahalo.

Coordinator: Again the floor is open for comments. If you would like to make a comment please press Star 1 on your touchtone phone and record your name at the prompt. Once again for any comments over the phone please press Star 1 on your touchtone phone and record your name at the prompt.

Our next comments come from (Marilyn Leimomi Khan). Your line is open.

(Marilyn Leimomi Khan): Yes Aloha. I'd just like to add to my earlier comments and then also comment on a previous speaker I think (Charlene) who expressed some concern about the public hearings. And like her I would agree and recommend that the DOI consider conducting a couple of these public hearings during the month of November probably about mid-November. That would enable, you know, us to get the message out to more native Hawaiians and also because the rule is very detailed and requires us to, you know, really take a hard look at all of its provisions.

And so I think many of us are still in the formulative stage and holding discretions with our members. So I strongly recommend considering at least a couple more meetings in mid-November. Mahalo. Aloha.

Coordinator: Again for comments over the phone please press Star 1 on your touchtone phone and record your name at the prompt.

Next comments come from (Charlene Chun Lum) your line is open.

(Charlene Chun Lum): Aloha. Mahalo. I'd like to also recommend that if there are additional meetings a summary briefing that might be a little bit more than assumption (unintelligible) might be appreciated because as (Leimomi) said and as others have said it takes some constitution to read through everything and to understand what they're reading. And so if there were an executive summary of some sort that could be discussed at the beginning of the meeting for the public I think that would be helpful.

And we on our part will try to perhaps put a slide show together that might make it simpler for a community meetings that we might have with our own people but something official coming from the Department of Interior would be also helpful. Thank you for your consideration.

Coordinator: Once again for comments over the phone please press Star 1 on your touchtone phone and record your name at the prompt. Our next comments come from (Kanoë Cheek) your line is open.

(Kanoë Cheek): Hi Aloha again. I just wanted to agree with the previous two speakers. I think we should have some kind of - I know you had public hearings earlier in the year or whatever but I think this is important to have the public feedback on this. Also I read the 20 pages. I've gone through it I kind of understand it but

then I just wonder how many native Hawaiians will actually read this document and understand it. So I agree with the previous speakers on having the summary of some sort. Okay Aloha.

Coordinator: Again for comments over the phone please press Star 1 and record your name at the prompt. If you'd like to make any comments over the phone lines please press Star 1 on your touchtone phone and record your name at the prompt. For comments over the phone lines press Star 1 and record your name at the prompt.

(Kris Sarri): Hi this is (Kris Sarri). I want to thank everybody for the suggestions the comments and the questions that we've received. As I mentioned at the start of the call if we had all callers had a chance to testify that wanted to and there were no further remarks we would conclude the call. So what I'd like to do now is just check in. We're about 45 minutes into the call we'll plan to be on listening for 15 more minutes and I will get on at the end of that time and conclude the call if we don't have any additional comments over the next 15 minutes. Thank you.

Coordinator: Once more for questions over the phone lines please press Star 1 on your touchtone phone and record your name at the prompt.

Next question comes from Paul Richards. Your line is open.

Paul Richards: Thank you very much. Thank you (Kris) for allowing us the opportunity again to provide comments. I just wanted to add on to my previous comments and this was a concern. Our association as well as others this change to I guess their availability to participate. A lot of them currently worked during the day and especially during the week day and they really wanted to participate but

however they couldn't be able to get away from their time at work or to take off.

So I'm not sure exactly what would be the best alternative either to schedule this for a weekend in the morning for other homesteaders, non-homesteaders (unintelligible) organizations civil clubs and whoever else. I'm just particularly concerned that because of the numbers it would be probably better to have it during a non-working time so that that way it could be able to be more opened for others to participate. Thank you very much.

Coordinator: Once again for comments over the phone lines please press Star 1 on your touchtone phone and record your name at the prompt. And I'm showing no one queued at this time. If you would like to make any further comments on the call please press Star 1 on your touchtone phone and record your name at the prompt. And we have no further comments.

Our next comments come from (Lehua Kiuilau) your line is open.

(Lehua Kiuilau): Aloha on behalf of (Unintelligible) we object to these rules. Specifically we object to several sections of the rules but in Section 50.12 Section B (Unintelligible) he specifically opposes the use of the roll that was established by the State of Hawaii. Irrespective of the (unintelligible) decision to allow the process to go forward and not grant the preliminary injunction that was filed there is an appeal in this process and we believe that that process could subject this whole process to further legal challenge.

Therefore that portion that allows the roll that was established by the State of Hawaii that defines qualified native Hawaiians violates self-determination. Also thousands of names were added on the list without their consent part of Act 77 amendment that was made to F195. So therefore there are people who

are on other lists that had not participated in roll that were arbitrarily added onto the role therefore all of that portions of the rule that allows that roll to participate in this process should be stricken.

There is an article published in (unintelligible) today by (Tricia Kaholi Watson) that (unintelligible) a lot of those concerns for community has about the roll in the (unintelligible) process. In addition (unintelligible) is very concerned that there will be no (Unintelligible) that will be available for this governing entity. What will be the jurisdiction and the jurisdiction that would be exercised by this government over Hawaii lands? And these and other concerns are what (Unintelligible) has regarding these DOI rules.

We will be submitting more formal in depth testimony in writing but we did want to register our objections at this time. Mahalo.

Coordinator: Any further comments over the phone lines please press Star 1 and record your name at the prompt. There are no further questions.

(Kris Sarri): Hi this is (Kris Sarri) again. I want to thank (Victor) very much for facilitating the phone call. And I want to thank you very much for all the questions the suggestions and your comments today. We really do value your input. As noted at the beginning of the call the commentary closes on December 30, 2015 and the department will consider all oral and written comments received by that deadline. We really do encourage you to also submit written comments.

I want to make sure everybody is aware that the next call is taking place on a Saturday November 7 it's from 3 to 6 pm Eastern Time or 9 to 12 - 9 am to 12 pm Hawaii Standard Time. So our next call will be November 7 and that will be an open call to the public.

Once again thank you very much for your questions suggestions and comments today and we look forward to talking to you in the future. Thank you.

Coordinator: Thank you for participation in today's conference you may now disconnect.

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