

**STATE OF HAWAI'I  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. NIMITZ HIGHWAY, SUITE 200**

**COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT  
MINUTES**

**November 18, 2015 1:30 p.m.**

**ATTENDANCE:**

Chairperson John Waihe'e, IV  
Trustee Rowena Akana  
Trustee Haunani Apoliona  
Trustee Hulu Lindsey  
Trustee Robert Lindsey  
Trustee Colette Machado

**EXCUSED:**

Vice-Chairperson Peter Apo  
Trustee Lei Ahu Isa  
Trustee Dan Ahuna

**BOT STAFF:**

A. U'ilani Tanigawa  
Claudine Calpito  
Davis Price  
Dayna Pa  
Harold Nedd  
Lady Elizabeth Garrett  
Lehua Itokazu  
Liana Pang  
Louise Yee Hoy  
Melissa Wennihan  
Reynold Freitas

**ADMINISTRATION STAFF:**

Kamana'opono Crabbe, Ph.D., Pouhana / CEO  
Anuheha Patoc, PUBL  
Auli'i George, CMTY OUT  
Deja Ostrowski, PUBL  
Derek Kauano'e, ADV-GOV  
Jessica Freedman, PUBL  
Jim McMahon, ADV  
Jocelyn Doane, PUBL  
John Rosa, OUTR  
Jonathan L. Ching, PUBL  
Kawika Riley, ADV  
Lindsay Kukona Pakele, GOV  
Monica Morris, ADV  
Sterling Wong, PUBL  
Wayne Tanaka, ADV

**GUESTS:**

Sherry Broder, Esq.

**I. CALL TO ORDER**

**Chair Waihe'e** calls the Committee on Beneficiary Advocacy and Empowerment for Wednesday, November 18, 2015 to order at **1:30 p.m.**

**Chair Waihe'e** notes for the record that **PRESENT** are:

MEMBERS			AT CALL TO ORDER (1:30 p.m.)	TIME ARRIVED
CHAIR	JOHN	WAIHE'E, IV	PRESENT	
TRUSTEE	HAUNANI	APOLIONA	PRESENT	
TRUSTEE	CARMEN "HULU"	LINDSEY	PRESENT	
TRUSTEE	ROBERT	LINDSEY	PRESENT	
TRUSTEE	COLETTE	MACHADO	PRESENT	
TRUSTEE	ROWENA	AKANA	PRESENT	Arrived at 1:31 p.m.

At the Call to Order, **FIVE (5) Trustees** are **PRESENT**, thereby constituting a quorum.

**EXCUSED from the BAE Meeting are:**

MEMBERS			COMMENT
VICE-CHAIR	PETER	APO	MEMO – REQUESTING TO BE EXCUSED
TRUSTEE	LEI	AHU ISA	MEMO – REQUESTING TO BE EXCUSED
TRUSTEE	DAN	AHUNA	MEMO – REQUESTING TO BE EXCUSED

**II. APPROVAL OF MINUTES**

**A. October 21, 2015**

**Trustee Hulu Lindsey moves to approve the minutes of October 21, 2015.**

**Trustee Machado seconds the motion.**

**Chair Waihe'e asks if there is any discussion. There is none.**

**Chair Waihe'e asks if anyone votes NO or ABSTAINS. There are no replies.**

						1:30 p.m.	
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI	AHU ISA						EXCUSED
DAN	AHUNA						EXCUSED
ROWENA	AKANA						Arrived at 1:31 p.m.
VICE-CHAIR PETER	APO						EXCUSED
HAUNANI	APOLIONA			X			
CARMEN HULU	LINDSEY	1		X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO		2	X			
CHAIR JOHN	WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>				<b>5</b>	<b>0</b>	<b>0</b>	<b>4</b>

**MOTION: [ X ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED**

**Chair Waihe'e notes for the record that all members present vote 'AE (YES) and the MOTION CARRIES.**

**III. COMMUNITY CONCERNS\***

None

## IV. NEW BUSINESS

### **A. BAE 15-08: 2016 OHA Legislative Package**

**Chair Waihe'e** turns it over to Ka Pouhana Kamana'opono Crabbe.

**Pouhana Crabbe:** Aloha. Public Policy Manager Sterling Wong and the infamous Senior Public Policy Advocate Jocelyn Doane will present the update on the 2016 OHA Legislative Package.

**Public Policy Manger Wong:** Aloha mai kākou. About a month ago, we presented the Conceptual Legislative Package to the OHA Board. Based on the feedback we got at the time and now after further review and analysis, we're bringing in an action item with the current legislative package that we'll briefly go through included in the PowerPoint presentation. The numbering is a little funky; it's OHA-8, OHA-9 and OHA-10. That's because what we have done historically with our package is, because this is the second year of the two-year legislative session (biennium) we've been continuing the numbers where last year we went from OHA-1 to OHA-7. So we're just continuing with 8, 9, and 10 for this year.

The first bill OHA-8 is relating to the Mauna Kea subleases. If you recall last time when we had this discussion, one of the longstanding issues we've had with Mauna Kea have been specifically the subleases - surrounding the transparency and accountability with the subleases and how they're approved. The vast majority of subleases on the mountain, all charge nominally just one dollar and there have been limited opportunities for transparency and accountability.

The first sublease that really drew a lot of community interest was the TMT. That process which went through both the Board of Regents and the BLNR for approval, showed a lack of transparency and accountability. It took us a while to understand how they come up with the numbers. After further discussions with OMKM, it became clearer that the numbers for the lease rent seemed more arbitrary. So what we've tried to do to address that issue is create a bill that would require a law for the Board of Regents to do actual rules. The rules would then provide some sort of transparent public process or provide methodology on how they come up with the rent amounts.

**Senior Public Policy Advocate Doane:** This is consistent with how other public lands are disposed of, either through leasing or licensing. The bulk of the lands that are held by DLNR are disposed of through Chapter 171 and there's a process for how those leases are given out. So there are standards and opportunities for input, and the Department of Agriculture actually leases out their lands through a process established in rulemaking; so this would be very similar to that.

**Public Policy Manger Wong:** This will all be spelled out in rules. One of the really important aspects of this bill is that the standard we're using is not necessarily fair market rent; it's called "fair rate of return" which is different. If you look at page 4 of the bill, the standards for "fair rate of return" for the bill would include the cost of administering a management plan approved by the BLNR; that was one of our critics of the TMT lease. It wasn't clear how they came up with the evaluation for actually implementing the management plan. Then how they distributed that cost among the leases was also up in the air. So what we want in the rules is for them to require more clearly how they will account for the cost of managing the mountain.

Other standards include: compensation for loss of the use of the leased land and for other uses, compensation for loss of access to the leased land and other areas, potential costs of mitigating environmental degradation, and additional considerations, including but not limited to; the impact of the lease on Native Hawaiian rights, wildlife habitat, and the health of the ecosystem. So this gives a number of different criteria beyond just market rent for UH to consider in subleasing.

Act 132, which passed in 2009, gave rulemaking authority to UH. These are the rules that they've been taking around and having open houses on. Those rules cover commercial activities like the commercial tours. We have consistently told them in writing that they need to include in those rules subleasing and they have consistently told us *NO*, and that's why the rules that are going around right now don't have specific language relating to the subleases. That's why we want the OHA Board to approve introducing this bill, to make sure that UH does rulemaking specifically for subleasing to create clearer of transparency and accountability.

#### **OHA-9: Environmental Impact Statement (EIS) and Environmental Assessments (EA)**

One of the historical complaints about the EIS and EA processes is that people don't know when the process is happening for projects in their neighborhood. So there can be an environmental review occurring for like a vacant lot in someone's neighborhood and they have no idea the actual review is happening; they're not afforded the opportunity to provide comment and to learn more about the project. So this bill would create a requirement that before you start an EA or an EIS, you need to post a sign at the project site that would include basic information and contact information for people to provide comment. The bill is pretty straight forward. We wanted to be considerate of timing, so there is a delayed effective date so that projects that are already in process are not negatively affected by this.

#### **OHA-10: Remnants Right of First Refusal**

As you recall, we've tried for many years to close this loophole with remnants where the State is allowed to sell remnants outside of the Act 176 process. We saw two significant parcels go through this and since we haven't had the opportunity to get those laws passed, we've decided to go with a different bill which gives OHA the Right of First Refusal. Our big issue with *Public Land Trust* lands and *Ceded* lands is that the Native Hawaiian people's claims to those lands have never been resolved, and if those properties are allowed to exit the trust then they're out forever. So the idea here is that if the state is going to sell a remnant we should get the first right of refusal to maintain that claim. The idea is straightforward, but actually trying to implement it is a little tricky. So we're working to get a sense of timing and due diligence.

**Senior Public Policy Advocate Doane:** So if the Trustees approve this measure then we will be setting up a meeting with the DLNR Land Division to talk a little more about the idea to see what kind of reception we get. This is due to their adamant opposition of the remnant bills that we introduced the last 3-4 years; because they want to be able to dispose of those lands easily. So we are thinking that DLNR may like this option better.

**Public Policy Manger Wong:** Yes, one of the reasons they want to sell the lands is because of liability issues. So this might help if OHA is willing to purchase it first.

When we first brought the *Conceptual Legislative Package* to the committee, we had more bills. So we'll talk a little as to why those other bills did not make it in.

For instance, with:

- The two *Charter School* bills for the authorizers and attorneys - the sentiment at the OHA Board level was that we didn't want to include it in our package. We have been working with the Charter School community in trying to help them with the bills, so they will be moving them on their own. I didn't include the *Immersion School* bill on the PowerPoint, but in speaking with Trustee Hulu Lindsey and the community, they wanted to first work it administratively and see how far it goes at that level.
- Pay Day Loans - we're gathering more information and we're working with our partners who might have someone else who is interested in pushing it.
- Pa'ahao Voting - same thing as the Pay Day Loans above.
- Vacation Rentals - it is a big carry and we're still doing more analysis working with our partners. There might be other vehicles people introduce. Given the priorities, the OHA Board has for the legislative session, we want to take the bills that we know we have the best chance of moving and focus our resources more efficiently around those measures.

**OHA 2016  
LEGISLATIVE PACKAGE**

 BAE Committee November 11, 2015

**NEW PROPOSALS**

- **OHA-8 Mauna Kea Sublease Rules**
  - Requires the University of Hawai'i to promulgate rules for the subleasing of Mauna Kea lands
    - Must describe the method by which it will ensure a "fair rate of return" in establishing sublease rent.
  - Provides for a public hearing process for the public and stakeholders to review and comment on proposed sublease terms and fees.

**NEW PROPOSALS**

- **OHA-9 Posting Notice for Environmental Review at Project Sites**
  - Requires agencies and applicants to post a "Notice of Preparation" of an environmental assessment at the physical site that may be directly impacted

**NEW PROPOSALS**

- **OHA-10 Remnants Right of First Refusal**
  - Provides OHA with a right of first refusal to purchase remnant parcels, prior to their disposal to any other entity.

**Conceptual Package**

- **2 charter school bills (authorizers and attorneys)**
  - working with charter school community
  - Immersion school bill – working on it administratively
- **Pay day loan bill** – gathering more information; working with partners
- **Paahao voting bill** – working with partners
- **Vacation rentals bill** – gathering more information; conducting further analysis; working with partners

**Pau**

That concludes our update on this action item.

Chair Waihe'e thanks the Public Policy staff for their work and presentation.

Trustee Hulu Lindsey moves to support the following new legislative proposals and approve their inclusion in the 2016 OHA Legislative Package:

- **OHA-8**  
**Mauna Kea Sublease Rules:** Requires the University of Hawai'i to promulgate rules for the subleasing of Mauna Kea lands, which shall describe the method by which it will ensure a "fair rate of return" in establishing sublease rent. Provides for a public hearing process for the public and stakeholders to review and comment on proposed sublease terms and fees.
- **OHA-9**  
**Posting Notice for Environmental Review at Project Sites:** Requires agencies and applicants to post a "Notice of Preparation" of an environmental assessment or environmental impact statement for a site-specific action at the physical site or sites that may be directly impacted by the action.
- **OHA-10**  
**Remnants Right of First Refusal:** Provides OHA with a right of first refusal to purchase remnant parcels, prior to their disposal to any other entity.

Trustee Akana seconds the motion.

Chair Waihe'e asks if there is any further discussion. There is none.

Chair Waihe'e calls for a **ROLL CALL VOTE**.

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	1:59 p.m. EXCUSED
LEI	AHU ISA						EXCUSED
DAN	AHUNA						EXCUSED
ROWENA	AKANA		2	X			
VICE-CHAIR PETER	APO						EXCUSED
HAUNANI	APOLIONA			X			
CARMEN HULU	LINDSEY	1		X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>				<b>6</b>	<b>0</b>	<b>0</b>	<b>3</b>

**MOTION: [ X ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED**

Chair Waihe'e notes for the record that the **MOTION PASSES**.

#### IV. NEW BUSINESS

##### **B. BAE 15-09: OHA's proposed response to the Department of the Interior's proposed rule for Reestablishing a Formal Government-to-Government relationship with the Native Hawaiian Community**

**Chair Waihe'e** turns it over again to Ka Pouhana Kamana'opono Crabbe.

**Pouhana Crabbe:** Thank you Chair Waihe'e. I'd like to call upon Chief Advocate Kawika Riley and Governance Manager Derek Kauano'e to brief the committee on the potential written comments on the DOI Rule Making.

**Chief Advocate Riley:** Mahalo and Aloha. We will be going through the PowerPoint presentation for our approach to this response. We have been thoroughly reviewing this rule, and it seems to be simply an option for Native Hawaiians to choose from. This is not something that will be forced upon the Native Hawaiian people. Currently, what we have here essentially is the ability to build a door, where at the present time and for many years, there has only been a wall. On the other side of that door, we're not saying that things are perfect or that we know exactly what will be or what will become, but we know that there are rights, opportunities, and protections that are afforded on the other side of that door that we currently don't have today.

Another way to look at this rule making is that it would set up an application process; something that if the Native Hawaiian people through our own volition via choice, have a cohesive nation building process and want to have this type of government-to-government relationship and the protections that come from it. We would have the ability to do that, whereas presently that option is denied to the Native Hawaiian people.

In addition, just as adopted by the OHA Board last summer in their position of *advanced notice of proposed rulemaking*, we continue to see this proposed rule as the most viable way under federal law to protect existing rights and resources. During the *advanced notice of proposed rulemaking* stage, there were concerns that were raised in the community about what kind of changes this proposed rule could potentially have on the rights and benefits enjoyed by the Hawaiian Homes Commission Act beneficiaries. So we wanted to address that. What it comes down to is that we have a clear assurance from the Department of the Interior that there would not be changes made to the rights and opportunities enjoyed by DHHL or HHCA beneficiaries.

With that as background, we move on to our recommended position, which is that OHA strongly support the proposed rule, but that it supports the proposed rule with amendments. We think that this is a very important and historic opportunity for the Native Hawaiians people and for OHA as fiduciaries of Native Hawaiian assets and for OHA as an advocate for Native Hawaiians. We think it's an important and good opportunity but we think that the rule can be improved.

So we have a number of recommendations we want to bring to you. They fall under three categories.

First, amending provisions so that Native Hawaiians or the Native Hawaiian Government defines who its membership is and who gets to participate and how they participate, rather than the Federal Government making those requirements itself.

Secondly, we also request adjustments for practical and achievable thresholds for the ratification vote.

Lastly, we have a number of amendments to reduce delays that we find unnecessary.

***Amend Provisions so Native Hawaiians Define Membership:*** Currently, the proposed rule would require the exclusion of Native Hawaiians who are not U.S. Citizens from participating in the Nation Building process. We request that U.S. Citizenship not be a requirement; first and foremost this is an issue of self-determination. We believe that it's the Native Hawaiian people's choice to determine how they define the citizenship for the Native Hawaiian government. It's each Native Hawaiian Individual's choice to choose whether or not to participate in this process. So we believe that, given the federal government's acknowledgement that it did not want to reorganize or play an undue role in the organization. We think that they should change this provision to be consistent with that school of thought.

Additionally, the staff conducted analysis where we looked at the way that congress has defined *Native Hawaiian*. Some of the thought was that perhaps the federal government was looking at the congressional definition. However, what we found was that in a review of all the acts of the congress that we have in our inventory (45 in total) that defined *Native Hawaiian*; by a margin of over two-to-one, or just under 70 percent, the U.S. Congress adopts the kind of definition that we're recommending. In other words, it's very uncommon for congress to set up a Native Hawaiian federal program and then to limit that program's services to Native Hawaiians who also have to prove that they're U.S. Citizens. By and large they are less exclusive and we believe that it's very important for the rule making to do the same thing.

We also conducted a review of about 48 constitutions from federally recognized Indian governments to see if they were excluding non U.S. citizens; we found that the rate of exclusion was less than five percent. So in terms of fairness and self-determination, we recommend that this provision be changed.

Additionally, there is a requirement in the proposed rule that there be a separation during the stage of voting for the ratification of the governing documents that we separate or divide the Native Hawaiian community by blood quantum. There would be a vote tally for the larger Native Hawaiian population and a separate vote tally for the Hawaiian Homes Commission Act beneficiaries, or based on the way they define the native Hawaiians (having 50% or more blood quantum). So those Hawaiian Homes Commission Act beneficiaries who are 25-49% in blood quantum, who inherited the lease, wouldn't fall under this definition; so they wouldn't be included in the second tally.

**Adjust for practical and achievable thresholds and standards:** In addition to requiring that for the ratification of the constitution, after that occurs, if a Native Hawaiian government chooses to apply for a federal acknowledgement, one of the things that the federal government will look at is not just whether or not the constitution was ratified by a majority of voters, but by how many voters.

What they've set up here is a vote threshold. Theoretically, the rationale surrounds that if there is a process where you only had a roll of a hundred Hawaiians and they met all of the other criteria and then all one hundred of them voted for the constitution, you have to ask yourself, would that vote of one hundred individuals really constitute something that should be recognized with sovereign status. So in addition to asking for a majority vote, they also set up a minimum threshold for the number of votes. Think of it as a floor of certainly, and not a ceiling. What they propose are 30,000 affirmative votes for the department to even look at the application from the Native Hawaiian Government.

Also, they say, that if there are 50,000 affirmative votes for the constitution then they'll apply what they call a *strong presumption* where they'll say this part of the application looks good, we'll move on. We suggest a threshold range between 24 and 28 thousand, and I'll go into explaining why. What we did here was we looked at the principle of equity and we looked at the kinds of thresholds that are in place when other indigenous governments are asking to have their constitutions approved. The main threshold of which is in 25 United States Code (U.S.C.) 478a and the formula that's used there is essentially a minimum of 30% voter turnout. So when looking at indigenous people for that nation, at least 30% of those who are eligible to vote would turn-out to vote. Having met the 30% threshold, then a majority of the votes cast would approve of the governing document. Essentially if you apply the same figures for Native Hawaiians and make an appropriate adjustment, that's how you get the 24 to 28 thousand that we suggest.

In addition to having that vote threshold for the general Native Hawaiian population, they have a vote threshold for the Hawaiians Homes Commission Act beneficiaries regarding the separate votes I had mentioned earlier. They propose 9,000 votes minimum to even look at it and 15,000 votes in order to provide what they call a *strong presumption*.

We simply recommend that they get rid of this separate vote tally. This is a choice for the Hawaiian people to make and we shouldn't be divided by blood quantum at this time in our history. However, if they choose to ignore that request, we ask that at a bare minimum they provide a more practicable threshold. We ask that they provide the same standard that I mentioned before in the U.S.C. If you take the total number of Native Hawaiians who are registered on the waitlist and add them with the total number of Native Hawaiians who currently hold residential and other leases, you get a beneficiary population amount. When you apply that population amount number to the existing U.S.C. formula, what you get under the existing formula is a lower reasonable threshold of between four to five thousand beneficiaries.

At this time, I'm going to turn it over to our Governance Manager Derek Kauano.

**Governance Manager Kauanoë:** Thank you for the opportunity. Another part of the proposed rule is that it requires a majority vote in support of a governing document. On the face of it, this sounds very reasonable and practical. However, we are requesting that the rule actually accepts some plurality in support of a governing document. A majority vote standard works great when a group of people are only voting on one item and it's a yes or no. When we consider the diverse views of our community with regard to Hawaiian self-governance and then look at who is actually running as a candidate, we continue to have diverse views in the candidate pool.

When we look at the diverse views, it wouldn't be unreasonable for there to be a situation during the convention where the different delegates rather than proposing a single constitution for Native Hawaiians to vote on, they may recommend putting several proposals simultaneously out there for Native Hawaiians to vote on. We can imagine an example of why this type of situation may not work – say you have a proposed *constitution A* getting 21% of the votes during the ratification, proposed *constitution B* gets 30%, and proposed *constitution C* gets 49%. The proposal with the most number of votes in this situation does not meet the majority standard, but it has more support than any other model. So for this, we're not saying that convention delegates have to propose more than one constitution for Native Hawaiians, but what we want to do is to make sure that this rule is the best that it can be for Native Hawaiians and to accommodate for the uniqueness of Native Hawaiians.

**Amend to reduce unnecessary delays:** Right now the way the rule is written, the Feds anticipate a single proposal to be put to a vote. One of the problems with that is that if the majority of Native Hawaiians vote against it, it doesn't mean that they're opposed to self-governance. It could just mean that they're just opposed to the terms of that constitution. Then they might have to say to the delegates *"hey go back to the drawing board, you didn't get it right this time, fix these problems and we'll vote again"*. So that will cause another delay because it would require more time and resources. A rule that recognizes that Native Hawaiians may have more than one proposal to vote on, we think, can reduce undue delays in that respect.

The proposed rule also provides for an elected government to be the requesting entity for the political relationship. We're requesting that the rule clarify that an appointed interim government can make a request. We're trying to make the rule a little more flexible for the unique needs and circumstances of Native Hawaiians.

The proposed rule also provides that the DOI may provide technical assistance. We're asking for an amendment that says that the DOI **shall** provide technical assistance. The language "may" doesn't really mandate anything, but putting "shall" in there would mean that the DOI is available upon request with technical assistance.

**Chief Advocate Riley:** Mahalo Trustees for the opportunity to provide the presentation.



## OVERVIEW

- GENERAL INFORMATION
- RECOMMENDED POSITION
- SUGGESTED AMENDMENTS

## GENERAL INFORMATION

A Federal Rule Provides an Option for Native Hawaiians to Choose

Most Viable Way to Protect Existing Resources and Rights

Reestablished Native Hawaiian Governing Entity is not authorized "to sell, dispose of, lease, or encumber Hawaiian home lands or interests in those lands . . . ."

"leaves intact rights, protections, and benefits under the HHCA."

"does not diminish any Native Hawaiian's rights or immunities . . . under the HHCA."

"The proposed rule would not dictate the inherent sovereign powers a reorganized Native Hawaiian government could exercise."

## RECOMMENDED POSITION

OHA Strongly Supports the Proposed Rule with Amendments

Amend Provisions so Native Hawaiians Define Membership

Adjust for practical and achievable thresholds and standards

Amend to reduce unnecessary delays

## SUGGESTED AMENDMENTS

Amend Provisions so Native Hawaiians Define Membership

Proposed Rule excludes Native Hawaiians who are not U.S. citizens	We request that U.S. citizenship not be a requirement
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For Voting, Proposed Rule Separates ≥50% from ≤49% Native Hawaiians	We request that separate voting be eliminated
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Adjust for practical and achievable thresholds and standards

Proposed Rule establishes 30,000 affirmative votes minimum threshold; 50,000 for strong presumption

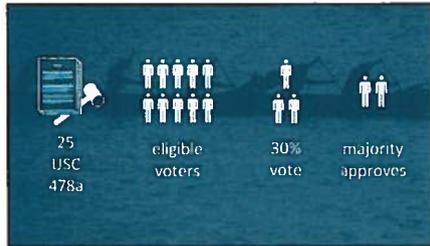
We suggest a threshold range of 24,000 - 28,000

We suggest amending these thresholds to be consistent with requirements for other indigenous governments as described in 25 U.S.C. 478a.

**25 U.S.C. 478a**

30% of voters actually vote

majority of actual voters approve



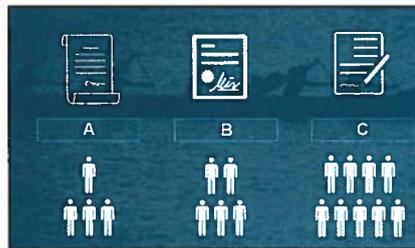
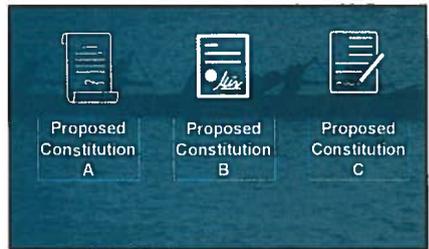
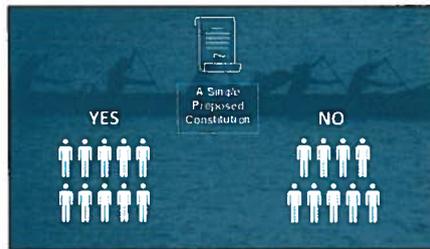
Proposed Rule establishes 9,000 affirmative votes minimum threshold for HHCA-eligibles; 15,000 for strong presumption

We request eliminating separate voting

If voting kept - suggest a threshold range of 4,000 - 5,000

Proposed Rule requires a majority vote in support of governing document

We request that rule accepts a plurality in support of governing document



Amend to reduce unnecessary delays

Drafting more than one proposal can reduce delays

Proposed Rule provides for an elected government to request political relationship

We ask for clarification that appointed interim government can make a request

Allowing for an interim government provides Native Hawaiians with the ability to prioritize issues

Proposed Rule provides the DOI "may provide technical assistance...."

We request amendment that DOI "shall provide technical assistance...."

**MAHALO**

Trustee Machado moves for The Office of Hawaiian Affairs' ("OHA") Board of Trustees to direct its Ka Pouhana (Chief Executive Officer) to timely submit OHA's comment in strong support of the proposed rule with amendments, including comments explaining why the proposed amendments should be made, in response to the Department of the Interior's ("Interior") proposed rule for Procedures for Reestablishing a Formal Government-to-Government Relationship with the Native Hawaiian Community.

Trustee Apoliona seconds the motion.

Chair Waihe'e asks if there is any further discussion. There is none.

Chair Waihe'e calls for a ROLL CALL VOTE.

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	2:30 p.m. EXCUSED
LEI	AHU ISA						EXCUSED
DAN	AHUNA						EXCUSED
ROWENA	AKANA			X			
VICE-CHAIR PETER	APO						EXCUSED
HAUNANI	APOLIONA		2	X			
CARMEN HULU	LINDSEY						Not present at time of vote
ROBERT	LINDSEY			X			
COLETTE	MACHADO	1		X			
CHAIR JOHN	WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>				<b>5</b>	<b>0</b>	<b>0</b>	<b>4</b>

MOTION:  UNANIMOUS  PASSED  DEFERRED  FAILED

Chair Waihe'e notes for the record that the MOTION PASSES.

**V. UNFINISHED BUSINESS**

None

**VI. EXECUTIVE SESSION\*\***

- A. Approval of Executive Session Minutes for October 7, 2015
- B. Consultation with OHA Counsel Sherry Broder, Esq., and John James McMahon, Esq., regarding questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding public land trust revenues. Pursuant to section 92-5(a)(4), Hawai'i Revised Statutes.

Chair Waihe'e asks for a motion to resolve into Executive Session pursuant to HRS § 92-5(a)(4).

Trustee Robert Lindsey moves to resolve into Executive Session.

Trustee Machado seconds the motion.

Chair Waihe'e asks if there is any discussion. There is none.

Chair Waihe'e asks if anyone votes NO or ABSTAINS. There are no replies.

						2:31 p.m.
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI AHU ISA						EXCUSED
DAN AHUNA						EXCUSED
ROWENA AKANA			X			
VICE-CHAIR PETER APO						EXCUSED
HAUNANI APOLIONA			X			
CARMEN HULU LINDSEY						Not present at time of vote
ROBERT LINDSEY	1		X			
COLETTE MACHADO		2	X			
CHAIR JOHN WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>			<b>5</b>	<b>0</b>	<b>0</b>	<b>4</b>

**MOTION: [ X ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED**

The committee resolved into Executive Session at 2:31 p.m. to discuss:

**VI. EXECUTIVE SESSION\*\***

- A. **Approval of Executive Session Minutes for October 7, 2015**
- B. **Consultation with OHA Counsel Sherry Broder, Esq., and John James McMahon, Esq., regarding questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding public land trust revenues. Pursuant to section 92-5(a)(4), Hawai'i Revised Statutes.**

The committee returned to Open Session at 3:28 p.m.

**VII. BENEFICIARY COMMENTS\***

None

**VIII. ANNOUNCEMENTS**

None

**IX. ADJOURNMENT**

**Trustee Hulu Lindsey moves to adjourn the BAE meeting.**

**Trustee Apoliona seconds the motion.**

**Chair Waihe'e asks if there is any discussion. There is none.**

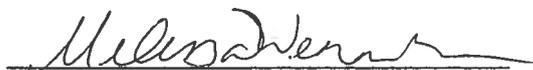
**Chair Waihe'e asks if any members vote NO or ABSTAIN. There are no dissenting votes.**

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	3:29 p.m. EXCUSED
LEI	AHU ISA						EXCUSED
DAN	AHUNA						EXCUSED
ROWENA	AKANA			X			
VICE- CHAIR PETER	APO						EXCUSED
HAUNANI	APOLIONA		2	X			
CARMEN HULU	LINDSEY	1		X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>				<b>6</b>	<b>0</b>	<b>0</b>	<b>3</b>

**MOTION: [ X ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED**

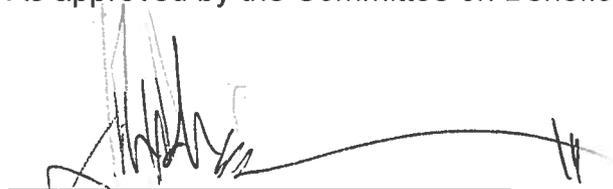
**Chair Waihe'e adjourns the BAE meeting at 3:29 p.m.**

Respectfully submitted,



Melissa Wennihan  
Trustee Aide  
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment on December 16, 2015.



Trustee John Waihe'e, IV  
Chair  
Committee on Beneficiary Advocacy and Empowerment

ATTACHMENT(s):

- Notice of Excused Absence (3)