



COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

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Council for Native Hawaiian Advancement Policy Center – Honolulu, Hawaii

November 29, 2016

Attention: Office of the Assistant Secretary, Indian Affairs, Office of Regulatory Affairs & Collaborative Action at 1849 C Street, NW, MS 3642, Washington DC 20240

Comments Due By: November 30, 2016 on Tribal Trust Compliance and
Federal Infrastructure Decision-Making

The Council for Native Hawaiian Advancement (CNHA) was founded in 2001 and is the largest national advocate of Native Hawaiian Organizations dedicated to *enhancing the cultural, political, economic and community development of the Native people of Hawaii*. Mahalo for the opportunity to offer comments on the above referenced topic.

Given the struggle of the Standing Rock Sioux Tribe against the Dakota Access Pipeline, a greater awareness of the larger American public is occurring regarding the federal trust relationship with America's Native peoples, particularly in the approval process of infrastructure projects that impact Native lands and peoples.

Our comments express 4 major recommendations for *Federal Infrastructure Decision Making* that are in sync with the long standing government-to-government trust relationship between the federal government and Native peoples:

1. Permitting Processes that Mandate Early Consultation by States and Permit Applicants.

The federal government has an obligation to consultation that is consistent with its trust relationship with federally recognized Native peoples. President Clinton, President Bush and President Obama have all issued Executive Orders to expound upon the significance of Tribal Consultation.

Federally recognized Native governments located within states where infrastructure decision-making is taking place should be included at the earliest opportunities when permitting applications are being discussed within any state or multi-state region with state government and by permit applicants.

2. Permitting Processes that Require a Tribal or Native Land Trust Impact Statement & Consent

Once an infrastructure project is identified within a state or multi-state region, the federal government should require the drafting of an *Indian Trust Impact Statement* to assess the federal trust responsibility in the project, to assess any harm or threat to Tribal or Native Trust Lands, and to assess any impact to cultural and other resources including water. An *Indian Trust Impact Statement* should also document any consultation and any consent or opposition by federally recognized Tribal governments in the state or region of the proposed project location.

3. Permitting Processes that Includes a Federal Trust Responsibility Compliance Officer

The federal government should assign a *Federal Trust Responsibility Compliance Officer* to applications for infrastructure permits where the project is located within a state or region where federally recognized Tribal governments exist. This assignment ensures that a federal official is focused on ensuring dialogue and inclusion of the interests of federally recognized Tribal governments are at the table from start to finish before any permitting proceeds.

4. Federal Indian Policy & Government-to-Government Relations Training for Federal Agencies

The federal government should develop, establish and deliver ongoing training of federal agency officials on the U.S. Constitution, on Indian Nations, and on the Federal Policy of Self Determination and Self Governance.

The history, legal standing and long established trust relationship between the federal government and American Indians, Alaska Natives and Native Hawaiians, meaningful consultation practices, are all areas necessary to understand for any agency official involved in projects or programs impacting Native peoples. Federal staff involved in such projects should be required to participate in basic and comprehensive training.

It should be noted that the federal government requires training under its Foreign Service Institute before personnel can be assigned to serve in other countries. This same approach toward federally recognized Native Nations geographically located within the United States would yield similar benefits of the FSI.

In closing, we urge the Administration as it relates to the Dakota Access Pipeline, to deny any easement request to cross Lake Oahe, and to conduct a full environmental impact statement under the National Environmental Policy Act, with a specific review of Tribal impacts. The story of Standing Rock, and many infrastructure projects of the past 40 years, reflect the critical need for Tribal interests to be established in the federal infrastructure decision-making process.

Native Hawaiians, like American Indians and Alaska Natives have a trust relationship with the federal government through numerous congressional enactments. We support the National Congress of American Indians (NCAI) resolution # PHX-16-067. As such, we appreciate any consideration of our comments in strengthening the implementation of the trust obligations to all Native peoples. Please contact Michelle Kauhane, CNHA President or Jordyn Danner, CNHA Policy Center Manager at policy@hawaiiancouncil.org or by phone at 808-596-8155. Mahalo.