

**AMENDMENT TO GRIJALVA AMENDMENT IN THE
NATURE OF A SUBSTITUTE
OFFERED BY MR. CASE OF HAWAII**

At the end, add the following (and amend the table of contents accordingly):

1 **TITLE IX—NATIVE HAWAIIAN**
2 **ORGANIZATIONS**

3 **SEC. 901. DEFINITIONS.**

4 For the purposes of this title:

5 (1) CONFERENCE.—The term “conference”
6 means the direct and timely process of receiving
7 input from, and sharing information with, Native
8 Hawaiian Organizations regarding any covered activ-
9 ity or proposed regulatory action that has a Native
10 Hawaiian impact.

11 (2) NATIVE HAWAIIAN.—The term “Native Ha-
12 waiian” means an individual who is—

13 (A) a citizen of the United States; and

14 (B) a descendant of the aboriginal people,
15 who, prior to 1778, occupied and exercised sov-
16 ereignty in the area that currently constitutes
17 the State of Hawaii, as evidenced by—

18 (i) genealogical records;

1 (ii) verification by kupuna (elders) or
2 kamaʻāina (long-term community resi-
3 dents); or

4 (iii) birth records of the State of Ha-
5 waii.

6 (3) NATIVE HAWAIIAN IMPACT.—The term
7 “Native Hawaiian impact” means any covered activ-
8 ity or proposed regulatory action that has an impact
9 on Native Hawaiians, including impacts to—

10 (A) Native Hawaiian cultural practices, re-
11 sources, or access to traditional areas of cul-
12 tural or religious importance; and

13 (B) programs that allow Native Hawaiian
14 Organizations to provide services to Native Ha-
15 waiians.

16 (4) NATIVE HAWAIIAN IMPACT STATEMENT.—
17 The term “Native Hawaiian impact statement”
18 means a Native Hawaiian impact statement pro-
19 duced under section 902.

20 (5) NATIVE HAWAIIAN ORGANIZATION.—The
21 term “Native Hawaiian Organization” means an en-
22 tity—

23 (A) that serves the best interests of Native
24 Hawaiians;

1 (B) in which Native Hawaiians serve in
2 substantive and policymaking positions;

3 (C) that has as a primary and stated pur-
4 pose of the provision of services to Native Ha-
5 waiians; and

6 (D) that has expertise in Native Hawaiian
7 affairs.

8 (6) NATIVE HAWAIIAN SACRED SITE.—The
9 term “Native Hawaiian sacred site” means an area
10 in the State of Hawaii that contains religious, cul-
11 tural, or burial grounds important to Native Hawai-
12 ians.

13 **SEC. 902. NATIVE HAWAIIAN IMPACT STATEMENT.**

14 As early as possible in the planning stage of a covered
15 activity or proposed regulatory action, the lead agency
16 shall—

17 (1) prepare a Native Hawaiian impact state-
18 ment that, at minimum—

19 (A) identifies any potential Native Hawai-
20 ian impacts of the covered activity or proposed
21 regulatory action;

22 (B) includes the scope of the covered activ-
23 ity or proposed regulatory action being consid-
24 ered, including any Native Hawaiian sacred
25 sites that might be affected; and

1 (C) includes a list of affected Native Ha-
2 waiian Organizations; and

3 (2) in the case of a covered activity, make a
4 good faith effort to identify areas that contain Na-
5 tive Hawaiian sacred sites, including areas that may
6 not be currently identified as such by an agency.

7 **SEC. 903. CONFERENCE DETERMINATION.**

8 (a) CONFERENCE REQUIRED.—If the lead agency de-
9 termines in a Native Hawaiian impact statement that a
10 covered activity or proposed regulatory action will have a
11 Native Hawaiian impact, the lead agency shall initiate a
12 conference with affected Native Hawaiian Organizations
13 identified in the Native Hawaiian impact statement.

14 (b) CONFERENCE NOT REQUIRED.—If the lead agen-
15 cy determines in a Native Hawaiian impact statement that
16 a covered activity or proposed regulatory action will not
17 have a Native Hawaiian impact, conference with Native
18 Hawaiian Organizations is not required, and a Finding of
19 No Native Hawaiian Impact shall be made part of the con-
20 ference record pursuant to section 908.

21 (c) REQUIRED INCLUSION IN THE FEDERAL REG-
22 ISTER.—In the case of a finalized regulatory action, a
23 Finding of No Native Hawaiian Impact shall be listed as
24 a separately identified portion of the preamble to the regu-
25 lation as it is to be published in the Federal Register.

1 **SEC. 904. CONFERENCE REQUEST PROCEDURES FOR A**
2 **COVERED ACTIVITY WITH NATIVE HAWAIIAN**
3 **IMPACTS.**

4 (a) CONFERENCE REQUEST.—

5 (1) TRANSMISSION OF DOCUMENT.—With re-
6 spect to a covered activity that the lead agency de-
7 termines in the Native Hawaiian impact statement
8 may have a Native Hawaiian impact, the lead agen-
9 cy shall transmit, via the agency’s standard method
10 of written communication, a request for a conference
11 meeting, a description or copy of the covered activ-
12 ity, and a copy of the Native Hawaiian impact state-
13 ment to each affected Native Hawaiian Organization
14 identified in the Native Hawaiian impact statement.

15 (2) REQUIRED FOLLOW UP.—The lead agency
16 shall, not later than 10 days after the date on which
17 a request is transmitted under paragraph (1)—

18 (A) follow up to ensure receipt of the docu-
19 ments by each affected Native Hawaiian Orga-
20 nization; and

21 (B) if the document was not received by an
22 affected Native Hawaiian Organization, re-
23 transmit all materials to that affected Native
24 Hawaiian Organization via a form of written
25 communication that is suitable to the recipient.

1 (b) DESIGNATION OF NATIVE HAWAIIAN COMMUNITY
2 STAKEHOLDERS.—At the written request of an affected
3 Native Hawaiian Organization, the affected Native Ha-
4 waiian Organization may designate Native Hawaiian com-
5 munity entities or State agencies to join the conference
6 process with the affected Native Hawaiian Organization.
7 The lead agency shall transmit any document required to
8 be transmitted to such affected Native Hawaiian Organi-
9 zation under this title to each Native Hawaiian community
10 entity or State agency designated by such affected Native
11 Hawaiian Organization under this subsection.

12 (c) NON-RESPONSE TO CONFERENCE REQUEST.—If,
13 after a good faith effort, the lead agency fails to engage
14 an affected Native Hawaiian Organization in the con-
15 ference process, the lead agency may proceed with the cov-
16 ered activity and provide the affected Native Hawaiian Or-
17 ganization with a written notification and explanation for
18 its decision to proceed without conference, which shall be
19 made part of the conference record pursuant to section
20 908.

21 **SEC. 905. CONFERENCE REQUEST PROCEDURES FOR A**
22 **PROPOSED REGULATORY ACTION WITH NA-**
23 **TIVE HAWAIIAN IMPACTS.**

24 (a) ADVANCE NOTICE OF PROPOSED RULEMAKING
25 THAT MAY HAVE NATIVE HAWAIIAN IMPACTS.—In the

1 preliminary stages of agency rulemaking, the lead agency
2 shall publish an Advance Notice of Proposed Rulemaking
3 in the Federal Register for any proposed regulatory action
4 that may have Native Hawaiian impacts, as identified in
5 the Native Hawaiian impact statement.

6 (b) CONFERENCE REQUEST.—

7 (1) TRANSMISSION OF DOCUMENT.—Upon pub-
8 lication of the Advance Notice of Proposed Rule-
9 making under subsection (a), the lead agency shall
10 transmit, via the agency’s standard method of writ-
11 ten communication, a request for a conference meet-
12 ing, including a copy of the Advance Notice of Pro-
13 posed Rulemaking and a copy of the Native Hawai-
14 ian impact statement, to each affected Native Ha-
15 waiian Organization identified in the Native Hawai-
16 ian impact statement.

17 (2) REQUIRED FOLLOW UP.—The lead agency
18 shall, not later than 10 days after the date on which
19 a request is transmitted under paragraph (1)—

20 (A) follow up to ensure receipt of the docu-
21 ments by each affected Native Hawaiian Orga-
22 nization; and

23 (B) if the document was not received by an
24 affected Native Hawaiian Organization, re-
25 transmit all materials to that affected Native

1 Hawaiian Organization via a form of written
2 communication that is suitable to the recipient.

3 (c) NON-RESPONSE TO CONFERENCE REQUEST.—If,
4 after a good faith effort, the lead agency fails to engage
5 an affected Native Hawaiian Organization in the con-
6 ference process, the lead agency may proceed with the pro-
7 posed regulatory action and provide the affected Native
8 Hawaiian Organization with a written notification and ex-
9 planation for its decision to proceed without conference,
10 which shall be made part of the conference record pursu-
11 ant to section 908.

12 **SEC. 906. CONFERENCE PROCESS FOR A COVERED ACTIV-**
13 **ITY OR PROPOSED REGULATORY ACTION**
14 **WITH NATIVE HAWAIIAN IMPACTS.**

15 (a) CONFERENCE MEETING ARRANGEMENTS AND
16 REQUIREMENTS.—The lead agency shall coordinate with
17 each affected Native Hawaiian Organization to determine
18 the date, format, agenda, and goals for the conference
19 meetings. A conference meeting shall—

20 (1) be structured to allow for meaningful and
21 respectful interaction throughout the conference
22 meeting among all participants, including allowing
23 adequate time for introductions and any ceremonial
24 proceedings; and

1 (2) conclude with planning for any subsequent
2 conference meetings, if necessary.

3 (b) CONFERENCE MEETING OBJECTIVES.—The lead
4 agency shall make a good faith effort through sustained
5 interaction and collaboration during conference meetings
6 to reach a consensus between the lead agency and the af-
7 fected Native Hawaiian Organization regarding the cov-
8 ered activity or proposed regulatory action.

9 (c) WITHDRAWAL FROM CONFERENCE.—A Native
10 Hawaiian Organization may withdraw from the conference
11 process under this title by notifying the lead agency of
12 their intent to withdraw. In such case, the lead agency
13 shall provide the affected Native Hawaiian Organization
14 with the opportunity to submit a written statement, expla-
15 nation, or comment on the conference proceedings which
16 shall be made part of the conference record pursuant to
17 section 908.

18 **SEC. 907. CONFERENCE OUTCOME.**

19 (a) PRELIMINARY CONFERENCE OUTCOME.—

20 (1) TRANSMISSION OF DOCUMENT.—Upon the
21 conclusion of the conference process for a covered
22 activity or proposed regulatory action with Native
23 Hawaiian impacts, the lead agency shall transmit a
24 preliminary outcome document, via such agency's
25 standard method of written communication, to each

1 affected Native Hawaiian Organization (including
2 those that withdrew from the process), that—

3 (A) states the decision to proceed or not
4 proceed with the covered activity or proposed
5 regulatory action;

6 (B) states the rationale for the decision;
7 and

8 (C) specifically addresses any points where
9 the decision conflicts with the request of a Na-
10 tive Hawaiian Organization or Native Hawaiian
11 community stakeholder designated under sec-
12 tion 904(b), including a detailed explanation of
13 why the request was not accepted.

14 (2) REQUIRED FOLLOW UP.—The lead agency
15 shall, not later than 10 days after the date on which
16 a preliminary outcome document is transmitted
17 under paragraph (1)—

18 (A) follow up to ensure receipt of the docu-
19 ments by each affected Native Hawaiian Orga-
20 nization; and

21 (B) if the document was not received by an
22 affected Native Hawaiian Organization, re-
23 transmit all materials to that affected Native
24 Hawaiian Organization via a form of written
25 communication that is suitable to the recipient.

1 (b) NATIVE HAWAIIAN RESPONSE PERIOD.—The
2 lead agency shall provide a period of not less than 45 days
3 after issuance of the preliminary outcome document for
4 a response by an affected Native Hawaiian Organization
5 or Native Hawaiian community stakeholder designated
6 under section 904(b).

7 (c) FINAL CONFERENCE OUTCOME.—

8 (1) TRANSMISSION OF DOCUMENT.—After the
9 expiration of the period described in subsection (b),
10 the lead agency shall transmit a final outcome docu-
11 ment, via such agency’s standard method of written
12 communication to each affected Native Hawaiian
13 Organization (including those that withdrew from
14 the process), that—

15 (A) states the decision to proceed or not
16 proceed with the covered activity or proposed
17 regulatory action;

18 (B) states the rationale for the decision;

19 (C) lists any changes to the preliminary
20 decision in response to comments received dur-
21 ing the period described in subsection (b); and

22 (D) specifically addresses any points where
23 the decision conflicts with the request of an af-
24 fected Native Hawaiian Organization or Native
25 Hawaiian community stakeholder designated

1 under section 904(b), including a detailed ex-
2 planation of why the request was not accepted.

3 (2) REQUIRED FOLLOW UP.—The lead agency
4 shall, not later than 10 days after the date on which
5 a final outcome document is transmitted under para-
6 graph (1)—

7 (A) follow up to ensure receipt of the docu-
8 ments by each affected Native Hawaiian Orga-
9 nization; and

10 (B) if the document was not received by an
11 affected Native Hawaiian Organization, re-
12 transmit all materials to that affected Native
13 Hawaiian Organization via a form of written
14 communication that is suitable to the recipient.

15 (d) SUMMARY OF CONFERENCE PROCESS.—Upon
16 confirmation of receipt of the final outcome document by
17 the affected Native Hawaiian Organizations, the lead
18 agency shall publish a summary of the conference process.
19 The summary shall consist of—

20 (1) a description of the extent of the lead agen-
21 cy's conference efforts with affected Native Hawai-
22 ian Organizations;

23 (2) a summary of the nature of any concerns of
24 affected Native Hawaiian Organizations;

1 (3) a statement of the extent to which the con-
2 cerns of affected Native Hawaiian Organizations
3 have been met; and

4 (4) the lead agency's position supporting the
5 need to proceed with the covered activity or proposed
6 regulatory action.

7 **SEC. 908. DOCUMENTATION AND REPORTING.**

8 (a) **OFFICIAL CONFERENCE RECORD.**—With respect
9 to each covered activity or proposed regulatory action with
10 a Native Hawaiian impact, the lead agency shall—

11 (1) keep an official conference record in accord-
12 ance with chapter 31 of title 44, United States
13 Code, that allows accurate tracking of the process so
14 that the lead agency and the affected Native Hawai-
15 ian Organization can correct any errors or omis-
16 sions, and provides an official record of the process
17 that can be referred to in any litigation that may
18 arise;

19 (2) document all efforts to initiate conference
20 as well as documenting the process once it has
21 begun, such as correspondence, telephone logs, and
22 emails;

23 (3) keep notes so that the conference record
24 documents the content of conference meetings and

1 phone calls in addition to information about dates
2 and who participated; and

3 (4) include all final documentation in the offi-
4 cial conference record.

5 (b) REPORT TO CONGRESS.—Each Federal agency
6 shall submit a biennial report on its conference activities
7 to Congress, including each final outcome document pro-
8 duced under this title by such agency.

9 **SEC. 909. IMPLEMENTATION AND TRAINING.**

10 (a) CONFERENCE POLICY.—Not later than 180 days
11 after the date of the enactment of this Act, each official
12 designated under section 701(a) shall submit to the Office
13 of Management and Budget a description of the Federal
14 agency's conference policy, including all Federal agency
15 officials designated under section 701(b), in conformity
16 with this title.

17 (b) TRAINING.—Each Federal agency shall establish
18 and implement training for staff who participate in the
19 Federal agency's implementation of this title that is aimed
20 at improving the Federal agency's capacity for interacting
21 with Native Hawaiian Organizations in carrying out the
22 conference process. The training shall—

23 (1) promote coordination, conference, engage-
24 ment, and other interactions with Native Hawaiian
25 Organizations;

1 (2) outline and reinforce the Federal agency's
2 duties concerning Native Hawaiian interests; and
3 (3) strengthen the understanding of the United
4 States trust responsibility owed to individual Native
5 Hawaiians and how the trust responsibility is imple-
6 mented through federally funded projects and pro-
7 grams.

