

Department of Interior Proposed Rules: C.F.R. Parts 47 & 48

PRIMER

Federal “Notice and Comment” Rulemaking

- “Notice of Proposed Rulemaking” (May 6).
- Public comment period.
- Consideration of the rulemaking record.
- Proceed or not.

Proposed Rules Parts 47 & 48

- Two topics.
 - Land exchanges.
 - Amendments to the Hawaiian Homes Commission Act (“HHCA”).
- Two statutory authorities.
 - Hawaiian Home Lands Recovery Act (“HHLRA”).
 - Admission Act.

Land Exchanges

- HHLRA §205(a) says:
 - ...the Chairman shall submit a report to the Secretary. The report shall contain--
 - A description of the acreage and fair market value of the lands involved in the exchange;
 - Surveys and appraisals prepared by DHHL, if any; and
 - An identification of the benefits to the parties.

Land Exchanges

- Proposed rule §47.60 says the Chairman shall submit:
 - Required Statements:
 - Approval for the exchange from the Commission;
 - Compliance with NHPA and a cultural and historic property review;
 - Explanation of how the exchange will advance the interests of beneficiaries;
 - Summary of any consultation with any beneficiaries that may have occurred;
 - Compliance with the NAGPRA;
 - Required Analyses and Reports:
 - Environmental analyses and records sufficient to meet CERCLA, NEPA, and all other pertinent; Federal environmental requirements;
 - Land appraisal reports and statements;
 - If property conveyed is adjacent to Hawaiian home lands,
 - Analysis of intended use of lands conveyed; and
 - A finding that the intended use will not conflict with established management objectives on adjacent Hawaiian home lands;
 - A copy of the exchange proposal, if any.
 - Relevant Legal Documents
 - Any land exchange agreements entered into regarding the subject properties between DHHL and the non-DHHL party;
 - Evidence of title;
 - Deeds.

Land Exchanges

- HHLRA §205(b) says:
 - Not later than 120 days after receiving the information required to be submitted by the Chairman, the Secretary shall approve or disapprove the proposed exchange.

Land Exchanges

- Proposed rule §47.65 says:
 - The Secretary will approve or disapprove within 120 days.
 - Before approving or disapproving the Secretary must determine whether the exchange
 - Complies with applicable law; and
 - Advances the interests of beneficiaries.
 - The Secretary may consult with beneficiaries when making a determination if the exchange advances the interests of beneficiaries.
 - The Secretary will notify DHHL and HHC.

Land Exchanges

- Proposed rule §47.20 provides “factors” to consider:
 - Achieve better management of Hawaiian home lands;
 - Meet the needs of the HHCA beneficiaries and their economic circumstances by promoting;
 - Homesteading opportunities, economic self-sufficiency, and social well-being;
 - Promote development of Hawaiian home lands for residential, agricultural, and pastoral use;
 - Protect cultural resources and watersheds;
 - Consolidate lands for more logical and efficient management and development;
 - Expand homesteading communities;
 - Accommodate land use authorizations;
 - Address HHCA beneficiary needs; and
 - Advance other identifiable interests of the beneficiaries consistent with the HHCA.

Land Exchanges

- Proposed rule §47.30 provides elements of when an exchange advances the interests of beneficiaries:
 - The exchange supports perpetuation and administration of Hawaiian home lands;
 - The interests of beneficiaries in obtaining non-Hawaiian home lands exceeds the interest of the beneficiaries in retaining the Hawaiian home lands proposed for the exchange based on factors from §47.20; and
 - The intended use of the conveyed Hawaiian home lands will not significantly conflict with the beneficiaries' interests in adjacent Hawaiian home lands.

Summary

- Proposed rules require:
 - DHHL submit the documents listed;
 - Then, within 120 days, the Secretary will determine if the exchange advances the interests of beneficiaries using the factors and elements from §§47.20 and 47.30.

Amendments to the HHCA

- Admission Act §4 says:
 - When the HHCA can be amended by the State of Hawaii; and
 - When amendments will require the consent of Congress.

Amendments to the HHCA

- HHLRA §204(a) says within 120 days the Chairman shall submit to the Secretary
 - A copy of the proposed amendment;
 - The nature of the change proposed; and
 - An opinion regarding whether the proposed amendment requires the approval of Congress under §4 of the Admission Act.

Amendments to the HHCA

- Proposed §48.15(a) says to submit the same documents as required by the HHLRA.

Amendments to the HHCA

- Proposed §48.15(b) requires DHHL also submit:
 - A description of the amendment, including why it advances the interests of the beneficiaries;
 - All testimony and correspondence from the Director of DHHL, Commissioners, and Homestead Associations, providing views on the amendment;
 - An analysis of the law and policy of the amendment;
 - Documentation of the dates and number of hearings held on the measure, and a copy of all testimony provided or submitted at each hearing;
 - Copies of all committee reports and other legislative history, including prior versions;
 - Final vote totals by the Commission and the legislature;
 - Summaries of all outreach or consultations conducted with the beneficiaries; and
 - Other additional information.

Amendments to the HHCA

- Proposed §48.20 describes how the Secretary will determine if the amendment requires Congressional consent by interpreting §4 of the Admission Act.

Amendments to the HHCA

- For example:
 - Proposed rules say: consent will be required if the amendment decreases the benefits to the beneficiaries.
 - Admission Act says: the State can make amendments that increase the benefits to the beneficiaries.

Amendments to the HHCA

- Proposed §48.25 provides a “balancing test” for the Secretary to determine if the amendment decreases the benefits to beneficiaries:
 - How would the amendment advance or otherwise impact current lessees? Applicants? Those who have not yet applied?

Amendments to the HHCA

- If the interests of those who have not yet been awarded and lessees differ,
 - How does the amendment weigh interests of those who have not been awarded with lessees?
 - Do the benefits to the lessees outweigh any detriment to the beneficiaries who have not been awarded?
 - Do the benefits to non-awardees outweigh any detriment to the lessees?

Summary

- The proposed rules require:
- DHHL submit a number of documents,
- Then, the Secretary, within 60 days, will determine whether:
 - The amendment falls into one of the categories that require Congressional consent
 - Using a balancing test, whether the benefits to beneficiaries are decreased.

Who is the Secretary?

- Secretary of the Interior is appointed by the President and serves at the will of the President.
- Kristen Sarri is the Assistant Secretary for Policy, Management and Budget.
- Kimo Kaloi is the Director of the Office of Native Hawaiian Relations.

Who is the Secretary?

[DOI webpage](#)

[DOI Organizational Chart](#)