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