[4310-93]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Parts 47 and 48

RIN 1090-AA98

Land Exchange Procedures and Procedures to Amend the Hawaiian Homes Commission Act, 1920

AGENCY: Office of the Secretary, Interior

ACTION: Proposed rule.

SUMMARY: This rule would remove ambiguities the State of Hawai'i faces in administration of the Hawaiian Homes Commission Act. It would facilitate the goal of the rehabilitation of the Native Hawaiian community, including the return of native Hawaiians to the land, consistent with the Hawaiian Homes Commission Act, the State of Hawai'i Admission Act, and the Hawaiian Home Lands Recovery Act. The rule clarifies the land exchange process, the documents required, and the respective responsibilities of the Department of the Interior, the Department of Hawaiian Home Lands, and other entities engaged in land exchanges of Hawaiian home lands. It also clarifies the documents required and the responsibilities of the Secretary of the Interior in the approval process for proposed amendments by the State of Hawai'i to the Hawaiian Homes Commission Act, 1920, as amended.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the rulemaking by either of the methods listed below. Please use Regulation Identifier Number 1090-AA98 in your message.

1. Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions on the website for submitting comments.
2. U.S. mail, courier, or hand delivery: Office of Native Hawaiian Relations, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ka'i'ini Kimo Kaloi, Director, Office of Native Hawaiian Relations, telephone (202) 208-7462.

SUPPLEMENTARY INFORMATION:

I. Background

In 1921, Congress enacted the Hawaiian Homes Commission Act (HHCA), 42 Stat. 108, to provide a homesteading program for native Hawaiians by placing approximately 200,000 acres of land (known as Hawaiian home lands) into trust. The HHCA and the Hawaiian Home Lands Trust are administered by the Department of Hawaiian Home Lands (DHHL), an agency of the State of Hawai'i. The HHCA provides the DHHL the authority to propose to the Secretary of the Interior the exchange of Hawaiian home lands for land privately or publicly owned in furtherance of the purposes of the HHCA.

The Hawaiian Homes Commission Act, among other things, created a series of funds HHCA section 213, 42 Stat.108 (as amended). The intent of one of these funds is the "rehabilitation of native Hawaiians," which includes the rehabilitation of "the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated." *Id.* The Department of the Interior interprets the term "rehabilitation" to include political, cultural and social reorganization that

would facilitate the stated goals of rehabilitation[1]. By providing a clear process for the Department's review and approval of land exchanges and HHCA amendments, this regulation will further the goals of the HHCA, including rehabilitation.

In 1959, Congress enacted the Hawai'i Admission Act, 73 Stat. 4, to admit the State of Hawai'i into the United States. In compliance with the Hawai'i Admission Act, and as a compact between the State of Hawai'i and the United States relating to the management and disposition of the Hawaiian home lands, the State of Hawai'i adopted the HHCA, as amended, as a law of the State through Article XII of the Constitution of the State. Because Congress in the HHCA section 223 reserved the right to alter, amend, or repeal Title 2 of the HHCA, section 4 of the Hawai'i Admission Act provides that the HHCA is subject to amendment or repeal by the State of Hawai'i only with the consent of the United States. Recognizing, however, that it was granting the State administrative authority, Congress in section 4 also provided exceptions within which the State could amend certain administrative provisions of the HHCA without the consent of the United States.

---

[1] *See generally* Hearings on the Rehabilitation and Colonization of Hawaiians and Other Proposed Amendments to the Organic Act of the Territory of Hawai'i before the House Committee on the Territories, H.R. Rep. No. 839, 66th Cong., 2d Sess., at 4 (1920) (Sen. John H. Wise testified, "The Hawaiian people are a farming people and fishermen, out-of-door people, and [being] frozen out of their lands . . . is one of the reasons why the Hawaiian people are dying. Now, the only way to save them, I contend, is to take them back to the lands and give them the mode of living that their ancestors were accustomed to and in that way rehabilitate them.").

During the territorial period of Hawai'i, the HHCA was included in the compilation of the Revised Laws of Hawai'i. Following Hawai'i's statehood, the HHCA was not repealed and remains in effect with elements of both Federal and State law. The compilation of the HHCA was removed from the text of the United States Code and inserted into a note in the Code, recognizing the State's authority to amend provisions of the HHCA that do not alter the responsibilities of the United States or infringe upon its interests or the interests of the beneficiaries.

The HHCA is a compound of interdependent Federal and State law. Congress enacted the Hawaiian Home Lands Recovery Act, 1995, (HHLRA), Public Law 104-42, 109 Stat. 357, which provides that the Secretary of the Interior shall determine whether a proposed amendment to the HHCA requires the consent of the United States under section 4 of the Hawai'i Admission Act. It is appropriately the function of the United States to ensure conformance with the limitations in the Admissions Act and protect the integrity of this statutory framework.

The HHLRA also clarified the role of the Secretary in the oversight of the Hawaiian Home Lands Trust. Section 204(a)(3) of the HHCA, in conjunction with Section 205 of the HHLRA, requires the approval or disapproval of the Secretary of the Interior for the exchange of Hawaiian home lands. The HHLRA details the Secretary's responsibilities to ensure that Hawaiian home lands are administered in a manner that advances the interests of the beneficiaries.

The HHLRA clarifies the scope of two of the continuing responsibilities of the Federal Government with regard to the HHCA. It clarifies the role of the Secretary in land exchanges and requires the State of Hawai'i to notify the Secretary of the Interior of any amendment it proposes to the HHCA and requires the Secretary to determine whether the State is proposing to amend the Federal responsibilities under the HHCA, or infringe on Federal interests or those of

the beneficiaries, thus requiring Congress to approve the proposed amendment. 43 CFR part 47 of the proposed regulations sets forth the Secretary's process for approving or disapproving land exchanges of Hawaiian home lands conducted by DHHL under the HHCA and HHLRA. 43 CFR part 48 of the proposed regulations establishes the review and approval process for State of Hawai'i proposed amendments to the HHCA.

II. Summary of Impacts

1. Regulatory Planning and Review (Executive Orders 12866 and 13563.)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. This proposed rule is consistent with these requirements.

2. Regulatory Flexibility Act.

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

3. Small Business Regulatory Enforcement Fairness Act (SBREFA).

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act.

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

5. Takings (E.O. 12630).

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132).

In accordance with Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It would not substantially and directly affect the relationship between the Federal and state governments. The Secretary of the Department of the Interior has oversight to ensure that land under the HHCA is

administered in a manner that advances the interests of the beneficiaries. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988).

In accordance with Executive Order 12988, the Office of the Solicitor determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Consultation with Indian Tribes (E.O. 13175).

Under the criteria in Executive Order 13175, the Department evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. This proposed rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

9. Paperwork Reduction Act.

This proposed rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83-I is not required.

10. National Environmental Policy Act.

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act, 1969, is not required. Under Departmental Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative

or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case."

11. Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This proposed rule will not have a significant effect on the nation's energy supply, distribution, or use.

12. Clarity of this Regulation

The Department is required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the Department publishes must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that the Department did not meet these requirements, please send comments by one of the methods listed in the "ADDRESSES" section. To better help the Department revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

13. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your

personal identifying information – may be made publicly available at any time. While you can ask the Department in your comment to withhold your personal identifying information from public review, the Department cannot guarantee that it will be able to do so.

List of Subjects in 43 CFR Parts 47 and 48

Hawaii, Intergovernmental programs, Land, State-Federal relations.

Date: May 6, 2015

Kristen J. Sarri
Principal Deputy Assistant Secretary for Policy, Management and Budget

For the reasons stated in the preamble, the Department of the Interior proposes to amend title 43 of the Code of Federal Regulations by adding new parts 47 and 48 as set forth below:

PART 47 – LAND EXCHANGE PROCEDURES

Sec.

47.5 What is the purpose of this part?

47.10 What definitions apply to terms used in this part?

47.15 What laws apply to exchanges made under this part?

Subpart A – The Exchange Process

47.20 What factors will the Secretary consider in analyzing a land exchange?

47.30 When does a land exchange advance the interests of the beneficiaries?

47.35 Must lands exchanged be of equal value?

47.40 How must properties be described?

47.45 How does the exchange process work?

47.50 What should DHHL include in a land exchange proposal for the Secretary?

47.55 What are the minimum requirements for appraisals used in a land exchange?

47.60 What documentation must DHHL submit to the Secretary in the land exchange packet?

Subpart B – Approval and Finalization

47.65 When will the Secretary approve or disapprove the land exchange?

47.70 How does DHHL complete the exchange once approved?

Authority: State of Hawai'i Admission Act, 73 Stat. 4, chapter 339, approved March 18, 1959; Hawaiian Homes Commission Act, 1920, as amended, Act of July 9, 1921, chapter 42, 42 Stat.

108; Hawaiian Home Lands Recovery Act, 1995, 109 Stat. 537, Public Law 104-42; 5 U.S.C. 301; 25 U.S.C. 2 and 9; 43 U.S.C. 1457; 112 Departmental Manual 28.

§ 47.5 What is the purpose of this part?

This part sets forth the procedures for conducting land exchanges of Hawaiian home lands authorized by the Hawaiian Homes Commission Act (HHCA), 1920, as amended.

§ 47.10 What definitions apply to terms used in this part?

As used in this part, the following terms have the meanings given in this section.

Appraisal or *Appraisal report* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands to be exchanged as of a specific date(s), supported by the presentation and analysis of relevant market information.

Beneficiaries means "native Hawaiian(s)" as that term is defined under section 201(a) of the *Hawaiian Homes Commission Act.*

Chairman means the Chairman of the Hawaiian Homes Commission designated under section 202 of the *Hawaiian Homes Commission Act*.

Commission means the Hawaiian Homes Commission established by section 202 of the *Hawaiian Homes Commission Act*, which also serves as the executive board of the *Department of Hawaiian Homes Lands*.

Consultation means an open discussion process that allows interested parties to address potential issues, changes, or actions. Consultation does not require formal face to face meetings. However, it does require dialogue (verbal, electronic, or printed) or at least a good faith effort to engage in dialogue between the DHHL and the beneficiaries, consideration of their views, and,

where feasible, seek agreement with the beneficiaries when engaged in the land exchange process.

DHHL or *Department of Hawaiian Home Lands* means the department established by the State of Hawai'i under sections 26-4 and 26-17 of the Hawai'i Revised Statutes to administer the *Hawaiian Homes Commission Act*. This department assumes the authorities and responsibilities of the Hawaiian Homes Commission and the Commission serves as the department's executive board under amended section 202 of the *Hawaiian Homes Commission Act*.

Hawaiian home lands means all trust lands given the status of Hawaiian home lands under section 204 of the *Hawaiian Homes Commission Act*, and those lands obtained through approval under this part, and as directed by Congress.

Hazardous substances means those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

HHCA or *Hawaiian Homes Commission Act* means the Hawaiian Homes Commission Act, 1920, Act of July 9, 1921, chapter 42, 42 Stat. 108, as amended.

HHLRA or *Hawaiian Home Lands Recovery Act* means the *Hawaiian Home Lands Recovery Act,* 1995, Public Law 104-42, 109 Stat. 357.

Land exchange is any transaction, other than a sale, that transfers Hawaiian home lands from DHHL to another entity and in which DHHL receives the other entity's land as Hawaiian home lands. A land exchange can involve trading Hawaiian home lands for private land, but it can also involve trading land between DHHL and State or Federal agencies.

Market value means the most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions

requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

Native Hawaiian or *native Hawaiian* has the same meaning as that term defined under section 201(a) of the *Hawaiian Homes Commission Act*.

Office of Valuation Services (OVS) means the Office with real estate appraisal functions within the Office of the Assistant Secretary – Policy, Management, and Budget of the Department of the Interior.

Outstanding interests means rights or interests in property involved in a land exchange held by an entity other than a party to the exchange.

Secretary means the Secretary of the Interior or the individual to whom the authority and responsibilities of the Secretary have been delegated.

§ 47.15 What laws apply to exchanges made under this part?

(a) DHHL may only exchange land under the authority of the HHCA in conformity with the HHLRA.

(b) When DHHL makes any land exchange, the following laws and regulations constitute a partial list of applicable laws and regulations:

Legislation or regulation	**Citation**
(1) The National Historic Preservation Act, 1966	16 U.S.C. 470 et seq.
(2) Implementing regulations for the National Historic Preservation Act	36 CFR part 800
(3) Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA)	25 U.S.C. 3002
(4) Implementing regulations for the Native American Graves Protection and Repatriation Act	43 CFR part 10
(5) The National Environmental Policy Act, 1969 (NEPA)	42 U.S.C. 4371 et seq.

(6) Implementing regulations for NEPA	40 CFR parts 1500-1508; 43 CFR part 46
(7) The State of Hawai'i Admission Act	73 Stat. 4, Public Law 86-3
(8) Hawaiian Homes Commission Act, 1920, as amended	42 Stat. 108
(9) Hawaiian Home Lands Recovery Act, 1995	109 Stat. 537, Public Law 104-42
(10) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)	42 U.S.C. 9601 et seq.
(11) Implementing regulations for CERCLA	40 CFR part 312

(c) No new legal rights or obligations are created through listing applicable laws and regulatory provisions in this section.

Subpart A – The Exchange Process

§ 47.20 What factors will the Secretary consider in analyzing a land exchange?

The Secretary may approve an exchange only after making a determination that the exchange will advance the interests of the beneficiaries. In considering whether a land exchange will advance the interests of the beneficiaries, the Secretary will evaluate the extent to which it will:

(a) Achieve better management of Hawaiian home lands;

(b) Meet the needs of HHCA beneficiaries and their economic circumstances by promoting:

(1) Homesteading opportunities,

(2) Economic self-sufficiency, and,

(3) Social well-being;

(c) Promote development of Hawaiian home lands for residential, agricultural, and pastoral use;

(d) Protect cultural resources and watersheds;

(e) Consolidate lands or interests in lands, such as agricultural and timber interests, for more logical and efficient management and development;

(f) Expand homestead communities;

(g) Accommodate land use authorizations;

(h) Address HHCA beneficiary needs; and

(i) Advance other identifiable interests of the beneficiaries consistent with the HHCA.

§ 47.30 When does a land exchange advance the interests of the beneficiaries?

A determination that an exchange advances the interests of the beneficiaries must find that:

(a) The exchange supports perpetuation and administration of Hawaiian home lands;

(b) The interests of the beneficiaries in obtaining non-Hawaiian home lands exceeds the interests of the beneficiaries in retaining the Hawaiian home lands proposed for the exchange, based on an evaluation of the factors in § 47.20; and

(c) The intended use of the conveyed Hawaiian home lands will not significantly conflict with the beneficiaries' interests in adjacent Hawaiian home lands.

§ 47.35 Must lands exchanged be of equal value?

Hawaiian home lands to be exchanged must be of equal or lesser value than the lands to be received in the exchange, as determined by the appraisal. Once the market value is established by an approved appraisal, an administrative determination as to the equity of the exchange can be made based on the market value reflected in the approved appraisal.

§ 47.40 How must properties be described?

The description of properties involved in a land exchange must be either:

(a) Based upon a survey completed in accordance with the Public Land Survey System laws and standards of the United States; or

(b) If Public Land Survey System laws and standards cannot be applied, based upon a survey that both:

(1) Uses other means prescribed or allowed by applicable law; and

(2) Clearly describes the property and allows it to be easily located.

§ 47.45 How does the exchange process work?

(a) The Secretary recommends the parties prepare a land exchange proposal in accordance with § 47.50. The Secretary also recommends the DHHL and the non-DHHL party in the exchange meet with the Department before finalizing a land exchange proposal and signing an agreement to initiate the land exchange to informally discuss:

(1) The review and processing procedures for Hawaiian home lands exchanges;

(2) Potential issues involved that may require more consideration; or

(3) Any other matter that may make the proposal more complete before submission to us.

(b) Whether or not a land exchange proposal is completed, the DHHL initiates the exchange by preparing the documentation, conducting appropriate studies, and submitting them to the Secretary in accordance with § 47.60.

(c) Upon completing the review of the final land exchange packet under § 47.60, the Secretary will issue a Notice of Decision announcing the approval or disapproval of the exchange.

(d) If the Secretary approves an exchange, title will transfer in accordance with State law.

§ 47.50 What should DHHL include in a land exchange proposal for the Secretary?

(a) A land exchange proposal should include the following documentation:

The proposal should include...	that should contain...
(1) Identifying information	(i) The identity of the parties involved in the proposed exchange; and (ii) The status of their ownership of the properties in the exchange, or their ability to provide title to the properties.
(2) Descriptive information	A legal description of: (i) The land considered for the exchange; and (ii) The appurtenant rights proposed to be exchanged or reserved.
(3) Authorized use information	(i) Any authorized uses including grants, permits, easements, or leases; and (ii) Any known unauthorized uses, outstanding interests, exceptions, adverse claims, covenants, restrictions, title defects or encumbrances.
(4) A time schedule for completing the exchange.	Expected dates of significant transactions or milestones.
(5) Assignment of responsibilities	Responsibilities for: (i) Performance of required actions; and (ii) Costs associated with the proposed exchange.
(6) Hazardous substance information	Notice of: (i) Any known release, storage, or disposal of hazardous substances on non-DHHL properties in the exchange; (ii) Any commitments regarding responsibility for removal or remedial actions concerning hazardous substances on non-DHHL properties; and (iii) All terms and conditions regarding hazardous substances on non-DHHL properties.
(7) Grants of permission by each party to the other	Permission to enter the properties for the purpose of conducting physical examination and studies in preparation for the exchange. Written permission to appraise the properties should also be included.

The proposal should include...	that should contain...
(8) Three statements	Details of: (i) Arrangements for relocating tenants occupying the DHHL and non-DHHL properties involved in the exchange; (ii) How the land exchange proposal complies with the HHCA and HHLRA; and (iii) How the documents of conveyance will be exchanged once the Secretary has approved the exchange.

(b) When the parties to the exchange agree to proceed with the land exchange proposal, they may sign an agreement that DHHL will initiate the exchange.

§ 47.55 What are the minimum requirements for appraisals used in a land exchange?

(a) The following table shows the steps in the appraisal process.

Appraisal process step	Requirements
(1) The parties to the exchange must arrange for appraisals.	(i) The parties must arrange for appraisals within 90 days after executing the agreement to initiate the land exchange, unless the parties agree to another schedule. (ii) The parties must give the appraiser the land exchange proposal, if any, and the agreement to initiate the land exchange, and any attachments and amendments. (iii) The DHHL is encouraged to request assistance from the Department's Office of Valuation Services (OVS). OVS can provide valuation services to DHHL, including appraisal, appraisal review, and appraisal consultation on a reimbursable basis. OVS is also available for post-facto program review to ensure that appraisals conducted by the State are in conformance with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions as appropriate.
(2) The qualified appraiser must provide an appraisal report.	The appraiser must: (i) Meet the qualification requirements in paragraph (b) of this section; (ii) Produce a report that meets the qualifications in paragraph (c) of this section; and

Appraisal process step	Requirements
	(iii) Complete the appraisal under the timeframe and terms negotiated with the parties in the exchange.
(3) The Secretary will review appraisal reports.	The Secretary will evaluate the reports using: (i) The Uniform Standards of Professional Appraisal Practice; and (ii) The Uniform Appraisal Standards for Federal Land Acquisitions.

(b) To be qualified under paragraph (a)(2) of this section, an appraiser must:

(1) Be competent, reputable, impartial, and experienced in appraising property similar to the properties involved in the appraisal assignment; and

(2) Be approved by the OVS, if required by the Department's Office of Native Hawaiian Relations.

(3) Be licensed to perform appraisals in the State of Hawai'i unless a Federal employee whose position requires the performance of appraisal duties. Federal employees only need to be licensed in one State or territory to perform real estate appraisal duties as Federal employees in all States and territories.

(c) Appraisal reports for the exchange must:

(1) Be completed in accordance with the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA); and

(2) Include the estimated market value of Hawaiian home lands and non-Hawaiian home lands properties involved in the exchange.

§ 47.60 What documentation must DHHL submit to the Secretary in the land exchange packet?

The documents in the exchange packet submitted to us for approval must include the following:

The packet must contain...	**that must include...**
(a) Required statements	(1) A statement of approval for the exchange from the Commission; (2) A statement of compliance with the National Historic Preservation Act and, as appropriate, a cultural and historic property review; (3) An explanation of how the exchange will advance the interests of the beneficiaries; (4) A summary of any consultation with any beneficiaries that may have occurred; and (5) A statement of compliance with the Native American Graves Protection and Repatriation Act.
(b) Required analyses and reports	(1) Environmental analyses and records sufficient to meet CERCLA, NEPA, and all other pertinent Federal environmental requirements; (2) Land appraisal reports and statements of qualification of the appraisers in accordance with § 47.55; and (3) If property conveyed is adjacent to Hawaiian home lands: (i) An analysis of intended use of the Hawaiian home lands conveyed; (ii) A finding that the intended use will not conflict with established management objectives on the adjacent Hawaiian home lands; and (4) A copy of the land exchange proposal, if any.
(c) Relevant legal documents	(1) Any land exchange agreements entered into regarding the subject properties between DHHL and the non-DHHL party; (2) Evidence of title; and (3) Deeds signed by the parties, with a signature block for the Secretary of the Interior or our authorized representative to approve the transaction.

Subpart B – Approval and Finalization

§ 47.65 When will the Secretary approve or disapprove the land exchange?

On receipt of the complete land exchange packet from the Commission, the Secretary will approve or disapprove the exchange within 120 calendar days.

(a) Before approving or disapproving the exchange, the Secretary will review all environmental analyses, appraisals, and all other supporting studies and requirements to determine whether the proposed exchange complies with applicable law and advances the interests of the beneficiaries.

(b) The Secretary may consult with the beneficiaries when making a determination if a land exchange advances the interests of the beneficiaries.

(c) After approving or disapproving an exchange, the Secretary will notify DHHL, the Commission, and other officials as required by section 205(b)(2) of the HHLRA.

§ 47.70 How does DHHL complete the exchange once approved?

(a) The DHHL completes the exchange in accordance with the requirements of State law.

(b) DHHL shall provide a title report to us as evidence of the completed exchange.

PART 48 – AMENDMENTS TO THE HAWAIIAN HOMES COMMISSION ACT

Sec.

48.5 What is the purpose of this part?

48.6 What definitions apply to terms used in this part?

48.10 What is the Secretary's role in reviewing proposed amendments to the HHCA?

48.15 What are the State's responsibilities in proposing amendments?

48.20 How does the Secretary determine if the State is seeking to amend Federal law?

48.25 How does the Secretary determine if the proposed amendment decreases the benefits to beneficiaries of Hawaiian home lands?

48.30 How does the Secretary determine if Congressional approval is unnecessary?

48.35 When must the Secretary determine if the proposed amendment requires Congressional approval?

48.40 What notification will the Secretary provide?

48.45 When is a proposed amendment deemed effective?

48.50 Can the State of Hawai'i amend the Hawaiian Homes Commission Act without Secretarial review?

Authority: State of Hawai'i Admission Act, 73 Stat. 4, chapter 339, approved March 18, 1959; Hawaiian Homes Commission Act, 1920, 42 Stat. 108 et seq., chapter 42; Hawaiian Home Lands Recovery Act,1995, 109 Stat. 537; 5 U.S.C. 301; 25 U.S.C. 2 and 9; 43 U.S.C. 1457; 112 Departmental Manual 28.

§ 48.5 What is the purpose of this part?

(a) This part sets forth the policies and procedures for:

(1) Review by the Secretary of proposed amendments to the Hawaiian Homes Commission Act by the State of Hawai'i; and

(2) Determination by the Secretary whether the proposed amendment requires congressional approval.

(b) This part implements requirements of the Hawaiian Homes Commission Act, the State of Hawai'i Admission Act, 1959, and the Hawaiian Home Lands Recovery Act, 1995.

§ 48.6 What definitions apply to terms used in this part?

As used in this part, the following terms have the meanings given in this section.

Beneficiaries means "native Hawaiian(s)" as that term is defined under section 201(a) of the *Hawaiian Homes Commission Act.*

Chairman means the Chairman of the Hawaiian Homes Commission designated under section 202 of the *Hawaiian Homes Commission Act*.

Consultation means an open discussion process that allows interested parties to address potential issues, changes, or actions. Consultation does not require formal face-to-face meetings. However, it does require dialogue (verbal, electronic, or printed) or at least a good faith effort to engage in dialogue with the beneficiaries.

DHHL or *Department of Hawaiian Home Lands* means the department established by the State of Hawai'i under sections 26-4 and 26-17 of the Hawai'i Revised Statutes to administer the *Hawaiian Homes Commission Act*. This department assumes the authorities and responsibilities of the Hawaiian Homes Commission and the Commission serves as the department's executive board under amended section 202 of the *Hawaiian Homes Commission Act*.

HHCA or *Hawaiian Homes Commission Act* means the *Hawaiian Homes Commission Act, 1920*, 42 Stat. 108 et seq., chapter 42, as amended.

HHLRA or *Hawaiian Home Lands Recovery Act* means the *Hawaiian Home Lands Recovery Act, 1995*, 109 Stat. 537, Public Law 104-42.

Hawaiian home lands means all trust lands given the status of Hawaiian home lands under section 204 of the *Hawaiian Homes Commission Act* and those lands obtained through approval under part 47, Land Exchange Procedures, by the DHHL, and as directed by Congress.

Lessee means either a:

(1) Beneficiary who has been awarded a lease under section 207(a) of the *Hawaiian Homes Commission Act*;

(2) Transferee lessee under section 208(5) of the *Hawaiian Homes Commission Act*; or

(3) Successor lessee under section 209 of the *Hawaiian Homes Commission Act*.

Secretary means the Secretary of the Interior or a designated employee.

Special Trust Funds means the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund as defined under section 213 of the *Hawaiian Homes Commission Act*.

§ 48.10 What is the Secretary's role in reviewing proposed amendments to the HHCA?

(a) The Secretary must review proposed amendments to the Hawaiian Homes Commission Act (HHCA) by the State of Hawai'i to determine whether the proposed amendment requires approval of Congress.

(b) The Secretary will notify the Chairman and Congress of this determination, and if approval is required, submit to Congress the documents required by §48.35(b).

§ 48.15 What are the State's responsibilities in proposing amendments?

(a) Not later than 120 days after the State approves a proposed amendment to the HHCA, the Chairman must submit to the Secretary a clear and complete:

(1) Copy of the proposed amendment;

(2) Description of the nature of the change proposed by the proposed amendment; and,

(3) Opinion regarding whether the proposed amendment requires the approval of Congress.

(b) The following information must also be submitted:

(1) A description of the proposed amendment, including why the proposed amendment advances the interests of the beneficiaries;

(2) All testimony and correspondence from the Director of the Department of Hawaiian Home Lands, Hawaiian Homes Commissioners, and Homestead Associations, providing views on the proposed amendment;

(3) An analysis of the law and policy of the proposed amendment by the Department of Hawaiian Home Lands and the Hawaiian Homes Commission;

(4) Documentation of the dates and number of hearings held on the measure, and a copy of all testimony provided or submitted at each hearing;

(5) Copies of all committee reports and other legislative history, including prior versions of the proposed amendment;

(6) Final vote totals by the Commission and the legislature on the proposed amendment forwarded to the Secretary of the Interior;

(7) Summaries of all outreach or consultations conducted with the beneficiaries regarding the proposed amendment; and

(8) Other additional information that the State believes may assist in the review of the proposed amendment.

§ 48.20 How does the Secretary determine if the State is seeking to amend Federal law?

The Secretary will determine that Congressional approval is required if the proposed amendment does any of the following:

(a) Decreases benefits to the beneficiaries of Hawaiian home lands;

(b) Reduces or impairs the Special Trust Funds;

(c) Allows for additional encumbrances to be placed on Hawaiian home lands by officers other than those charged with the administration of the HHCA;

(d) Changes the qualifications of who may be a lessee;

(e) Allows the use of proceeds and income from the Hawaiian home lands for purposes other than carrying out the provisions of the HHCA; or

(f) Amends a section other than sections 202, 213, 219, 220, 222, 224, or 225, or other provisions relating to administration, or paragraph (2) of section 204, section 206, or 212 or other provisions relating to the powers and duties of officers other than those charged with the administration of the HHCA.

§ 48.25 How does the Secretary determine if the proposed amendment decreases the benefits to beneficiaries of Hawaiian home lands?

The Secretary will determine if the proposed amendment decreases the benefits to the beneficiaries, now or in the future, by weighing the answers to the following questions:

(a) How would the proposed amendment advance or otherwise impact current lessees of Hawaiian home lands?

(b) How would the proposed amendment advance or otherwise impact HHCA beneficiaries currently on a waiting list for a Hawaiian home lands lease?

(c) How would the proposed amendment advance or otherwise impact HHCA beneficiaries who have not yet applied for a Hawaiian home lands lease?

(d) If the interests of the beneficiaries who have not been awarded a Hawaiian home lands lease and the lessees differ, how does the proposed amendment weigh the interests of HHCA beneficiaries who have not been awarded a Hawaiian home lands lease with the interests of Hawaiian home lands lessees?

(e) If the interests of the beneficiaries who have not been awarded a Hawaiian home lands lease and the lessees differ, do the benefits to the lessees outweigh any detriment to the beneficiaries who have not been awarded a Hawaiian home lands lease?

(f) If the interests of the beneficiaries differ from the interests of the lessees, do the benefits to the beneficiaries outweigh any detriment to the lessees?

§ 48.30 How does the Secretary determine if Congressional approval is unnecessary?

The Secretary will determine that Congressional approval is unnecessary if the proposed amendment meets none of the circumstances in § 48.20.

§ 48.35 When must the Secretary determine if the proposed amendment requires Congressional approval?

The Secretary will review the documents submitted by the Chairman, and if they meet the requirements of § 48.15, the Secretary will determine within 60 days after receiving them if the proposed amendment requires Congressional approval.

§ 48.40 What notification will the Secretary provide?

(a) If the Secretary determines that Congressional approval of the proposed amendment is unnecessary, the Secretary will:

(1) Notify the Chairmen of the Senate Committee on Energy and Natural Resources and of the House Committee on Natural Resources; and

(2) Include, if appropriate, an opinion on whether the proposed amendment advances the interests of the beneficiaries.

(b) If the Secretary determines that Congressional approval of the proposed amendment is required, the Secretary will notify the Chairmen of the Senate Committee on Energy and Natural Resources and of the House Committee on Natural Resources. The Secretary will also submit to the Committees the following:

(1) A draft joint resolution approving the proposed amendment;

(2) A description of the change made by the proposed amendment and an explanation of how the proposed amendment advances the interests of the beneficiaries;

(3) A comparison of the existing law with the proposed amendment;

(4) A recommendation on the advisability of approving the proposed amendment;

(5) All documentation concerning the proposed amendment received from the Chairman; and

(6) All documentation concerning the proposed amendment received from the beneficiaries.

§ 48.45 When is a proposed amendment deemed effective?

(a) If the Secretary determines that a proposed amendment meets none of the criteria in §48.20, the effective date of the proposed amendment is the date of the notification letter to the Committee Chairmen.

(b) If the Secretary determines that the proposed amendment requires congressional approval then the effective date of the proposed amendment is the date that Congress' approval becomes law.

§ 48.50 Can the State of Hawai'i amend the Hawaiian Homes Commission Act without Secretarial review?

The Secretary of the Interior must review all proposed amendments to the Hawaiian Homes Commission Act. Any proposed amendments to any terms or provisions of the Hawaiian Homes Commission Act by the State must also specifically state that the proposed amendment proposes to amend the Hawaiian Homes Commission Act. Any state enactment that impacts any of the factors in § 48.20 shall have no effect on the provisions of the HHCA or administration of the trust, except pursuant to this part.