

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

List of Subjects in 43 CFR Parts 47 and 48

Hawaii, Intergovernmental Programs, Land, State-Federal Relations.

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Principal Deputy Assistant Secretary for Policy, Management and Budget.

For the reasons stated in the preamble, the Department of the Interior amends 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.

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Authority: State of Hawai'i Admission Act, 73 Stat. 4, approved March 18, 1959; Hawaiian Homes Commission Act, 1920, as amended, Act of July 9, 1921, 42 Stat. 108; 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.

§ 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, 1920 (HHCA).

§ 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.

Beneficiary or *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 serves as the executive board of the Department of Hawaiian Home Lands.

Consultation or *consult* means representatives of the government engaging in an open discussion process that allows interested parties to address potential issues, changes, or actions. Consultation does not necessarily require formal face-to-face meetings. The complexity of the matter along with the potential effects that the matter may have on the Trust or beneficiaries will dictate the appropriate process for consultation. Consultation requires dialogue (oral, electronic, or printed) or a good faith, dialogue or documented effort to engage with 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 exercise the authorities and responsibilities of the Hawaiian Homes Commission under the Hawaiian Homes Commission Act.

Hawaiian Home Lands Trust 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.

Hawaiian Home Lands Trust Funds means the funds established in the HHCA section 213.

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, 42 Stat. 108, as amended.

HHCA Beneficiary Association means an organization controlled by beneficiaries who submitted applications to the DHHL for homesteads and are awaiting the assignment of a homestead; represents and serves the interests of those beneficiaries; has as a stated primary purpose the representation of, and provision of services to, those beneficiaries; and filed with the Secretary a statement, signed by the governing body, of governing procedures and a description of the beneficiaries it represents.

HHLRA or *Hawaiian Home Lands Recovery Act* means the Hawaiian Home Lands Recovery Act, 1995, 109 Stat. 357.

Homestead Association means a beneficiary controlled organization that represents and serves the interests of its homestead community; has as a stated primary purpose the representation of, and provision of services to, its homestead community; and filed with the Secretary a statement, signed by the governing body, of governing procedures and a description of the territory it represents.

Land exchange is any transaction, other than a sale, that transfers Hawaiian home lands from the Hawaiian Home Lands Trust to another entity and in which the Hawaiian Home Lands Trust receives the 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 the Hawaiian Home Lands Trust 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.

Trust means the Hawaiian Home Lands Trust and the Hawaiian Home Lands Trust Funds.

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

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

(b) When the Chairman 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.
(8) Hawaiian Homes Commission Act, 1920, as amended	42 Stat. 108.
(9) Hawaiian Home Lands Recovery Act, 1995	109 Stat. 537.
(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.

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 of the Hawaiian Home Lands Trust;
- (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 Chairman and the non-Chairman party in the exchange meet with the Secretary 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.

(b) Whether or not a land exchange proposal is completed, the Chairman 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 the Chairman 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-Hawaiian Home Land Trust properties in the exchange; (ii) Any commitments regarding responsibility for removal or remedial actions concerning hazardous substances on non-Hawaiian Home Land Trust properties; and (iii) All terms and conditions regarding hazardous substances on non-Hawaiian Home Land Trust 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.
(8) Three statements	Details of: (i) Arrangements for relocating tenants, if there are tenants, occupying the Hawaiian Home Land Trust and non-Hawaiian Home Land Trust 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 the Chairman 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 Chairman may request assistance from the Office of Valuation Services (OVS). OVS can provide valuation services to the Chairman, including appraisal, appraisal review, and appraisal advice 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 (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 to appraise land for exchange 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 of the Interior'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 the Chairman 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 that includes the recorded vote of 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 all consultations with beneficiaries, HHCA homestead associations, or HHCA beneficiary associations; 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 Chairman and the non-Chairman 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.

§ 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. The Secretary will post notice of the determination on the DOI Web site and give email notice of the posting to all those on the notification list maintained by the Office of Native Hawaiian Relations requesting notice of actions by the Secretary.

§ 47.70 How does the Chairman complete the exchange once approved?

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

(b) The Chairman shall provide a title report to the Secretary 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 Chairman's responsibilities in submitting proposed amendments to the Secretary?
- 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, approved March 18, 1959; Hawaiian Homes Commission Act, 1920, 42 Stat. 108 *et seq.*, 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 amendments to the Hawaiian Homes Commission Act proposed 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.

Beneficiary or 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 serves as the executive board of the Department of Hawaiian Home Lands.

Consultation or consult means representatives of the government