

P R O P O S E D

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM
SUBTITLE 3 STATE LAND USE COMMISSION

CHAPTER 15

LAND USE COMMISSION RULES

**FOR PUBLIC HEARING
ON AUGUST 17, 2009**

RAMSEYER FORMAT

Amendments to Chapter 15-15
Hawaii Administrative Rules

1. Section 15-15-03, Hawaii Administrative Rules, is amended as follows:

a. By amending the definition of "chairperson" to read as follows:

"Chairperson" means the chairperson of the land use commission."

b. By amending the definition of "chief clerk" to read as follows:

"Chief clerk" means the person who is responsible for receiving, recording, and preserving the records of all matters brought before the land use commission."

2. Section 15-15-03, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Executive officer" means the individual appointed by the commission to be the administrative officer of the commission."

3. Section 15-15-03, Hawaii Administrative Rules, is amended as follows:

a. By amending the definition of "filing" to read as follows:

"Filing" means the submittal of documents with the chief clerk, as evidenced by the date and time endorsed on the document by or at the direction of the chief clerk. Unless otherwise specifically provided in these rules, electronic or facsimile transmission of documents to the chief clerk or the executive officer of the commission does not constitute filing. This definition is to be distinguished from the definition for "proper filing" for petitions to amend a district boundary."

b. By amending the definition of "lot" to read as follows:

"Lot" means a single parcel of land of record in the

real property tax records of the county in which the land is located [~~State of Hawaii~~]."

c. By amending the definition of "party" to read as follows:

"Party" means a person named or admitted as a party or entitled as of right to be admitted as a party in any contested case proceeding before the commission. The State office of planning and the applicable county planning department shall be parties to district boundary amendment proceedings. However, they are not parties as of right in proceedings for declaratory rulings and all proceedings before the commission when the petition for a district boundary amendment has not yet been deemed a proper filing, and the State office of planning is not a party as of right in special permit proceedings at the commission level unless it was a party at the county level."

4. Section 15-15-03, Hawaii Administrative Rules, is amended by adding a new definition to read as follows:

"Public records" means the same as "government records" as defined in chapter 92F, HRS."

5. Section 15-15-03, Hawaii Administrative Rules, is amended by amending the definition of "unauthorized ex parte communication" to read as follows:

"Unauthorized ex parte communication" means [~~private~~] communications or arguments with members of the commission or its hearings officer as to the merits of a proceeding with a view towards influencing the outcome of the petition or proceeding."

6. Section 15-15-05, Hawaii Administrative Rules, is amended to read as follows:

§15-15-05 Office and office hours. (a) The office of the commission is in Honolulu, Hawaii. All communications to the commission, including requests for information [~~or other~~] and submittals, shall be in writing and shall be addressed to the commission's office, unless otherwise directed by the commission.

(b) The office of the commission shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, excepting holidays observed, unless otherwise provided by statute or

executive order."

7. Section 15-15-06, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-06 Chairperson and vice-chairperson. (a) The commissioners shall annually elect a chairperson and [~~vice chairperson or~~] one or more vice-chairpersons from its members.

(b) The chairperson shall have the responsibilities and duties prescribed in this chapter.

(c) In the absence or incapacity of the chairperson, the vice-chairperson or vice-chairpersons shall have the responsibilities and duties of the chairperson prescribed in this chapter. In case of resignation or incapacity of the chairperson, a vice-chairperson shall perform such duties as are imposed on the chairperson until such time as the commission shall elect a new chairperson. In the event the chairperson or a vice-chairperson resigns, the commission shall elect a new chairperson or vice-chairperson, as the case may be, as soon as practicable after such resignation."

8. Section 15-15-06.1, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-06.1 Hearings officer. (a) The commission may [~~duly~~] appoint a hearings officer pursuant to section 92-16, HRS.

(b) If for any reason the hearings officer designated is unable to complete a hearing, the commission, without abatement of the proceedings, may assign the matter to another hearings officer."

9. Section 15-15-07, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-07 Executive officer. (a) The executive officer shall be appointed by the commission to serve as the administrative head of the commission staff and have responsibilities and duties as prescribed by the commission. The executive officer shall be directly responsible to the commission, and shall have control of and responsibility for the execution of the commission's policies, the administration of its affairs, and the employment and supervision of its personnel. From time to time the executive officer shall furnish the commission

members with such information and make such recommendation as shall be necessary to effect the purposes of the commission and for the proper administration of its affairs. The executive officer shall authorize and certify payrolls, requisitions, invoices, and other documents essential to the proper administration of the commission.

(b) The executive officer shall prepare a hearings calendar and agenda for all meetings and hearings, under the direction of the chairperson.

(c) The executive officer or such other person as may be authorized by the commission shall certify all decisions and orders and other actions of the commission.

~~[(d) All requests for public information, copies of public records, or to inspect the public records of the commission, shall be directed to the executive officer either in writing or in person.]~~

~~[(e)]~~ (d) The executive officer may be appointed by the commission to serve as hearings officer.

~~[(f)]~~ (e) The executive officer may interpret land use district boundaries at the request of the public. Interpretation of district boundaries shall be done in compliance with section 15-15-22.

~~[(g)]~~ (f) The executive officer may conduct the prehearing conference provided under section 15-15-57."

10. Section 15-15-08, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-08 Chief clerk. (a) Under the supervision of the executive officer, the chief clerk shall have custody of the commission's official records and shall be responsible for the maintenance and custody of the docket files, including the transcripts and exhibits, the minutes of all of the commission's ~~[actions,~~ meetings and proceedings and all of the commission's decisions, orders, opinions, rules, and approved forms.

(b) ~~[For the purposes of this section and all references thereto, "chief clerk" means the person who is responsible for receiving, recording, and preserving the records of all matters brought before the commission.]~~

The chief clerk shall maintain a docket file of all proceedings filed with the commission, including petitions for district boundary amendments, all applications for special permits, and all petitions for declaratory ruling filed with the commission, and each docket shall be assigned a number."

11. Section 15-15-09, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-09 Public records and information. [The term "public records" shall have the same meaning as those "government records" as is defined in chapter 92F, HRS, which are required to be disclosed under said chapter.] All public records shall be available for inspection at the office of the commission during regular business hours. Public information on matters within the jurisdiction of the commission (which excludes confidential information) may be obtained by inquiring in person during regular business hours, or by submitting a written request to the commission. Requests made via facsimile or electronic mail to the commission are acceptable."

12. Section 15-15-10, Hawaii Administrative Rules, is amended by repealing subsection (c):

"§15-15-10 Meetings; generally. * * *
[(c) The commission shall comply with the provisions of section 92-7, HRS, by providing the required written public notice of any meeting.]"

13. Section 15-15-12, Hawaii Administrative Rules, is repealed:

["§15-15-12 Emergency meetings. The commission may hold an emergency meeting that does not comply with the notice requirement of section 92-7, HRS, under conditions specified in section 92-8, HRS."]

14. Section 15-15-13, Hawaii Administrative Rules, is amended by amending subsection (c) to read as follows:

"§15-15-13 Quorum and number of votes necessary for a decision. * * *
(c) If the commission's action on a petition for a special permit under section 205-6, HRS, fails to obtain five affirmative votes, findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the commission."

15. Section 15-15-14, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-14 Removal of persons from meetings. The presiding officer may remove any person who willfully disrupts a meeting~~[+.]~~ or hearing or other proceeding before the commission."

16. Section 15-15-15, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

"§15-15-15 Minutes of meetings. * * * (

(b) The minutes shall be public [~~records~~] and shall be available within thirty days after the meeting except where the disclosure would be inconsistent with section 92-5, HRS. The commission may withhold publication of the minutes of executive meetings so long as their publication would defeat the lawful purpose of the executive meeting~~+~~, ~~but no longer~~]."

17. Section 15-15-16, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-16 Computation of time. In computing any period of time [~~under the rules as provided in~~] prescribed by this chapter, by notice, or by any order, or rule of the commission, or any applicable statute, the time begins with the day following the act, event, or default~~+~~ after which the designated time is to run, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday, or a day or a part of a day on or for which the chief executive has granted administrative leave in the State, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Unless otherwise specified in these rules, when the prescribed period of time is less than seven days, Saturdays, Sundays, or legal holidays within the designated period shall [~~be excluded~~] not be included in the computation."

18. Section 15-15-18, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-18 Standards for determining "U" urban district boundaries. Except as otherwise provided in this chapter, in determining the boundaries for the "U" urban district, the following standards shall be used:

- (1) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other

- related land uses;
- (2) It shall take into consideration the following specific factors:
 - (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment;
 - (B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and
 - (C) Sufficient reserve areas for foreseeable urban growth;
 - (3) It shall include lands with satisfactory topography, drainage, [~~and~~] reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects;
 - (4) Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, [~~and~~] particularly when indicated for future urban use on state or county general plans or county community plans or development plans;
 - (5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans or county community plans or development plans;
 - (6) It may include lands which do not conform to the standards in paragraphs (1) to (5):
 - (A) When surrounded by or adjacent to existing urban development; and
 - (B) Only when those lands represent a minor portion of this district;
 - (7) It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services; and
 - (8) It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect

the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape."

19. Section 15-15-19, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-19 Standards for determining "A" agricultural district boundaries. Except as otherwise provided in this chapter, in determining the boundaries for the "A" agricultural district, the following standards shall apply:

- (1) It shall include lands with a high capacity for agricultural production;
- (2) It may include lands with significant potential for grazing or for other agricultural uses; [~~and~~]
- (3) It may include lands surrounded by or contiguous to agricultural lands or which are not suited to agricultural and ancillary activities by reason of topography, soils, and other related characteristics[~~-~~]and
- (4) It shall include lands designated important agricultural lands pursuant to part III of chapter 205, HRS."

20. Section 15-15-20, Hawaii Administrative Rules, is Amended to read as follows:

"§15-15-20 Standards for determining "C" conservation district boundaries. Except as otherwise provided in this chapter, in determining the boundaries for the "C" conservation district, the following standards shall apply:

- (1) It shall include lands necessary for protecting watersheds, water resources, and water supplies;
- (2) It may include lands susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the state and federal government, and lands necessary for the protection of the health and welfare of the public by reason of the land's susceptibility to inundation by tsunami and flooding, to volcanic activity, and landslides;
- (3) It may include lands used for national or state parks;
- (4) It shall include lands necessary for the conservation, preservation, and enhancement of

- scenic, cultural, historic, or archaeological sites and sites of unique physiographic or ecologic significance;
- (5) It shall include lands necessary for providing and preserving parklands, wilderness and beach reserves, for conserving natural ecosystems of indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered, and for forestry and other related activities to these uses;
 - (6) It shall include lands having an elevation below the shoreline as stated by section 205A-1, HRS, marine waters, fish ponds, and tidepools of the State, and accreted portions of lands pursuant to ~~[section]~~ sections 501-33 and 669-1, HRS, unless otherwise designated on the district maps. All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps;
 - (7) It shall include lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use, except when those lands constitute areas not contiguous to the conservation district;
 - (8) It may include lands with a general slope of twenty per cent or more which provide for open space amenities or scenic values; and
 - (9) It may include lands suitable for farming, flower gardening, operation of nurseries or orchards, growing of commercial timber, grazing, hunting, and recreational uses including facilities accessory to those uses when the facilities are compatible with the natural physical environment."

21. Section 15-15-21, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-21 Standards for determining "R" rural district boundaries. Except as otherwise provided in this chapter, in determining the boundaries for the "R" rural district, the following standards shall apply:

- (1) Areas consisting of small farms; provided that the areas need not be included in this district if their inclusion will alter the general

- characteristics of the areas;
- (2) Activities or uses as characterized by low-density residential lots of not less than one-half acre [~~and a density of not more than one single family dwelling per one half acre~~] in areas where "city-like" [~~concentration~~] concentrations of people, structures, streets, and urban [~~level~~] levels of services are absent, and where small farms are intermixed with the low-density residential lots; and
 - (3) It may also include parcels of land which are surrounded by, or contiguous to this district, and are not suited to low-density residential uses for small farm or agricultural uses."

22. Section 15-15-22, Hawaii Administrative Rules, is amended by amending subsections (a), (b) and (c) to read as follows:

"§15-15-22 Interpretation of district boundaries.

- (a) Except as otherwise provided in this chapter:
 - (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;
 - (2) Land having an elevation below the shoreline as stated by section 205A-1, HRS, marine waters, fish ponds, and tidepools of the State, and accreted portions of lands pursuant to sections 501-33, and 669-1, HRS, unless otherwise designated on the land use district maps, shall be included in the conservation district;
 - (3) All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps; and
 - (4) All water areas within the State are considered to be within a district and controlled by the applicable district rules.
- (b) All requests for boundary interpretations shall be in writing and include the tax map key identification of the property and a print of a map of the property. All requests for boundary interpretations involving shoreline properties shall be accompanied by a survey map or other map acceptable to the executive officer showing the locations of the shoreline as provided for in section 205A-42, HRS. Any erosion or accretion through natural processes shall be reflected on the [~~survey~~] map. Further, any shoreline structure, piers, and areas of man-made fill

which were constructed or completed since the date of adoption of the ~~[current]~~ state land use district boundaries existing as of the date of the request for boundary interpretation shall be reflected on the ~~[survey]~~ map.

(c) The executive officer may request the following information:

- (1) Additional copies of the print, including a reproducible master map of the print; and
- (2) Additional information such as, but not limited to, tax map key maps, topographic maps, aerial photographs, certified shoreline surveys, and subdivision maps relating to the boundary interpretation.

The executive officer may employ, or require that the party requesting the boundary interpretation employ, at its sole expense, a registered professional land surveyor to prepare a map for interpretation. * * *

23. Section 15-15-25, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-25 Permissible uses within the "A" agricultural district. (a) Permissible uses within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be those uses set forth in section 205-4.5, HRS.

(b) Permissible uses within the agricultural district land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be those uses ~~[permitted in A and B lands]~~ as set forth in ~~[section]~~ sections 205-4.5[,] and 205-5, HRS, and also ~~[those]~~ uses compatible to the activities described in [set forth in] section 205-2(d), HRS, as determined by the commission."

24. Section 15-15-27, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-27 Permissible uses within the "R" rural district. (a) Permissible uses within the rural district shall include the following activities:

- (1) All agricultural related activities and uses permitted under section 15-15-25 ~~[relating to agricultural uses]~~;
- (2) Low-density residential lots of not more than one

dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), HRS; ~~and~~

- (3) Golf courses and golf driving ranges and golf-related facilities[-]; and
- (4) Public, quasi-public and public utility facilities.

The commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, provided all other lots in the subdivision have the minimum lot size of one-half acre. A petition for variance may be processed under the special permit procedure pursuant to subchapter 12. This exception shall apply to lots of record existing prior to January 1, 1977, and of not more than two acres. There shall be no more than one single-family dwelling per one-half acre, except as may be provided for in this section."

25. Section 15-15-29, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-29 Nonconforming uses[-of structures and lands]. (a) Any lawful use of lands or buildings existing prior to the establishment of ~~the~~ a land use district, may be continued even though those uses do not conform to the provisions thereof.

(b) Any use on or within a lot of record or any subdivision of land which is not in conformity with subchapter 3 or this subchapter, but has received approval by the county having jurisdiction prior to the establishment of the land use district, shall be permitted as a nonconforming use.

(c) Except as otherwise provided, the following provisions shall apply to nonconforming uses or structures within any district:

- (1) It shall not be changed to another nonconforming use or structure;
- (2) It shall not be expanded or increased in intensity of use; and
- (3) It shall not be reestablished after discontinuance and abandonment for a continuous period of one year."

26. Section 15-15-30, Hawaii Administrative Rules, is

repealed:

~~["§15-15-30 Nonconforming areas and parcels. A lot of record or any proposed subdivision of land which is not in conformity with this subchapter, but which has received approval by the county having jurisdiction prior to the establishment of the land use district, shall be permitted as a nonconforming area subject to the ordinances and rules of the county. All lots within the nonconforming area shall be considered nonconforming parcels."]~~

27. Section 15-15-34, Hawaii Administrative Rules, is amended to read as follows:

~~"§15-15-34 [Quasi-judicial proceedings; waiver]~~
Waiver or suspension of rules. [(a) The intent and purpose of chapter 205, HRS, is to establish quasi judicial procedures which would ensure the effective application of established state land use policies through an adversarial process in a hearing in which diverse interests will have an opportunity to present their views in an open and orderly manner. Accordingly, the commission expects all persons and parties to comply with this subchapter and chapter 91, HRS, so that the commission will have a full and complete record upon which it can render its decision.

~~(b) For good cause shown]~~ To the extent permitted by law, the commission may waive or suspend any procedural rule[-] when the commission determines that: (a) good cause exists for such waiver; and (b) strict enforcement of such procedural rule would impose a manifest injustice upon a party or person who has substantially complied with the commission's rules in good faith. No rule relating to jurisdictional matters shall be waived or suspended by the commission."

28. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a new section 15-15-34.1 to read as follows:

"§15-15-34.1 Verbatim transcripts. Verbatim transcripts of hearings and other proceedings before the commission pursuant to chapter 91, HRS, shall be made and kept by the commission."

29. Section 15-15-35, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-35 Appearance before the commission. (a) Any party to a proceeding before the commission may appear on the party's own behalf. A partnership, corporation, trust, or association may be represented by a duly authorized agent. An officer or employee of a department or agency of the State or a political subdivision may represent that department or agency in any proceeding before the commission.

(b) A party may be represented by an attorney. The attorney who appears before the commission shall be a member in good standing of the Hawaii state bar. A member of the bar of another jurisdiction may appear by motion or by association with a member in good standing of the Hawaii state bar. All pleadings and documents shall be served on the member of the Hawaii state bar.

(c) The United States or any of its agencies may be represented by an employee of the agency or any attorney who is a member in good standing of the bar of any state and who is employed as an attorney by the United States or one of its agencies.

~~[(+e)]~~(d) Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the commission, by such an act represents that the person is legally authorized to do so and shall comply with the laws of this State and the several counties, and the rules of the commission. Further, the person shall maintain the respect due to the commission, and shall never deceive or knowingly present any false statements of fact or law to the commission. The commission at any time may require any person appearing before the commission in a representative capacity to prove the person's authority and qualification to act in that capacity.

~~[(+d)]~~ (e) All former employees of the State, as that term is defined in section 84-3, HRS, shall comply with the provisions of chapter 84, HRS, standards of conduct, prior to making an appearance in a representative capacity before the commission."

30. Section 15-15-36, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-36 Decisions and orders. (a) All decisions and orders for boundary amendment and special permit applications shall be signed by ~~[the chairperson or]~~ the commissioners who have heard or examined the evidence in

the proceeding and have voted affirmatively on the decision. Commission members who have not heard and examined all of the evidence may vote and sign only after the procedures set forth in section 91-11, HRS, have been complied with.

(b) Unless otherwise indicated in the order, the effective date of a decision and order shall be the date ~~[of service.]~~ it is filed by the chief clerk.

(c) Official copies of decisions and orders and other commission actions shall be effectuated under the signature of the chairperson, executive officer, or by ~~[such other person as may be authorized by the commission.]~~ the chief clerk."

31. Section 15-15-37, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-37 Filing documents; place and time. All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda, and other legal papers required or permitted to be filed with the commission in any proceeding shall be filed at the office of the commission before or on the ~~[time limit]~~ date prescribed by statute, rules, or order of the commission. Unless otherwise ordered and except as provided by section 15-15-50, the date on which ~~[the papers are received]~~ the original papers are filed by or at the direction of the chief clerk shall be regarded as the date of filing. The commission will not accept a facsimile or digital copy of any document ~~[required to be filed with the commission under these rules]~~ for filing purposes unless otherwise ordered by the commission."

32. Section 15-15-38, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-38 Format. (a) All documents exceeding seventy-five pages shall be ~~[bound]~~ placed in three-ring binders or equivalent (prongs and rubber bands are not acceptable) and be typewritten upon white paper 8-1/2 x 11 inches in size. Twelve point font or larger shall be used. Tables, maps, charts, exhibits, or appendices may be larger and shall be folded to that size where practical. All pleadings shall be printed and shall be double-spaced, except that footnotes and quotations in excess of a few lines may be single-spaced. Reproduction may be by any process, provided all copies are clear and permanently

legible.

(b) All pleadings shall show the title of the proceeding before the commission and the case docket number assigned by the chief clerk and shall show the name, address, and telephone number of the person or attorney.

(c) The original of each pleading shall be signed in ~~[black]~~ ink by each party or the party's ~~[counsel]~~ attorney. If the party is a corporation, ~~[or]~~ association, partnership, limited liability entity or other entity, the pleading may be signed by an officer or partner thereof or other authorized person. The name of the person signing shall be typed below the signature.

(d) In addition to the paper originals, the parties shall also submit documents and pleadings in electronic format. However, the filing date shall be the date the paper original is filed in the office of the commission."

33. Section 15-15-39, Hawaii Administrative Rules, is amended by amending subsections (a) and (b) to read as follows:

"§15-15-39 Verification. (a) Petitions, amendments thereto, and other pleadings which initiate a proceeding, and amendments thereto shall be verified by at least one of the persons or officers or other authorized signatory of the party filing the same.

(b) If the party filing the pleading is a corporation, ~~[or]~~ association, partnership, limited liability entity or other entity, the pleading may be verified by an officer, or partner thereof or other authorized person. Evidence of such authorization shall be provided."

34. Section 15-15-40, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-40 Copies. Unless otherwise required by this subchapter or the commission, all parties shall file with the commission an original and ~~[fifteen]~~ eleven paper copies and one electronic copy of each pleading or amendment thereof. Additional copies shall be promptly provided if the chairperson or the executive officer so requests."

35. Section 15-15-41, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-41 Defective [~~filings.~~] or nonconforming documents. (a) The mere fact [~~of filing]~~ a document has been filed shall not [~~waive]~~ be deemed a waiver of any failure to comply with this subchapter. Except as provided in subsection (b), if a document filed in a proceeding governed by this chapter is not in substantial conformity with the applicable rules of the commission, or is otherwise insufficient, the commission may on its own motion or on the motion of any party, strike such document or require its amendment. If amended, the document shall be effective as of the date the amended or corrected document is filed.

(b) Notwithstanding the provisions of sections 15-15-50(e) and 15-15-50(f), the commission may [~~entertain motions]~~, on its own motion, or on motion by any of the parties, [~~addressing alleged deficiencies of the petition.]~~ dismiss defective petitions without prejudice. If the petition is [~~in fact]~~ determined by the commission to be defective, the date of [~~filing]~~ proper filing shall be [~~as of]~~ the date the commission determines that the defects are cured. If the defects are jurisdictional, including, without limitation, failure to satisfy the requirements of section 15-15-50(c)(5), the commission shall dismiss the petition without prejudice."

36. Section 15-15-42, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-42 Extensions of time. (a) Whenever a party is required to file a pleading within a period prescribed or allowed by these rules by notice given thereunder, or by an order, the chairperson, presiding officer, or the executive officer may:

- (1) For good cause, with or without notice or hearing, extend such period if written request therefor is made before the expiration of the [~~prescribed]~~ period[, ~~with or without notice to the parties, extend the period]~~ originally prescribed or as extended by a previous order;
- (2) Pursuant to a stipulation between all of the parties, without notice or hearing, extend the period; or
- (3) [~~Permit]~~ Upon motion after the expiration of the specified period, permit the act to be done [~~after the expiration of a specified period]~~ where the failure to act is clearly shown to be the result of excusable neglect[-]; but it may

not extend the time for taking any action on jurisdictional matters.

(b) Extensions of time to file any pleading or other document required by a decision and order of the commission must be requested by motion filed with the commission at least thirty days before the pleading or other document is due."

37. Section 15-15-44, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-44 Retention of documents. The commission shall retain all documents filed with or presented to the commission in the files of the commission. However, the chairperson~~[,]~~ or presiding officer~~[, or executive officer]~~ may permit ~~[the withdrawal of]~~ a party to withdraw original documents submitted by that party upon submission of properly authenticated copies to replace the original documents. The party shall not withdraw the original documents until it has submitted the authenticated copies and it has given to the chief clerk a receipt, specifying the date and identifying the original documents withdrawn."

38. Section 15-15-45, Hawaii Administrative Rules, is amended by amending subsections (b), (c), (d) and (e) to read as follows:

"§15-15-45 Service of process. * * * (

(b) All papers served by either the commission or any party shall be filed and served upon all parties or their ~~[counsel]~~ attorney and shall contain a ~~[certification]~~ certificate of service. Any ~~[counsel]~~ attorney entering an appearance subsequent to the proceeding shall notify the commission and all other ~~[counsel]~~ attorneys then of record and all parties not represented by ~~[counsel]~~ an attorney of that fact.

(c) The final decision and order, and any other paper required to be served by the commission upon a party, shall be served upon the party's ~~[counsel]~~ attorney of record or in the absence of ~~[counsel]~~ an attorney, upon the party.

(d) Service of papers other than the notice of hearing and the final decision and order, shall be made personally or, unless otherwise provided by law, by ~~[certified mail.]~~ first class mail. Notice of hearing shall be served as provided in section 15-15-51, and the final decision and order shall be served by certified mail.

(e) Service upon parties, other than the commission,

shall be regarded as complete [~~when the paper is properly stamped and properly addressed to the parties involved at the last known address and mailed in accordance with subsection (d).~~] upon the occurrence of at least one of the following: (1) the party or its attorney is personally served; (2) the document is delivered to the party's office or its attorney's office and left with some responsible person; or (3) the document is properly stamped, addressed and mailed by first class mail to the last known address of the party on file with the commission or to the party's attorney. * * *

39. Section 15-15-47, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-47 Filing. The petitioner shall file one paper original and [~~fifteen~~] eleven paper copies, together with one electronic copy of a petition for boundary amendment and all supporting documents and exhibits, with the commission."

40. Section 15-15-48, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-48 Service of petition and other documents.
(a) [The] At the time the petition is filed with the commission, the petitioner shall serve copies of the petition and all supporting documents upon:
(1) the county planning department and planning commission of the county within which the subject land is situated,
(2) the office of planning, and
(3) all persons with a property interest in the subject property as recorded in the county's real property tax records at the time the petition is filed.
(b) The petitioner shall serve copies of the petition upon any potential intervenor upon receipt of a notice of intent to intervene pursuant to section 15-15-52(b)[-] and upon the island planning commission if the subject land is situated on the island of Lanai or the island of Molokai.
(c) Copies of all documents filed by petitioner after filing of the petition shall be served upon the county planning department and the office of planning at the same time the document is filed with the commission."

41. Section 15-15-49, Hawaii Administrative Rules, is

amended to read as follows:

"§15-15-49 Fees. (a) A petition for an amendment to district boundaries filed by any person other than a state or county department or agency shall be accompanied by [an application] a filing fee by cashier's check, for [a \$500] \$1,000, made payable to the State of Hawaii. [The commission shall waive this fee on any petition submitted by a state or county department or agency.] State or county departments or agencies that submit petitions for amendments to district boundaries shall not be subject to the filing fee. A petition for an amendment to district boundaries filed jointly by a person who is not a state or county department or agency and a state or county department or agency shall be subject to the filing fee.

(b) A petition for intervention filed by any persons other than a state or county department or agency shall be accompanied by a filing fee, by cashier's check, in the amount of \$100, made payable to the State of Hawaii. State or county departments or agencies that submit requests for intervention shall not be subject to the filing fee.

[~~(b)~~](c) Except as otherwise provided by law, a copy of any public document or government record, including any map, plan diagram, photograph, or photostat, which is open to [the] inspection [~~of~~] by the public shall be furnished to any person [~~applying for~~] requesting the same by the executive officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy, which amount shall not be less than 5 cents per page, sheet, or fraction thereof. [~~Such reproduction cost shall include, but shall not be limited to,~~] In addition, the requestor shall be responsible to pay for labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs[~~-~~] of providing the requested public document or government record.

[~~(c)~~](d) The petitioner for district boundary amendment shall reimburse the commission for or pay at the direction of the commission any expenses related to the publication of the hearing notice[~~-~~] for a petition for district boundary amendment, expenses of court reporter, expenses of the hearing room and expenses for audio/visual services and equipment.

[~~(d)~~](e) After notice and opportunity to be heard, the commission may also assess any party to any proceeding before the commission a reasonable fee or require

reimbursements for ~~[court reporter expenses, and]~~ any ~~[other reimbursements for]~~ hearing expenses as determined by the commission, including without limitation, expenses of court reporter, hearing room and expenses for audio/visual services and equipment.

~~[(e)]~~(f) The commission may assess a reasonable fee or require reimbursements to be made for inexcusable absence of a party from a boundary amendment proceeding. The assessment may include, but not be limited to, such costs for airfare, room rental fees, and publication fees."

42. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a new section 15-15-49.1, to read as follows:

"§15-15-49.1 Fees nonrefundable. The fees set forth in this chapter shall be nonrefundable."

43. Section 15-15-50, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-50 Form and contents of petition. (a) The form of the petition for boundary amendment shall conform to the requirements of subchapters 5 and 6. All petitions shall:

- (1) State clearly and concisely the authorization or relief sought; and
- (2) Cite by appropriate reference the statutory provision or other authority under which commission authorization or relief is sought.

(b) For petitions to reclassify properties from the conservation district to any other district, the petition shall not be deemed ~~[submitted]~~ a proper filing unless an environmental impact statement or ~~[negative declaration]~~ finding of no significant impact is approved or accepted by the commission for the proposed reclassification request. Such approved or accepted environmental impact statement or ~~[negative declaration]~~ finding of no significant impact shall be filed with and be part of the petition for boundary amendment. Notwithstanding any rule to the contrary, subsections (e) and (f) shall not commence until this subsection is satisfied.

(c) The following information shall also be provided in each petition for boundary amendment:

- (1) The exact legal name of each petitioner and the location of the principal place of business and if an applicant is a corporation, trust, or

- association, or other organized group, the state in which the petitioner was organized or incorporated;
- (2) The name, title, and address of the person to whom correspondence or communications in regard to the application are to be addressed;
 - (3) Description of the subject property, acreage, and tax map key number, with maps, including the tax map, that identify the area under petition. If the subject property is a portion of one or more lots, or the petition proposes incremental development of the subject property on both increments of development, the petitioner shall include a map and description of the subject property and increments in metes and bounds prepared by a registered professional land surveyor;
 - (4) The reclassification sought and present use of property, including an assessment of conformity of the reclassification to the standards for determining the requested district boundary amendment;
 - (5) The petitioner's property interest in the subject property. The petitioner shall attach as exhibits to the petition the following:
 - (A) A true copy of the deed, lease, option agreement, development agreement, or other document conveying to the petitioner a property interest in the subject property[+] or a certified copy of a nonappealable final judgment of a court of competent jurisdiction quieting title in the petitioner;
 - (B) If the petitioner is not the owner in fee simple of the subject property, or any part thereof, written authorization of [~~the~~] all fee [owner] owners to file the petition and a true copy of the deed to the subject property; and
 - (C) An affidavit of the petitioner or its agent attesting to its compliance with section 15-15-48;
 - (6) A description of any easements on the subject property, together with identification of the owners of the easements; a description of any other ownership interests shown on the tax

- maps (for example, and not by way of limitation, kuleana lands, Land Commission Awards, Royal Patent Grants), or evidence that there are no such ownership interests.
- ~~[(6)]~~(7) Type of use or development being proposed, including without limitation, a description of any planned development, residential, golf course, open space, resort, commercial, or industrial use;
- ~~[(7)]~~(8) A statement of projected number of lots, lot size, number of units, densities, selling price, intended market, and development timetables;
- ~~[(8)]~~(9) A statement describing the financial condition together with ~~[a current balance sheet and income statement, and]~~: (i) an audited balance sheet, including any pertinent notations and explanations contained therein, as of the end of the last calendar year, or if the petitioner is on a fiscal year basis, as of the end of the petitioner's last fiscal year; (ii) an income statement covering the period from the close of the last audited balance sheet up to the date of the latest available balance sheet attached to the petition; and (iii) a clear description of the manner in which the petitioner proposes to finance the proposed use or development. If such information is protected from disclosure under chapter 92F, HRS, the petitioner may request a protective order to protect the confidentiality of the information pursuant to section 15-15-70.1. A petitioner~~[, which]~~ that is a state or county department or agency, shall [be waived] be exempt from this requirement;
- ~~[(9)]~~(10) Description of the subject property and surrounding areas including the use of the property over the past two years, the present use, the soil classification, the agricultural lands of importance to the State of Hawaii classification (ALISH), the Land Study Bureau productivity rating, the flood and drainage conditions, and the topography of the subject property;
- ~~[(10)]~~(11) An assessment of the impacts of the proposed use or development upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, groundwater, or other resources of the area;

If required by chapter 343, HRS, an environmental impact statement or a finding of no significant impact after review of an environmental assessment conforming to the requirements of chapter 343, HRS, must be filed;

- ~~[(11)]~~ (12) Availability or adequacy of public services and facilities such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, ~~[and]~~ police and fire protection, civil defense, emergency medical service and medical facilities, and to what extent any public agency would be impacted by the proposed development or reclassification;
- ~~[(12)]~~ (13) Location of the proposed use or development in relation to adjacent land use districts and any centers of trading and employment;
- ~~[(13)]~~ (14) Economic impacts of the proposed reclassification, use, or development including, without limitation, the provision of any impact on employment opportunities, and the potential impact to agricultural production in the vicinity of the subject property, and in the county and State;
- ~~[(14)]~~ (15) ~~[If a residential development is proposed, a]~~ A description of the manner in which the petitioner addresses the housing needs of low income, low-moderate income, and gap groups;
- ~~[(15)]~~ (16) An assessment of need for the reclassification based upon the relationship between the use or development proposed and other projects existing or proposed for the area and consideration of other similarly designated land in the area;
- ~~[(16)]~~ (17) An assessment of conformity of the reclassification to applicable goals, objectives, and policies of the Hawaii state plan, chapter 226, HRS, and applicable priority guidelines and functional plan policies;
- ~~[(17)]~~ (18) An assessment of the conformity of the reclassification to objectives and policies of the coastal zone management program, chapter 205A, HRS;
- ~~[(18)]~~ (19) An assessment of conformity of the reclassification to the applicable county general plans, development or community plans, zoning designations and policies, and proposed amendments required;

~~[(19)]~~ (20) Petitioners submitting applications for reclassification to the urban district shall also represent that development of the subject property in accordance with the demonstrated need ~~[therefore]~~ therefor will be accomplished before ten years after the date of commission approval. In the event full urban development cannot substantially be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments together with a map identifying the location of each increment, each such increment to be completed within no more than a ten-year period;

~~[(20)]~~ (21) A statement addressing Hawaiian customary and traditional rights under Article XII, section 7 of the Hawaii State Constitution;

~~[(21)]~~ (22) Any written comments received by the petitioner from governmental, non-governmental agencies, organizations, or individuals in regards to the proposed reclassification; and

~~[(22)]~~ (23) A copy of the notification of petition filing pursuant to subsection (d).

(d) The petitioner shall send a notification of petition filing to persons included on a mailing list provided by the chief clerk. The notification of petition filing shall be in a form as prescribed by the executive officer, and shall include, but not be limited to, the following information:

- (1) Petitioner's name and mailing address;
- (2) Landowner's name;
- (3) Tax map key identification of the property requested for reclassification;
- (4) Location of the property;
- (5) Requested reclassification and approximate acreage;
- (6) Proposed use of the property;
- (7) A statement that detailed information on the petition may be obtained by reviewing the petition and maps on file at the office of the commission or the respective county planning department or at the commission's website;
- (8) A statement that informs potential intervenors on the mailing list provided by the commission that they may file a notice of intent to intervene with the commission within thirty days of the date of the notification of petition filing

pursuant to section 15-15-52(b);

- (9) A statement that informs the general public to contact the office of the commission for information on participating in the hearing; and
- (10) A location map depicting the petition area.

The notification of petition filing shall be sent to all persons on the mailing list on the same day that the petition is submitted to the commission. The petitioner shall submit to the commission an affidavit that the petitioner has sent the notification of petition filing pursuant to this subsection.

(e) The executive officer shall receive and complete a review of the petition for completeness within thirty days of submission of the petition. The provisions herein, however, are subject to the requirements of subsection (b) on petitions for reclassification of conservation district lands.

(f) Upon completion of the review pursuant to subsection (e), the executive officer shall determine whether the petition is [~~properly filed~~] a proper filing and is accepted for processing. The petition shall be deemed a proper filing if the items required in subsections (a), (b), (c), and (d) have been submitted. The petition may be deemed defective by the executive officer if any of the items required in subsections (a), (b), (c), or (d) have not been submitted. If the petition is deemed defective, the executive officer shall notify the petitioner of the determination and the reasons for the determination. The petition may be deemed as a proper filing upon review of the additional information submitted and upon determination by the executive officer[-], and the date the petition will be deemed a proper filing will be the date the executive officer determines the defects have been cured. The executive officer will file a notice of proper filing and mail the notice to the petitioner, the State office of planning, the county planning agency, and to persons who have filed a notice of intent to intervene. The executive officer's determination is subject to review in accordance with section 15-15-41. The provisions herein, however, are subject to the requirements of section 15-15-50(b) on petitions for reclassification of conservation district lands.

(g) The petitioner has a continuing obligation to update the information submitted in the petition prior to and during the pendency of the hearing on the petition."

44. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a two new sections, 15-15-50.5 and 15-15-50.6, to read as follows:

"§15-15-50.5 Dismissal of petition for failure to provide additional information or correct defects. Where the executive officer, pursuant to section 15-15-50(f), or the commission, pursuant to section 15-15-41, has determined that a petition is defective and the petitioner has not provided additional information or cured any defects within nine (9) months after the date of the notice that the petition is defective, the executive officer shall notify the petitioner in writing that the petition will be dismissed for want of prosecution unless objections thereto, showing good cause (specific reasons) are filed within ten days after the date of such notification. If objections are not filed within said ten-day period, the executive officer shall file an order of dismissal without prejudice. If objections are filed within said ten-day period, the commission shall hear the objections upon notice and determine whether the petition should be dismissed.

§15-15-50.6 Withdrawal or amendment of petition.
(a) The petitioner may withdraw or amend the petition without prejudice: (1) at any time before a petition for district boundary amendment is deemed a proper filing or, (2) any time after a petition for district boundary amendment has been deemed a proper filing but before it has been set for hearing; provided that if substantive amendments are made, the filing date for the petition shall be the date the amended petition is deemed a proper filing, and petitioner must send a notification of filing of the amended petition in conformance with the requirements of section 15-15 50(d).

(b) If a petition for district boundary amendment has been set for hearing, the petition may be withdrawn only upon the commission's granting of a motion for withdrawal filed by the petitioner. In the event the commission grants a motion to withdraw, the petitioner may not refile the petition within one year after the granting of the motion for withdrawal.

(c) If a petition for district boundary amendment has been set for hearing, the petition may be amended only in compliance with the requirements of section 15-15-43. "

45. Section 15-15-51, Hawaii Administrative Rules, is

amended by amending subsections (a), (b), and (d) to read as follows:

"§15-15-51 Notice of hearing for boundary amendment petitions. (a) [~~Upon proper filing of a petition for boundary amendment, the commission, not~~] Not less than sixty and not more than one hundred eighty days[~~, the commission shall conduct~~] after the proper filing of a petition for boundary amendment, a hearing shall be conducted by the commission or a hearings officer on the island in which the subject property is situated.

(b) The notice of hearing shall be served on the office of planning, the planning commission and the planning department of the county in which the subject property is situated, the planning commission of the island on which the subject property is situated if the subject property is located on Molokai or Lanai, [and] all persons with a property interest in the subject property that is recorded in the county's real property tax records at the time the petition is submitted[~~-~~], all persons with an easement over, on, upon or under or through the subject property, and all persons who appear on the county tax maps to have an interest in the land by virtue of kuleana title, Land Commission Award or Royal Patent grant. In addition, notice of the hearing shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings. * * *

(d) The notice of hearing of a boundary amendment shall include:

- (1) The date, time, place, and nature of the hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved;
- (5) The fact that parties may retain [~~counsel~~] an attorney if they so desire and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation, trust, or association may represent the corporation, trust, or association;
- (6) Where the map of the subject property or petition may be inspected; and
- (7) The rights of interested persons under

section 205-4(e), HRS. * * *

46. Section 15-15-52, Hawaii Administrative Rules, is amended by amending subsections (e), (f), (g), and (h) to read as follows:

"§15-15-52 Intervention in proceeding for district boundary amendments. * * *

(e) In a boundary amendment proceeding, petitions to intervene and become a party shall be in conformity with subchapter 5 and filed with the commission. An original and ~~[fifteen]~~ eleven copies, plus one electronic copy, of the petition for intervention with proof of service on all parties shall be filed with the commission within ~~[fifteen]~~ seven calendar days after the notice of hearing is published pursuant to section 15-15-51(c). Except for good cause shown, late filing shall not be permitted.

(f) ~~[The petition]~~ Petitions for intervention shall make reference to the following:

- (1) Nature of the petitioner's statutory or other right;
- (2) Nature and extent of the petitioner's interest in the matter, and if an abutting property owner, the tax map key description of the property; and
- (3) Effect of any decision in the proceeding on the petitioner's interest.

(g) ~~[If applicable, the petition shall also]~~ Petitions for intervention pursuant to subsection (d) shall also make reference to the following:

- (1) Other means available whereby the petitioner's interest may be protected;
- (2) Extent the petitioner's interest ~~[may]~~ will not be represented by or differs from that of existing parties;
- ~~[(3) Extent the petitioner's interest in proceeding differs from that of the other parties;]~~
- ~~[(4)]~~ (3) Extent the petitioner's participation can assist in development of a complete record;
- ~~[(5)]~~ (4) Extent the petitioner's participation will broaden the ~~[issue]~~ issues; and
- ~~[(6)]~~ (5) How the petitioner's intervention would serve the public interest.

(h) Petitions for intervention shall be accompanied by a filing fee of ~~[\$50]~~ \$100. The fee shall be

waived for state and county agencies."

47. Section 15-15-53, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-53 Intervention in other than district boundary amendment proceeding. (a) In any proceeding other than a district boundary amendment proceeding [~~and special permit proceedings~~] before the commission, petitions to intervene and become a party shall conform to subchapter 5 and be filed [~~at least within~~] no later than fifteen days [from] after the date of the publication of the hearing notice.

(b) Contents of the petition shall conform to sections 15-15-52(e) and 15-15-52(f).

(c) Petitions to intervene in special permit proceedings will not be considered since the record is made by and before the county planning commission."

48. Section 15-15-55, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-55 [~~Statement~~] Statements of position. No later than thirty days [~~from the date that a boundary amendment petition is deemed properly filed by the commission, unless otherwise directed by the executive officer,~~] after the date of notice that the petition has been deemed a proper filing, the State and county shall file with the commission a statement of position with a summary of reasons in support or opposition, including without limitation, a statement describing the respective positions of any department within the State and county that may be impacted by the boundary amendment."

49. Section 15-15-55.1, Hawaii Administrative Rules, is amended by amending subsections (a), (b), and (c) to read as follows:

"§15-15-55.1 Filing of exhibits. (a) No later than [~~forty five~~] twenty-five days prior to the [~~scheduled~~] date set for hearing pursuant to section 15-15-51, or as specified in a prehearing order issued in accordance with section 15-15-57, all parties shall submit all exhibits to substantiate their position on the boundary amendment.

(b) No later than [~~forty five~~] twenty-five days prior

to the scheduled hearing pursuant to section 15-15-51, or as specified in a prehearing order issued in accordance with section 15-15-57, all intervenors granted standing shall submit all exhibits to substantiate their position on the boundary amendment petition.

(c) Each party shall have the opportunity to provide further response to address the exhibits submitted or amended pleadings up to [~~thirty~~]twenty days prior to the hearing date set pursuant to section 15-15-51[~~-~~] or as specified in a prehearing order issued in accordance with section 15-15-57."

50. Section 15-15-56, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-56 [~~Stipulation as to findings of fact, conclusions of law, and conditions of reclassification]~~Stipulations. [~~At the hearing, all~~]All parties may enter into appropriate stipulations as to testimony, exhibits, findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary [~~change~~] amendment, as follows:

- (1) A petitioner who desires to enter into a stipulation shall prepare a proposed stipulation as to any or all testimony, exhibits, proposed findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary change;
- (2) All parties shall sign the proposed stipulation as to any or all testimony, exhibits, proposed findings of fact, conclusions of law, conditions of reclassification, and a proposed decision and order, if at all, and shall submit such stipulation to the commission [~~ten~~] at least fourteen business days prior to the hearing date;
- (3) At the hearing, the commission may approve or deny the proposed stipulation and proposed decision and order in whole or in part, or the commission may require the parties to submit additional evidence concerning the proposed stipulation and proposed decision and order;
- (4) The commission may approve the proposed decision and order by amending or adopting the proposed decision and order. The commission shall issue a decision and order pursuant to provisions of sections 15-15-36 and 15-15-74 and

section 205-4(g), HRS."

51. Section 15-15-57, Hawaii Administrative Rules, is Amended by amending subsection (a) to read as follows:

"§15-15-57 Prehearing conference; exchange of exhibits; prehearing conference order. (a) The chairperson, presiding officer, or the executive officer shall be authorized to hold a prehearing conference with the parties for the purpose of identifying the issues, identifying the [~~position~~] positions of the parties, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, determining the extent of agreement as to proposed findings, and such other matters as may expedite orderly conduct and disposition of the hearing. No motions and decisions on substantive matters shall occur at the [~~meeting~~]prehearing conference."

52. Section 15-15-59, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-59 Conduct of hearing. (a) The hearing shall be conducted in accordance with this subchapter. Unless otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion.

(b) The presiding officer shall convene the hearing and summarize the proceeding.

(c) Before presenting the case, the parties shall have the opportunity to make opening statements in the order in which they present witnesses. Opening statements may be waived.

(d) Unless otherwise directed by the presiding officer, witnesses shall be called in the following order in a district boundary amendment proceeding:

- (1) Witnesses for the petitioner;
- (2) Witnesses for the county planning department;
- (3) Witnesses for the State office of planning;
- (4) Witnesses for each intervenor, in the order in which intervention was granted;
- (5) Rebuttal witnesses for the petitioner;
- (6) Additional witnesses as the presiding officer may determine.

(e) Witnesses shall be examined in the following order:

- (1) Direct examination by the party calling the witness;
- (2) Cross-examination by the other parties;
- (3) Examination by the presiding officer or any member of the commission;
- (4) Redirect examination by the party calling the witness;
- (5) Recross examination by the other parties;
- (6) Recross examination by the presiding officer or any member of the commission.

(f) After all parties have presented their cases through testimony and exhibits, all parties may provide closing statements in the order in which they presented witnesses; provided that petitioner may make a rebuttal closing argument. Closing statements may be waived."

53. Section 15-15-60, Hawaii Administrative Rules, is amended by amending subsections (a) and (b) to read as follows:

"§15-15-60 Presiding officer. (a) [~~In~~] Notwithstanding section 15-15-06, in all hearings before the commission, the chairperson, a vice-chairperson, [~~or~~] one of the other commissioners, or a hearings officer [~~duly~~] appointed [~~and designated~~] by the commission shall preside at the hearing.

(b) The presiding officer shall convene the hearing and briefly state the nature of the case, control the schedule and course of the hearings, administer oaths and affirmations, receive evidence, hold appropriate conferences before and during hearings, rule upon all objections or motions which do not involve a final determination of the proceedings, receive offers of proof, and fix the time for the filing of briefs or proposed findings of fact, conclusions of law and decisions and orders, dispose of any other matter that normally and properly arises in the course of a hearing, and take all other actions authorized by law that are deemed necessary to the orderly and just conduct of a hearing. * * *

54. Section 15-15-63, Hawaii Administrative Rules, is amended by amending subsections (f), (h) and (l) to read as follows:

"§15-15-63 Evidence. * * *

(f) With the approval of the presiding officer, a witness may read into the record the witness' testimony on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall provide an original and ~~[fifteen]~~ eleven paper copies and one electronic copy of the prepared testimony to the chief clerk, with a copy to each party to the proceeding. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, a copy of the prepared testimony may be received into evidence without reading, provided that the witness shall be subject to proper cross-examination on matters contained in the prepared testimony. Any amendments to prepared direct and rebuttal testimony, or the introduction of totally new matters by revisions or supplements shall be accompanied by a sworn affidavit explaining why these matters were not submitted with the original prepared testimony. * * *

(h) Exhibits shall be legible and may be prepared on paper not exceeding 8-1/2 x 11 inches in size or bound or folded to the respective approximate size, where practical. Where practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form. When exhibits are offered in evidence, the party shall furnish the original and ~~[fifteen]~~ eleven paper copies and one electronic copy of the exhibits to the chief clerk with a copy to each party to the proceeding, unless copies have been previously furnished or the presiding officer directs otherwise. * * *

(l) At the hearing, the presiding officer may require the production of further evidence through testimony or exhibits upon any issue. The presiding officer may authorize the filing of specific documentary evidence as a part of the record after the close of the hearing, subject to the rights of the parties to request reopening of the hearing within a specified time after the receipt of such evidence, or may keep the hearing open until such time as evidence is received by the commission. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission, reserving an exhibit number therefor, but the hearing shall remain open. The presiding officer is authorized to close the hearing when the exhibit is received, provided that there is no objection from any party, and no request to cross-examine by any party or a request to answer questions by a commissioner."

55. Section 15-15-64, Hawaii Administrative Rules, is repealed:

~~["§15-15-64 Order of presentation. In hearings on petitions and complaints, the parties shall be heard in such order as the presiding officer directs."]~~

56. Section 15-15-66, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-66 Removal from proceeding. Any person who willfully disrupts a hearing or other proceeding may be removed from the hearing room."

57. Section 15-15-67, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-67 Co-counsel. Where a party is represented by more than one ~~[counsel]~~ attorney, only one of the ~~[counsel]~~ attorneys shall be permitted to make an opening statement, or to cross-examine a particular witness or to state any objections, or to make a closing [arguments,] argument, unless otherwise authorized by the presiding officer."

58. Section 15-15-68, Hawaii Administrative Rules, is repealed:

~~["§15-15-68 Cross examination. Each party shall have the right to conduct any cross examination of the witnesses as may be required for a full and true disclosure of the facts. Parties may submit rebuttal evidence subject to the approval of the presiding officer."]~~

59. Section 15-15-70, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-70 Motions. (a) Any party may make motions before, during, or after the close of a hearing.

(b) All motions, other than those made during a hearing, shall:

- (1) Be in writing;
- (2) State the grounds for the motion;
- (3) Set forth the relief or order sought; ~~[and]~~
- (4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of

law[-]; and

- (5) Be filed with the commission at least ten business days before the next regularly scheduled meeting of the commission.

(c) Every motion, except one entitled to be heard ex parte, shall indicate whether a hearing is requested on the motion. If a motion requires the consideration of facts not appearing of record, it shall be supported by an affidavit or affidavits or declaration or declarations.

(d) The moving party shall serve a copy of all motion papers on all other parties and shall file the original plus [~~fifteen~~] eleven copies and one electronic copy with the commission and proof of service.

(e) The opposing party or parties shall serve and file counter affidavits and memorandums in opposition to the motion and of the authorities relied upon not later than seven days after being served with any written motion, or, if the hearing on the motion will occur less than seven days after the motion is served, at least forty-eight hours before the time set for hearing, unless otherwise ordered by the chairperson, chairperson's designee, or hearings officer. The chairperson, chairperson's designee, or hearings officer may order the opposing party or parties to file its memorandum in opposition earlier than the seven day period.

(f) Any party who does not oppose a motion or who intends to support a motion or who desires a continuance shall notify the commission, through the executive officer, and the opposing counsel within seven days after being served or, if the hearing on the motion will occur less than seven days after the motion is served, within forty-eight hours before the time set for hearing.

(g) Failure to serve or file [~~a memorandum~~]memoranda in opposition to a motion or failure to appear at the hearing may be deemed a waiver of objection to the granting or denial of the motion.

(h) Motions that do not involve the final determination of a proceeding may be heard and determined by the chairperson, commissioner, or hearings officer.

(i) If a hearing is requested, the executive officer shall set a date and time for hearing on the motion.

(j) If a hearing on the motion is not requested, the commission may decide the matter upon the pleadings, memoranda, and other documents filed with the commission.

(k) Any motion except a motion for relief from or release of conditions submitted by the same party or

parties and upon substantially the same grounds as a previous motion that has been considered by the commission or denied by the commission shall not be again considered.

(l) After the hearing is closed, but before issuance of a decision, a party may move to re-open the hearing to take additional evidence. The motion shall specify the facts claimed to constitute grounds in justification of the motion, including material changes of fact or of law alleged to have occurred since the closing of the hearing and shall provide a description of the proposed additional evidence and an explanation of why the evidence was not previously adduced.

(m) Orders granting, denying or otherwise disposing of motions, except motions to amend decisions and orders relating to district boundary amendments and to special permits, may be signed by the chairperson or any vice chairperson, or the presiding officer, or the hearings officer, as the case may be. Orders granting, denying, or otherwise disposing of motions relating to amendments of decisions and orders in district boundary amendment proceedings and to special permits shall be signed by the commissioners who have heard or examined the evidence relating to the motion and who have voted affirmatively on the decision."

60. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a new section 15-15-70.1 to read as follows:

"§15-15-70.1 Protective Orders. Any party or any person may move for a protective order to protect the confidentiality of information that is protected from disclosure under chapter 92F, HRS, or by law. A motion for protective order shall specifically identify the document or information to be protected. The movant shall bear the burden of establishing that the information should be protected. Stipulations for protective order, subject to the commission's approval, may be accepted in lieu of motions for protective orders."

61. Section 15-15-74, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-74 Decision. (a) For district boundary amendment petitions filed before December 31, 1995, within a period of not more than one hundred twenty days after the close of the hearing, unless otherwise ordered by the

court, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions in accordance with subchapter 11.

(b) For district boundary amendment petitions filed on or after July 14, 1998, prior to a period of not more than three hundred sixty-five days after the proper filing of the petition, unless otherwise ordered by a court, or unless a time extension, not to exceed ninety days, is established by a two-thirds vote of the members of the commission, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions in accordance with subchapter 11. If the commission fails to act on the petition pursuant to section 205-4(g), HRS, the petition shall be deemed approved, subject to the provisions of section 15-15-90(e).

~~[(c) Notwithstanding subsections (a) and (b), the commission shall act to approve, deny, or modify with conditions, a housing project petition submitted pursuant to Act 227, SLH 1992, within one hundred eighty days from the date the petition is accepted as a complete filing. The commission may extend the one hundred eighty day time period for an additional ninety days either upon stipulation of the parties, or upon determination by the commission that additional time is necessary to allow an adequate and complete record to be presented to the commission for its consideration. If the commission fails to act on the petition pursuant to Act 227, SLH 1992, the petition shall be deemed approved, subject to the provisions of section 15-15-90(e).~~

~~(d) As used in subsection (c), a "housing project petition" means a petition in which the proposed use is for the development of single or multi family housing units and ancillary uses. Upon motion by the petitioner that a petition is being submitted as a housing project petition pursuant to subsection (c), the commission shall promptly decide whether the petition may be so considered and subject to the provisions therein.]~~

~~[(e)](c) Notwithstanding subsections (a), and (b), [and (e)], decisions for petitions submitted pursuant to section [201G-118,] 201H-38, HRS, shall be made in the timeframe as provided in section 15-15-97."~~

62. Section 15-15-76, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-76 Re-application by the petitioner for boundary amendment. (a) The commission shall not accept any petition for boundary amendment covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of filing findings of fact and conclusions of law denying the petition unless the petitioner submits significant new data or additional reasons which substantially strengthen the petitioner's position, provided that in no event shall any new petition be accepted within six months of the date of filing of the findings of fact and conclusions of law.

(b) Additionally, the commission shall not accept any petition for boundary amendment for the same request involving the same land that was before the commission and withdrawn voluntarily by the petitioner within one year of the date of the withdrawal."

63. Section 15-15-77, Hawaii Administrative Rules, is amended by amending subsections (a) and (b) to read as follows:

"§15-15-77 Decision-making criteria for boundary amendments. (a) The commission shall not approve an amendment of a land use district boundary unless the commission finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, is not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

(b) In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards;
- (3) The impact of the proposed reclassification on the following areas of state concern:
 - (A) Preservation or maintenance of important natural systems or habitats;
 - (B) Maintenance of valued cultural, historical,

- or natural resources;
 - (C) Maintenance of other natural resources relevant to Hawaii's economy including, but not limited to agricultural resources;
 - (D) Commitment of state funds and resources;
 - (E) Provision for employment opportunities and economic development; and
 - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;
- (4) In establishing the boundaries of the districts in each county, the commission shall give consideration to the general plan, and community, development, or community development plans of the county in which the land is located;
- (5) The representations and commitments made by the petitioner in securing a boundary change, including a finding that the petitioner has the necessary economic ability to carry out the representations and commitments relating to the proposed use or development; ~~and~~
- (6) Lands in intensive agricultural use for two years prior to date of filing of a petition or lands with a high capacity for intensive agricultural use shall not be taken out of the agricultural district unless the commission finds either that the action:
- (A) Will not substantially impair actual or potential agricultural production in the vicinity of the subject property or in the county or State; or
 - (B) Is reasonably necessary for urban growth~~[-]~~;
and
- (7) In considering reclassification of lands designated important agricultural lands pursuant to part III, chapter 205, HRS, the commission shall specifically consider the standards and criteria set forth in section 205-50, HRS. * * *

64. Section 15-15-78, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-78 Incremental districting. (a) If it appears to the commission that full development of the subject property cannot substantially be completed within

ten years after the date of the commission's approval and that the incremental development plan submitted by the petitioner can be substantially completed, and if the commission is satisfied that all other pertinent criteria for redistricting the [~~premises~~] subject property or part thereof are present, then the commission may:

- (1) Grant the petitioner's request to reclassify the entire subject property; or
- (2) Redistrict only that portion of the [~~premises~~] subject property which the petitioner plans to develop first and upon which it appears that substantial development can be completed within ten years after the date of the commission's approval. At the same time, the commission shall indicate its approval of the future redistricting of the total [~~premises~~] subject property requested by the petitioner, or so much thereof as shall be justified as appropriate therefor by the petitioner, such approval to indicate a schedule of incremental redistricting over successive periods not to exceed ten years each. The commission may reclassify the subject property, if it finds such a change is justified.

(b) In reclassifying property on an incremental basis, in addition to standards in this subchapter, the commission may consider projected population growth for the area, other lands reclassified in the area, the availability of and impacts on resources, and the desirability of directing growth and development to the area over a long term basis.

(c) Upon receipt of an application for redistricting of the second and subsequent increments of [~~premises~~] property for which previous approval for incremental development has been granted by the commission, substantial completion of any offsite and onsite improvements of the development, in accordance with the approved incremental plan, of the preceding increment redistricted will be prima facie proof that the approved incremental plan complies with the requirements for boundary amendment.

(d) The following are procedures for processing incremental districting applications:

- (1) The petitioner shall file an original and [~~fifteen~~] eleven paper copies and one electronic copy of an application to approve the second or subsequent increments utilizing the same docket number as the original petition;
- (2) The petitioner shall serve copies of the

- application on all parties of record in the original proceeding;
- (3) The application shall include facts, affidavits, and other documentation, including a metes and bounds description and map, in support of the fact that the petitioner has substantially completed offsite and onsite improvements, complied with chapter 343, HRS, where applicable, and complied with conditions of the commission approval in accordance with the approved incremental plan of the preceding increment redistricted;
 - (4) A prehearing conference may be conducted pursuant to section 15-15-57;
 - (5) A notice of hearing shall be published notifying the public of the time and place the application will be considered by the commission and will provide for the admission of public witnesses;
 - (6) The procedures for hearing the application will be subject to the timeframes presently existing for district boundary changes, and the provisions of section 15-15-13; and
 - (7) The petitioner shall provide notice of the application to all persons having a property interest in the increment [being redistricted] for which a land use district boundary amendment is sought."

65. Section 15-15-79, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-79 Performance time. (a) Petitioners granted district boundary amendments shall make substantial progress within a reasonable period, as specified by the commission, from the date of approval of the boundary change, in developing the redistricted [area] property. The commission may act to amend, nullify, change, or reverse its decision and order if the petitioner fails to perform as represented to the commission within the specified period.

(b) The commission may provide by condition that absent substantial commencement of use of the [land] subject property and substantial progress in developing the redistricted area in accordance with [such] representations and commitments made by the petitioner to the commission, the commission [may] shall issue and serve upon the party bound by the condition an order to show cause why the

property should not revert to its former land use classification or be changed to a more appropriate classification. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances pursuant to section 15-15-92."

66. Section 15-15-82, Hawaii Administrative Rules, is amended by amending subsections (a), (b) and (c) to read as follows:

"§15-15-82 Issuance of decisions and orders. (a) A proceeding shall stand submitted for decision by the commission after the taking of evidence, and the filing of briefs or the presentation of oral argument as may have been prescribed by the presiding officer or hearings officer. [~~The parties~~] Each party to the proceeding shall submit a proposed decision and order which shall include proposed findings of fact. If a party enters into a partial stipulation as authorized in section 15-15-___, the party shall nevertheless file a proposed decision and order indicating the findings of fact, conclusions of law and proposed conditions that are stipulated to and also set forth proposed findings of fact, conclusions of law and proposed conditions that it proposes that are different from the stipulation. The proposed decision and order shall be served upon each party to the proceeding and an opportunity given to each party to comment thereon.

(b) A commission member may prepare a proposed findings of fact and conclusions of law, and serve the document upon each party no less than [~~seven days~~] ten business days prior to the meeting at which the proposed findings of fact and conclusions of law shall be presented.

(c) Notwithstanding any provision of this chapter to the contrary, each party may provide its position on the commission members' proposed findings of fact and conclusions of law within [~~three~~] five business days from the date of service. Any party providing its position shall provide a summary of its reasons for support or objection. * * *"

67. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a new section 15-15-82.1, to read as follows:

"§15-15-82.1 Stipulation as to findings of fact, conclusions of law, and conditions of reclassification.

After the close of the evidentiary portion of the hearing, some or all parties may enter into stipulations as to findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary change as follows:

- (1) A petitioner who desires to enter into a stipulation shall prepare a proposed stipulation as to any or all findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary change;
- (2) Parties shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, conditions of reclassification, and a proposed decision and order, if at all, and shall submit such stipulation to the commission within the time frame specified by the commission;
- (3) After the hearing, the commission may approve or deny the proposed stipulation and if it approves the stipulated decision and order the commission may accept, modify or reject any of the findings of fact, conclusions of law, or conditions of reclassification contained in the stipulation;
- (4) The commission may approve the proposed decision and order by amending or adopting the proposed decision and order. The commission shall issue a decision and order pursuant to provisions of sections 15-15-36 and 15-15-74 and section 205-4(g), HRS."

68. Section 15-15-83, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-83 Service of decisions and orders. The commission shall serve the decisions and orders by mailing certified copies to the parties of record. The effective date of the decision and order is the date certified by the executive officer. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy. When a party to a proceeding has appeared by a representative, service upon the representative or ~~counsel~~ attorney shall be deemed to be service upon the party."

69. Section 15-15-84, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

"§15-15-84 Reconsideration of decision. * * *

(b) The motion for reconsideration shall state specifically [~~what points of law or fact the commission has overlooked or misunderstood together with brief arguments on the points raised.~~] the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous. * * *"

70. Section 15-15-85, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-85 [~~Recommendation of hearings officer.~~] Recommended decision. (a) Upon completion of taking of the evidence, the hearings officer may request the parties to submit a proposed findings of fact, conclusions of law, and decision and order. Proposed decision and orders submitted shall be served upon each party to the proceeding and an opportunity given to each party to comment thereon. [~~If requested, and upon~~] Upon receipt of the proposed decision and orders and any comments from the parties, the hearings officer shall prepare and submit to the commission a [report setting forth proposed findings of fact, conclusions of law, the reasons therefore, and a recommended order, and shall present the report of the proceeding to the commission.] recommended decision which shall include recommended findings of fact, conclusions of law and a recommended decision and order. If any party has filed proposed findings of fact or conclusions of law, the hearings officer shall incorporate in the recommended decision a ruling on each proposed finding so presented.

(b) The record shall include the petition and other pleadings, notice of hearing, motions, rulings, orders, transcript of the hearing, stipulations, documentary evidence, offers of proof, proposed findings, [~~or~~] other documents submitted by the parties, all matters placed in evidence, objections to the conduct of the hearing, the [~~report~~] recommended decision of the hearings officer, and all other matters placed in evidence.

[~~(c) The hearings officer shall cause a copy of the report to be served upon all parties to the proceedings.~~]"

71. Chapter 15-15, Hawaii Administrative Rules, is

amended by adding a new section 15-15-85.1, to read as follows:

"§15-15-85.1 Proposed decision. Upon receipt of the hearings officer's recommended decision, the commission may adopt it as its proposed decision, or may remand it to the hearings officer for any clarification or correction, or may modify it and issue its own proposed decision.

A copy of any proposed decision of the commission shall be served upon each party."

72. Section 15-15-86, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-86 [~~Exception to hearings officer's report and recommendations.~~] Exceptions; extension of time; finality of proposed decision. (a) Within [seven] fourteen days after [~~service of the report and recommendations by the hearings officer,~~] mailing of a copy of the commission's proposed decision, a party may file with the commission, exceptions to [the report together with a brief in support of such exceptions.] any part thereof and request review by the commission. Such party shall serve copies of exceptions and briefs upon each party to the proceeding.

(b) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken;
- (2) Identify that part of the [~~hearings officer's report and recommended order~~] proposed decision to which objections are made;
- (3) Designate by page citation the portions of the record relied upon[+] and specify authorities relied upon to sustain each point; and
- (4) State all the grounds for exceptions to a ruling, finding, or conclusion [~~, or recommendation~~]. [~~The grounds~~] Grounds not cited or specifically urged are waived.

(c) Any party may apply for an extension of time within which to file exceptions to the proposed decision by filing a written application setting forth the reason for the request. The application shall be filed before the expiration of the period prescribed for the filing of exceptions. Upon good cause shown, the executive officer may extend the time for filing exceptions for an additional period not to exceed

ten (10) calendar days.

(d) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the commission, on its own motion, orders further proceedings to be held."

73. Section 15-15-87, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-87 Support of hearings officer's [report and recommendation] recommended decision. (a) Within seven days after service of the [hearings officer's recommendations] exceptions taken to the proposed decision, any party may file with the commission a brief [in support of the hearings officer's recommendations] opposing the exceptions. Such party shall serve copies of the brief upon each party to the proceeding.

(b) The brief [in support] opposing exceptions shall:

- (1) Answer specifically the points of procedure, fact, law, or policy to which exceptions were taken;
- (2) State the facts and reasons why the proposed decision should be affirmed; and
- (3) Designate by page citation the portions of the record relied upon."

74. Section 15-15-88, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-88 [~~Oral argument before the commission.~~]Argument on exceptions.

[~~(a) Any party adversely affected by the hearings officer's report shall be afforded an opportunity to present oral arguments to the commission.~~] Upon the filing of exceptions by a party adversely affected by the proposed decision, the commission shall grant such party an opportunity to present arguments to the commission. The executive officer, with direction from the chairperson, shall set the time and place of hearing of argument on exceptions and give written notice to the parties.

[~~(b) The commission may direct oral argument on its own motion.]"~~

75. Section 15-15-89, Hawaii Administrative Rules, is repealed:

~~["§15-15-89 Commission action; exceptions. (a) In the event no statement of exceptions is filed, the commission may proceed to reverse, modify, or adopt the recommendations of the hearings officer.~~

~~(b) Upon the filing of the exceptions and briefs together with the briefs in support, the commission may:~~

- ~~(1) Render its decision upon the record;~~
- ~~(2) If oral argument has been allowed, the commission may render its decision after oral argument; or~~
- ~~(3) Reopen the docket and take further evidence or may take such other disposition of the case that is necessary under the circumstances."]~~

76. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a new section 15-15-89.1, to read as follows:

"§ 15-15-89.1 Final decision. (a) When exceptions have been filed to the commission's proposed decision, the commission, within forty-five days after the hearing on the exceptions, shall render its final decision. In rendering its final decision, the commission shall consider the whole record or such portions thereof as may be cited by the parties and shall resolves all questions of fact by what it deems to be the greater weight of the evidence thereon. The final decision shall contain findings of fact and conclusions of law upon which the decision is based.

(b) When the commission has heard and examined all of the evidence, the commission, within forty-five days after the reception of the evidence, or filing of any memoranda or proposed findings filed by any party, shall render its final decision which shall contain findings of fact and conclusions of law upon which the decision is based. If any party has filed proposed findings of fact or conclusions of law, the final decision shall incorporate a ruling on each proposed finding and conclusion so presented."

77. Section 15-15-90, Hawaii Administrative Rules, is Amended by amending subsection (e) to read as follows:

"§15-15-90 Imposition of conditions; generally.

* * *

(e) If a boundary amendment petition filed pursuant to section 205-4, HRS, is approved pursuant to section 91-13.5, HRS, or a petition filed pursuant to section [2016-

~~118~~]201H-38, HRS, is deemed approved on the forty-sixth day, the following mandatory conditions shall apply:

- (1) Petitioner shall develop the area reclassified in substantial compliance with the representations made to the commission. Failure to so develop the reclassified area may result in reversion of the reclassified area to its former classification, or change to a more appropriate classification;
- (2) Petitioner shall provide notice to the commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the reclassified area, prior to or during development of the reclassified area, excluding, however, individual lot sales in a residential or industrial development;
- (3) Petitioner shall timely provide without any prior notice, annual reports to the commission, office of planning, and the respective county planning department in connection with the status of the subject project proposed for the reclassified area, and petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the commission. The annual report shall be due prior to or on the anniversary date of the approval of the petition;
- (4) The commission may fully or partially release the conditions provided herein as to all or any portion of the reclassified area upon timely motion and upon the provision of adequate assurance of satisfaction of the conditions imposed by the petitioner;
- (5) Within seven days of the approval date of the petition, the petitioner shall:
 - (A) Record with the bureau of conveyances a statement that the reclassified area is subject to conditions imposed herein by the commission; and
 - (B) File a copy of such recorded statement with the commission;
- (6) Petitioner shall record the conditions imposed herein by the commission with the bureau of conveyances pursuant to section 15-15-92;
- (7) Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate

income residents of the State of Hawaii to the satisfaction of the respective county in which the land reclassified is located. The respective county shall consult with the Hawaii housing finance and [community] development corporation [~~of Hawaii~~] prior to its approval of the petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the petitioner and the respective county;

- (8) Provided that the proposed land uses include residential units, petitioner shall contribute to the development, funding, and construction of public school facilities as determined by and to the satisfaction of the state department of education;
- (9) Petitioner shall participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a fair-share basis, as determined by the respective county in which the land reclassified is located, and the state department of health;
- (10) Petitioner shall prepare a traffic impact analysis report. The traffic impact analysis report shall identify the traffic impacts attributable to the proposed development and recommended proposed mitigation measures. The report should also reflect the latest planning efforts for transportation. The report shall be reviewed and approved by the state department of transportation, and the respective county transportation agency in which the land reclassified is located. Based upon the report, the petitioner may be required to participate on a fair-share basis, in the funding and construction of local and regional transportation improvements and programs, including dedication of rights-of-way as determined by the state department of transportation and the respective county transportation agency in which the land reclassified is located;
- (11) Petitioner shall, on a fair-share basis, fund and construct adequate civil defense measures as determined by the state civil defense agency;
- (12) Petitioner shall have an archaeological inventory

survey conducted by a professional archaeologist. The findings shall be submitted to the state department of land and natural resources, state historic preservation division in report format for adequacy review. The state historic preservation division shall verify in writing that the survey report is acceptable, that significance evaluations are acceptable, and that mitigation commitments are acceptable;

- (13) If significant historic sites are present, the petitioner shall submit a detailed historic preservation mitigation plan for review by the state historic preservation division. This plan may include preservation and archaeological data recovery subplans (detailed scopes of work). The state historic preservation division shall verify in writing that the plan has been successfully executed;
- (14) Petitioner shall stop work in the immediate vicinity should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found. Subsequent work shall proceed upon an archaeological clearance from the state historic preservation division when they find that mitigative measures have been implemented to their satisfaction;
- (15) Petitioner shall participate in an air quality monitoring program as specified by the state department of health;
- (16) Petitioner shall be responsible for implementing sound attenuation measures to bring noise levels from vehicular traffic in the affected properties down to a level of fifty-five decibels;
- (17) If the petition for a boundary amendment involves the conversion of prime agricultural lands, petitioner shall be responsible for contributing to the protection of an equivalent amount of prime agricultural lands and related infrastructure via long-term agricultural conservation easements or other agriculturally-related assets as determined by and to the satisfaction of the Department of Agriculture;
- (18) Petitioner shall notify all prospective buyers of property of the potential odor, noise, and dust pollution if there are any agricultural district

- lands surrounding the reclassified area;
- (19) Petitioner shall notify all prospective buyers of property that the Hawaii Right to Farm Act, chapter 165, HRS, limits the circumstances under which pre-existing farm activities may be deemed a nuisance if there are any agricultural district lands surrounding the reclassified area;
- (20) Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the reclassified properties to the satisfaction of the appropriate state and county agencies;
- (21) Petitioner shall cooperate with the state department of health and the respective county to conform to the program goals and objectives of chapter 342G, HRS, and the respective county's approved integrated solid waste management plans in accordance with a schedule and timeframe satisfactory to the state department of health;
- (22) To the extent required by the state department of health, petitioner shall ensure that nearshore, offshore, and deep ocean waters remain in pristine condition;
- (23) Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed uses. Water transmission facilities shall be coordinated and approved by appropriate state and county agencies. The county's water use and development plan shall be amended to reflect changes in water demand forecasts and in water development plans to supply the proposed uses; ~~and~~
- (24) Petitioner shall preserve and protect any established gathering and access rights of native Hawaiians who have customarily and traditionally exercised subsistence, cultural, and religious practices on the reclassified area.
- (25) To the extent that the petition area is contiguous or adjacent to lands in the State land use agricultural district, any action that would interfere with or restrain farming operations on those lands is prohibited; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices.
- (26) Petitioner shall notify all prospective

developers or purchasers of all or any portion of the petition area or any interest in the petition area, and shall require its purchasers to provide subsequent notification to lessees or tenants that farming operations and practices on adjacent or contiguous land in the State land use agricultural district are protected under HRS chapter 165, the Hawaii Right to Farm Act. This notice shall be included in any disclosure required for the sale or transfer of all or any portion of the petition area or any interest in the petition area."

78. Section 15-15-95, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-95 Petition before county planning commission. (a) Any person who desires to use land within an agricultural or rural district for other than a permissible agricultural or rural use may petition the county planning commission of the county within which the land is located for a special permit to use the land in the manner desired[-]; provided that if the person is not the owner or sole owner in fee simple of the land, the person shall submit written authorization of all fee simple owners to file the petition, which authorization shall also include an acknowledgment that the owners and their successors shall be bound by the special permit and its conditions.

(b) Special permits for areas greater than fifteen acres require approval of both the county planning commission and the commission. Special permits approved by the county planning commission and which require commission approval must be forwarded to the commission within sixty days following the county planning commission's decision. The county shall assure that prior to the hearing on the petition for special permit, copies of the special permit petition are forwarded to the land use commission, the office of planning, and the department of agriculture for their review and comment. The decision[-] of the county planning commission approving the special permit, together with the complete record, including maps, charts, [and] other exhibits [as evidence,-] and other evidence, and the complete transcript of the proceeding before the county planning commission must be transmitted to the commission. Unless otherwise required by the commission, the planning commission shall file with the commission an original and

~~[fifteen]~~ eleven copies of the complete record~~[-]~~, together with an electronic copy of the complete record.

~~[(b)]~~(c) Certain "unusual and reasonable" uses within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":

- (1) The proposed use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;
- (2) The ~~[desired]~~ proposed use would not adversely affect surrounding property;
- (3) The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;
- (4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

~~[(e)]~~ (d) Petitions for issuance of a special permit shall specify the proposed use ~~[desired]~~ and state concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the special permit, and shall include any facts, views, arguments, maps, plans, and relevant data~~[-]~~ in support of the petition.

~~[(d)]~~(e) The petitioner shall comply with all of the rules of practice and procedure of the county planning commission in which the subject property is located.

~~[(e)]~~(f) The county planning commission may impose such protective conditions as it deems necessary in the issuance of a special use permit. The county planning commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use~~[-]~~ proposed, and if appropriate, a time limit for the duration of the ~~[particular]~~ proposed use, which shall be a condition of the special permit~~[-]~~; provided, however, that the commission, for good cause shown, may specify or change the time period of the special permit. If the permitted use is not substantially established to the satisfaction of the county planning commission within the specified time, it may revoke the permit. The county planning commission, with the concurrence of the commission, may extend the time

limit if it deems that circumstances warrant the granting of the extension."

79. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a new section 15-15-95.1, to read as follows:

"§15-15-95.1 Applicability of subchapter 5. Except as otherwise provided in this subchapter, the procedural provisions of subchapter 5 shall apply to petitions for special permits."

80. Section 15-15-96, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"§15-15-96 Decision and order by the land use commission. (a) Within forty-five days after receipt of the county planning commission's decision[, together with] and the complete record of the proceeding ,as determined by the executive officer, before the county planning commission, the commission shall act to approve, approve with modification, or deny the petition. The commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the petitioner. Upon determination by the commission, the petition may be remanded to the county planning commission for further proceedings. * * *"

81. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a new section 15-15-96.1, to read as follows:

"§15-15-96.1 Modification of special permit. Any request for modification of a special permit or modification, release, or deletion of a condition imposed on a special permit, whether imposed by the county planning commission or the commission, shall be submitted to the appropriate county planning commission and, for special permits for land greater than fifteen acres in size, the commission, for consideration and decision.

The decision of the county planning commission with respect to modification of a special permit, or modification, release or deletion of a condition to a special permit shall comply with the requirements of section 15-15-95 and 15-15-96."

82. Section 15-15-97, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-97 Procedure for processing petitions for housing projects under section [201G-118,] 201H-38, HRS.

(a) Petitions for housing projects under section [201G-118,] 201H-38, HRS, shall be processed according to the procedures provided in this section.

(b) Not less than sixty days prior to the filing of a petition, the petitioner shall:

- (1) File an original and [~~fifteen~~] eleven paper copies, together with one electronic copy of a notice of intent to file a petition with the commission according to a format provided by the commission;
- (2) Publish the notice of intent at least once in a newspaper of general circulation in the State as well as in a county newspaper in which the subject property is situated. The notice of intent shall include:
 - (A) The name and address of the petitioner and the petitioner's property interest in the subject property;
 - (B) Proposed reclassification;
 - (C) Tax map key;
 - (D) Acreage;
 - (E) Existing land use;
 - (F) Brief description of the proposed development or use;
 - (G) The date that the petitioner shall file its petition with the commission; and
 - (H) Inform the public of the rights of interested persons under section 205-4(e), HRS;
- (3) Serve copies of the notice of intent to file a petition upon the director of the office of planning, the planning department of the county within which the subject property is situated, and persons with a property interest in the subject property that is recorded in the county's real property tax records. The notice of intent to file a petition shall also be sent to persons on a mailing list provided by the chief clerk;
- (4) File an original and [~~fifteen~~] eleven copies of an affidavit of mailing the notices of intent to the persons specified in paragraph (3); and

(5) File an affidavit of publication of the notice of intent to file a petition in compliance with paragraph (2).

(c) The commission may conduct a preapplication meeting with the petitioner and proposed parties to the proceeding for the purpose of determining information requirements, possible issues, proposed stipulations, and other matters which may assist in contributing to a more orderly hearing process.

(d) If the petitioner fails to file the petition on the date stated in its notice of intent, the petitioner shall refile a notice of intent in the manner set forth in this section [~~, unless the refiling is waived by the chairperson or presiding officer pursuant to the standards set forth in section _____~~].

(e) The petitioner shall file a petition in conformance with subchapters 5 and 6 except that at the time of filing, the petition shall include:

- (1) A [~~negative declaration~~] finding of no significant impact or approved environmental impact statement if conservation district lands are involved;
- (2) A proposed decision and order;
- (3) An affidavit that the petitioner has met with interested community groups to discuss the proposed project; [~~and~~]
- (4) A clear description of the manner in which petitioner proposes to finance the proposed development, including a budget, a marketing plan, and a feasibility study; and
- [(-4)](5) A certification from the [~~housing and community development corporation of Hawaii~~] Hawaii housing finance and development corporation or county housing agency that the petition involves a section [~~201G-118,~~] 201H-38, HRS, housing project.

(f) Petitions [~~which~~] that fail to comply with the requirements set forth in subsections (b) and (e) shall be deemed defective and the date of filing of the petition shall be as of the date the defect is cured.

(g) The hearing on the application shall be conducted in accordance with subchapter 7, except that the time requirements for holding a hearing, statement of position, and decision making shall not apply.

(h) Notice of the hearing shall be published to the extent provided by law.

(i) The commission shall approve or disapprove a

boundary change within forty-five days after [~~the corporation has submitted a petition to the commission as provided in section 205-4, HRS.~~] the petition has been deemed a proper filing by the executive officer. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission, and the provisions of section 15-15-90(e) shall apply."

83. Section 15-15-98, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"§15-15-98 Who may petition. (a) On petition of [~~an~~] any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission[~~-~~] to a factual situation. * * *"

84. Section 15-15-99, Hawaii Administrative Rules, is amended by amending subsection (a) to read as follows:

"§15-15-99 Petition for declaratory order; form and contents. (a) The petition shall be submitted in duplicate, shall conform to the format requirements of [~~subchapters 5 and 7~~] sections 15-15-38, 15-15-39, and 15-15-40, and shall contain:

- (1) The name, address (including zip code), and telephone number of each petitioner;
- ~~(2) The signature of each petitioner;~~
- ~~(3) A designation of the specific statutory provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;~~
- ~~(4) A statement of the petitioner's interest in the subject matter, including the reason for submission of the petition;~~
- ~~(5) A statement of the petitioner's position or contention; and~~
- ~~(6) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention.]~~
- (2) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question, together with a complete statement of the relevant facts and a statement of the issues raised or

- controversy or uncertainty involved;
- (4) A statement of the petitioner's interpretation of the statute, rule or order or the petitioner's position or contention with respect thereto;
- (5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention. The commission may require the petitioner to file additional data or memoranda.
- (6) The names of any other potential parties; and
- (7) The signature of each petitioner; and
- (8) A statement whether the petition for declaratory ruling relates to any commission docket for district boundary amendment or special permit, and if so, the docket number and identification of all parties to the docket. * * *

85. Section 15-15-100, Hawaii Administrative Rules, is amended to read as follows:

~~"§15-15-100 [Declaratory orders; commission action. Within ninety days after the receipt of a petition for declaratory order, the commission shall either deny the petition in writing, stating the reasons for the denial, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in section 15-15-103 provided that if the matter is set for hearing, the commission shall render its findings and decision within one hundred twenty days after the close of the hearing.]~~Consideration of petition for declaratory order. (a) The commission, within ninety days after submission of a petition for declaratory relief, shall:

- (1) Deny the petition where:
 - (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future; or
 - (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law; or
 - (C) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of

- the officers or employees in any litigation which is pending or may reasonably be expected to arise; or
- (D) The petitioner requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission; or
- (2) Issue a declaratory order on the matters contained in the petition; or
- (3) Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.

(b) If the matter is set for hearing, the commission shall render its findings and decision within forty-five days after the close of the hearing or, if briefs are filed, forty-five (45) days after the last brief is filed, unless a different time period is stated at the hearing."

86. Section 15-15-101, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-101 Declaratory orders; dismissal of petition. The commission, without notice or hearing, may dismiss a petition for declaratory order that fails in material respect to comply with the requirements of this subchapter. The dismissal shall be in writing and state the reasons therefor."

87. Section 15-15-102, Hawaii Administrative Rules, is repealed:

~~["§15-15-102 Refusal to issue declaratory order. The commission, for good cause, may refuse to issue a declaratory order by giving specific reasons for the determination. Without limiting the generality of the foregoing, the commission may so refuse where:~~

- ~~(1) The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;~~
- ~~(2) The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;~~

- ~~(3) The issuance of the declaratory order may affect the interests of the commission in a litigation that is pending or may reasonably be expected to arise; or~~
- ~~(4) The matter is not within the jurisdiction of the commission."]~~

88. Section 15-15-103, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-103 Declaratory orders; request for hearing. The commission may, but shall not be required to, conduct a hearing on a petition for declaratory order. Any petitioner or party in interest who desires a hearing on a petition for a declaratory order shall set forth in detail in the request the reasons why the matters alleged in the petition, together with supporting affidavits or other written briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition, and to the extent that the request for a hearing is dependent upon factual assertion, shall accompany the request by affidavit establishing those facts. [~~In the event a hearing is ordered by the commission, subchapter 7 shall govern the proceeding.~~]"

89. Section 15-15-104, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-104 Applicability of declaratory order. An order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts not considered in the order exist. The order shall have the same force and effect as other orders issued by the commission."

90. Section 15-15-105, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

"§15-15-105 Initiation of rulemaking proceedings.

* * *

(b) Any interested person may petition the commission for the adoption, amendment, or repeal of any rule of the commission. The petitioner shall file and deliver eleven paper copies and one electronic copy of the petition to the office of the commission. Petitions for rulemaking filed with the commission shall become matters of public record."

91. Section 15-15-106, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-106 Rulemaking; form and contents of petition. Petitions for rulemaking need not be in any special form but shall conform to the requirements of this subchapter and shall contain:

- (1) The name, address (including zip code), and telephone number of each petitioner;
- ~~[(2) The signature of each petitioner;~~
- ~~(3) A draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired;~~
- ~~(4) A statement of the petitioner's interest in the subject matter;~~
- ~~(5) A statement of the reasons in support of the proposed rule, amendment, or repeal;~~
- ~~(6) The authorization or relief sought; and~~
- ~~(7) The citation of the statutory provision or other authority under which commission authorization or relief is sought.]~~
- (2) A statement of the petitioner's interest in the subject matter;
- (3) A statement of the reasons in support of the proposed rule, amendment, or repeal;
- (4) The authorization or relief sought;
- (5) The citation of the statutory provision or other authority under which commission authorization or relief is sought;
- (6) A draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; and
- (7) The signature of each petitioner.

Any petition which does not conform to the foregoing requirements may be rejected by the commission. The rejection shall be in writing and shall state the reasons therefor."

92. Section 15-15-107, Hawaii Administrative Rules, is amended by amending subsections (a) and (b) to read as follows:

"§15-15-107 Rulemaking; action on petition. (a) Within sixty days after the filing of a petition for rulemaking, the commission shall either deny the petition

in writing, stating its reasons for its denial, or initiate proceedings for the adoption, amendment, or repeal of the rule, in accordance with section 91-3, HRS.

(b) Any petition that fails in material respect to comply with the requirements of this subchapter, or that fails to disclose sufficient reasons to justify the institution of public rulemaking proceedings shall not be considered by the commission. The commission shall notify the petitioner in writing of the denial, stating the reasons [~~thereto.~~] therefor. Denial of a petition shall not [~~operate to~~] prevent the commission from acting on its own motion on any matter [~~disclosed~~] contained in the petition. * * *

93. Chapter 15-15, Hawaii Administrative Rules, is amended by adding a new section 15-15-107.1, to read as follows:

"§15-15-107.1 Commission action. The commission shall consider all statements, views, comments, and documents of record before taking final action in a rulemaking proceeding. Unless otherwise provided by law, any decision rendered pursuant to this subchapter shall not be subject to a motion for reconsideration or judicial review. The adoption, amendment or repeal of a rule is subject to approval of the governor and filing with the lieutenant governor."

94. Section 15-15-110, Hawaii Administrative Rules, is amended to read as follows:

"§15-15-110 Emergency rulemaking. If the commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than thirty days notice of hearing, and states in writing its reasons for that finding, it may adopt emergency rules pursuant to sections 91-3(b) and 91-4, HRS."

95. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

96. Additions to source notes to reflect these amendments are not underscored.

97. These amendments to chapter 15-15, Hawaii Administrative Rules, shall take effect ten days after

filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

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DUANE KANUHA
Chairperson, State
Land Use Commission

THEODORE E. LIU
Director, Department of
Business, Economic
Development & Tourism

APPROVED AS TO FORM:

Deputy Attorney General