

DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT, AND TOURISM

Amendment and Compilation of Chapter 15-15
Hawaii Administrative Rules
November 4, 1999

SUMMARY

1. §15-15-10 is amended.
2. §15-15-13 is amended.
3. §15-15-14 is amended.
4. §15-15-17 is amended.
5. §15-15-27 is amended.
6. §15-15-28 is amended.
7. §15-15-29 is amended.
8. §15-15-30 is amended.
9. §15-15-31 is amended.
10. §15-15-32 is amended.
11. §15-15-34 is amended.
12. §15-15-35 is amended.
13. §15-15-43 is amended.
14. §15-15-45 is amended.
15. §15-15-49 is amended.
16. §15-15-50 is amended.
17. §15-15-51 is amended.
18. §15-15-52 is amended.

19. §15-15-55.1 is amended.
20. §15-15-61 is amended.
21. §15-15-63 is amended.
22. §15-15-74 is amended.
23. §15-15-78 is amended.
24. §15-15-82 is amended.
25. §15-15-90 is amended.
26. §15-15-91 is amended.
27. §15-15-92 is amended.
28. §15-15-94 is amended.
29. §15-15-96 is amended.
30. §15-15-97 is amended.
31. §15-15-97.1 is repealed.
32. §15-15-106 is amended.
33. §15-15-108 is amended.
34. Subchapter 18 is repealed.
35. Chapter 15 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT, AND TOURISM

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CHAPTER 15

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Historical Note: This chapter is based substantially upon Rules of Practice and Procedure, Part I of the land use commission [Eff. 4/21/62; am and ren. 8/4/69; am and ren. 1/5/75; am and ren. 12/21/75; am 3/27/77; R 10/27/86] and State Land Use District Regulations, Part II of the land use commission [Eff. 8/23/64; am and ren. 8/4/69; am and ren. 1/5/75; am and ren. 12/21/75; R 10/27/86] and land use commission rules, chapter 15-15. [Eff 10/27/86; am 3/20/87; am 7/12/93; am 3/24/94; am 7/18/94; R 8/16/97]

SUBCHAPTER 1

GENERAL PROVISIONS

§15-15-01 Purpose. This chapter governs the practice and procedure before the land use commission, and shall be construed to secure the just and efficient determination of every proceeding. This chapter shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawaii. The rules under this chapter are promulgated pursuant to authority provided by sections 205-1 and 205-7, HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS

§§205-1, 205-7) (Imp: HRS §205-7)

§15-15-02 REPEALED. [R 8/16/97]

§15-15-03 Definitions. As used in this chapter:

"Accessory building or use" means a subordinate building or use which is incidental to and customary with a permitted use of the land.

"Agency" means each state or county board, commission, department, or office authorized by law to make rules or to adjudicate contested cases, except those in legislative or judicial branches.

"Agency hearing" refers only to a hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14, HRS.

"Agricultural park" means the same as in section 166-2, HRS.

"Building" means any structure having a roof, including, but not limited to, attached carports and similar structures.

"Chairperson" means the chairperson of the commission.

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

"Commission" means the land use commission of the State of Hawaii.

"Commissioner" means a member of the commission.

"Contested case" means a proceeding in which legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.

"District" means an area of land, including lands underwater, established as an urban, agricultural, conservation, or rural district.

"Dwelling" means a building designed or used exclusively for single family residential occupancy, but not including house trailer, multi-family unit, mobile home, hotel, or motel.

"Economic feasibility" means the degree to which the market demand for the proposed project, development, or use by the petitioner is accurately

estimated and appears to be substantial enough to indicate the probability of a viable endeavor to justify the boundary amendment.

"Facsimile" means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.

"Farm dwelling" means a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

"Filing" means the submittal of documents with the chief clerk. This definition is to be distinguished from the definition for "proper filing" for petitions to amend a district boundary.

"Hearings officer" means a person or persons duly designated and authorized by the commission to conduct proceedings on matters within the jurisdiction of the commission for purposes of taking testimony and to report the person's findings and recommendations to the commission.

"HRS" means the Hawaii Revised Statutes.

"Intervenor" means a person who properly seeks by application to intervene and is entitled to be admitted as a party in any contested case proceeding before the commission.

"Land" means all real property in the State including areas under water within the boundaries of the State.

"Lot" means a single parcel of land of record in the real property tax records of the State of Hawaii.

"Map" means the land use district boundaries maps of the commission.

"Meeting" means the convening of the commission for which a quorum is required in order to make a decision or deliberate toward a decision upon a matter over which the commission has supervision, control, jurisdiction, or advisory power.

"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.

"Person" means any individual, corporation, firm, association, partnership, society, and any federal, state, and county department or agency.

"Petitioner" means a person who seeks permission or authorization from the commission in any matter for which the commission is authorized to grant relief.

"Planning commission" means the planning commissions of the various counties, including the city and county of Honolulu.

"Presiding officer" means any commissioner or a hearings officer duly designated as such. Unless otherwise designated, the chairperson shall be the presiding officer.

"Proceeding" means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:

- (1) Petitions for district boundary amendment;
- (2) Petitions for special permit;
- (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
- (4) Petitions for declaratory orders under section 91-8, HRS;
- (5) An investigation or review instituted or requested to be initiated by the commission; and
- (6) All other matters in the administration of chapter 205, HRS.

"Proper filing," as applied in section 205-4, HRS, means after a petition for district boundary amendment has been filed with the chief clerk, and the executive officer has made a determination that the petition conforms to the requirements of section 15-15-50 and accepts the petition for processing.

"Public institution or building" means any institution or building being used by a federal, state, or county agency for a public purpose.

"Respondent" means a person subject to any statute, rule, or order administered by the commission and upon whom an order or notice is issued by the commission instituting an agency hearing to show cause.

"Shoreline" means the same as in section 205A-1, HRS.

"Single-family dwelling" means a dwelling occupied exclusively by one family.

"State" means the State of Hawaii.

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"Structure" means a constructed or erected material or combination of materials, which requires location on the ground, including, but not limited to, buildings, radio towers, sheds, storage bins, fences, and signs.

"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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-1, 205-7)

§15-15-04 Grammatical usage. (a) Words used in the present tense include the future tense.

(b) The singular number includes the plural; and the plural, the singular.

(c) The word "shall" is always mandatory.

(d) The word "may" is always permissive.

(e) Terms not defined in this chapter shall have the meaning customarily assigned to them. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-7)

§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 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, unless otherwise provided by statute or executive order. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§80-1, 91-2, 205-7)

§15-15-06 Chairperson and vice-chairperson. (a) The commissioners shall annually elect a chairperson and vice-chairperson or vice-chairpersons from its members.

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

(c) In the absence of the chairperson, the vice-chairperson or vice-chairpersons shall have the responsibilities and duties prescribed in this chapter. [Eff 10/27/86; am and comp 8/16/97; comp

May 08 2000] (Auth: HRS §§205-1, 205-7) (Imp.: HRS §§91-2, 205-7)

§15-15-06.1 Hearings officer. The commission may duly appoint a hearings officer pursuant to section 92-16, HRS. [Eff and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§92-16, 205-1)

§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.

(b) The executive officer shall prepare a hearings calendar and the agenda for all meetings, 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) The executive officer may be appointed by the commission to serve as hearings officer.

(f) 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) The executive officer may conduct the prehearing conference provided under section 15-15-57. [Eff 10/27/86; am and comp 8/16/97; comp

May 08 2000] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-1)

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§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, 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: §§91-2, 205-1)

§15-15-09 Public records. 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§92F-1, et seq.)

§15-15-10 Meetings; generally. (a) The commission may meet and exercise its power in the State of Hawaii. Except as provided in sections 92-4 and 92-5, HRS, all of the commission meetings are open to the public. The parliamentary procedure to be utilized by the commission in the conduct of its meetings shall be based on the current edition of Robert's Rules of Order Newly Revised, only if it does not conflict with chapters 91 and 92, HRS, or these rules.

(b) The commission shall allow all interested persons an opportunity to submit data, views, arguments or present oral testimony on any agenda item in an open meeting. The commission may provide for the recordation of all presented oral testimony. The commission may impose limitations on the submission of data, views, arguments, or oral testimony in the interest of preserving due process concerns of the contested case proceeding.

(c) The commission shall comply with the provisions of section 92-7, HRS, by providing the required written public notice of any meeting. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-3, 92-7)

§15-15-11 Executive meetings. (a) The commission may hold an executive meeting from which the public may be excluded, for those purposes permitted by section 92-4, HRS, but only if there is an affirmative vote of two-thirds of the members present at the meeting; provided the affirmative vote constitutes a majority of the members to which the commission is entitled. The reason for holding the executive meeting shall be publicly announced and the vote of the members shall be recorded and entered into the minutes of the meeting.

(b) The commission shall not make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in section 92-5(a), HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§92-4, 92-5)

§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. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-8)

§15-15-13 Quorum and number of votes necessary for a decision. (a) Unless otherwise provided by law, a majority of all the members to which the commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the commission is entitled shall be necessary to make a commission decision valid provided all approvals of petitions for boundary amendments under section 205-4, HRS, shall require six affirmative votes and approvals for special permits under section 205-6, HRS,

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shall require five affirmative votes.

(b) If the commission's action on a petition for boundary amendment under section 205-4, HRS, fails to obtain six affirmative votes, findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the commission.

(c) If the commission's action on 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. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 92-15, 205-4, 205-6)

§15-15-14 Removal of persons from meetings. The presiding officer may remove any person who wilfully disrupts a meeting. [Eff 10/27/86; comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §92-3)

§15-15-15 Minutes of meetings. (a) The commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time, and place of the meeting;
- (2) The members of the commission recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided, and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the commission requests be included or reflected in the minutes.

(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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §92-9)

§15-15-16 Computation of time. In computing any period of time under the rules as provided in this chapter, by notice, or by any order, or rule of the commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday 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 in the computation. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

SUBCHAPTER 2

ESTABLISHMENT OF STATE LAND USE DISTRICTS

§15-15-17 Districts; district maps. (a) In order to effectuate the purposes of chapter 205, HRS, all the lands in the State shall be divided and placed into one of the four land use districts:

- (1) "U" urban district;
- (2) "A" agricultural district;
- (3) "C" conservation district; or
- (4) "R" rural district.

(b) The boundaries of land use districts are shown on the maps entitled "Land Use District Boundaries, dated December 20, 1974," as amended, maintained and under the custody of the commission. Not all ocean areas and offshore and outlying islands of the State in the conservation district are shown when deemed unnecessary to do so. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-2)

§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;
- (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;
- (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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

§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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

§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 501-33, 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

§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 of people, structures, streets, and urban level 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

§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 section 501-33, 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 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 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 surveyor to prepare a map for interpretation.

(d) The executive officer may use all applicable commission records in determining district boundaries.

(e) The following shall apply whenever uncertainty exists with respect to the boundaries of the various districts:

- (1) Whenever a district line falls within or abuts a street, alley, canal, navigable or non-navigable stream or river, it may be deemed to be in the midpoint of the foregoing. If the actual location of the street, alley, canal, navigable or non-navigable stream or river varies slightly from the location as shown on the district map, then the actual location shall be controlling;
 - (2) Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling; and
 - (3) Unless otherwise indicated, the district lines shall be determined by the use of the scale contained on the map.
- (f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**]
(Auth: HRS §§205-1, 205-7) (Imp: HRS §205-1)

SUBCHAPTER 3

PERMISSIBLE LAND USES

§15-15-23 Permissible uses; generally. Except as otherwise provided in this chapter, the following land and building uses are compatible and permitted within the following land use districts, except when applicable county ordinances or regulations are more restrictive. Except as otherwise provided in this chapter, uses not expressly permitted are prohibited. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**]
(Auth: HRS §§205-1, 205-7) (Imp: HRS §205-2)

§15-15-24

§15-15-24 Permissible uses within the "U" urban district. Any and all uses permitted by the counties, either by ordinances or rules may be allowed within this district, subject to any conditions imposed by the commission pursuant to section 205-4(g), HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-2)

§15-15-25 Permissible uses within the "A" agricultural district. (a) Permissible uses within agricultural district land 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 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 205-4.5, HRS, and also those uses set forth in section 205-2(d), HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-2, 205-4.5)

§15-15-26 Permissible uses within the "C" conservation district. Uses of land within a conservation district shall be governed by the rules of the state department of land and natural resources, title 13, and chapter 183C, HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-2)

§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 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) 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. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-2)

SUBCHAPTER 4

NONCONFORMANCE

§15-15-28 Statement of intent. This subchapter is intended to expedite the eventual elimination of existing uses or structures that are not in conformity with the provisions of subchapter 3 because their continued existence violates basic concepts of health, safety, and welfare as well as principles of good land use. However, in applying subchapter 3, no elimination of nonconforming uses or structures shall be effected so as to cause unreasonable interference with established property rights. [Eff 10/27/86; comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

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

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

§15-15-29

- (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. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§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. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§15-15-31 Casual or illegal use of land. A casual, intermittent, temporary, or illegal use of lands or buildings shall not be sufficient to establish the existence of a nonconforming use. [Eff 10/27/86; comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§15-15-32 Existence of nonconforming use is a question of fact. Whether a nonconforming use exists shall be a question of fact and shall be decided by the board, commission, or agency having jurisdiction over uses within the district. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§15-15-33 Illegal uses. An illegal use of lands or buildings shall not be validated by the adoption of this chapter. [Eff 10/27/86; am and comp 8/16/97;

comp **May 08 2000**] (Auth: HRS §§205-1, 205-7)
(Imp: HRS §205-8)

SUBCHAPTER 5

PROCEEDINGS BEFORE THE COMMISSION

§15-15-34 Quasi-judicial proceedings; 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 the commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-3)

§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) Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts

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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) 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. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§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.

(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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**](Auth: HRS §205-1, 205-7) (Imp: HRS §91-12)

§15-15-37 Filing documents; place and time. All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda, and other legal papers

required to be filed with the commission in any proceeding shall be filed at the office of the commission before or on the time limit 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 shall be regarded as the date of filing. The commission will not accept a facsimile of any document required to be filed with the commission under these rules. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7)(Imp: HRS §§91-2, 205-4; SLH 1992, Act 227, §1)

§15-15-38 Format. (a) All documents shall be bound and typewritten upon paper 8-1/2 x 11 inches in size. 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. If the party is a corporation or association, the pleading may be signed by an officer thereof. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§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 of the party filing the same.

(b) If the party filing the pleading is a corporation or association, the pleading may be verified by an officer thereof.

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(c) The attorney for a party may sign and verify a pleading if the party is absent, or for some cause unable to sign and verify the pleading. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-40 Copies. Unless otherwise required by this subchapter or the commission, all parties shall file with the commission an original and fifteen copies of each pleading or amendment thereof. Additional copies shall be promptly provided if the chairperson or the executive officer so requests. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-41 Defective filings. The mere fact of filing shall not waive any failure to comply with this subchapter. Notwithstanding the provisions of sections 15-15-50(e) and 15-15-50(f), the commission may entertain motions by the parties addressing alleged deficiencies of the petition. If the petition is in fact defective, the date of filing shall be as of the date the commission determines that the defects are cured. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-42 Extensions of time. 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 before the expiration of the prescribed period, with or without notice to the parties, extend the period;
- (2) Pursuant to a stipulation between all of the parties, extend the period; or
- (3) 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-43 Amended pleadings. All pleadings may be amended at any time until forty-five days prior to the hearing date set pursuant to section 15-15-51. Amendments offered prior to the hearing date shall be served on all parties and filed with the commission. All parties shall have the opportunity to provide any further response to address the amended pleading up to thirty days prior to the hearing date set pursuant to section 15-15-51. No amended pleadings shall be filed after forty-five days prior to the date of the hearing and no responses shall be filed after thirty days prior to the hearing date, unless a stipulation is reached by all parties, or good cause is shown and approval of the chairperson, presiding officer, or the chairperson's designee is obtained. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-1, 205-7)

§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, presiding officer, or executive officer may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the original documents. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-45 Service of process. (a) The commission shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.

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(b) All papers served by either the commission or any party shall be filed and served upon all parties or their counsel and shall contain a certification of service. Any counsel entering an appearance subsequent to the proceeding shall notify all other counsel then of record and all parties not represented by counsel 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 of record or in the absence of counsel, upon the party.

(d) Service of papers shall be made personally or, unless otherwise provided by law, 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).

(f) Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the person, and the notice or paper is served by mail, two days shall be added to the prescribed period. [Eff 10/27/86; am and comp 8/16/97; am and comp

May 08 2000] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

SUBCHAPTER 6

APPLICATION REQUIREMENTS FOR BOUNDARY AMENDMENT PETITIONS

§15-15-46 Standing to initiate boundary amendments. The following persons may initiate a petition to the commission for district boundary amendment:

- (1) State departments or agencies;
- (2) County departments or agencies of the county in which the property is situated; or

- (3) Any person with a property interest in the property sought to be reclassified. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-3.1, 205-4)

§15-15-47 Filing. The petitioner shall file one original and fifteen copies of a petition for boundary amendment with the commission. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-48 Service of petition. (a) The petitioner shall serve copies upon the county planning department and planning commission within which the subject land is situated, the office of planning, and 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). [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-49 Fees. (a) A petition for an amendment to district boundaries shall be accompanied by an application fee by cashier's check, for \$500 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.

(b) Except as otherwise provided by law, a copy of any public document or record, including any map, plan diagram, photograph, or photostat, which is open to the inspection of the public shall be furnished to any person applying for 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

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per page, sheet, or fraction thereof. Such reproduction cost shall include, but shall not be limited to, 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.

(c) The petitioner shall reimburse the commission for any expenses related to the publication of the hearing notice.

(d) 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.

(e) 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. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

§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 unless an environmental impact statement or negative declaration is approved or accepted by the commission for the proposed reclassification request. Such approved or accepted environmental impact statement or negative declaration 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:

- (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 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;
 - (B) If the petitioner is not the owner in fee simple of the subject property, written authorization of the fee owner to file the petition; and
 - (C) An affidavit of the petitioner or its agent attesting to its compliance with

section 15-15-48;

- (6) 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) A statement of projected number of lots, lot size, number of units, densities, selling price, intended market, and development timetables;
- (8) A statement describing the financial condition together with a current balance sheet and income statement, and a clear description of the manner in which the petitioner proposes to finance the proposed use or development. A petitioner, which is a state or county department or agency, shall be waived from this requirement;
- (9) 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 productivity rating, the flood and drainage conditions, and the topography of the subject property;
- (10) 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;
- (11) 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, and to what extent any public agency would be impacted by the proposed development or reclassification;
- (12) Location of the proposed use or development in relation to adjacent land use districts and any centers of trading and employment;
- (13) 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) If a residential development is proposed, a description of the manner in which the petitioner addresses the housing needs of low income, low-moderate income, and gap groups;
 - (15) 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) 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) An assessment of the conformity of the reclassification to objectives and policies of the coastal zone management program, chapter 205A, HRS;
 - (18) 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) 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 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) A statement addressing Hawaiian customary and traditional rights under Article XII, section 7 of the Hawaii State Constitution;
- (21) Any written comments received by the petitioner from governmental, non-governmental agencies, organizations, or individuals in regards to the proposed reclassification; and
- (22) 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;
- (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 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. The provisions herein, however, are subject to the requirements of section 15-15-50(b) on petitions for reclassification of conservation district lands. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7; SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-4)

SUBCHAPTER 7

AGENCY HEARING AND POST HEARING PROCEDURES

§15-15-51 Notice of hearing for boundary amendment petitions. (a) Upon proper filing of a petition for boundary amendment, the commission, not less than sixty days and not more than one hundred eighty days, shall conduct a hearing 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, 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. 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.

(c) The notice of hearing for a boundary amendment shall be published at least once in the county in which the land sought to be redistricted is situated as well as once statewide at least thirty days in advance of the hearing. The notice of hearing shall also be filed with the lieutenant governor's office at least six calendar days before the hearing.

(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 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.

(e) The hearing may be continued or reopened by the commission when necessary, provided that notice is given pursuant to section 92-7, HRS, and the continued or re-opened hearing shall not extend beyond three hundred sixty-five days from the date the petition is deemed properly filed, unless a written motion for extension of time is filed and the commission establishes the extension of time by a two-thirds vote of the membership of the commission. The extension of

time shall not exceed ninety days beyond three hundred sixty-five days from the date the petition is deemed properly filed. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§1-28.5, 91-9, 92-7, 92-41, 205-4)

§15-15-52 Intervention in proceeding for district boundary amendments. (a) The petitioner, the office of planning, and the county planning department within which the subject land is situated shall appear in every case as parties, and make recommendations relative to the proposed boundary change.

(b) Within thirty days of the date of the notification of petition filing pursuant to section 15-15-50(d), persons who intend to intervene may file a notice of intent to intervene with the commission. The notice of intent to intervene shall provide, but not be limited to, the following information:

- (1) The person's name and mailing address; and
- (2) The nature and extent of the person's interest in the petition.

The notice of intent to intervene shall be served upon the petitioner, the office of planning, and the respective county planning department. Upon receipt of a notice of intent to intervene, the petitioner shall serve a copy of the petition filed with the chief clerk upon the potential intervenor. All persons who wish to formally intervene shall comply with subsections (e), (f), (g), and (h).

(c) Persons who may intervene upon timely application include:

- (1) All departments and agencies of the State and of the county in which the land is situated; and
- (2) All persons who have a property interest in the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public.

(d) All other persons may apply for leave to intervene, which shall be freely granted, provided the

commission or its hearings officer may deny an application to intervene when, in the commission's, or hearings officer's discretion it appears that:

- (1) The position of the applicant for intervention is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable.

(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 copies of the petition for intervention with proof of service on all parties shall be filed with the commission within fifteen 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 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, 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 make reference to the following:

- (1) Other means available whereby the petitioner's interest may be protected;
- (2) Extent the petitioner's interest may be represented by existing parties;
- (3) Extent the petitioner's interest in proceeding differs from that of the other parties;
- (4) Extent the petitioner's participation can assist in development of a complete record;
- (5) Extent the petitioner's participation will broaden the issue; and
- (6) How the petitioner's intervention would serve the public interest.

(h) Petitions for intervention shall be accompanied by a filing fee of \$50. The fee shall be waived for state and county agencies.

(i) If any party opposes the petition for intervention, the party shall file a pleading in opposition within seven days after being served.

(j) All petitions to intervene shall be heard prior to the scheduled hearing.

(k) A person whose petition to intervene has been denied may appeal the denial to the circuit court pursuant to section 91-14, HRS. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**]

(Auth: HRS §§205-1, 205-4, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §205-4, SLH 1995, Act 235, §1)

§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 fifteen days from 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). [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§205-1, 205-4)

§15-15-54 Consolidation. The commission, upon its own initiative or upon motion, may consolidate for hearing or other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if the commission finds that consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

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§15-15-55 Statement 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, 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-4, SLH 1995, Act 235, §1)

§15-15-55.1 Filing of exhibits. (a) No later than forty-five days prior to the scheduled hearing pursuant to section 15-15-51, all parties shall submit all exhibits to substantiate their position on the boundary amendment.

(b) No later than forty-five days prior to the scheduled hearing pursuant to section 15-15-51, 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 days prior to the hearing date set pursuant to section 15-15-51.

(d) Any amendments to pleadings shall be submitted pursuant to section 15-15-43. [Eff and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-4, SLH 1995, Act 235, §1)

§15-15-56 Stipulation as to findings of fact, conclusions of law, and conditions of reclassification. At the hearing, all parties may enter into appropriate 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) All 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 ten days prior to the hearing date;
 - (3) At the hearing, the commission may approve or deny the proposed stipulation and proposed decision and order 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

§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 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.

(b) The chairperson, presiding officer, or the executive officer may issue a prehearing conference order that shall establish a schedule for the mutual

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exchange of exhibits and identification of witnesses. The prehearing conference order shall insure that all parties will be provided an opportunity to actively participate in the hearing. No party shall be allowed to present additional exhibits or witnesses that are material or substantial and not identified within the schedule provided by the prehearing conference order, unless the presenting party provides good cause or the exhibit or witness is being presented for rebuttal purposes. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-58 Procedure for witnesses. (a) The commission may subpoena witnesses as set forth in section 15-15-69.

(b) Together with other witnesses that the commission may desire to hear at the hearing, the commission shall also allow a representative of a citizen or community group to testify, who indicates a desire to express the views of those citizen or community group concerning the proposed boundary change. Anyone who desires to testify shall make written application to be a witness prior to the hearing and, if the person desires to express the views of a citizen or community group, shall submit written evidence to show that the person is a duly authorized representative of the citizen or community group.

(c) The presiding officer shall place witnesses under oath or affirmation prior to testifying. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-59 Conduct of hearing. The hearing shall be conducted in accordance with this subchapter. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-60 Presiding officer. (a) In all hearings before the commission, the chairperson, or one of the commissioners, or a hearings officer duly

appointed and designated by the commission shall preside at the hearing.

(b) The presiding officer shall control the schedule and course of the hearings, administer oaths, 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, 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.

(c) The presiding officer may postpone or continue any hearing upon a motion of any party without a hearing. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7)(Imp: HRS §§91-2, 205-4)

§15-15-61 Disqualification. No commissioner or hearings officer shall sit in any proceeding in which the commissioner or hearings officer has a personal pecuniary or business interest, or one in which the commissioner or hearings officer is related within the first degree by blood or marriage to any party to the proceeding. Except that, if, after declaring the nature of the circumstances of the pecuniary interest or consanguinity to the parties, the parties do not oppose the commissioner or hearings officer sitting in a proceeding, the record shall note clearly the waiver by the parties. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-62 Ex parte communications. (a) No person whether or not a party to a proceeding before the commission shall make an unauthorized ex parte communication either oral or written about the proceeding to any member of the commission or hearings officer who will be a participant in the decision-making process.

(b) "Unauthorized ex parte communication" means private communications or arguments with members of the

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commission or its hearings officer as to the merits of a proceeding with a view towards influencing the outcome of the petition or proceeding.

(c) The following classes of ex parte communications are permitted:

- (1) Communications which relate solely to matters which a commission member or hearings officer is authorized by the commission to dispose of on ex parte basis, including communications regarding scheduling or other procedural matters regarding the course of the proceeding;
- (2) Requests for information with respect to the status of a proceeding;
- (3) Communications which all parties to the proceeding agree or which the commission has formally ruled may be made on an ex parte basis; and
- (4) Communications with representatives of any news media on matters intended to inform the general public. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-13, 205-4)

§15-15-63 Evidence. (a) In contested cases, evidentiary requirements shall be controlled by this section.

(b) Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The commission shall give effect to the rules of privilege recognized by law. Neither the commission nor a hearings officer is bound by the common law rules relating to the admission or rejection of evidence.

(c) The presiding officer shall rule on the admissibility of all evidence. The rulings may be reviewed by the commission in determining the matter on

its merits. In extraordinary circumstances, where prompt decision by the commission is necessary to promote justice, the presiding officer may refer the matter to the commission for determination.

(d) When objections are made to the admission or exclusion of evidence, the objecting party shall briefly state the grounds relied upon. Formal exceptions to rulings are unnecessary and need not be taken.

(e) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.

(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 copies 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.

(g) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.

(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 copies 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.

(i) A party may use maps or other demonstrative exhibits as evidence provided the parties submit the number of legible copies as may be required by the

presiding officer. The commission shall not permit the introduction of or testimony from any visual aid not introduced as evidence.

(j) If any matter contained in the petition or in a document filed as a public record with the commission is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of the document are specifically identified and are otherwise competent, relevant, and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy shall be presented as an exhibit, unless otherwise ordered by the presiding officer.

(k) The commission may take official notice of matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts within the commission's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(l) At the hearing, the presiding officer may require the production of further evidence 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. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-10, 205-4)

§15-15-64 Order of procedure. In hearings on petitions and complaints, the parties shall be heard in such order as the presiding officer directs. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-65 Limiting testimony. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-66 Removal from proceeding. Any person who wilfully disrupts a hearing may be removed from the hearing room. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-3, 205-4)

§15-15-67 Co-counsel. Where a party is represented by more than one counsel, only one of the counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments, unless otherwise authorized by the presiding officer. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§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. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-10, 205-4)

§15-15-69 Subpoenas. (a) Any party may file a written motion for the issuance of a subpoena requiring the attendance of a witness for the purpose of taking

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oral testimony before the commission.

(b) Motions for the issuance of subpoenas duces tecum shall:

- (1) Be in writing;
- (2) Specify the particular document or record, or part thereof, desired to be produced;
- (3) State the reasons why the production thereof is believed to be material and relevant to the issues involved; and
- (4) Include a statement of the reasons why the testimony of the witness is believed to be material and relevant to the issues involved.

(c) Three original copies of the subpoenas duces tecum shall be submitted together with the motion filed pursuant to subsection (b).

(d) The presiding officer, chairperson, or in the chairperson's absence, any commissioner, may issue subpoenas. Subpoenas shall not be issued unless the party requesting the subpoena has complied with this section. Signed and sealed blank subpoenas shall not be issued to any person. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall show at whose instance the subpoena is issued.

(e) A party requesting the subpoenas shall be responsible for service of the issued subpoenas, and pay the witnesses summoned the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii, and the fees and mileage shall be paid by the party at whose instance the witness appears.

(f) Notwithstanding any rule to the contrary, the chairperson, a commissioner, or a duly-appointed hearings officer may make an oral motion to request the issuance of a subpoena. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-16, 205-4)

§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.

(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.

(d) The moving party shall serve a copy of all motion papers on all other parties and shall file the original plus fifteen copies 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 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.

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(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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7)
(Imp: HRS §§91-2, 205-4)

§15-15-71 Substitution of parties. Upon motion and for good cause shown, the commission may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7)
(Imp: HRS §91-2, 205-4)

§15-15-72 Correction of transcript. The chairperson, presiding officer, or hearings officer shall determine any motion at the hearing to correct the transcript. Any motions after the hearing to correct the transcript shall be filed with the commission within seven days after receipt of the transcript unless otherwise directed, and shall be served on all parties. Such motions shall certify the date when the transcript was received. If no objections are received before seven days after the date of service, the transcript, upon approval of the commission, shall be changed to reflect the corrections. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7)
(Imp: HRS §91-2)

§15-15-73 Post hearing procedures. Post hearing procedures shall conform to subchapters 9 and 10. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§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

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petition may be so considered and subject to the provisions therein.

(e) Notwithstanding subsections (a), (b), and (c), decisions for petitions submitted pursuant to section 201G-118, HRS, shall be made in the timeframe as provided in section 15-15-97. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§91-13.5, 205-1, 205-4, 205-75) (Imp: HRS §§ 91-13.5, 201G-118, 205-4, SLH 1992, Act 227, §1, SLH 1994, Act 261, §1)

§15-15-75 Appeals. Parties to proceedings to amend land use district boundaries may obtain judicial reviews thereof in the manner set forth in section 91-14, HRS. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-14, 205-4)

§15-15-76 Re-application by the petitioner for boundary amendment. 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. 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

SUBCHAPTER 8

DECISION-MAKING CRITERIA FOR BOUNDARY AMENDMENTS

§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, not violative of section 205-2, HRS, and 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 of the county in which the land is located;

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- (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.

(c) Amendments of a land use district boundary in conservation districts involving land areas fifteen acres or less shall be determined by the commission pursuant to this subsection and section 205-3.1, HRS.

(d) Amendments of land use district boundary in other than conservation districts involving land areas fifteen acres or less shall be determined by the appropriate county land use decision-making authority for the district.

(e) Amendments of a land use district boundary involving land areas greater than fifteen acres shall be determined by the commission, pursuant to this subsection and section 205-3.1, HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-3.1, 205-4, 205-16, 205-17)

§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 or part thereof are present, then the commission may:

- (1) Grant the petitioner's request to reclassify the entire property; or
- (2) Redistrict only that portion of the premises 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 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 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 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 copies 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. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: §205-4)

§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. 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 in accordance with such representations made by the petitioner to the commission, the commission may 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §205-4)

SUBCHAPTER 9

POST HEARING PROCEDURES FOR HEARINGS BEFORE THE COMMISSION

§15-15-80 Briefs. The presiding officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the commission in writing, and a copy served upon or mailed to the parties to the proceeding. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions shall not be granted unless a stipulation is filed with the commission. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-81 Oral argument. The commission or the presiding officer may direct or permit the presentation of oral argument with the petitioner opening and concluding the argument. Not more than fifteen minutes on each side of the proceeding shall be allowed for argument without special leave of the commission. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-9, 205-4)

§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 to the proceeding shall

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submit a proposed decision and order which shall include proposed findings of fact. 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 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 days from the date of service. Any party providing its position shall provide a summary of its reasons for support or objection.

(d) Every decision and order adverse to a party to the proceeding, rendered by the commission in a contested case, shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling upon each proposed finding so presented.

(e) Findings of fact, conclusions of law, and decision and order shall be issued by the commission for district boundary amendments and special permits deemed approved pursuant to section 91-13.5, HRS. The decision and order shall include mandatory conditions pursuant to section 15-15-90(e). [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-2, 91-12, 205-4)

§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 shall be

deemed to be service upon the party. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-12, 205-4)

§15-15-84 Reconsideration of decision. (a) A motion for reconsideration shall be filed with the commission within seven calendar days after issuance of the commission's written decision and order. The motion for reconsideration shall clearly specify that the motion is for reconsideration.

(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.

(c) In no event will the commission consider any motion for reconsideration on any petition after the period within which the commission is required to act on the petition. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

SUBCHAPTER 10

POST HEARING PROCEDURES FOR HEARING CONDUCTED BY HEARINGS OFFICER

§15-15-85 Recommendation of hearings officer. (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 receipt of the proposed decision and orders and any comments from the parties, the hearings officer shall prepare 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.

(b) The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, stipulations, documentary evidence, proposed

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findings, or other documents submitted by the parties, objections to the conduct of the hearing, the report 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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-11, 92-16, 205-4)

§15-15-86 Exception to hearings officer's report and recommendations. (a) Within seven days after service of the report and recommendations by the hearings officer, a party may file with the commission, exceptions to the report together with a brief in support of such exceptions. 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 to which objections are made;
- (3) Designate by page citation the portions of the record relied upon; and
- (4) State all the grounds for exceptions to a ruling, finding, conclusion, or recommendation. The grounds not cited or specifically urged are waived. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-11, 205-4)

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

- (b) The support brief 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 report and recommendation must be affirmed; and
 - (3) Designate by page citation the portions of the record relied upon. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-11, 205-4)

§15-15-88 Oral argument before the commission.

(a) Any party adversely affected by the hearings officer's report shall be afforded an opportunity to present oral arguments to the commission.

(b) The commission may direct oral argument on its own motion. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-10, 91-11, 205-4)

§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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-16)

SUBCHAPTER 11

CONDITIONS: FILING, ENFORCEMENT, MODIFICATION,
DELETION

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

(a) In approving a petition for boundary change, the commission may impose conditions necessary to uphold the general intent and spirit of chapters 205, 205A, and 226, HRS, and to assure substantial compliance with representations made by the petitioner in seeking the boundary amendment.

(b) The commission may request the appropriate state or county agency to report periodically to the commission on the petitioner's compliance with the applicable conditions imposed by the commission.

(c) The commission may require the petitioner to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the commission under this subchapter.

(d) The commission may require the petitioner to notify the commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the property covered by the approved petition.

(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 201G-118, 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 development of the reclassified area;

- (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 housing 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.

(f) If a special permit filed pursuant to section 205-6, HRS, is approved pursuant to section 91-13.5, HRS, the following mandatory conditions shall apply:

- (1) All conditions listed under subsection (e);
(2) The proposed use shall be established within one year from the date that the special permit was approved pursuant to section 91-13.5, HRS; and
(3) The special permit shall be valid for a period of five years from the approval date pursuant to section 91-13.5, HRS.

[Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 205-4)

§15-15-91 Applicability. Conditions imposed by the commission shall run with the land and shall be binding upon the petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer. [Eff 10/27/86; comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

§15-15-92 Filing procedure for conditions imposed by the commission. (a) Within seven days of issuance of the decision and order pursuant to section 15-15-83, the owner of the property shall file a notice of imposition of conditions, in a form prescribed by the executive officer, with the bureau of conveyances.

(b) All conditions imposed by the commission in its decision and order and conditions pursuant to section 15-15-90(e), shall be recorded at the bureau of conveyances and shall comply with the following procedures:

- (1) The document listing the conditions shall be submitted to the commission for review and

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- approval by the executive officer prior to filing with the bureau of conveyances;
- (2) The owner of the property shall record the conditions at the bureau of conveyances within sixty days after the receipt of the decision and order requiring the same. The timeframe for recordation of the condition may be extended pursuant to section 15-15-42;
 - (3) Evidence of recordation shall be by certified copy under the signature of the registrar of conveyances. The owner of the property shall forward a certified copy to the commission; and
 - (4) Description of the land shall be sufficiently accurate to identify the land intended to be affected. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-93 Enforcement of conditions, representations, or commitments. (a) Any party or interested person may file a motion with the commission requesting an issuance of an order to show cause upon a showing that there has been a failure to perform a condition, representation, or commitment on the part of the petitioner. The party or person shall also serve a copy of the motion for an order to show cause upon any person bound by the condition, representation, or commitment. The motion for order to show cause shall state:

- (1) The interest of the movant;
 - (2) The reasons for filing the motion;
 - (3) A description and a map of the property affected by the condition;
 - (4) The condition ordered by the commission which has not been performed or satisfied;
 - (5) Concisely and with particularity the facts, supported by an affidavit, giving rise to a belief that a condition ordered by the commission has not been performed or satisfied; and
 - (6) The specific relief requested.
- (b) Whenever the commission shall have reason to

believe that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner, the commission shall issue and serve upon the party or person bound by the conditions, representations, or commitments, 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. The commission shall serve the order to show cause in writing by registered or certified mail with return receipt requested at least thirty days before the hearing. A copy shall be also sent to all parties in the boundary amendment proceedings. The order to show cause shall include:

- (1) A statement of the date, time, place, and nature of the hearing;
- (2) A description and a map of the property to be affected;
- (3) A statement of the legal authority under which the hearing is to be held;
- (4) The specific sections of the statutes, or rules, or both, involved; and
- (5) A statement that any party may retain counsel if the party so desires.

(c) The commission shall conduct a hearing on an order to show cause in accordance with the requirements of subchapter 7, where applicable. Any procedure in an order to show cause hearing may be modified or waived by stipulation of the parties and informal disposition may be made in any case by stipulation, agreed settlement, consent order, or default.

(d) Post hearing procedures shall conform to subchapter 7 or subchapter 9. Decisions and orders shall be issued in accordance with subchapter 7 or subchapter 9.

(e) The commission shall amend its decision and order to incorporate the order to show cause by including the reversion of the property to its former land use classification or to a more appropriate classification. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4, 205-12, 205-17)

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§15-15-94 Modification or deletion of conditions or orders. (a) If a petitioner, pursuant to this subsection, desires to have a modification or deletion of a condition that was imposed by the commission, or imposed pursuant to section 15-15-90(e) or (f), or modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy to all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed.

(b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.

(c) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter 11. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

SUBCHAPTER 12

SPECIAL PERMITS

§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 within which the land is located for a special permit to use the land in the manner desired. 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 decision, together with the complete record, including maps, charts, and other exhibits as evidence, 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 copies of the complete record.

(b) 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 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 use would not adversely affect surrounding property;
- (3) The 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.

(c) Petitions for issuance of a special permit shall specify the 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.

(d) 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) 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, and if appropriate, a time limit for the duration of the particular use, which shall be a condition 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

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extend the time limit if it deems that circumstances warrant the granting of the extension. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-6)

§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 the complete record of the proceeding 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.

(b) The commission shall not consider any petition for special permit 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 the filing of the findings of fact, conclusions of law, and decision and order denying the petition for special permit 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 the filing of the findings of fact, conclusions of law, and decision and order. Additionally, the commission shall not consider any petition for special permit 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.

(c) A denial or modification of the special permit, as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

(d) If a special permit is approved pursuant to section 91-13.5, HRS, the provisions of section 15-15-82(e) and section 15-15-90(f) shall apply. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 205-6)

SUBCHAPTER 13

GOVERNMENT SPONSORED HOUSING PROJECTS

§15-15-97 Procedure for processing petitions for housing projects under section 201G-118, HRS. (a) Petitions for housing projects under section 201G-118, 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 copies 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 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 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 certification from the housing and community development corporation of Hawaii or county housing agency that the petition involves a section 201G-118, HRS, housing project.

(f) Petitions which 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. 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. [Eff 3/20/87; am 7/18/94; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§201G-118, 205-1, 205-7) (Imp: HRS §§205-4, 201G-118)

§15-15-97.1 REPEALED. [R **May 08 2000**]

SUBCHAPTER 14

DECLARATORY ORDERS

§15-15-98 Who may petition. (a) On petition of an 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.

(b) Notwithstanding the other provisions of this subchapter, the commission, on its own motion or upon request but without notice of hearing, may issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-99 Petition for declaratory order; form and contents. The petition shall conform to the requirements of subchapters 5 and 7 and shall contain:

- (1) The name, address, and telephone number of each petitioner;

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- (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 reasons 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. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§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. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§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. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§91-8,

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205-1, 205-7) (Imp: HRS §§91-2, 91-8)

SUBCHAPTER 15

RULEMAKING PROCEDURES

§15-15-105 Initiation of rulemaking proceedings.

(a) The commission, at any time on its own motion, may initiate proceedings for the adoption, amendment, or repeal of any rule of the commission.

(b) Any interested person may petition the commission for the adoption, amendment, or repeal of any rule of the commission. Petitions for rulemaking filed with the commission shall become matters of public record. [Eff 10/27/86; comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-6, 205-7)

§15-15-106 Rulemaking; form and contents of petition. Petitions for rulemaking shall conform to the requirements of this subchapter and shall contain:

- (1) The name, address, 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.
- [Eff 10/27/86; comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §91-13.5, 91-6, 205-7)

§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 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. Denial of a petition shall not operate to prevent the commission from acting on its own motion on any matter disclosed in the petition.

(c) If the commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in sections 15-15-108, 15-15-109, 15-15-110, and chapter 92, HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-3, 91-6, 92-1, et seq.)

§15-15-108 Rulemaking; notice of public hearing.

(a) When, pursuant to a petition therefor or upon its own motion, the commission proposes to adopt, amend, or repeal any rule, the notice of hearing shall be published pursuant to the requirements of sections 1-28.5 and 91-3, HRS. The notice of hearing shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the commission's rulemaking proceedings at their last recorded address. The notice of hearing shall be published at least thirty days prior to the date set for public hearing. The notice of hearing shall also be filed with the lieutenant governor's office.

(b) A notice of the proposed adoption, amendment, or repeal of a rule shall include:

- (1) A statement of the date, time, and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed; and

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- (3) A statement of the substance of the proposed rules. [Eff 10/27/86; am and comp 8/16/97; am and comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§1-28.5, 91-3, 92-41)

§15-15-109 Rulemaking; conduct of public hearing.

(a) The chairperson of the commission or, in the chairperson's absence, another member designated by the commission, or a duly appointed hearings officer shall conduct the public hearing for the adoption, amendment, or repeal of the rules. The commission shall afford interested persons a reasonable opportunity to offer testimony with respect to the matter specified in the notice of hearing, in order to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each such public hearing shall be held at the time and place set in the notice of hearing but may at that time and place be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(d) Each witness, before proceeding to testify, shall state the witness' name, address, and whom the witness represents at the hearing, and shall give any information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called. In order to allow persons to have an equal amount of time to testify, or to prevent cumulative unnecessary testimony, the presiding officer may limit the amount of time for testimony per individual or per issue. Every witness may be subject to questioning by the members of the commission or by any other representative of the

commission. Questions by other than commission members or staff shall be permitted only at the discretion of the presiding officer.

(e) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. A person may submit written comments, data, views, or arguments ten days after the close of the scheduled public hearing date. An original and fifteen copies of written comments, recommendations, replies, or exhibits shall be submitted.

(f) Unless otherwise specifically ordered by the commission, testimony given at the public hearing shall not be reported verbatim. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-3)

§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 section 91-3(b), HRS. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-3, 91-4)

SUBCHAPTER 16

LAND USE DISTRICT BOUNDARIES

§15-15-111 Land use district boundaries. (a) The boundaries of land use districts are shown on the land use district maps, entitled "Land Use District Boundaries, dated December 20, 1974," as amended, maintained and under the custody of the commission.

(b) The official maps entitled "Land Use District Boundaries, dated December 20, 1974," as amended, are located in the commission office. [Eff 10/27/86; am and comp 8/16/97; comp **May 08 2000**] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-1)

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SUBCHAPTER 17

(RESERVED)

[SUBCHAPTER 18

PETITIONS FOR HAWAII HOUSING AUTHORITY
RENTAL HOUSING PROJECTS

§15-15-122 REPEALED. [R 8/16/97]

Amendments to and compilation of chapter 15, title 15, Hawaii Administrative Rules on the summary page dated November 4, 1999, were adopted on November 4, 1999, following public hearings held on September 13, 14, 16 and 17, 1999, after public notice was given in the Midweek and the Honolulu Advertiser on August 2, 1999.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

MERLE A.K. KELAI
Chairperson, State
Land Use Commission

SEIJI F. NAYA
Director, Department of
Business, Economic
Development & Tourism

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: _____

Filed

APPROVED AS TO FORM:

PRESLEY PANG
Deputy Attorney General