

2018 Proposed Administrative Rule Amendments to Section 15-15, HAR

1. §15-15-13 is amended.

Language regarding voting requirements for affirming or failure to affirm a decision has been clarified.

Reason

Conformance with Supreme Court decision in Koa Ridge II.

2. §15-15-45.1 is amended.

Added additional language to clarify that a fee is required for a motion to amend a special permit.

Reason

Housekeeping.

3. §15-15-50 is amended.

- (a) Added additional language regarding a need to analyze and disclose Hawaiian customary and traditional rights.
- (b) Added two new subsections requiring analysis of sustainability and climate change issues.

Reason

- (a) Conformance with Supreme Court decision in Ka Pa`akai O Ka`Āina.
- (b) Conform with requirements in sections 226-108 and -109, Hawai`i Revised Statutes.

4. §15-15-70 is amended.

- (a) Added language to allow the Commission discretion to hold a hearing on a motion in order to gather additional evidence, even if movant does not request a hearing.
- (b) Provides consistency between subsection 15-15-36(a) and this subsection and clarifies that the chairperson, vice chairperson, presiding officer, or hearing officer shall sign orders disposing of motions to amend district boundary amendments and special permits.

Reason

- (a) Consistent with past practice. Housekeeping to clarify procedure.
- (b) Consistent with past practice. Housekeeping to clarify procedure and remove and conflict between subsections.

5. §15-15-74 is amended.

Grammatical correction and addition of a new subsection to clarify the procedure for decisions on environmental compliance documents submitted pursuant to chapter 343, HRS.

Reason

To clarify procedure and conform to statutory requirements contained in section 343-5(e), HRS.

6. §15-15-75 is amended.

To amend subsection to conform to recent legislative changes regarding judicial review of decisions by the Commission. Appeals can now be addressed directly to the State Supreme Court.

Reason

To conform to changes made to chapter 205-19, HRS by Act 48 (SLH 2016) that judicial review of LUC decisions can be made directly to the State Supreme Court.

7. §15-15-77 is amended.

Adds additional language to clarify information of state concern required by applicants that Commission must consider for decision-making.

Reason

To clarify to applicants the information the Commissioners must consider in decision-making pursuant to past Supreme Court decisions in PASH and Ka Pa`akai O Ka `Āina.

8. §15-15-82 is amended.

- (a) Adds language to clarify procedure that only the applicant must submit a proposed decision and order, other parties may submit their own or choose to stipulate in part or in whole.
- (b) Adds language to clarify proper procedure for transmittal of orders for accepted environmental compliance documents.

Reason

- (a) Consistent with past practice. Housekeeping to clarify procedure.
- (b) Consistent with past practice. Housekeeping to clarify procedure.

9. §15-15-93 is amended.

Adds language from Supreme Court decision to address the term “substantial compliance” to be based on specific facts and circumstances.

Reason

To conform with Supreme Court decision in Bridge `Aina Le`a.

10. §15-15-97 is amended.

To clarify procedure; that certification by the appropriate housing agency and county council resolution approving a section 201H-38, HRS housing project are required in district boundary amendment application.

Reason

Consistent with past practice. Housekeeping to clarify procedure.

11. §15-15-122 is amended.

- (a) Corrects inaccurate reference to specific subsection in the administrative rules.
- (b) Clarifies appropriate subchapters applicable to submittal of a petition for declaratory order and procedure for hearing.

Reason

- (a) Housekeeping. Correct reference to administrative rules.
- (b) Consistent with past practice. Housekeeping to clarify procedure.

12. §15-15-124 is amended.

Corrects inaccurate references to specific subsections in the administrative rules.

Reason

Housekeeping. Correct reference to administrative rules.

Amendment and Compilation of Chapter 15-15
Hawai`i Administrative Rules

Month Date, 2018

1. Chapter 15-15, Hawaii Administrative Rules, entitled "Land Use Commission Rules," is amended and compiled to read as follows:

"HAWAI`I ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT, AND TOURISM

CHAPTER 15

LAND USE COMMISSION RULES

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\$15-15-02	Repealed
\$15-15-03	Definitions
\$15-15-04	Grammatical usage
\$15-15-05	Office and office hours
\$15-15-06	Chairperson and vice-chairperson
\$15-15-06.1	Hearings officer
\$15-15-07	Executive officer
\$15-15-08	Chief clerk
\$15-15-09	Public records
\$15-15-10	Meetings; generally
\$15-15-11	Executive meetings
\$15-15-12	Repealed
\$15-15-13	Quorum and number of votes necessary for a decision
\$15-15-14	Removal of persons from meetings

- \$15-15-15 Minutes of meetings
- \$15-15-16 Computation of time

Subchapter 2 Establishment of State Land Use Districts

- \$15-15-17 Districts; district maps
- \$15-15-18 Standards for determining "U" urban district boundaries
- \$15-15-19 Standards for determining "A" agricultural district boundaries
- \$15-15-20 Standards for determining "C" conservation district boundaries
- \$15-15-21 Standards for determining "R" rural district boundaries
- \$15-15-22 Interpretation of district boundaries

Subchapter 3 Permissible Land Uses

- \$15-15-23 Permissible uses; generally
- \$15-15-24 Permissible uses within the "U" urban district
- \$15-15-25 Permissible uses within the "A" agricultural district
- \$15-15-26 Permissible uses within the "C" conservation district
- \$15-15-27 Permissible uses within the "R" rural district

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- \$15-15-28 Statement of intent
- \$15-15-29 Non-conforming uses of structures and lands
- \$15-15-30 Non-conforming areas and parcels
- \$15-15-31 Casual or illegal use of land
- \$15-15-32 Existence of non-conforming use is a question of fact
- \$15-15-33 Illegal uses

Subchapter 5 Proceedings Before the Commission

- §15-15-34 Quasi-judicial proceedings; waiver or suspension of rules
- §15-15-34.1 Verbatim transcripts
- §15-15-35 Appearance before the commission
- §15-15-36 Decisions and orders
- §15-15-37 Filing documents; place and time
- §15-15-38 Format
- §15-15-39 Verification
- §15-15-40 Copies
- §15-15-41 Defective filings
- §15-15-42 Extensions of time
- §15-15-43 Amended pleadings
- §15-15-44 Retention of documents
- §15-15-45 Service of process
- §15-15-45.1 Fees
- §15-15-45.2 Fees Not Refundable

Subchapter 6 Application Requirements for
Boundary Amendment Petitions

- §15-15-46 Standing to initiate boundary amendments
- §15-15-47 Filing
- §15-15-48 Service of petition
- §15-15-49 Repealed
- §15-15-50 Form and contents of petition
- §15-15-50.5 Dismissal of petition for failure to provide additional information or correct defects
- §15-15-50.6 Withdrawal or amendment of petition

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- §15-15-52 Intervention in proceeding for district

	boundary amendments
§15-15-53	Intervention in other than district boundary amendment proceedings or important agricultural lands designation proceedings
§15-15-54	Consolidation
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- \$15-15-106 Rulemaking; form and contents of petition
- \$15-15-107 Rulemaking; action on petition
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§15-15-108 Rulemaking; notice of public hearing
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Subchapter 17 Important Agricultural Lands

§15-15-120 Criteria and procedures for the identification of important agricultural lands
§15-15-121 Petition by farmer or landowner
§15-15-122 Petition by farmer or landowner for designation of important agricultural land and urban, rural or conservation reclassification
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§15-15-128 Periodic review and amendment of important agricultural lands maps

Subchapter 18 (Repealed)

Historical Note: This chapter is based substantially upon Rules of Practice and Procedure,

§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 5/8/00; comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-7)
(Imp: HRS §§92-4, 92-5)

§15-15-12 REPEALED. [R 11/2/2013]

§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, shall require five affirmative votes. ~~[If a petition receives six affirmative votes, any subsequent vote reflecting the commission's approval of the form of the order shall require five affirmative votes.]~~

(b) If the commission's action to approve 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. ~~[If a petition fails to receive six affirmative votes, any subsequent vote reflecting the commission's approval of the form of the order shall require five affirmative votes.]~~

(c) If the commission's action to approve a petition for a special permit under section 205-6, HRS, fails to obtain five affirmative votes, findings of fact, conclusions of law, and a decision and order denying the petition shall be filed by the commission. ~~[If a petition fails to receive five affirmative votes, any subsequent vote reflecting the commission's approval of the form of the order shall require five affirmative votes.]~~

(d) In contested cases, commission members who have not heard and examined all of the evidence may vote only after the procedures set forth in section 91-11, HRS, have been complied with. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; am and comp] (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 or executive officer may remove any person who willfully disrupts a meeting or hearing or other proceeding before the commission. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp] (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,

all other attorneys then of record and all parties not represented by an attorney of that fact.

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

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

(e) Service upon parties, other than the commission, shall be regarded as complete upon the occurrence of at least one of the following: (1) the party or its attorney is personally served; (2) the document is delivered to the party's office or its attorney's office and left with some responsible person; or (3) the document is properly stamped, addressed and mailed by first class mail to the last known address of the party on file with the commission or to the party's attorney.

(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 5/8/00; am and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-45.1 Fees. (a) Unless otherwise provided herein, a motion for incremental districting approval, motion for amendment to a decision and order, requested rule making, a motion to release conditions, a motion for declaratory order, a motion for special permit, or a motion to amend a special permit, a motion for order to show cause, or motion

for important agricultural land designation, by any person other than a state or county department or agency shall be accompanied by a filing fee by cashier's check, for \$1,000, made payable to the State of Hawai'i. State or county departments or agencies that submit such petitions, motions, or applications shall not be subject to the filing fee. Such petition, motion, or application filed jointly by a state or county department or agency and a person who is not a state or county department or agency shall be subject to the filing fee.

(b) A petition for an amendment to a district boundary filed by any person other than a state or county department or agency shall be accompanied by a filing fee by cashier's check for \$5,000, made payable to the State of Hawai'i. State or county departments or agencies that submit a petition for amendment to a district boundary shall not be subject to the filing fee. A petition for an amendment to a district boundary filed jointly by a state or county department or agency and a person who is not a state or county department or agency shall be subject to the filing fee.

(c) A petition for intervention in any proceeding filed by any person other than a state or county department or agency shall be accompanied by a filing fee by cashier's check in the amount of \$50, made payable to the State of Hawai'i. State or county departments or agencies that submit such petitions for intervention shall not be subject to the filing fee.

(d) Except as otherwise provided by law, a copy of any public document or government record, including any map, plan diagram, photograph, or photostat, which is open to inspection by the public shall be furnished to any person requesting the same by the executive officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy, which amount shall not be less than 12 cents per page, sheet, or fraction thereof. In addition, the requestor shall be responsible to pay for labor costs for searching, reviewing, and segregating, and actual time for reproducing, and material costs, including

electricity cost, equipment cost including rental cost, cost for certification, and other related costs of providing the requested public document or government record.

(e) The petitioner, movant, or applicant for any petition, motion, or application shall, unless otherwise ordered by the commission, reimburse the commission for or pay at the direction of the commission any expenses related to the publication of any required hearing notice, expenses of court reporter services, expenses of the hearing room, expenses for audio/visual services and equipment, and any other hearing-related expenses.

(f) 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 hearing expenses as determined by the commission, including without limitation, expenses of court reporter, hearing room, and expenses for audio/visual services and equipment.

(g) The commission may assess a reasonable fee or require reimbursements to be made for inexcusable absence of a party from a contested case proceeding. The assessment may include, but not be limited to, such costs for airfare, room rental fees, and publication fees. [Eff and comp 11/2/2013; am and comp] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

§15-15-45.2 Fees nonrefundable. The fees set forth in this chapter shall be nonrefundable. [Eff and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

- (2) the appropriate island planning commission,
- (3) the state office of planning, and
- (4) 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).

(c) Copies of all documents filed by petitioner after filing of the petition shall be served upon the county planning department and the state office of planning at the same time the document is filed with the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-49 REPEALED. [R 11/2/2013]

§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 a proper filing unless an approved environmental impact statement or finding of no significant impact is approved or accepted by the commission for the proposed boundary amendment request. Such approved or accepted environmental

impact statement or finding of no significant impact shall be filed with and be part of the petition for boundary amendment. Notwithstanding any rule to the contrary, the processes provided by subsections (e) and (f) shall not commence until this subsection is satisfied.

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

- (1) The exact legal name of each petitioner and the location of the principal place of business and if an applicant is a corporation, trust, or association, or other legal entity, 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 petition 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 stated in the petition. If the subject property is a portion of one or more tax map key parcels, 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 each increment in metes and bounds prepared by a registered professional land surveyor;
- (4) The boundary amendment sought and present use of the property, including an assessment of conformity of the boundary amendment to the standards for determining the requested district boundary amendment;
- (5) The petitioner's property interest in the subject property. The petitioner shall attach as exhibits to the petition the following:
 - (A) A true copy of the deed, lease, option agreement, development agreement, or other document conveying to the petitioner a property interest in the

- subject property or a certified copy of a nonappealable final judgment of a court of competent jurisdiction quieting title in the petitioner;
- (B) If the petitioner is not the owner in fee simple of the subject property, or any part thereof, written authorization of all fee owners to file the petition and a true copy of the deed to the subject property; and
 - (C) An affidavit of the petitioner or its agent attesting to its compliance with section 15-15-48;
- (6) A description of any easements on the subject property, together with identification of the owners of the easements; a description of any other ownership interests shown on the tax maps.
 - (7) Type of use or development being proposed, including without limitation, a description of any planned development, residential, golf course, open space, resort, commercial, or industrial use;
 - (8) A statement of projected number of lots, lot size, number of units, densities, selling price, intended market, and development timetables;
 - (9) A statement describing the financial condition together with a current certified balance sheet and income statement as of the end of the last calendar year, or if the petitioner is on a fiscal year basis, as of the end of the petitioner's last fiscal year, and a clear description of the manner in which the petitioner proposes to finance the proposed use or development. If such information is protected from disclosure under chapter 92F, HRS, the petitioner may request a protective order to protect the confidentiality of the information pursuant to section 15-15-70.1. A petitioner which

- is a state or county department or agency, shall be exempt from this requirement;
- (10) Description of the subject property and surrounding areas including the use of the property over the past two years, the present use, the soil classification, the agricultural lands of importance to the State of Hawai`i classification (ALISH), the Land Study Bureau productivity rating, the flood and drainage conditions, and the topography of the subject property;
 - (11) An assessment of the impacts of the proposed use or development upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, groundwater, or other resources of the area. If required by chapter 343, HRS, either a finding of no significant impact after review of an environmental assessment or an environmental impact statement conforming to the requirements of chapter 343, HRS, must be filed;
 - (12) Availability or adequacy of public services and facilities such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, police and fire protection, civil defense, emergency medical service and medical facilities, and to what extent any public agency would be impacted by the proposed development or boundary amendment;
 - (13) Location of the proposed use or development in relation to adjacent land use districts and any centers of trading and employment;
 - (14) Economic impacts of the proposed boundary amendment, 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;

- (15) A description of the manner in which the petitioner addresses the housing needs of low income, low-moderate income, and gap groups;
- (16) An assessment of need for the boundary amendment 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;
- (17) An assessment of conformity of the boundary amendment to applicable goals, objectives, and policies of the Hawai'i state plan, chapter 226, HRS, and applicable priority guidelines and functional plan policies;
- (18) An assessment of the conformity of the boundary amendment to objectives and policies of the coastal zone management program, chapter 205A, HRS;
- (19) An assessment of conformity of the boundary amendment to the applicable county general plans, development or community plans, zoning designations and policies, and proposed amendments required;
- (20) Petitioners submitting petitions for boundary amendment to the urban district shall also represent that development of the subject property in accordance with the demonstrated need therefor will be accomplished before ten years after the date of commission approval. In the event full urban development cannot substantially be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments together with a map identifying the location of each increment, each such increment to be completed within no more than a ten-year period;
- (21) A [statement] written disclosure and analysis addressing Hawaiian customary and traditional rights under Article XII,

section 7 of the Hawai'i State Constitution;
(22) Any written comments received by the petitioner from governmental and non-governmental agencies, organizations, or individuals in regards to the proposed boundary amendment; [and]

(23) A copy of the notification of petition filing pursuant to subsection (d) [-];

(24) A statement and analysis pursuant to section 226-109, HRS, addressing climate change related threats to the proposed development and proposed mitigation measures. The statement and analysis shall address, but not be limited to, the following issues:

(A) The impacts of sea level rise on the proposed development;

(B) Infrastructure adaptations to address the impacts of climate change including sewer, water and roadway improvements;

(C) The overall carbon footprint of the proposed development and any mitigation measures or carbon footprint reductions proposed; and

(D) The location of the proposed development and the threats imposed to the proposed development by sea level rise, based on the maps and information contained in the Hawaii Sea Level Rise Vulnerability Adaptation report and the proposed mitigation measures taken to address those impacts.

(25) A statement and analysis addressing the proposed development's adherence to sustainability principles and priority guidelines and climate change issues as contained in section 226-108, HRS, the Hawai'i State Plan (Sustainability), and smart growth principles, including, but not limited to:

(A) Walkability;

(B) Accessibility to alternate forms of

transportation;

(C) Transit oriented development opportunities;

(D) Green infrastructure, including water recharge and reuse and water recycling;

(E) Mitigation of heat island effects; and,

(F) Urban agricultural opportunities.

(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 boundary amendment;
- (4) Location of the property;
- (5) Requested boundary amendment and approximate acreage;
- (6) Proposed use of the property;
- (7) A statement that detailed information on the petition may be obtained by reviewing the petition and maps on file at the office of the commission or the respective county planning department or at the commission's website;
- (8) A statement that informs potential intervenors on the mailing list provided by the commission that they may file a notice of intent to intervene with the commission within thirty days of the date of the notification of petition filing pursuant to section 15-15-52(b);
- (9) A statement that informs the general public to contact the office of the commission for information on participating in the hearing; and
- (10) A location map depicting the petition area. The notification of petition filing shall be

sent to all persons on the mailing list on the same day that the petition is filed with 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 the filing 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 a proper filing and is accepted for processing. The petition shall be deemed a proper filing if the items required in subsections (a), (b), (c), and (d) have been submitted. The petition may be deemed defective by the executive officer if any of the items required in subsections (a), (b), (c), or (d) have not been submitted. If the petition is deemed defective, the executive officer shall notify the petitioner of the determination and the reasons for the determination. The petition may be deemed as a proper filing upon review of the additional information submitted and upon determination by the executive officer, and the date the petition will be deemed a proper filing will be the date the executive officer determines the defects have been cured. The executive officer will file a notice of proper filing and mail the notice to the petitioner, the State office of planning, the county planning agency, and to persons who have filed a notice of intent to intervene. The executive officer's determination is subject to review in accordance with section 15-15-41. The provisions herein, however, are subject to the requirements of section 15-15-50(b) on petitions for boundary amendment of conservation district lands.

(g) The petitioner has a continuing obligation to update the information submitted in the petition prior to and during the pendency of the hearing on the petition. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; am and comp] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-50.5 Dismissal of petition for failure to provide additional information or correct defects.

Where the executive officer, pursuant to section 15-15-50(f), has determined that a petition is defective or nonconforming and the petitioner has not provided additional information or cured any defects within nine (9) months after the date of issuance of the notice that the petition is defective, the executive officer shall notify the petitioner in writing that the petition is dismissed for want of prosecution unless objections thereto, showing good cause with specific reasons, are filed within ten days after the date of such notification. If objections are not filed within said ten-day period, the executive officer shall file an order of dismissal with or without prejudice. If objections are filed within said ten-day period, the commission shall hear the objections upon notice and determine whether the petition should be dismissed. [Eff and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-4, 205-7)

§15-15-50.6 Withdrawal or amendment of petition. (a) The petitioner may withdraw or amend the petition without prejudice: (1) at any time before a petition for district boundary amendment is deemed a proper filing or, (2) any time after a petition for district boundary amendment has been deemed a proper filing but before it has been set for hearing; provided that if substantive amendments are

§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;
- (4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of law; and
- (5) Be filed with the commission at least ten business days before the next regularly scheduled meeting of the commission.

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

(d) The moving party shall serve a copy of all motion papers on all other parties and shall file the original plus one paper copy and one electronic copy with the commission and proof of service. The number and format of copies required under this section may be modified by order of the commission.

(e) The opposing party or parties shall serve on all other parties 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. The opposing party shall file the original plus one paper copy and one electronic copy with the commission and proof of service. The number and format of copies required under this section may be modified by order of the

commission.

(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 memoranda in opposition to a motion or failure to appear at the hearing may be deemed a waiver of objection to the granting or denial of the motion.

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

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

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

(k) Any motion, except a motion for relief from or release of conditions submitted by the same party or parties and based upon substantially the same grounds as a previous motion that has been considered by the commission or denied by the commission shall not be again considered.

(1) After the hearing on the evidence is closed, but before the commission votes on a decision, a party for good cause shown may move to re-open the hearing to take newly discovered evidence. The motion shall specify the facts claimed to constitute good cause, including material changes of fact or of law alleged to have occurred since the closing of the hearing and shall provide a description of the proposed additional evidence and an explanation of why the newly discovered evidence was not previously adduced. The party filing the motion shall be responsible for fees and costs pursuant to section 15-15-45.1.

(m) Orders granting, denying or otherwise disposing of motions, ~~[except] including~~ motions to amend decisions and orders relating to district boundary amendments and to special permits, ~~[may] shall~~ be signed by the chairperson or any vice chairperson, or the presiding officer, or the hearings officer, as the case may be. ~~[Orders granting, denying, or otherwise disposing of motions relating to amendments of decisions and orders in district boundary amendment proceedings and to special permits shall be signed by the commissioners who have heard or examined the evidence relating to the motion and who have voted affirmatively on the decision.]~~ [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and 11/2/2013; am and comp] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-70.1 Protective orders. Any party or any person may move for a protective order to protect the confidentiality of information that is protected from disclosure under chapter 92F, HRS, or by other law. A motion for protective order shall specifically identify the document or information to be protected. The movant shall bear the burden of establishing that the information should be protected. Stipulations for protective order, subject to the commission's approval, may be filed in lieu of motions for protective orders. [Eff and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-7)

§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 5/8/00; comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2, 205-4)

§15-15-72

§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 5/8/00; comp 11/2/2013; comp] (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 5/8/00; comp 11/2/2013; comp] (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 petition has been deemed a proper filing by the commission or the executive officer, 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) [7] and (b), decisions for petitions submitted pursuant to section 201H-38, HRS, shall be made in the timeframe as provided in section 15-15-97.

(d) Notwithstanding subsections (a) and (b), decisions on acceptance or non-acceptance of environmental compliance documents submitted pursuant to chapter 343, HRS, shall be made within thirty days of receipt of the final statement, provided that the period may be extended at the request of the applicant for a period not to exceed fifteen days. Notification of a determination of acceptance or non-acceptance will be by letter from the executive officer to the applicant and office of environmental quality control, pursuant to chapter 343, HRS. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; am and comp] (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] review as provided in section 205-19, HRS. [thereof in the manner set forth in section 91-14, HRS.] [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp 11/2/2013; am and comp] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-14, 205-4, 205-19)

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

(b) Additionally, the commission shall not accept any petition for boundary amendment for the same request involving the same land that was before the commission and withdrawn voluntarily by the petitioner within one year of the date of the withdrawal. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp]
(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, is not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

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

- (1) The extent to which the proposed boundary amendment conforms to the applicable goals, objectives, and policies of the Hawai`i state plan and relates to the applicable priority guidelines of the Hawai`i state plan and the adopted functional plans;
- (2) The extent to which the proposed boundary amendment conforms to the applicable district standards;
- (3) The impact of the proposed boundary amendment on the following areas of state concern:
 - (A) Preservation or maintenance of important natural systems or habitats;
 - (B) Preservation and [Maintenance] maintenance of valued cultural resources and activities, and, historical, or natural resources, including water resource uses;
 - (C) Maintenance of other natural resources relevant to Hawai`i's economy including, but not limited to agricultural resources;
 - (D) Commitment of state funds and resources;
 - (E) Provision for employment opportunities and economic development; and
 - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;
- (4) In establishing the boundaries of the districts in each county, the commission shall give consideration to the general plan, and community, development, or community development plans of the county in which the land is located;
- (5) The representations and commitments made by the petitioner in securing a boundary amendment, 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;

- (6) Lands in intensive agricultural use for two years prior to date of filing of a petition or lands with a high capacity for intensive agricultural use shall not be taken out of the agricultural district unless the commission finds either that the action:
 - (A) Will not substantially impair actual or potential agricultural production in the vicinity of the subject property or in the county or State; or
 - (B) Is reasonably necessary for urban growth; and
- (7) In considering boundary amendments for lands designated important agricultural lands pursuant to part III, chapter 205, HRS, the commission shall specifically consider the standards and criteria set forth in section 205-50, HRS.

(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 a 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 5/8/00; am and comp 11/2/2013; am and comp] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-3.1, 205-4, 205-16, 205-17)

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 with one original, one paper copy, and one electronic copy filed with the commission, 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 5/8/00; am and comp 11/2/2013; comp]
(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 5/8/00; comp 11/2/2013; comp] (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. ~~[Each party to the proceeding]~~ The petitioner shall submit a proposed decision and order which shall include proposed findings of fact, conclusions of law, and proposed conditions; all other parties may submit a proposed decision and order including proposed findings of fact, conclusions of law and proposed conditions. If a party enters into a partial stipulation as authorized in section 15-15-82.1, the party shall nevertheless file a proposed decision and order indicating the findings of fact, conclusions of law and proposed conditions that are stipulated to and also set forth proposed findings of fact, conclusions of law and proposed conditions that it proposes that are different than the stipulation. A proposed decision and order shall be filed with the commission consisting of one paper original, one paper copy, and one electronic copy, and a copy shall be served upon each party to the proceeding. ~~[and an opportunity given to each]~~ Each party to the proceedings shall be given the opportunity to comment [thereon.] on each proposed decision and order filed with the commission.

(b) A commission member may prepare a proposed findings of fact and conclusions of law, and serve the document upon each party not less than ten business days prior to the meeting at which the proposed findings of fact and conclusions of law shall be presented.

(c) Notwithstanding any provision of this chapter to the contrary, each party may provide its position on the commission members' proposed findings of fact and conclusions of law within five business 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.

(e) Findings of fact, conclusions of law, and decision and order shall be issued by the commission

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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). **For orders determining the acceptability of environmental compliance documents pursuant to chapter 343, HRS, the chair or presiding officer shall sign for the commission.** [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; am and comp] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-2, 91-12, 205-4)

§15-15-82.1 Stipulation as to findings of fact, conclusions of law, conditions of boundary amendment, and decision and order. After the close of the evidentiary portion of the hearing, some or all parties may enter into stipulations as to findings of fact, conclusions of law, conditions of boundary amendment, and decision and order concerning the proposed boundary amendment 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, conditions of boundary amendment, and decision and order concerning the proposed boundary amendment;
- (2) Parties in agreement with a stipulation shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, conditions of boundary amendment, and a proposed decision and order, and shall submit such stipulation to the commission within the time frame specified by the commission;
- (3) After the hearing, the commission may adopt the proposed stipulation, and if it adopts the stipulated decision and order the commission may amend, accept, modify or reject in part or in whole any of the findings of fact, conclusions of law,

certified copy under the signature of the registrar of conveyances. The petitioner 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 5/8/00; am and comp 11/2/2013; comp]
(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 or declaration, 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) Absent substantial commencement of construction, the commission may revert the property to its former land use classification or a more appropriate classification. For the purposes of this subsection (e) substantial commencement shall be determined based on the circumstances or facts presented in the order to show cause regardless of dollar amount expended or percentage of work completed.

(f) [-(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.

(g) ~~[(f)]~~ Fees for a motion for order to show cause will be borne by the movant pursuant to section 15-15-45.1 herein. However, should the motion for order to show cause be granted, any further fees for proceedings arising from the motion shall be borne by the party upon which the order to show cause has been issued. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; am and comp] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4, 205-12, 205-17)

§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 on 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 5/8/00; am and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

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section 15-15-95 and 15-15-96. [Eff and comp
11/2/2013; comp] (Auth: HRS §§205-1,
205-7)

SUBCHAPTER 13

GOVERNMENT SPONSORED HOUSING PROJECTS

§15-15-97 Procedure for processing petitions for housing projects under section 201H-38, HRS. (a)

Petitions for housing projects under section 201H-38, HRS, shall be processed according to the procedures provided in this section.

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

- (1) File an original, one paper copy, and one electronic copy of a notice of intent to file a petition with the commission according to a format provided by the commission; the number and format of copies required under this section may be modified by order of 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 boundary amendment;
 - (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 state office of planning, the planning department of the county in 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. In proceedings related to 201H petitions, the petitioner's notice of intent shall also serve as the notice of hearing for the purposes of intervention;
- (4) File an original and one paper copy 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) 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 hearing 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) Petitions to intervene and become a party shall be in conformity with subchapter 5 and filed with the commission. An original and one paper copy, together with one electronic copy 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 intent to file a petition is published pursuant to section 15-15-97(b)(2). 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 proposed intervenor's statutory or other right;
- (2) Nature and extent of the proposed intervenor'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 proposed intervenor's interest.

(g) If applicable, the petition shall also make reference to the following:

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

interest.

(h) Petitions for intervention shall be accompanied by a filing fee of \$50. The fee shall not apply to state and county agencies.

(i) The commission may conduct a pre-application 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.

(j) 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.

(k) 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 finding of no significant impact or approved environmental impact statement if conservation district lands are involved;
- (2) A proposed decision and order;
- (3) An affidavit that the petitioner has met with interested community groups to discuss the proposed project;
- (4) A clear description of the manner in which petitioner proposes to finance the proposed development, including a budget, a marketing plan, and a feasibility study; and
- (5) A certification from the Hawai'i housing finance and development corporation or county housing agency that the petition involves a section [+] 201H-38, HRS, housing project, including a certified copy of an approved county council resolution approving the project with conditions and any exemptions granted.

(1) Petitions that fail to comply with the requirements set forth in subsections (b) and (k) shall be deemed defective and the date of filing of the petition shall be as of the date the defect is cured.

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(m) 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.

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

(o) The commission shall approve or disapprove a boundary amendment within forty-five days after the petition has been deemed a proper filing by the executive officer. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission, and the provisions of section 15-15-90(e) shall apply. [Eff 3/20/87; am 7/18/94; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; am and comp]
(Auth: HRS §§201G-118, 205-1, 205-4, 205-7) (Imp: HRS §§205-4, 201G-118)

§15-15-97.1 REPEALED. [R 5/8/00]

§15-15-97.2 Fees. The petitioner will be responsible for fees pursuant to section 15-15-45.1. [Eff and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

SUBCHAPTER 14

DECLARATORY ORDERS

§15-15-98 Who may petition. (a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the

§15-15-121 Petition by farmer or landowner.

(a) A farmer or landowner seeking to have lands designated important agricultural lands may file a petition for declaratory ruling with the commission seeking to have its lands designated important agricultural lands.

(b) The petition for declaratory ruling shall be submitted in accordance with subchapter 14 and shall include:

- (1) Tax map keys of the land to be designated along with verification and authorization from the applicable landowners;
- (2) Proof of qualification for designation under section 15-15-120; and
- (3) The current or planned agricultural use of the area to be designated.

(c) The commission shall review the petition and the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 15-15-121.

(d) A petition for declaratory order seeking designation of lands as important agricultural lands shall only be granted if a two-thirds majority of the commission finds, after its review and evaluation and based upon a preponderance of the evidence, that the subject lands qualify for designation as important agricultural lands under this subchapter and sections 205-44 and 205-45, HRS. If a petition fails to receive the affirmative votes of two-thirds of the commissioners, findings of fact, conclusions of law and a decision and order denying the petition shall be filed by the commission. [Eff and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-45)

§15-15-122 Petition by farmer or landowner for designation of important agricultural land and urban, rural or conservation re-classification. (a) A landowner may, within the same petition for

declaratory order as described in subsection 15-15-121, request the reclassification of a portion of the land which is the subject of the petition in the agricultural district to the rural, urban, or conservation district, or a combination thereof. The land sought to be reclassified as urban, rural or conservation shall:

- (1) Be within the same county as the land sought to be designated as important agricultural lands;
- (2) If the reclassification of the land is proposed to the urban district, that reclassification to urban is consistent with the relevant county general and community, development, or community development plans; and
- (3) Be no more than fifteen percent of the total acreage which is the subject of the petition such that at least eighty-five per cent of the total acreage which is the subject of the petition is sought to be designated as important agricultural land; and
- (4) Meet all of the requirements of subchapter 8 herein.

(b) In a petition for declaratory order under this section seeking to designate lands important agricultural lands in the agricultural district to the rural, conservation or urban district, the lands to be designated important agricultural lands shall be deemed qualified for such designation only if the commission reasonably finds that the lands meet the criteria of sections ~~[15-115-120(e)-(5)]~~ 15-15-120(c)(5) and (c)(7).

(c) A petition for declaratory order under this section shall be submitted in accordance with subchapter 14 and be set for initial hearing within 90 days of submission. The procedure for the hearing shall be in conformance with the procedures set forth in subchapter 7, and shall include:

- (1) Tax map key numbers of the land to be designated as important agricultural lands and, if applicable, the land to be

reclassified from the agricultural district to the rural, urban, or conservation district;

- (2) Verification of ownership and/or authorization from the applicable landowners;
- (3) Proof of qualification for designation as important agricultural lands under this subchapter;
- (4) The current or planned agricultural use of the area sought to be designated as important agricultural lands; and
- (5) The current or planned use of the area sought to be reclassified to the rural, urban, or conservation district.

(d) An application for a declaratory order to designate important agricultural land in combination with the reclassification of agricultural land to the rural, urban, or conservation district shall not be deemed a proper filing until the petitioner has submitted a certification, issued by the state department of agriculture as to the quality of the land which is the subject of the petition.

(e) In review of any petition seeking to have lands classified as important agricultural lands in combination with a request to reclassify a portion of the agricultural land to the urban, rural or conservation designation, the commission shall review the petition and the accompanying submissions in accordance with this subchapter and section 205-44, HRS. The commission shall also specifically determine, by a preponderance of the evidence whether:

- (1) The land is suitable for the reclassification in accordance with subchapters 2 and 8; and
- (2) If the reclassification of a portion the land is proposed to the urban district, that reclassification to urban is consistent with the relevant county general and community, development, or community development plan.

(f) Approval of a petition for designation of important agricultural lands in conjunction with a

petition for urban, rural or conservation reclassification under this section shall require approval by a vote of a two-thirds majority of the commissioners. The commission shall include reasonable conditions in its order.

(g) Should the commission find that either the designation of lands in the petition sought to be identified as important agricultural lands or the lands identified in the petition for reclassification to urban, rural, or conservation is not supported by a preponderance of the evidence and should not be approved, the commission shall deny the petition in its entirety. [Eff and comp 11/2/2013; am and comp] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-45)

§15-15-123 Adherence to chapter 343 HRS. A petition filed under this subsection, if applicable, shall adhere to the requirements of chapter 343, HRS. No petition under this subchapter will be deemed complete unless it has met the requirements of chapter 343, HRS. [Eff and comp 11/2/2013; comp] (Auth: HRS §§205-1, 205-7, 205-45)

§15-15-124 Private landowner credits in important agricultural land proceeding. (a) The commission shall allow a petitioner for an important agricultural land designation to reserve the right to designate lands for reclassification to urban, rural, or conservation at a future proceeding. The commission shall not grant a landowner the right to reserve lands for future reclassification greater than fifteen percent of the total acreage of land which is the subject of the petition, total acreage being the land sought to be designated important agricultural land plus the land sought to be reclassified urban, rural or conservation.

(b) Where a petitioner submits a petition for designation of lands as important agricultural lands in combination with a request to reclassify lands urban, rural or conservation and the commission grants the petition under this subchapter, the petitioner may, if specifically requested in the petition, obtain credits for the difference between fifteen percent of the total amount of land requested to be reclassified as urban, rural and conservation and the amount of land set forth in the petition to be so reclassified, if the amount of land for reclassification to urban, rural or conservation set forth in the petition is less than fifteen percent of the total land subject to the petition.

(c) In order to preserve the right to reclassify lands under this section at a future proceeding a request for future credits must be specified in any petition for designation of important agricultural lands or petition for designation of important agricultural lands in conjunction with a request to re-classify lands to the urban, rural or conservation district.

(d) If a petition fails to include a request for future credits under subsection ~~[(b)]~~ (a) or ~~[(c)]~~ (b), the petitioner's right to such credits shall be waived and the petitioner shall be barred from claiming the credits at a future date.

(e) Credits held by a petitioner under this section may only be applied to lands owned or held by the petitioner in the same county as the lands designated important agricultural lands in the original petition giving rise to the credits are located.

(f) In order to utilize such credits to have lands reclassified under this section the petitioner must, prior to utilization of such credits and before the credits are applied to any land to be reclassified, file a petition for declaratory order pursuant to subchapters 5 and 14 and section 15-15-123.

(g) A petition for use of credit for re-classification of land granted under this section must

be filed within ten years of the effective date of the original order by which the credits were granted by the commission. Unused credits shall expire and become unusable if not used within ten years from the effective date the original order by which the credits were granted by the commission.

(h) Credits issued under this section may only be used by the petitioner awarded the credits under the original declaratory order granting the credits. Unused or unexhausted credits awarded under this section may not be transferred to another person.

(i) If a petitioner files a request for declaratory order to utilize credits held pursuant to this section the commission shall not grant such petition unless:

- (1) By a preponderance of the evidence presented, the land is suitable for reclassification in accordance with sections 205-2 and 205-3.1, HRS;
- (2) The reclassification is consistent with the relevant county general and, development, or community development plans;
- (3) By a preponderance of the evidence presented, the land sought to be reclassified is suitable for reclassification in accordance with subchapters 2 and 8; and
- (4) The petitioner has met all of the requirements of chapter 343 HRS with regard to the subject petition. [Eff and comp 11/2/2013; am and comp]
(Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-45)

§15-15-125 County identification of important agricultural lands. (a) Receipt of recommendations and maps from the planning department of a county under section 205-48, HRS, shall not be considered a petition for a declaratory order designating land