

STATE OF HAWAII  
LAND USE COMMISSION

Minutes of Meeting

September 9, 1975 - 10:00 a.m.

Board Room  
Department of Land & Natural Resources  
Honolulu, Hawaii

*Adopted*  
OCT 7 1975

COMMISSIONERS PRESENT: James Carras  
Charles Duke  
Colette Machado  
Mitsuo Oura  
Stanley Sakahashi  
Eddie Tangen  
Carol Whitesell  
Tanji Yamamura  
Edward Yanai

STAFF PRESENT: Tatsuo Fujimoto, Executive Officer  
Ah Sung Leong, Planner  
Gordan Furutani, Planner  
Tany Hong, Deputy Attorney General  
Harry Kim, Consultant  
Dora Horikawa, Clerk Reporter

The meeting was called to order by the Executive Officer, Tatsuo Fujimoto. It was announced by Mr. Fujimoto that the first item on the agenda was the election of the Chairman of the Land Use Commission, and that the floor was open for nomination.

Commissioner Carras nominated Commissioner Tangen for the office of Chairman. Commissioner Oura moved to close the nomination, seconded by Commissioner Yamamura, and Eddie Tangen was unanimously elected Chairman of the Land Use Commission by a show of hands.

Newly elected Chairman Tangen expressed his appreciation to the Commissioners for their vote of confidence and opened the floor for nomination of Vice Chairman of the Land Use Commission. Commissioner Oura nominated Commissioner Sakahashi for Vice Chairman, and since there was no further nomination, Chairman Tangen declared that the nomination was closed. Stanley Sakahashi was unanimously elected Vice Chairman of the Land Use Commission by a show of hands.

Chairman Tangen welcomed the three newly appointed members to the Land Use Commission--Charles Duke, Colette Machado and Carol Whitesell.

Chairman Tangen called on Attorney Harry Kim, consultant who had prepared the proposed amendments to the Land Use Commission's Rules and Regulations, to review the proposed changes.

Mr. Kim advised that he had been assigned the responsibility of preparing the amendment to the existing Rules and Regulations, and

to draft Rules of Practice and Procedure for the Land Use Commission, as a result of the new act (Act 193) passed by the Legislature.

Mr. Kim elaborated that Act 193 had altered the Land Use Commission's hearing procedure from that of quasi-legislative to quasi-judicial, requiring contested case proceedings. Some of the basic provisions of Act 193 were enumerated as follows:

1. The method of selection of the Commission members has been changed.
2. Agricultural parks have been included within the Agricultural District.
3. Land use district boundaries existing as of the effective date of Act 193 shall continue in full force, subject to amendment based on any litigation filed prior to July 1, 1975.
4. The standing to file a petition for boundary amendment is now limited to a person who has a property interest in the land sought to be reclassified, the Land Use Commission, any department or agency of the State, any department or agency of the county in which the land is situated. Adjacent property owners would have standing to intervene in proceedings.
5. The requirement to conduct the 5-year boundary review has been repealed--in its place the Department of Planning and Economic Development will prepare a state plan which will be updated periodically.
6. The Commission shall observe and comply with the interim statewide land use guidance policies contained in Act 193 until the adoption of the State Plan.

Continuing with his presentation of the proposed amendments to the Rules and Regulations, Mr. Kim explained that the Ramseyer method had been utilized to indicate the changes--i.e. new material to be added was underscored, material to be deleted was bracketed.

Mr. Kim proceeded with a detailed explanation of the proposed changes. Copies of the proposed amendments to the State Land Use District Regulations and the Proposed Rules of Practice and Procedure of the Land Use Commission, together with a list of the corrections to the first draft of the Rules and Practice and Procedures, are hereby filed and made a part of these records.

Following a detailed discussion, during which questions from the Commissioners were answered by Mr. Kim, it was moved by Commissioner Duke that the Rules and Regulations as amended and as discussed today be adopted for presentation at public hearings. The motion was seconded by Commissioner Yamamura and unanimously carried.

It was decided by the Commission that the Special Permits pending before the Commission will be acted upon at the next meeting of the Land Use Commission since Act 193 did not amend the Special Permit procedure and no transitional provision had been inserted into the Act.

On the boundary amendment applications pending before the Commission which cannot be heard prior to the adoption and effective date of the amended District Regulations and Rules of Practice and Procedure, it was decided that the petitioner be requested to refile his petition.

Upon motion by Vice Chairman Sakahashi, seconded by Commissioner Whitesell, Ah Sung Leong was appointed as the Acting Executive Officer of the Land Use Commission.

It was unanimously agreed that Commissioners Whitesell and Machado work together to prepare procedures to be followed at the public hearings on the proposed amendments.

Since there was no further business, the meeting was adjourned.

PROPOSED AMENDMENTS TO THE  
STATE LAND USE DISTRICT REGULATIONS  
LAND USE COMMISSION, STATE OF HAWAII

Section 1. The State Land Use District Regulations is amended to read:

"PART I. General Provisions

1-1 Title. These regulations shall be known as the State Land Use District Regulations.

1-2 Purpose. These rules and regulations are intended to clarify and implement Act 187, SLH 1961 as now or hereafter amended. They are intended to preserve, protect and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii.

1-3 Minimum Requirement. These rules and regulations shall be the minimum requirements [only] of the Commission. In the event that any County imposes stricter requirements, and the stricter requirements are not in derogation of the administration or intent and purpose of Act 187 SLH 1961, as amended, the County's ordinances or regulations shall be controlling in that County.

1-4 Definitions.

(a) As used in these regulations prescribed by the Commission, except as otherwise required by the context:

(1) "Accessory building or use" shall mean a subordinate building or use which is incidental to and customary with a permitted use of the land.

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2 (2) "Agency" means the planning department of each County.

3 (3) "Agricultural park" means any planned agricultural  
4 complex which combines and concentrates in a common  
5 location a number of agricultural activities for the  
6 purpose of realizing production and distribution  
7 economies. Agricultural buildings, farm residences,  
8 and employee dwellings necessary to the production  
9 and distribution of agricultural commodities shall  
10 be considered part of the agricultural park.

11 (4) "Building" shall mean any structure having a roof,  
12 including, but not limited to attached carports and  
13 such devices.

14 (5) "Commission" shall mean the Land Use Commission of  
15 the State of Hawaii.

16 (6) "District" shall mean an area of land, including lands  
17 underwater, established as an Urban, Agricultural,  
18 Conservation or Rural District.

19 (7) "Dwelling" shall mean a building designed or used  
20 exclusively for residential occupancy, but not  
21 including home trailers, multi-unit buildings, mobile  
22 homes, hotels, motels, boarding and lodging houses,  
23 tourist courts or tourist homes.

24 (8) "Economic feasibility" shall mean the degree to which  
25 (1) the market demand for the goods and services pro-  
posed by the petitioner is accurately estimated and  
appears to be substantial enough to indicate a

1  
2 a probability of sufficiently profitable endeavor to  
3 justify the rezoning requested, and (2) the costs of  
4 providing public services will be overcome by the  
5 public revenues to be accrued through taxes and other  
6 sources or will otherwise be offset by effects bene-  
7 ficial to the economy of the State.

8 (9) "Family" shall mean an individual or two or more per-  
9 sons related by blood, marriage or adoption of a group  
10 comprising not more than five persons, not related by  
11 blood, marriage or by adoption.

12 (10) "Farm dwelling" shall mean a single-family dwelling  
13 located on and used in connection with a farm where  
14 agricultural activity provides income to the family  
15 occupying the dwelling.

16 (11) "Land" shall include areas under water within the  
17 boundaries of the State.

18 (12) "Land Use Law" shall mean Act 187, SLH 1961 as now  
19 or hereafter amended.

20 (13) "Lot" shall mean a parcel of land.

21 (14) "Lot of record" shall mean a lot recorded in the land  
22 records of the State of Hawaii.

23 (15) "Map" shall mean the Land Use District Maps of the  
24 Land Use Commission.

25 (16) "Non-conforming structure" shall mean a building or  
structure, lawfully existing at the time of adoption

1  
2 of the State Land Use District Regulations and Bound-  
3 aries or subsequent amendments made thereto, that does  
4 not conform to the State Land Use District Regulations  
5 and Boundaries.

6 (17) "Owner" shall include lessees of real property.

7 (18) "Non-conforming use" shall mean the use of a building  
8 or structure, or of a parcel of land, lawfully existing  
9 at the time of adoption of the State Land Use District  
10 Regulations and Boundaries or subsequent amendments  
11 made thereto, that does not conform to the State Land  
12 Use District Regulations and Boundaries.

13 (19) "Planning Commission" shall mean the Planning Commis-  
14 sions of the various Counties, including the City and  
15 County of Honolulu.

16 (20) "Premises" shall mean a lot together with all buildings  
17 and structures thereon.

18 (21) "Public institution and building" shall mean any insti-  
19 tution or building being used by governmental agency  
20 for public purpose.

21 (22) "Shoreline" means the upper reaches of the wash of  
22 waves, other than storm and tidal waves, usually  
23 evidenced by the edge of vegetation growth.

24 (23) "Shoreline setback" means all of the land area between  
25 the shoreline and the shoreline setback line.

(24) "Shoreline setback line" means that line established  
by the State Land Use Commission or the County running

1 inland from and parallel to the shoreline at a  
2 horizontal plane.

3  
4 (25) "Sign" shall mean and include an identification,  
5 description, illustration or device which is affixed  
6 to a building, structure or land and which directs  
7 attention to a product, place, activity, person,  
8 institution or business.

9 (26) "Single-family dwelling" shall mean a dwelling  
10 occupied exclusively by one family.

11 (27) "State" shall mean the State of Hawaii.

12 (28) "Structure" shall mean and include any constructed  
13 or erected material or combination of materials,  
14 which requires location on the ground, including, but  
15 not limited to, buildings, radio towers, sheds, storage  
16 bins, fences and signs.

17 (29) "Zone of wave action" shall mean that portion of the  
18 shore lying between the sea and any visible marks  
19 which indicate the farthest extent to which the maxi-  
20 mum annual wave advances inland including, but not  
21 limited to, the vegetation line or line of debris,  
22 the crest of the sand or dune line, or the rocky shore.

23 1-5 Definitions Pertaining to Grammatical Usage and Construction

24 (1) Words used in the present tense include the future tense.

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

(3) The word "shall" is always mandatory except where its usage  
in these rules and regulations requires a less absolute



1  
2 application to be consistent with the intent and  
3 spirit of the Land Use Law and of these regulations.

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

5 (5) The word "person" includes a firm, partnership, or  
6 corporation, as well as an individual.

7 (6) Terms not herein defined shall have the meanings  
8 customarily assigned to them.

9 PART II. Establishment of State Land Use District

10 2-1 Districts and District Maps. In order to effectuate the purposes  
11 of the Land Use Law, all the lands in the State shall be divided  
12 and placed into one of the four (4) Districts:

13 "U"	Urban District
"A"	Agricultural District
"C"	Conservation District
14 "R"	Rural District

15 The boundaries of the above-mentioned Districts are shown on the  
16 maps on file in the Commission office. Not all ocean areas and  
17 off-shore and outlying islands of the State in the Conservation  
18 District are shown when deemed necessary to do so. The maps  
19 shall be designated as the "Land Use District Maps of the  
20 State of Hawaii."

21 In establishing the boundaries of the districts in each County,  
22 the Commission shall give consideration to the General Plan of  
23 the County.

24 2-2 Standards for Determining District Boundaries. The following  
25 standards shall be used in establishing the district boundaries.  
[They shall also be used as guides for the periodic review of

1  
2 district boundaries, for the granting of amendments to the  
3 district boundaries and for other changes and adjustments.]

4 2-3 "U" Urban District. In determining the boundaries for the "U"  
5 Urban District, the following standards shall be used:

6 (a) It shall include lands characterized by "city-like"  
7 concentrations of people, structures, streets, urban  
8 level of services and other related land uses.

9 (b) It shall take into consideration the following specific  
10 factors:

11 (1) Proximity to centers of trading and employment  
12 facilities except where the development would  
13 generate new centers of trading and employment.

14 (2) Substantiation of economic feasibility by the peti-  
15 tioner.

16 (3) Proximity to basic services such as sewers, water,  
17 sanitation, schools, parks, and police and fire  
18 protection.

19 (4) Sufficient reserve areas for urban growth in appro-  
20 priate locations based on a ten (10) year projection.

21 (c) Lands included shall be those with satisfactory topography  
22 and drainage and reasonably free from the danger of floods,  
23 tsunامي and unstable soil conditions and other adverse  
24 environmental effects.

25 (d) In determining urban growth for the next ten years, or in  
amending the boundary, lands contiguous with existing urban  
areas shall be given more consideration than non-contiguous

lands, and particularly when indicated for future urban use on State or County General Plans.

(e) 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.

(f) Lands which do not conform to the above standards may be included within this District:

(1) When surrounded by or adjacent to existing urban development; and

(2) Only when such lands represent a minor portion of this District.

(g) It shall not include lands, the urbanization of which will contribute towards scattered spot urban development, necessitating unreasonable investment in public supportive services.

(h) It may include lands with a general slope of 20% or more which do not provide open space amenities and/or scenic values if the Commission finds that such lands are desirable and suitable for urban purposes and that official design and construction controls are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the landscape.

2-4 "A" Agricultural District. In determining the boundaries for the "A" Agricultural District, the following standards shall apply:

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- 2 (a) Lands with a high capacity for agricultural production
- 3 shall be included in this District except as otherwise
- 4 provided for in other sections of these regulations.
- 5 (b) Lands with significant potential for grazing or for other
- 6 agricultural uses shall be included in this District ex-
- 7 cept as otherwise provided for in other sections of these
- 8 regulations.
- 9 (c) Lands surrounded by or contiguous to agricultural lands
- 10 and which are not suited to agricultural and ancillary
- 11 activities by reason of topography, soils and other related
- 12 characteristics may be included in the Agricultural District.
- 13 (d) Lands in intensive agricultural use or lands with a high
- 14 capacity for intensive agricultural use should not be taken
- 15 out of this District unless the Commission finds either
- 16 that: (1) such action will not substantially impair actual
- 17 or potential agricultural production in the vicinity of
- 18 such lands, and/or (2) such action is reasonably necessary
- 19 for urban growth.

20 2-4 "C" Conservation Districts. In determining the boundaries for

21 the "C" Conservation District, the following standards shall apply:

- 22 (a) Lands necessary for protecting watersheds, water sources
- 23 and water supplies shall be included in this District except
- 24 as otherwise provided for in other sections of these
- 25 regulations.
- (b) Lands susceptible to floods, and soil erosion, land

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2 undergoing major erosion damage and requiring corrective  
3 attention by State or Federal Government, and lands neces-  
4 sary for the protection of the health and welfare of the  
5 public by reason of the lands' susceptibility to inundation  
6 by tsunami and flooding, to volcanic activity and landslides  
may be included in this District.

7 (c) Lands used for national or state parks may be included in  
8 this District.

9 (d) Lands necessary for the conservation, preservation and  
10 enhancement of scenic, historic or archaeologic sites  
11 and sites of unique physiographic or ecologic significance  
12 shall be included in this District except as otherwise  
13 provided for in other sections of these regulations.

14 (e) Lands necessary for providing and preserving parklands,  
15 wilderness and beach reserves, and for conserving natural  
16 ecosystems of endemic plants, fish and wildlife, for  
17 forestry, and other related activities to these uses shall  
18 be included in this District except as otherwise provided  
for in other sections of these regulations.

19 (f) Lands having an elevation below the maximum inland line of  
20 the zone of wave action, and marine waters, fish ponds and  
21 tide pools of the State shall be included in this District  
22 unless otherwise designated on the district maps. All off-  
23 shore and outlying islands of the State of Hawaii are clas-  
24 sified Conservation unless otherwise indicated.  
25

- (g) 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, shall be included in this District, except where such lands constitute areas not contiguous to the Conservation District.
- (h) Lands with a general slope of 20% or more which provide for open space amenities and/or scenic values shall be included in this District except as otherwise provided for in other sections of these regulations.
- (i) Lands suitable for farming, flower gardening, operation of nurseries or orchards, growing of commercial timber, grazing, hunting, and recreational uses including facilities accessory to such uses when said facilities are compatible with the natural physical environment, may be included in this District.

2-5 "R" Rural District. In determining the boundaries for the "R" Rural District, the following standards shall apply:

- (a) Areas consisting of small farms; provided that such areas need not be included in this District if their inclusion will alter the general characteristics of the areas.
- (b) Activities or uses as characterized by low density residential lots of not less than one-half (1/2) acres and a density of not more than one single-family dwelling per one-half (1/2) acre[.] in areas where "city-like" concentration of people, structures, streets, and urban level

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2 of services are absent, and where small farms are intermixed  
3 with the low density residential lots.

- 4 (c) Generally, parcels of land not more than five (5) acres;  
5 however, it may include other parcels of land, which are  
6 surrounded by, or contiguous to this District and are  
7 not suited to low density residential uses or for small  
8 farm or agricultural uses.

9 2-6 Interpretation of District Boundaries.

- 10 (a) Except as otherwise provided, a district name or letter  
11 appearing on the district maps applies throughout the  
12 whole area bounded by the district boundary lines.  
13 (b) The following rules shall apply whenever uncertainty exists  
14 with respect to the boundaries of the various Districts:  
15 (1) Whenever a district line falls within a street, alley,  
16 canal, navigable or non-navigable stream or river,  
17 it shall be deemed to be in the mid-point of the fore-  
18 going. If the actual location varies slightly from  
19 the location as shown on the district maps, then the  
20 actual location shall be controlling.  
21 (2) Whenever a district line is shown as being located  
22 within a specific distance from a street line or other  
23 fixed physical feature, or from an ownership line,  
24 this distance shall be controlling.  
25 (3) Unless otherwise indicated, the district lines shall  
be determined by the use of the scale contained on the  
map.

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- (4) All water areas within the State are considered to be within a use district and controlled by the applicable district regulations.
- (5) Lands having an elevation below the maximum inland line of the zone of wave action, and marine waters, fishponds and tide pools of the State are designated within the State's Conservation District, unless otherwise designated on the District Maps.
- (6) All requests for boundary interpretations involving shoreline properties shall be accompanied by three (3) copies of a map showing the location of the shoreline based upon actual field surveys conducted by a registered land surveyor and certified by the State Surveyor. Any erosion of accretion through natural processes which significantly affects the configuration of the property shall be reflected on the survey maps. Further, any shoreline structure, such as, but not limited to walls, revetments and 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) Whenever subparagraphs (a) and (b) mentioned hereinabove cannot resolve an uncertainty concerning the location of any district line, the Land Use Commission, upon written application or upon its own motion, shall determine the location of such district lines.



1 PART III. Land Use Regulations

2 3-1 Permissible Uses. Except as otherwise provided, the following  
3 land and building uses are compatible and permitted within the  
4 following Land Use Districts, except when a County ordinance or  
5 regulation is more restrictive. Except as otherwise provided,  
6 uses not expressly permitted are prohibited.

7 3-2 Permissible Uses Within the "U" Urban District. Any and all  
8 uses permitted by the Counties, either by ordinances or regu-  
9 lations, shall be allowed within this District, subject to any  
10 conditions imposed by the Commission pursuant to provisions of  
11 [Act 187-72.] Section 205-4 HRS.

12 3-3 Permissible Uses Within the "A" Agricultural District.

- 13 (a) [Growing] Cultivation of crops, including but not limited  
14 to flowers, vegetables, foliage, fruits, forage and timber.  
15 (b) Game and fish propagation.  
16 (c) Raising of livestock, including but not limited to poultry,  
17 bees, fish or other [domestic animals.] animal or aquatic  
18 life that are propagated for economic or personal use.  
19 (d) Farm dwellings, farm buildings, or activities or uses  
20 related to farming and animal husbandry.  
21 (e) Public institutions and buildings which are necessary  
22 for agricultural practices.  
23 (f) Public and private "open area" types of recreational uses  
24 including day camps, picnic grounds, parks, and riding  
25 stables, but not including dragstrips, airports, drive-in  
theaters, golf courses, golf driving ranges, country clubs,  
and overnight camps.

(g) Public, private, and quasi-public utility lines, and roadways, transformer stations, etc., and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material vehicle storage, repair or maintenance, treatment plants and major storage tanks not ancillary to agricultural practices, or corporation yards or other like structures.

(h) Retention, restoration, rehabilitation or improvement of buildings or sites of historic or scenic interest.

(i) Roadside stands for the sale of agricultural products grown on the premises.

(j) Buildings and uses, including but not limited to mills, storage and processing facilities, maintenance facilities that are normally considered direct accessory to the above-permitted uses.

(k) Agricultural parks.

3-4 Permissible Uses Within the "C" Conservation District. Uses of land within a Conservation District are governed by the Rules and Regulations of the State Department of Land and Natural Resources under Chapter 183, Hawaii Revised Statutes.

3-5 Permissible Uses Within the "R" Rural District.

(a) Any and all uses permitted under [Rule 2.72] Section 3-3 relating to agricultural uses and those uses that are compatible within the Agricultural District.

(b) Low density residential uses with a minimum lot size of one-half (1/2) acre. There shall be no more than one single-family dwelling per one-half (1/2) acre.

1 PART IV. Non-Conformance.

2 4-1 Statement of Intent. The regulations contained in this [sub-]  
3 Part [D] IV are intended to reasonably expedite the eventual  
4 elimination of existing uses or structures that are not in con-  
5 formity with the provisions of this part because their continued  
6 existence violates basic concepts of health, safety and welfare  
7 as well as principles of good land use. However, in applying  
8 the aforesaid regulations, no elimination of non-conforming  
9 uses or structures shall be effected so as to cause unreasonable  
10 interference with established property rights.

11 4-2 Non-Conforming Uses of Structures.

12 (a) Any lawful use of lands or buildings existing at the  
13 effective date of these regulations may be continued  
14 even though such uses do not conform to the provisions  
15 hereof.

16 (b) Except as otherwise provided, the following provisions  
17 shall apply to non-conforming uses or structures within  
18 any District.

19 (1) It shall not be changed to another non-conforming  
20 use or structure.

21 (2) It shall not be expanded or increased in intensity  
22 of use.

23 (3) It shall not be re-established after discontinuance  
24 and abandonment for a continuous period of one (1)  
25 year.

26 4-3 Non-Conforming Areas and Parcels.

27 (a) A lot of record may be occupied by any use permitted by  
28 these regulations, including a single-family dwelling;

provided, however, this exception shall not apply to subdivisions that have not received proper approval by the Counties.

(b) Any proposed subdivision of land which is not in conformity with these regulations, but which has received approval by the County having jurisdiction on or before the date of adoption of these regulations, shall be permitted as a non-conforming area subject to the ordinances and regulations of the County. All lots within the non-conforming area shall be considered as non-conforming parcels.

(c) Any parcel of land which is in a Rural District and which is smaller than one-half (1/2) acre, shall be deemed a non-conforming parcel.

4-4 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 non-conforming use.

4-5 Existence of Non-Conforming Use is a Question of Fact. Whether a non-conforming use exists shall be a question of fact and shall be decided by the County Planning Commission after public notice and hearing.

4-6 Illegal Non-Conforming Uses. An illegal non-conforming use of lands or buildings shall not be validated by the adoption of these regulations.

#### PART V. Special Permits

5-1 Petition Before County Planning Commission. Any person who desires to use his land within an Agricultural or Rural District for other than an agricultural or rural use may petition the

1 County Planning Commission within which his land is located  
2 for permission to use his land in the manner desired. [in  
3 accordance with Part I. Sub-Part D. Procedure for Special  
4 Permit.] The procedure to be utilized is outlined in Part XIII  
5 of this Commission's Rules of Practice and Procedure.

6 [5-2 Test to be Applied. Certain "unusual and reasonable" uses  
7 within Agricultural and Rural Districts other than those for  
8 which the District is classified may be permitted. The following  
9 guidelines are established in determining an "unusual and  
reasonable use."

- 10 (a) Such use shall not be contrary to the objectives sought  
11 to be accomplished by the Land Use Law and Regulations.  
12 (b) That the desired use would not adversely affect surround-  
13 ing property.  
14 (c) Such use would not unreasonably burden public agencies  
15 to provide roads and streets, sewers, water, drainage  
16 and school improvements, and police and fire protection.  
17 (d) Unusual conditions, trends and needs have arisen since  
18 the district boundaries and regulations were established.  
19 (e) That the land upon which the proposed use is sought is  
20 unsuited for the uses permitted within the District.  
21 (f) That the proposed use will not substantially alter or  
22 change the essential character of the land and the  
23 present use.  
24 (g) That the proposed use will make the highest and best use  
25 of the land involved for the public welfare.]

1 PART VI. Amendments to District Boundaries

2 6-1 Requirements for Boundary Amendments. [The Commission may  
3 permit amendment to any district boundary provided that the  
4 petitioner has submitted proof that the area is needed within  
5 the next five year period for a use other than that for which  
6 the District in which it is situated is classified and pro-  
7 vided that either one of the following requirements has been  
8 fulfilled:

9 (a) The petitioner has submitted proof that the land is  
10 usable and adaptable for the use to which it is proposed  
11 to be classified; or

12 (b) Conditions and trends of development have so changed, since  
13 the adoption of the existing classification, that the pro-  
14 posed classification is reasonable.

15 The Commission shall not approve any amendments to the district  
16 boundaries that would be contrary to the objectives sought to  
17 be accomplished by the Land Use Law and Regulations.]

18 No amendment of a land use district boundary shall be approved  
19 unless the Commission finds upon the clear preponderance of the  
20 evidence that the proposed boundary amendment is reasonable, not  
21 violative of section 205-2 and consistent with the Interim State-  
22 wide Land Use Guidance Policies established pursuant to Section 205-  
23 \_\_\_\_, or any State Plan hereafter enacted by the Legislature,  
24 which State Plan shall supersede the Interim Statewide Land Use  
25 Policies. Except when the Commission finds that an injustice  
or inequity will result, the Commission shall observe and comply  
with the Interim Statewide Land Use Guidance Policies set forth  
below:

- 1 (a) Land use amendments shall be approved only as reasonably  
2 necessary to accommodate growth and development, provided  
3 there are no significant adverse effects upon agricultural,  
4 natural, environmental, recreational, scenic, historic,  
5 or other resources of the area.
- 6 (b) Lands to be reclassified as an urban district shall have  
7 adequate public services and facilities or as can be so  
8 provided at reasonable costs to the petitioner.
- 9 (c) Maximum use shall be made of existing services and faci-  
10 lities, and scattered urban development shall be avoided.
- 11 (d) Urban districts shall be contiguous to an existing urban  
12 district or shall constitute all or a part of a self-  
13 contained urban center.
- 14 (e) Preference shall be given to amendment petitions which  
15 will provide permanent employment; or needed housing  
16 accessible to existing or proposed employment centers,  
17 or assist in providing a balance housing supply for all  
18 economic and social groups.
- 19 (f) In establishing the boundaries of the districts in each  
20 county, the Commission shall give consideration to the  
21 general plan of the county.
- 22 (g) Insofar as practicable conservation lands shall not be  
23 reclassified as urban lands.
- 24 (h) The Commission is encouraged to reclassify urban lands  
25 which are incompatible with the interim statewide land  
use guidance policy or are not developed in a timely  
manner.

1 6-2 Incremental Districting.

2 (a) Petitioners submitting applications for redistricting to  
3 urban shall also submit proof that development of the  
4 premises in accordance with the demonstrated need therefor  
5 will be accomplished within 5 years from the date of  
6 Commission approval. In the event full urban develop-  
7 ment cannot reasonably be completed within such period,  
8 the petitioner shall also submit a schedule for develop-  
9 ment of the total of such project in increments, each  
10 such increment to be completed within no more than a  
11 5-year period.

12 (b) If it appears to the Commission that full development of  
13 the total premises cannot reasonably be completed within  
14 5 years and that the incremental development plan sub-  
15 mitted by the petitioner is reasonable, and if the  
16 Commission is satisfied that all other pertinent criteria  
17 for rezoning the premises or part thereof to Urban are  
18 present, then the Commission shall rezone to Urban only  
19 that portion of the premises which the petitioner plans  
20 to develop first and upon which it appears that total  
21 development can reasonably be completed within 5 years.  
22 At the same time, the Commission will indicate its  
23 approval of the future redistricting to Urban of the  
24 total premises requested by the petitioner, or so much  
25 thereof as shall be justified as appropriate therefor  
by the petitioner, such approval to indicate a schedule  
of incremental redistricting to Urban over successive  
periods not to exceed 5 years each.



1 (c) Upon receipt of an application for redistricting to  
2 Urban of the second and subsequent increments of premises  
3 for which previous approval for incremental development  
4 has been granted by the Commission, substantial comple-  
5 tion of any offsite and onsite improvements of the urban  
6 development, in accordance with the approved incremental  
7 plan, of the preceding increment redistricted to Urban  
8 will be prima facie proof that the approved incremental  
9 plan complies with the requirements for boundary amendment.

10 6-3 Performance Time. Petitioners requesting amendments to Dis-  
11 trict Boundaries shall make substantial progress in the develop-  
12 ment of the area redistricted to the new use approved within  
13 a period specified by the Commission not to exceed five (5)  
14 years from the date of approval of the boundary change. The  
15 Commission may act to reclassify the land to an appropriate  
16 District classification upon failure to perform within the  
17 specified period according to representations made to the  
18 Commission; provided that the Commission, in seeking such  
19 a boundary reclassification, complies with the requirements  
20 of Section 205-4, Hawaii Revised Statutes.

21 PART VII. Conditions.

22 7-1 Imposition of Conditions.

23 (a) In approving a petition for boundary change, the Commis-  
24 sion may impose conditions necessary to uphold the gener-  
25 al intent and spirit of the Land Use Law and Regulations  
and to assure substantial compliance with representations  
made by the petitioner in seeking the boundary amendment.  
Such conditions may include, but are not limited to,

the following:

(1) Staging of Development. The Commission may require any development proposed by the petitioner to be coordinated and timed as necessary with the provision of public service systems such as schools, roads, drainage, and water services, including services provided by quasi-public utilities regulated by the Public Utilities Commission. The Commission shall periodically review the progress toward completion of any development proposed by the petitioner in connection with the needs and standards of the relevant public service systems and may revise as necessary the timing schedule initially required.

(2) Connection with or Provision of Service Systems. The Commission may require the petitioner to connect with existing public service systems, in order to prevent scatterization, sprawl, and costly leapfrog development. As an alternative, the Commission may authorize the provision by the petitioner of private service systems, provided that:

(a) The petitioner has demonstrated sufficient capacity in available land, capital, and projected market share to provide adequate services and facilities on an efficient basis;

(b) The services and facilities are projected for full or near-full utilization of system capacity within a reasonable time, at a level of demand to assure a unit cost comparable to that of the public sector;

1 (c) There has been satisfactory consultation with the  
2 appropriate public agencies during the project plan-  
3 ning stage and that these public agencies are agree-  
4 able to the provision of private service systems by  
5 the petitioner.

6 (3) Petitioner's Intent, Capacity and Compliance with Represen-  
7 tations. The Commission may require petitioners to submit  
8 a development schedule providing for the completion of  
9 development within a reasonable time period; to demon-  
10 strate financial, organizationl and legal capacity to  
11 undertake the development that is proposed; and to offer  
12 written assurances of compliance with any representations  
13 made by the petitioner as part of the application for  
14 approval and any specific conditions attached to approval  
15 of said application.

16 (4) Special Conditions at the Request of State and County  
17 Agencies. [All petitions for boundary redistricting  
18 shall be referred to the appropriate state and county  
19 agencies, which may advise the Commission on what con-  
20 ditions, consistent with the provisions of this section,  
21 are appropriate for inclusion in the approval of the  
22 petitioner's application.] In the review by state and  
23 county agencies of the petitions for boundary amendment  
24 filed with the Commission, the state and county agencies  
25 shall include in their recommendations, if any, special  
conditions that would be appropriate for the Commission's  
consideration.

- 1 (5) Dedications for Public Uses. The Commission may  
2 require the petitioner to dedicate land, in amounts  
3 as specified by the Commission, for park and school  
4 sites; public rights of way; easements for beach  
5 and mountain access; and easements for public or  
6 private service and utility systems. Land dedications  
7 required by the Commission shall be also subject to  
8 applicable County ordinances. The Commission may  
9 request the appropriate County Planning Commission  
10 to report periodically to the Commission on the  
11 applicant's compliance with the dedication require-  
12 ments imposed by the Commission.
- 13 (6) Dedications for Housing. The Commission may require  
14 the petitioner to dedicate land to the Hawaii Housing  
15 Authority, in an amount specified by the Commission,  
16 for use by the Authority in the construction of  
17 housing.
- 18 (7) Monitoring. The Commission may require all petitioners  
19 to submit periodic reports indicating what progress  
20 has been made in complying with any conditions that  
21 may have been imposed by the Commission under the  
22 provisions of this section. Appropriate County and  
23 State agencies shall be informed of development approv-  
24 als and asked to monitor such developments as consis-  
25 tent with their regular duties.
- (8) Notice of Transfer. The Commission may require peti-  
tioners to notify the Commission of any intent to sell,  
lease, assign, place in trust, or otherwise voluntarily

1                   alter the ownership interests in the property  
2                   covered by the approved petition.

3       (b) The approval granted by the Commission on a petition for  
4           boundary change may be reversed if the parties bound by  
5           the conditions attached to the approval fail to comply  
6           with said conditions.

7       (c) Conditions, if any, imposed by the Commission shall run  
8           with the land and shall be binding upon the petitioner  
9           and each and every subsequent owner, lessee, sub-lessee,  
10          transferee, grantee, assignee, or developer.

11       (d) On good cause shown by the petitioner or by the County  
12          Planning Commission, or upon its own motion, the Land  
13          Use Commission may act to modify, or delete any of the  
14          conditions imposed. In taking such action, the Commis-  
15          sion shall follow the procedures set forth in Part [I,  
16          Section 1.19.] XI of the Commission's Rules of Practice  
17          and Procedure.

18 PART VIII. Shoreline Setback

19 8-1 Establishment of Shoreline Setback Lines

20       (a) Shoreline setback lines are established throughout the  
21          State by the Commission at 40 feet inland from the upper  
22          reaches of the wash of waves other than storm and tidal  
23          waves, usually evidenced by the edge of vegetation growth,  
24          except that such shoreline setback lines shall be 20 feet  
25          on any land parcel of record when any one or more of the  
26          following exist:

27       (1) Where the average depth of a parcel, as measured  
28          from the shoreline or the seaward boundary of the

1 parcel, whichever is the less, is less than 100  
2 feet;

3 (2) Where the parcel is less than one-half (1/2) acre  
4 and where that parcel area is less than the minimum  
5 lot area required by the respective County zoning  
6 or subdivision ordinance applicable to said parcel;  
7 or

8 (3) Where the buildable area of the parcel is reduced to  
9 less than 50 percent of the parcel area after apply-  
10 ing the 40 foot shoreline setback line and all State  
11 and County requirements wherein the parcel is located  
12 including but not limited to front and side yard set-  
13 backs, cross-slope requirements, and terrain require-  
14 ments.

15 (b) Counties through ordinance may require that shoreline  
16 setback lines be established at a distance greater than  
17 that established by the Commission.

18 PART X. Miscellaneous Provisions.

19 10-1 Dedicated Lands. Notwithstanding any approval by the Director  
20 of Taxation of a petition of a landowner within any district  
21 to dedicate his land for specific ranching or other agricul-  
22 tural use under Section 246-12, Hawaii Revised Statutes, the  
23 Land Use Commission may change the Land Use District in which  
24 the land is situated.

25 10-2 Validity. If any section or part of these Regulations is held  
invalid for any reason whatsoever, such invalidity shall not  
affect the validity of the remaining sections or part of  
these Regulations.

1 [10-3 Effective Date. These Regulations shall become effective when  
2 officially adopted in a manner provided by law.]"

3  
4 Section 2. Part III of the Commission's Regulations entitled "Land  
5 Use District Boundaries" is incorporated into the Land  
6 Use District Regulations and is designated as Part IX of  
7 the Regulations.

8 "PART IX. Land Use District Boundaries.

9 9-1 The District Boundary maps for the entire State, on file in  
10 the Commission office, are numbered and/or named as follows:

11 (a) COUNTY OF KAUAI

12 Island of Niihau:

13 Niihau

14 Island of Kauai:

15 Key Map for Land Use District Maps, County of Kauai

16 K-1 Makaha Point  
17 K-2 Kekaha  
18 K-3 Haena  
19 K-4 Waimea Canyon  
20 K-5 Hanapepe  
21 K-6 Hanalei  
22 K-7 Waialeale  
23 K-8 Koloa  
24 K-9 Anahola  
25 K-10 Kapaa  
K-11 Lihue

(b) COUNTY OF MAUI

Island of Molokai:

Key Map for Land Use District Maps, County of Maui

(Molokai and Lanai)

Mo-1 Ilio Point  
Mo-2 Molokai Airport  
Mo-3 Kauanakakai  
Mo-4 Kamalo  
Mo-5 Halawa

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Island of Lanai:

Lanai

Island of Kahoolawe:

Kahoolawe

Island of Maui:

Key Map for Land Use District Maps, County of Maui  
(Maui)

- |      |                 |
|------|-----------------|
| M-1  | Honolua         |
| M-2  | Lahaina         |
| M-3  | Olowalu         |
| M-4  | Kahakuloa       |
| M-5  | Wailuku         |
| M-6  | Maalaea         |
| M-7  | Paia            |
| M-8  | Puu O Kali      |
| M-9  | Makena          |
| M-10 | Haiku           |
| M-11 | Kilohana        |
| M-12 | Lualailua Hills |
| M-13 | Keanae          |
| M-14 | Nahiku          |
| M-15 | Kaupo           |
| M-16 | Hana            |
| M-17 | Kipahulu        |

(c) COUNTY OF HAWAII

Island of Hawaii:

Key Map for Land Use District Maps, County of Hawaii

- |      |               |
|------|---------------|
| H-1  | Makalawena    |
| H-2  | Keahole Point |
| H-3  | Mahukona      |
| H-4  | Keawanui Bay  |
| H-5  | Anaehoomalu   |
| H-6  | Kiholo        |
| H-7  | Kailua        |
| H-8  | Kealakekua    |
| H-9  | Honaunau      |
| H-10 | Kauluoa Point |
| H-11 | Milolii       |
| H-12 | Manuka Bay    |
| H-13 | Hawi          |
| H-14 | Kawaihae      |
| H-15 | Puu Hinai     |
| H-16 | Puu Anahulu   |
| H-17 | Hualalai      |



1	H-18	Puu Lehua
	H-19	Kaunene
2	H-20	Puu Pohakuloa
	H-21	Papa
3	H-22	Pohue Bay
	H-23-A	Puu Hou
	H-23-B	Ka Lae
4	H-24	Honokane
	H-25	Kamuela
5	H-26	Nohonaohae
	H-27	Keamuku
6	H-28	Naohueleelua
	H-29	Puu O Uo
7	H-30	Sulphur Cone
	H-31	Alika Cone
8	H-32	Puu O Keokeo
	H-33	Kahuku Ranch
	H-34	Kukuihaele
9	H-35	Makahalau
	H-36	Ahumoa
10	H-37	Puu Koli
	H-38	Kokoolau
11	H-39	Mauna Loa
	H-40	Keaiwa Reservoir
12	H-41	Punaluu
	H-42	Naalehu
13	H-43	Honokaa
	H-44	Umikoa
	H-45	Mauna Kea
14	H-46	Puu Oo
	H-47	Puu Ulaula
15	H-48	Kipuka Pakekake
	H-49	Wood Valley
16	H-50	Pahala
	H-51	Kukaiau
17	H-52	Keanakolu
	H-53	Puu Akala
	H-54	Upper Piihonua
18	H-55	Kulani
	H-56	Kilauea Crater
19	H-57	Kau Desert
	H-58	Maliikakani Point
20	H-59	Papaaloa
	H-60	Akaka Falls
21	H-61	Piihonua
	H-62	Puu Makaala
	H-63	Volcano
22	H-64	Makaopuhi Crater
	H-65	Papaikou
23	H-66	Hilo
	H-67	Mountain View
24	H-68	Kalalua
	H-69	Kalapana
	H-70	Keaau Ranch
25	H-71	Pahoa North

H-72 Pahoa South  
H-73 Kapoho

(d) CITY AND COUNTY OF HONOLULU

Island of Oahu:

Key Map for Land Use District Maps, City and County  
of Honolulu

0-1	Kaena
0-2	Waianae
0-3	Waimea
0-4	Haleiwa
0-5	Schofield Barracks
0-6	Ewa
0-7	Kahuku
0-8	Hauula
0-9	Waipahu
0-10	Puuloa
0-11	Kahana
0-12	Kaneohe
0-13	Honolulu
0-14	Mokapu
0-15	Koko Head"

Section 3. Statutory material to be repealed is bracketed. New material is underscored. In printing these Rules and Regulations, the Commission need not include the brackets, the bracketed material, or the underscoring.

The Land Use District Regulations were renumbered in its entirety to be in conformity with the proposed rules of practice and procedure. To save on typing time, no brackets were placed on the existing section or part numbers and neither were the new part and section numbers underscored. The proposed amendment to the Regulations will be treated as if the appropriate brackets and underscoring were in fact inserted to the part and section numbers.

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Section 4. These Rules and Regulations shall become effective when  
officially adopted in the manner provided by law.

PROPOSED  
RULES OF PRACTICE AND PROCEDURE  
BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

PART 1. GENERAL RULES

1-1. PURPOSE. These Rules govern the practice and procedure before the Land Use Commission under Chapter 205, Hawaii Revised Statutes. They shall be construed to secure the just and speedy and inexpensive determination of every proceeding.

1-2. DEFINITIONS. As used in these Rules, except as otherwise required by context:

- (1) Act 166, Session Laws of Hawaii 1975, is the amendment to Part I, Chapter 92, Hawaii Revised Statutes.
- (2) "Agency hearing or hearing" refers only to such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14 HRS.
- (3) "Clerk Reporter" means the person who is responsible for receiving, recording and preserving the records of all matters that are brought before the Commission.

- 1 (4) "Commission, "Chairman," and "Commissioner" means  
2 the Land Use Commission of the State of Hawaii, its  
3 Chairman and a member thereof, respectively.
- 4 (5) "Executive Officer" means the person appointed by  
5 the Commission and responsible as the administra-  
6 tive head of the Commission staff and such other  
7 duties to be prescribed by the Commission.
- 8 (6) HRS means Hawaii Revised Statutes.
- 9 (7) "Intervenor" means a person who petitions to  
10 intervene in a proceeding as provided in Part  
11 VIII and is admitted as a party to a  
12 proceeding.
- 13 (8) "Meetings" means the convening of a board for which  
14 a quorum is required in order to make a decision  
15 or to deliberate toward a decision upon a matter  
16 over which the board has supervision, control,  
17 jurisdiction, or advisory power.
- 18 (9) "Party" means a person named or admitted as a  
19 party or properly seeking and entitled as of right  
20 to be admitted as a party in any court or agency  
21 proceeding.
- 22 (10) "Person" means when appropriate to the context, not  
23 only individuals, but corporations, firms,  
24 associations, societies and State and County  
25 departments or agencies.

- 1 (11) "Petitioner" means a person on whose behalf an  
2 application is made for permission or authorization  
3 which the Commission may grant under statutory or  
4 other authority delegated to it and a person  
5 seeking relief not otherwise designated in these  
6 Rules are styled petitioners.
- 7 (12) "Presiding Officer" means and shall include any  
8 member of the Commission duly designated as such.  
9 Unless otherwise designated, the Chairman shall  
10 be the Presiding Officer.
- 11 (13) "Proceeding" means any matter that is brought  
12 before the Commission in which it has jurisdiction  
13 and shall include, but not be limited to:
- 14 (1) petition for district boundary amendment;
  - 15 (2) proceeding for the adoption, amendment or  
16 repeal of rules and regulations under section  
17 205-7 HRS;
  - 18 (3) petition for declaratory ruling under section  
19 91-8 HRS; and
  - 20 (4) an investigation or review instituted or  
21 requested to be initiated by the Commission.
  - 22 (5) all other matters in the administration of  
23 Chapter 205 HRS, as amended.
  - 24
  - 25

(14) "Respondent" means a person subject to any statute administered by the Commission, or any order, rule or regulation issued or promulgated thereunder, against whom any complaint is filed or to whom any complaint is filed or to whom an order or notice is issued by the Commission instituting a hearing to show cause or investigation on its own initiative, is styled a respondent.

(15) "Rules" means the Rules of Practice and Procedure before the Commission.

1-3. THE COMMISSION.

(1) OFFICE. The office of the Commission is at Honolulu, Hawaii. All communications to the Commission shall be addressed to Land Use Commission, State of Hawaii, Kamamalu Building, 250 S. King Street, Honolulu, Hawaii, 96813, unless otherwise directed.

(2) HOURS. The office of the Commission shall be open from 7:45 a.m. to 4:30 p.m. of each week-day unless otherwise provided by statute or executive order.

1-4. MEETINGS. The Commission may meet and exercise its powers in any part of the State of Hawaii. Except as provided by law, all of its meetings are open to the public.

*Parliamentary procedure of its own meetings based upon the revised edition of the Roberts Rules of Order*

- 1 (a) Regular Meetings; Notice. All proceedings and  
2 meetings except executive meetings, shall be open  
3 to the public. The Commission shall give written  
4 public notice of the date, time and place of any  
5 regular special or rescheduled meeting. The  
6 notice shall include an agenda which list all the  
7 items to be considered at the meeting. The notice  
8 shall be filed with the office of the lieutenant  
9 governor and in the Commission's office for public  
10 inspection, at least seventy-two (72) hours before  
11 the meeting. Whenever feasible, the notice shall  
12 also be posted at the site of the meeting. Once  
13 the agenda is filed, no items shall be added to  
14 the agenda without a two-thirds recorded vote of  
15 all the members to which the Commission is entitled.
- 16 (b) Executive Meetings. The Commission may, for only  
17 those purposes provided by law, hold an executive  
18 meeting in which the public may be excluded, but  
19 only if there is an affirmative vote of two-thirds  
20 of the members present at the meeting. The reason  
21 for holding the executive meeting and the vote of  
22 the members shall be recorded and entered into the  
23 minutes of the meeting. The following can be the  
24 basis for an executive meeting:  
25



- 1 (1) To consider the hire, evaluation, dismissal,  
2 or discipline of an officer or employee or  
3 of charges brought against him, where  
4 consideration of matters affecting privacy  
5 will be involved; provided, that if the  
6 individual concerned requests an open meeting,  
7 an open meeting shall be held;
- 8 (2) To deliberate concerning the authority of  
9 persons designated by the board to conduct  
10 labor negotiations or to negotiate the  
11 acquisition of public property, or during the  
12 conduct of such negotiations;
- 13 (3) To consult with the Commission's attorney;
- 14 (4) To investigate proceedings regarding criminal  
15 misconduct; and
- 16 (5) To consider sensitive matters related to  
17 public safety or security.
- 18 (c) No ruling, regulation, contract, appointment, or  
19 decision shall be finally acted upon in an  
20 executive meeting.
- 21 (d) Emergency Meeting. Any emergency meeting is a  
22 meeting in which the seventy-two hour notice  
23 requirement cannot be met. Such a meeting can only  
24 be held if there is a written finding that there  
25 is imminent peril to the public health safety or

welfare and provided the following procedures are met:

- (1) The Commission states in writing the reasons for its finding;
- (2) Two-thirds of the members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are filed with the office of lieutenant governor and in the Commissions' office; and
- (4) Persons on the mailinglist are contacted by mail or phone as soon as practicable.

1-5. NOTICE. Notice of meetings or proceedings including the agenda for the scheduled meeting shall be sent to the parties and all persons who have made a written request to be on the mailing list for this purpose.

1-6. QUORUM AND NUMBER OF VOTES NECESSARY FOR A DECISION.

Unless otherwise provided by law, a majority of all the members to which the Commission is entitled to shall constitute a quorum to transact 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; however, all approvals of petitions for boundary amendments under Section 205-4, HRS, shall require six (6) affirmative votes.

1 1-7. MINUTES. The Commission shall keep written minutes of  
2 all meetings. Unless otherwise required by law, neither  
3 a full transcript nor a recording of the meeting is  
4 required, but the written minutes shall give a true  
5 reflection of the matters discussed at the meeting and  
6 the views of the members. The minutes shall include,  
7 but need not be limited to:

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

17 (b) The minutes shall be public records and shall be  
18 available within thirty days after the meeting except  
19 where such disclosure would be inconsistent with section  
20 92-5 HRS: provided, that minutes of executive meetings  
21 may be withheld so long as their publication would defeat  
22 the lawful purpose of the executive meeting, but no  
23 longer.

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1 1-8. DECISIONS AND ORDERS. All decisions and orders shall  
2 be signed by the Commissioners who have heard and  
3 examined the evidence in the proceeding. Commission  
4 members who have not heard and examined all of the  
5 evidence may vote and sign only after the procedures set  
6 forth in Section 91-12, HRS, have been complied with.  
7 (a) Effective Date. Unless otherwise indicated in the  
8 order, the effective date of a decision and order  
9 shall be the date of service.  
10 (b) Official copies of decisions and orders and other  
11 Commission actions shall be promulgated under the  
12 signature of the Chairman or the Executive Officer.  
13 1-9. REMOVAL OF PERSON FROM MEETINGS. The Commission may  
14 remove any person or persons who wilfully disrupts a  
15 meeting to prevent and compromise the conduct of the  
16 meeting.  
17 1-10. EXECUTIVE OFFICER. The executive officer shall prepare  
18 a hearing calendar and the agenda for all meetings under  
19 the direction of the chairman.  
20 (1) Authentication of Commission Actions. All decisions  
21 and orders and other actions of the Commission shall  
22 be authenticated by the executive officer or by such  
23 other person as may be authorized by the Commission.  
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1 (2) Request for Public Information and Records.

2 All requests for public information, copies of  
3 public records or to inspect the public records of  
4 the Commission, shall be directed to the executive  
5 officer either in writing or in person.

6 (3) Custody of Records. Under the supervision of the  
7 executive officer, the clerk - reporter shall have  
8 custody of the Commission's official records and  
9 shall be responsible for the maintenance and  
10 custody of the docket files, including the  
11 transcripts and exhibits, the minutes of all  
12 Commission's actions, and all of the Commission's  
13 decisions, orders, opinions, rules and regulations  
14 and approved forms.

15 (4) Report to Governor. The executive officer shall  
16 prepare for the Commission the draft of an annual  
17 report of the Commission's activities, accomplish-  
18 ments, and recommendations for submission to the  
19 Governor and to the Legislature through the  
20 Governor.

21 1-11. PUBLIC RECORDS. The term "public records" shall have  
22 the same meaning as is defined in Chapter 92 HRS and  
23 shall include maps, rules and regulations, written  
24 statements of policy or interpretation formulated,  
25 adopted or used by the Commission in its functions,

1 all decisions, orders, minutes of Commission meetings  
2 and records of any docket on file with the Commission  
3 but shall not include records which invades the right  
4 of privacy of an individual.

5 (1) Inspection of public records. All public records  
6 shall be available for inspection by any person  
7 during established office hours unless public  
8 inspection of such records is in violation of any  
9 other state or federal law, provided that, except  
10 where such records are open under any rule of court,  
11 the attorney general and the responsible attorneys  
12 of the various counties may determine which records  
13 in their offices may be withheld from public  
14 inspection when such records pertain to the  
15 preparation of the prosecution or defense of any  
16 action or proceeding, prior to its commencement,  
17 to which the State or county is or may be a party,  
18 or when such records do not relate to a matter in  
19 violation of law and are deemed necessary for the  
20 protection of a character or reputation of any  
21 person.

22 (2) Copies of public records. Copies of public records  
23 printed or reproduced for persons other than  
24 governmental agencies shall be given to any person  
25 provided the statutory fees or costs that are

delineated in section 92-21 HRS are paid.

(3) Denial of inspection; application to circuit courts.

Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause.

PART II

APPEARANCE BEFORE THE COMMISSION *adjudication may*

2-1. GENERAL. The intent and purpose of Act 193 SLH 1975, was to establish judicial procedures which would insure the effective application of established State land use policies through an adversary process in a hearing in which diverse interests will have an opportunity to compete in an open and orderly manner. Accordingly, this Commission expects all persons and parties to comply with these Rules of Practice and Procedure and the Hawaii Administrative Procedure Act so that the Commission will have a full and complete record upon which it can render its decision. In cases of undue hardship or unusual circumstances where the application of these rules would create an injustice to a petitioner, the Commission may waive or suspend said Rule or Rules of practice and procedure. No Rules, however, relating to jurisdictional matters shall be waived or suspended by the Commission.

2-2. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

(1) Who may appear. Any party to a proceeding before the Commission may appear in his own behalf or as an authorized representative of a partnership, corporation, trust or association, and an officer



1 or employee of a department or agency of the State  
2 or a political subdivision may represent that  
3 department or agency in any proceeding before the  
4 Commission.

5 (2) Representation by attorney. Only an attorney-at-  
6 law in good standing before the Hawaii Supreme  
7 Court shall be permitted to represent and appear  
8 in behalf of a party before the Commission.

9 2-3. CODE OF ETHICS. Any person who signs a pleading or  
10 brief, enters an appearance at a hearing, or transacts  
11 business with the Commission, by such act represents  
12 that he is legally authorized to do so and shall comply  
13 with the laws of this State and the several Counties,  
14 and the rules and regulations of this Commission, and  
15 further, he shall maintain the respect due to the  
16 Commission and shall never deceive or knowingly present  
17 any false statements of fact or law to the Commission.  
18 The Commission may at any time require any person  
19 appearing before the Commission in a representative  
20 capacity to prove his authority and qualification to  
21 act in such capacity. All former employees of the State,  
22 as that term is defined in Section 84-3 HRS, shall be  
23 in compliance with the provisions of Chapter 84 HRS,  
24 prior to making an appearance in a representative  
25 capacity before the Commission.

1 2-4. REMOVAL FROM PROCEEDING. Any person or persons who  
2 wilfully disrupt a hearing to prevent and compromise  
3 the conduct of the hearing shall be removed from the  
4 hearing room.  
5

6 PART III

7 FORMAL REQUIREMENTS FOR  
8 ALL PLEADINGS AND BRIEFS

9 3-1. TIME AND PLACE. All pleadings, briefs, submittals,  
10 petitions, reports, maps, exceptions, memoranda and  
11 other legal papers required to be filed with the  
12 Commission in any proceeding shall be filed at the  
13 office of the Commission at Honolulu, Hawaii, within  
14 the time limit prescribed by statute, Rules and  
15 Regulations, or by order of the Commission. The date  
16 on which the papers are received shall be regarded as  
17 the date of filing.

18 3-2. FORM AND SIZE. Pleadings shall be bound at the top,  
19 shall be typewritten upon paper 8-1/2 x 14 inches in  
20 size, and exhibits or appendices, except maps, annexed  
21 thereto, where practical, folded to that size. The  
22 impression shall be on one side of the paper only and  
23 shall be double-spaced, except that footnotes and  
24 quotations in excess of a few lines may be single-  
25 spaced. Briefs may be typewritten upon paper 8-1/2 x 14

1 inches in size, or printed upon paper 6 by 9 inches  
2 in size. Reproduction may be by any process, provided  
3 all copies are clear and permanently legible.

4 3-3. TITLE AND NUMBER. Petitions pleadings, briefs and other  
5 documents shall show the title of the proceeding before  
6 the Commission and the case docket assigned by the clerk-  
7 reporter and shall show the name and address of the  
8 person or attorney.

9 3-4. SIGNATURES. The original of each petition, complaint,  
10 answer or amendment shall be signed in black ink by  
11 each party or his counsel. If such party is a  
12 corporation or association, the pleading may be signed  
13 by an officer thereof.

14 Motions, notices and briefs may be signed  
15 by an attorney.

16 3-5. VERIFICATION. Petitions and amendments thereto and other  
17 pleadings which initiates a proceeding and amendments  
18 thereto shall be verified by at least one petitioner.  
19 Answers, if any, shall be verified by at least one of  
20 the respondents filing the same.

21 If the party filing the pleading is a  
22 corporation or association, the pleading  
23 may be verified by an officer thereof.  
24  
25

- 1 3-6. VERIFICATION OF ATTORNEY. The attorney for a party  
2 may sign and verify a pleading if such party is absent  
3 or for some cause is unable to sign and verify such  
4 pleading.
- 5 3-7. COPIES. Unless otherwise required by these Rules or the  
6 Commission, there shall be filed with the Commission an  
7 original and twelve (12) copies of each pleading or  
8 amendment thereof. Additional copies shall be promptly  
9 provided if the Chairman or the Executive Officer so  
10 requests.
- 11 3-8. AMENDED PLEADINGS. All pleadings may be amended at any  
12 time prior to hearing. Amendments offered prior to  
13 hearing shall be served on all parties and filed with  
14 the Commission. All parties shall have the opportunity  
15 to answer and be heard on amendments filed after hearing  
16 commences, and the Commission shall decide whether such  
17 amendments shall be allowed.
- 18 3-9. COMPUTATION OF TIME. In computing any period of time  
19 under the rules herein, by notice, or by any order of  
20 regulation of the Commission, the time begins with the  
21 day following the act, event, or default, and includes  
22 the last day of the period unless it is a Saturday,  
23 Sunday, or legal holiday for the Commission in which  
24 event the period runs until the end of the next day  
25 which is not a Saturday, Sunday, or holiday. When the

1       prescribed period of time is ten (10) days or less,  
2       Saturdays, Sundays, or holidays within the designated  
3       period shall be excluded in the computation.

4 3-10. DEFECTIVE FILINGS. Pleadings, briefs or documents not  
5       in compliance with these Rules, Commission orders or  
6       applicable statutes shall be accepted by the clerk-  
7       reporter and filed. The mere fact of filing shall not  
8       waive any failure to comply with the Rules herein, and  
9       the Commission may require amendment of a pleading, or  
10      entertain motions in connection therewith. If the  
11      filings were in fact, defective, the date of filing shall  
12      be as of the date the defects are cured.

13 3-11. RETENTION OF DOCUMENTS BY THE COMMISSION. All documents  
14      filed with or presented to the Commission shall be  
15      retained in the files of the Commission. However, the  
16      Chairman may permit the withdrawal of original documents  
17      upon submission of properly authenticated copies to  
18      replace said original documents.

19 3-12. SERVICE OF PROCESS.

20       (1) By Whom Served. The Commission shall cause to be  
21       served all orders, notices, and other papers issued  
22       by it, together with any other papers that it is  
23       required by law to serve. All other papers shall  
24       be served by the parties filing them.

25

- 1 (2) Upon Whom Served. All papers served by either  
2 the Commission or any party shall be filed and  
3 served upon all parties or their counsel and shall  
4 contain a certification of service. Any counsel  
5 entering an appearance subsequent to the proceeding  
6 shall notify all other counsel then of record and  
7 all parties not represented by counsel of such fact.
- 8 (3) Service Upon Parties. The final decision and order,  
9 and any other paper required to be served by the  
10 Commission upon a party, shall be served upon such  
11 party, or his counsel of record.
- 12 (4) Method of Service. Service of papers shall be made  
13 personally or, unless otherwise provided by law,  
14 by first-class mail.
- 15 (5) When Service Complete. Service upon parties, other  
16 than the Commission, shall be regarded as complete  
17 by mail upon deposit in the United States mail,  
18 properly stamped and properly addressed to the  
19 parties involved.
- 20  
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PART IV  
RULEMAKING PROCEEDINGS

4-1. INITIATION OF RULEMAKING PROCEEDINGS.

(1) Motion by Commission. The Commission may, at any time on its own motion, initiate proceedings for the adoption, amendment, or repeal of any rule or regulation of the Commission.

(2) Petition by Person or Agency. Any interested person may petition the Commission for the adoption, amendment, or repeal of any rule or regulation of the Commission. Petitions for rulemaking filed with the Commission will become matters of public record.

(a) Form and Contents. Petitions for rulemaking shall conform to the requirements of Part III and shall contain the name, address, and telephone number of each petitioner; the signature of each petitioner; a draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; a statement of the petitioner's interest in the subject matter; and a statement of the reasons in support of the proposed rule, amendment, or repeal.

1 (b) Commission Action. The Commission shall,  
2 within thirty (30) days after the filing of a  
3 petition for rulemaking, either deny the  
4 petition in writing, stating its reasons for  
5 its denial or initiate proceedings in  
6 accordance with Section 91-3 HRS.

7 (c) Denial of Petition. Any petition that fails  
8 in material respect to comply with the require-  
9 ments herein or that fails to disclose  
10 sufficient reasons to justify the institution  
11 of public rulemaking proceedings will not be  
12 considered by the Commission. The Commission  
13 shall notify the petitioner in writing of such  
14 denial, stating the reasons thereto. Denial  
15 of a petition shall not operate to prevent  
16 the Commission from acting, on its own motion,  
17 on any matter disclosed in the petition.

18 (d) Acceptance of Petition. If the Commission  
19 determines that the petition is in order and  
20 that it discloses sufficient reasons in support  
21 of the proposed rulemaking to justify the  
22 institution of rulemaking proceedings, the  
23 procedures to be followed shall be as set  
24 forth in Rules 4-2 through 4-4 and the  
25 applicable statutes and law.



- 1 4-2. NOTICE OF PUBLIC HEARING.
- 2 (1) Publication and Mailing. When, pursuant to a petition
- 3 therefor or upon its own motion, the Commission
- 4 proposes to adopt, amend, or repeal a rule or
- 5 regulation, a notice of proposed rulemaking shall
- 6 be published at least once in a newspaper of general
- 7 circulation in the State and at least once in a
- 8 newspaper which is published and issued at least
- 9 twice in that respective County; and such notice
- 10 shall also be mailed to all persons or agencies who
- 11 have made timely written requests for advance
- 12 notice of the Commission's rulemaking proceedings
- 13 at their last recorded address. The notices shall
- 14 be published at least twenty (20) days prior to
- 15 the date set for public hearing. The notice of
- 16 hearing will also be filed with the Lieutenant
- 17 Governor's office.
- 18 (2) Form. A notice of the proposed adoption, amend-
- 19 ment, or repeal of a rule or regulation shall
- 20 include:
- 21 1. A statement of the date, time and place where
- 22 the public hearing will be held;
- 23 2. Reference to the authority under which the
- 24 adoption, amendment, or repeal of a rule or
- 25 regulation is proposed;

1 3. A statement of the substance of the proposed rules.

2 4-3. CONDUCT OF PUBLIC HEARING.

3 (1) Presiding Officer. The public hearing for the  
4 adoption, amendment, or repeal of rules and  
5 regulations shall be heard before the Commission  
6 and presided over by the Chairman of the Commission,  
7 or, in his absence by another member designated by  
8 the Commission. The hearing shall be conducted in  
9 such a way as to afford to interested persons a  
10 reasonable opportunity to offer testimony with  
11 respect to the matters specified in the notice of  
12 hearing and so as to obtain a clear and orderly  
13 record. The presiding officer shall have authority  
14 to administer oaths or affirmations and to take all  
15 other actions necessary to the orderly conduct of  
16 the hearing.

17 (2) Continuance of Public Hearing. Each such public  
18 hearing shall be held at the time and place set in  
19 the notice of hearing but may at such time and  
20 place be continued by the Chairman from day to day  
21 or adjourned to a later date or to a different  
22 place without notice other than the announcement  
23 thereof at the hearing.  
24  
25

- 1 (3) Order of Public Hearing. At the commencement of  
2 the hearing, the Chairman shall read the notice of  
3 hearing and shall then outline briefly the  
4 procedure to be followed. Testimony shall then be  
5 received with respect to the matters specified in  
6 the notice of hearing in such order as the chairman  
7 shall prescribe.
- 8 (4) Submission of Testimony. Each witness shall, before  
9 proceeding to testify, state his name, address,  
10 and whom he represents at the hearing, and shall  
11 give such information respecting his appearance as  
12 the Chairman may request. The Chairman shall  
13 confine the testimony to the matters for which the  
14 hearing has been called. In order to allow persons  
15 to have an equal amount of time to testify, or to  
16 prevent cumulative unnecessary testimony, the  
17 presiding officer may limit the number of witnesses,  
18 or the amount of time for testimony per individual  
19 or per issue. Every witness may be subject to  
20 questioning by the members of the Commission or by  
21 any other representative of the Commission;  
22 questions by persons or agencies shall be permitted  
23 only at the discretion of the Chairman.  
24  
25

1 (5) Oral and Written Presentation at Public Hearing.

2 All interested persons or agencies will be afforded  
3 an opportunity to submit data, views, or arguments  
4 orally or in writing that are relevant to the  
5 matters specified in the notice of hearing. The  
6 period for filing written comments, or recommenda-  
7 tions may be extended beyond the hearing date by  
8 the Chairman. An original and twelve (12) copies  
9 are requested when submitting written comments,  
10 recommendations, replies, or exhibits.

11 (6) Transcript. Unless otherwise specifically ordered  
12 by the Commission, testimony given at the public  
13 hearing shall not be reported verbatim.

14 4-4. COMMISSION ACTION. The Commission shall consider all  
15 relevant testimony and documents of record before taking  
16 final action in a rulemaking proceeding. Final action  
17 should be taken within thirty (30) working days after  
18 (a) the final public hearing, or (b) <sup>after</sup> ~~at~~ the end of  
19 the expiration of any extension period for submission  
20 of written comments or recommendations.

21 4-5. EMERGENCY RULEMAKING. Notwithstanding the foregoing  
22 rules, if the Commission finds that an imminent peril  
23 to public health or safety requires adoption, amendment,  
24 or repeal of a rule or regulation upon less than twenty  
25 (20) days notice of hearing, and states in writing its

1 reasons for such finding, it may proceed without prior  
2 notice or hearing or upon such abbreviated notice and  
3 hearing as it finds practicable to adopt an emergency  
4 rule or regulation to be effective for a period not  
5 longer than one hundred twenty (120) days without renewal.  
6 The emergency rule shall become effective upon filing  
7 with the lieutenant governor and the emergency rule is  
8 published at least once in a newspaper of general  
9 circulation in the State within five days from the date  
10 of filing of the rule.

11  
12 PART V

13 DECLARATORY ORDERS

- 14  
15 5-1. PETITIONS FOR DECLARATORY ORDER. On petition of an  
16 interested person, the Commission may issue a declaratory  
17 order as to the applicability of any statutory provision  
18 or of any rule or regulation or order of the Commission.  
19 (1) Form and Contents. The petition shall conform to  
20 the requirements of Part III and shall contain the  
21 name, address, and telephone number of each  
22 petitioner; the signature of each petitioner; a  
23 designation of the specific statutory provision,  
24 rule, or order in question, together with a state-  
25 ment of the controversy or uncertainty involved;

1 a statement of the petitioner's interest in the  
2 subject matter, including the reasons for submission  
3 of the petition; a statement of the petitioner's  
4 position or contention; a memorandum of authorities,  
5 containing a full discussion of reasons and legal  
6 authorities, in support of such position or  
7 contention.

8 (2) Commission Action. Within forty-five (45) days after  
9 the submission of a petition for declaratory ruling,  
10 the Commission shall either deny the petition in  
11 writing, stating the reasons for such denial, or  
12 issue a declaratory order on the matters contained  
13 in the petition, or set the matter for hearing, as  
14 provided in Rule 5-3 provided, however, that if the  
15 matter is set for hearing, the Commission shall  
16 render its findings and decision within thirty (30)  
17 days after the close of the hearing.

18 (3) Dismissal of Petition. The Commission may, without  
19 notice or hearing, dismiss a petition for  
20 declaratory ruling that fails in material respect  
21 to comply with the requirements of this part.

22 5-2. REFUSAL TO ISSUE DECLARATORY ORDER. The Commission may,  
23 for good cause, refuse to issue a declaratory order by giving  
24 specific reasons for such determination. Without limiting  
25 the generality of the foregoing, the Commission may so  
refuse where:

- 1 a. the question is speculative or purely hypothetical  
2 and does not involve existing facts, or facts that  
3 can be expected to exist in the near future;  
4 b. the petitioner's interest is not of the type that  
5 would give him standing to maintain an action if  
6 he were to seek judicial relief;  
7 c. the issuance of the declaratory order may affect  
8 the interests of the Commission in a litigation  
9 that is pending or may reasonably be expected to  
10 arise;  
11 d. the matter is not within the jurisdiction of the  
12 Commission.

13 5-3. REQUEST FOR HEARING. Although in the usual course of  
14 disposition of a petition for a declaratory ruling no  
15 formal hearing will be granted to the petitioner or to  
16 a party in interest, the Commission may in its  
17 discretion order such proceeding set down for hearing.  
18 Any petitioner or party in interest who desires a  
19 hearing on a petition for a declaratory ruling shall set  
20 forth in detail in his request the reasons why the  
21 matters alleged in the petition, together with supporting  
22 affidavits or other written briefs or memoranda of  
23 legal authorities, will not permit the fair and  
24 expeditious disposition of the petition, and, to the  
25 extent that such request for a hearing is dependent

1 upon factual assertion, shall accompany such request  
2 by affidavit establishing such facts. In the event a  
3 hearing is ordered by the Commission, the Rules relating  
4 to a hearing before the Commission shall govern the  
5 proceeding.

6 5-4. APPLICABILITY OF ORDER. An order disposing of a petition  
7 shall be applicable only to the factual situation  
8 described in the petition or set forth in the order.  
9

10 PART VI  
11 HEARING PROCEDURES

12 6-1. PRESIDING OFFICER.

13 (1) In all hearings before the Commission, the Chairman,  
14 or one of the Commissioners, or a hearing officer  
15 duly appointed and designated shall preside at the  
16 hearing.

17 (2) AUTHORITY. The presiding officer controls the  
18 course of hearings, administers oaths, receives  
19 evidence, holds appropriate conferences before or  
20 during hearings, rules upon all objections or  
21 motions which do not involve final determination of  
22 proceedings, receives offers of proof, and fixes  
23 the time for the filing of briefs, disposes of any  
24 other matter that normally and properly arises in  
25 the course of a hearing, and takes all other actions



1 authorized by law that are deemed necessary to the  
2 orderly and just conduct of a hearing.

3 (3) CONTINUANCE. The presiding officer may, in his  
4 discretion, postpone or continue any hearing.

5 (4) EXTENSIONS OF TIME. Whenever a party is required  
6 to file a pleading within the period prescribed or  
7 allowed by these Rules, by notice given thereunder  
8 or by an order or regulation, the Chairman, or in  
9 the absence of the Chairman, the executive officer  
10 may (1) for good cause before the expiration of  
11 the prescribed period, with or without notice to  
12 the parties, extend such period; (2) pursuant to a  
13 stipulation between all of the parties, extend  
14 such period; and (3) permit the act to be done  
15 after the expiration of a specified period where  
16 the failure to act is clearly shown to be the  
17 result of excusable neglect. All requests for  
18 continuances, except for stipulations, should be  
19 by written motion, unless it is made during the  
20 course of a hearing.

21 6-2. HEARING OFFICER. A hearing officer duly appointed shall  
22 have the same powers that are accorded to the presiding  
23 officer.  
24  
25

1 6-3. DISQUALIFICATION. No Commissioner or hearing officer  
2 shall sit in any proceeding in which he has any pecuniary  
3 or business interest involved in the proceeding or who  
4 is related within the first degree by blood or marriage  
5 to any party to the proceeding. If, after declaring any  
6 pecuniary interest or consanguinity to the parties,  
7 the parties do not oppose the Commissioner from sitting  
8 in a proceeding, the record will note clearly the waiver  
9 by the parties.

10 6-4. UNAUTHORIZED EX PARTE COMMUNICATIONS.

11 a. Ex parte communication. Unauthorized ex parte  
12 communications are defined as private communications  
13 or arguments with members of the Commission or its  
14 hearings officer as to the merits of a proceeding  
15 with a view towards influencing the outcome of the  
16 cause, except that the following classes of ex parte  
17 communications shall not be prohibited:

- 18 1. Those which relate solely to matters which a  
19 Commission member or hearings officer is  
20 authorized by the Commission to dispose of on  
21 ex parte basis.
- 22 2. Requests for information with respect to the  
23 status of a proceeding.
- 24 3. Those which all parties to the proceeding agree  
25 or which the Commission has formally ruled may

be made on an ex parte basis.

4. Those with representatives of any news media on matters intended to inform the general public.

b. Unauthorized communication. 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.

6-5. NOTICE OF HEARINGS.

(1) Boundary amendment petitions. Upon a proper filing of a petition for boundary amendment, the Commission shall within sixty<sup>rather than</sup> (60) and not more than one hundred twenty days (120) conduct a hearing on the island in which the subject property is situated. The notice of hearing shall be served on the director of the department of planning and economic development, all County Planning Commissions, County planning departments, persons with a property interest in the subject property that is recorded at the department of taxation, and persons who have made a written request or are on the mailing list for this purpose at their last recorded address at least thirty days in advance of the hearing date.

- 1 (a) Contents of Notice. The notice of hearing of a  
2 boundary amendment shall include:
- 3 (1) The date, time, place and nature of hearing;  
4 (2) The legal authority under which the hearing  
5 is to be held;  
6 (3) The particular sections of the statutes and  
7 rules involved;  
8 (4) An explicit statement in plain language of  
9 the issues involved;  
10 (5) The fact that any party may retain counsel if  
11 he so desires;  
12 (6) Where the map of subject property or petition  
13 may be inspected; and  
14 (7) Shall inform interested persons of their  
15 rights under 205-4(d) HRS.
- 16 (b) Publication of Notice. The notice of hearing for a  
17 boundary amendment shall also be published at least  
18 once in a newspaper of general circulation in the  
19 State and as well as in a County newspaper in which  
20 subject property is situated not less than thirty  
21 (30) days in advance of the hearing date. The  
22 notice of hearing shall also be filed with the  
23 lieutenant governor's office..  
24  
25

1 (2) Other Proceedings. For all other proceedings, the  
2 notice of hearing will be served to all parties  
3 and persons on the mailing list for this purpose  
4 at their last recorded address within a reasonable  
5 time after the hearing date has been set. Further  
6 the notice will be filed at least seventy-two (72)  
7 hours prior to the hearing with the lieutenant  
8 governor's office.

9 6-6. PREHEARING CONFERENCE; EXCHANGE OF EXHIBITS.

10 A presiding officer may hold a pre-hearing conference  
11 with the parties for the purpose of formulating or  
12 simplifying the issues, arranging for the exchange of  
13 proposed exhibits or proposed written testimony, setting  
14 of schedules, exchanging names of witnesses, limitation  
15 of number of witnesses, and such other matters as may  
16 expedite orderly conduct and disposition of the  
17 proceeding.

18 6-7. LIMITING NUMBER OF WITNESS. To avoid unnecessary  
19 cumulative evidence, the presiding officer may limit  
20 the number of witnesses or the time for testimony upon  
21 a particular issue.

22 6-8. ORDER OF PROCEDURE. In hearings on petitions and  
23 complaints, the petitioner or complainant shall open  
24 and close. Intervenor's shall be heard in such order  
25 as the presiding officer directs.

- 1 6-9. CO-COUNSEL. Where a party is represented by more  
2 than one counsel, only one of the counsel shall be  
3 permitted to cross-examine a witness or to state any  
4 objections or to make closing arguments.
- 5 6-10. WITNESSES; REQUEST FOR SUBPOENAS. Requests for the  
6 issuance of subpoenas, requiring the attendance of a  
7 witness for the purpose of taking oral testimony before  
8 the Commission shall be in writing, and shall state the  
9 reasons why the testimony of the witness is believed  
10 to be material and relevant to the issues involved.  
11 Only parties or a Commissioner may request the issuance  
12 of a subpoena.
- 13 6-11. SUBPOENAS DUCES TECUM. Requests for the issuance of  
14 subpoenas for the production of documents or records  
15 shall be in writing; shall specify the particular  
16 document or record, or part thereof, desired to be  
17 produced; and shall state the reasons why the produc-  
18 tion thereof is believed to be material and relevant  
19 to the issues involved.
- 20 6-12. WHO MAY ISSUE SUBPOENAS. Subpoenas may be issued by the  
21 Chairman or in his absence, any Commissioner. No  
22 subpoena shall issue unless the party has complied with  
23 Rule 6-10 or Rule 6-11, and gives the name and address  
24 of the desired witness. Signed and sealed blank  
25 subpoenas will not be issued to anyone. The name and

1 address of the witness shall be inserted in the original  
2 subpoena, a copy of which shall be filed in the  
3 proceeding. Subpoenas shall show at whose instance  
4 the subpoena is issued.

5 6-13. FEES. Witnesses summoned shall be paid the same fees  
6 and mileage as are paid witnesses in Circuit Courts of  
7 the State of Hawaii and such fees and mileage shall be  
8 paid by the party at whose instance the witness appear.

9 6-14. OATH.  
10 Witnesses shall be placed under oath or affirmation  
11 prior to testifying.

12 6-15. CONSOLIDATION. The Commission, upon its own initiative  
13 or upon motion, may consolidate for hearing or for other  
14 purposes, or may contemporaneously consider, two or  
15 more proceedings which involve substantially the same  
16 parties or issues which are the same or closely related  
17 if it finds that such consolidation or contemporaneous  
18 consideration will be conducive to the proper dispatch  
19 of its business and to the ends of justice and will not  
20 unduly delay the proceedings.

21 6-16. SUBSTITUTION OF PARTIES. Upon motion and for good  
22 cause shown, the Commission may order substitution of  
23 parties, except that in the case of death of a party,  
24 substitution may be ordered without the filing of a  
25 motion.

1 6-17. MOTIONS.

2 (a) Before or after hearing.

3 1. Form; contents. All motions other than those  
4 made during a hearing shall be made in writing  
5 to the Commission or hearings officer, and  
6 shall state the relief sought and shall be  
7 accompanied by affidavits or legal memorandum  
8 setting forth the grounds upon which they are  
9 based.

10 (b) Service of motions. The moving party shall serve  
11 a copy of all motion papers on all other parties  
12 and shall file with the Commission the original  
13 with proof of service.

14 (c) Memorandum in opposition; Waiver. A memorandum  
15 in opposition or counter affidavit shall be served  
16 on all parties and the original and proof of  
17 service shall be filed with the Commission within  
18 five (5) days after being served with motion. The  
19 Chairman may order the memorandum in opposition  
20 to be filed earlier than the five (5) days period.  
21 Failure to serve or file a memorandum in  
22 opposition to a motion or failure to appear at the  
23 hearing may be deemed a waiver of objection to the  
24 granting or denial of the motion. A party who  
25 does not oppose the motion shall notify the  
executive officer and opposing counsel or party  
promptly.



PART VII

EVIDENCE

7-1. FORM AND ADMISSIBILITY.. The Commission shall not be bound by the rules relating to the admission or rejection of evidence, but may exercise its own discretion in such matter with a view to doing substantial justice.

7-2. RULINGS. The presiding officer shall rule on the admissibility of all evidence. Such 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 substantial justice, the presiding officer may refer the matter to the Commission for determination.

7-3. OBJECTIONS AND EXCEPTIONS. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

7-4. OFFER OF PROOF. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.

7-5. PREPARED TESTIMONY. With the approval of the presiding officer, a witness may read into the record his testimony on direct examination. Before any prepared

1 testimony is read, unless excused by the presiding  
2 officer, the witness shall deliver copies thereof to  
3 the presiding officer, the reporter, and all counsel or  
4 parties. Admissibility shall be subject to the rules  
5 governing oral testimony. If the presiding officer  
6 deems that substantial saving in time will result, a  
7 copy of the prepared testimony may be received in  
8 evidence without reading, provided that copies thereof  
9 shall have been served upon all parties and the Commission  
10 five days before the hearing or such prior service is  
11 waived, to permit proper cross examination of the  
12 witness on matters contained in said prepared testimony.

13 7-6. DOCUMENTARY EVIDENCE. If relevant and material matter  
14 offered in evidence is embraced in a document containing  
15 other matters, the party offering it shall designate  
16 specifically the matter so offered. If other matter in  
17 the document would unnecessarily encumber the record,  
18 the document will not be received in evidence, but at  
19 the discretion of the presiding officer, the relevant  
20 and material matter may be read into the record or copies  
21 thereof received as an exhibit. Other parties shall be  
22 afforded opportunity to examine the document, and to  
23 offer in evidence other portions thereof believed  
24 material and relevant.  
25

1 7-7. EXHIBITS. Exhibits shall be legible and may be prepared  
2 on paper not exceeding 8-1/2 x 14 inches or 8-1/2 x 11  
3 inches in size or bound or folded to the respective  
4 approximate size, where practical. Wherever practicable,  
5 sheets of each exhibit shall be numbered and data and  
6 other figures shall be set forth in tabular form.

7 7-8. COPIES OF EXHIBITS. When exhibits are offered in  
8 evidence, the original and twelve (12) copies shall be  
9 furnished to the presiding officer with a copy to each  
10 party to the proceeding other than the Commission,  
11 unless such copies have been previously furnished  
12 or the presiding officer directs otherwise.

13 7-9. COMMISSION RECORDS. If any matter contained in a  
14 document on file as a public record with the Commission  
15 is offered in evidence, unless directed otherwise by  
16 the presiding officer, such document need not be  
17 produced as an exhibit, but may be received in evidence  
18 by reference, provided that the particular portions  
19 of such document are specifically identified and other-  
20 wise competent, relevant and material. If testimony  
21 in proceedings other than the one being heard is offered  
22 in evidence, a copy thereof shall be presented as an  
23 exhibit, unless otherwise ordered by the presiding  
24 officer.

25

1 7-10. OFFICIAL NOTICE OF FACTS. Official notice may be taken  
2 of such matters as may be judicially noticed by the  
3 courts of the State of Hawaii. Official notice may also  
4 be taken of generally recognized technical or scientific  
5 facts within the Commission's specialized knowledge when  
6 parties are given notice either before or during the  
7 hearing of the material so noticed and afforded the  
8 opportunity to contest the facts so notice.  
9 7-11. ADDITIONAL EVIDENCE. At the hearing, the presiding  
10 officer may require the production of further evidence  
11 upon any issue. Upon agreement of the parties, he may  
12 authorize the filing of specific documentary evidence  
13 as a part of the record within a fixed time after sub-  
14 mission reserving exhibit number therefor.  
15 7-12. CORRECTION OF TRANSCRIPT. Motions made at the hearing  
16 to correct the transcript will be acted upon by the  
17 presiding officer or the Commission, as the case may be.  
18 Motions made after the hearing to correct the transcript  
19 shall be filed with the Commission within five days  
20 after receipt of the transcript unless otherwise direct-  
21 ed and shall be served on all parties. Such motions  
22 shall certify the date when the transcript was  
23 received. If no objections are received within ten (10)  
24 days after date of service, the transcript will, upon  
25 approval of the Commission, be changed to reflect such

1 corrections. If objections are received, the motion  
2 will be acted upon with due consideration to the  
3 stenographic transcript of the hearing.

4  
5 PART VIII

6 INTERVENTION

7  
8 8-1. INTERVENTION IN PROCEEDING.

9 (a) Petition to intervene. In any proceeding, petitions  
10 to intervene and become a party shall be in  
11 conformity with Part III and filed with the  
12 Commission.

13 (b) Contents of petition. The petition shall make  
14 reference to the following:

15 1. Nature of petitioner's statutory or other right.

16 2. Nature and extent of his interest *and if an*

17 *abstract property, owner give the map key description*  
18 3. Effect of any decision in the proceeding on  
petitioner's interest.

19 4. Other means available whereby petitioner's  
20 interest may be protected.

21 5. Extent petitioner's interest may be represented  
22 by existing parties.

23 6. Extent petitioner's interest in the proceeding  
24 differs from that of the other parties.

25 7. Extent petitioner's participation can assist in  
development of a sound record.

*Binding on intervention on that party  
# 88 copy to Commission  
notification of all parties*

- 1 8. Extent petitioner's participation will broaden  
2 the issue or delay the proceeding.
- 3 9. How the petitioner's intervention would  
4 serve the public interest.
- 5 (c) Filing of petition. The original with proof of  
6 service on all parties shall be filed  
7 with the Commission fifteen (15) days before the  
8 date of hearing. Late filings will not be permitted  
9 except for good cause shown.
- 10 (d) Opposition to Intervention. If any party opposes  
11 the petition for intervention, the party shall file  
12 his motion to oppose within five (5) days after  
13 being served.
- 14 8-2. APPEAL FROM DENIAL. A person whose petition to intervene  
15 has been denied may appeal such denial to the circuit  
16 court pursuant to Section 91-14 HRS.
- 17 8-3. FILING FEES. Petitions for intervention shall be  
18 accompanied by a filing fee of \$\_\_\_\_\_.  
19 *(Reasonable was entered in for LOC to me)*  
20  
21  
22  
23  
24  
25

PART IX  
HEARING OFFICER PROCEDURE

9-1. RECOMMENDATIONS OF HEARINGS OFFICER.

(a) Submission of recommendations. Upon completion of taking of the evidence the hearings officer shall prepare a report setting forth findings of facts, conclusions of law, and the reasons therefor, and a recommended order and submit the report of the case to the Commission.

(b) Contents of record. The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the parties, objections to the conduct of the hearing and the report of the hearing officer and all other matters placed in evidence.

(c) Service of hearings officer's report. The hearings officer shall cause a copy of his report to be served upon all parties to the proceedings.

9-2. EXCEPTIONS TO HEARINGS OFFICER'S REPORT AND RECOMMENDATIONS

(a) File; form; copies; time; service. Within ten (10) working days after service of the report and recommendations by the hearings officer, a party

1 may file with the Commission his exceptions to the  
2 report and his brief in support thereof with the  
3 Commission simultaneously. Copies of such  
4 exceptions and briefs shall be served upon each  
5 party to the proceeding.

6 (b) Contents of exceptions; waiver. The exceptions  
7 shall:

- 8 1. Set forth specifically the questions of  
9 procedure, fact, law, or policy to which  
10 exceptions are taken.
- 11 2. Identify that part of the hearings officer's  
12 report and recommended order to which objections  
13 are made.
- 14 3. Designate by page citation the portions of the  
15 record relied upon.
- 16 4. State all the grounds for exceptions to a  
17 ruling, finding, conclusion or recommendation.  
18 The grounds not cited or specifically urged  
19 are waived.

20 9-3. SUPPORT OF HEARINGS OFFICER'S REPORT AND RECOMMENDATIONS.

21 (a) File; form; copies; time; service. Within ten (10)  
22 working days after service of the exceptions taken  
23 to the hearing officer's report, a party may file  
24 with the Commission a brief in support of the  
25 hearing officer's recommendations. Copies of the



1 brief in support shall be served upon each party  
2 to the proceeding.

3 (b). Contents of support brief. The support brief shall:

4 1. Answer specifically the points of procedure,  
5 fact, law or policy to which exceptions were  
6 taken.

7 2. State the facts and reasons why report and  
8 recommendations must be affirmed.

9 3. Designate by page citation the portions of the  
10 record relied upon.

11 9-4. ORAL ARGUMENT BEFORE THE COMMISSION.

12 (a) Oral Argument. If a party desires to argue orally  
13 before the Commission, a written request with  
14 reasons therefor shall accompany the exceptions  
15 or the support briefs filed and the Commission may  
16 grant such request.

17 (b) Commission. The Commission may direct oral  
18 argument on its own motion.

19 9-5. COMMISSION ACTION.

20 (a) In the event no statement of exceptions is filed  
21 as herein provided, the Commission may proceed to  
22 reverse, modify or adopt the recommendations of the  
23 hearings officer.  
24  
25

1 (b) Upon the filing of the exceptions and briefs  
2 together with the briefs in support, the Commission  
3 may render its decision forthwith upon the record,  
4 or if oral argument has been allowed after oral  
5 argument, or may reopen the docket and take  
6 further evidence or may make such other disposition  
7 of the case that is necessary under the circumstances.

8  
9 PART X

10 POST HEARING PROCEDURES

11  
12 10-1. BRIEFS. The presiding officer may fix the time for the  
13 filing of briefs. Exhibits may be reproduced in an  
14 appendix to a brief. A brief of more than 20 pages  
15 shall contain a subject index and table of authorities.  
16 Requests for extension of time to file briefs must be  
17 made to the Commission in writing, and a copy thereof  
18 served upon or mailed to the other parties to the  
19 proceeding. Ordinarily, when a matter is to be sub-  
20 mitted on concurrent briefs, extensions will not be  
21 granted unless a stipulation is filed with the  
22 Commission.

23 10-2. ORAL ARGUMENTS. The Commission or the presiding officer  
24 may direct or permit the presentation of oral argument  
25 with petitioner opening and concluding the argument.

1 Not more than one hour on each side of the proceeding  
2 will be allowed for argument without special leave of  
3 the Commission. If more than one party is participating  
4 on a side of the proceeding, the parties so concerned  
5 shall divide the hour for that side.

6 10-3. ISSUANCE OF DECISIONS AND ORDERS. A proceeding shall  
7 stand submitted for decision by the Commission after the  
8 taking of evidence, and the filing of such briefs or the  
9 presentation of such oral argument as may have been  
10 prescribed by the presiding officer or hearing officer.  
11 A party to the proceeding may submit a proposed  
12 decision and order which shall include proposed findings  
13 of fact. Said proposals shall be mailed to each party  
14 to the proceeding and an opportunity given to each  
15 party to comment thereon. Every decision and order  
16 adverse to a party to the proceeding, rendered by the  
17 Commission in a contested case, shall be in writing or  
18 stated in the record and shall be accompanied by  
19 separate findings of fact and conclusions of law. If  
20 any party to the proceeding has filed proposed findings  
21 of fact, the Commission shall incorporate in its  
22 decision a ruling upon each proposed findings so  
23 presented.

24 10-4. SERVICE OF DECISIONS AND ORDERS. Decisions and Orders  
25 shall be served by the executive officer by mailing

1 certified copies thereof to the parties of record.  
2 When service is not accomplished by mail, it may be  
3 effected by personal delivery of a certified copy  
4 thereof. When a party to an application proceeding has  
5 appeared by a representative, service upon such  
6 representative or counsel shall be deemed to be service  
7 upon the party.

8 10-5. RECONSIDERATION OF PETITIONS. The Commission shall not  
9 reconsider its action on any petition after the period  
10 within which the Commission is required to act on such  
11 petition under Chapter 205, HRS. The Commission further  
12 shall not reconsider its action on any petition after  
13 6:00 p.m. of the first week-day following the date of such  
14 action.

15 10-6. RE-APPLICATION BY PETITIONER. The Commission shall not  
16 consider any petition for boundary amendment or special  
17 permit covering substantially the same request for  
18 substantially the same land as had previously been  
19 denied by the Commission within one year of the date of  
20 such denial unless the petitioner submits significant  
21 new data or additional reasons which substantially  
22 strengthen his petition, provided that in no event shall  
23 any such new petition be accepted within six (6) months  
24 of the date of such previous denial.  
25

PART XI

RECORDATION OF CONDITIONS

11-1. FILING PROCEDURE FOR CONDITIONS IMPOSED BY THE COMMISSION.

All conditions imposed by the Commission in its decision and order and required to be recorded at the Bureau of Conveyances or filed with the Assistant Registrar of the Land Court shall comply with the following procedures:

- (a) The document listing the conditions shall be submitted to the Land Use Commission for its approval prior to filing with the Bureau of Conveyances or the Assistant Registrar of the Land Court.
- (b) The owner of the property shall record the conditions at the Bureau of Conveyances or with the Assistant Registrar of the Land Court, as the case may be, within 30 days after the receipt of the decision and order requiring same.
- (c) Evidence of recordation shall be by certified copy under the signature of the Assistant Registrar of Land Court or by the Registrar of Conveyances, as the case may be. The owner of the property shall forward a certified copy to the Land Use Commission.
- (d) Description of the land shall be sufficiently accurate to identify the land intended to be affected. Registered land shall be identified by

lot number, map number, land court application number, and the transfer certificate of title number to be affected.

11-2. ENFORCEMENT OF CONDITONS. Whenever the Commission shall have reason to believe that there has been a failure to perform according to the conditions imposed, the Commission shall issue and serve upon the party bound by the conditions an order to show cause why the property should not revert to its former land use classification or a more appropriate classification.

(a) The order to show cause shall:

- (1) Be given in writing by registered or certified mail with return receipt requested at least thirty (30) days before the hearing;
- (2) Include a statement of the date, time, place and nature of the hearing;
- (3) Include a description and a map of the property to be affected;
- (4) State the legal authority under which the hearing is to be held;
- (5) State the specific sections of the statutes and/or rules involved;
- (6) State that any party may retain counsel if he so desires.

1 (b) Any procedure in an order to show cause hearing  
2 may be modified or waived by stipulation of the  
3 parties and informal disposition may be made in  
4 any case by stipulation, agreed settlement, consent  
5 order or default.  
6

7 PART XII

8 PETITION FOR DISTRICT  
9 BOUNDARY AMENDMENT

10 12-1. STANDING TO INITIATE BOUNDARY AMENDMENTS. The follow-  
11 ing persons may initiate a petition to the Commission  
12 for district boundary amendment:

- 13 (a) Land Use Commission  
14 (b) State departments or agencies  
15 (c) County departments or agencies in which the  
16 land is situated.  
17 (d) Any person with a property interest in the land  
18 sought to be reclassified.

19 12-2. FORM AND CONTENTS. The form of the petition for  
20 boundary amendment shall conform to the requirements  
21 of PART III of these Rules. All petitions shall state  
22 clearly and concisely the authorization or relief  
23 sought; shall cite by appropriate reference the  
24 statutory provision or other authority under which  
25 Commission authorization or relief is sought. Further

the following 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. Notice, orders, and other papers may be served upon the person so named, and such service shall be deemed to be service upon applicant.
- (3) Description of the subject property; acreage, and tax map key number, with maps that identify the area under petition.
- (4) The reclassification sought and present use of property.
- (5) Petitioner's proprietary interest in subject property.

12-3. COPIES; SERVICE. There shall be filed with the Commission one original and twenty copies of petitions for boundary amendments. Further, the petitioner shall serve copies to every county planning commission and department in this State, the director of department of



1 planning and economic development, or his designated  
2 representative, and all persons with a property interest  
3 in the land recorded at the department of taxation.  
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- 1 12-4. FEES. An application for an amendment to district  
2 boundary shall be accompanied by a certified check for  
3 \$50.00 payable to the State of Hawaii. The Commission  
4 shall waive this fee on any petition submitted by  
5 a State or County department or agency.
- 6 12-5. PETITION FOR URBAN CLASSIFICATION. Petitions  
7 requesting an urban classification shall include, but  
8 not be limited to, the following type of facts or data:  
9 (a) Type of urban development proposed, such as  
10 single-family, multi-family, residential, planned  
11 development, resort, commercial, industrial, etc..  
12 (b) Data such as projected number of lots; lot-size;  
13 number of units; densities; selling price;  
14 intended market, development timetables; projected  
15 costs; petitioner's financial condition together  
16 with latest balance sheet or income statement.  
17 (c) What significant effects, if any, upon the  
18 environment, agriculture, recreational historic,  
19 scenic or other resource of the area.  
20 (d) Development plans, site plans, topographic  
21 analysis, drainage, soil conditions, traffic  
22 or demographic studies, including charts, tables,  
23 analysis, and reports supporting the above data.  
24 (e) Availability of public services and facilities  
25 such as schools; sewer; parks; water; sanitation;

- 1 drainage; roads; police and fire protection;  
2 adequacy thereof, or whether said services or  
3 facilities would be unreasonably burdened by the  
4 proposed development.
- 5 (f) Location of proposed development in relationship  
6 to adjacent urban districts and developments  
7 whether contiguous or part of a self-contained  
8 center.
- 9 (g) Relationship to employment centers; potential for  
10 permanent employment opportunities.
- 11 (h) If residential development, whether development  
12 considers housing for all economic and social  
13 groups.
- 14 (i) County General Plan designation, <sup>and</sup> whether amendments  
15 are necessary, recommendations, if any, by County  
16 Planning Department, or Commission.
- 17 (j) Any unique planning or development feature; long,  
18 range plans for adjacent areas or community  
19 development, changing characteristics of community  
20 or area in question.
- 21 (k) Facts to indicate why the proposed classifica-  
22 tion is necessary at this time and at this  
23 specific location.
- 24 (l) Facts indicating that the proposed classifica-  
25 tion is consistent with the State's interim land

1 use guidance policy, Chapter 205 HRS, and  
2 Commission's District Regulations.

3 (m) An environmental impact statement, if required,  
4 under Chapter 343 HRS and the Environmental Impact  
5 Statement Regulations adopted thereto.

6 (n) If applicable, whether the proposed amendment  
7 will be in conformity with the Environmental  
8 Shoreline Protection Act, Act 176 SLH 1975, and  
9 the rules and regulations adopted thereto.

10 12-6. PETITIONS REQUESTING CONSERVATION, RURAL AND AGRICULTURAL  
11 CLASSIFICATIONS.

12 Petitions requesting a classification for a conservation,  
13 rural or agricultural district classification, shall  
14 provide the basic factual information that will satisfy  
15 the criteria for districting and classification of  
16 lands established by Section 205-2, HRS and Subparts  
17 B and C of the Commission's District Regulations  
18 relating to establishment of State Land Use Districts  
19 and Land Use Regulations. All statements made to  
20 support petitioner's contention that the proposed  
21 amendment is consistent with the land use law and  
22 regulations shall be supported by appropriate documenta-  
23 tion in the form of reports, studies, maps, data, and  
24 other information that will provide a full record and  
25 will aid the Commission in rendering a sound decision.

1 The petition shall also include, but not be limited to,  
2 the following:

3 (a) What significant effects if any, upon the  
4 environment, agriculture, recreational, historic or  
5 other resources of the area.

6 (b) Soil conditions, drainage conditions, demographic  
7 or ecological studies, if any.

8 (c) County general plan designation, <sup>and</sup> whether a general  
9 plan amendment is necessary, ~~and recommendations~~  
10 if any, by County Planning Department, or Commission

11 (d) Facts to indict why the proposed classification is  
12 necessary at this time and at this specific  
13 location.

14 (e) Whether the proposal is consistent with the  
15 Interim Statewide Land Use Guidance Policy, See  
16 Section 10 of Act 193, SLH 1975.

17 (f) An environmental impact statement, if required,  
18 under Chapter 343 HRS and the Environmental Impact  
19 Statement Regulations adopted thereto.

20 (g) If applicable, whether the proposed amendment  
21 will be in conformity with the Environmental  
22 Shoreline Protection Act, Act 176 SLH 1975, and  
23 the rules and regulations adopted thereto.  
24  
25

PART XIII

SPECIAL USE PERMIT PROCEDURES

- 13-1. <sup>Special use</sup> PETITION FOR PERMIT. Any person who desires to use his land within an agricultural or rural district for other than an agricultural or rural use may petition the County Planning Commission within which his land is located for <sup>special use permit</sup> ~~permission~~ to use his land in the manner desired. If approved, the County Planning Commission shall forward the <sup>decision together with the findings of the</sup> ~~petition~~ to the Commission <sup>entry record of the procedure</sup> for its approval, approval with modification or denial.
- 13-2. CONTENT OF PETITION. Petitions for issuance of a special permit shall specify the permit desired and state concisely the nature of the petitioner's interest in the subject matter and his reasons for seeking the permit, and shall include any facts, views, arguments and data deemed relevant by the petitioner.
- 13-3. RULES. The petitioner shall comply with all of the rules of practice and procedure of the County Planning Commission in which subject property is located.
- 13-4. CONDITIONS. The County Planning Commission may require such protective conditions as it deems necessary in the issuance of a permit. The County Planning Commission shall establish, among other conditions, a reasonable time limit suited to establishing the <sup>cannot ask to hear further on County Planning Commission - only use records.</sup>

1 particular use, which time limit shall be a condition  
2 of the special permit. If the permitted use is not  
3 substantially established to the satisfaction of the  
4 County Planning Commission within the specific time,  
5 it may revoke the permit. The County Planning  
6 Commission may, with Land Use Commission concurrence,  
7 extend the time limit if it deems that unusual  
8 circumstances warrant the granting of such an extension.

9 13-5. ORAL ARGUMENTS. Upon receipt of the decision granting  
10 a special use permit and the record of the County  
11 Planning Commission, the Commission may, at its own  
12 option or at the request of a party to the proceeding  
13 before the County Planning Commission, schedule oral  
14 arguments to be heard by the Commission on the merits  
15 of the County Planning Commission's decision.

16 (a) Not an evidentiary hearing. There shall be no  
17 taking of any evidence by the Commission in a  
18 special use permit proceeding, nor will any  
19 hearing be granted for the taking of additional  
20 evidence.

21 (b) Oral argument; waiver. If a party desires to  
22 present oral argument to the Commission, he shall  
23 present a written statement, to be in the form  
24 of a motion, stating the concise reasons why the  
25 Commission should entertain the argument.

*Sunshine Law*

1 This motion shall be filed with the Commission  
2 within five (5) days after the decision and record  
3 is received by the Commission. Failure to file  
4 said motion within five (5) days is a waiver of a  
5 party's right to present oral argument.

6 (c) Filing dates; waiver. If oral arguments are to be  
7 heard by the Commission, the parties shall receive  
8 notice by the executive officer of the date when  
9 their briefs shall be filed with the Commission.  
10 The briefs shall be filed simultaneously and  
11 there shall be no extensions granted for the filing  
12 of briefs. Failure to file a brief may be deemed  
13 a waiver of objection to the approval or denial  
14 of the special use permit.

15 (d) Briefs. The briefs to be submitted in a special  
16 use permit proceeding shall state concisely the  
17 points, grounds, reasons and arguments that are  
18 based on the record as to why the permit should be  
19 approved, approved with modification or denied.  
20 The form of the brief and service requirements shall  
21 be in accordance with Part III of these Rules and  
22 9-2 and 9-3 of these Rules.  
23  
24  
25



PART XIV

FORMS

14-1. FORMS. The following skeleton form of a petition is merely illustrative as to a general form. The contents of a particular pleading will vary, depending upon the subject matter and applicable procedural Rules.

(1) Form for petition for amendment to district boundary; verification; certificate of service.  
(See Form A)

(2) Form for petition to intervene. (See Form B)

ADDENDUM

(1) A definition of hearing officer will be added to the definition Section:

"Hearing Officer" means any qualified person or persons designated and authorized by the Commission to conduct a hearing for the purpose of taking testimony and to report his or their findings of facts and conclusions of laws with his or their recommendations to the Commission on matters that are within the jurisdiction of the Commission.

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

Docket No. \_\_\_\_\_

The petition of (exact legal name of each petitioner, home address or principal place of business if a corporation, partnership or association, and the State in which petitioner was organized or incorporated, telephone number) respectfully shows that:

1. Communications in regard to this petition are to be addressed to (name, title, address and phone number; if represented by counsel, his or her office address with phone number).
2. The description of the subject property is as follows:  
  
(Provide description with acreage, tax map key number and map(s) that are attached as on exhibit).
3. Petitioner(s) request(s) an amendment to the Land Use District Boundary in the County of \_\_\_\_\_ Island of \_\_\_\_\_, from its present classification in a(n) \_\_\_\_\_ district to a(n) \_\_\_\_\_ district.

4. Petitioner(s) property interest in subject property is(are) as follows:

(Describe precisely what the property interest in subject property is.)

5. Petitioner (here and in succeeding numbered paragraphs, state the specific facts it intends to prove as required by applicable policies, rules, and statutes, and any other material and relevant facts that will produce a full record. All documents, reports, etc; should be attached as exhibits.)

Wherefore, petitioner requests an order (state accurately the specific authorization sought by petitioner).

Dated at \_\_\_\_\_, State of Hawaii this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ .

\_\_\_\_\_  
signature of each petitioner`  
\_\_\_\_\_

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

STATE OF HAWAII )

\_\_\_\_\_ County of \_\_\_\_\_ )

(Name of one petitioner), being first duly sworn, on  
oath deposes and says: That he is the petitioner in the  
above proceeding, has read the foregoing petition, and  
knows the contents thereof; and that the same is true  
except as to matters stated on information or belief, and  
that as to those matters he believes it to be true.

\_\_\_\_\_  
Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ Judicial Circuit, State of Hawaii  
My commission expires: \_\_\_\_\_

CORPORATE VERIFICATION

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

STATE OF HAWAII )  
 ) ss.  
\_\_\_\_\_ County of \_\_\_\_\_ )

(Name of authorized representative), being first duly sworn, on oath deposes and says: That he is the (title of officer) of (name of company), the within named petitioner, that he makes this verification for and on behalf of said petitioner and is authorized to do so; that he has read the foregoing petition, and knows the contents thereof, and that the same is true except as to matters stated on information or belief and that as to those matters he believes it to be true.

\_\_\_\_\_  
Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Judicial Circuit, State of Hawaii  
My commission expires: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof was served upon  
the following by mailing the same, postage prepaid on

\_\_\_\_\_ 19\_\_\_\_, addressed as follows:

1. (Insert addresses of all county planning  
commission and departments in the State.)
2. Director of Planning and Economic Development,  
State of Hawaii.
3. (All persons with a property interest, other  
than petitioner, whose names are recorded at the  
department of taxation for subject property.)

\_\_\_\_\_  
signature of petitioner or attorney

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

Docket No.

The petition of (exact legal name of each petitioner, home address or principal place of business if a corporation, partnership or association, and the State in which petitioner was organized or incorporated, telephone number) respectfully shows that:

1. Communications in regard to this petition are to be addressed to (name, title, address and phone number; if represented by counsel, his or her office address with phone number).
2. Petitioner(s) property interest in subject property is (are) as follows:  
  
(Describe precisely what the property interest in subject property is.)
3. Petitioner (here and in succeeding paragraphs state the specific facts as required by Part VIII of these Rules.)



Wherefore, petitioner requests an order (state accurately the specific authorization sought by petitioner).

Dated at \_\_\_\_\_, State of Hawaii this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
signature of each petitioner  
\_\_\_\_\_

Important to go all in @ County Planning  
Commission.

Will make legislative - can speak/ commission