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

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

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

5. "Commission" shall mean the Land Use Commission of the State of Hawaii.

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

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

8. "Economic feasibility" shall mean the degree to which (1) the market demand for the goods and services proposed by the petitioner is accurately estimated and appears to be substantial enough to indicate a...
a probability of sufficiently profitable endeavor to justify the rezoning requested, and (2) the costs of providing public services will be overcome by the public revenues to be accrued through taxes and other sources or will otherwise be offset by effects beneficial to the economy of the State.

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

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

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

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

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

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

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

(16) "Non-conforming structure" shall mean a building or structure, lawfully existing at the time of adoption
of the State Land Use District Regulations and Boundaries or subsequent amendments made thereto, that does not conform to the State Land Use District Regulations and Boundaries.

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

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

(19) "Planning Commission" shall mean the Planning Commissions of the various Counties, including the City and County of Honolulu.

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

(21) "Public institution and building" shall mean any institution or building being used by governmental agency for public purpose.

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

(23) "Shoreline setback" means all of the land area between 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
inland from and parallel to the shoreline at a horizontal plane.

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

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

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

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

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

1-5 Definitions Pertaining to Grammatical Usage and Construction

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

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

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

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

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

PART II. Establishment of State Land Use District

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

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

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

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

2-2 Standards for Determining District Boundaries. The following standards shall be used in establishing the district boundaries. [They shall also be used as guides for the periodic review of
district boundaries, for the granting of amendments to the district boundaries and for other changes and adjustments.]

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

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

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

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

(2) Substantiation of economic feasibility by the petitioner.

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

(4) Sufficient reserve areas for urban growth in appropriate locations based on a ten (10) year projection.

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

(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:
(a) Lands with a high capacity for agricultural production shall be included in this District except as otherwise provided for in other sections of these regulations.

(b) Lands with significant potential for grazing or for other agricultural uses shall be included in this District except as otherwise provided for in other sections of these regulations.

(c) Lands surrounded by or contiguous to agricultural lands and which are not suited to agricultural and ancillary activities by reason of topography, soils and other related characteristics may be included in the Agricultural District.

(d) Lands in intensive agricultural use or lands with a high capacity for intensive agricultural use should not be taken out of this District unless the Commission finds either that: (1) such action will not substantially impair actual or potential agricultural production in the vicinity of such lands, and/or (2) such action is reasonably necessary for urban growth.

2-4 "C" Conservation Districts. In determining the boundaries for the "C" Conservation District, the following standards shall apply:

(a) Lands necessary for protecting watersheds, water sources and water supplies shall be included in this District except as otherwise provided for in other sections of these regulations.

(b) Lands susceptible to floods, and soil erosion, land
undergoing major erosion damage and requiring corrective attention by State or Federal Government, and lands necessary for the protection of the health and welfare of the public by reason of the lands' susceptibility to inundation by tsunami and flooding, to volcanic activity and landslides may be included in this District.

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

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

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

(f) Lands having an elevation below the maximum inland line of the zone of wave action, and marine waters, fish ponds and tide pools of the State shall be included in this District unless otherwise designated on the district maps. All offshore and outlying islands of the State of Hawaii are classified Conservation unless otherwise indicated.
(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...
of services are absent, and where small farms are intermixed
with the low density residential lots.

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

2-6 Interpretation of District Boundaries.

(a) Except as otherwise provided, a district name or letter
appearing on the district maps applies throughout the
whole area bounded by the district boundary lines.

(b) The following rules shall apply whenever uncertainty exists
with respect to the boundaries of the various Districts:

(1) Whenever a district line falls within a street, alley,
canal, navigable or non-navigable stream or river,
it shall be deemed to be in the mid-point of the fore-
going. If the actual location varies slightly from
the location as shown on the district maps, then the
actual location shall be controlling.

(2) Whenever a district line is shown as being located
within a specific distance from a street line or other
fixed physical feature, or from an ownership line,
this distance shall be controlling.

(3) Unless otherwise indicated, the district lines shall
be determined by the use of the scale contained on the
map.
(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.
PART III. Land Use Regulations

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

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

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

(a) [Growing] Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage and timber.

(b) Game and fish propagation.

(c) Raising of livestock, including but not limited to poultry, bees, fish or other [domestic animals.] animal or aquatic life that are propagated for economic or personal use.

(d) Farm dwellings, farm buildings, or activities or uses related to farming and animal husbandry.

(e) Public institutions and buildings which are necessary for agricultural practices.

(f) Public and private "open area" types of recreational uses including day camps, picnic grounds, parks, and riding 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 o.r 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.
PART IV. Non-Conformance.

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

4-2 Non-Conforming Uses of Structures.

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

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

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

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

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

4-3 Non-Conforming Areas and Parcels.

(a) A lot of record may be occupied by any use permitted by
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
County Planning Commission within which his land is located for permission to use his land in the manner desired. [in accordance with Part I. Sub-Part D. Procedure for Special Permit.] The procedure to be utilized is outlined in Part XIII of this Commission's Rules of Practice and Procedure.

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

(a) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

(b) That the desired use would not adversely affect surrounding property.

(c) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

(d) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

(e) That the land upon which the proposed use is sought is unsuited for the uses permitted within the District.

(f) That the proposed use will not substantially alter or change the essential character of the land and the present use.

(g) That the proposed use will make the highest and best use of the land involved for the public welfare.]

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PART VI. Amendments to District Boundaries

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

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

(b) Conditions and trends of development have so changed, since the adoption of the existing classification, that the proposed classification is reasonable.

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

No amendment of a land use district boundary shall be approved unless the Commission finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, not violative of section 205-2 and consistent with the Interim Statewide Land Use Guidance Policies established pursuant to Section 205-__, or any State Plan hereafter enacted by the Legislature, which State Plan shall supersede the Interim Statewide Land Use 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:

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(a) Land use amendments shall be approved only as reasonably necessary to accommodate growth and development, provided there are no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area.

(b) Lands to be reclassified as an urban district shall have adequate public services and facilities or as can be so provided at reasonable costs to the petitioner.

(c) Maximum use shall be made of existing services and facilities, and scattered urban development shall be avoided.

(d) Urban districts shall be contiguous to an existing urban district or shall constitute all or a part of a self-contained urban center.

(e) Preference shall be given to amendment petitions which will provide permanent employment, or needed housing accessible to existing or proposed employment centers, or assist in providing a balance housing supply for all economic and social groups.

(f) In establishing the boundaries of the districts in each county, the Commission shall give consideration to the general plan of the county.

(g) Insofar as practicable conservation lands shall not be reclassified as urban lands.

(h) The Commission is encouraged to reclassify urban lands which are incompatible with the interim statewide land use guidance policy or are not developed in a timely manner.
Incremental Districting.

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

(b) If it appears to the Commission that full development of the total premises cannot reasonably be completed within 5 years and that the incremental development plan submitted by the petitioner is reasonable, and if the Commission is satisfied that all other pertinent criteria for rezoning the premises or part thereof to Urban are present, then the Commission shall rezone to Urban only that portion of the premises which the petitioner plans to develop first and upon which it appears that total development can reasonably be completed within 5 years. At the same time, the Commission will indicate its approval of the future redistricting to Urban of the total premises requested by the petitioner, or so much thereof as shall be justified as appropriate therefor by the petitioner, such approval to indicate a schedule of incremental redistricting to Urban over successive periods not to exceed 5 years each.
Upon receipt of an application for redistricting to Urban of the second and subsequent increments of premises for which previous approval for incremental development has been granted by the Commission, substantial completion of any offsite and onsite improvements of the urban development, in accordance with the approved incremental plan, of the preceding increment redistricted to Urban will be prima facie proof that the approved incremental plan complies with the requirements for boundary amendment.

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

PART VII. Conditions.

7-1 Imposition of Conditions.

(a) In approving a petition for boundary change, the Commission may impose conditions necessary to uphold the general 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;
(c) There has been satisfactory consultation with the appropriate public agencies during the project planning stage and that these public agencies are agreeable to the provision of private service systems by the petitioner.

(3) Petitioner's Intent, Capacity and Compliance with Representations. The Commission may require petitioners to submit a development schedule providing for the completion of development within a reasonable time period; to demonstrate financial, organizational and legal capacity to undertake the development that is proposed; and to offer written assurances of compliance with any representations made by the petitioner as part of the application for approval and any specific conditions attached to approval of said application.

(4) Special Conditions at the Request of State and County Agencies. [All petitions for boundary redistricting shall be referred to the appropriate state and county agencies, which may advise the Commission on what conditions, consistent with the provisions of this section, are appropriate for inclusion in the approval of the petitioner's application.] In the review by state and county agencies of the petitions for boundary amendment filed with the Commission, the state and county agencies shall include in their recommendations, if any, special conditions that would be appropriate for the Commission's consideration.
Dedications for Public Uses. The Commission may require the petitioner to dedicate land, in amounts as specified by the Commission, for park and school sites; public rights of way; easements for beach and mountain access; and easements for public or private service and utility systems. Land dedications required by the Commission shall be also subject to applicable County ordinances. The Commission may request the appropriate County Planning Commission to report periodically to the Commission on the applicant's compliance with the dedication requirements imposed by the Commission.

Dedications for Housing. The Commission may require the petitioner to dedicate land to the Hawaii Housing Authority, in an amount specified by the Commission, for use by the Authority in the construction of housing.

Monitoring. The Commission may require all petitioners to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the Commission under the provisions of this section. Appropriate County and State agencies shall be informed of development approvals and asked to monitor such developments as consistent with their regular duties.

Notice of Transfer. The Commission may require petitioners to notify the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily
alter the ownership interests in the property covered by the approved petition.

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

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

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

PART VIII. Shoreline Setback

8-1 Establishment of Shoreline Setback Lines

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

(1) Where the average depth of a parcel, as measured from the shoreline or the seaward boundary of the
parcel, whichever is the less, is less than 100 feet;

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

(3) Where the buildable area of the parcel is reduced to less that 50 percent of the parcel area after applying the 40 foot shoreline setback line and all State and County requirements wherein the parcel is located including but not limited to front and side yard setbacks, cross-slope requirements, and terrain requirements.

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

PART X. Miscellaneous Provisions.

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

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.
Effective Date. These Regulations shall become effective when officially adopted in a manner provided by law.

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

"PART IX. Land Use District Boundaries.

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

(a) COUNTY OF KAUA'I

Island of Niihau:

Niihau

Island of Kauai:

Key Map for Land Use District Maps, County of Kauai

K-1 Makaha Point
K-2 Kekaha
K-3 Haena
K-4 Waimea Canyon
K-5 Hanapepe
K-6 Hanalei
K-7 Waialeale
K-8 Koloa
K-9 Anahola
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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<th>Island of Lanai:</th>
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<td>Island of Kahoolawe:</td>
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<td>Kahoolawe</td>
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<td>Island of Maui:</td>
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<td>Key Map for Land Use District Maps, County of Maui (Maui)</td>
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<td>Puu O Kali</td>
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<td>Lualailua Hills</td>
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<td>M-16</td>
<td>Hana</td>
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<td>M-17</td>
<td>Kipahulu</td>
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(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             | Kawaihau |
| H-15             | Puu Hinal |
| H-16             | Puu Anahulu |
| H-17             | Hualalai |

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1. H-18  Puu Lehua
2. H-19  Kaunene
3. H-20  Puu Pohakuloa
4. H-21  Papa
5. H-22  Pohue Bay
6. H-23-A  Puu Hou
7. H-23-B  Ka Lae
8. H-24  Honokane
9. H-25  Kamuela
10. H-26  Mauna Karu
11. H-27  Kealakekua
12. H-28  Naohu Helelua
13. H-29  Puu O Uo
14. H-30  Sulphur Cone
15. H-31  Alika Cone
16. H-32  Puu O Keokeo
17. H-33  Lahuku Ranch
18. H-34  Kukuihaele Ranch
19. H-35  Makahalau
20. H-36  Puu Hana
21. H-37  Puu Kohala
22. H-38  Kokoolau
23. H-39  Mauna Loa
24. H-40  Kealakekua Reservoir
25. H-41  Punalu'u
26. H-42  Naalehu
27. H-43  Honokaa
28. H-44  Umau
29. H-45  Mauna Kea
30. H-46  Puu Oo
31. H-47  Puu Olaula
32. H-48  Kipuka Pakekake
33. H-49  Wood Valley
34. H-50  Pahala
35. H-51  Kukuihaele Ranch
36. H-52  Kealakekua
37. H-53  Puu O Keokeo
38. H-54  Upper Pahoa North
39. H-55  Kulani
40. H-56  Kilauea Crater
41. H-57  Kau Desert
42. H-58  Makahakani Point
43. H-59  Papaaloa
44. H-60  Akaka Falls
45. H-61  Pahoa North
46. H-62  Puu O Keokeo
47. H-63  Volcano
48. H-64  Makaopuhi Crater
49. H-65  Pahoa North
50. H-66  Hilo
51. H-67  Mountain View
52. H-68  Kalalua
53. H-69  Kalapana
54. H-70  Keahole Ranch
55. H-71  Pahoa North
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.
Section 4. These Rules and Regulations shall become effective when officially adopted in the manner provided by law.
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.
"Commission, "Chairman," and "Commissioner" means the Land Use Commission of the State of Hawaii, its Chairman and a member thereof, respectively.

"Executive Officer" means the person appointed by the Commission and responsible as the administrative head of the Commission staff and such other duties to be prescribed by the Commission.

HRS means Hawaii Revised Statutes.

"Intervenor" means a person who petitions to intervene in a proceeding as provided in Part VIII and is admitted as a party to a proceeding.

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

"Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

"Person" means when appropriate to the context, not only individuals, but corporations, firms, associations, societies and State and County departments or agencies.
"Petitioner" means a person on whose behalf an application is made for permission or authorization which the Commission may grant under statutory or other authority delegated to it and a person seeking relief not otherwise designated in these Rules are styled petitioners.

"Presiding Officer" means and shall include any member of the Commission duly designated as such. Unless otherwise designated, the Chairman shall be the Presiding Officer.

"Proceeding" means any matter that is brought before the Commission in which it has jurisdiction and shall include, but not be limited to:

1. petition for district boundary amendment;
2. proceeding for the adoption, amendment or repeal of rules and regulations under section 205-7 HRS;
3. petition for declaratory ruling under section 91-8 HRS; and
4. an investigation or review instituted or requested to be initiated by the Commission.
5. all other matters in the administration of Chapter 205 HRS, as amended.
(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 weekday 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.
(a) **Regular Meetings; Notice.** All proceedings and meetings except executive meetings, shall be open to the public. The Commission shall give written public notice of the date, time and place of any regular special or rescheduled meeting. The notice shall include an agenda which list all the items to be considered at the meeting. The notice shall be filed with the office of the lieutenant governor and in the Commission's office for public inspection, at least seventy-two (72) hours before the meeting. Whenever feasible, the notice shall also be posted at the site of the meeting. Once the agenda is filed, no items shall be added to the agenda without a two-thirds recorded vote of all the members to which the Commission is entitled.

(b) **Executive Meetings.** The Commission may, for only those purposes provided by law, hold an executive meeting in which the public may be excluded, but only if there is an affirmative vote of two-thirds of the members present at the meeting. The reason for holding the executive meeting and the vote of the members shall be recorded and entered into the minutes of the meeting. The following can be the basis for an executive meeting:
(1) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against him, where consideration of matters affecting privacy will be involved; provided, that if the individual concerned requests an open meeting, an open meeting shall be held;

(2) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(3) To consult with the Commission's attorney;

(4) To investigate proceedings regarding criminal misconduct; and

(5) To consider sensitive matters related to public safety or security.

(c) No ruling, regulation, contract, appointment, or decision shall be finally acted upon in an executive meeting.

(d) Emergency Meeting. Any emergency meeting is a meeting in which the seventy-two hour notice requirement cannot be met. Such a meeting can only be held if there is a written finding that there 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 Commission's office; and
(4) Persons on the mailing list 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.
1-7. MINUTES. The Commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members. The minutes shall include, but need not be limited to:

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

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where such disclosure would be inconsistent with section 92-5 HRS: provided, that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.
1-8. **DECISIONS AND ORDERS.** All decisions and orders shall be signed by the Commissioners who have heard and examined the evidence in the proceeding. Commission members who have not heard and examined all of the evidence may vote and sign only after the procedures set forth in Section 91-12, HRS, have been complied with.

(a) **Effective Date.** Unless otherwise indicated in the order, the effective date of a decision and order shall be the date of service.

(b) **Official copies of decisions and orders and other Commission actions** shall be promulgated under the signature of the Chairman or the Executive Officer.

1-9. **REMOVAL OF PERSON FROM MEETINGS.** The Commission may remove any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting.

1-10. **EXECUTIVE OFFICER.** The executive officer shall prepare a hearing calendar and the agenda for all meetings under the direction of the chairman.

(1) **Authentication of Commission Actions.** All decisions and orders and other actions of the Commission shall be authenticated by the executive officer or by such other person as may be authorized by the Commission.
(2) Request for Public Information and Records.
All requests for public information, copies of
public records or to inspect the public records of
the Commission, shall be directed to the executive
officer either in writing or in person.

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

(4) Report to Governor. The executive officer shall
prepare for the Commission the draft of an annual
report of the Commissions activities, accomplish-
ments, and recommendations for submission to the
Governor and to the Legislature through the
Governor.

1-11. PUBLIC RECORDS. The term "public records" shall have
the same meaning as is defined in Chapter 92 HRS and
shall include maps, rules and regulations, written
statements of policy or interpretation formulated,
adopted or used by the Commission in its functions,
all decisions, orders, minutes of Commission meetings
and records of any docket on file with the Commission
but shall not include records which invades the right
of privacy of an individual.

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

(2) Copies of public records. Copies of public records
printed or reproduced for persons other than
governmental agencies shall be given to any person
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.
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
or employee of a department or agency of the State
or a political subdivision may represent that
department or agency in any proceeding before the
Commission.

(2) Representation by attorney. Only an attorney-at-

law in good standing before the Hawaii Supreme

Court shall be permitted to represent and appear

in behalf of a party before the Commission.

2-3. CODE OF ETHICS. Any person who signs a pleading or

brief, enters an appearance at a hearing, or transacts

business with the Commission, by such act represents

that he is legally authorized to do so and shall comply

with the laws of this State and the several Counties,

and the rules and regulations of this Commission, and

further, he shall maintain the respect due to the

Commission and shall never deceive or knowingly present

any false statements of fact or law to the Commission.

The Commission may at any time require any person

appearing before the Commission in a representative

capacity to prove his authority and qualification to

act in such capacity. All former employees of the State,

as that term is defined in Section 84-3 HRS, shall be

in compliance with the provisions of Chapter 84 HRS,

prior to making an appearance in a representative

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

**PART III**

**FORMAL REQUIREMENTS FOR ALL PLEADINGS AND BRIEFS**

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

3-2. **FORM AND SIZE.** Pleadings shall be bound at the top, shall be typewritten upon paper 8-1/2 x 14 inches in size, and exhibits or appendices, except maps, annexed thereto, where practical, folded to that size. The impression shall be on one side of the paper only and shall be double-spaced, except that footnotes and quotations in excess of a few lines may be single-spaced. Briefs may be typewritten upon paper 8-1/2 x 14
inches in size, or printed upon paper 6 by 9 inches in size. Reproduction may be by any process, provided all copies are clear and permanently legible.

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

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

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

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

If the party filing the pleading is a corporation or association, the pleading may be verified by an officer thereof.
3-6. **VERIFICATION OF ATTORNEY.** The attorney for a party may sign and verify a pleading if such party is absent or for some cause is unable to sign and verify such pleading.

3-7. **COPIES.** Unless otherwise required by these Rules or the Commission, there shall be filed with the Commission an original and twelve (12) copies of each pleading or amendment thereof. Additional copies shall be promptly provided if the Chairman or the Executive Officer so requests.

3-8. **AMENDED PLEADINGS.** All pleadings may be amended at any time prior to hearing. Amendments offered prior to hearing shall be served on all parties and filed with the Commission. All parties shall have the opportunity to answer and be heard on amendments filed after hearing commences, and the Commission shall decide whether such amendments shall be allowed.

3-9. **COMPUTATION OF TIME.** In computing any period of time under the rules herein, by notice, or by any order of regulation of the Commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday for the Commission in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday. When the
prescribed period of time is ten (10) days or less, Saturdays, Sundays, or holidays within the designated period shall be excluded in the computation.

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

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

3-12. **SERVICE OF PROCESS.**

(1) **By Whom Served.** The Commission shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.
(2) **Upon Whom Served.** All papers served by either the Commission or any party shall be filed and served upon all parties or their counsel and shall contain a certification of service. Any counsel entering an appearance subsequent to the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(3) **Service Upon Parties.** The final decision and order, and any other paper required to be served by the Commission upon a party, shall be served upon such party, or his counsel of record.

(4) **Method of Service.** Service of papers shall be made personally or, unless otherwise provided by law, by first-class mail.

(5) **When Service Complete.** Service upon parties, other than the Commission, shall be regarded as complete by mail upon deposit in the United States mail, properly stamped and properly addressed to the parties involved.
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.
(b) **Commission Action.** The Commission shall, within thirty (30) days after the filing of a petition for rulemaking, either deny the petition in writing, stating its reasons for its denial or initiate proceedings in accordance with Section 91-3 HRS.

(c) **Denial of Petition.** Any petition that fails in material respect to comply with the requirements herein or that fails to disclose sufficient reasons to justify the institution of public rulemaking proceedings will not be considered by the Commission. The Commission shall notify the petitioner in writing of such denial, stating the reasons thereto. Denial of a petition shall not operate to prevent the Commission from acting, on its own motion, on any matter disclosed in the petition.

(d) **Acceptance of Petition.** If the Commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in Rules 4-2 through 4-4 and the applicable statutes and law.
NOTICE OF PUBLIC HEARING.

(1) Publication and Mailing. When, pursuant to a petition therefor or upon its own motion, the Commission proposes to adopt, amend, or repeal a rule or regulation, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State and at least once in a newspaper which is published and issued at least twice in that respective County; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the Commission's rulemaking proceedings at their last recorded address. The notices shall be published at least twenty (20) days prior to the date set for public hearing. The notice of hearing will also be filed with the Lieutenant Governor's office.

(2) Form. A notice of the proposed adoption, amendment, or repeal of a rule or regulation shall include:

1. A statement of the date, time and place where the public hearing will be held;

2. Reference to the authority under which the adoption, amendment, or repeal of a rule or regulation is proposed;
3. A statement of the substance of the proposed rules.

4-3. **CONDUCT OF PUBLIC HEARING.**

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

(2) **Continuance of Public Hearing.** Each such public hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the Chairman from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.
(3) **Order of Public Hearing.** At the commencement of
the hearing, the Chairman shall read the notice of
hearing and shall then outline briefly the
procedure to be followed. Testimony shall then be
received with respect to the matters specified in
the notice of hearing in such order as the chairman
shall prescribe.

(4) **Submission of Testimony.** Each witness shall, before
proceeding to testify, state his name, address,
and whom he represents at the hearing, and shall
give such information respecting his appearance as
the Chairman may request. The Chairman shall
confine the testimony to the matters for which the
hearing has been called. In order to allow persons
to have an equal amount of time to testify, or to
prevent cumulative unnecessary testimony, the
presiding officer may limit the number of witnesses,
or the amount of time for testimony per individual
or per issue. Every witness may be subject to
questioning by the members of the Commission or by
any other representative of the Commission;
questions by persons or agencies shall be permitted
only at the discretion of the Chairman.
(5) **Oral and Written Presentation at Public Hearing.**

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

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

4-4. **COMMISSION ACTION.** The Commission shall consider all relevant testimony and documents of record before taking final action in a rulemaking proceeding. Final action should be taken within thirty (30) working days after (a) the final public hearing, or (b) the end of the expiration of any extension period for submission of written comments or recommendations.

4-5. **EMERGENCY RULEMAKING.** Notwithstanding the foregoing rules, if the Commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule or regulation upon less than twenty (20) days notice of hearing, and states in writing its
reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than one hundred twenty (120) days without renewal. The emergency rule shall become effective upon filing with the lieutenant governor and the emergency rule is published at least once in a newspaper of general circulation in the State within five days from the date of filing of the rule.

PART V
DECLARATORY ORDERS

5-1. PETITIONS FOR DECLARATORY ORDER. On petition of an interested person, the Commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the Commission.

(1) Form and Contents. The petition 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 designation of the specific statutory provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
a statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition; a statement of the petitioner's position or contention; a memorandum of authorities, containing a full discussion of reasons and legal authorities, in support of such position or contention.

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

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

5-2. REFUSAL TO ISSUE DECLARATORY ORDER. The Commission may, for good cause, refuse to issue a declaratory order by giving specific reasons for such determination. Without limiting the generality of the foregoing, the Commission may so refuse where:
a. the question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;

b. the petitioner's interest is not of the type that would give him standing to maintain an action if he were to seek judicial relief;

c. the issuance of the declaratory order may affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise;

d. the matter is not within the jurisdiction of the Commission.

5-3. REQUEST FOR HEARING. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the Commission may in its discretion order such proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail in his request the reasons why the matters alleged in the petition, together with supporting affidavits or other written briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition, and, to the extent that such request for a hearing is dependent
upon factual assertion, shall accompany such request by affidavit establishing such facts. In the event a hearing is ordered by the Commission, the Rules relating to a hearing before the Commission shall govern the proceeding.

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

PART VI
HEARING PROCEDURES

6-1. PRESIDING OFFICER.

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

(2) AUTHORITY. The presiding officer controls the course of hearings, administers oaths, receives evidence, holds appropriate conferences before or during hearings, rules upon all objections or motions which do not involve final determination of proceedings, receives offers of proof, and fixes the time for the filing of briefs, disposes of any other matter that normally and properly arises in the course of a hearing, and takes all other actions
authorized by law that are deemed necessary to the orderly and just conduct of a hearing.

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

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

6-2. HEARING OFFICER. A hearing officer duly appointed shall have the same powers that are accorded to the presiding officer.
6-3. DISQUALIFICATION. No Commissioner or hearing officer shall sit in any proceeding in which he has any pecuniary or business interest involved in the proceeding or who is related within the first degree by blood or marriage to any party to the proceeding. If, after declaring any pecuniary interest or consanguinity to the parties, the parties do not oppose the Commissioner from sitting in a proceeding, the record will not clearly the waiver by the parties.

6-4. UNAUTHORIZED EX PARTE COMMUNICATIONS.

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

1. Those which relate solely to matters which a Commission member or hearings officer is authorized by the Commission to dispose of on ex parte basis.

2. Requests for information with respect to the status of a proceeding.

3. Those which all parties to the proceeding agree 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 (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.
(a) Contents of Notice. The notice of hearing of a boundary amendment shall include:

1. The date, time, place and nature of hearing;
2. The legal authority under which the hearing is to be held;
3. The particular sections of the statutes and rules involved;
4. An explicit statement in plain language of the issues involved;
5. The fact that any party may retain counsel if he so desires;
6. Where the map of subject property or petition may be inspected; and
7. Shall inform interested persons of their rights under 205-4(d) HRS.

(b) Publication of Notice. The notice of hearing for a boundary amendment shall also be published at least once in a newspaper of general circulation in the State and as well as in a County newspaper in which subject property is situated not less than thirty (30) days in advance of the hearing date. The notice of hearing shall also be filed with the lieutenant governor's office.
(2) **Other Proceedings.** For all other proceedings, the notice of hearing will be served to all parties and persons on the mailing list for this purpose at their last recorded address within a reasonable time after the hearing date has been set. Further the notice will be filed at least seventy-two (72) hours prior to the hearing with the lieutenant governor's office.

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

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

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

6-8. **ORDER OF PROCEDURE.** In hearings on petitions and complaints, the petitioner or complainant shall open and close. Intervenors shall be heard in such order as the presiding officer directs.
6-9. **CO-COUNSEL.** Where a party is represented by more than one counsel, only one of the counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.

6-10. **WITNESSES; REQUEST FOR SUBPOENAS.** Requests for the issuance of subpoenas, requiring the attendance of a witness for the purpose of taking oral testimony before the Commission shall be in writing, and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only parties or a Commissioner may request the issuance of a subpoena.

6-11. **SUBPOENAS DUces TECUM.** Requests for the issuance of subpoenas for the production of documents or records shall be in writing; shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.

6-12. **WHO MAY ISSUE SUBPOENAS.** Subpoenas may be issued by the Chairman or in his absence, any Commissioner. No subpoena shall issue unless the party has complied with Rule 6-10 or Rule 6-11, and gives the name and address of the desired witness. Signed and sealed blank subpoenas will not be issued to anyone. The name and
address of the witness shall be inserted in the original
subpoena, a copy of which shall be filed in the
proceeding. Subpoenas shall show at whose instance
the subpoena is issued.

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

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

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

6-16. SUBSTITUTION OF PARTIES. Upon motion and for good
cause shown, the Commission may order substitution of
parties, except that in the case of death of a party,
substitution may be ordered without the filing of a
motion.
6-17. MOTIONS.

(a) Before or after hearing.

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

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

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

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

7-6. DOCUMENTARY EVIDENCE. If relevant and material matter offered in evidence is embraced in a document containing other matters, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.
7-7. **EXHIBITS.** Exhibits shall be legible and may be prepared on paper not exceeding 8-1/2 x 14 inches or 8-1/2 x 11 inches in size or bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.

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

7-9. **COMMISSION RECORDS.** If any matter contained in a document on file as a public record with the Commission is offered in evidence, unless directed otherwise by the presiding officer, such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and otherwise competent, relevant and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the presiding officer.
7-10. OFFICIAL NOTICE OF FACTS. Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so notice.

7-11. ADDITIONAL EVIDENCE. At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, he may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission reserving exhibit number therefor.

7-12. CORRECTION OF TRANSCRIPT. Motions made at the hearing to correct the transcript will be acted upon by the presiding officer or the Commission, as the case may be. Motions made after the hearing to correct the transcript shall be filed with the Commission within five days after receipt of the transcript unless otherwise directed and shall be served on all parties. Such motions shall certify the date when the transcript was received. If no objections are received within ten (10) days after date of service, the transcript will, upon approval of the Commission, be changed to reflect such
corrections. If objections are received, the motion will be acted upon with due consideration to the stenographic transcript of the hearing.

PART VIII
INTERVENTION

8-1. INTERVENTION IN PROCEEDING.

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

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

1. Nature of petitioner's statutory or other right.
3. Effect of any decision in the proceeding on petitioner's interest.
4. Other means available whereby petitioner's interest may be protected.
5. Extent petitioner's interest may be represented by existing parties.
6. Extent petitioner's interest in the proceeding differs from that of the other parties.
7. Extent petitioner's participation can assist in development of a sound record.
8. Extent petitioner's participation will broaden the issue or delay the proceeding.

9. How the petitioner's intervention would serve the public interest.

(c) Filing of petition. The original with proof of service on all parties shall be filed with the Commission fifteen (15) days before the date of hearing. Late filings will not be permitted except for good cause shown.

(d) Opposition to Intervention. If any party opposes the petition for intervention, the party shall file his motion to oppose within five (5) days after being served.

8-2. APPEAL FROM DENIAL. A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to Section 91-14 HRS.

8-3. FILING FEES. Petitions for intervention shall be accompanied by a filing fee of $____. (Reasonable was evident in the case)
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. Set forth specifically the questions of procedure, fact, law, or policy to which exceptions are taken.

2. Identify that part of the hearings officer's report and recommended order to which objections are made.

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

4. State all the grounds for exceptions to a ruling, finding, conclusion or recommendation. The grounds not cited or specifically urged are waived.

SUPPORT OF HEARINGS OFFICER'S REPORT AND RECOMMENDATIONS.

(a) File; form; copies; time; service. Within ten (10) working days after service of the exceptions taken to the hearing officer's report, a party may file with the Commission a brief in support of the hearing officer's recommendations. Copies of the
brief in support shall be served upon each party to the proceeding.

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

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

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

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

9-4. ORAL ARGUMENT BEFORE THE COMMISSION.

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

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

9-5. COMMISSION ACTION.

(a) In the event no statement of exceptions is filed as herein provided, the Commission may proceed to reverse, modify or adopt the recommendations of the hearings officer.
(b) Upon the filing of the exceptions and briefs together with the briefs in support, the Commission may render its decision forthwith upon the record, or if oral argument has been allowed after oral argument, or may reopen the docket and take further evidence or may make such other disposition of the case that is necessary under the circumstances.

PART X
POST HEARING PROCEDURES

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

10-2. ORAL ARGUMENTS. The Commission or the presiding officer may direct or permit the presentation of oral argument with petitioner opening and concluding the argument.
Not more than one hour on each side of the proceeding will be allowed for argument without special leave of the Commission. If more than one party is participating on a side of the proceeding, the parties so concerned shall divide the hour for that side.

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

10-4. SERVICE OF DECISIONS AND ORDERS. Decisions and Orders shall be served by the executive officer by mailing
certified copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to an application proceeding has appeared by a representative, service upon such representative or counsel shall be deemed to be service upon the party.

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

10-6. RE-APPLICATION BY PETITIONER. The Commission shall not consider any petition for boundary amendment or special permit covering substantially the same request for substantially the same land as had previously been denied by the Commission within one year of the date of such denial unless the petitioner submits significant new data or additional reasons which substantially strengthen his petition, provided that in no event shall any such new petition be accepted within six (6) months of the date of such previous denial.
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 CONDITIONS.** 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.
(b) Any procedure in an order to show cause hearing may be modified or waived by stipulation of the parties and informal disposition may be made in any case by stipulation, agreed settlement, consent order or default.

PART XII
PETITION FOR DISTRICT BOUNDARY AMENDMENT

12-1. STANDING TO INITIATE BOUNDARY AMENDMENTS. The following persons may initiate a petition to the Commission for district boundary amendment:
(a) Land Use Commission
(b) State departments or agencies
(c) County departments or agencies in which the land is situated.
(d) Any person with a property interest in the land sought to be reclassified.

12-2. FORM AND CONTENTS. The form of the petition for boundary amendment shall conform to the requirements of PART III of these Rules. All petitions shall state clearly and concisely the authorization or relief sought; shall cite by appropriate reference the statutory provision or other authority under which 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
planning and economic development, or his designated representative, and all persons with a property interest in the land recorded at the department of taxation.
12-4. FEES. An application for an amendment to district boundary shall be accompanied by a certified check for $50.00 payable to the State of Hawaii. The Commission shall waive this fee on any petition submitted by a State or County department or agency.

12-5. PETITION FOR URBAN CLASSIFICATION. Petitions requesting an urban classification shall include, but not be limited to, the following type of facts or data:

(a) Type of urban development proposed, such as single-family, multi-family, residential, planned development, resort, commercial, industrial, etc.

(b) Data such as projected number of lots; lot-size; number of units; densities; selling price; intended market, development timetables; projected costs; petitioner's financial condition together with latest balance sheet or income statement.

(c) What significant effects, if any, upon the environment, agriculture, recreational historic, scenic or other resource of the area.

(d) Development plans, site plans, topographic analysis, drainage, soil conditions, traffic or demographic studies, including charts, tables, analysis, and reports supporting the above data.

(e) Availability of public services and facilities such as schools; sewer; parks; water; sanitation;
1 drainage; roads; police and fire protection; adequacy thereof, or whether said services or facilities would be unreasonably burdened by the proposed development.

(f) Location of proposed development in relationship to adjacent urban districts and developments whether contiguous or part of a self-contained center.

(g) Relationship to employment centers; potential for permanent employment opportunities.

(h) If residential development, whether development considers housing for all economic and social groups.

(i) County General Plan designation and whether amendments are necessary, recommendations, if any, by County Planning Department, or Commission.

(j) Any unique planning or development feature; long, range plans for adjacent areas or community development, changing characteristics of community or area in question.

(k) Facts to indicate why the proposed classification is necessary at this time and at this specific location.

(l) Facts indicating that the proposed classification is consistent with the State's interim land
use guidance policy, Chapter 205 HRS, and
Commission's District Regulations.

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

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

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

Petitions requesting a classification for a conservation,
rural or agricultural district classification, shall
provide the basic factual information that will satisfy
the criteria for districting and classification of
lands established by Section 205-2, HRS and Subparts
B and C of the Commission's District Regulations
relating to establishment of State Land Use Districts
and Land Use Regulations. All statements made to
support petitioner's contention that the proposed
amendment is consistent with the land use law and
regulations shall be supported by appropriate documenta-
tion in the form of reports, studies, maps, data, and
other information that will provide a full record and
will aid the Commission in rendering a sound decision.
The petition shall also include, but not be limited to, the following:

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

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

(c) County general plan designation whether a general plan amendment is necessary, if any, by County Planning Department, or Commission

(d) Facts to indicate why the proposed classification is necessary at this time and at this specific location.

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

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

(g) If applicable, whether the proposed amendment will be in conformity with the Environmental Shoreline Protection Act, Act 176 SLH 1975, and the rules and regulations adopted thereto.
PART XIII
SPECIAL USE PERMIT PROCEDURES

13-1. 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 permission to use his land in the manner desired. If approved, the County Planning Commission shall forward the petition to the Commission 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
particular use, which time limit shall be a condition of the special permit. If the permitted use is not substantially established to the satisfaction of the County Planning Commission within the specific time, it may revoke the permit. The County Planning Commission may, with Land Use Commission concurrence, extend the time limit if it deems that unusual circumstances warrant the granting of such an extension.

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

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

(b) Oral argument; waiver. If a party desires to present oral argument to the Commission, he shall present a written statement, to be in the form of a motion, stating the concise reasons why the Commission should entertain the argument.
This motion shall be filed with the Commission within five (5) days after the decision and record is received by the Commission. Failure to file said motion within five (5) days is a waiver of a party's right to present oral argument.

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

(d) **Briefs.** The briefs to be submitted in a special use permit proceeding shall state concisely the points, grounds, reasons and arguments that are based on the record as to why the permit should be approved, approved with modification or denied. The form of the brief and service requirements shall be in accordance with Part III of these Rules and 9-2 and 9-3 of these Rules.
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.
FORM A
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) Docket No.
) )
) for a petition to amend the )
) district boundary of )
) property situate at Puhi, )
) Kauai, County of Kauai )

PETITION FOR BOUNDARY AMENDMENT

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.)


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
FORM B

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) Docket No.
(state name) )
for a petition to amend the )
district boundary of )
property situate at Puhi, )
Kauai, County of Kauai )

PETITION FOR INTERVENTION

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 get all in County Planning Commission.