

**From:** [Ken Church](#)  
**To:** [DBEDT LUC](#)  
**Subject:** [EXTERNAL] written testimony  
**Date:** Friday, July 5, 2024 6:36:58 AM  
**Attachments:** [combined document Testimony July 2 2024.pdf](#)

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Good morning,

On July 2, 2024 I sent, to the LUC, an email with my attached testimony in regards to the LUC's proposed amendments to HAR 15-15 RULES. I have since edited my testimony. Please find attached, below, my amended testimony.

Sincerely,

Ken Church, Hakalau, Hi



**TESTIMONY OF KENNETH S. CHURCH  
HAWAII RESIDENT and owner of TMK's (3) 2-9-003: 029, 060  
in regards to the LUC's proposed amendments to HAR 15-15**

I have added, to the LUC's proposed HAR 15-15 amendment document, my comments and further testimony in (l.h. side) text boxes in the pdf document's format where the comment is relevant to the rule that is described. **This testimony is intended to replace an earlier version of my testimony, which I submitted, by email attachment, on July 2, 2024.**

I request that the LUC inform me, by email and at least 3 days in advance, when my Testimony will be considered by the LUC at a LUC scheduled meeting. My email address is dockline3@yahoo.ca.

I have applied considerable time to my Testimony and I request that the LUC treat the testimony with respect and apply fair consideration to the issues that I raise. I am not a lawyer nor do I have any professional accreditation. I acknowledge that I may not comprehensively understand the LUC's HAR 15-15 rules and related HRStatutes but it should become clear that the LUC's HAR 15-15 rules are confusing and appear to be contradictory. These are further confused by the LUC's application of its own rules.

I am aware that the Executive Officer directly told the Commissioners at the beginning of this process that '**recent hearings and orders have not completely complied with the LUC's HAR 15-15 rules or State HRS LAW**'. He referenced that '**a few recent petitions for boundary interpretations have resulted in the LUC's administrative staff recommending a number of improvements to HAR 15-15**'. DR21-72 and -73 are 2 of the **few recent petitions for boundary interpretations** that he was referring to.

Thank you in advance for considering my testimony.

Sincerely,  
Ken Church, Hakalau, Hawaii, July 5, 2024



DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT, AND TOURISM

Amendment and Compilation of Chapter 15-15  
Hawai'i Administrative Rules  
~~November 2, 2018~~

SUMMARY

1. §15-15-~~13~~-03 is amended.
2. §15-15-07(a) is amended.
3. §15-15-15(c) is amended.
4. §15-15-22(c)(1) is amended.
5. §15-15-22(f) is amended.
6. §15-15-37 is amended.
7. §15-15-38(a) is amended.
8. §15-15-40 is amended.
9. §15-15-42(a)(1) is amended.
- ~~2-10.~~ §15-15-45-17 is amended.
- ~~3-11.~~ §15-15-50(c)(13) is ~~amended~~added.
12. §15-15-50(c)(20) is amended.
13. §15-15-50(c)(27) is added.
14. §15-15-50.6(a)(1) is amended.
15. §15-15-62(a) is amended.
16. §15-15-63(f) is amended.

17. §15-15-63(f) is amended.
18. §15-15-63(h) is amended.
19. §15-15-63(l) is amended.
20. §15-15-66 is amended.
- 4-21. §15-15-70(d) is amended.
22. §15-15-70(e) is amended.
23. §15-15-70(l) is added.
- ~~5. §15-15-74 is amended.~~
- ~~6. §15-15-75 is amended.~~
- 7-24. §15-15-77(e) is ~~amended~~ added.
25. §15-15-77(f) is added.
26. §15-15-78(a) (2) is amended.
27. §15-15-78(d) (1) is amended.
28. §15-15-80 is amended.
- 8-29. §15-15-82(a) is amended.
30. §15-15-85(a) is amended.
31. §15-15-90(e) (3) is amended.
32. §15-15-90(e) (5) (B) is amended.
33. §15-15-90(e) (8) is amended.
34. §15-15-90(e) (9) is amended.
35. §15-15-90(e) (12) is amended.

36. §15-15-90(e)(13) is amended.
37. §15-15-90(e)(15) is amended.
38. §15-15-90(e)(20) is amended.
39. §15-15-90(e)(25) is added.
40. §15-15-92(b)(3) is amended.
- 9-41. §15-15-93(a) is amended.
42. §15-15-93(b) is amended.
43. §15-15-94(a) is amended.
44. §15-15-94(b) is amended.
45. §15-15-94(c) is amended.
46. §15-15-94(d) is added.
47. §15-15-94(e) is amended.
48. §15-15-95(c) is amended.
49. §15-15-95(c)(2) is amended.
50. §15-15-95(c)(4) is amended.
51. §15-15-95(c)(5) is amended.
- 10-52. §15-15-97(b)(1) is amended.
53. §15-15-97(b)(4) is amended.
54. §15-15-97(e) is amended.
55. §15-15-99 is amended.
- 11-56. §15-15-~~122~~-101 is amended.

12.57. §15-15-~~124~~-105(b) is amended.

58. §15-15-105(b) is amended.

59. §15-15-106 is amended.

60. §15-15-107(b) is amended.

61. §15-15-108(a) is amended.

13.62. Chapter 15 is compiled

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND

TOURISM

CHAPTER 15

LAND USE COMMISSION RULES

Subchapter 1 General Provisions

§15-15-01	Purpose
§15-15-02	Repealed
§15-15-03	Definitions
§15-15-04	Grammatical usage
§15-15-05	Office and office hours
§15-15-06	Chairperson and vice-chairperson
§15-15-06.1	Hearings officer
§15-15-07	Executive officer
§15-15-08	Chief clerk
§15-15-09	Public records
§15-15-10	Meetings; generally
§15-15-11	Executive meetings
§15-15-12	Repealed
§15-15-13	Quorum and number of votes necessary for a decision
§15-15-14	Removal of persons from meetings
§15-15-15	Minutes of meetings
§15-15-16	Computation of time

Subchapter 2 Establishment of State Land Use  
Districts

§15-15-17	Districts; district maps
§15-15-18	Standards for determining "U" urban district boundaries

- §15-15-19 Standards for determining "A" agricultural district boundaries
- §15-15-20 Standards for determining "C" conservation district boundaries
- §15-15-21 Standards for determining "R" rural district boundaries
- §15-15-22 Interpretation of district boundaries

#### Subchapter 3 Permissible Land Uses

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

#### Subchapter 4 Non-conformance

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

#### Subchapter 5 Proceedings Before the Commission

- §15-15-34 Quasi-judicial proceedings; waiver or suspension of rules
- §15-15-34.1 Verbatim transcripts
- §15-15-35 Appearance before the commission
- §15-15-36 Decisions and orders
- §15-15-37 Filing documents; place and time



§15-15-38 Format  
§15-15-39 Verification  
§15-15-40 Copies  
§15-15-41 Defective filings  
§15-15-42 Extensions of time  
§15-15-43 Amended pleadings  
§15-15-44 Retention of documents  
§15-15-45 Service of process  
§15-15-45.1 Fees  
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Subchapter 6 Application Requirements for  
Boundary Amendment Petitions

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

Subchapter 7 Agency Hearing and Post Hearing  
Procedures

§15-15-51 Notice of hearing for boundary  
amendment  
petitions  
§15-15-52 Intervention in proceeding for district  
boundary amendments  
§15-15-53 Intervention in other than district  
boundary amendment proceedings or  
important agricultural lands  
designation proceedings  
§15-15-54 Consolidation  
§15-15-55 Statement of position  
§15-15-55.1 Filing of exhibits

§15-15-56	Stipulation as to findings of fact, conclusions of law, and conditions of reclassification
§15-15-57	Prehearing conference; exchange of exhibits; prehearing conference order
§15-15-58	Procedure for witnesses
§15-15-59	Conduct of hearing
§15-15-60	Presiding officer
§15-15-61	Disqualification
§15-15-62	Ex parte communications
§15-15-63	Evidence
§15-15-64	Repealed
§15-15-65	Limiting testimony
§15-15-66	Removal from proceeding
§15-15-67	Co-counsel
§15-15-68	Repealed
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§15-15-70	Motions
§15-15-70.1	Protective Orders
§15-15-71	Substitution of parties
§15-15-72	Correction of transcript
§15-15-73	Post hearing procedures
§15-15-74	Decision
§15-15-75	Appeals
§15-15-76	Re-application by the petitioner for boundary amendment

Subchapter 8    Decision-Making Criteria for  
Boundary Amendments

§15-15-77	Decision-making criteria for boundary amendments
§15-15-78	Incremental districting
§15-15-79	Performance time

Subchapter 9    Post Hearing Procedures for  
Hearings Before the Commission

§15-15-80	Briefs
§15-15-81	Oral argument

§15-15-82 Issuance of decision and orders  
§15-15-82.1 Stipulation as to findings of fact,  
conclusions of law, conditions of  
reclassification and decision and order  
§15-15-83 Service of decisions and orders  
§15-15-84 Reconsideration of decision

Subchapter 10 Post Hearing Procedures for  
Hearing Conducted by Hearings  
Officer

§15-15-85 Recommendation of hearings officer  
§15-15-85.1 Proposed decision  
§15-15-86 Exception to hearings officer's report  
and recommendations  
§15-15-87 Support of hearings officer's report  
and  
recommendations  
§15-15-88 Oral argument before the commission  
§15-15-89 Final decision

Subchapter 11 Conditions: Filing, Enforcement,  
Modification, Deletion

§15-15-90 Imposition of conditions; generally  
§15-15-91 Applicability  
§15-15-92 Filing procedure for conditions imposed  
by the commission  
§15-15-93 Enforcement of conditions,  
representations, or commitments  
§15-15-94 Modification or deletion of conditions  
or orders

Subchapter 12 Special Permits

§15-15-95 Petition before county planning  
commission  
§15-15-95.1 Applicability of subchapter 5

- §15-15-96 Decision and order by the land use commission
- §15-15-96.1 Modification of special permit

Subchapter 13 Government Sponsored Housing  
Projects

- §15-15-97 Procedure for processing petitions for housing projects under section 201H-38, HRS
- §15-15-97.1 Repealed

Subchapter 14 Declaratory Orders

- §15-15-98 Who may petition
- §15-15-99 Petition for declaratory order; form and contents
- §15-15-100 Declaratory orders; commission action
- §15-15-101 Declaratory orders; dismissal of petition
- §15-15-102 Repealed
- §15-15-103 Declaratory orders; request for hearing
- §15-15-104 Applicability of declaratory order

Subchapter 15 Rulemaking Proceedings

- §15-15-105 Initiation of rulemaking proceedings
- §15-15-106 Rulemaking; form and contents of petition
- §15-15-107 Rulemaking; action on petition
- §15-15-107.1 Commission action
- §15-15-108 Rulemaking; notice of public hearing
- §15-15-109 Rulemaking; conduct of public hearing
- §15-15-110 Emergency rulemaking

Subchapter 16 Land Use District Boundaries

§15-15-111 Land use district boundaries

§15-15-112 to 15-15-119 reserved

Subchapter 17 Important Agricultural Lands

- 15-15-120 Criteria and procedures for the identification of important agricultural lands
- 15-15-121 Petition by farmer or landowner
- 15-15-122 Petition by farmer or landowner for designation of important agricultural land and urban, rural or conservation reclassification
- 15-15-123 Adherence to chapter 343, HRS
- 15-15-124 Private landowner credits in important agricultural land proceeding
- 15-15-125 County identification of important agricultural lands
- 15-15-126 Criteria for designation of lands as important agricultural lands pursuant to county recommendation
- 15-15-127 Standards and criteria for the reclassification or rezoning of important agricultural lands
- 15-15-128 Periodic review and amendment of important agricultural lands maps

Subchapter 18 (Repealed)

Historical Note: This chapter is based substantially upon Rules of Practice and Procedure, Part I of the land use commission [Eff. 4/21/62; am and ren. 8/4/69; am and ren. 1/5/75; am and ren. 12/21/75; am 3/27/77; R 10/27/86] and State Land Use District Regulations, Part II of the land use commission [Eff. 8/23/64; am and ren. 8/4/69; am and ren. 1/5/75; am and ren. 12/21/75; R 10/27/86] and §15-15-01

land use commission rules, chapter 15-15. [Eff  
10/27/86; am 3/20/87; am 7/12/93; am 3/24/94; am  
7/18/94; am and comp 8/16/97; am and comp 5/08/00; am  
and comp 11/2/2013; am and comp ]

## SUBCHAPTER 1

### GENERAL PROVISIONS

**§15-15-01 Purpose.** This chapter governs the practice and procedure before the land use commission, and shall be construed to secure the just and efficient determination of every proceeding. This chapter shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawai'i. The rules under this chapter are promulgated pursuant to authority provided by sections 205-1 and 205-7, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-7)

**§15-15-02 REPEALED.** [R 8/16/97]

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

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

"Adverse environmental effects" means the permanent loss, reduction or transformation of resource access, ecosystem services, cultural or recreational values, or other means of livelihood and health, as well as permanent loss of land or property.

"Agency" means each state or county board,

commission, department, or office authorized by law to make rules or to adjudicate contested cases, except those in legislative or judicial branches.

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

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

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

"Chairperson" means the chairperson of the commission.

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

"Commission" means the land use commission of the State of Hawai'i.

"Commissioner" means a member of the commission.

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

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

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

"Economic feasibility" means the degree to which the market demand for the proposed project, development, or use by the petitioner is accurately estimated and appears to be substantial enough to indicate the probability of a viable endeavor to justify the boundary amendment.

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

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

"Farm dwelling" means a single-family dwelling located on and used in connection with a farm or where

agricultural activity provides income to the family occupying the dwelling.

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

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

"HRS" means the Hawai'i Revised Statutes.

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

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

"Landowner" means a person or party with a fee simple interest in the land.

"Lot" means a single parcel of land of record in the real property tax records of the county in which the land is located.

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

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

"Party" means a person named or admitted as a party or entitled as of right to be admitted as a party in any contested case proceeding before the commission.



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

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

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

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

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

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

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

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

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

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

"Shoreline" means the same as in section 205-7, HRS.

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

"State" means the State of Hawai'i.

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

"Unauthorized ex parte communication" means private communications or arguments with members of the commission, or its hearing officer as to the merits of a proceeding with a view towards influencing the outcome of the petition or proceeding. [Effective 10/27/86; amended 8/16/97; 5/8/00; 11/2/2013; 2015] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-1, 205-7)

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

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

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

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

(e) Terms not defined in this chapter shall have the meaning customarily assigned to them. [Effective 10/27/86; 8/16/97; 5/8/00; 11/2/2013; 2015] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-7)

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

(b) The office of the commission shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, excepting legal holidays as designated pursuant to section 8-1, HRS, and any day or any part of a day

There is a problem throughout HAR 15-15. The word "**shall**" appears some 360 times. In a HSC opinion (copied in italics below, in part,) HSC describes when the word "**shall**" is **mandatory** and not merely **directory**. I will highlight some of the areas in this copy of the proposed amendments where problems result. Particularly in the case of my Petition DR21-72 **the DO is null and void** according to HSC because it was not issued **within 120 days of the hearing**. See HAR 15-15-100 (b) *If the matter is set for hearing, the commission shall render its findings and decision within one hundred and twenty days after the close of the hearing.* (HSC case law supports this)

I will also point out other areas. Generally where "**shall**" is mandatory in the rules a remedy should be provided for lack of performance. In the case of **Towne v. LUC (Cite as: 55 Haw. 538, 524 P.2d 84)** HSC describes how the word "**shall**"

must be applied by the LUC.....  
*Statutes 361 227 361 Statute 361VI Construction and Operation 361VI(A) General Rules of Construction 361k227 k. Construction as Mandatory or Directory. Most Cited Cases*

*Where the language of the statute (HRS § 205-4) is plain and unambiguous that a specific time provision must be met, it is mandatory and not merely directory. \*\*85 Syllabus by the Court*

**1. Where the language of the statute (HRS s 205-4) is plain and unambiguous that a specific time provision must be met, it is mandatory and not merely directory.**

**2. The adoption of district boundaries classifying lands into conservation, agricultural, rural or urban districts, or the amendment to said district boundaries is not a 'rule making' process within the meaning of HRS s 91-1(4).**

**3. A case involving an amendment to district boundaries which is challenged by an adjoining landowner having property interests in the outcome of said amendment is a 'contested case', within the meaning of HRS s 91-1(5).**

**4. All state and county boards, commissions, departments or offices must conform to the requirements of the Hawaii Administrative Procedure Act when acting in either a rule making capacity (quasilegislative), or in the adjudication of a contested case (quasi-judicial).**

Effectively petitions for boundary interpretations **must be held as a contested case hearing** and not a meeting... This conflicts with **§15-15-103**

**Declaratory orders; request for hearing.** The commission may, but shall not be required to, conduct a contested case hearing...

**My testimony** is that I strongly suggest that the LUC review and apply new language in regards to the use of the word "**shall**" throughout its HAR 15-15 rules to include performance consequences.

or for which the governor has granted administrative leave in the State, unless otherwise provided by statute or executive order. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)  
(Imp: HRS §§80-1, 91-2, 205-7)

**§15-15-06 Chairperson and vice--chairperson.**

(a) The commissioners shall annually elect a chairperson and one or more vice--chairpersons from its members.

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

(c) In the absence of the chairperson, the vice-chairperson or vice-chairpersons shall have the responsibilities and duties of the chairperson prescribed in this chapter. In case of resignation or incapacity of the chairperson, a vice-chairperson shall perform such duties as are imposed on the chairperson until such time as the commission shall elect a new chairperson. In the event the chairperson or a vice-chairperson resigns, the commission shall elect a new chairperson or vice-chairperson, as the case may be, as soon as practicable after such resignation. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp.: HRS §§91-2, 205-7)

**§15-15-06.1 Hearings officer.** (a) The commission may appoint a hearings officer pursuant to section 92-16, HRS.

(b) If for any reason the hearings officer designated is unable to complete a hearing, the commission, without abatement of the proceedings, may assign the matter to another hearings officer. [Eff and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)  
(Imp: HRS §§92-16, 205-1)

**§15-15-07 Executive officer.** (a) The executive officer shall be appointed by the commission to serve as the administrative head of the commission staff and have responsibilities and duties as prescribed by the commission. The executive officer shall be directly responsible ~~to~~ the commission, and shall have control of and responsibility for the execution of the commission's policies, the administration of its affairs, and the employment and supervision of its personnel, subject to the commission's oversight. From time to time, or as requested, the executive officer shall furnish the commission members with such information and make such recommendations as shall be necessary to effect the purposes of the commission and for the proper administration of its affairs. The executive officer shall develop annual budgets, authorize and certify payrolls, requisitions, invoices, and other such documents essential to the proper administration of the commission.

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

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

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

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

(f) The executive officer may conduct the prehearing conference provided under section 15-15-57. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-1)

**§15-15-08 Chief clerk.** (a) Under the supervision of the executive officer, the chief clerk shall have custody of the commission's official records and shall be responsible for the maintenance

and custody of the docket files, including the transcripts and exhibits, the minutes of all of the commission's meetings and hearings, and all of the commission's decisions, orders, opinions, rules, and approved forms.

(b) In addition to other duties, the chief clerk shall maintain a docket file of all proceedings filed with the commission, including all petitions for district boundary amendments, all applications for special permits, and all petitions for rule-making or declaratory ruling filed with the commission, and each docket shall be assigned a number. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: §§91-2, 205-1)

**§15-15-09 Public records.** All public records shall be available for inspection at the office of the commission during regular business hours. Public information on matters within the jurisdiction of the commission, but which excludes confidential information, may be obtained by inquiring in person during regular business hours, or by submitting a written request to the commission. Requests made via facsimile or electronic mail to the commission are acceptable. Commission staff may respond to any inquiry or request by making the records available at the commission office. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§92F-1, et seq.)

**§15-15-10 Meetings; generally.** (a) The commission may meet and exercise its power in the State of Hawai'i. Except as provided in sections 92-4 and 92-5, HRS, all of the commission meetings and hearings are open to the public. Unless waived by the chairperson, the parliamentary procedure to be utilized by the commission in the conduct of its meetings and hearings shall be based on the current edition of Robert's Rules of Order Newly Revised, but

During my Petition DR21-72 hearing for reconsideration we raised an Objection twice. The Chair ignored the Objection without pausing the hearing and ruling on it. **My testimony** is that I strongly suggest that HAR 15-15-10 add a remedy here if the process is not followed according to this rule.

only if it does not conflict with chapters 91 and 92, HRS, or these rules.

(b) The commission shall allow all interested persons an opportunity to submit data, views, arguments or present oral testimony on any agenda item in an open meeting. The commission may provide for the recordation of all presented oral testimony. The commission may impose limitations on the submission of data, views, arguments, or oral testimony in the interest of preserving due process concerns of the contested case proceeding. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-3, 92-7)

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

(b) The commission shall not make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in section 92-5(a), HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§92-4, 92-5)

**§15-15-12 REPEALED.** [R 11/2/2013]

**§15-15-13 Quorum and number of votes necessary for a decision.** (a) Unless otherwise provided by law, a majority of all the members to which the

commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the commission is entitled shall be necessary to make a commission decision valid; provided all approvals of petitions for boundary amendments under section 205-4, HRS, shall require six affirmative votes and approvals for special permits under section 205-6, HRS, shall require five affirmative votes.

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

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

(d) In contested cases, commission members who have not heard and examined all of the evidence may vote only after the procedures set forth in section 91-11, HRS, have been complied with. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; am and comp \_\_\_\_\_] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 92-15, 205-4, 205-6)

**§15-15-14 Removal of persons from meetings.** The presiding officer or executive officer may remove any person who willfully disrupts a meeting or hearing or other proceeding before the commission. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp \_\_\_\_\_] (Auth: HRS §§205-1, 205-7) (Imp: HRS §92-3)

**§15-15-15 Minutes of meetings.** (a) The commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection

of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

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

(b) The minutes shall be public and shall be available within thirty days after the meeting except where the disclosure would be inconsistent with section 92-5, HRS. The commission may withhold publication of the minutes of executive meetings so long as their publication would defeat the lawful purpose of the executive meeting.

(c) For the purposes of this section, the full, verbatim, transcript of the proceedings may serve as the minutes. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §92-9)

**§15-15-16 Computation of time.** In computing any period of time prescribed by this chapter, by notice, or by any order, or rule of the commission, or any applicable statute, the time begins with the day following the act, event, or default and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday, or a day or a part of a day on or for which the governor has granted administrative leave in the State, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Unless otherwise specified in these rules, when the prescribed period of time is less than seven days, Saturdays, Sundays, or legal holidays within the designated period shall not be included in the computation. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

In HAR 15-15-100 (b) we find the word "**shall**". It is a mandatory instruction. In *Towne V. LUC*, 55 H. 538, 524 P.2d 84 (1974) HSC found that the word "**shall**" is mandatory and furthermore applied to time limits.... *Provision that commission shall render decision within forty-five and ninety days after the public hearing is mandatory and decision rendered after the time period is void.* While, in DR21-72 the stipulated **120 days** is different than in the above cited *Towne V. LUC* the effect is the same.. The LUC heard my Petition DR21-72 on September 8, 2021, the DO was issued March 15, 2022, **188 days later**. It would seem therefore that **the LUC's DO for DR21-72 is null and void.**

**My testimony** is that I strongly suggest that HAR 15-15-16 add a remedy here if the process is not followed according to this rule.



SUBCHAPTER 2

ESTABLISHMENT OF STATE LAND USE DISTRICTS

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

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

(b) The boundaries of land use districts are shown on the maps entitled "Land Use District Boundaries, dated December 20, 1974," as amended, maintained and under the custody of the commission. Not all ocean areas and offshore and outlying islands of the State in the conservation district are shown when deemed unnecessary to do so. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-2)

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

- (1) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses;
- (2) It shall take into consideration the following specific factors:
  - (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment;

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

landscape. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013 comp ] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

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

- (1) It shall **include lands with a high capacity for agricultural production;**
- (2) It may include lands with significant potential for grazing or for other agricultural uses;
- (3) It may include lands surrounded by or contiguous to agricultural lands or which are not suited to agricultural and ancillary activities by reason of topography, soils, and other related characteristics; and
- (4) It shall include all lands designated important agricultural lands pursuant to part III of chapter 205, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

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

- (1) It shall include lands necessary for protecting watersheds, water resources, and water supplies;
- (2) It may include lands susceptible to floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention by the state and federal government, and lands necessary for the

**"Greatest possible protection"** has to mean that Ag. zoning holds a higher priority than Cons. zoning

In HAR 15-15-100 (b) we find the word "**shall**". It is a mandatory instruction.

In **Towne V. LUC, 55 H. 538, 524 P.2d 84 (1974)** HSC found that the word "**shall**" is mandatory and furthermore applied to time limits....

In HAR 15-15-19 (1) it is described that *lands with a high capacity for agricultural production* "**shall**" be zoned in the Ag. District.

HRS 205-2 (3) goes further here..... *In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation;*

In the case of my property, TMK(as) (3) 2-9-003; 029, 060 they are classified to have **a high capacity for agricultural production**.. They are shoreline lands.

In 1969 the LUC redistricted large tracts of Hawai'i Island's shorelines into the Conservation District..

**The record of the LUC's redistricting actions are found in three 1969 community hearing transcripts and a 200 + page book ("Report")..**

Combined the 4 historical records described that **the LUC would not subsequently interpret the district boundary on the SLUD maps to have redistricted shoreline lands, that were in ag. use in 1969.** None-the-less the LUC issued a DO, for Petition DR 21-72, that my property was redistricted Cons. in 1969. The DO conflicts with the LUC'S own historical records and the **LAW**.....

HRS 205-2 (3) makes it mandatory "**shall**" that **the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation.** Meaning the protection of ag. lands is to be treated with a higher priority by the LUC than Cons. districting of lands, i.e, here from the **LAW. "the greatest possible protection".**

Either the LUC erred in its redistricting actions in 1969 or the LUC erred in denying Petition DR 21-72 when it interpreted the SLUD boundary in the area of our property.

**My testimony** is that I strongly suggest that HAR 15-15-19 clarifies that Ag. lands, with a high capacity for ag. production, may not be redistricted Cons...

protection of the health and welfare of the public by reason of the land's susceptibility to inundation by tsunami and flooding, to volcanic activity, and landslides;

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

including facilities accessory to those uses when the facilities are compatible with the natural physical environment. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

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

- (1) Areas consisting of small farms; provided that the areas need not be included in this district if their inclusion will alter the general characteristics of the areas;
- (2) Activities or uses as characterized by low-density residential lots of not less than one-half acre and a density of not more than one single family dwelling per one-half acre in areas where "city-like" concentrations of people, structures, streets, and urban levels of services are absent, and where small farms are intermixed with the low-density residential lots; and
- (3) It may also include parcels of land which are surrounded by, or contiguous to this district, and are not suited to low-density residential uses for small farm or agricultural uses. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

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

- (a) Except as otherwise provided in this chapter:
- (1) A district name or letter appearing on the land use district map applies throughout the

Re: HAR 15-15-22.....here we find the key phrase "***Except as otherwise provided in this chapter***". Clearly the "***district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;***" ***does not always apply***, i.e. "***Except as otherwise provided in this chapter:***" yet the LUC cited HAR 15-15 (a) (1) of this rule in its DO for DR21-72.

It is a fact that the district lines on maps are **undefined "reference"** boundary lines that are subject to interpretation based on historical redistricting records. In my Petition DR 21-72 and its motion for reconsideration I clearly described the LUC's error. None-the-less the LUC continues to ignore its own HARules and **the LAW** HRS 205-2(a) (3)..... ***In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation;***

For this reason and more, described herein, the LUC should vacate its DO for Petition DR21-72 and conduct a contested case hearing for the Petition.

**My testimony** is that I strongly suggest that HAR 15-15-22 (d) be amended to provide clarity that, when requested by an applicant, "**The executive officer shall use all applicable commission records in determining district boundaries..**"

whole area bounded by the district boundary lines;

- (2) Land having an elevation below the shoreline as stated by section 205A-1, HRS, marine waters, fish ponds, and tidepools of the State, and accreted portions of lands pursuant to sections 501-33 and 669-1, HRS, unless otherwise designated on the land use district maps, shall be included in the conservation district;
- (3) All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps; and
- (4) All water areas within the State are considered to be within a district and controlled by the applicable district rules.

(b) All requests for boundary interpretations shall be in writing and include the tax map key identification of the property and a print of a map of the property. All requests for boundary interpretations involving shoreline properties shall be accompanied by a survey map showing the locations of the shoreline as provided for in section 205A-42, HRS. Any erosion or accretion through natural processes shall be reflected on the map. Further, any shoreline structure, piers, and areas of man-made fill which were constructed or completed since the date of adoption of the state land use district boundaries existing as of the date of the request for boundary interpretation shall be reflected on the map.

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

- (1) Additional copies of the print, including a reproducible master map of the print ~~or~~ and an ADA compliant electronic copy in a recognized format of the executive officer's designation; and
- (2) Additional information such as, but not limited to, tax map key maps, topographic maps, aerial photographs, certified

§15-15-22

shoreline surveys, and subdivision maps

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

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

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

- (1) Whenever a district line falls within or abuts a street, alley, canal, navigable or non-navigable stream or river, it may be deemed to be in the midpoint of the foregoing. If the actual location of the street, alley, canal, navigable or non-navigable stream or river varies slightly from the location as shown on the district map, then the actual location shall be controlling;
- (2) Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling; and
- (3) Unless otherwise indicated, the district lines shall be determined by the use of the scale contained on the map.

(f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application for declaratory order or upon its own motion, shall determine the location of those district lines, within thirty days of finalization of the boundary interpretation if on its own motion or within thirty days of the filing of petition for declaratory order. [Eff

10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-1)

further consideration is needed to the text "or within thirty days of the filing of petition for declaratory order". I seriously doubt that the LUC intends that it is able to conduct a contested case hearing "within 30 days of the filing of petition". If, on-the-other-hand, this somehow means that the LUC intends to dictate boundaries without providing for contested case hearings

**My testimony is that** I seriously object to the way this proposed rule change is worded.

Historically the LUC's Exec. Officer routinely issues and re-issues Boundary Interpretations. The re-issued BI(s) often conflict with previous BI(s) that were previously issued. **Case in point...** in a **June 17, 1982**, LUC BI letter for shoreline land (**TMK(s) 2-7-04: 25 & 11B**), which is shown on SLUD Map H-65 (**where my property is also described**) the LUC described that "**top of sea pali**" was the SLUD boundary between Cons. and Ag. land. More recently the LUC's Exec. Officer issued a BI for a contiguous lot to the North of the referenced lots where the Exec. Officer described the SLUD boundary to be 300 ft. inland. The Historical records agree with the 1982 BI and conflict with the recent BI. **Effectively** both in 1982 and in 1999 (DR99-21 Stengle) LUC's own historical records prove that the LUC recognized that Hamakua Coastal land the was in ag. use, in 1969, was not redistricted cons. In the case of my Petition the LUC has chosen to ignore or interpret districting that is not supported in the LUC's own historical text records.

**My testimony** is that I strongly suggest that HAR 15-15-22 be amended to clarify that SLUD lines on SLUD Maps are **undefined reference lines** wherein the precise location of the line, at an individual parcel level, shall be determined based on LUC historical districting and redistricting **text records**, including districting and redistricting reports, redistricting hearing transcripts and any other LUC records, including other boundary interpretations for land on the same SLUD map that have been issued that may be relevant to the SLUD boundary on other locations on the SLUD Map.

SUBCHAPTER 3

PERMISSIBLE LAND USES

**§15-15-23 Permissible uses; generally.** Except as otherwise provided in this chapter, the following land and building uses are compatible and permitted within the following land use districts, except when applicable county ordinances or regulations are more restrictive. Except as otherwise provided in this chapter, uses not expressly permitted are prohibited. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-2)

**§15-15-24 Permissible uses within the "U" urban district.** Any and all uses permitted by the counties, either by ordinances or rules may be allowed within this district, subject to any conditions imposed by the commission pursuant to section 205-4(g), HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-2)

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

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



10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-2, 205-4.5)

**§15-15-26 Permissible uses within the "C" conservation district.** Uses of land within a conservation district shall be governed by the rules of the state department of land and natural resources, title 13, and chapter 183C, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-2)

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

- (1) All agricultural related activities and uses permitted under section 15-15-25;
- (2) Low-density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), HRS;
- (3) Golf courses and golf driving ranges and golf-related facilities;
- (4) Public, quasi-public and public utility facilities; and
- (5) The commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, provided all other lots in the subdivision have the minimum lot size of one-half acre. A petition for variance may be processed under the special permit procedure pursuant to subchapter 12. This exception shall apply to lots of record existing prior to January 1, 1977, and of not more than two acres. There shall be no more than one single-family dwelling per one-half acre, except as may be provided for in this section. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp

11/2/2013; comp ] (Auth: HRS  
§§205-1, 205-7) (Imp: HRS §205-2)

#### SUBCHAPTER 4

#### NONCONFORMANCE

**§15-15-28 Statement of intent.** This subchapter is intended to expedite the eventual elimination of existing uses or structures that are not in conformity with the provisions of subchapter 3 because their continued existence violates basic concepts of health, safety, and welfare as well as principles of good land use. However, in applying subchapter 3, no elimination of nonconforming uses or structures shall be effected so as to cause unreasonable interference with established property rights. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

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

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

- (1) It shall not be changed to another nonconforming use or structure;
- (2) It shall not be expanded or increased in intensity of use; and
- (3) It shall not be reestablished after discontinuance and abandonment for a continuous period of one year. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1,

Here 15-15-29 may conflict with -28 **and the LAW** because it may interfere with basic property rights. . If a lot was in agricultural use before it was redistricted Conservation, its use for ag. has to be allowed as a non-conforming use whether it was paused for a period greater than one year or not.

Basic property rights include the ag. use of land. It is not unusual for ag. use of land to be paused for periods greater than one year. Having a HARule that eliminates property rights leaves the State open to eminent domain lawsuits. HARules should not expose the State or land owners to unnecessary litigation.

**My testimony is that** I seriously object to the proposed wording of -28 and -29

205-7) (Imp: HRS §205-8)

**§15-15-30 Nonconforming areas and parcels.** A lot of record or any proposed subdivision of land which is not in conformity with this subchapter, but which has received approval by the county having jurisdiction prior to the establishment of the land use district, shall be permitted as a nonconforming area subject to the ordinances and rules of the county. All lots within the nonconforming area shall be considered nonconforming parcels. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

**§15-15-31 Casual or illegal use of land.** A casual, intermittent, temporary, or illegal use of lands or buildings shall not be sufficient to establish the existence of a nonconforming use. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

**§15-15-32 Existence of nonconforming use is a question of fact.** Whether a nonconforming use exists shall be a question of fact and shall be decided by the board, commission, or agency having jurisdiction over uses within the district. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

**§15-15-33 Illegal uses.** An illegal use of lands or buildings shall not be validated by the adoption of this chapter. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

SUBCHAPTER 5

PROCEEDINGS BEFORE THE COMMISSION

**§15-15-34 Quasi-judicial proceedings; waiver or suspension of rules.**

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

(b) Unless contrary to statute, the commission may waive or suspend any rule when the commission determines that: (1) good cause exists for such waiver; and (2) strict enforcement of such procedural rule would impose a manifest injustice upon a party or person who has substantially complied with the commission's rules in good faith. No rule relating to jurisdictional matters shall be waived or suspended by the commission. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)  
(Imp: HRS §91-3)

**§15-15-34.1 Verbatim transcripts.** Verbatim transcripts of hearings and other proceedings before the commission pursuant to chapter 91, HRS, shall be made and kept by the commission. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-9)

**§15-15-35 Appearance before the commission.** (a)

Any party to a proceeding before the commission may appear on the party's own behalf. A partnership, corporation, trust, or association, or other legal entity, may be represented by a duly authorized agent. An officer or employee of a department or agency of the State or a political subdivision may represent that department or agency in any proceeding before the commission.

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

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

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

(e) All former employees of the State, as that term is defined in section 84-3, HRS, shall comply with the provisions of chapter 84, HRS, standards of conduct, prior to making an appearance in a representative capacity before the commission. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

**§15-15-36 Decisions and orders.** (a) All decisions and orders for boundary amendment and special permit applications shall be signed by the chairperson or presiding officer (b) Unless otherwise indicated in the order, the effective date of a decision and order shall be the date it is filed by the chief clerk.

(c) Official copies of decisions and orders and other commission actions shall be effectuated under the signature of the chairperson, executive officer, or by the chief clerk. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; Comp ] (Auth: HRS §205-1, 205-7) (Imp: HRS §91-12)

**§15-15-37 Filing documents; place and time.** All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda, and other legal papers required or permitted to be filed with the commission in any proceeding shall be filed at the office of the commission before or on the date prescribed by statute, rules, or order of the commission. Unless otherwise ordered and except as provided by section 15-15-50, the date on which the original papers are filed by or at the direction of the chief clerk shall be regarded as the date of filing. Additionally, The the commission will require an ADA compliant ~~not accept a facsimile or~~ electronic copy of any document for filing purposes unless otherwise permitted by the executive officer. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4; SLH 1992, Act 227, §1)

**§15-15-38 Format.** (a) All documents exceeding seventy five pages shall be placed in three-ring binders or equivalent (prongs and rubber bands are not acceptable) and be printed upon white paper 8-1/2 x 11 inches in size. Twelve point font or larger shall be used. Tables, maps, charts, exhibits, or appendices

HAR 15-15-36 is deficient. While a DO may be signed by a chairperson it must also be voted on, at a public meeting, where an open forum of discussion is allowed by the LUC and the community in regards to the proposed FOF(s) and (COL(s)).

The LUC staff develop the text of the DO **AFTER** the hearing. Just like all other documents, i.e. minutes of meeting, the document has to come back to the Commissioners for consideration and adoption. It is not proper for the chairperson to dictate, by singular determination, what was Found and Concluded. The Findings and Conclusions are the Commission's findings and not just the chairperson's findings.

In the DO for my Petition DR21-72 the DO contain facts which were never evidenced/ raised or discussed during the hearing. A forum has to be provided in order to be sure that the record is a correct representation of the proceedings.

**My testimony** is that I strongly suggest that the Decisions and orders that contain FOF and COL must be adopted by the LUC at an open public meeting, and voted and approved, before they are signed by the Exec. Officer.

may be larger and shall be folded to that size where practical and tabbed. All pleadings shall be printed and shall be one and a half spaced or greater, except that footnotes and quotations in excess of a few lines may be single-spaced. Reproduction may be by any process, provided all copies are clear and permanently legible. Electronic copies shall be similarly formatted and bookmarked and ADA compliant.

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

(c) The original of each pleading shall be signed by each party or the party's attorney. If the party is a corporation, association, partnership, or other legal entity, the pleading may be signed by an officer or partner thereof or other authorized person. The title and name of the person signing shall be typed below the signature.

(d) In addition to the paper originals and one paper copy, the parties shall also submit documents and pleadings in electronic format, as directed by the executive officer. However, the filing date shall be the date the paper original is filed in the office of the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

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

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

(c) The attorney for a party may sign and verify a pleading if the party is absent, or for some cause unable to sign and verify the pleading. [Eff

10/27/86; comp 8/16/97; comp 5/8/00; am and comp  
11/2/2013; comp ] (Auth: HRS §§205-1,  
205-7) (Imp: HRS §91-2)

**§15-15-40 Copies.** Unless otherwise required by  
this subchapter or the commission, all parties shall  
file with the commission a paper original, ~~one paper~~  
~~copy~~ and one ADA compliant electronic copy of each  
pleading or amendment thereof. Additional copies  
shall be promptly provided if the chairperson or the  
executive officer so requests. The commission, by  
order, may modify the number or format of copies  
required under  
this section. [Eff 10/27/86; comp 8/16/97; comp  
5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

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**§15-15-41 Defective or nonconforming documents.**

(a) The mere fact that a document has been filed or  
been deemed a proper filing by the executive officer  
pursuant to section 15-15-50 (d) and (e) shall not be  
deemed a waiver of any failure to comply with this  
subchapter. Except as provided in subsection (b), if  
a document filed in a proceeding governed by this  
chapter is defective, not in substantial conformity  
with the applicable rules of the commission, or is  
otherwise insufficient, the commission may on its own  
motion or on the motion of any party, strike or  
dismiss such document or require its amendment. If  
amended, the document shall be effective as of the  
date the amended or corrected document is deemed a  
proper filing by the executive officer.

(b) Notwithstanding the provisions of sections  
15-15-50(e), 15-15-50(f), and 15-15-50.5, the  
commission may, on its own motion, or on motion by any  
of the parties addressing alleged deficiencies of the  
petition, dismiss defective or nonconforming petitions  
with or without prejudice. If the petition is  
determined by the commission to be defective or  
nonconforming, the date of proper filing shall be the  
date the commission determines that the defects are



cured. If the defects are jurisdictional, including, without limitation, failure to satisfy the requirements of section 15-15-50(c)(5), the commission shall dismiss the petition without prejudice. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

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

- (1) For good cause shown, with or without notice or hearing, extend such period if written request ~~therefor~~therefore is made before the expiration of the period originally prescribed or as extended by a previous order;
  - (2) Pursuant to a stipulation between all of the parties, without notice or hearing, extend the period; or
  - (3) Upon motion after the expiration of the specified period, permit the act to be done where the failure to act is clearly shown to be the result of excusable neglect; but may not extend the time for taking any action on jurisdictional matters.
- (b) Extensions of time to file any pleading or other document required by a decision and order of the commission must be requested more than fourteen days prior to the next scheduled hearing date on the matter.

This section shall not apply to extensions of time affecting jurisdictional matters [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-43 Amended pleadings.** All pleadings may be amended at any time until forty-five days prior to

the hearing date set pursuant to section 15-15-51. Amendments offered prior to the hearing date shall be served on all parties and filed with the commission. All parties shall have the opportunity to provide any further response to address the amended pleading up to thirty days prior to the hearing date set pursuant to section 15-15-51. No amended pleadings shall be filed after forty-five days prior to the date of the hearing and no responses shall be filed after thirty days prior to the hearing date, unless a stipulation is reached by all parties, or good cause is shown and approval of the chairperson, presiding officer, or the chairperson's designee is obtained. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-1, 205-7)

**§15-15-44 Retention of documents.** The commission shall retain all documents filed with or presented to the commission in the files of the commission. However, the chairperson or presiding officer may permit a party to withdraw original documents submitted by a party upon submission of properly authenticated copies to replace the original documents. The party shall not withdraw the original documents until it has submitted the authenticated copies and it has given to the chief clerk a receipt, specifying the date and identifying the original documents withdrawn. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

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

(b) All papers served by either the commission or any party shall be filed and served upon all

parties or their attorney and shall contain a certificate of service. Any attorney entering an appearance subsequent to the proceeding shall notify all other attorneys then of record and all parties not represented by an attorney of that fact.

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

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

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

(f) Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the person, and the notice or paper is served by mail, two days shall be added to the prescribed period. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

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

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

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

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

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

It is unreasonable that the same fee of \$1,000 be required by the LUC for .....

(1) a motion for a petition for a Declaratory Order that only requires that the LUC administer and order it at regularly scheduled "meeting", or

(2) a contested case hearing for a motion for a Declaratory Order.

It may result in uncertainty in regards to exactly what service is being provided by the LUC.

The administrative costs associated with each of the above are different.

**My testimony is** that I strongly suggest that HAR 15-15-44.1 be corrected to reflect different fees for each.

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

(f) After notice and opportunity to be heard, the commission may also assess any party to any proceeding before the commission a reasonable fee or require reimbursements for hearing expenses as determined by the commission, including without limitation, expenses of court reporter, hearing room, and expenses for audio/visual services and equipment.

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

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

#### SUBCHAPTER 6

#### APPLICATION REQUIREMENTS FOR BOUNDARY AMENDMENT PETITIONS

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

amendment:

- (1) State departments or agencies;
- (2) County departments or agencies of the county in which the property is situated; or
- (3) Any person with a property interest in the property sought to be reclassified. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-3.1, 205-4)

**§15-15-47 Filing.** The petitioner shall file one original, and ~~one paper copy and one ADA compliant~~ electronic copy of a petition for boundary amendment and all supporting documents and exhibits, with the commission. Additional copies shall be promptly provided if the chairperson or the executive officer so requests. The number and format of copies required under this section may be modified by order of the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

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**§15-15-48 Service of petition.** (a) At the time the petition is filed with the commission, the petitioner shall serve copies of the petition and all supporting documents upon:

- (1) the county planning department and planning commission of the county within which the subject land is situated,
- (2) the appropriate island planning commission,
- (3) the state office of planning, and
- (4) all persons with a property interest in the subject property as recorded in the county's real property tax records at the time the petition is filed.

(b) The petitioner shall serve copies of the petition upon any potential intervenor upon receipt of a notice of intent to intervene pursuant to section 15-15-52(b).

(c) Copies of all documents filed by petitioner

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

**§15-15-49 REPEALED.** [R 11/2/2013]

**§15-15-50 Form and contents of petition.** (a)

The form of the petition for boundary amendment shall conform to the requirements of subchapters 5 and 6. All petitions shall:

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

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

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

- (1) The exact legal name of each petitioner and the location of the principal place of business and if an applicant is a corporation, trust, or association, or other legal entity, the state in which the petitioner was organized or incorporated;

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



- ownership interests shown on the tax maps.
- (7) Type of use or development being proposed, including without limitation, a description of any planned development, residential, golf course, open space, resort, commercial, or industrial use;
  - (8) A statement of projected number of lots, lot size, number of units, densities, selling price, intended market, and development timetables;
  - (9) A statement describing the financial condition together with a current certified balance sheet and income statement as of the end of the last calendar year, or if the petitioner is on a fiscal year basis, as of the end of the petitioner's last fiscal year, and a clear description of the manner in which the petitioner proposes to finance the proposed use or development. If such information is protected from disclosure under chapter 92F, HRS, the petitioner may request a protective order to protect the confidentiality of the information pursuant to section 15-15-70.1. A petitioner which is a state or county department or agency, shall be exempt from this requirement;
  - (10) Description of the subject property and surrounding areas including the use of the property over the past two years, the present use, the soil classification, the agricultural lands of importance to the State of Hawai'i classification (ALISH), the Land Study Bureau productivity rating, the flood and drainage conditions, and the topography of the subject property;
  - (11) An assessment of the impacts of the proposed use or development upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, groundwater, or other resources of the area. If required by chapter 343, HRS, either a finding of no significant impact after review of an environmental assessment or an environmental impact statement conforming to the requirements of chapter 343, HRS, must

- be filed;
- (12) Availability or adequacy of public services and facilities such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, police and fire protection, civil defense, emergency medical service and medical facilities, and to what extent any public agency would be impacted by the proposed development or boundary amendment;
  - (13) Certification or approval of the commission on water resource management for utilization of water from a specific aquifer or aquifer(s) for the project.
  - (~~14~~14) Location of the proposed use or development in relation to adjacent land use districts and any centers of trading and employment;
  - (~~14~~5) Economic impacts of the proposed boundary amendment, use, or development including, without limitation, the provision of any impact on employment opportunities, and the potential impact to agricultural production in the vicinity of the subject property, and in the county and State;
  - (~~15~~6) A description of the manner in which the petitioner addresses the housing needs of low income, low-moderate income, and gap groups;
  - (~~16~~7) An assessment of need for the boundary amendment based upon the relationship between the use or development proposed and other projects existing or proposed for the area and consideration of other similarly designated land in the area;
  - (~~17~~8) An assessment of conformity of the boundary amendment to applicable goals, objectives, and policies of the Hawai'i state plan, chapter 226, HRS, and applicable priority guidelines and functional plan policies;
  - (~~18~~9) An assessment of the conformity of the boundary amendment to objectives and policies of the coastal zone management program, chapter 205A, HRS;
  - (~~19~~20) An assessment of conformity of the

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boundary amendment to the applicable county general plans, development or community plans, zoning designations and policies, and proposed amendments required;

- (201) Petitioners submitting petitions for boundary amendment to the urban district shall also represent that development of the subject property in accordance with the demonstrated need ~~therefor~~ therefore will be accomplished before ten years after the date of commission approval. In the event full urban development cannot substantially be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments together with a map identifying the location of each increment, each such increment to be completed within no more than a ten-year period;
- (212) A written disclosure and analysis addressing Hawaiian customary and traditional rights under Article XII, section 7 of the Hawai`i State Constitution;
- (223) Any written comments received by the petitioner from governmental and non-governmental agencies, organizations, or individuals in regards to the proposed boundary amendment;
- (234) A copy of the notification of petition filing pursuant to subsection (d);
- (245) A statement and analysis pursuant to section 226-109, HRS, addressing climate change related threats to the proposed development and proposed mitigation measures. The statement and analysis shall address, but not be limited to, the following issues: (A) The impacts of sea level rise on the proposed development; (B) Infrastructure adaptations to address the impacts of climate change including sewer, water and roadway improvements; (C) The overall carbon footprint of the proposed development and any mitigation measures or carbon footprint reductions

proposed; and

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

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

(A) Walkability;

(B) Accessibility to alternate forms of transportation;

(C) Transit oriented development opportunities;

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

(E) Mitigation of heat island effects; and,

(F) Urban agricultural opportunities.

(27) Certification or approval by the state office of planning and sustainable development's state sustainability coordinator that all issues identified in §15-15-50(c) (25) and (26) have been adequately addressed and climate adaptation and mitigation measures identified.

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

(1) Petitioner's name and mailing address;

(2) Landowner's name;

(3) Tax map key identification of the property requested for boundary amendment;

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

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

(f) Upon completion of the review pursuant to subsection (e), the executive officer shall determine whether the petition is a proper filing and is accepted for processing. The petition shall be deemed a proper filing if the items required in subsections (a), (b), (c), and (d) have been submitted. The petition may be deemed defective by the executive officer if any of the items required in subsections (a), (b), (c), or (d) have not been submitted. If the petition is deemed defective, the executive officer

shall notify the petitioner of the determination and the reasons for the determination. The petition may be deemed as a proper filing upon review of the additional information submitted and upon determination by the executive officer, and the date the petition will be deemed a proper filing will be the date the executive officer determines the defects have been cured. The executive officer will file a notice of proper filing and mail the notice to the petitioner, the State office of planning, the county planning agency, and to persons who have filed a notice of intent to intervene. The executive officer's determination is subject to review in accordance with section 15-15-41. The provisions herein, however, are subject to the requirements of section 15-15-50(b) on petitions for boundary amendment of conservation district lands.

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

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

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

petition should be dismissed. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-4, 205-7)

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

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

(c) If a petition for district boundary amendment has been set for hearing, the petition may be amended only in compliance with the requirements of section 15-15-43. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-4, 205-7)

SUBCHAPTER 7

AGENCY HEARING AND POST HEARING PROCEDURES

**§15-15-51 Notice of hearing for boundary amendment petitions.** (a) Not less than sixty days and not more than one hundred eighty days after the proper filing of a petition for boundary amendment, a hearing shall be conducted by the commission or a

**See §15-15-100 Consideration of petition for declaratory order. (a) (3)** Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The **procedures** set forth in subchapter 7 shall be applicable.

In Petition DR21-72 a number of "**The procedures set forth in subchapter 7**" were not followed. I will attempt to highlight the ones that that I believe should have been followed by the LUC, but were not, throughout my comments regarding Subchapter 7 that the LUC did not follow.

**It is my testimony that** serious consideration need to be applied to amending the HARules in this regard in order to correct deficiencies in "**Procedures**" for Petition hearings and distinguish between the procedures for LUC "**meetings**" vs. "**contested case hearings**".

hearings officer on the island in which the subject property is situated.

(b) The notice of hearing shall be served on the office of planning, the planning commission and the planning department of the county in which the subject property is situated, the appropriate planning commission of the island on which the subject property is situated, all persons with a property interest in the subject property that is recorded in the county's real property tax records at the time the petition is submitted, all persons with an easement over, on, upon or through the subject property, and all persons who appear on the county tax map to have an interest in the subject property. In addition, notice of the hearing shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings.

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

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

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

See §15-15-100 Consideration of petition for declaratory order. (a) (3) *Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.....* In the case of my Petition DR21-72 no "notice of hearing" was published. Instead a "meeting" notice was published.

This appears to conflict with §15-15-100 (a) (3) and confused the entire process going forward.....

"The legal authority under which the hearing is to be held" was not provided. I believed that I had petitioned for a "contested case hearing" and I presented at the hearing with the belief that witnesses and cross examination of witnesses was allowed (see hearing transcript).

The Chair said '**I believe that is allowed**' to which the Exec. Officer stated '**this is not that kind of a hearing**'. A serious error occurred here in the proceedings. It is not for the Exec. Officer to determine whether a hearing is a "**contested case hearing**" or just a "**meeting**". That is for the Commissioners to determine. See HAR 15-15-103..... "**Declaratory orders; request for hearing. The commission may, but shall not be required to, conduct a hearing on a petition for declaratory order.**"

The "**notice**", if, indeed, it was a "**notice**" it did not describe "**The particular sections of the statutes and rules involved**" nor did it generally describe the remaining elements prescribed as "**shall**" what HAR 15-15-51 (d) required..

**My testimony** is that I strongly suggest that HAR 15-15 is deficient. The Notice of Hearing/ Meeting , that may result in a DO has to specify the 'HRStatutes & HARules', the "legal authority under which the hearing is to be held", describe whether it will be a "meeting" or a "contested case hearing", "an explicit statement in plain language of the issues involved. For Petitions DR21-72 & DR 21-73 the notice did not state any of these requirements. The LUC is obliged to vacate its DO for my Petition DR21-72 and conduct a contested case hearing for my Petition.



section 205-4(e), HRS.

(e) The hearing may be continued or reopened by the commission when necessary, provided that notice is given pursuant to section 92-7, HRS, and the continued or re-opened hearing shall not extend beyond three hundred sixty-five days from the date the petition is deemed properly filed, unless an extension of time is requested by motion by any party, by stipulation, or by the commission on its own motion, so long as the commission votes affirmatively on the motion or stipulation by a two-thirds vote of the membership of the commission. The extension of time shall not exceed ninety days beyond three hundred sixty-five days from the date the petition is deemed properly filed. [Eff10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§1-28.5, 91-9, 92-7, 92-41, 205-4)

**§15-15-52 Intervention in proceeding for district boundary amendments, except proceedings pursuant to chapter 201H, HRS.** (a) The petitioner, the state office of planning, and the planning department of the county within which the subject land is situated shall appear in every case as parties, and make recommendations relative to the proposed boundary amendment.

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

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

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

Without laboring this discussion, in regards to whether the LUC followed the mandatory process that HAR 15-15-100(a) (3) prescribes....."***Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.***" **It is my testimony** that the LUC's HARules are seriously deficient in a number of ways in the way the LUC administers Petitions. At the date of my writing this written testimony around the end of June 2024 the LUC's proposed amendments do not adequately resolve deficiencies, and the LUC should conduct a much more extensive review of its HARules in these regards and make suitable amendments to its HARules in order to prevent the continuing confusing way in which the LUC conducts Petitions for boundary interpretations. There have only been 2 such petitions in the last 10 years. Therefore the added burden to the volunteer LUCcommissioners, nor LUC staff would not be great.

with subsections (e), (f), (g), and (h).

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

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

(d) All other persons may apply for leave to intervene, which shall be freely granted, provided the commission or its hearings officer may deny an application to intervene when, in the commission's, or hearings officer's discretion it appears that:

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

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

(f) Petitions for intervention shall make reference to the following:

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

(3) Effect of any decision in the proceeding on the petitioner's interest.

(g) Petitions for intervention pursuant to subsection (d) shall also make reference to the following:

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

(h) Petitions for intervention shall be accompanied by a filing fee as provided for in section 15-15-45.1. The fee shall not apply to state and county agencies.

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

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

(k) A person whose petition to intervene has been denied may appeal the denial to the circuit court pursuant to section 91-14, HRS. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-4, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §205-4, SLH 1995, Act 235, §1)

**§15-15-53 Intervention in other than district boundary amendment proceeding or important agricultural lands designation proceeding.**

(a) In any proceeding other than a district boundary amendment proceeding or important agricultural lands designation proceeding before the commission, petitions to intervene and become a party shall conform to subchapter 5 and be filed no later than fifteen days after the date of the publication of the hearing notice.

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

(c) Petitions to intervene in special permit proceedings will not be considered since the record is made by and before the county planning commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§205-1, 205-4)

**§15-15-54 Consolidation.** The commission, upon its own initiative or upon motion by any party, may consolidate for hearing or other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if the commission finds that consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-55 Statements of position.** No later than thirty days after the postmarked date of notice that the petition has been deemed a proper filing, the state office of planning and appropriate county planning department, and any intervenor, or person or legal entity who filed a timely notice of intent to intervene and whose intervention petition is still pending, shall file with the commission a statement of position with a summary of reasons in support or opposition, including without limitation, a statement describing the respective positions of any department within the State and county that may be impacted by the boundary amendment. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-4, SLH 1995, Act 235, §1)

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

(b) No later than twenty-five days prior to the scheduled hearing pursuant to section 15-15-51, or as specified in a prehearing order issued in accordance with section 15-15-57, all intervenors granted intervention shall submit all exhibits to substantiate their position on the boundary amendment petition.

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

(d) Any amendments to pleadings shall be submitted pursuant to section 15-15-43. [Eff and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-4, SLH 1995, Act 235, §1)

**§15-15-56 Stipulations.** All parties may enter into appropriate stipulations as to testimony, exhibits, findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary amendment as follows:

- (1) A petitioner who desires to enter into a stipulation shall prepare a proposed stipulation as to any or all testimony, exhibits, proposed findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary amendment;
- (2) All parties shall sign the proposed stipulation as to any or all testimony, exhibits, proposed findings of fact,

conclusions of law, conditions of reclassification, and a proposed decision and order, if at all, and shall submit such stipulation to the commission at least fourteen business days prior to the hearing date;

- (3) At the hearing, the commission may approve or deny the proposed stipulation and proposed decision and order in whole or in part, or the commission may require the parties to submit additional evidence concerning the proposed stipulation and proposed decision and order;
- (4) The commission may approve the proposed decision and order by amending or adopting the proposed decision and order. The commission shall issue a decision and order pursuant to provisions of sections 15-15-36 and 15-15-74 and section 205-4(g), HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

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

(b) The chairperson, presiding officer, or the executive officer may issue a prehearing conference order that shall establish a schedule for the mutual exchange of exhibits and identification of witnesses.

The prehearing conference order shall insure that all parties will be provided an opportunity to actively participate in the hearing. No party shall be allowed to present additional exhibits or witnesses that are material or substantial and not identified within the schedule provided by the prehearing conference order, unless the presenting party provides good cause or the exhibit or witness is being presented for rebuttal purposes, or by stipulation of the parties with the permission of the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

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

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

(c) The presiding officer shall place witnesses under oath or affirmation prior to testifying. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

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

burden of persuasion.

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

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

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

(1) Witnesses for the petitioner;

(2) Witnesses for the county planning department;

(3) Witnesses for the state office of planning;

(4) Witnesses for each intervenor, in the order in which intervention was granted;

(5) Rebuttal witnesses for the petitioner;

(6) Additional witnesses as the presiding officer may determine.

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

(1) Direct examination by the party calling the witness;

(2) Cross-examination by the other parties;

(3) Examination by the presiding officer or any member of the commission;

(4) Redirect examination by the party calling the witness;

(5) Recross examination by the other parties;

(6) Reexamination by the presiding officer or any member of the commission.

(f) After all parties have presented their cases through testimony and exhibits, all parties may provide closing statements in the order in which they presented witnesses; provided that petitioner may make a rebuttal closing statement. Closing statements may be waived. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-60 Presiding officer.** (a)

Notwithstanding section 15-15-06, in all hearings before the commission, the chairperson, a vice-

HRS 91 describes the burden of proof. While it may be different in a meeting vs. a contested case hearing format, for a Petition it should be the same. The LUCommissioners are almost always used to being able to apply their discretion in most of the work that is set before them. The transcript of my Petition hearing clearly shows that the Commissioners were of the belief that they may apply discretion in making their ruling. A petition for a BI is simply a fact discovery based on the historical textual record of the 1969 LUC's redistricting actions. In the transcripts of both DR21-72 and DR21-73 it can be seen that the individual commissioners strongly felt that they may apply discretion in their DO rather than a complete and textual examination of the evidence (eg. 'Okuda to Ag. *do we have to ignore what is really going on here*'). In these 2 Petitions the burden of proof is just 50%+. It is obvious that the Commissioners believed that the burden of proof was more.

HRS 91-10 (5).....

*Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. **The degree or quantum of proof shall be a preponderance of the evidence.***

**It is my testimony** that HAR needs to be strengthened in order to provide the LUCommissioners with more clear guidance that the burden of proof is no more than 50% +.



chairperson, one of the other commissioners, or a hearings officer appointed by the commission shall preside at the hearing.

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

(c) The presiding officer may postpone or continue any hearing upon a motion of any party without a hearing. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; Comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-61 Disqualification.** No commissioner or hearings officer shall sit in any proceeding in which the commissioner or hearings officer has a personal pecuniary or business interest, or one in which the commissioner or hearings officer is related within the first degree by blood or marriage to any party to the proceeding. However, if, after declaring the nature of the circumstances of the pecuniary interest or consanguinity to the parties, and the parties do not oppose the commissioner or hearings officer sitting in the proceeding, the commissioner or hearings officer may participate in the proceeding. The record shall note clearly the waiver by the parties. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**It is my testimony** for HAR 15-15-60 (b) that the Executive Officer describe whether it is a meeting or a contested case hearing and the Laws and Rules applicable. A question should be asked whether the Petitioner and the Commissioners agree with which type of hearing it is and which laws are applicable. This should not release the LUC's obligation to also disclose this in the Notice of Meeting. When, at the beginning of my Petition hearing, I asked that I *'be allowed to cross examine witnesses'*, the Chair stated *'I think that is allowed'* to which the Executive Officer over ruled him and said *'it is not that kind of a hearing'*. The decision whether it was to be a contested case hearing or a meeting is required to be made by a vote of the Commissioners. The LUC should vacate its DO for my Petition and conduct a contested case hearing for the Petition otherwise the transcript and the resulting DO will stand as evidence of how improper it conducts LUC affairs.

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

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

- (1) Communications which relate solely to matters which a commission member or hearings officer is authorized by the commission to dispose of on an ex parte basis, including communications regarding scheduling or other procedural matters regarding the course of the proceeding;
- (2) Requests for information with respect to the status of a proceeding;
- (3) Communications which all parties to the proceeding agree or which the commission has formally ruled may be made on an ex parte basis; and
- (4) Communications with representatives of any news media on matters intended to inform the general public. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-13, 205-4)

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

(b) Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The commission shall give effect to the rules of privilege recognized

**My testimony** is that i agree with this proposed amendment,

**It is my testimony** that this conflicts with HAR 15-15-100 where it states that the rules of this subchapter apply. If the rules of evidence are the same for contested case hearings and meetings that needs to be clarified. and the Commissioners need to clearly understand that the burden of proof is 50%+

by law. Neither the commission nor a hearings officer is bound by the common law rules relating to the admission or rejection of evidence.

(c) The presiding officer shall rule on the admissibility of all evidence. The rulings may be reviewed by the commission in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the commission is necessary to promote justice, the presiding officer may refer the matter to the commission for determination.

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

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

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

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

(h) Exhibits shall be legible and may be prepared on paper not exceeding 8-1/2 x 11 inches in

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size or bound or folded to the respective approximate size, where practical. Where practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form. When exhibits are offered in evidence, the party shall furnish the original, ~~one paper copy~~ and one ADA compliant electronic copy of the exhibits to the chief clerk with a copy to each party to the proceeding, unless copies have been previously furnished or the presiding officer directs otherwise. The number and format of copies required under this section may be modified by order of the commission.

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(i) A party may use maps or other demonstrative exhibits as evidence provided the parties submit the number of legible copies as may be required by the presiding officer. The commission shall not permit the introduction of or testimony from any visual aid not introduced as evidence.

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

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

(l) At the hearing, the presiding officer may require the production of further evidence through testimony or exhibits upon any issue. The presiding officer may authorize the filing of specific documentary evidence as a part of the record after the close of the hearing, subject to the rights of the

parties to request reopening of the hearing within a specified time after the receipt of such evidence, or may keep the hearing open until such time as evidence is received by the commission. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission, reserving an exhibit number ~~therefor~~therefore, but the hearing shall remain open. The presiding officer is authorized to close the hearing when the exhibit is received, provided that there is no objection from any party, and no request to cross-examine by any party or a request to answer questions by a commissioner. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-10, 205-4)

**§15-15-64 REPEALED.** [R 11/2/2013]

**§15-15-65 Limiting testimony.** To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-66 Removal from proceeding.** Any person who ~~wilfully~~willfully disrupts a hearing or other proceeding may be removed from the hearing room. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-3, 205-4)

**§15-15-67 Co-counsel.** Where a party is represented by more than one attorney or representative, only one of the attorneys or

representatives shall be permitted to make an opening statement, or to examine or cross-examine a particular witness or to state any objections or to make closing statements, unless otherwise authorized by the presiding officer. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; Comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-68 REPEALED.** [R 11/2/2013]

**§15-15-69 Subpoenas.** (a) Any party may file a written motion for the issuance of a subpoena requiring the attendance of a witness for the purpose of taking oral testimony before the commission, which motion shall not require a hearing.

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

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

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

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

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

(f) Notwithstanding any rule to the contrary, the chairperson, a commissioner, or a duly-appointed hearings officer may make an oral motion to request the issuance of a subpoena. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)  
(Imp: HRS §§91-2, 92-16, 205-4)

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

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

- (1) Be in writing;
- (2) State the grounds for the motion;
- (3) Set forth the relief or order sought;
- (4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of law; and
- (5) Be filed with the commission at least ten business days before the next regularly scheduled meeting of the commission.

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

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

(e) The opposing party or parties shall serve on all other parties and file counter affidavits and memorandums in opposition to the motion and of the

I believe there may be a conflict here with the HAR 15-15 rule "Fees" which requires the payment of considerable fees for the filing of motions.

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authorities relied upon not later than seven days after being served with any written motion, or, if the hearing on the motion will occur less than seven days after the motion is served, at least forty-eight hours before the time set for hearing, unless otherwise ordered by the chairperson, chairperson's designee, or hearings officer. The chairperson, chairperson's designee, or hearings officer may order the opposing party or parties to file its memorandum in opposition earlier than the seven day period. The opposing party shall file the original plus ~~one paper copy and one~~ ADA compliant electronic copy with the commission and proof of service. The number and format of copies required under this section may be modified by order of the commission.

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

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

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

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

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

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

(l) The commission may dismiss or deny a motion

**It is my testimony that I stongly disagree** with this (l) proposed amendment addition to the Rule and if allowed I propose that additional text be added. A DO must be issued in order to provide a Petitioner an opportunity to appeal the DO to HSC.



if it determines that at the completion of the petitioner's presentation, that petitioner has not met its burden of proof to grant the motion, has failed to provide sufficient evidence to render a decision on the motion, or there are substantive or procedural defects in the motion.

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

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

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

**§15-15-71 Substitution of parties.** Upon motion and for good cause shown, the commission may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2, 205-4)

**§15-15-72 Correction of transcript.** The chairperson, presiding officer, or hearings officer shall determine any motion at the hearing to correct the transcript. Any motions after the hearing to correct the transcript shall be filed with the commission within seven days after receipt of the transcript unless otherwise directed, and shall be served on all parties. Such motions shall certify the date when the transcript was received. If no objections are received before seven days after the date of service, the transcript, upon approval of the commission, shall be changed to reflect the corrections. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

**§15-15-73 Post hearing procedures.** Post hearing procedures shall conform to subchapters 9 and 10. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

**§15-15-74 Decision.** (a) For district boundary amendment petitions filed before December 31, 1995, within a period of not more than one hundred twenty days after the close of the hearing, unless otherwise ordered by the court, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions in accordance with

subchapter 11.

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

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

(d) Notwithstanding subsections (a) and (b), decisions on acceptance or non-acceptance of environmental compliance documents submitted pursuant to chapter 343, HRS, shall be made within thirty days of receipt of the final statement, provided that the period may be extended at the request of the applicant for a period not to exceed fifteen days. Notification of a determination of acceptance or non-acceptance will be by letter from the executive officer to the applicant and office of environmental quality control, pursuant to chapter 343, HRS. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; am and comp ] (Auth: HRS §§91-13.5, 205-1, 205-4, 205-75) (Imp: HRS §§ 91-13.5, 201G-118, 205-4, SLH 1992, Act 227, §1, SLH 1994, Act 261, §1)

**§15-15-75 Appeals.** Parties to proceedings to amend land use district boundaries may obtain judicial review as provided in section 205-19, HRS. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp 11/2/2013; am and comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-14, 205-4, 205-19)

**This rule is confusing and problematic in more than one way .**

**HAR §15-15-100 Consideration of petition for declaratory order, HAR 15-15-100 (a)**

**(3) Set the petition for hearing before the commission or a hearing officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.**

Subchapter 7's rules begin at HAR 15-15-51 and end at HAR 15-15-76. I have described several sections of Subchapter 7 that were not followed in the LUC's administration of my Petition. Here "Timeliness" issues described in

Subchapter 7 **§15-15-74 Decision.** (b) appears to conflict with **HAR 15-15-100 (b)**

*If the matter is set for hearing, the commission shall render its findings and decision within one hundred and twenty days after the close of the hearing.*

In **Towne V. LUC, 55 H. 538, 524 P.2d 84 (1974)** HSC found that the word "shall" is mandatory and furthermore applied to time limits....

*Provision that commission shall render decision within forty-five and ninety days after the public hearing is mandatory and decision rendered after the time period is void.*

The stipulated **120 days** (HAR 15-15-100(b)) is different than in the above cited Towne V. LUC but the effect is the same.. The LUC heard my Petition on September 8, 2021, the DO was issued March 15, 2022, **188 days later**, however the DO was issued within 365 days of the Petition's filing (HAR 15-15-74) which filing date was June 17, 2021 (total time from filing to DO = 273 days). It would seem therefore that **the LUC's DO for DR21-72 is null and void** as per the cited HSC decision and HAR 15-15-100(b).

**My testimony** is that the LUC's amended rules should clear up this apparent conflict AND the LUC should vacate its DO for DR21-72 and hear the Petition as a contested case hearing.

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

(b) Additionally, the commission shall not accept any petition for boundary amendment for the same request involving the same land that was before the commission and withdrawn voluntarily by the petitioner within one year of the date of the withdrawal. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

#### SUBCHAPTER 8

#### DECISION-MAKING CRITERIA FOR BOUNDARY AMENDMENTS

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

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

I did not apply for a "**boundary amendment**" in my Petition. The SLUD lines on the LUC's SLUD maps are **undefined reference lines** which are subject to interpretation. They will always be reference lines to which the LUC must consider and apply **LUC historical text records** (including a DO which text record defined the precise location of the undefined reference boundary line on the SLUD map). However once determined and ordered by the LUC in a DO they likely are final unless overturned on appeal OR the DO is subsequently vacated by the LUC. either by its own motion or a Petitioner's motion. None-the-less the LUC's DO for my Petition did refer to it as a '**boundary amendment**' petition in a number of places. If that is correct **then** Section 8's rules DO APPLY but Subchapter SUBCHAPTER 14 **DECLARATORY ORDERS** should ALSO state that Subchapter 8's rules apply. AND if it is a **boundary amendment** HAR 15-15's rules require a **contested case hearing**, an EA, FONSI etc. etc. which was not the process that the LUC administered for my Petition.

**It is my testimony that** Subchapter 14's rules be amended to reflect that Subchapter 8's rules apply to the LUC's decision making for Petitions for boundary interpretations, vacate its DO for my Petition and re-hear the Petition as a contested case hearing.

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

or lands with a high capacity for intensive agricultural use shall not be taken out of the agricultural district unless the commission finds either that the action:

- (A) Will not substantially impair actual or potential agricultural production in the vicinity of the subject property or in the county or State; or
  - (B) Is reasonably necessary for urban growth; and
- (7) In considering boundary amendments for lands designated important agricultural lands pursuant to part III, chapter 205, HRS, the commission shall specifically consider the standards and criteria set forth in section 205-50, HRS.

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

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

(e) The land use commission may dismiss a petition if it determines that the parties have failed to provide sufficient evidence to render a decision on the petition.

(f) The land use commission may deny a petition if it concludes, at the completion of the petitioner's presentation, that the petitioner has not met its burden of proof to grant the petition as required by this §15-15-77, or that there are substantive or procedural defects in the petition.

(eg) Amendments of a land use district boundary involving land areas greater than fifteen acres shall be determined by the commission, pursuant to this subsection and section 205-3.1, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; am and comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-3.1, 205-4, 205-16, 205-17)

**It is my testimony** that I strongly oppose this added rule. My reasoning is described throughout the notes that I have added to the proposed new HAR 15-15 rules and amendments.

**§15-15-78 Incremental districting.** (a) If it appears to the commission that full development of the subject property cannot substantially be completed within ten years after the date of the commission's approval and that the incremental development plan submitted by the petitioner can be substantially completed, and if the commission is satisfied that all other pertinent criteria for amending the land use boundary for the subject property or part thereof are present, then the commission may:

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

(b) In amending a land use district boundary on an incremental basis, in addition to standards in this subchapter, the commission may consider projected population growth for the area, other lands that have received boundary amendments in the area, the availability of and impacts on resources, and the desirability of directing growth and development to the area over a long term basis.

(c) Upon receipt of an application for boundary amendment for the second and subsequent increments of property for which previous approval for incremental development has been granted by the commission,

substantial completion of any offsite and onsite improvements of the development, in accordance with the approved incremental plan, of the preceding increment that received boundary amendment will be prima facie proof that the approved incremental plan complies with the requirements for boundary amendment.

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

- (1) The petitioner shall file an original, one ~~paper copy and one~~ ADA compliant electronic copy of an application to approve the second or subsequent increments utilizing the same docket number as the original petition. The number and format of copies required under this section may be modified by order of the commission;
- (2) The petitioner shall serve copies of the application on all parties of record in the original proceeding;
- (3) The application shall include facts, affidavits or declarations, and other documentation, including a metes and bounds description and map, in support of the fact that the petitioner has substantially completed offsite and onsite improvements, complied with chapter 343, HRS, where applicable, and complied with conditions of the commission approval in accordance with the approved incremental plan of the preceding increment receiving a boundary amendment;
- (4) A prehearing conference may be conducted pursuant to section 15-15-57;
- (5) A notice of hearing shall be published notifying the public of the time and place the application will be considered by the commission and will provide for the admission of public witnesses;
- (6) The procedures for hearing the application will be subject to the timeframes presently existing for district boundary amendments, and the provisions of section 15-15-13; and
- (7) The petitioner shall provide notice of the application to all persons having a property interest in the increment for which a land

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use district boundary amendment is sought.  
[Eff 10/27/86; am and comp 8/16/97; am and  
comp 5/8/00; am and comp 11/2/2013;  
comp ] (Auth: HRS §§205-1,  
205-7) (Imp: §205-4)

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

(b) The commission may provide by condition that absent substantial commencement of use of the subject property or substantial progress in developing the land receiving the boundary amendment in accordance with representations and commitments made by the petitioner to the commission, the commission shall issue and serve upon the party bound by the condition an order to show cause why the property should not revert to its former land use district classification or be changed to a more appropriate land use district classification. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances pursuant to section 15-15-92. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §205-4)

#### SUBCHAPTER 9

#### POST HEARING PROCEDURES FOR HEARINGS BEFORE THE COMMISSION

**§15-15-80 Briefs.** The presiding officer may fix

the time for the filing of briefs. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the commission in writing with one original, ~~one paper copy, and one ADA~~ compliant electronic copy filed with the commission, and a copy served upon or mailed to the parties to the proceeding. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions shall not be granted unless a stipulation is filed with the commission. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

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**§15-15-81 Oral argument.** The commission or the presiding officer may direct or permit the presentation of oral argument with the petitioner opening and concluding the argument. Not more than fifteen minutes on each side of the proceeding shall be allowed for argument without special leave of the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-9, 205-4)

**§15-15-82 Issuance of decisions and orders.** (a) A proceeding shall stand submitted for decision by the commission after the taking of evidence, and the filing of briefs or the presentation of oral argument as may have been prescribed by the presiding officer or hearings officer. The petitioner shall submit a proposed decision and order which shall include proposed findings of fact, conclusions of law, and proposed conditions; all other parties may submit a proposed decision and order including proposed findings of fact, conclusions of law and proposed conditions. If a party enters into a partial stipulation as authorized in section 15-15-82.1, the party shall nevertheless file a proposed decision and order indicating the findings of fact, conclusions of law and proposed conditions that are stipulated to and

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also set forth proposed findings of fact, conclusions of law and proposed conditions that it proposes that are different than the stipulation. A proposed decision and order shall be filed with the commission consisting of one paper original, ~~one paper copy,~~ and one ADA compliant electronic copy, and a copy shall be served upon each party to the proceeding. Each party to the proceedings shall be given the opportunity to comment on each proposed decision and order filed with the commission.

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

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

(d) Every decision and order adverse to a party to the proceeding, rendered by the commission in a contested case, shall be accompanied by separate findings of fact and conclusions of law.

(e) Findings of fact, conclusions of law, and decision and order shall be issued by the commission for district boundary amendments and special permits deemed approved pursuant to section 91-13.5, HRS. The decision and order shall include mandatory conditions pursuant to section 15-15-90(e). For orders determining the acceptability of environmental compliance documents pursuant to chapter 343, HRS, the chair or presiding officer shall sign for the commission. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; am and comp ] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-2, 91-12, 205-4)

**§15-15-82.1 Stipulation as to findings of fact, conclusions of law, conditions of boundary amendment,**

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

- (1) A petitioner who desires to enter into a stipulation shall prepare a proposed stipulation as to any or all findings of fact, conclusions of law, conditions of boundary amendment, and decision and order concerning the proposed boundary amendment;
- (2) Parties in agreement with a stipulation shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, conditions of boundary amendment, and a proposed decision and order, and shall submit such stipulation to the commission within the time frame specified by the commission;
- (3) After the hearing, the commission may adopt the proposed stipulation, and if it adopts the stipulated decision and order the commission may amend, accept, modify or reject in part or in whole any of the findings of fact, conclusions of law, conditions of boundary amendment, and anything else contained in the stipulation;
- (4) The commission shall issue a decision and order pursuant to provisions of sections 15-15-36 and 15-15-74 and section 205-4(g), HRS. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)

**§15-15-83 Service of decisions and orders.** The commission shall serve the decisions and orders by personal delivery or mailing certified copies to the parties of record. The effective date of the decision and order is the date certified by the executive officer. When a party to a proceeding has appeared by a representative, service upon the representative or attorney shall be deemed to be service upon the party.

[Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-12, 205-4)

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

(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

(c) In no event will the commission consider any motion for reconsideration on any petition after the period within which the commission is required to act on the petition. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

#### SUBCHAPTER 10

##### POST HEARING PROCEDURES FOR HEARING CONDUCTED BY HEARINGS OFFICER

**§15-15-85 Recommended decision.** (a) Upon completion of taking of the evidence, the hearings officer may request the parties to submit a proposed findings of fact, conclusions of law, and decision and order, consisting of one original, ~~one paper copy,~~ and one ADA compliant electronic copy. Proposed decision and orders submitted shall be served upon each party to the proceeding and an opportunity given to each party to comment thereon. Upon receipt of the proposed decision and orders and any comments from the parties, the hearings officer shall prepare and submit to the commission a recommended decision which shall

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include recommended findings of fact, conclusions of law and a recommended decision and order.

(b) The record shall include the petition and other pleadings, notice of hearing, motions, rulings, orders, transcript of the hearing, stipulations, documentary evidence, offers of proof, proposed findings, or other documents submitted by the parties, all matters placed in evidence, objections to the conduct of the hearing, the recommended decision of the hearings officer, and all other matters placed in evidence. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7)

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

A copy of any proposed decision of the commission shall be served upon each party. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)

**§15-15-86 Exceptions; extension of time; finality of proposed decision.** (a) Within fourteen calendar days after the date of mailing or personal service of a copy of the commission's proposed decision, a party may file with the commission exceptions to any part thereof and request review by the commission. Such party shall serve copies of exceptions and briefs upon each party to the proceeding.

- (b) The exceptions shall:
- (1) Set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken;
  - (2) Identify that part of the proposed decision to which objections are made;
  - (3) Designate by page citation the portions of

the record relied upon and specify authorities relied upon to sustain each point; and

- (4) State all the grounds for exceptions to a ruling, finding, or conclusion. Grounds not cited or specifically urged are waived.

(c) Any party may apply for an extension of time within which to file exceptions to the proposed decision by filing a written application setting forth the reason for the request. The application shall be filed before the expiration of the period prescribed for the filing of exceptions. Upon good cause shown, the executive officer may extend the time for filing exceptions for an additional period not to exceed ten (10) calendar days.

(d) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the commission, on its own motion, orders further proceedings to be held. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-11, 205-4)

**§15-15-87 Support of hearings officer's recommended decision.**

(a) Within seven days after service of the exceptions taken to the proposed decision, any party may file with the commission a brief opposing the exceptions. Such party shall serve copies of the brief in support upon each party to the proceeding

- (b) The brief opposing exceptions shall:
  - (1) Answer specifically the points of procedure, fact, law, or policy to which exceptions were taken;
  - (2) State the facts and reasons why the proposed decision must be affirmed; and
  - (3) Designate by page citation the portions of the record relied upon. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-11, 205-4)

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**§15-15-88 Argument on exceptions.** Upon the filing of exceptions by a party adversely affected by the proposed decision, the commission shall grant such party an opportunity to present arguments to the commission. The executive officer, with direction from the chairperson, shall set the time and place of hearing of argument on exceptions and give written notice to the parties. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-10, 91-11, 205-4)

**§15-15-89 Final decision.** (a) When exceptions have been filed to the commission's proposed decision, the commission, within forty-five days after the hearing on exceptions, shall render its final decision. In rendering its final decision, the commission shall consider the whole record or such portions thereof as may be cited by the parties and shall resolve all questions of fact by what it deems to be the greater weight of the evidence thereon. The final decision shall contain findings of fact and conclusions of law upon which the decision is based.

(b) After the commission has heard and examined all of the evidence, the commission, shall issue its decision within forty-five days after receiving the evidence, or filing of any memoranda or proposed findings of fact and conclusions of law upon which the decision is based. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-16)

#### SUBCHAPTER 11

CONDITIONS: FILING, ENFORCEMENT, MODIFICATION,  
DELETION



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

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

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

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

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

(e) If a boundary amendment petition filed pursuant to section 205-4, HRS, is approved pursuant to section 91-13.5, HRS, or a petition filed pursuant to section 201H-38, HRS, is deemed approved on the forty-sixth day, the following mandatory conditions shall apply:

- (1) Petitioner shall develop the land to which the boundary amendment applies in substantial compliance with the representations made to the commission. Failure to so develop the subject property may result in reversion of the subject property to its former land use district classification, or change it to a more appropriate land use district classification;
- (2) Petitioner shall provide notice to the commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the subject property prior to or during development of the subject property, excluding, however, individual lot sales or lease in a residential or industrial development;

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- (3) Petitioner shall timely provide without any prior notice, annual reports to the commission, state office of planning and sustainable development, and the respective county planning department in connection with the status of the project proposed for the land to which the boundary amendment applies, and petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the commission. The annual report shall consist of one original, ~~one paper copy,~~ and one ADA compliant electronic copy, and shall be due prior to or on the anniversary date of the approval of the petition;
- (4) The commission may fully or partially release the conditions provided herein as to all or any portion of the land to which the boundary amendment applies upon timely motion and upon the provision of adequate assurance by the petitioner of satisfaction of the conditions imposed;
- (5) Within seven days of the approval date of the petition, the petitioner shall:
- (A) Record with the bureau of conveyances a statement that the land to which the boundary amendment applies is subject to conditions imposed herein by the commission; and
  - (B) File a certified ADA compliant electronic copy of such recorded statement with the commission;
- (6) Petitioner shall record the conditions imposed herein by the commission with the bureau of conveyances pursuant to section 15-15-92;
- (7) Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate income residents of the State of Hawai`i to the satisfaction of the respective county in which the land to which the boundary amendment applies is located. The respective county shall consult with the Hawai`i housing finance and development

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corporation prior to its approval of the petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the petitioner and the respective county;

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- (8) Provided that the proposed land uses include residential units, petitioner shall contribute to the development, ~~funding,~~ and construction of public school facilities as determined by and to the satisfaction of the state department of education;
- (9) Petitioner shall be required to seek approval of the commission on water resource management for utilization of water from a specific aquifer or aquifer(s) for the project. The commission on water resource management may deny use of water from any existing aquifer if it determines such use will harm the aquifer or exceed the capacity of the aquifer. Petitioner shall participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a fair-share basis, as determined by the respective county in which the land to which the boundary amendment applies is located, and the state department of health;
- (10) Petitioner shall prepare a traffic impact analysis report. The traffic impact analysis report shall identify the traffic impacts attributable to the proposed development and recommended proposed mitigation measures. The report should also reflect the latest planning efforts for transportation. The report shall be reviewed and approved by the state department of transportation, and the respective county transportation agency in which the land to which the boundary amendment applies is located. Based upon the report, the petitioner may be required to participate on a fair-share basis, in the funding and construction of local and

regional transportation improvements and programs, including dedication of rights-of-way as determined by the state department of transportation and the respective county transportation agency in which the land to which the boundary amendment applies is located;

- (11) Petitioner shall, on a fair-share basis, fund and construct adequate civil defense measures as determined by the state civil defense agency;
- (12) Petitioner shall have an archaeological inventory survey conducted by a professional archaeologist. The findings shall be submitted to the state department of land and natural resources, state historic preservation division in report format for adequacy review and an ADA compliant copy shall be provided to the commission. The state historic preservation division shall verify in writing with a copy provided to the commission that the survey report is acceptable, that significance evaluations are acceptable, and that mitigation commitments are acceptable;
- (13) If significant historic sites are present, the petitioner shall submit a detailed historic preservation mitigation plan for review by the state historic preservation division and an ADA compliant copy shall be provided to the commission. This plan may include preservation and archaeological data recovery subplans (detailed scopes of work). The state historic preservation division shall verify in writing with a copy provided to the commission that the plan has been successfully executed;
- (14) Petitioner shall stop work in the immediate vicinity should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found. Subsequent work shall proceed upon an archaeological clearance from the state

- historic preservation division when it determines that mitigative measures have been implemented to its satisfaction;
- (15) Petitioner shall participate in an air quality monitoring and mitigation program as specified by the state department of health;
  - (16) Petitioner shall be responsible for implementing sound attenuation measures to bring noise levels from vehicular traffic in the affected properties down to a level of fifty-five decibels;
  - (17) If the petition for a boundary amendment involves prime agricultural lands, petitioner shall be responsible for contributing to the protection of an equivalent amount of prime agricultural lands and related infrastructure via long-term agricultural conservation easements or other agriculturally-related assets as determined by and to the satisfaction of the state department of agriculture;
  - (18) Petitioner shall notify all prospective buyers of property of the potential odor, noise, and dust pollution if there are any agricultural district lands surrounding the land to which the boundary amendment applies;
  - (19) To the extent that the petition area is contiguous or adjacent to lands in the State land use agricultural district, any action that would interfere with or restrain farming operations on those lands is prohibited, provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices. Petitioner shall notify all prospective developers or purchasers of all or any portion of the petition area or any interest in the petition area, and shall require its purchasers to provide subsequent notification to lessees or tenants that farming operations and practices on adjacent or contiguous land in the State land use agricultural district are protected under

chapter 165, HRS, the Hawai'i Right to Farm Act. This notice shall be included in any disclosure required for the sale or transfer of all or any portion of the petition area or any interest in the petition area;

- (20) Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the land to which the boundary amendment applies to the satisfaction of the appropriate state and county agencies. Such mitigation measures shall be submitted for review of the state office of planning and sustainable development's state sustainability coordinator to ensure that the infrastructure and mitigation measures are sufficient to address increased capacity requirements due to climate change;
- (21) Petitioner shall cooperate with the state department of health and the respective county to conform to the program goals and objectives of chapter 342G, HRS, and the respective county's approved integrated solid waste management plans in accordance with a schedule and timeframe satisfactory to the state department of health;
- (22) To the extent required by the state department of health, petitioner shall ensure that nearshore, offshore, and deep ocean waters remain in pristine condition;
- (23) Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed uses. Water transmission facilities shall be coordinated and approved by appropriate state and county agencies. The county's water use and development plan shall be amended to reflect changes in water demand forecasts and in water development plans to supply the proposed uses; and
- (24) Petitioner shall preserve and protect any established gathering and access rights of native Hawaiians who have customarily and traditionally exercised subsistence,

cultural, and religious practices on the land to which the boundary amendment applies.

(25) Petitioner shall be required to submit for review and approval by the state office of planning and sustainable development's state sustainability coordinator compliance with chapter 226, HRS.

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

- (1) All conditions listed under subsection (e);
- (2) The proposed use shall be established within one year from the date that the special permit was approved pursuant to section 91-13.5, HRS; and
- (3) The special permit shall be valid for a period of five years from the approval date pursuant to section 91-13.5, HRS. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 205-4)

**§15-15-91 Applicability.** Conditions imposed by the commission shall run with the land and shall be binding upon the petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

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

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

- (1) The document listing the conditions shall be submitted to the commission for review and approval by the executive officer prior to filing with the bureau of conveyances;
- (2) The petitioner shall record the conditions at the bureau of conveyances within sixty days after the receipt of the decision and order requiring the same. The timeframe for recordation of the condition may be extended pursuant to section 15-15-42;
- (3) Evidence of recordation shall be by certified copy under the signature of the registrar of conveyances. The petitioner shall forward a certified ADA compliant electronic copy to the commission; and
- (4) Description of the land shall be sufficiently accurate to identify the land intended to be affected. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

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

- (1) The interest of the movant;
- (2) The reasons for filing the motion;
- (3) A description and a map of the property affected by the condition;



- (4) The condition ordered by the commission which has not been performed or satisfied;
- (5) Concisely and with particularity the facts, supported by an affidavit or declaration, giving rise to a belief that a condition ordered by the commission has not been performed or satisfied; and
- (6) The specific relief requested.

(b) Whenever the commission shall have reason to believe that there has been a failure to perform according to the conditions imposed, or the representations or commitments made by the petitioner, the commission shall issue and serve upon the party or person bound by the conditions, representations, or commitments, an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification. The commission shall serve the order to show cause in writing by registered or certified mail with return receipt requested at least thirty days before the hearing. An ADA compliant electronic copy shall be also sent to all parties in the boundary amendment proceedings. The order to show cause shall include:

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

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

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

subchapter 9.

(e) Absent substantial commencement of use of the land, the commission may revert the property to its former land use classification or a more appropriate classification. For the purposes of this subsection (e) substantial commencement shall be determined based on the circumstances or facts presented in the order to show cause regardless of dollar amount expended or percentage of work completed.

(f) The commission shall amend its decision and order to incorporate the order to show cause by including the reversion of the property to its former land use classification or to a more appropriate classification.

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

**§15-15-94 Modification or deletion of conditions or orders.**

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

(b) For modification or deletion of conditions under the purview of the state commission on water resource management, the petitioner shall be required

to provide a sign-off or approval of the state commission on water resource management.

(c) For modification or deletion of conditions under the purview of the state office of planning and sustainable development's state sustainability coordinator, the petitioner shall be required to provide a sign-off or approval of the state sustainability coordinator.

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

(~~ee~~) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter ~~119~~.

[Eff  
10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

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## SUBCHAPTER 12

### SPECIAL PERMITS

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

(b) Special permits for areas greater than fifteen acres require approval of both the county planning commission and the commission. Special

permits approved by the county planning commission and which require commission approval must be forwarded to the commission within sixty days following the county planning commission's decision. The county shall assure that prior to the county hearing on the petition for special permit, copies of the special permit petition are forwarded to the land use commission, the state office of planning and sustainable development, the state commission on water resource management, the state sustainability coordinator, the state public utility commission, and the department of agriculture for their review and comment. The decision of the county planning commission recommending approval of the special permit, together with the complete record, including maps, charts, other exhibits and other evidence, and the complete transcript of the proceeding before the county planning commission must be transmitted to the commission. Unless otherwise required by the commission, the planning commission shall file with the commission an original, ~~one paper copy~~ of the complete record, together with an ADA compliant electronic copy of the complete record. The number and format of copies required under this section may be modified by order of the commission.

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(c) Certain "unusual and reasonable" uses within agricultural and rural districts other than those for which the district is classified may be permitted. ~~The following guidelines are established in~~ When determining whether an "unusual and reasonable use" is permitted, the county planning commission, and/or the commission if commission approval is required, may deny a special permit if one or more of the following guidelines is determined to be violated:

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- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;
- (2) The proposed use would not adversely affect the safety of surrounding property to an unreasonable degree, by causing physical harm to property or residents; causing air, water, or noise pollution; increasing trash or debris; increasing traffic or impairing traffic safety; impairing sanitation or

sewers; impairing flood control; increasing crime or trespassing; or increasing fire risk;

- (3) The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;
- (4) Unusual conditions, trends, and needs relating to the unsuitability of the land for permitted uses or the suitability of the land for other uses have arisen since the district boundaries and rules were established; ~~or~~
- (5) The land upon which the proposed use is sought is unsuited or not well-suited for the uses permitted within the district.

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

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

(f) The county planning commission may impose such protective conditions as it deems necessary in the issuance of a special permit. The county planning commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use proposed, and if appropriate, a time limit for the duration of the proposed use, which shall be a condition of the special permit; provided, however, that the commission for good cause shown, may specify or change the time period of the special permit. If the permitted use is not substantially established to the satisfaction of the county planning commission within the specified time, it may revoke the permit. The county planning commission, with the concurrence of the commission, may extend the time limit if it deems that circumstances warrant the granting of the extension. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)

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(Imp: HRS §205-6)

**§15-15-95.1 Applicability of subchapter 5.**

Except as otherwise provided in this subchapter, the procedural provisions of subchapter 5 shall apply to petitions for special permits. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)

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

(b) The commission shall not consider any petition for special permit covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of the filing of the findings of fact, conclusions of law, and decision and order denying the petition for special permit unless the petitioner submits significant new data or additional reasons which substantially strengthen the petitioner's position, provided that in no event shall any new petition be accepted within six months of the date of the filing of the findings of fact, conclusions of law, and decision and order. Additionally, the commission shall not consider any petition for special permit for the same request involving the same land that was before the commission and withdrawn voluntarily by the petitioner within one year of the date of the withdrawal.

(c) A denial or modification of the special

permit, as the case may be, of the proposed use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawai`i rules of civil procedure.

(d) If a special permit is approved pursuant to section 91-13.5, HRS, the provisions of section 15-15-82(e) and section 15-15-90(f) shall apply. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 205-6)

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

The decision of the county planning commission with respect to modification of a special permit, or modification, release or deletion of a condition to a special permit shall comply with the requirements of section 15-15-95 and 15-15-96. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)

#### SUBCHAPTER 13

#### GOVERNMENT SPONSORED HOUSING PROJECTS

**§15-15-97 Procedure for processing petitions for housing projects under section 201H-38, HRS.** (a) Petitions for housing projects under section 201H-38, HRS, shall be processed according to the procedures provided in this section.

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

- (1) File an original, ~~one paper copy,~~ and one ADA compliant electronic copy of a notice of intent to file a petition with the commission according to a format provided by the commission; the number and format of copies required under this section may be modified by order of the commission;
- (2) Publish the notice of intent at least once in a newspaper of general circulation in the State as well as in a county newspaper in which the subject property is situated. The notice of intent shall include:
  - (A) The name and address of the petitioner and the petitioner's property interest in the subject property;
  - (B) Proposed boundary amendment;
  - (C) Tax map key;
  - (D) Acreage;
  - (E) Existing land use;
  - (F) Brief description of the proposed development or use;
  - (G) The date that the petitioner shall file its petition with the commission; and
  - (H) Inform the public of the rights of interested persons under section 205-4(e), HRS;
- (3) Serve copies of the notice of intent to file a petition upon the director of the state office of planning, the planning department of the county in which the subject property is situated, and persons with a property interest in the subject property that is recorded in the county's real property tax records. The notice of intent to file a petition shall also be sent to persons on a mailing list provided by the chief clerk. In proceedings related to 201H petitions, the petitioner's notice of intent shall also serve as the notice of hearing for the purposes of intervention;
- (4) File an original and ~~one paper copy~~ an ADA compliant electronic copy of an affidavit of mailing the notices of intent to the persons specified in paragraph (3); and
- (5) File an affidavit of publication of the

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notice of intent to file a petition in compliance with paragraph (2).

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

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

(d) All other persons may apply for leave to intervene, which shall be freely granted, provided the commission or its hearings officer may deny an application to intervene when, in the commission's or hearing officer's discretion, it appears that:

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

(e) Petitions to intervene and become a party shall be in conformity with subchapter 5 and filed with the commission. An original and one ~~paper~~ ADA compliant electronic copy, together with one electronic copy of the petition for intervention with proof of service on all parties shall be filed with the commission within fifteen days after the notice of intent to file a petition is published pursuant to section 15-15-97(b)(2). Except for good cause shown, late filing shall not be permitted.

(f) The petition for intervention shall make reference to the following:

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

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the proposed intervenor's interest.

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

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

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

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

(j) If the petitioner fails to file the petition on the date stated in its notice of intent, the petitioner shall refile a notice of intent in the manner set forth in this section.

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

- (1) A finding of no significant impact or approved environmental impact statement if conservation district lands are involved;
- (2) A proposed decision and order;
- (3) An affidavit that the petitioner has met with interested community groups to discuss the proposed project;
- (4) A clear description of the manner in which petitioner proposes to finance the proposed development, including a budget, a marketing plan, and a feasibility study; and

(5) A certification from the Hawai'i housing finance and development corporation or county housing agency that the petition involves a section 201H-38, HRS, housing project, including a certified copy of an approved county council resolution approving the project with conditions and any exemptions granted.

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

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

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

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

**§15-15-97.1 REPEALED.** [R 5/8/00]

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

SUBCHAPTER 14

DECLARATORY ORDERS

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

(b) A farmer or landowner with lands qualifying under section 205-45, HRS, may file a petition for declaratory order to designate the lands as important agricultural lands and shall file a petition that conforms to the requirements of this section and section 205-44 and 205-45, HRS.

(c) Notwithstanding the other provisions of this subchapter, the commission, on its own motion or upon request but without notice of hearing, may issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ]  
(Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

**§15-15-99 Petition for declaratory order; form and contents.**

The petition shall be submitted consisting of one original, ~~one paper copy,~~ and one ADA compliant electronic copy, and shall conform to the format requirements of sections 15-15-38, 15-15-39, and 15-15-40, and shall contain:

- (1) The name, address including zip code, and telephone number of each petitioner;
- (2) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question, together with a complete statement of the relevant facts and a statement of the issues raised or controversy or uncertainty involved;

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- (4) A statement of the petitioner's interpretation of the statute, rule or order or the petitioner's position or contention with respect thereto;
- (5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention. The commission may require the petitioner to file additional data or memoranda;
- (6) The names of any other potential parties;
- (7) The signature of each petitioner; and
- (8) A statement whether the petition for declaratory ruling relates to any commission docket for district boundary amendment or special permit, and if so, the docket number and identification of all parties to the docket. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

**§15-15-100 Consideration of petition for declaratory order.** (a) The commission, within ninety days after submission of a petition for declaratory order, shall:

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

**It is my testimony that** if the LUC cites this rule in a DO it should cite '**pending litigation**' references in the DO OR explain how the DO would '**adversely affect the interest of the State.....**' Otherwise any appeal is unfairly handicapped.

statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission; or

(2) Issue a declaratory order on the matters contained in the petition; or

(3) Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.

(b) If the matter is set for hearing, the commission shall render its findings and decision within one hundred and twenty days after the close of the hearing or, if post hearing briefs are filed, forty-five days after the last brief is filed, unless a different time period is stated at the hearing. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

**§15-15-101 Declaratory orders; dismissal of petition.** The commission, without notice or hearing, may dismiss a petition for declaratory order that fails in material respect to comply with the requirements of this subchapter. The dismissal shall be in writing and state the reasons ~~therefor~~for the dismissal. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

**§15-15-102 REPEALED.** [R11/2/2013]

**§15-15-103 Declaratory orders; request for hearing.** The commission may, but shall not be required to, conduct a hearing on a petition for declaratory order. Any petitioner or party in interest who desires a hearing on a petition for a

**This rule is confusing and problematic in more than one way .**

**HAR §15-15-100 Consideration of petition for declaratory order, HAR 15-15-100 (a)**

**(3) Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.** Subchapter 7's rules begin at HAR 15-15-51 and end at HAR 15-15-76. I have described several sections of Subchapter 7 that were not followed in the LUC's administration of my Petition. Here "Timeliness" issues described in Subchapter 7 **§15-15-74 Decision.** (b) appears to conflict with **HAR 15-15-100 (b) If the matter is set for hearing, the commission shall render its findings and decision within one hundred and twenty days after the close of the hearing.**

In **Towne V. LUC, 55 H. 538, 524 P.2d 84 (1974)** HSC found that the word "shall" is mandatory and furthermore applied to time limits....

*Provision that commission shall render decision within forty-five and ninety days after the public hearing is mandatory and **decision rendered after the time period is void.***

The stipulated **120 days** (HAR 15-15-100(b)) is different than in the above cited Towne V. LUC but the effect is the same.. The LUC heard my Petition on September 8, 2021, the DO was issued March 15, 2022, **188 days later**, however the DO was issued within 365 days of the Petition's filing (HAR 15-15-74) which filing date was June 17, 2021 (total time from filing to DO = 273 days). It would seem therefore that **the LUC's DO for DR21-72 is null and void** as per the cited HSC decision and HAR 15-15-100(b).

**My testimony** is that the LUC's amended rules should clear up this apparent conflict AND the LUC should vacate its DO for DR21-72, **by its own motion**, and hear the Petition as a contested case hearing.

declaratory order shall set forth in detail in the request the reasons why the matters alleged in the petition, together with supporting affidavits or other written briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition, and to the extent that the request for a hearing is dependent upon factual assertion, shall accompany the request by affidavit establishing those facts. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

**§15-15-104 Applicability of declaratory order.**

An order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts not considered in the order exist. The order shall have the same force and effect as other orders issued by the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

**15-15-104.1 Fees.** The Petitioner shall be responsible for fees pursuant to section 15-15-45.1 herein. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

SUBCHAPTER 15

RULEMAKING PROCEDURES

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

(a) The commission, at any time on its own

motion, may initiate proceedings for the adoption, amendment, or repeal of any rule of the commission.

(b) Any interested person may petition the commission for the adoption, amendment, or repeal of any rule of the commission. The petitioner shall file and deliver one original, ~~one paper copy~~ and one ADA compliant electronic copy of the petition to the office of the commission. The number and format of copies required under this section may be modified by order of the commission. Petitions for rulemaking filed with the commission shall become matters of public record. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-6, 205-7)

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

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

Any petition which does not conform to the foregoing requirements may be rejected by the commission. The rejection shall be in writing and shall state the reasons ~~therefor~~ for rejection. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §91-13.5, 91-6, 205-7)



**§15-15-107 Rulemaking; action on petition.** (a)

Within sixty days after the filing of a petition for rulemaking, the commission shall either deny the petition in writing, stating its reasons for its denial or initiate proceedings for the adoption, amendment, or repeal of the rule, in accordance with section 91-3, HRS.

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

(c) If the commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in sections 15-15-108, 15-15-109, 15-15-110, and chapter 92, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-3, 91-6, 92-1, et seq.)

**§15-15-107.1 Commission action.** The commission shall consider all statements, views, comments, and documents of record before taking final action in a rulemaking proceeding. Unless otherwise provided by law, any decision rendered pursuant to this subchapter shall not be subject to a motion for reconsideration or judicial review. The adoption, amendment or repeal of a rule is subject to approval of the governor and filing with the lieutenant governor. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-3)

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

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

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

- (1) A statement of the date, time, and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed; and
- (3) A statement of the substance of the proposed rules. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§1-28.5, 91-3, 92-41)

**§15-15-109 Rulemaking; conduct of public hearing.** (a) The chairperson of the commission or, in the chairperson's absence, another member designated by the commission, or a duly appointed hearings officer shall conduct the public hearing for the adoption, amendment, or repeal of the rules. The commission shall afford interested persons a reasonable opportunity to offer testimony with respect to the matter specified in the notice of hearing, in order to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each such public hearing shall be held at the time and place set in the notice of hearing but

may at that time and place be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

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

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

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

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(f) Unless otherwise specifically ordered by the commission, testimony given at the public hearing shall not be reported verbatim. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7)  
(Imp: HRS §§91-2, 91-3)

**§15-15-110 Emergency rulemaking.** If the commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than thirty days notice of hearing, and states in writing its reasons for that finding, it may adopt emergency rules pursuant to section 91-3(b) and 91-4, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-3, 91-4)

#### SUBCHAPTER 16

#### LAND USE DISTRICT BOUNDARIES

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

(b) The official maps entitled "Land Use District Boundaries, dated December 20, 1974," as amended, are located in the commission office. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-1)

#### SUBCHAPTER 17

#### IMPORTANT AGRICULTURAL LAND DESIGNATION AND PROCEEDINGS

**§15-15-120 Criteria and procedure for the identification of important agricultural lands.** (a) The commission shall not approve a petition to have land designated as important agricultural land, either

in whole or in part, unless the commission finds upon a clear preponderance of the evidence, that the designation is reasonable and consistent with the policies of chapter 205 HRS and the provisions of this subchapter 17.

(b) Any petition seeking to designate lands as important agricultural lands shall adhere to the requirements of subchapter 14 of this chapter. A petition seeking to designate lands as important agricultural lands and a reclassification of lands to urban, rural or conservation under section 205-45, HRS, or a credit for reclassification of lands to urban, rural or conservation, shall be set for hearing in accordance with section 15-15-100. Any hearing set for determination of a petition for designation of important agricultural lands under this section shall be held pursuant to the procedures and requirements set forth in section 205-4, HRS, and subchapters 7 and 14 of this chapter. Petitions to intervene shall follow the procedures and requirements contained in section 15-15-52.

(c) In review of any petition seeking, in part or in whole, to have lands classified as important agricultural lands, the commission shall specifically consider the following:

- (1) Whether the land is currently used for agricultural production;
- (2) The land's soil qualities and whether the growing conditions support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) The land's classification or identification under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawai'i (ALISH) system adopted by the board of agriculture on January 28, 1977;
- (4) If the land has been or is a type that has been associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;
- (5) The land shall have sufficient quantities of water to support viable agricultural

- production;
- (6) If the land's designation as important agricultural lands will be consistent with general, development, and community plans of the county;
  - (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
  - (8) Whether the land has, or is near, support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

(d) If a petition is limited solely to designation by a landowner of important agricultural lands, the commission shall weigh the criteria set forth in section 15-15-120(c) against each other to meet the objectives of section 205-42 HRS.

(e) The commission shall not accept any petition to designate lands as important agricultural lands covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of filing of findings of fact and conclusions of law denying the petition. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-44)

**§15-15-121 Petition by farmer or landowner.** (a)

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

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

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

the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 15-15-121.

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

**§15-15-122 Petition by farmer or landowner for designation of important agricultural land and urban, rural or conservation re-classification.**

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

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

the petition is sought to be designated as important agricultural land; and

- (4) Meet all of the requirements of subchapter 8 herein.

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

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

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

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

- (e) In review of any petition seeking to have



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

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

(f) Approval of a petition for designation of important agricultural lands in conjunction with a petition for urban, rural or conservation reclassification under this section shall require approval by a vote of a two-thirds majority of the commissioners. The commission shall include reasonable conditions in its order.

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

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

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

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

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

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

(e) Credits held by a petitioner under this section may only be applied to lands owned or held by the petitioner in the same county as the lands

designated important agricultural lands in the original petition giving rise to the credits are located.

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

(g) A petition for use of credit for reclassification of land granted under this section must be filed within ten years of the effective date of the original order by which the credits were granted by the commission. Unused credits shall expire and become unusable if not used within ten years from the effective date the original order by which the credits were granted by the commission.

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

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

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

**§15-15-125 County identification of important agricultural lands.** (a) Receipt of recommendations and maps from the planning department of a county under section 205-48, HRS, shall not be considered a petition for a declaratory order designating land within its jurisdiction as important agricultural lands. The commission shall however, designate lands within the relevant county and adopt maps designating important agricultural lands in such county within 365 days of the submission being deemed complete pursuant to subsection (b). Such time period for determination may be extended for a period of up to one hundred and eighty days by order of the chairperson of the commission. The form and content of the county recommendations shall conform to the requirements of sections 205-42, 205-43, 205-44, and 205-47, HRS.

(b) The county making such recommendations to designate land important agricultural lands shall provide the commission a complete record of its proceedings in support of its recommendation, including evidence the county has specifically adhered to the requirements of section 205-47, HRS, including records evidencing that:

- (1) Maps of potential lands to be considered for designation as important agricultural lands have been developed in consultation and cooperation with landowners, the state department of agriculture, agricultural interest groups, including representatives from the Hawai'i farm bureau federation and other agricultural organizations, the United States department of agriculture - natural resources conservation service, the state office of planning, and other groups as necessary.
- (2) Each county, through its planning department, has utilized an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands,

including a series of public meetings throughout the identification and mapping process.

- (3) The county has taken notice of those lands already designated important agricultural lands by the commission.
- (4) Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, each county has taken reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands.
- (5) Evidence that the important agricultural lands mapping relates to, supports, and is consistent with the:
  - (A) Standards and criteria set forth in section 205-44, HRS, and this subchapter have been met;
  - (B) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
  - (C) Comments received from government agencies and others identified in section 205-47(b), HRS;
  - (D) Viability of existing agribusinesses;
  - (E) Representations or position statements of the owners whose lands are subject to the potential designation; and
  - (F) Any other relevant information.
- (6) The important agricultural lands maps have been adopted by the county council, by resolution.

(c) A submission by a county under this section shall not be deemed complete unless all of the evidence set forth in section 15-15-125(b) has been transmitted and accepted by the commission.

(d) Any hearing under this section shall adhere to the procedures set forth in this subchapter and subchapters 1 and 5, and shall be conducted as a rulemaking proceeding in accordance with section 15-15-109 and held in the relevant county.

- (e) The commission may, under this section:
- (1) Remand the matter back to the county for

- further review or clarification;
- (2) Adopt the recommendations of the county in its entirety after receipt of the complete record from the county pursuant to section 15-15-126, and designate lands in such county as important agricultural lands; or
  - (3) Based on evidence presented, amend or revise the county recommendation and proposal to exclude, or include, certain lands from designation as important agricultural lands.
- (f) The county shall serve a file-stamped copy of the county report and maps submitted pursuant to a petition under this section on the state department of agriculture and the state office of planning within one business day of filing with the commission. The state office of planning and state department of agriculture shall review the county submittal pursuant to section 205-48, HRS, and provide comments to the commission within forty-five days of the county filing being deemed complete.
- (g) Approval of maps and a designation of important agricultural lands under this section shall require the affirmative vote of two-thirds of the commission. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-47, 205-48, 205-49)

**§15-15-126 Criteria for designation of lands as important agricultural lands pursuant to county recommendation.** (a) In designating important agricultural lands in the state, pursuant to the recommendations of individual counties, the commission shall consider the extent to which:

- (1) The proposed lands meet the standards and criteria under section 205-44, HRS, and section 15-15-120;
- (2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-42 and 205-43, HRS; and
- (3) The commission has designated lands within the county as important agricultural lands, pursuant to this subchapter.

(b) Should the commission determine that more than fifty percent of a landowners' landholdings, excluding lands held in the conservation district, are already designated as important agricultural lands, pursuant to this subchapter, the commission shall not designate any additional lands of that landowner as important agricultural lands except by a petition from the landowner pursuant to this subchapter.

(c) The designation of lands as important agricultural lands and the adoption of maps of those lands pursuant to this section shall be based upon written findings of fact and conclusions of law, and a showing by a preponderance of the evidence that the subject lands meet the standards and criteria set forth in section 15-15-120.

(d) Designation of agricultural lands as important agricultural lands under this section shall be by an affirmative vote of two-thirds of the membership to which the commission is entitled. If the petition is not approved by a vote of two-thirds majority of the commission it shall be deemed denied.

[Eff and comp 11/2/2013; comp ]  
(Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-47, 205-49)

**§15-15-127 Standards and criteria for the reclassification or rezoning of important agricultural lands.**

(a) Any land use district boundary amendment or change in zoning involving important agricultural lands identified pursuant to this subchapter shall be considered as, and meet the submittal requirements for, a district boundary amendment under this chapter.

(b) An application for a special permit involving important agricultural lands shall include evidence that the request has been referred to the state department of agriculture and the state office of planning for review and comment and contain as part of the petition any comments or recommendations made by both the state department of agriculture and the state office of planning.

(c) In addition to the criteria set forth in subchapter 8, any decision by the commission or county pursuant to this section shall specifically consider,

and find by a preponderance of the evidence, that:

- (1) The land to be reclassified is not critical for agriculture based on the amount of similarly suited lands in the area and the State as a whole;
- (2) The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;
- (3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as important agricultural lands that create residual parcels of a size that would preclude viable agricultural use;
- (4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes;
- (5) The proposed district boundary amendment or zone change will not negatively impact the ability or capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area;
- (6) The public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes;
- (7) The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands;
- (8) The decision-making criteria of subchapter 8 governing decisions of the land use commission on district boundary amendments have been met; and
- (9) The decision-making criteria adopted by each county to govern decisions of county



decision-making authorities under this chapter have been met.

(d) The reclassification of lands designated as important agricultural shall be based upon written findings of fact and conclusions of law pursuant to subchapters 7 and 11.

(e) A reclassification of lands designated as important agricultural lands shall be by an affirmative vote of two-thirds of the membership to which the commission is entitled.

(1) If the petition is not approved by a vote of two-thirds of the membership of the commission, it shall be deemed denied.

(2) The commission shall not accept any petition to designate lands as important agricultural lands covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of filing of findings of fact and conclusions of law denying the petition.

(f) The commission may, upon petition by the farmer or landowner of lands designated as important agricultural lands, remove all or a portion of those important agricultural lands from the "important agricultural lands" designation if, after a hearing held pursuant to subchapter 14, the commission finds upon a preponderance of the evidence that a sufficient supply of water is no longer available to allow profitable farming of the land due to governmental actions, ~~acts of God~~ natural disasters or accidents that are caused without human intervention, or other causes beyond the farmer's or landowner's reasonable control.

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(g) The commission may only remove an important agricultural land designation on lands originally designated as important agricultural lands pursuant to a declaratory order that both designated land as important agricultural lands and reclassified land as urban, rural or conservation, or a combination thereof, with the prior authorization of the legislature as expressed by a two-thirds vote of each house of the legislature voting separately. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-50)

**§15-15-128 Periodic review and amendment of important agricultural lands maps.** (a) Amendment of the maps of important agricultural lands initiated by the county shall be conducted in accordance with section 15-15-109.

(b) In a county-initiated proceeding for an amendment of important agricultural land maps and designation under section 15-15-128(a), the "important agricultural lands" designation shall be removed from lands previously designated as important agricultural lands where the commission finds, by a preponderance of the evidence, that a sufficient supply of water is no longer available to allow profitable farming of the lands due to governmental actions, ~~acts of God~~ natural disasters or accidents that are caused without human intervention, or other causes beyond the farmer or landowner's reasonable control.

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(c) The commission shall not remove the important agricultural lands designation if the lands were designated important agricultural lands by declaratory order in combination with the reclassification of land in the agricultural district to the rural, conservation or urban district pursuant to section 205-45, HRS, unless the legislature provides prior authorization by adoption of a concurrent resolution in accordance with section 205-45, HRS. [Eff and comp 11/2/2013; comp ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-52)

#### SUBCHAPTER 18

#### PETITIONS FOR HAWAI`I HOUSING AUTHORITY RENTAL HOUSING PROJECTS

Repealed

**§15-15-122 REPEALED.** [R 8/16/97]



Amendments to and compilation of chapter 15, title 15, Hawaii Administrative Rules on the summary page dated ~~November 2, 2018~~ were adopted on ~~January 25, 2019~~, following public hearings held on ~~December 4, 5, 6, and 12, 2018~~ after public notice was given in the Honolulu Star Advertiser, the Maui News, West Hawai`i Today, the Hawai`i Tribune Herald and The Garden Isle on ~~November 2, 2018~~.

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

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~~JONATHAN LIKEKE SCHEUERDAN~~  
GIOVANNI  
Chairperson

TOKIOKA

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~~MICHAEL McCARTNEY~~ JAMES KUNANE  
Director, Department of Business,  
Economic Development and Tourism

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~~DAVID Y. ICE~~ JOSH GREEN, M.D.  
Governor  
State of Hawai`i

APPROVED AS TO FORM:

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Deputy Attorney General