

COUNTY OF HAWAI‘I
PLANNING
COMMISSION

RULES OF
PRACTICE AND
PROCEDURE

RULES 1-16

COUNTY OF HAWAI‘I
PLANNING COMMISSION

RULES OF PRACTICE AND PROCEDURE

TABLE OF CONTENTS

	PAGE
<u>RULE 1. GENERAL RULES</u>	
1-1 Authority	1-1
1-2 Purpose	1-1
1-3 General Definitions	1-1
1-4 The Commissions	1-2
1-5 Meetings	1-3
1-6 Public Records	1-6
1-7 Computation of Time	1-7
1-8 Severability	1-7
<u>RULE 2. PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES</u>	
2-1 Initiation of Rulemaking Proceedings	2-1
2-2 Notice of Public Hearing	2-2
2-3 Conduct of Public Hearing	2-2
2-4 Action	2-3
2-5 Emergency Rulemaking	2-3
2-6 Filing of Rules	2-3
2-7 Taking Effect of Rules	2-3
2-8 Publication of Rules	2-3
<u>RULE 3. DECLARATORY RULINGS</u>	
3-1 Petitions for Declaratory Rulings	3-1
3-2 Request for Public Hearing	3-1
3-3 Notice of Public Hearing	3-2
3-4 Conduct of Hearing	3-2
3-5 Action	3-2
3-6 Status of Orders	3-2
<u>RULE 4. CONTESTED CASE PROCEDURE</u>	
<u>PART 1. General Provisions</u>	
4-1 Purpose	4-1
4-2 Conflict with Other Time and Notice Requirements	4-1
4-3 Service of Notices, Documents, and Other Papers	4-1
4-4 Presiding Officer	4-1

4-5	Notice of Contested Case Hearing.....	4-2
4-6	Prehearing Procedure.....	4-3
4-7	Conference with Presiding Officer	4-5
4-8	Limiting Testimony	4-5
4-9	Removal from Proceeding	4-5
4-10	Order of Procedure	4-5
4-11	Questions from Commission	4-5
4-12	Cross-Examination	4-5
4-13	Requests for Subpoenas	4-6
4-14	Consolidation	4-7
4-15	Substitution of Parties.....	4-7
4-16	Written Requests.....	4-7
4-17	Evidence	4-8
4-18	Briefs	4-9
4-19	Oral Arguments	4-10
4-20	Public Testimony	4-10
4-21	Close of Hearing	4-10

PART 2. Post Hearing Procedure for Hearings Conducted by Hearing Officer

4-22	Recommendations of Hearing Officer.....	4-10
4-23	Exceptions to Hearing Officer's Report and Recommendations.....	4-11
4-24	Support of Hearing Officer's Report and Recommendations.....	4-11

PART 3. Commission Decision

4-25	Examination of Evidence by Commission	4-12
4-26	Oral Argument before the Commission.....	4-12
4-27	Commission Action	4-12
4-28	Time Limit for Decision	4-12
4-29	Issuance of Decisions and Orders.....	4-13
4-30	Service of Decisions and Orders.....	4-13
4-31	Reconsideration of Decision and Order.....	4-13
4-32	Appeal from the Commission's Decision	4-13

RULE 5. GENERAL PLAN AMENDMENTS

5-1	Authority.....	5-1
5-2	Scope and Purpose.....	5-1
5-3	Definition.....	5-1
5-4	Amendment Pursuant to Comprehensive Review	5-1
5-5	Interim Amendments	5-2

RULE 6. SPECIAL PERMITS

6-1	Authority.....	6-1
6-2	Standing to Submit a Petition for a Special Permit	6-1
6-3	Petition and Content	6-1

6-4	Incomplete Application	6-2
6-5	Posting of Signs for Public Notification	6-2
6-6	Public Hearing	6-3
6-7	Grounds for Special Permit	6-4
6-8	Decision	6-4
6-9	Amendments of Permit or Conditions	6-5
6-10	Appeals	6-5
6-11	Revocation	6-6

RULE 7. USE PERMITS

7-1	Authority	7-1
7-2	Application and Content	7-1
7-3	Incomplete Application	7-2
7-4	Posting of Signs for Public Notification	7-2
7-5	Public Hearing	7-3
7-6	Criteria for Granting a Use Permit	7-5
7-7	Decision	7-5
7-8	Concurrent Requests	7-5
7-9	Amendments of Permit or Conditions	7-6
7-10	Appeals	7-6
7-11	Revocation	7-7

RULE 8. SHORELINE SETBACK VARIANCE

8-1	Authority	8-1
8-2	Purpose	8-1
8-3	Definitions	8-1
8-4	Variance Application and Content	8-3
8-5	Posting of Signs for Public Notification	8-4
8-6	Incomplete Application	8-5
8-7	Compliance with Chapter 343, Hawai'i Revised Statutes	8-5
8-8	Public Hearing	8-5
8-9	Decision	8-6
8-10	Waiver of Public Hearing and Action	8-6
8-11	Criteria for Approval of a Variance	8-7
8-12	Amendments to a Variance	8-9
8-13	Administration and Enforcement	8-10
8-14	Appeals	8-10
8-15	Revocation	8-11

RULE 9. SPECIAL MANAGEMENT AREA

9-1	Authority	9-1
9-2	Purpose	9-1

9-3	Title	9-1
9-4	Definitions	9-1
9-5	Special Management Area.....	9-7
9-6	Objectives and Policies of Chapter 205A, HRS	9-7
9-7	Special Management Area Guidelines.....	9-7
9-8	Permits Required for Development	9-7
9-9	Authority of the Department in the Special Management Area	9-7
9-10	Assessment	9-8
9-11	Special Management Area Use Permit Procedures	9-13
9-12	Artificial Light on Shoreline and Ocean Waters	9-20
9-13	Prohibitions.....	9-21
9-14	Special Management Area Emergency Permits.....	9-21
9-15	Exemptions	9-22
9-16	Revocation	9-22
9-17	Penalties.....	9-23
9-18	Complaint and Investigative Procedures	9-23
9-19	Administrative Fines.....	9-23
9-20	Injunction.....	9-23
9-21	Hearing Officer	9-24
9-22	Petition for the Adoption, Amendment or Repeal of Rule 9 Special Management Area Rule of the County of Hawai‘i.....	9-25
9-23	Amendment of Special Management Area (SMA) Maps.....	9-26

RULE 10. ZONING AMENDMENTS

10-1	Authority.....	10-1
10-2	Procedures for Processing Zoning Amendments.....	10-1
10-3	Posting of Signs for Public Notification.....	10-4

RULE 11. GEOTHERMAL RESOURCE PERMITS

11-1	Purpose and Authority	11-1
11-2	Definitions	11-1
11-3	Contents of Application.....	11-1
11-4	Properly Filed Application	11-4
11-5	Posting of Signs for Public Notification.....	11-4
11-6	Hearing and Notification	11-5
11-7	Mediation.....	11-6
11-8	Criteria for Issuance of Geothermal Resource Permit.....	11-9
11-9	Action	11-9
11-10	Requirements Prior to Initiating Construction.....	11-10
11-11	Amendments of Permit and Conditions.....	11-10
11-12	Enforcement of Permit and Conditions	11-11
11-13	Penalties.....	11-12
11-14	Appeals	11-12

RULE 12. GEOTHERMAL ASSET FUND

12-1	Authority	12-1
12-2	Purpose	12-1
12-3	Definition	12-1
12-4	General Procedures	12-1
12-5	Geothermal Asset Fund Claims Adjuster	12-2
12-6	Eligibility of Claims	12-2
12-7	Filing of Claims	12-3
12-8	Hearings	12-3
12-9	Claims Adjuster's Recommendations	12-5
12-10	Commission Action	12-6
12-11	Award of Compensation	12-6
12-12	Denial of Award of Compensation	12-6
12-13	Appeal	12-6
12-14	When Rules are Silent	12-7
12-15	Petition for Adoption, Amendment or Repeal of Rules	12-7
12-16	Relocation	12-7
12-17	Other Rights	12-7

RULE 13. STATE LAND USE DISTRICT BOUNDARY AMENDMENT

13-1	Purpose and Authority	13-1
13-2	Standing to Submit Application for State Land Use District Boundary Amendment	13-1
13-3	Contents of Application	13-1
13-4	Incomplete Application	13-2
13-5	Posting of Signs for Public Notification	13-2
13-6	Procedures for Reviewing and Processing of Application	13-3
13-7	Standards for Review	13-4
13-8	Notification of Decision	13-4
13-9	Consolidated Proceeding with Other Land Use Changes	13-4

RULE 14. AGRICULTURAL PROJECT DISTRICTS

14-1	Authority	14-1
14-2	Purpose	14-1
14-3	Contents of Application and Requirements	14-1
14-4	Posting of Signs for Public Notification	14-1
14-5	Procedures for Reviewing and Processing Agricultural Project Districts	14-2
14-6	Decision	14-3
14-7	Criteria for Establishing an Agricultural Project District	14-3
14-8	Amendments to Conditions and Standards	14-4

RULE 15. PROJECT DISTRICTS

15-1	Authority	15-1
15-2	Purpose	15-1
15-3	Contents of Application and Requirements	15-1
15-4	Procedures for Reviewing and Processing Project Districts	15-1
15-5	Decision.....	15-2
15-6	Criteria for Establishing a Project District	15-2
15-7	Amendments to Conditions and Standards	15-3

RULE 16. PLANNED UNIT DEVELOPMENT (P.U.D.)

16-1	Authority	16-1
16-2	Purpose	16-1
16-3	Minimum land area required	16-1
16-4	Contents of Application for P.U.D Permits and Requirements.....	16-1
16-5	P.U.D. permit application and processing requirements located within special districts with design guidelines and/or standards.....	16-3
16-6	Notice of filing and action on P.U.D. application and sign posting.....	16-4
16-7	Procedure for processing application when use not permitted in district	16-5
16-8	Actions by Commission on P.U.D. permit applications	16-6
16-9	Criteria for granting a P.U.D. permit	16-7
16-10	Height exceptions authorized	16-7
16-11	Approvals issued under P.U.D. permit.....	16-8
16-12	Effect of P.U.D. permit on other zoning provisions.....	16-8
16-13	Time extensions and amendments.....	16-8
16-14	Appeals	16-9
16-15	Revocation.....	16-9

LEEWARD AND WINDWARD PLANNING COMMISSIONS
COUNTY OF HAWAI'I

RULES OF PRACTICE AND PROCEDURE

RULE 1. GENERAL RULES

1-1 Authority

The rules hereinafter contained are established pursuant to the authority of Section 6-7.5 of the 2020 Charter of the County of Hawai'i, as amended, and Chapter 91, Hawai'i Revised Statutes.

1-2 Purpose

These rules govern the practice and procedure before Leeward and Windward Planning Commissions of the County of Hawai'i.

1-3 General Definitions

- (a) "Agency" means any agency, board, commission, department, or officer of the county or state government.
- (b) "Applicant" means any agency or person who applies to the Commission for a land use application and/or permit.
- (c) "Chairperson" means the chairperson of the Leeward Planning Commission or the Windward Planning Commission, or both.
- (d) "Commission" means either the Leeward Planning Commission or the Windward Planning Commission.
- (e) "Joint Commission" means the combined membership of the Windward Planning Commission and Leeward Planning Commission meeting jointly.
- (f) "Contested case" means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.
- (g) "Copy or copies" means both physical media or electronic media.
- (h) "Council" means the County Council.
- (i) "County" means the County of Hawai'i.

- (j) “Department” means the Planning Department.
- (k) “Director” means the Planning Director.
- (l) “Document” means a form, letter, or other method of written communication and includes electronic communication such as electronic mail, etc.
- (m) “General Plan” means the Hawai‘i County General Plan.
- (n) “Hearings Officer” means a person or person duly designated and authorized by the Commission to conduct proceedings on matters within the jurisdiction of the Commission for purpose of taking testimony and to report the findings and recommendations to the Commission.
- (o) “Intervenor” means a person who petitions to intervene in a contested case proceeding and is admitted as a party.
- (p) “Party” means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in a proceeding.
- (q) “Person” means any individual, partnership, firm, association, trust, estate, corporation, or other legal entity of any character other than an agency.
- (r) “Presiding Officer” means any commissioner or a hearings officer duly designated as such. Unless otherwise designated, the chairperson shall be the presiding officer.
- (s) “Signature” means either an original signature scanned into a format prescribed by the Director or an electronic signature.
- (t) “Zoning Amendments” means changes to the boundaries of the zoning district or changes to any other provision of Chapter 25 (Zoning Code), Hawai‘i County Code 1983 (2016 Edition, as amended).

1-4 The Commissions

- (a) Office. The office of the Commissions is at Hilo, Hawai‘i.
- (b) Communications. Any communication to the Commissions shall be addressed to the Chairperson, Leeward or Windward Planning Commission, and submitted electronically to planning@hawaiicounty.gov, unless otherwise directed.

- (c) Membership. Each Commission consists of seven members appointed by the Mayor and confirmed by the Council. In addition, the Director of the Department of Public Works and the Manager of the Department of Water Supply or their designated representatives serve as ex-officio members without voting privileges.
- (d) Chairperson; Vice-chairperson. The chairperson and vice-chairperson shall be elected annually. The chairperson shall have the responsibilities and duties prescribed in this rule. The vice-chairperson shall perform all the duties of the chairperson during the absence of the chairperson.

1-5 Meetings

The Commission may meet and exercise its powers in its respective jurisdiction within the County. All Commission meetings are open to the public, except as provided by law. The parliamentary procedure to be utilized by the Commission in the conduct of its own meeting shall be based on the current edition of Robert's Rules of Order.

- (a) Regular Meetings. Regular meetings shall be held at least once a month in the Commission's jurisdiction, unless otherwise specified by law.
- (b) Special Meetings. Special meetings of the Commission for the transaction of its business may be held at any time and place as scheduled by the Commission.
- (c) Notice of Regular and Special Meetings.
 - (1) The Commission shall give written public notice of any regular or special meeting. The notice shall include an agenda which lists all of the items to be considered at the meeting, and the date, time, and place of the meeting.
 - (2) The Commission shall file the notice in the Office of the County Clerk and in the Commission's office for public inspection at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. The Commission shall not add items to the agenda, once filed, without a two-thirds recorded vote of all members to which the Commission is entitled; provided that no item shall be added to the agenda in the manner provided herein, if it is of reasonably major importance and action thereof by the Commission will affect a significant number of persons.
 - (3) The Commission shall maintain a list of names and addresses of

persons who request notification of meetings and shall mail or electronic mail, as elected by the requester, a copy of the agenda to such persons at their last recorded address no later than the time the agenda is filed under subsection (2).

- (4) Notice of any special meeting shall be published in a newspaper of general circulation in the County at least twenty-four hours in advance of the meeting.
- (d) Emergency Meetings; Notice. An emergency meeting is a meeting in which the six calendar days' notice requirement cannot be met. Such a meeting can only be held if there is a written finding that there is imminent peril to the public health, safety, or welfare and provided the following procedures are met:
 - (1) The Commission states in writing the reasons for its findings;
 - (2) Two-thirds of the members to which the Commission is entitled agree that the findings are correct and an emergency exists;
 - (3) An emergency agenda and the findings are filed with the Office of the County Clerk and in the Commission's office; and
 - (4) Persons requesting notification pursuant to Rule 1-5 (c)(3) are contacted by mail, electronic mail or telephone as soon as practicable.
 - (5) A notice of the meeting shall be published in a newspaper of general circulation in the County at least twenty-four hours prior to the meeting, or if the requirement with respect to publication of notice cannot be met because of insufficient time, the meeting notice shall be made by broadcasting a minimum of three announcements in the English language over an FCC licensed public radio station in the County or a television station with local audience.
- (e) Executive Meetings. The Commission may hold an executive meeting, closed to the public, upon an affirmative vote, taken at an open meeting, of two-thirds of the members present. The vote of each member on the question of holding a meeting closed to the public and the reason for holding such a meeting shall be recorded and entered into the minutes of the meeting. A meeting closed to the public may be held only for the following purposes:
 - (1) To consult with the Commission's attorney; and/or
 - (2) For any other specific purpose authorized by law.

- (f) Joint Leeward and Windward Planning Commissions' Meetings. When the Leeward and Windward Planning Commissions convene and meet jointly, the chairperson for that joint meeting shall be either the chairperson of the Leeward Planning Commission or the chairperson of the Windward Planning Commission, selected at that meeting by the affirmative vote of a majority of the combined membership of the two commissions. The chairperson not selected as the chairperson for the joint meeting shall be the first vice chairperson of the joint meeting.
- (g) Quorum. A majority (four) of all members to which the Commission is entitled shall constitute a quorum to transact business. For a joint Leeward and Windward commission meeting, a majority of eight members constitutes a quorum.
- (h) Minutes. The Commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed 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 members, of any votes taken; and
 - (4) Any other information that any member of the Commission requests be included or reflected in the minutes.

The minutes shall be public records and shall be available within forty days after the meeting except where such disclosure would be inconsistent with Section 92-5, Hawai'i Revised Statutes, or Section 13-20 of the Charter; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

- (i) Procedure for Testimony at Public Hearings. Members of the public desiring to testify shall register with the commission staff prior to the convening of the meeting. Additionally, the following procedures shall be followed when the applicant, the applicant's representative, or members of the public desire to testify during public hearings before the Commission:
 - (1) The person desiring to testify shall indicate his or her name and address.

- (2) The person testifying shall indicate whether he or she is testifying on their own behalf or as a representative of the applicant or an organization.
- (3) All written testimony offered by any person shall be submitted to the Commission prior to the time the person gives such testimony.
- (4) The person testifying shall submit such oral testimony under oath. That oath shall be administered by the chairperson or chairperson's designee.
- (5) The chairperson or vice-chairperson may limit testimony which is irrelevant, abusive, disruptive, or unduly repetitious.
- (6) The person testifying shall direct their remarks to the Chairperson and not to any individual commission member, staff member, or person in the audience.
- (7) All members of the public shall extend proper courtesy and respect to one another and to all commission members and staff, and all persons shall be addressed by their surnames. No profanity or abusive remarks will be allowed at any time in any meeting.
- (8) Any person who does not abide by these rules may be ruled out of order by the Chairperson.
- (9) Nothing in these procedures shall diminish the responsibility or the authority of the Chairperson to maintain order and decorum.
- (j) Removal of Person from Meeting. Any person who disrupts a meeting which prevents or compromises the conduct of the meeting may be removed from the meeting at the discretion of the Chairperson.

1-6 Public Records

The term "public records" shall include all maps, rules, written statements of policy or interpretation formulated, adopted, or used by the Commission in its functions, all decisions, orders, minutes of the Commission meetings and records of any proceeding on file with the Commission, but shall not include records protected by law or which invades the right of privacy of an individual.

- (a) Inspection of Public Records. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state, federal, or

county law; provided that, except where such records are open under any rule of court, the Corporation Counsel or Prosecuting Attorney may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding to which the County is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person.

- (b) Copies of Public Records. Copies of records printed or reproduced or electronically produced for persons other than governmental agencies shall be provided to any person, provided that the fees or costs prescribed in the Code are paid.
- (c) Denial of Inspection; Application to Circuit Court. Any person aggrieved by the person having custody of any public record of the right to inspect the records or to obtain copies or electronic copies of extracts thereof may apply to the circuit court for an order directing the person having custody of the record to permit the inspection of or to furnish copies or electronic copies of extracts of the public record. The court shall grant the order after hearing, upon a finding that the denial was not for just and proper cause.

1-7 Computation of Time

In computing any period of time under these rules, by notice, or by any order or rule of the Commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday.

1-8 Severability

In the event any portion of the Rules of Practice and Procedure of the Leeward and Windward Planning Commissions of the County of Hawai'i ("Rules of Practice and Procedure") are declared invalid, such invalidity shall not affect other parts of the Rules of Practice and Procedure.

RULE 2. PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES

2-1 Initiation of Rulemaking Proceedings

- (a) The Joint Commission may, at any time, initiate proceedings for the adoption, amendment, or repeal of any rule of the Commissions. Procedures to be followed in rulemaking shall be as set forth in these rules.
- (b) Any interested person or agency may petition the Joint Commission for the adoption, amendment, or repeal of any rule of the Commissions. Such petitions shall contain:
 - (1) A non-refundable filing and processing fee of five hundred dollars;
 - (2) The name, address, telephone number, if available, and signature of the petitioner;
 - (3) A draft or the substance of the proposed rule or amendment or a designation of the provisions, the repeal of which is desired;
 - (4) A statement of the reasons in support of the proposed rule, amendment, or repeal.
- (c) The Joint Commission shall, within thirty days after the filing of a petition for rulemaking, either deny the petition or initiate public rulemaking proceedings.
- (d) Any petition that fails in material respect to comply with the requirements of this section or that fails to disclose sufficient reasons to justify the institution of rulemaking proceedings shall be denied by the Joint Commission. The Joint Commission shall notify the petitioner in writing of such denial, stating the reasons thereof. Denial of the petition shall not operate to prevent the Joint Commission from acting, on its own motion, on any matter disclosed in the petition. Petitioner may seek review of the denial through the Third Circuit Court.
- (e) If the Joint Commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking proceedings, the Joint Commission shall conduct rulemaking proceedings in accordance with Section 2-2 of this rule.

2-2 Notice of Public Hearing

- (a) When, pursuant to a petition therefor or upon its own initiation, the Joint Commission proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the County, and the notice shall also be provided to all persons who have made timely written requests for advance notice of the Joint Commission's rulemaking proceedings. The notice shall be published at least thirty days prior to the date set for the public hearing.
- (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 rule.

2-3 Conduct of Public Hearing

- (a) The public hearing for the adoption, amendment, or repeal of any rule shall be heard before the Joint Commission and presided over by the chairperson or vice- chairperson of the Joint Commission or, in their absence, by another member designated by the Joint Commission. The hearing shall be conducted in such a way as to afford all interested persons a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record.
- (b) Any interested person will be afforded an opportunity to submit data, views, or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations shall not extend beyond the hearing date, unless specified by the Joint Commission.
- (c) In every matter requiring a public hearing, the presiding officer shall take public testimony at some point during the hearing. The presiding officer may limit testimony which is unduly repetitious or lengthy.
- (d) Unless otherwise specifically ordered by the Joint Commission, testimony given at the public hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar

data offered at the hearing, and which are deemed by the Joint Commission to be authentic and relevant, shall be received and made a part of the record.

2-4 Action

The Joint Commission shall consider all relevant comments and material of record before taking final action in a rulemaking proceeding. Final action shall be taken within sixty days after the close of the public hearing.

2-5 Emergency Rulemaking

If the Joint 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 such finding, it may proceed without prior notice or hearing upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule. The Joint Commission shall make an emergency rule known to persons who will be affected by it by publication at least once in a newspaper of general circulation in the County.

2-6 Filing of Rules

The Joint Commission, upon adopting, amending, or repealing a rule and approval by the Mayor, shall file certified copies of the rule with the County Clerk.

2-7 Taking Effect of Rules

Each rule adopted, amended, or repealed shall become effective ten days after filing with the County Clerk. If a later effective date is required by statute or specified in the rule, the later date shall be the effective date, provided that no rule shall specify an effective date in excess of thirty days after the filing of the rule with the County Clerk. An emergency rule shall become effective upon filing with the County Clerk for a period not exceeding one hundred twenty days without renewal unless extended in compliance with Section 91-3(a), Hawai'i Revised Statutes.

2-8 Publication of Rules

The Joint Commission shall, as soon as practicable, compile, index, and publish all rules adopted by the Joint Commission and remaining in effect. Compilations shall be supplemented as often as necessary and shall be reviewed at least once every ten years.

RULE 3. DECLARATORY RULINGS

3-1 Petitions for Declaratory Rulings

- (a) On petition of an interested person, the Commission may issue a declaratory order as to the applicability of any statutory provision, ordinance, or of any rule or order of the Commission.
- (b) Petition for a declaratory ruling shall contain:
 - (1) A non-refundable filing and processing fee of two hundred dollars (\$200);
 - (2) Name, address, telephone number, if available, and signature of each petitioner;
 - (3) A designation of the specific provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
 - (4) A statement of the petitioner's position or contention; and
 - (5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention.
- (c) Within sixty days after the submission of a petition for declaratory ruling, the Commission shall either deny the petition in writing, stating the reasons for such denial or issue a declaratory order on the matters contained in the petition, or set the matter for a public hearing, as provided in Sections 3-2, 3-3 and 3-4 of these rules.

3-2 Request for Public Hearing

The Commission, in its discretion, may order that a hearing be held on a declaratory ruling petition. Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall submit a written request for a hearing, setting forth in the request the reasons why the matters alleged in the petition and the supporting material submitted will not permit the fair and expeditious disposition of the petition and, to the extent that such request for a hearing is dependent upon factual assertion, shall attach to the request an affidavit establishing such facts. In the event a hearing is ordered by the Commission, the hearing shall be conducted in accordance with Section 3-4 of this rule.

3-3 Notice of Public Hearing

A notice of the declaratory ruling petition shall be published at least once in a newspaper of general circulation in the County, and the notice shall also be mailed or electronically mailed, as elected by the requester, to all persons who have made timely written requests for advance notice. The notice shall be published at least twenty days prior to the date set for the hearing.

3-4 Conduct of Hearing

- (a) The public hearing for the declaratory ruling petition shall be heard before the Commission and presided over by the chairperson or vice-chairperson or, in their absence, by another member designated by the Commission. The hearing shall be conducted in such a way as to afford all interested persons a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record.
- (b) Any interested person will be afforded an opportunity to submit data, views, or arguments, orally or in writing, that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations shall not extend beyond the hearing date, unless specified by the Commission.
- (c) Unless otherwise specifically ordered by the Commission, testimony given at the public hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are deemed by the Commission to be authentic and relevant, shall be received and made a part of the record.

3-5 Action

The Commission shall consider all relevant comments and material of record before taking final action on the declaratory ruling petition. Final action shall be taken within sixty days after the close of the public hearing.

3-6 Status of Orders

An order disposing of a petition shall have the same status as other Commission orders. An order shall be applicable only to the factual situation described in the petition or set forth in the order. An order shall not be applicable to different factual situations or where additional facts not considered in the order exist.

RULE 4. CONTESTED CASE PROCEDURE

PART 1. General Provisions.

4-1 Purpose

This rule governs contested case procedure before the Commission whenever it is required by law; provided that any procedure in a contested case may be modified or waived by stipulation of the parties, and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. This procedure shall be used in all cases where the action of the Commission is the final action of a County official or agency, prior to the opportunity for appeal to Third Circuit Court, whenever it is required. It shall therefore be followed in all cases where State statutes provide for direct appeal from the Commission to Third Circuit Court.

4-2 Conflict with Other Time and Notice Requirements

In any case of conflict of time and notice requirements between this rule and any other rule of the Commission, the provisions of this rule shall be applied.

4-3 Service of Notices, Documents, and Other Papers

- (a) **Upon Whom Served.** All notices, documents, and other papers shall be served on the Commission and all parties, except that where a party is represented, such representative shall be served, rather than the party.
- (b) **Method of Service.** Service shall be made by personal delivery, first-class mail, certified or registered mail, electronic mail or by other means as permitted by law. If by mail, service shall be regarded as complete upon the mailing of an item which is properly stamped and addressed.
- (c) **Additional Time after Service by Mail.** Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice, document, or paper upon that party by mail, two days shall be added to the prescribed period.

4-4 Presiding Officer

- (a) **Person Presiding.** The chairperson of the Commission, one of its members, or a hearings officer duly appointed and designated, shall preside at the hearing.
- (b) **Powers.** The presiding officer controls the course of hearings,

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

- (c) Continuance. The presiding officer may postpone or continue any hearing to ensure the orderly and just conduct of a hearing.

4-5 Notice of Contested Case Hearing

- (a) Unless otherwise provided by law, the notice of hearing will be served on all parties within a reasonable time after the hearing date has been set. The notice shall include a statement of:
 - (1) The date, time, place, and nature of hearing;
 - (2) The legal authority under which the hearing is to be held;
 - (3) The particular sections of the statutes and rules involved;
 - (4) An explicit statement of the issues involved and the facts alleged by the agency in support thereof; provided, that if the agency is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished; and
 - (5) The fact that any party may retain counsel if so desired.
- (b) The notice of the date, time, place, and nature of the hearing shall also be published twice in two newspapers of general circulation in the county. Within ten days after the application has been filed, a notice shall appear in two County newspapers of general circulation and a second notice, not less than ten days prior to the hearing, shall appear in two County newspapers of general circulation and shall also be filed at least six calendar days prior to the hearing with the Office of the County Clerk.
- (c) The applicant shall serve notice to surrounding property owners and lessees of record pursuant to Section 25-2-4 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). Such notice shall also include a form developed by the Planning Department that outlines the contested case procedure and who qualifies. In addition, the notice shall

state that you have a right to file a written request for a contested case procedure.

4-6 Prehearing Procedure

- (a) In all proceedings where the Commission's action is directly appealable to Third Circuit Court, the applicant and the Planning Director will be designated parties to the action. Any other person seeking to intervene as a party shall file a written request on a form approved by the Planning Director and accompanied by a filing fee of \$200 no later than seven calendar days, prior to the Commission's first meeting on the matter. If the applicant files a request with the Commission for the deferral or continuance of the hearing prior to the commencement of the hearing, the next regularly scheduled meeting of the Commission will then be considered the subsequent rescheduled hearing date. If the request for intervention is withdrawn in writing before the commencement of the hearing, the filing fee shall be refunded to the person seeking standing to intervene.
- (b) Upon receipt of a written request to intervene, the Commission, at the first meeting on the matter, shall hold a hearing on the written request. The petitioner shall be admitted as a party if it can demonstrate that:
 - (1) His or her interest is clearly distinguishable from that of the general public; or
 - (2) Government agencies whose jurisdiction includes the land involved in the subject request; or
 - (3) That they have some property interest in the land or lawfully reside on the land; or
 - (4) That even though they do not have an interest different than the public generally, that the proposed action will cause them actual or threatened injury in fact; or
 - (5) Persons who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practice those rights which are customarily and traditionally exercised for subsistence, cultural or religious purposes.

The Commission will grant or deny such written request prior to any further action on the matter.

- (c) Appeal from Denial. Any petitioner who has been denied standing as a

party may appeal such denial to the Third Circuit Court pursuant to Section 91-14, Hawai'i Revised Statutes.

- (d) After establishing the parties to the proceeding, the Commission may either proceed with the hearing, or continue the matter to a more appropriate time and date.
- (e) The Commission may join as a party any other person subject to service of process if complete relief cannot be accorded among those already parties or that person has an interest in the matter so that the action of the Commission may impair or impede that person's ability to protect that interest or create a risk of multiple or otherwise inconsistent actions. Should such an order of joinder be issued, further proceedings will be suspended until a date not less than 20 days from service of the order, so that the joined party might properly respond.
- (f) Multiple Intervenors. If more than one intervenor is admitted to a contested case proceeding, the hearings officer and/or Commission may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The hearings officer or Commission shall have the right to impose reasonable subject matter, as well as time limitations on examination and cross-examination of witnesses, whether or not parties are represented by counsel.
- (g) Opposition to Intervention. If any party opposes the petition for intervention, that party shall file, within five (5) days after being served, his or her motion opposing the petition upon the Commission, all other parties and the intervenor.
- (h) Prior to proceeding further, the Commission may vote upon the motion of any member, to refer the matter for further proceedings to either a hearings officer, or to one or more members to act as hearings officer(s).
- (i) Mediation. All parties to a contested case proceeding shall participate, in good faith, in one mediation conference, the length of which shall be determined by the mediator. The mediation conference shall be held within thirty days of the granting of an intervention by the Commission. A mediator shall be selected jointly by the parties or appointed by the Commission if the parties fail to agree. The mediator shall not be the person appointed as the hearings officer for the contested case proceeding. The cost of the mediation conference(s) shall be borne by the Department. No agreement reached as a result of mediation shall result in an improper delegation of powers of the Commission or prevent the Commission from making the final decision in the matter.

4-7 Conference with Presiding Officer

At any time during the proceedings, the Presiding Officer may hold a conference with the parties for the following purposes:

- (a) To determine the possibility of simplifying or eliminating the issues;
- (b) To facilitate the stipulation to facts or findings by the parties;
- (c) To identify evidence which will be needed at the hearing;
- (d) To determine the validity of proposed evidence;
- (e) To determine the need for depositions or subpoenas;
- (f) To determine the relevance of findings in some other case to the case at hand;
- (g) To determine the need for consolidation of cases or joint hearings; and
- (h) To determine any other matters which will reduce cost or save time or otherwise aid in the expeditious disposition of the contested case.

4-8 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.

4-9 Removal from Proceeding

Any person who disrupts a hearing which prevents or compromises the conduct of the hearing shall be removed from the hearing room.

4-10 Order of Procedure

The applicant shall open and close. Other parties shall be heard in such order as the presiding officer directs.

4-11 Questions from Commission

There shall be opportunity for the Commission, including its ex-officio members, to ask questions of the parties' witnesses as may be required for a full and true disclosure of the facts.

4-12 Cross-Examination

Each party shall have the right to conduct such cross-examination of the

witnesses as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence.

4-13 Requests for Subpoenas

- (a) Subpoena of a Witness. Any request for the issuance of a subpoena, requiring the attendance of a witness for the purpose of taking oral testimony before the Commission, shall be in writing and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only a party or a member of the Commission may request the issuance of a subpoena.
- (b) Subpoena of Documents. Any request for the issuance of a subpoena for the production of documents or records shall be in writing; shall state the name of the person who is to produce such documents or records; shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.
- (c) Time for Filing. A request for the issuance of a subpoena under this section shall be valid only if it is received by the Commission no later than five working days before the date of the hearing at which the subpoenaed witness is to testify or documents are to be produced. The names of those for whom subpoenas have been issued, and any returns of the service of said subpoenas, shall be available upon request to the public at the office of the Planning Department.
- (d) Who May Issue A Subpoena. A subpoena may be issued by the chairperson of the Commission, the presiding officer, or a Commission member so authorized by the Commission. No subpoena shall be issued unless the party requesting the subpoena has complied with this section and gives the name and address of the desired witness. Signed and sealed blank subpoenas will not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. The subpoena shall show at whose instance the subpoena is issued.
- (e) Fees and Mileage. Any witness summoned shall be paid the same fees and mileage as are paid to witnesses in the circuit court of the State of Hawai'i, and such fees and mileage shall be paid by the party at whose request the witness appears.
- (f) Oath. Each witness shall be placed under oath or affirmation prior to testifying.
- (g) Written Request to Quash. Any party may bring a written request to

quash any subpoena issued, pursuant to this section, prior to the next scheduled meeting of the Commission. Any such written request may be granted if the subpoena is unreasonable or oppressive or may be denied or denied upon condition that the requestor of the subpoena advance the reasonable cost of producing any requested book, paper, document or tangible thing.

4-14 Consolidation

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

4-15 Substitution of Parties

Upon written request and for good cause shown, the Commission may order the substitution of a party, except that in the case of death of a party, substitution may be ordered without the filing of a written request.

4-16 Written Requests

- (a) Timing. Written requests shall be made at least ten days before the hearing. Written requests may be made during the hearing but only for good cause shown and at the discretion of the Presiding Officer.
- (b) Form; Contents. Any written request, other than one made during a hearing, shall be made in writing to the Commission, shall state the relief sought, and shall be accompanied by an affidavit or legal memorandum setting forth the grounds upon which the written request is based.
- (c) Service of Written Requests. The moving party shall serve a copy of all written request papers on all other parties and shall file with the Commission the original with proof of service.
- (d) Memorandum in Opposition. A memorandum in opposition or counter affidavit shall be served on all parties and the original and proof of service shall be filed with the Commission within seven days after being served with the written request. The chairperson of the Commission may order the memorandum in opposition to be filed earlier than the seven-day period.

- (e) Waiver. Failure to serve or file a memorandum in opposition to a written request and to appear at the hearing may be deemed a waiver of objection to the granting or denial of the written request. A party who does not oppose the written request shall notify the chairperson and opposing counsel or party promptly.

4-17 Evidence

- (a) Form and Admissibility. The Commission shall not be bound by the rules relating to the admission or rejection of evidence but may exercise its own discretion in such matter with a view to do substantial justice.
- (b) Ruling. The presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the Commission in determining the matter of the merits.
- (c) Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken. The presiding officer shall exclude any evidence which is irrelevant, immaterial or unduly repetitious or which would infringe upon any privilege recognized by law.
- (d) Offer of Proof. An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.
- (e) Prepared Testimony. With the approval of the presiding officer, a witness may read into the record his testimony on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall provide copies thereof to the presiding officer and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the Commission fifteen days before the hearing or such prior service is waived, to permit proper cross-examination of the witness on matters contained in the prepared testimony.
- (f) Documentary Evidence. If relevant and material matter offered in evidence is embraced in a document containing other matters, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the

presiding officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded an opportunity to examine the document and to offer in evidence other portions thereof believed material and relevant.

(g) Exhibits.

(1) Form; Size. Exhibits shall be legible and scanned into a format prescribed by the Director. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.

(2) Copies. When exhibits are offered in evidence, the original shall be furnished to the presiding officer with a copy to each party to the proceeding other than the Commission, unless such copies have been previously furnished, or the presiding officer directs otherwise.

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

(i) Official Notice of Facts. Official notice may be taken of such 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.

(j) Additional Evidence. At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as part of the record within a fixed time after submission, reserving an exhibit number therefor.

4-18 Briefs

The presiding officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall

contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the Commission in writing, and a copy thereof served upon, electronically mailed or mailed to the other parties to the proceedings. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions will not be granted unless stipulation is filed with the Commission.

4-19 Oral Arguments

The Commission or the presiding officer may direct or permit the presentation of oral argument with the applicant opening and concluding the argument. Not more than one hour on each side of the proceeding will be allowed for argument without special leave of the Commission.

4-20 Public Testimony

The Presiding Officer shall afford all interested persons an opportunity to present testimony on the matter prior to the commencement of the hearing and prior to proceedings on any subsequent day to which the proceeding is continued. The Presiding Officer may reasonably limit such testimony as to time, and may exclude any testimony that is irrelevant, immaterial or unduly repetitive.

4-21 Close of Hearing

At the end of the presentation of the evidence, submission of briefs and oral arguments, if any, the Commission or the hearings officer shall close the hearing.

PART 2. Post Hearing Procedure for Hearings Conducted by

Hearings Officer

4-22 Recommendations of Hearings Officer

- (a) Submission of Recommendations. Upon completion of taking of the evidence, the hearings officer shall prepare a report, setting forth findings of fact, conclusions of law, and the reasons therefore, and a recommended order and submit the report of the case to the Commission.
- (b) Contents of Record. The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the parties, objections to the conduct of the hearing and the report of the hearings officer and all other matters placed in

evidence.

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

4-23 Exceptions to Hearings Officer's Report and Recommendations

- (a) File; Form; Copies; Time; Service. Within fifteen days after service of the report and recommendations by the hearings officer, a party may file with the Commission any exceptions to the report and a brief or statement in support thereof with the Commission. A copy of the exceptions and brief or statement shall be served upon each party to the proceeding.
- (b) Contents of Exceptions. The exceptions shall include:
 - (1) The specific questions of procedure, fact, law, or policy to which exceptions are taken.
 - (2) That part of the hearings officer's report and recommended order to which objections are made.
 - (3) All the grounds for exceptions to a ruling, finding, conclusion or recommendation.
- (c) Waiver of Exceptions. Any exceptions not specifically raised in writing by a party are waived.

4-24 Support of Hearings Officer's Report and Recommendations

- (a) File; Form; Copies; Time; Service. Within seven days after service of the exceptions taken to the hearings officer's report, a party may file with the Commission a brief or statement in support of the hearings officer's recommendation. A copy of the brief or statement in support shall be served upon each party to the proceeding.
- (b) Contents of Support Brief or Statement. The supporting brief or statement shall include:
 - (1) The specific points of procedure, fact, law, or policy to which exceptions were taken.
 - (2) The facts and reasons why report and recommendations must be affirmed.

PART 3. Commission Decision

4-25 Examination of Evidence by Commission

Whenever Commission members who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceedings, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commission members who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

4-26 Oral Argument before the Commission

- (a) Party's Request. If a party desires to argue orally before the Commission, a written request with reasons therefor shall accompany the exceptions or the support brief or statement filed, and the Commission may grant such request.
- (b) Commission Direction. The Commission may direct oral argument on its own motion.

4-27 Commission Action

- (a) No Exceptions Filed. In the event no statement of exceptions is filed with the Commission, the Commission may proceed to reverse, modify, or adopt the recommendations of the hearings officer.
- (b) Exceptions and Support Statements Filed. Upon the filing of the exceptions and briefs or statements, the Commission may render its decision forthwith upon the record; or if oral argument has been allowed, after oral argument; or may reopen the docket and take further evidence or may make such other disposition of the case that is necessary under the circumstances, provided that where additional evidence is taken and has not been heard and examined by all of the Commission members who are to render a final decision, the Commission shall comply with the procedure in Section 4-25 of this rule.

4-28 Time Limit for Decision

The Commission shall render its decision, order, or ruling within a period of not more than ninety days after the close of the hearing, unless a longer period of time is agreed upon by all parties.

4-29 Issuance of Decisions and Orders

Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. The agency shall notify the parties to the proceeding by providing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. Every decision and order shall be prepared by the Presiding Officer.

4-30 Service of Decisions and Orders

Decisions and orders shall be provided as certified copies to the parties of record. When a party to a proceeding has appeared by a representative, service upon such representative or counsel shall be deemed to be service upon the party.

4-31 Reconsideration of Decision and Order

The Commission shall not reconsider its action in any contested case hearing after the effective date of its decision.

4-32 Appeal from the Commission's Decision

Any party may seek judicial review of the Commission's final decision in the manner set forth in Section 91-14, Hawai'i Revised Statutes.

RULE 5. GENERAL PLAN AMENDMENTS

5-1 Authority

This rule implements General Plan amendment procedures before the Planning Commission as provided by Chapter 16, Hawai'i County Code 1983 (2016 Edition, as amended).

5-2 Scope and Purpose

The General Plan may be amended by changing its goals, policies, standards, zoning acreage allocations, land use pattern allocation guide map, and other applicable sections thereof, when the conditions or premises upon which the General Plan is based have changed and when such an amendment would assure the coordinated development of the County of Hawaii and the general welfare and prosperity of its people.

5-3 Definition

As used in these rules, except as otherwise recognized by context:

- (a) "Comprehensive review" means a complete review of the General Plan conducted by the Director at least once every ten years from the initial date of adoption of the General Plan as well as all other subsequent ten-year reviews.
- (b) "Interim amendments" means amendments to the General Plan proposed by a property owner, the general public, Council, or Director at any other time other than during the comprehensive review period.
- (c) "Property owner" means a person having an interest in title to the affected land proposed for an amendment and includes the holder of a lease interest in the affected land, where such lease interest is not due to expire until after ten years following the date of the filing of the petition.

5-4 Amendment Pursuant to Comprehensive Review

- (a) The Director shall, upon notification to the County Council, initiate the comprehensive review of the General Plan. The scope of the review includes, but is not limited to, the basic elements of the General Plan; goals, policies, standards and courses of action of the various elements; land use designations of the land use pattern allocation guide map; facilities map; and urban land use pattern acreage and zoning acreage allocations.

- (b) Upon completion of the review, the Director shall submit any proposed amendment to the Commission.
- (c) The Commission shall conduct and complete its review on the proposed amendments to the General Plan, and shall submit its recommendations, within one hundred fifty days from the date of receipt of the proposed amendments from the Director.
- (d) The Commission shall recommend approval of the proposed amendments, in whole or in part, recommend changes, or recommend the rejection of the proposal for changes to the General Plan.
- (e) If the Commission fails to act on a proposed amendment within the required period, it shall be deemed a negative recommendation.

5-5 Interim Amendments

- (a) Council-initiated
 - (1) The Council may initiate interim amendments to the General Plan at any time, except during the comprehensive review. The Council may, by resolution, request the Director and the Commission to review and make a recommendation on a proposed amendment.
 - (2) The Director shall have sixty days or a longer period, as may be agreed to by the Council, to submit a recommendation on the proposal to the Commission for review and recommendation.
 - (3) The Commission shall consider the proposed amendment at no less than two meetings, and shall make its recommendation on the proposed amendment to the Council within sixty days from its receipt of the Director's recommendation.
 - (4) If the Commission fails to act within the required period, it shall be deemed a negative recommendation.
- (b) Director-initiated
 - (1) The Director may initiate an interim amendment to the General Plan at any time other than during the comprehensive review. The Director shall submit the proposed amendment to the Commission for its review and recommendation.
 - (2) The Commission shall conduct and complete its review on the

proposed amendments and shall submit its recommendations, within one hundred twenty days from the date of receipt of the proposed amendments.

- (3) If the Commission fails to act within the required period, it shall be deemed a negative recommendation.

(c) General Public

- (1) A member of the public may submit an application requesting the Director to initiate an amendment to the General Plan at any time except during the comprehensive review.
- (2) Should the Director initiate the amendment from the member of the public, the amendment shall be processed according to Section 5-5(b).

RULE 6. SPECIAL PERMITS

6-1 Authority

This rule governs Special Permit procedures pursuant to authority conferred by Chapter 205-6, Hawai'i Revised Statutes, as amended.

6-2 Standing to Submit a Petition for a Special Permit

Any person who desires to use its land within a State Land Use agricultural or rural district other than for an agricultural or rural use may petition the Commission for permission to use its land in the manner desired.

6-3 Petition and Content

A petition for a Special Permit shall be filed with the Commission's office and shall include the following:

- (a) Non-refundable filing and processing fee of five hundred dollars.
- (b)
 - (1) Application form;
 - (2) Description of the property in sufficient detail to determine its precise location;
 - (3) A plot or site plan of the property, drawn to scale, with all existing and proposed uses and/or structures shown thereon;
 - (4) Building elevations, if required, of the proposed structures;
 - (5) A statement of the reasons for the granting of the Special Permit citing how the proposed use would promote the effectiveness and objectives of chapter 205, HRS, and why the proposal is an unusual and reasonable use of the land. The following criteria shall also be addressed:
 - (A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
 - (B) The desired use shall not adversely affect surrounding properties;
 - (C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;

- (D) Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;
 - (E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
 - (F) The proposed use will not substantially alter or change the essential character of the land and the present use; and
 - (G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans.
- (c) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.

6-4 Incomplete Application

The Commission, through the Planning Department, shall neither accept nor process an application which is incomplete as to form and content.

6-5 Posting of Signs for Public Notification

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (1) The nature of the application;
 - (2) The proposed use of the property;
 - (3) The size of the property;
 - (4) The tax map key(s) of the property;
 - (5) That the public may contact the planning department for additional information; and
 - (6) The address and telephone number of the planning department.
- (b) The sign shall remain posted until the application has been granted,

denied, or withdrawn. The applicant shall remove the sign promptly after such action.

- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
- (d) The applicant shall file an affidavit with the planning department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

6-6 Public Hearing

- (a) Upon acceptance of a Special Permit application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of a Special Permit application by the Director, or within a longer time period as agreed to by the applicant.
- (b) Promptly after the Commission's fixing a date for the public hearing, the applicant shall mail a notice of the application and hearing to owners of interests in properties within five hundred feet of the perimeter boundary of the affected property and to owners of interests in other properties which the Planning Commission may find to be directly affected by the proposed request. Such notice shall state:
 - (1) Name of the applicant;
 - (2) Precise location of the property involved;
 - (3) Nature of the proposed use; and
 - (4) Date, time, and place of the hearing.
- (c) Prior to the date of the hearing, the applicant shall file with the Commission, an affidavit or other similar proof of mailing of said notice. The Commission shall not conduct a hearing if this requirement

has not been complied with.

- (d) In addition to said notice and at least ten days prior to the date of the hearing, the Commission shall publish notice of the hearing in a newspaper of general circulation in the County which includes the information provided under Section 6-6(b)(1-4) of this rule.
- (e) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 6-6(b). An additional two hundred fifty dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

6-7 Grounds for Special Permit

The Commission shall not approve a Special Permit unless it is found that the proposed use:

- (a) Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and
- (b) Would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The Commission shall also consider the criteria listed under Section 6-3 (b)(5)(A) through (G).

6-8 Decision

Within sixty days after the close of the hearing, or within a longer time period as agreed to by the applicant, the Commission shall:

- (a) For a Special Permit involving fifteen acres of land or less, approve it by stating the reasons and attaching appropriate performance conditions; or
- (b) For a Special Permit involving greater than fifteen acres of land, recommend approval to the State Land Use Commission by stating the reasons and attaching appropriate performance conditions; or
- (c) Deny it by stating the reasons.

An application recommended for approval to the State Land Use Commission shall be forwarded within sixty days after the decision is rendered by the Commission.

6-9 Amendments of Permit or Conditions

- (a) The applicant may apply to the Commission through the Planning Department for an amendment to the permit or condition(s) imposed.
- (b) In the case of time extensions, the applicant shall file the request not less than ninety days prior to the expiration date of the time conditions, setting forth:
 - (1) The affected condition;
 - (2) The length of time requested; and
 - (3) The reasons for the request.

If the Commission is not able to act on a properly filed time extension request prior to the expiration date, the use granted under the Special Permit may be continued, unless the Commission specifically disallows the activity during the interim period.

- (c) In the case of additions, modifications, and/or deletions of conditions; or the original permit granted, the applicant shall set forth in writing:
 - (1) The affected condition;
 - (2) The specific amendment requested; and
 - (3) The reasons for the request.
- (d) The applicant shall also file a two hundred fifty dollar processing fee, along with the request.
- (e) The hearing and notice procedures and action shall be the same as under Sections 6-5, 6-6 and 6-8 of this rule.

6-10 Appeals

- (a) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.
- (b) If a contested case hearing is held, a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

6-11 Revocation

- (a) A Special Permit may be revoked by the Director in the event that any property owner who holds the permit sought to be revoked or any other person, with the property owner's consent, submits a written statement to the Director verifying that the development approved under the permit issued has either not been established or has been abandoned.
- (b) A Special Permit may be revoked by the Commission in the event that:
 - (1) The Director requests the revocation if:
 - (A) There has been noncompliance with the conditions of the permit; or
 - (B) The use authorized under the permit is creating a threat to the health or safety of the community.
 - (2) The proceeding to revoke a Special Permit, upon request of the Director, shall require written notice to the property owner and to the person who has been issued the permit prior to the Commission taking action to revoke the permit.

RULE 7. USE PERMITS

7-1 Authority

This rule governs Use Permit procedures before the Planning Commission as required by Chapter 25 (Zoning Code), Hawai'i County Code 1983 (2016 Edition, as amended).

7-2 Application and Content

An application for a Use Permit shall be filed with the Commission, through the Department, and shall include:

- (a) A non-refundable filing and processing fee of five hundred dollars.
- (b)
 - (1) Application form;
 - (2) Detailed written description and background information as required on the Use Permit Application form;
 - (3) An analysis of how the request satisfies each of the following standards:
 - (A) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan;
 - (B) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties; and
 - (C) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.
 - (4) Plot plan of the property, drawn to scale, showing property lines, all existing and proposed structures, uses and improvements; and reference points such as roadways, shoreline, etc.

- (c) A list of names, addresses and tax map key numbers of all owners and lessees of record of surrounding properties who are required to receive notice in accordance with Section 25-2-4 of the Zoning Code.
- (d) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.

7-3 Incomplete Application

The Director, on behalf of the Commission, shall neither accept nor process an application which is incomplete as to form and content.

7-4 Posting of Signs for Public Notification

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (1) The nature of the application;
 - (2) The proposed use of the property;
 - (3) The size of the property;
 - (4) The tax map key(s) of the property;
 - (5) That the public may contact the Department for additional information; and
 - (6) The address and telephone number of the Department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post

the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).

- (d) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

7-5 Public Hearing

- (a) Upon acceptance of a Use Permit application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of a Use Permit application by the Director, or within a longer time period as agreed to by the applicant.
- (b) At least ten calendar days prior to the date of the public hearing, unless a longer time period is required by either statute or charter provision, in which case, the notice period provided by statute or charter provision shall apply, the Commission shall publish a notice of the public hearing in at least two newspapers of general circulation in the County which includes the following:
 - (1) Name of the applicant;
 - (2) The precise location of the property involved;
 - (3) Nature of the application and the proposed use of the property; and
 - (4) The date, time and place on which the public hearing will be held.
- (c) The applicant shall serve notice on property owners and lessees of record of the surrounding properties as follows:
 - (1) Within ten days after filing an application with the Commission, through the Department, the applicant shall serve a first notice of the filing of the application on the surrounding owners and lessees.
 - (2) Within ten days after receiving notice of the date of the public

hearing and not less than ten days prior to the scheduled date of the public hearing, the applicant shall serve a second notice on the surrounding owners and lessees.

- (3) The notice shall include the following information:
 - (A) Name of the applicant;
 - (B) Precise location of the property involved, including tax map key identification, location map and site plan;
 - (C) Nature of the application and the proposed use of the property;
 - (D) Date on which the application was filed with the Commission; and
 - (E) Date, time and place that the scheduled public hearing will be held to consider the application (to be included in the second notice).
- (4) When the building site is located within the State Land Use Urban or Rural District, notice shall be served to owners and lessees of record within three hundred feet of any point along the perimeter boundary of the building site.
- (5) When the building site is located within the State Land Use Agricultural District, notice shall be served to owners and lessees of record within five hundred feet of any point along the perimeter boundary of the building site. Except, if the surrounding properties are located within either the State Land Use Urban or Rural District, notice shall be served to owners and lessees of record within three hundred feet of any point along the perimeter boundary of the building site.
- (d) Prior to the public hearing, the applicant shall submit to the Commission proof of service or of good faith efforts to serve notice of the application on the designated property owners and lessees. Such proof may consist of certified mail receipts, affidavits, declarations, or the like. The failure of a property owner or lessee to receive written notice shall not invalidate any proceeding by the Commission, provided that good faith efforts were made by the applicant to serve notice on the affected property owner or lessee.
- (e) For each hearing continued at the request of the applicant, the applicant

shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 7-5(c). An additional two hundred fifty dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

7-6 Criteria for Granting a Use Permit.

The Commission may approve a Use Permit upon finding that:

- (a) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan;
- (b) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties; and
- (c) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

7-7 Decision

- (a) Within sixty days following the close of the public hearing(s), or within a longer time period as agreed to by the applicant, the Commission shall either deny or approve the application. The Commission's decision shall be accompanied by a statement of factual findings supporting the decision.
- (b) In approving any use permit application, the Commission may issue the approval subject to conditions, including but not limited to hours of daily operation and terms of the use permit. The conditions imposed by the Commission shall bear a reasonable relationship to the use permit granted.
- (c) If the Commission fails to render a decision within the prescribed period, the application shall be considered as being approved, provided that no contested case hearing pertaining to the use permit is pending before the Commission.

7-8 Concurrent Requests

Concurrent requests may be acted upon by the Commission in conjunction with a use permit application.

7-9 Amendments of Permit or Conditions

- (a) The applicant may apply to the Commission through the Department for an amendment to the permit or condition(s) imposed.
- (b) In the case of time extensions, the applicant shall file the request not less than ninety days prior to the expiration date of the time conditions, setting forth:
 - (1) The affected condition;
 - (2) The length of time requested; and
 - (3) The reasons for the request.

If the Commission is not able to act on a properly filed time extension request prior to the expiration date, the use granted under the Use Permit may be continued, unless the Commission specifically disallows the activity during the interim period.

- (c) In the case of additions, modifications, and/or deletions of conditions; or the original permit granted, the applicant shall set forth in writing:
 - (1) The affected condition;
 - (2) The specific amendment requested; and
 - (3) The reasons for the request.
- (d) The applicant shall also file a two hundred fifty dollars processing fee, along with the request.
- (e) The hearing and notice procedures and action shall be the same as under Sections 7-4, 7-5 and 7-7 of this rule.

7-10 Appeals

- (a) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.
- (b) If a contested case hearing is held, a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

7-11 Revocation

- (a) A Use Permit may be revoked by the Director in the event that any property owner who holds the permit sought to be revoked or any other person, with the property owner's consent, submits a written statement to the Director verifying that the development approved under the permit issued has either not been established or has been abandoned.
- (b) A Use Permit may be revoked by the Commission in the event that:
 - (1) The Director requests the revocation if:
 - (A) There has been noncompliance with the conditions of the permit; or
 - (B) The use authorized under the permit is creating a threat to the health or safety of the community.
 - (2) The proceeding to revoke a Use Permit, upon request of the Director, shall require written notice to the property owner and to the person who has been issued the permit prior to the Commission taking action to revoke the permit.

RULE 8. SHORELINE SETBACK VARIANCE

8-1 Authority

Pursuant to authority conferred upon the Commission by Chapter 205A, Hawai'i Revised Statutes (HRS), as amended, the rules hereinafter contained are hereby established and shall apply to all lands within the shoreline setback area.

8-2 Purpose

The growing population and expanding development have brought about numerous cases of encroachment of structures upon the shoreline and within the nearby shoreline areas. Many of these structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks. The purpose of this rule is to establish authority, criteria and procedures for the review of all activities or structures proposed within the shoreline setback area which requires a Shoreline Setback Variance in accordance with the requirements of this rule and Chapter 205A Part III, HRS.

8-3 Definitions

For the purpose of these rules, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

- (a) "Activity" means any landscaping, excavating, grubbing, grading, filling or stockpiling of earth materials, including sand, coral, coral rubble, rocks, soil, or marine deposits.
- (b) "Authority" means the county planning commission. The authority may, as appropriate, delegate the responsibility for administering this rule, as stated in this rule.
- (c) "Beach" means a coastal landform primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, that is established and shaped by wave action and tidal processes. "Beach" includes sand deposits in nearshore submerged areas, or sand dunes or upland beach deposits landward of the shoreline, that provide benefits for public use and recreation, for coastal

ecosystems, and as a natural buffer against coastal hazards.

- (d) “Coastal hazards” means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.
- (e) “Department” means the planning department of the County of Hawai‘i.
- (f) “Lot” means a parcel, tract, or area of land established by subdivision or as otherwise lawfully established prior to the adoption of the Chapter 23 (Subdivision Code), Hawai‘i County Code 1983 (2016 Edition, as amended) and accepted by the Department.
- (g) “Practicable alternative” means an alternative to the proposed project which is available and capable of being done, taking into consideration existing technology and logistics, and which would accomplish the basic purposes of the project while avoiding or having less adverse impact on the shoreline area.
- (h) “Shoreline” means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, which has been certified by the Board of Land and Natural Resources in accordance with its rules.
- (i) “Shoreline setback area” shall include all of the land area between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this rule extends seaward of the shoreline, then the term "shoreline setback area" shall include the entire structure.
- (j) “Shoreline setback line” means that line established by the Department in accordance with the requirements of Department Rule No. 11 regarding Shoreline Setback, running inland from and parallel to the certified shoreline at a horizontal plane.
- (k) “Structure” includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.

8-4 Variance Application and Content

An application for a shoreline setback variance shall be filed with the Commission, through the Department, and shall include:

- (a) A non-refundable filing and processing fee of five hundred (\$500) dollars.
 - (1) Application form;
 - (2) Description of the property in sufficient detail, including the tax map key identification, location map, and land area;
 - (3) Written description of the proposed project, including a statement as to how the request complies with the criteria within Section 8-11;
 - (4) An environmental assessment or environmental impact statement consistent with the requirements of Chapter 343, HRS, which may include, but not be limited to, flood hazard engineering studies of subject property and project's impact analysis on adjacent properties, an archaeological survey, floral and faunal surveys, photographs, existing and proposed contours; and
 - (5) A site plan of the shoreline setback area, drawn to scale, showing:
 - (A) Existing natural and man-made features and conditions within the shoreline setback area;
 - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
 - (C) The certified shoreline;
 - (D) The shoreline setback line;
 - (E) Contours at a minimum interval of five feet unless waived by the Commission;
 - (F) Proposed development and improvements showing new conditions.
- (b) A copy of the certified shoreline survey map of the property.
- (c) Detailed justification of the proposed project, which addresses the criteria

and conditions set forth in Section 8-11.

- (d) A list of all properties by tax map key located within 300 feet of the perimeter boundary of the property under consideration.
- (e) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.
- (f) Any other information required by the Commission.

8-5 Posting of Signs for Public Notification

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (1) The nature of the application;
 - (2) The proposed use of the property;
 - (3) The size of the property;
 - (4) The tax map key(s) of the property;
 - (5) That the public may contact the Department for additional information; and
 - (6) The address and telephone number of the Department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
- (d) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been posted in compliance

with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

8-6 Incomplete Application

The Commission, through the Department shall neither accept nor process an application which is incomplete as to form and content. An incomplete application shall be returned with a written explanation of its deficiencies.

8-7 Compliance with Chapter 343, Hawai'i Revised Statutes

An environmental assessment or environmental impact statement, prepared in accordance with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawai'i Administrative Rules (HAR), shall accompany the filing of a shoreline setback variance application with the Commission. The Department, on behalf of the Commission, shall be the accepting agency of all environmental assessments and/or environmental impact statements, if appropriate, which are prepared in accordance with this rule. A shoreline setback variance application shall not be considered complete until such time the Department has complied with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, HAR.

8-8 Public Hearing

- (a) Except as otherwise provided in this rule, the Commission shall conduct a public hearing within a period of ninety days from the date of acceptance of a complete application, or within a longer time period as agreed to by the applicant. Prior to acceptance of an application, the applicant shall comply with the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, HAR. In the case of a finding of no significant impact (FONSI) and final environmental impact statements, the Office of Planning and Sustainable Development, Environmental Review Program Periodic Bulletin publication date will be used as compliance. For exemptions, the date of determination will be used.
- (b) At least twenty days prior to the date of the public hearing, the Commission shall publish a notice of the hearing in at least two daily newspapers of general circulation in the county which includes the following:
 - (1) Name of the applicant;
 - (2) The location of the property involved, including its physical address and tax map key number;
 - (3) Nature of the variance sought;

- (4) Date, time, and place of the public hearing.
- (c) Promptly after the Commission's fixing a date for the hearing but not less than ten days prior to the date of the hearing, the applicant shall mail a notice of the hearing to all property owners within three hundred feet of the affected property. Reasonable notice shall also be provided to those persons who have requested such notification of the applicant. Prior to the date of the hearing, the applicant shall file with the Commission proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of certified mail receipts, affidavits, or the like. However, any failure to mail or to receive the written notice shall not invalidate the proceedings.
- (d) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 8-8(c). An additional two hundred fifty (\$250) dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

8-9 Decision

- (a) Within sixty days following the close of the public hearing(s), or within a longer time period as agreed to by the applicant, the Commission shall render a decision to approve or deny the application.
- (b) Notice of the decision shall be promptly given to the applicant by delivery thereof.
- (c) Whenever an application for a variance has been denied, no new application for the same or similar development, covering all or any portion of the property involved in the application, shall be accepted by the Commission for a period of one year from the effective date of the denial of the application; provided, however, that upon showing of a substantial change of circumstances the Commission may permit the filing of a new application prior to the expiration of such a one year period.

8-10 Waiver of Public Hearing and Action

- (a) The Commission hereby delegates to the Department the authority to waive a public hearing and to take action on a variance application for:
 - (1) Stabilization of shoreline erosion by moving sand entirely on public lands;
 - (2) Protection of a structure determined by the Department to be legally constructed, which costs more than \$20,000; provided the structure

is at risk of immediate damage from shoreline erosion as determined by the Department, in consultation with appropriate agencies (i.e. U.S. Army Corps of Engineers, Department of Public Works); or

- (3) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which result in little or no interference with natural shoreline processes.
- (b) An applicant who seeks processing under Section 8-10 shall make the request in writing upon submittal of the variance application.
- (c) The Department may deny the public hearing waiver and the application shall be heard and noticed by the Commission in accordance with Section 8-8.
- (d) The Department shall promulgate rules to administer Section 8-10.

8-11 Criteria for Approval of a Variance

- (a) A variance may be granted for a structure or activity otherwise prohibited by Planning Department Rule 11 (Shoreline Setback) and Chapter 205A, HRS if the Commission finds in writing, based on the record, that the proposed structure or activity is necessary for or ancillary to:
 - (1) Cultivation of crops;
 - (2) Aquaculture;
 - (3) Landscaping, provided that the Commission finds that the proposed structure or activity will not adversely affect beach processes, will not impede public access, and will not artificially fix the shoreline.
- (b) Shoreline-dependent Facility Standard.

A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

- (1) Drainage;
- (2) Boating, maritime, or watersports recreational facilities;
- (3) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the

authority also finds that moving of sand will not adversely affect beach processes, will not diminish the size of a public beach, and will be necessary to stabilize an eroding shoreline.

(c) Public Interest Standard.

A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

- (1) Facilities or improvements by public agencies or public utilities regulated under Chapter 269, HRS;
- (2) Private facilities or improvements that are clearly in the public interest.

(d) Hardship Standard.

(A) A variance may also be granted, provided that the proposal is the practicable alternative which best conforms to the purpose of this rule, and upon a finding that, based upon the record, the proposed structure or activity is necessary for or ancillary to:

- (1) Private facilities or improvements that will not adversely affect beach processes, result in flanking shoreline erosion, or artificially fix the shoreline; provided that the Commission may consider any hardship that will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (2) Private facilities or improvements that may artificially fix the shoreline; provided that the Commission may consider hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; provided further that a variance to artificially fix the shoreline shall not be granted in areas with beaches or where artificially fixing the shoreline may interfere with existing recreational and waterline activities unless the granting of the variance is clearly demonstrated to be in the interest of the general public.

(B) A structure or activity may be granted a variance upon grounds of hardship only if:

- (i) The applicant would be deprived of reasonable use

of the land if required to comply fully with this rule;
and

(ii) The request is due to unique circumstances and does not draw into question the reasonableness of this rule; and

(iii) The request is the practicable alternative which best conforms to the purpose of this rule.

(C) Before granting a hardship variance, the Commission must determine that the request is a reasonable use of the land. The determination of the reasonableness of the use of land shall consider factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.

(D) If a structure is proposed to artificially fix the shoreline, the Commission must also determine that shoreline erosion is likely to cause hardship if the structure is not allowed within the shoreline setback area.

(E) Hardship shall not be determined as a result of zoning amendments, planned unit development (PUD) permits, cluster plan development (CPD) permits, or subdivision approvals after June 16, 1989.

(e) No variance shall be granted unless appropriate conditions are imposed as applicable:

(1) To comply with Chapters 10 and 27 of the Hawai'i County Code relating to Erosion and Sedimentation Control and Flood Control, respectively;

(2) To maintain safe lateral access along the shoreline or adequately substitute for its loss;

(3) To minimize risk of adverse impacts on beach processes;

(4) To minimize risk of structures failing and becoming loose rocks, sharp or otherwise dangerous debris, or rubble on public property; and

(5) To minimize adverse impacts on public views to, from, and along the shoreline.

8-12 Amendments to a Variance

- (a) The applicant may apply to the Commission through the Department for an amendment to the variance.
- (b) In the case of additions, modifications, and/or deletions to the variance or conditions, the applicant shall submit the written request, which includes:
 - (1) The affected section of the variance or condition;
 - (2) The specific amendment requested;
 - (3) The reasons for the request; and
 - (4) Any other information required by the Commission.
- (c) In the case of time extensions, the applicant shall file the request not less than ninety days prior to the expiration date of the time conditions, setting forth:
 - (1) The affected condition;
 - (2) The length of time requested;
 - (3) The reasons for the request; and
 - (4) Any other information required by the Commission.
- (d) Upon submitting a request as set forth in Section 8-12(b) or (c), with the exception of administrative time extensions, the applicant shall also file a two hundred fifty (\$250) dollar processing fee.
- (e) The hearing and notice procedures and action shall be the same as under Sections 8-5, 8-8, and 8-9.

8-13 Administration and Enforcement

The Department is responsible for the processing of all variance applications and is also responsible for the enforcement of all conditions and requirements associated with a variance issued in accordance with this rule.

8-14 Appeals

- (a) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person

desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.

- (b) If a contested case hearing is held a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

8-15 Revocation

- (a) A Shoreline Setback Variance may be revoked by the Director in the event that any property owner who holds the variance sought to be revoked or any other person, with the property owner's consent, submits a written statement to the Director verifying that the development approved under the variance issued has either not been established or has been abandoned.
- (b) A Shoreline Setback Variance may be revoked by the Commission in the event that:
 - (1) The Director requests the revocation if:
 - (A) There has been noncompliance with the conditions of the variance; or
 - (B) The use authorized under the variance is creating a threat to the health or safety of the community.
 - (2) The proceeding to revoke a Shoreline Setback Variance, upon request of the Director, shall require written notice to the property owner and to the person who has been issued the variance prior to the Commission taking action to revoke the variance.

RULE 9. SPECIAL MANAGEMENT AREA

9-1 Authority

Pursuant to authority conferred by Chapter 205A, Hawai'i Revised Statutes (HRS), the rule hereinafter contained is hereby established and shall apply to all lands within the Special Management Area of the County of Hawai'i.

9-2 Purpose

It is the State policy to preserve, protect, and where possible, to restore the natural resources of the coastal zone of Hawai'i. Therefore, special controls on development within the area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options, and to insure that adequate public access is provided to public-owned or used beaches, recreation areas, and natural reserves, by dedication or other means.

9-3 Title

This rule shall be known as the "Special Management Area Rule of the County of Hawai'i."

9-4 Definitions

For the purpose of this rule, unless it is plainly evident from the content that a different meaning is intended, certain words and phrases used herein are defined as follows:

- (a) "Artificial light" or "artificial lighting" means the light emanating from any fixed human-made device.
- (b) "Assessment" means an evaluation by the Department of a proposed use, activity, or operation to determine whether a Special Management Area Use Permit is required.
- (c) "Authority" means the county planning commission. The authority may, as appropriate, delegate the responsibility for administering this rule, as stated in this rule.
- (d) "Beach" means a coastal landform primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, that is established and shaped by wave action and tidal processes. "Beach" includes sand deposits in nearshore submerged areas, or sand dunes or upland beach deposits landward of the shoreline, that provide benefits for public use and recreation, for coastal ecosystems, and as a natural buffer against coastal hazards.

- (e) "Coastal hazards" means any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.
- (f) "Crops" means agricultural produce or part(s) of plants or trees cultivated for commercial or personal use including but not limited to the raising of livestock.
- (g) "Cultural" pertains to traditional and customary practices and usage of resources to fulfill responsibilities and rights possessed and exercised by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778.
- (h) "Department" means the planning department of Hawai'i County.
- (i) "Development" means any of the following uses, activities, or operations on land or in or under water within the Special Management Area:
 - (1) "Development" includes the following:
 - (A) Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste;
 - (B) Grading, removing, dredging, mining, or extraction of any materials;
 - (C) Change in the density or intensity of use of land, including but not limited to the division or subdivision of land;
 - (D) Change in the intensity of use of water, ecology related thereto, or of access thereto; and
 - (E) Construction, reconstruction, or alteration of the size of any structure.
 - (2) "Development" does not include the following uses, activities or operations:
 - (A) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred (7,500) square feet of floor area, is not situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion, and is not part of a larger development. Floor area shall be the total area of all floors of a building(s) associated with the single-family residence, including a

basement and accessory structures, measured along the exterior walls of such building(s). The floor area of a building(s), or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above;

- (B) Repair or maintenance of roads and highways within existing rights-of-way;
- (C) Routine maintenance dredging of existing streams, channels, and drainage ways;
- (D) Repair and maintenance of utility lines, including but not limited to water, sewer, power, and telephone and minor appurtenant structures such as pad mounted transformers and sewer pump stations;
- (E) Zoning variances, except for height, density, parking, and shoreline setback;
- (F) Repair, maintenance, or interior alterations to existing structures or relating to existing uses;
- (G) Demolition or removal of structures, except those structures located on any historic site as designated in national or state registers or those listed in the Historic Sites Element of the General Plan;
- (H) Use of any land for the purpose of cultivating, planting, growing, and harvesting plants, crops, trees, and other agricultural, horticultural, or forestry products or animal husbandry, or aquaculture or mariculture of plants or animals, or other agricultural purposes;
- (I) Transfer of title of land;
- (J) Creation or termination of easements, covenants, or other rights in structures or land;
- (K) Subdivision of land into lots greater than twenty acres in size;
- (L) The amendment of the General Plan, State Land Use Boundary amendments and changes of zone;
- (M) Subdivision of a parcel of land into four or fewer parcels

when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;

- (N) Installation of underground utility lines and appurtenant aboveground fixtures less than four feet in height along existing corridors;
 - (O) Structural and non-structural improvements to existing single-family residences, where otherwise permissible;
 - (P) Non-structural improvements to existing commercial or non-commercial structures;
 - (Q) Construction, installation, maintenance, repair, and replacement of civil defense warning or signal devices and sirens; and
 - (R) Plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the Division of Boating and Ocean Recreation of the State Department of Land and Natural Resources.
- (3) Any proposed use, activity, or operation listed in Section 9-4(i)(2) shall be deemed to be “Development” until the Director has determined it to be exempted from the definition of “development.”
- (4) Whenever the Director finds that any excluded use, activity, or operation may have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, that use, activity, or operation shall be defined as “development” for the purpose of this rule.
- (j) “Directly illuminate” means to illuminate through the use of a glowing element, lamp, globe, or reflector of an artificial light source.
- (k) “EIS” means an informational document prepared in compliance with Chapter 343, HRS, and the Hawai‘i Administrative Rules, Title II, Chapter 200.1 (Environmental Impact Statement Rules). An EIS discloses the environmental effects of a proposed action, effects of a proposed action on the economic welfare, social welfare, and cultural practices of the community and State, effects of economic activities arising out of the proposed action, measures proposed to minimize adverse effects and alternatives to the action and their environmental effects.

- (l) "Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the seawater is measurably diluted with fresh water derived from land drainage.
- (m) "Native Hawaiian Rights" means those rights defined in and protected under HRS 1-1, HRS 7-1, HRS 174C-101, Article XII, Section 7 of the Hawai'i State Constitution, and in rulings of Hawai'i case law."
- (n) "Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.
- (o) "Owner" means all equitable and legal holders or lessees of real property. Lessees shall present certification of approval from the legal owner.
- (p) "Person" means and includes any individual, organization, partnership, or corporation, including any utility and any agency of government.
- (q) "Petitioner" means and includes any person who seeks permission or authorization which the Commission may grant under this rule.
- (r) "Public Works Director" means Director of the Department of Public Works of the County of Hawai'i.
- (s) "Shoreline" means the upper reaches of the wash of waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.
- (t) "Shoreline Survey" means the actual field location of the shoreline in accordance with the definition herein along with the existing property lines which shall be located and platted by instrument surveys and the property corners or appropriate references thereof along the shoreline be marked on the ground by a registered land surveyor in the State of Hawai'i. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the confirming signature of the Chairman of the Board of Land and Natural Resources.
- (u) "Single-Family Residence" means a detached building designed for and/or used as the complete facility for cooking, sleeping and living area of a single family only and occupied by no more than one family. Single family residences may include uses or structures normally considered accessory to the single family facilities provided that any such uses or structures are situated on the same lot or building site and are in compliance with all requirements of any county or state regulation, statute, or ordinance. A single family shall include all persons living in a dwelling related by blood, marriage or by adoption or a group comprised of not more than five persons

not related by blood, marriage or by adoption.

- (v) "Special Management Area" means the land extending inland from the shoreline as delineated on the maps filed with the Commission as of June 8, 1977, or as amended pursuant to Section 9-21.
- (w) "Special Management Area Emergency Permit" means an action by the Director authorizing development in cases of emergency requiring immediate action to prevent substantial harm to persons or property or to allow the reconstruction of structures damaged by natural hazards to their original form, provided that those structures were previously found to be in compliance with requirements of the National Flood Insurance Program.
- (x) "Special Management Area Minor Permit" means an action by the Director authorizing development, the valuation of which is not in excess of \$500,000 and which has no cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.
- (y) "Special Management Area Use Permit" means an action by the Commission authorizing development, the valuation of which exceeds \$500,000 or which may have a cumulative impact, or a substantial adverse environmental or ecological effect on the Special Management Area.
- (z) "Structure" means and includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.
- (aa) "Use" means any purpose for which a structure or a tract of land is designed, arranged, intended, maintained or occupied or any activity, occupation, business, or operation carried on or intended to be carried on in any structure or on a tract of land.
- (bb) "Valuation" shall be determined by the Director and means the estimated cost to replace the structure, in kind, based on current replacement costs, or in the case of other developments, as defined in 9-4(i)(1), the fair market value of the development.
- (cc) "Vegetation Growth" means any plant, tree, shrub, grass, or groups, clusters or patches of the same, naturally rooted and growing.

9-5 Special Management Area

Special Management Area of the County shall be as delineated on such maps filed with the Authority as of June 8, 1977, or as may be amended pursuant to Section 9-21, and shall be the official Special Management Area to be administered and enforced under this rule.

9-6 Objectives and Policies of Chapter 205A, HRS

- (a) The objectives and policies of the coastal zone management program shall be those set forth in Section 205A-2, HRS, as amended.
- (b) The Commission shall implement these objectives and policies, as appropriate.

9-7 Special Management Area Guidelines

The Special Management Area guidelines set forth in Section 205A-26, HRS, as amended, shall be used by the Commission, as appropriate, for the review of developments proposed in the Special Management Area.

9-8 Permits Required for Development

- (a) No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.
- (b) No State or County Agency authorized to issue permits within the Special Management Area shall authorize any development unless approval is first received in accordance with this rule.
- (c) Special Management Area Minor, Use or Emergency Permits or exemptions validly issued by the Department or the Commission, subsequent to any amendment to Chapter 205A, HRS but preceding any supportive amendment to this rule shall continue to be considered valid.

9-9 Authority of the Department in the Special Management Area

All development within the Special Management Area shall be administered through the Department under this rule pursuant to the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS.

To improve the efficiency of the Commission's review, approval and permitting processes granted upon it by Chapter 205A-22, HRS and in accordance with Rule 9 herein, the Commission hereby delegates to the Director the authority to process assessments, determinations and conditions regarding exemptions, issue and enforce Special Management Area Minor Permits and Special Management Area

Emergency Permits, and to administer, interpret, and enforce terms, scope and conditions set forth in Special Management Area Use Permits issued by the Commission.

9-10 Assessment

- (a) The Department shall assess all uses, activities or operations proposed in the Special Management Area except in cases in which the applicant determines that the proposed use, activity or operation will: a) exceed \$500,000 in valuation; or b) have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. In this case, the assessment procedures may be waived and the applicant shall petition the Commission for a Special Management Area Use Permit pursuant to Section 9-11.
- (b) For proposed uses, activities or operations that are subject to an assessment, the applicant shall submit to the Department a Special Management Area Assessment (SMAA) on a form prepared by the Department. The review and acceptance of the assessment application shall follow the procedures pursuant to Section 25-2-3 (Review and acceptance of applications) in Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). The information on the SMAA form shall include, but not be limited to, the following:
 - (1) The tax map number for the property.
 - (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon and any other information necessary to a proper determination relative to the specific request.
 - (3) A written description of the proposed project and a statement of objectives.
 - (4) An Environmental Assessment (EA) or Environmental Impact Statement (EIS) if required under Chapter 343, HRS, or when required by the Director.
 - (5) A written description of the anticipated impacts of the proposed uses, activities or operations on the Special Management Area including but not limited to:
 - (A) Description of environmental setting;
 - (B) The relationship of the proposed action to land use plans, policies, and control of the affected area;

- (C) The probable impact of the proposed action on the environment;
 - (D) Any probable adverse environmental effects which cannot be avoided;
 - (E) Alternatives to the proposed action;
 - (F) Mitigating measures proposed to minimize impact; and
 - (G) Any irreversible and irretrievable commitment of resources.
- (6) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
- (A) The identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the area;
 - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - (C) The feasible action, if any, to be taken to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (7) A written statement discussing the proposed use, activity or operation in relation to the objectives and policies as provided by Chapter 205A, HRS.
- (8) A statement of the valuation of the proposed use, activity or operation.
- (9) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline.
- (10) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used.

- (11) Any other plans or information required by the Director. An EIS that has been declared adequate under the National Environmental Policy Act (NEPA) or under Chapter 343, HRS, may constitute a valid filing under this section.
- (12) A fifty dollar (\$50) filing fee.
- (c) The Director shall assess the proposed use, activity or operation upon the applicant's compliance with Section 9-10B based on the following criteria:
 - (1) The valuation of the proposed use, activity or operation.
 - (2) The potential effects and significance of each specific circumstance of the use, activity or operation, according to the criteria of significant adverse effect established by Section 9-10H.
- (d) The Director, within sixty calendar days after the receipt of all filing requirements or within a longer period as may be agreed to by the applicant, shall notify the applicant in writing that:

The proposed use, activity or operation does not constitute a development or is exempt from the definition of development; or

A Special Management Area Minor Permit is being issued; or

A Special Management Area (Major) Use Permit is required.

If the proposed use, activity, or operation is less than \$500,000 in value and the Director fails to act within the sixty calendar day period or within such longer period as may have been agreed to by the applicant, the proposed use, activity or operation shall be forwarded to the Commission for its consideration. The notice and hearing procedures and action shall be the same as under Section 9-11(c) through 9-11(f).

- (e) Where it is found that the proposed use, activity or operation is not in excess of \$500,000 in valuation; and will not have a cumulative impact, or a significant adverse effect on the Special Management Area, and after review by the Public Works Director for compliance with Chapter 27, Flood Control, of the Hawai'i County Code, the Director shall issue a Special Management Area Minor Permit.
 - (1) The issuance of such minor permit shall be subject to any reasonable terms or conditions.
 - (2) A copy of the Special Management Area Minor Permit issued shall be filed with the Commission and the Office of Planning of the State

Department of Business, Economic Development and Tourism.

- (f) The Director shall declare that a Special Management Area Use Permit is required if it is found that the proposed use, activity or operation has a valuation in excess of \$500,000 or may have a significant adverse effect on the Special Management Area. Should a determination be made that the proposed use, activity or operation requires a Special Management Area Use Permit, the applicant shall submit such application in accordance with Section 9-11.
- (g) The Director shall declare the proposed use, activity or operation exempt from the definition of development if it is found that the proposal falls in any category under Section 9-4(h)(2), and does not have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a significant adverse effect on the Special Management Area.
- (h) Criteria of Significant Adverse Effect

In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action.

A 'significant adverse effect' is determined by the specific circumstances of the proposed use, activity or operation. In determining whether a proposal may have a significant adverse effect on the environment, the Director shall consider every phase of a proposed action and expected consequences, either primary or secondary, or the cumulative as well as the short or long-term effect of the proposal. The Director should bear in mind that in most instances, the following factors of a proposal, although not limited to same, may constitute a significant adverse effect on the environment when the proposed use, activity or operation:

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes outlined in the General Plan or other adopted plans;
- (2) curtails the range of beneficial uses of the environment;
- (3) conflicts with the long-term environmental policies or goals of the General Plan or the State Plan;

- (4) significantly affects the economic or social welfare and activities of the community, County or State;
- (5) involves significant secondary impacts, such as population changes and effects on public facilities;
- (6) in itself has no significant adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions;
- (7) significantly affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (8) detrimentally affects air or water quality or ambient noise levels;
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water; or
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

(i) SMA Short Form Assessment

The Department may create a SMA short form assessment to be used by the Department to assess uses that may result in a determination that the proposed use is exempt, i.e., single family residence, minor grubbing, or accessory structures. The short form assessment may include, but not be limited to the following information:

- (1) The tax map number for the property;
- (2) A plot plan of the property, drawn to scale, with all proposed and existing structures shown thereon;
- (3) Description of the proposed action, including the extent of land clearing, if any;
- (4) Description of any known historical sites, anchialine ponds, wetland, or sandy beach, and any other pertinent information.

In case of a single family dwelling, a Building Permit application may suffice as the plot plan required under (2).

The Director may require a full SMAA if it is determined through the short

form assessment review that further information is needed from the applicant. The Director may impose certain conditions with the exemption determination to assure that the proposed use, activity, or operation does not have a significant adverse effect on the SMA.

9-11 Special Management Area Use Permit Procedures

(a) Compliance with Chapter 343, HRS

If the action proposed requires compliance with Chapter 343, HRS, an environmental assessment or environmental impact statement shall accompany the filing of a special management area use permit application. The Department, on behalf of the Commission, shall be the accepting authority of all environmental assessments and/or environmental impact statements, if appropriate, which are prepared in accordance with Chapter 343, HRS and this rule. A special management area use permit application shall not be considered complete until such time as the requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawai'i Administrative Rules, if applicable, have been complied with.

(b) Application

An applicant who has received a determination that the proposed use, activity or operation does not conform to the requirements for a minor permit, or who has determined on its own that the proposed use, activity or operation will exceed \$500,000 in valuation or will have a cumulative impact, or a significant adverse environmental or ecological effect on the Special Management Area, shall apply to the Authority through the Director for a Special Management Area Use Permit.

The applicant shall submit the following to the Director:

- (1) The completed application including the following:
 - (A) A tax map key description of the property;
 - (B) A plot plan of the property, drawn to scale, with all existing and proposed structures shown thereon and any other information necessary to make a proper determination of the impacts relative to the specific request;
 - (C) A written description of the proposed project and statement of the objectives;
 - (D) An EA or EIS if required under Chapter 343, HRS, or when required by the Director;

- (E) A written description of the anticipated impacts of the proposed development on the Special Management Area, including but not limited to:
 - (i) Description of environmental setting;
 - (ii) The relationship of the proposed action to land use plans, policies, and control of the affected area;
 - (iii) The probable impact of the proposed action on the environment;
 - (iv) Any probable adverse environmental effects which cannot be avoided;
 - (v) Alternatives to the proposed action;
 - (vi) Mitigating measures proposed to minimize impact; and
 - (vii) Any irreversible and irretrievable commitment of resources.
- (F) A written description of the anticipated impacts of the proposed development on valued cultural, historical or natural resources on or in the vicinity of the property, to include:
 - (i) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
 - (ii) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - (iii) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.
- (G) A written statement discussing the proposed development in relationship to the objectives and policies as provided by

Chapter 205A, HRS;

- (H) A statement of the valuation of the proposed use, activity or operation;
 - (I) A current certified shoreline survey when the parcel abuts the shoreline, except that the Director may waive the submission of the survey when the proposed development is clearly and unmistakably located on a shoreline parcel at a considerable distance from the shoreline;
 - (J) Identification and detailed information of existing public access to and along the shoreline and whether the access is being used; and
 - (K) Any other plans or information required by the Director.
- (2) In the case of an applicant whose proposed development has been assessed, any information as to the areas of critical concern delineated by the Director.
 - (3) In the case where a multi-unit residential structure, containing more than ten units is proposed, the Director may require the applicant to submit a scale model or three-dimensional rendering of the proposed development and related improvements.
 - (4) Archaeological Resources (one of the following):
 - (A) An archaeological inventory report or assessment prepared by a licensed archaeologist containing significance assessments, effect determinations, and proposed mitigation commitments. The report should be completed pursuant to Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD) rules.
 - (B) A prior “no-effect” letter from the DLNR-SHPD for the subject property.
 - (C) A letter and location map for the Planning Department to submit to DLNR-SHPD claiming no significant historic sites are likely to be present. The letter must present supportive evidence documenting the proposed land altering activities (including the affected area and depth of disturbance) and documenting the likely nature and depth of historic properties that may have once existed in the area.

- (5) Five hundred (\$500) dollars filing fee to cover publication and other administration costs.
 - (6) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.
- (c) Posting of Signs for Public Notification
- (1) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (A) The nature of the application;
 - (B) The proposed use of the property;
 - (C) The size of the property;
 - (D) The tax map key(s) of the property;
 - (E) That the public may contact the Department for additional information; and
 - (F) The address and telephone number of the Department.
 - (2) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
 - (3) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
 - (4) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been

posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

(d) Hearings

Upon acceptance of an SMA Use Permit application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of an SMA Use Permit application by the Director, or within a longer time period as agreed to by the applicant.

Promptly after the Commission fixing a date for the hearing, the applicant shall mail a notice of the hearing setting forth the time, date, and place of the hearing to the owners of properties, lessees, and others with a recorded possessory interest in property within three hundred feet of the perimeter boundary of the affected property and to any other person or agency that has made a written request to the Department for advance notice of the hearing, not less than twenty calendar days prior to the date set for the hearing. Prior to the date of the hearing, the applicant shall file with the Commission, through the Director, an affidavit or other similar proof of mailing of said notice. In addition to said notice and at least twenty calendar days prior to the date of the hearing, the Commission shall give public notice of the time, date, and place of the hearing at least once in the County. Any failure to mail or to receive the public notice shall not invalidate the proceedings, provided further that the proceedings conform to the requirements of Chapter 91, HRS, as amended. These aforementioned notice requirements are not required for subsequent hearing dates upon the same application.

At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and Commission Rule 4 relating to Contested Case Procedures, where applicable.

Any such hearing shall, whenever possible, be held jointly and concurrently with other applicable hearings for the proposed development.

The applicant shall submit an additional two hundred fifty (\$250) dollars processing fee for each hearing continued at the request of the applicant. The applicant shall also notify all owners of properties, lessees, and other recorded possessory interests in the property within three hundred feet of the perimeter boundary of the affected property of the continued hearing.

(e) Grounds for Approval of Special Management Area Use Permits:

The Commission may permit the proposed development only upon finding that:

- (1) The development will not have any significant adverse environmental or ecological effect except as any adverse effect is minimized to the extent practicable and is clearly outweighed by public health, safety, or compelling public interest. Those adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each of which taken by itself might not have a significant adverse effect, and the elimination of planning options;
- (2) The development is consistent with the objectives and policies and the Special Management Area guidelines as provided by Chapter 205A, HRS;
- (3) The development is consistent with the general plan, community plan, zoning code and other applicable ordinances, provided that a finding of consistency shall not preclude concurrent processing where a general plan, community plan, or zoning amendment may also be required.
- (4) The development will, to the extent feasible, reasonably protect native Hawaiian rights if they are found to exist, including specific factual findings regarding:
 - (A) The identity and scope of valued cultural, historical or natural resources in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
 - (B) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
 - (C) The feasible action, if any, to be taken by the Authority to reasonably protect any valued cultural, historical or natural resources, including any existing traditional and customary native Hawaiian rights.

Any development permitted shall be subject to reasonable terms and conditions set by the Authority in accordance with the Special Management Area guidelines as contained in Section 9-7.

- (f) Decision and Order

- (1) Within sixty days following the close of the public hearing(s), or a longer time period as agreed to by the applicant, the commission shall either deny or approve the application. The decision, whether to grant or to deny the application, shall require a majority vote of the total membership of the Commission. In the event the Commission fails to render a decision to approve or deny within the prescribed time limit, the request shall be considered denied.

The applicant may request the Commission to defer action on the application. A majority vote of the total membership of the Commission is required if applicant requests to defer action on the application. In the event the Commission fails to render a decision to defer action within the prescribed time limit, the request shall be considered denied.

- (2) Notice of Decision: Notice of the decision shall be promptly given to the applicant by delivery thereof or by mailing or electronically mailing the notice to the applicant's last known address.
- (3) Reconsideration: In the event an application is denied due to the Commission's failure to render a decision within the period prescribed by Section 9-11(f)(1) above, the applicant may, within ten calendar days after receipt of notice of the denial, request reconsideration of that decision. Upon such request, the Department shall place the application on the agenda of Commission for its reconsideration at the next meeting. In the event the Commission fails to render a decision by a majority vote of its total membership at the next meeting, the application shall be considered as denied.
- (4) Refiling: Whenever an application for a Special Management Area Use Permit has been denied, no new application for the same or similar development, covering all or any portion of the property involved in the application, shall be accepted by the Commission through the Director for a period of two years from the effective date of the denial of the application; provided, however, that upon showing of a substantial change of circumstances the Commission may permit the filing of a new application prior to the expiration of such a two-year period.
- (5) Appeals:
 - (A) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the person desiring to appeal is

notified of the decision or order, or of the action taken in a manner provided by statute.

- (B) If a contested case hearing is held, a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

(g) Amendments to a Special Management Area Use Permit or Conditions

- (1) Application: The applicant may apply to the Commission through the Director for an amendment to the permit or condition(s) imposed by the Special Management Area Use Permit.

In the case of time extensions, the applicant shall set forth in writing: (a) the length of time requested; and (b) the reasons for the time extension.

In the case of additions, modifications, and/or deletions of conditions, the applicant shall file the request not less than sixty days prior to the expiration date of the time conditions, setting forth: (a) the condition to be amended; and (b) the reasons thereof.

The applicant shall also deposit with the Department the sum of two hundred fifty (\$250) dollars to cover publication and other administrative costs, along with the request.

- (2) Notice and Hearing: The hearing and notice procedures shall be the same as under Section 9-11(c) and (d).
- (3) Decision and Order: The procedures shall be the same as provided for under Section 9-11(f).

9-12 Artificial Light on Shoreline and Ocean Waters

- (a) Artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purposes is prohibited when the light (1) directly illuminates the shoreline and ocean waters; or (2) is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-12(a) shall not apply to:
 - (1) A outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo, provided that (A) the outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or (B) the outdoor lighting fixture is the only practicable

means of ensuring the safety and security of guests, visitors, and employees; and

- (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

9-13 Prohibitions

- (a) No special management area use permit or special management area minor permit shall be granted for structures that allow artificial light from floodlights, uplights, or spotlights used for decorative or aesthetic purpose when the light:
 - (1) Directly illuminates the shoreline and ocean waters; or
 - (2) Is directed to travel across property boundaries toward the shoreline and ocean waters.
- (b) Section 9-13(a) shall not apply to special management area use permits for structures with:
 - (1) An outdoor lighting fixture that is located on the grounds of a hotel/hotel-condo; provided that
 - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
 - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
 - (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.

9-14 Special Management Area Emergency Permits

- (a) A Special Management Area Emergency Permit may be issued for emergency repairs to existing public utilities including but not limited to water, sewer, gas and electric transmission lines and highways, or similar emergencies which may otherwise not be exempt from the Special

Management Area permit requirements. Upon finding that an emergency exists and requires immediate action, the Director shall issue a Special Management Area Emergency Permit subject to reasonable terms and conditions including an expiration date. Such permits shall be filed with the Commission in writing.

- (b) In cases of imminent substantial harm to public health, safety, or welfare in the County, including declared states of emergency by the Governor, the Mayor may waive the requirements of obtaining a permit pursuant to these Rules and Regulations.

9-15 Exemptions

This rule shall not apply to proposed developments within the Special Management Area for which final approval, or in the case of subdivisions, for which preliminary subdivision approval, was issued prior to the adoption of this rule, amendments thereto, or to the adoption of the Special Management Area Maps. SMA Use Permit applications filed prior to the adoption of amendments to this rule shall be exempted from any new procedures.

9-16 Revocation

- (a) A Special Management Area Use Permit may be revoked by the Commission in the event that:
 - (1) Any property owner who holds the permit sought to be revoked or at the request of any other person, with the property owner's consent, submits a written statement to the Commission verifying that the development approved under the permit issued has either not been established or has been abandoned.
 - (2) The Director submits a request if:
 - (A) There has been noncompliance with the conditions of the permit; or
 - (B) The development authorized under the permit is creating a threat to the health or safety of the community.
- (b) Notice and Hearing: The Director shall provide written notice to the property owner and/or to the person who has been issued the permit prior to the Commission taking action to revoke the permit. The Commission shall conduct a hearing within a period of ninety calendar days from the receipt of the request by the applicant or Director. At the hearing, all interested persons shall be afforded an opportunity to be heard. The proceedings shall comply with the requirements of Chapter 91, HRS, as amended, and

Commission Rule 4 relating to Contested Case Procedures, where applicable.

- (c) Decision and Order: The procedures shall be the same as provided under Section 9-11(f) of this rule.
- (d) A property owner or other person affected by the revocation of a Special Management Area Use Permit ordered by the Commission, may, within thirty days after the date of the Commission's written order, appeal the Commission's action to the Third Circuit Court as provided by Chapter 91 of the HRS. An appeal to the Third Circuit Court shall stay the provisions of the Commission's revocation order pending the final decision of the Third Circuit Court.
- (e) The Department is authorized to adopt rules to establish procedures for revocation of a Special Management Area Minor Permit.

9-17 Penalties

- (a) Any person who violates any provision of this rule shall be liable for (1) a civil fine not to exceed \$100,000; or (2) for the cost of returning the affected environment or ecology within the Special Management Area to the condition existing before the violation.
- (b) In addition to any other penalties, any person who is violating any provision of this rule shall be liable for a civil fine not to exceed \$10,000 a day for each day in which such violation persists.
- (c) Any civil fine or other penalty provided under this rule may be imposed by the circuit court or by the Department after an opportunity for a hearing under Chapter 91, HRS.

9-18 Complaint and Investigative Procedures

The Department shall adopt rules to establish procedures for investigating complaints and alleged violations.

9-19 Administrative Fines

The Department is authorized to impose administrative fines in accordance with established rules.

9-20 Injunction

Any person violating any provision of this rule may be enjoined by the circuit court of the State by mandatory or restraining order necessary or proper to

effectuate the purposes of this rule in a suit brought by the County.

9-21 Hearing Officer

- (a) The Commission may authorize a hearing officer to conduct a hearing for the purpose of taking testimony and to report his/her findings of facts and conclusions of law with his/her recommendation to the Authority on proceedings under the jurisdiction of the Commission as provided by this rule.
- (b) The notice and hearing requirements for hearings conducted by a hearing officer shall be same as provided under Sections 9-11(c), 9-11(d), 9-22(b), 9-23(a)(2) or 9-23(b)(2), as may be applicable.
- (c) Post hearing procedures for hearings conducted by a hearing officer:
 - (1) Recommendation of hearing officer: Upon completion of taking of the evidence the hearing officer shall prepare a report setting forth findings of fact, conclusions of law, and the reasons therefor, and a recommended order and submit the report of the case to the Commission.
 - (2) Contents of the record: The record shall include the petition, transcripts of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the persons involved, objections to conduct of the hearing and the report of the hearing officer and all other matters placed into evidence.
 - (3) Within forty-five calendar days after the conclusion of the hearing, the hearing officer shall complete the report and submit it to the Commission and to all persons involved in the proceedings.
- (d) Exceptions to the Hearing Officer's Report and Recommendation:
 - (1) Within ten working days after receipt of the report and recommendation by the hearing officer, a person involved in the proceedings may submit to the Authority his exceptions to the report and his reasons in support thereof.
 - (2) The exception shall:
 - (A) Set forth specifically the procedure, fact, law or policy to which exceptions are taken;
 - (B) Identify the part of the hearing officer's report and recommended order to which objections are made; and

(C) State specifically the reasons for exceptions to the ruling, finding, conclusion, or recommendation.

(e) Testimony Before the Commission:

- (1) If a person involved in the proceedings desires to testify before the Authority, a written request with reasons therefor shall accompany the exceptions and the Commission may grant such request.
- (2) The Commission may on its own motion re-open the hearing to allow the taking of additional testimony and further evidence.

(f) Commission Action:

- (1) In the event no statement of exception is filed, the Commission may proceed to reverse, modify or adopt the recommendation of the hearing officer.
- (2) Upon the submittal of exceptions and the taking of further evidence, if any, Commission shall render its decision pursuant to Rule 9-11(e).

9-22 Petition for the Adoption, Amendment or Repeal of Rule 9 Special Management Area Rule of the County of Hawai'i

(a) Petition

Any person may petition the Commission through the Director requesting the adoption, amendment or repeal of any provision of this rule.

The petitioner shall be responsible for submitting the following to the Director:

- (1) The completed petition including:
 - (A) A statement of the nature of the petitioner's interest.
 - (B) A draft of the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.
 - (C) An explicit statement of the reasons in support of the proposed rule, amendment or repeal. Said reasons shall include a discussion of the relationship of the proposed change with Chapter 205A, HRS, Relating to Coastal Zone Management, and other applicable State and County

Ordinances or regulations including the General Plan.

- (2) Five hundred (\$500) dollars filing fee to cover publication and other administrative costs.

(b) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) and (d), provided further that the Commission shall conduct a public hearing within a period of ninety calendar days from the receipt of a properly filed petition.

(c) Decision and Order

The procedures shall be the same as under Section 9-11(f).

9-23 Amendment of Special Management Area (SMA) Maps

(a) Amendments initiated by the Director:

(1) Initiation:

- (A) The Director may at any time initiate amendments to the Special Management Area Boundaries.
- (B) The Commission, by a two-thirds (2/3) vote of its total membership, may direct the Director to initiate amendments to the Special Management Area boundaries.
- (C) The Director shall give notice of his intent to amend the Special Management Area boundaries to the Commission, the general public and the State Office of Planning, stating the initiation date and estimated completion date of review. The Director, upon completion of his review, shall submit the proposed amendments to the Commission.

(2) Notice and Hearing:

The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) of this rule, provided further that the Commission shall conduct a hearing within a period of sixty calendar days from the submittal of the proposed amendments by the Director.

(3) Grounds for Approval of Special Management Area Boundary Amendments:

The Commission may amend the Special Management Area boundaries only upon finding that the amendments will further the objectives and policies as provided by Chapter 205A, HRS, and will be consistent with the General Plan and other applicable ordinances.

(4) Decision and Order:

The procedures shall be the same as under Section 9-11(f).

(b) Special Management Area Boundary Amendments Initiated by the General Public:

(1) Application:

Any person may apply to the Commission through the Director requesting the amendment of the Special Management Area boundaries.

The applicant shall submit the following to the Department:

(A) The completed application including the following:

- (i) A statement of the nature of the applicant's interest.
- (ii) A description of the properties involved in sufficient detail to determine the precise location.
- (iii) An explicit statement of the reasons in support of the request including a discussion of how the amendment will further the Special Management Area objectives and policies as well as be consistent with the General Plan and other applicable ordinances.
- (iv) A statement discussing the proposed use of the parcel and any other information necessary to render a proper decision relating to the specific request.

(B) Five hundred (\$500) dollars filing fee to cover publication and other administrative costs.

(2) Notice and Hearing

The notice and hearing procedures shall be the same as stipulated under Section 9-11(c) and (d).

- (3) Grounds for Approval of Special Management Area Boundary Amendments:

The Grounds for approval of Special Management Area boundary amendments shall be the same as provided for in Section 9-23(a)(3).

- (4) Decision and Order:

The procedures shall be the same as provided for in Section 9-11(f).

RULE 10. ZONING AMENDMENTS

10-1 Authority

This rule governs zoning amendment procedures before the Planning Commission as required by Chapter 25 (Zoning Code), Hawai'i County Code 1983 (2016 Edition, as amended).

10-2 Procedures for Processing Zoning Amendments

(a) Public Hearing Notice

- (1) The Commission shall publish notice of the public hearing in at least two newspapers of general circulation in the County, at least ten days prior to the date of the hearing, unless a longer time period is required by either statute or charter provision, in which case, the notice period provided by statute or charter provision shall apply. The notice shall specify the time, date and place of the hearing, its purpose and a description of the property, if any, involved.
- (2) The Commission may publish consolidated notices of any public hearings to be held on the same date; provided that the consolidated notices state specific information regarding the time, date and place, the purpose and a description of the property involved in each matter.
- (3) In the cases of amendments initiated by the Director and Council, the Commission shall publish notice of the public hearing in accordance with subsection (a)(1), except that when a proposed amendment involves a specific parcel of land, notice shall be provided by the Commission as follows:
 - (A) Notice by mail to surrounding owners and lessees of record shall not be required for any amendment initiated by the Director or the Council. In lieu of mailing written notice to surrounding owners and lessees of record, the Commission shall publish notice of the public hearing in at least two newspapers of general circulation in the County, once a week for three consecutive weeks, with the last notice to be at least ten days prior to the hearing. The notice shall specify the time, date and place of the hearing, its purpose and a description of any property which may be involved.

- (B) No later than thirty days prior to the public hearing, the Commission shall provide written notice to owners of any properties specifically subject to the proposed amendment.
- (4) Prior to the public hearing, the applicant shall submit to the Commission proof of service or of good faith efforts to serve notice of the application on the designated property owners and lessees. Such proof may consist of certified mail receipts, affidavits, declarations, or the like. The failure of a property owner or lessee to receive written notice, shall not invalidate any proceeding by the Commission, provided that good faith efforts were made by the applicant to serve notice on the affected property owner or lessee.
- (5) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 25-2-4 of Chapter 25, Zoning Code, as amended. An additional two hundred fifty dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.
- (b) Amendments initiated by property owners and other persons.
 - (1) The Commission shall hold at least one public hearing and shall provide thirty days' notice of the date of the hearing to the applicant.
 - (2) Within ninety days after receipt of the application from the Director, unless a longer time period is agreed to by the applicant, the Commission shall transmit the proposed change of zone ordinance together with its recommendations thereon through the Mayor to the Council. The Commission shall recommend approval in whole or in part, with or without modifications, or rejection of such application. In the event that the Commission fails to act on the application within the ninety-day period, the application shall be considered an unfavorable recommendation by the Commission, and the application shall be transmitted through the Mayor to the Council with such recommendation.
- (c) Amendments initiated by the Director and Council.
 - (1) Any proposed amendment initiated by the Director shall be reviewed by the Commission. The Director shall submit the

justification and recommendation on the amendment to the Commission.

- (A) Upon receipt of a proposed amendment from the Director, the Commission shall hold at least one public hearing.
 - (B) Within sixty days after receipt of the amendment from the Director, the Commission shall transmit the proposed amendment together with its recommendation thereon through the Mayor to the Council. The Commission shall recommend approval in whole or in part, with or without modifications, or rejection of such amendment. In the event that the Commission fails to act on the amendment within the sixty-day period, such inaction shall be considered as unfavorable recommendation by the Commission, and the amendment shall then be submitted through the Mayor to the Council with such recommendation.
- (2) The Council shall refer any proposed Council-initiated amendment to Chapter 25, Zoning Code, to the Director and the Commission with requests for their respective comments and recommendations thereon, prior to the first reading of any such amendment. The Director and the Commission shall each submit comments and recommendations on the proposed amendment to the Council within one hundred twenty days from the date that the amendment is transmitted by the Council.
- (A) Within the one hundred twenty-day review period, the Director shall submit comments and any recommendations to both the Commission and the Council. The Commission shall hold at least one public hearing on the proposed amendment.
 - (B) The Commission shall transmit the proposed amendment together with its recommendation thereon through the Mayor to the Council. The Commission shall recommend approval in whole or in part, with or without modifications, or rejection of such amendment. In the event that the Commission fails to act on the amendment within the one hundred twenty-day review period, such inaction shall be considered as an unfavorable recommendation by the Commission, and the amendment shall then be submitted through the Mayor to the County Council with such recommendation.

- (C) After the one hundred twenty-day review period has expired, the Council may proceed to act on the proposed amendment as it deems appropriate.

10-3 Posting of Signs for Public Notification

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (1) The nature of the application;
 - (2) The proposed use of the property;
 - (3) The size of the property;
 - (4) The tax map key(s) of the property;
 - (5) That the public may contact the Department for additional information; and
 - (6) The address and telephone number of the Department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
- (d) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

RULE 11. GEOTHERMAL RESOURCE PERMITS

11-1 Purpose and Authority

This rule governs geothermal resource permit procedures pursuant to authority conferred by Section 205-5.1, Hawai‘i Revised Statutes, as amended, upon the Commission to determine whether proposed geothermal development activities should be allowed. The Commission is the issuing authority for geothermal resource permits in geothermal resource subzones located within Agricultural, Rural and Urban State Land Use Districts in the County.

The Commission’s approval of an application for a geothermal resource permit shall not in any way abrogate nor supersede the provisions of Chapters 182 and 183, HRS, and rules promulgated thereunder.

11-2 Definitions

As used herein, “geothermal development activities,” whether for research or commercialization purposes, means exploration, development, or production of electrical energy from geothermal resources, or as otherwise defined in Hawai‘i Revised Statutes, Section 205-5.1.

11-3 Contents of Application

Any person who desires to conduct geothermal development activities on land that is located within a geothermal resource subzone and located within either the Agricultural, Rural or Urban State Land Use Districts shall apply to the Commission for a geothermal resource permit. An application for a geothermal resource permit shall be filed in the Department's office and shall include the following:

- (a) Non-refundable filing and processing fee of one thousand dollars.
- (b)
 - (1) Application form;
 - (2) Written and appropriate graphic descriptions of the property and the proposed geothermal development activities including, but not limited to:
 - (A) A description of the property for which a permit is being requested to include the property’s real property tax map key designation and a description of the property’s location within the County.

- (B) A written statement describing the scope of the planned activities and presenting the applicant's reasons for requesting the permit.
- (C) A preliminary plot or site plan of the property, drawn to scale, showing all existing and proposed uses and locations of structures including, but not limited to, drilling sites, wells, access roadways, water sources, waste water collection and disposal systems, the geothermal steam and/or brine collection and disposal systems, power plant(s) and electrical power distribution systems.
- (D) Preliminary elevation drawings of the proposed temporary and permanent structures.
- (E) The proposed locations and elevations and depths of all superstructures and drilling rigs, bottom hole locations, casing program, proposed well completion program, size and shape of drilling sites, and location of all existing and proposed access roads.
- (F) Areas of potential temporary and/or permanent surface disturbance, including, but not limited to, excavation and grading sites, the location of camp sites, airstrips, and other support facilities, excavation and borrow pits for roads and other construction activities.
- (G) A written description of the methods for disposing of well effluent and other wastes.
- (H) A geologist's report on the site and surrounding area's surface and subsurface geology, nature and occurrence of known or potential geological hazards and geothermal resources, surface and ground water resources, topographic features of the land, and drainage patterns.
- (I) Pre-exploration meteorological, ambient air quality and noise level measurements that demonstrate the potential effects on surrounding properties through air quality and noise impact analysis.
- (J) A written description of the measures proposed to be taken for protection of the environment, including, but not limited to, the prevention and/or control of:

- (i) Fires,
 - (ii) Soil erosion,
 - (iii) Surface and ground water contamination,
 - (iv) Damage to fish and wildlife or other natural resources,
 - (v) Air and noise emissions,
 - (vi) Hazards to public health and safety,
 - (vii) Socio-economic impact(s), and
 - (viii) Impact(s) on public infrastructure and services.
- (K) Statement(s) addressing how the proposed development would mitigate or reconcile:
- (i) Any effects to residents or surrounding properties in the areas of health, environment and socio-economic activities;
 - (ii) The burdening of public agencies to provide support infrastructure such as roads, sewers, water, drainage, school and related services and police and fire protection.
- (L) Preliminary provisions and/or plans for the monitoring of environmental effects such as noise and air and water quality during each proposed phase of the project (exploration, development and production) demonstrating how the applicant intends to comply with this rule, the rules of the State's Department of Health, and the rules of the State Board of Land and Natural Resources.
- (M) A preliminary plan of action for emergency situations which may threaten the health, safety, and welfare of employees and other persons in the vicinity of the proposed project site including, but not limited to, procedures to facilitate coordination with appropriate Federal, State and County officials and the evacuation of affected individuals.
- (N) Preliminary timetable(s) and/or schedule(s) for each proposed phase of the project.

- (O) Method(s) of presenting timely progress reports to the Commission.
- (P) Other pertinent information or data such as an archaeological survey which the Director may require to support the application for the utilization of geothermal resources and the protection of the environment.
- (c) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of bankruptcy or similar matters as authorized by the County Director of Finance.

11-4 Properly Filed Application

Within twenty days of receipt of an application, the Director shall review it to determine if it is complete in that it includes the supporting data required pursuant to Section 11-3. An application that is determined to be complete shall be officially accepted within twenty days of receipt of the application and the applicant shall be so notified in writing.

11-5 Posting of Signs for Public Notification.

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (1) The nature of the application;
 - (2) The proposed use of the property;
 - (3) The size of the property;
 - (4) The tax map key(s) of the property;
 - (5) That the public may contact the Department for additional information; and
 - (6) The address and telephone number of the Department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.

- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
- (d) The applicant shall file an affidavit with the planning department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

11-6 Hearing and Notification

- (a) The Director, on behalf of the Commission, shall set a date for a public hearing to be held within a period of ninety days from the date of official acceptance of a properly filed and completed application.
- (b) The Commission shall conduct a public hearing. Upon appropriate request for mediation from any party who submitted comment at the public hearing, the Commission shall order the requesting party or parties, the applicant and the appropriate agencies to submit to the mediation process outlined in Section 11-6.
- (c) Promptly after the Director fixes a date for the public hearing and at least fifteen days before the date of the public hearing, the applicant shall mail a notice of the hearing to owners of interests in properties, as shown on the current real property tax rolls at the County Real Property Tax Office, within a minimum of three hundred feet of the perimeter boundary of the property for which a permit is being requested (or as determined by the Director), and to other interested persons or groups as may be determined by the Director. The applicant shall also make a reasonable attempt or best effort in notifying residents within one thousand feet of the perimeter boundary of the property of the public hearing. Such notice shall state:
 - (1) Name of the applicant;
 - (2) Precise location of the property involved;

- (3) Nature of the proposed geothermal development activities; and
- (4) Date, time, and place of the hearing.
- (d) If the notification requirement set forth in Section 11-5(c) has not been met, the Commission shall not conduct a hearing and further action on the application shall be deferred until the notification requirement is met.
- (e) In addition to said notice and at least fifteen days prior to the date of the hearing, the Commission shall publish notice of the hearing in a newspaper of general circulation in the County which includes the information provided under Section 11-6(c)(1) to (4).
- (f) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 11-6(c). An additional two hundred fifty dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

11-7 Mediation

- (a) Persons Entitled to Request Mediation. Any person, including interested government agencies, who submitted comment at the public hearing, may, upon appropriate request, seek mediation of issues raised by that person at the initial public hearing. Upon receipt of an appropriate request, the Commission shall require the parties to participate in mediation. All appropriate requests for mediation shall be consolidated in a single mediation conference. The Commission shall not be a party to the mediation, and shall not be permitted to attend mediation conferences. The Department may be a party to the mediation if it makes an appropriate request.
- (b) Requests for Mediation. A request for mediation shall be made in writing to the Commission, shall contain a brief statement of the issue or issues raised by that person at the public hearing, and shall contain the name, address, phone number and signature of the person requesting mediation.
- (c) Time for Submission of Request. The request for mediation shall be filed with the Commission within five days after the close of the initial public hearing and one copy of the request shall be served on the applicant.
- (d) Appointment of a Mediator. Within five days after receipt of a timely request, the Commission shall appoint a qualified mediator. Appointment of the mediator by the Commission shall be final, except

as provided in Section 11-7(e).

- (e) **Qualifications of Mediator.** No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the mediation. Prior to accepting an appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent the prompt completion of the mediation. Upon receipt of such information, the Chairperson shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event the parties are unable to agree as to whether the mediator shall serve, or in the event the appointed mediator becomes unable or unwilling to serve, the Chairperson will appoint another mediator. The mediator shall not be an employee of any County agency or its staff.
- (f) **Notice of Mediation Conference.** The applicant and any person submitting a timely request for mediation shall be notified in writing by the Commission of the date, time, and place of the first mediation conference by depositing such notice in the mail to the return address stated in the application and in the request for mediation or by electronic mail to the electronic mail address stated in the application and in the request for mediation, which method shall be indicated in the application or request for mediation. The notice shall be mailed no later than ten days before the start of the mediation conference.
- (g) **Mediation Conference.** The initial mediation session shall be held within fifteen days after the appointment of the mediator. The mediator shall fix the time and place of each subsequent mediation session. The conference shall be held within the County of Hawai'i unless all parties and the mediator agree otherwise. The mediation period shall not extend beyond thirty days after the initial mediation session, except by order of the Commission. Mediation shall be confined to the issues raised at the public hearing by the respective party or parties requesting mediation.
- (h) **Authority of Mediator.** The mediator shall attempt to help the parties reach a satisfactory resolution of their dispute, but shall not have authority to impose a settlement upon the parties. The mediator may conduct joint and separate meetings with the parties and make oral and written recommendations for settlement.
- (i) **Privacy.** Mediation sessions shall be private. The parties and their representatives shall have the right to attend the joint mediation sessions. Other persons may attend only with the permission of all

parties to the mediation and the consent of the mediator.

- (j) Confidentiality. Confidential information disclosed to a mediator by any party in the course of the mediation shall not be divulged by the mediator to anyone, including other parties to the mediation. All records, reports, or other documents received by a mediator while serving in such capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any administrative proceedings or judicial forum.
- (k) The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, administrative, or other proceeding:
 - (1) views expressed or suggestions made by any other party with respect to a possible settlement of any disputed issue;
 - (2) statements or admissions made by any other party in the course of mediation proceedings;
 - (3) proposals made or views expressed by the mediator;
 - (4) the fact that the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- (l) Stenographic Record. There shall be no stenographic record or electronic recodation of the mediation process.
- (m) Recommendation of Mediator. The mediator shall submit a written report containing recommendations to the Commission, based upon any mediation agreement reached between the parties or stating that no agreement was reached, for consideration by the Commission in its final decision. The written report of the mediator shall be filed with the Commission and served on all parties to the mediation within ten days of the close of the mediation conference.
- (n) Second Public Hearing. If there is no mediation agreement, or if the mediation agreement does not resolve all issues submitted for mediation, the Commission may, in its sole discretion, hold a second public hearing to receive additional comment related to the unresolved mediation issues. The second public hearing, if to be conducted, shall be held within thirty days after receipt of the mediator's report. Within ten days after the second public hearing, the Commission may receive additional written comment on the unresolved mediation issues raised at the second public hearing by any party.

- (o) If a second hearing is held, the Commission shall consider the comments raised at the second hearing before rendering its final decision. The Commission shall then determine whether a geothermal resource permit shall be granted for geothermal development activities described in the application.
- (p) Expenses. The parties shall each bear their respective costs, fees and expenses.

11-8 Criteria for Issuance of Geothermal Resource Permit

The Commission shall grant a geothermal resource permit if it finds that the applicant has demonstrated that:

- (a) The proposed geothermal development activities would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property; and
- (b) The proposed geothermal development activities would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection; and
- (c) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

11-9 Action

- (a) Unless there is mutual agreement to extend the period of time for the Commission's action, the Commission shall take action on a properly filed and complete application within one hundred eighty days of the date a complete application is filed; provided that the time limit may be extended by agreement between the applicant and the Commission.
- (b) The Commission's action shall either:
 - (1) Grant the geothermal resource permit as requested by the applicant based upon the satisfaction of criteria in Section 11-8 and stating the reasons therefore, subject to performance, reporting and other appropriate conditions imposed by the Commission.
 - (2) Grant the geothermal resource permit as may be modified from the applicant's request and stating the reasons therefore, subject to performance, reporting, and other appropriate conditions

imposed by the Commission.

- (3) Grant the geothermal resource permit in phases or increments dependent upon the timely and progressive completion of a precedent phase or increment and stating the reasons therefore, subject to performance, reporting, and other appropriate conditions imposed by the Commission.
- (4) Deny the geothermal resource permit and stating the reasons therefore.
- (c) The Chairperson of the Commission shall issue official written notification to the applicant of the Commission's action including any performance, reporting, and other appropriate conditions imposed by the Commission.

11-10 Requirements Prior to Initiating Construction

Prior to initiating construction of an approved project or any phase of an approved project, the applicant shall submit the following to the Director:

- (a) Copies of approved permits and other applicable approvals for the project or any phase of the project from other County, State or Federal agencies as applicable.
- (b) Final plans or provisions for monitoring environmental effects of the project or any phase of the project such as noise, air and water quality as may be required to insure compliance with County rules and the rules of the State's Department of Health and Board of Land and Natural Resources, and other permit-issuing agencies.
- (c) A final plan of action to deal with emergency situations which may threaten the health, safety, and welfare of the employees and other persons in the vicinity of the proposed project site. The plan shall include procedures to facilitate coordination with appropriate State and County officials and the evacuation of affected individuals.
- (d) A final site plan and elevations of proposed temporary and/or permanent structures for the project or any phase of the project.

11-11 Amendments of Permit and Conditions

- (a) For any amendments to the geothermal resource permit or its conditions the permittee shall set forth in writing:
 - (1) The specific amendment requested;
 - (2) The reasons for the request, including statements addressing the

criteria listed under Section 11-8; and

- (3) Any other applicable information requested by the Director.
- (b) In the case of any amendment concerning a time extension to the permit or its conditions, the permittee shall file the request not less than ninety days prior to the deadline for performance of the condition, setting forth:
 - (1) The affected condition;
 - (2) The length of time requested; and
 - (3) The reasons for the request.

If either the Director or the Commission is not able to act on a properly filed time extension request prior to the deadline for a time extension, the geothermal development activities allowed by the Geothermal Resource Permit may be continued by the Director.

- (c) All of the procedures set forth in this rule and the procedures set forth in other applicable Commission rules shall apply.

11-12 Enforcement of Permit and Conditions

- (a) If the Director determines that there is noncompliance with the geothermal resource permit or its conditions, Director shall so inform the permittee in writing and, if applicable, other appropriate County, State or Federal agencies, setting forth the grounds of his determination. Upon receiving notice of the determination of noncompliance, the permittee shall have five days to provide a written response to the notice of determination of noncompliance.
- (b) Notwithstanding any written response submitted by the permittee, if the Director affirms the determination of noncompliance, he shall so advise the permittee in writing. The permittee shall have five days thereafter to correct the noncompliance; provided that the Director may allow a longer period upon a finding of good cause, such as where circumstances beyond the permittee's control will prevent compliance within the five-day period.
- (c) The permittee may request a hearing with the Commission to amend the permit, should compliance be impossible or impractical to meet.
- (d) If the permittee fails to correct the noncompliance within the required time period, the Director shall refer the matter with his recommendations to the Commission for further disposition, which may include, but is not limited to, either the revocation or the

modification of the permit.

- (e) Notwithstanding any other provision of this section, pending a hearing by the Commission, the Director may immediately and temporarily suspend the permit and operations allowed thereunder. Notice of a temporary suspension shall be provided in writing or orally with subsequent written confirmation within three days to the permittee and shall set forth the reasons for the temporary suspension. The Director may reactivate the permit upon a subsequent finding of the permittee's compliance with the permit condition. Subject to the Commission rules, the permittee may at any time request a hearing before the Commission for its review and action with regard to the permit's temporary suspension or any subsequent refusal of the Director to reactivate the permit. Referrals by the Director to the Commission and reviews by the Commission of the Director's action shall be heard at the Commission's next meeting when the matter can be placed on the Commission's agenda.

11-13 Penalties

If a permittee, its successors or assigns do not comply with any provision of a permit or its conditions issued under this Rule they may be subject to a civil fine not to exceed those provided for by applicable statutes.

11-14 Appeals

- (a) Any decision made by the Commission pursuant to a public hearing or hearings under this rule may be appealed directly on the record to the supreme court for final decision and shall not be subject to a contested case hearing. Sections 91-14(b) and (g), Hawai'i Revised Statutes, as amended, shall govern the appeal, notwithstanding the lack of a contested case hearing on the matter. The Commission shall provide a court reporter to produce a transcript of the proceedings at all public hearings under this rule for purposes of an appeal.
- (b) For the purposes of an appeal from a decision from a public hearing, the record shall include:
 - (1) The application for the permit and all accompanying supporting documents, including but not limited to; reports, studies, affidavits, statements, and exhibits.
 - (2) Staff recommendations from County agencies submitted to the Commission in consideration of the application.
 - (3) Oral and written public testimony received at the public

hearings.

- (4) Written transcripts of the proceedings at the public hearings.
- (5) The written recommendation received by the Commission from the mediator with any mediation agreement.
- (6) A statement of relevant matters officially noticed by the Commission and/or any of its members at the public hearings.
- (7) The written decision of the Commission issued in connection with the application and public hearings.
- (8) Other documents required by the Commission.

RULE 12. GEOTHERMAL ASSET FUND

12-1 Authority

Pursuant to the authority conferred upon the Windward Planning Commission by Ordinance No. 95-62 and 95-74, the rules and regulations hereinafter contained are hereby established and shall apply to claims made against the Geothermal Asset Fund.

12-2 Purpose

The purpose of this rule is to allow the Windward Planning Commission to authorize payment of money from the Geothermal Asset Fund to claimant(s) whom the Commission finds has been adversely impacted by activities authorized or unauthorized by Geothermal Resource Permit No. 2, issued by the County of Hawai'i, and to authorize payment for community approved geothermal impact mitigation projects within the District of Puna. The Geothermal Asset Fund was created pursuant to Condition No. 51 of Geothermal Resource Permit No. 2, issued to Puna Geothermal Venture on October 3, 1989. Since this rule relates to a condition of Geothermal Resource Permit No. 2 issued for property within the Puna District, County of Hawai'i, this rule is applicable only to the Windward Planning Commission.

12-3 Definition

- (a) "Hearing" means the taking of evidence concerning a claim for the purpose of voting on a recommendation to the Planning Commission as to the granting or denial of the claim.
- (b) "Expert Witness" means any person whom the determines to be an expert through knowledge, skill, experience, training or education to provide scientific, technical, or other specialized knowledge that will assist in the understanding of the evidence. In determining the issue of assistance, the Planning Commission may consider the trustworthiness and validity of the scientific technique or mode of analysis employed by the proposed expert.

12-4 General Procedures

All claims for release of monies from the Geothermal Asset Fund will be presented to and reviewed by a Professional Claims Adjuster, who will then present its findings and recommendations to the Commission. The Commission will review these findings and then render a decision.

12-5 Geothermal Asset Fund Claims Adjuster

A professional claims adjuster will be selected by the Commission after receiving a list of names selected through requirements of the State Procurement Code. Unless otherwise required by Statute, the claims adjuster will serve for a period of five years. In the event that five years have passed and the life of the Geothermal Asset Fund is extended, the Commission may either ask for a new list of names to choose another claims adjuster or extend the claims adjuster who previously served the Commission.

12-6 Eligibility of Claims

Claims for compensation from the Geothermal Asset Fund may be filed by any person or organization who is adversely impacted under the activity of geothermal development authorized or unauthorized under Geothermal Resource Permit No. 2, granted by the County of Hawai'i. Persons or organizations that have already been compensated for damage claims due to a specific event through means other than this Geothermal Asset Fund shall not be eligible to file claims for compensation for the same event against this fund. Claims filed with the Department prior to the adoption of the rule may be reaffirmed through the filing of necessary information pursuant to this rule.

- (a) Claims for community approved mitigation projects shall address the alleviation or attenuation of the direct detrimental effects of geothermal operations carried out pursuant to Geothermal Resource Permit No. 2.
- (b) Claims for temporary relocation shall indicate dates and duration.
- (c) Adverse impacts shall include physical injury, medical and health conditions, business or economic loss, nuisance, or any other claim of adverse impact which is able to be substantiated by evidence.
- (d) Adverse impact claims may be supported by documents such as doctor's affidavits, photographs, bills, invoices, other expert opinions or testimony, etc. Documents shall be provided upon request.
- (e) Claims will be acted upon with initial filing date setting the first come, first served basis. Any claim received before the passing of this rule will need to be resubmitted to follow the guidelines set forth in this rule.
- (f) An action on the merits of a claim by the professional claims adjuster to recommend approval or denial of a claim and subsequent Commission action to confirm or reject the claims adjuster's recommendation shall, after exhaustion of the Commission appeal process, become final and shall bar any subsequent claim before the Commission by the same

claimant(s) based upon the same facts.

12-7 Filing of Claims

- (a) All claims for compensation for adverse impact pursuant to this rule shall be filed with the Hawai'i County Planning electronically to planning@hawaiicounty.gov, unless otherwise directed.
- (b) Each claim shall include the following information:
 - (1) Name of claimant(s). When the claimant is an organization, the claimant shall submit a list of officers, a membership list, and a copy of the organization's by-laws.
 - (2) Address of claimant(s).
 - (3) Tax Map Key of claimant(s).
 - (4) Date of filing of claim.
 - (5) Description of the nature of the claim, including the way in which the claimant(s) has been adversely impacted and the compensation sought.
 - (6) List of documents supporting the claim, showing evidence of adverse impact.
 - (7) The claim and all supporting documents.
 - (8) Notarized signature of the claimant(s) on the claim.
- (c) The claim application and submitted evidence shall be a matter of public record and copies shall be distributed to the Commission members who will hear the claim.

12-8 Hearings

- (a) **Scheduling of Hearing.** Whenever an application is made for compensation, the claims adjuster shall submit a recommendation to the Commission within ninety days of the receipt of the application and all supporting documents.
- (b) **Documents, Applications, Amendment, Dismissal.** All papers, documents and applications must be submitted electronically to planning@hawaiicounty.gov, unless otherwise directed. The signature or electronic signature of the person signing the document or application constitutes a certification that they have read the document,

that to the best of their knowledge, information, and belief, every statement contained in the document is true and no such statements are misleading. If any document or application filed with the claims adjuster is not in substantial conformity with the applicable rules as to the contents thereof, or is otherwise insufficient, the claims adjuster may recommend to the Commission dismissal of such document or application or may require its amendment. If amended, the document or application shall be effective as of the date of the submittal of amendments.

- (c) The claims adjuster shall recommend to the Commission whether or not the claim has merit and, if so, what amount of compensation. It shall be forwarded to the Commission within ninety days of filing with the claims adjuster. The Commission may vote to pay the claimant(s) after reviewing the supporting documents and the recommendation made by the claims adjuster if it finds that:
 - (1) The claimant(s) has been adversely impacted by the activities authorized or unauthorized by Geothermal Resource Permit No. 2, issued by the County of Hawai'i, and
 - (2) The amount of compensation to be granted is deemed by the Commission to be appropriate for the damage caused by the adverse impact as a result of the activity permitted or not permitted by Geothermal Resource Permit No. 2, issued by the County of Hawai'i, or
 - (3) The proposal for a Puna community mitigation project will be for the benefit of a majority of Puna residents most directly impacted by geothermal development activities permitted or not permitted by Geothermal Resource Permit No. 2, issued by the County of Hawai'i.
- (d) The Commission may bring in expert witnesses to review the supporting documents and recommendation made by the claims adjuster and then to assist it in making the final decision on any claim. These may include a County Doctor or other such experts as the Commission shall deem necessary.
- (e) Compensation shall be granted or denied by an affirmative vote of the majority of the entire voting membership of the Commission or by default by the Commission choosing not to consider the claims adjuster's recommendation.

12-9 Claims Adjuster's Recommendations

The claims adjuster shall recommend to the Commission its recommendation based on the following determinations:

- (a) Basis for the Determination that Adverse Impacts have occurred. Adverse impacts will be assumed if any of the following are shown to be true.
 - (1) The geothermal development activities have had unreasonable adverse health, environmental, or socio-economic effects on a resident(s) or surrounding property(ies), or
 - (2) The geothermal development activities have unreasonably burdened public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection, or
 - (3) There are no reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.
 - (b) Basis for Recommendation to Grant Claim. The claims adjuster shall recommend that a claim be granted if it finds that:
 - (1) The claimant(s) has been adversely impacted by the activities authorized or unauthorized by Geothermal Resource Permit No. 2, issued by the County of Hawai'i, and
 - (2) The amount of compensation to be granted is appropriate for the damage caused by the adverse impact resulting from the activity permitted or not permitted by Geothermal Resource Permit No. 2, issued by the County of Hawai'i, or
 - (3) The proposal for a community approved Puna mitigation project will be for the benefit of a majority of Puna residents most directly impacted by geothermal development activities permitted or not permitted by Geothermal Resource Permit No. 2, issued by the County of Hawai'i.
- These findings for recommendation to grant the claim shall be stated in writing and a copy shall be given to the claimants.
- (c) Basis for Recommendation to Deny a Claim. The claims adjuster shall recommend that a claim be denied if it finds that:
 - (1) The claimant(s) has not been adversely impacted by the activities authorized or unauthorized by Geothermal Resource

Permit No. 2, issued by the County of Hawai'i, or

- (2) The proposal for a Puna community mitigation project, would not be for the benefit of a majority of Puna residents most directly impacted by the geothermal development activities permitted or not permitted by Geothermal Resource Permit No. 2, issued by the County of Hawai'i.

These findings for recommendation of denial of the claim shall be stated in writing and a copy shall be given to the claimant(s).

12-10 Commission Action

- (a) The Commission shall review the findings and recommendation prior to announcing the decision or the date when its decision will be announced. If the Commission does not make a decision on the claims adjuster's recommendation within ninety days from the close of the hearing, the claims adjuster's recommendation becomes final.
- (b) Reconsideration by Commission. Any commissioner who voted with the majority may move to reconsider a vote on a claim at the same meeting or the next regular meeting. A decision shall not be reconsidered more than once.

12-11 Award of Compensation

Upon voting to award compensation to claimant(s), the Commission shall prepare a written, brief statement of the facts upon which the vote was decided, a finding that the claimant(s) was adversely affected by the activity permitted or not permitted by Geothermal Resource Permit No. 2, issued by the County of Hawai'i, and a statement of the amount of compensation.

12-12 Denial of Award of Compensation

Upon voting to deny an award of compensation to the claimant(s), the Commission shall prepare a written, brief statement of the facts upon which the vote was decided, a finding that a claimant(s) was not adversely affected, that the proposed project does not mitigate direct detrimental effects caused, or the proposed project will not be for the benefit of a majority of Puna residents most directly affected by the activity permitted or not permitted by Geothermal Resource Permit No. 2, issued by the County of Hawai'i.

12-13 Appeal

- (a) Any decision of the Commission so made within the context of this rule shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within thirty (30) days after the

person desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.

- (b) If a contested case hearing is held a different appeal option if available. Refer to Planning Commission Rule 4-32 for appeal procedures.

12-14 When Rules are Silent

The rules of parliamentary practice and procedure, as laid down by Robert's Rules of Order, Revised, and where not inconsistent with this rule, shall govern the claims adjuster.

12-15 Petition for Adoption, Amendment or Repeal of Rules

- (a) Any interested person may petition the Planning Commission requesting the adoption, amendment or repeal of any rules of the Geothermal Asset Fund rule.
- (b) The petition shall be submitted and include:
 - (1) A statement of the nature of the petitioner's interest.
 - (2) A draft or the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed.
 - (3) An explicit statement of the reasons in support of the proposed rule, amendment or repeal.
- (c) The Commission shall within sixty days after the submission of the petition either deny the petition in writing, stating its reasons for such denial, or initiate proceedings in accordance with Chapter 91-3, Hawai'i Revised Statutes, for the adoption, amendment or repeal of the rule, as the case may be, and shall have the community participation and input as stated in Condition No. 51 of Geothermal Resource Permit No. 2.

12-16 Relocation

The Geothermal Asset Fund may be used for relocation and payment for adverse impacts.

12-17 Other Rights

Nothing in this rule shall be construed to deprive or deny any person any other rights or recourse under law.

RULE 13. STATE LAND USE DISTRICT BOUNDARY AMENDMENT

13-1 Purpose and Authority

This rule governs State Land Use district boundary amendment procedures pursuant to authority conferred by Section 205-3.1 of the Hawai'i Revised Statutes and Chapter 28 of the Hawai'i County Code 1983 (2016 Edition, as amended), which allow the County to amend State Land Use district boundaries for lands fifteen acres or less located in the State Land Use Urban, Rural, and Agricultural districts. District boundary amendments to lands situated within the State Land Use Conservation district, however, are not covered by this rule.

13-2 Standing to Submit Application for State Land Use District Boundary Amendment

An application for a change in district boundary may be filed by any department or agency of the state or county, or by any person with a property interest in the land sought to be reclassified. An application may also be initiated by resolution of the Council.

13-3 Contents of Application

An application for a State Land Use district boundary amendment shall be filed with the Department and shall include the following:

- (a) Non-refundable filing and processing fee of five hundred dollars.
- (b)
 - (1) Application form;
 - (2) Description of the property in sufficient detail, including the tax map key identification, map, and acreage;
 - (3) Preliminary site plan, drawn to scale, with all existing and proposed structures and improvements shown thereon;
 - (4) The reclassification sought and the present use of the land; and
 - (5) Reasons for the requested change and a written description of the proposed development.
- (c) Prior to the acceptance of any application, all real property taxes and other fees relating to the subject parcel or parcels shall be paid and there shall be no outstanding delinquencies, except in cases of

bankruptcy or similar matters as authorized by the County Director of Finance.

13-4 Incomplete Application

The Department shall neither accept nor process an application which is incomplete as to form and content. An incomplete application shall be returned to the applicant with a written explanation of its deficiencies.

13-5 Posting of Signs for Public Notification.

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (1) The nature of the application;
 - (2) The proposed use of the property;
 - (3) The size of the property;
 - (4) The tax map key(s) of the property;
 - (5) That the public may contact the Department for additional information; and
 - (6) The address and telephone number of the Department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
- (d) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been posted in

compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

13-6 Procedures for Reviewing and Processing of Application

(a) Department

- (1) Upon receipt of a complete application, the Department shall serve a copy to the State Land Use Commission and the State Department of Business, Economic Development and Tourism.
- (2) Within ninety days of acceptance of an application or such longer period as may be agreed to by the applicant, the Department shall submit its recommendation to the Commission. The Department may recommend either the approval or denial of the proposed amendment or approval subject to conditions which would further the intent of the General Plan and other related ordinances and documents.

(b) Commission

- (1) Upon acceptance of a State Land Use Boundary Amendment application, the Commission, through the Department, shall fix a date for the public hearing. The public hearing shall commence no later than ninety days after the acceptance of a State Land Use Boundary Amendment application by the Director, or within a longer time period as agreed to by the applicant. The Commission shall notify the State Land Use Commission and the State Business, Economic Development and Tourism of the time and place of the hearing and the application scheduled to be heard at the hearing.
- (2) At least ten days prior to the public hearing, the Commission shall give notice of the proposed amendment by publishing it at least once in a newspaper of general circulation in the County.
- (3) In cases of property owner-initiated amendments, promptly after the Commission's fixing a date for the hearing but not less than ten days prior to the date of the hearing, applicant shall mail a notice of the hearing to all property owners within three hundred feet of the affected property. Prior to the date of the hearing, the petitioner shall file with the Commission proof of service or of good faith efforts to serve notice of the application on the designated property owners. Such proof may consist of

certified mail receipts, affidavits, or the like.

- (4) The applicant shall notify all property owners within three hundred feet of the affected property of any subsequent hearing(s) continued at the applicant's request. An additional two hundred fifty dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.
- (5) After the conclusion of the hearing, the Commission shall recommend either the approval or denial of the amendment to the Council stating its reasons for such decision, including appropriate performance conditions in the case of an approval recommendation.
- (6) Prior to the Commission forwarding its report to the Council, the applicant shall file with the Department a map and written description by metes and bounds of the property.

13-7 Standards for Review

In reviewing a district boundary amendment, consideration shall be given to the provisions set forth in Section 205-2, Hawai'i Revised Statutes, and the purpose of Chapter 28, Hawai'i County Code. Specifically, consideration shall be given to the following:

- (a) The extent to which the proposed reclassification conforms to the applicable goals, policies, standards, and courses of action of the General Plan and implementing ordinances, plans and documents. No amendment shall be approved unless it conforms to the General Plan. However, a proposed amendment may be combined with a request to amend the General Plan.
- (b) The extent to which the proposed reclassification conforms to the applicable district standards.

13-8 Notification of Decision

Within thirty days of the effective date of the district boundary amendment, the Department shall submit the decision and the description and map of the reclassified area to the State Land Use Commission.

13-9 Consolidated Proceeding with Other Land Use Changes

An application for a district boundary amendment may be submitted simultaneously with other land use changes and applicable permits for consolidated review and processing, including any hearings.

RULE 14. AGRICULTURAL PROJECT DISTRICTS

14-1 Authority

This rule governs Agricultural Project Districts (APD) before the Commission as required by Chapter 25 (Zoning Code), Hawai'i County Code 1983 (2016 Edition, as amended).

14-2 Purpose

The Agricultural Project District development is intended to provide a flexible and creative planning approach for developments within the agricultural zoning districts, in lieu of specific land use designations. It will allow for flexibility in the location of specific types of agricultural uses and variations in lot sizes. Under this planning approach, opportunities will be provided for a mix of small scale agricultural activities and associated residential uses, as well as larger agricultural projects. This district will also provide a vehicle to satisfy the demand of a rural lifestyle on marginal agricultural land, while decreasing the pressure to develop important agricultural land for this purpose. The planning approach would establish continuity in land uses and designs, while providing for the needed infrastructural facilities and systems to support the various types of agricultural developments. An Agricultural Project District is an amendment to Chapter 25, Zoning Code, Hawai'i County Code, which changes the district boundaries in accordance with the individual Agricultural Project District.

14-3 Contents of Application and Requirements

An application for an Agricultural Project District shall be filed with the Commission, through the Department, on a form prescribed by the Director. The application shall conform to the requirements of Section 25-6-54 of Chapter 25, Hawai'i County Code. The Director shall review, accept and process an application which has been determined complete as to form and content and as provided by Section 25-2-3 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended).

14-4 Posting of Signs for Public Notification

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
 - (1) The nature of the application;

- (2) The proposed use of the property;
 - (3) The size of the property;
 - (4) The tax map key(s) of the property;
 - (5) That the public may contact the Department for additional information; and
 - (6) The address and telephone number of the Department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
 - (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3 (Signs) Hawai'i County Code 1983 (2016 Edition, as amended).
 - (d) The applicant shall file an affidavit with the Department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

14-5 Procedures for Reviewing and Processing Agricultural Project Districts

- (a) Within one hundred twenty days after an Agricultural Project District application has been accepted, the Director shall forward the application to the Commission, together with a recommendation on the proposed Agricultural Project District and a proposed ordinance which establishes the Agricultural Project District. The ordinance shall provide Agricultural Project District standards and conditions, including permitted land uses, accessory uses, densities, heights, setbacks and variances from the requirements of Chapter 25 (Zoning Code) and Chapter 23 (Subdivision Control), if applicable, as contained in the master conceptual plan for the Agricultural Project District.

- (b) The Commission shall hold at least one public hearing in the Council district in which the proposed Agricultural Project District is located. The Commission shall provide reasonable notice of the date of the hearing to the applicant. The Commission shall also publish notice of the hearing in accordance with the requirements of Section 25-2-5 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended).
- (c) Within ten days after receiving notice of the date of the public hearing, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 25-2-4 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). The applicant shall also serve notice on owners and lessees of record of interests in other properties which the Commission may find to be directly affected by the proposed Agricultural Project District.
- (d) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 25-2-4 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). An additional two hundred fifty dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

14-6 Decision

Within ninety days after receipt of the application from the Director, unless a longer period is agreed to by the applicant, the Commission shall transmit the proposed Agricultural Project District ordinance together with its recommendation thereon to the Council through the Mayor for the Council's consideration and action. The Commission shall recommend approval in whole or in part, with or without modifications, or rejection of such proposal.

14-7 Criteria for Establishing an Agricultural Project District

An Agricultural Project District may be established as an amendment to Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended), whenever the public necessity and convenience and the general welfare require that a comprehensive planning approach for an agricultural area should be adopted in order to establish continuity in land uses while providing the required infrastructural facilities and systems. In addition, an Agricultural Project District may only be established if the proposed Agricultural Project District:

- (a) Is consistent with the intent and purpose of Chapter 25, Hawai'i County Code (2016 Edition, as amended), and the General Plan; and
- (b) Will not result in a substantial adverse impact upon the surrounding

area, community or region.

14-8 Amendments to Conditions and Standards

- (a) Any amendment to the conditions and standards contained in an Agricultural Project District enabling ordinance shall be processed in the same manner as the Agricultural Project District enabling ordinance, unless the Council in the ordinance authorizes the amendments to be made by the Director.
- (b) A request for any amendment to the Agricultural Project District enabling ordinance shall be submitted in writing to the Director, in lieu of the application required for an Agricultural Project District. The request shall be accompanied by a non-refundable filing fee of two hundred fifty dollars.
 - (1) The applicant shall submit a written request, which includes:
 - (i) The affected section of the Agricultural Project District enabling ordinance;
 - (ii) The specific amendment or length of time requested;
 - (iii) The reasons for the request; and
 - (iv) Any other information required by the Commission.
 - (2) The notice and hearing procedures and decision shall be the same as under Section 14-4, 14-5 and 14-6 of this rule.

RULE 15. PROJECT DISTRICTS

15-1 Authority

This rule governs Project Districts (PD) before the Commission as required by Chapter 25 (Zoning Code), Hawai'i County Code 1983 (2016 Edition, as amended).

15-2 Purpose

The Project District development is intended to provide for a flexible and creative planning approach rather than specific land use designations, for quality developments. It will also allow for flexibility in location of specific uses and mixes of structural alternatives. The planning approach would establish a continuity in land uses and designs while providing for a comprehensive network of infrastructural facilities and systems. A variety of uses as well as open space, parks and other project uses are intended to be in accord with each individual project district objective. A Project District is an amendment to Chapter 25, Zoning Code, Hawai'i County Code 1983 (2016 Edition, as amended), which changes the district boundaries in accordance with the individual Project District.

15-3 Contents of Application and Requirements

An application for a Project District shall be filed with the Commission, through the Department, on a form prescribed by the Director. The application shall conform to the requirements of Section 25-6-44 of Chapter 25, Zoning Code. The Director shall review, accept and process an application which has been determined complete as to form and content and as provided by Section 25-2-3 of Chapter 25, Zoning Code.

15-4 Procedures for Reviewing and Processing Project Districts

- (a) Within one hundred twenty days after a Project District application has been accepted, the Director shall forward the application to the Commission, together with a recommendation on the proposed Project District and a proposed ordinance which establishes the Project District. The ordinance shall provide Project District standards and conditions, including permitted land uses, accessory uses, densities, heights, setbacks and variances from the requirements of Chapter 25 (Zoning Code) and Chapter 23 (Subdivision Control), if applicable, as contained in the master conceptual plan for the Project District.
- (b) The Commission shall hold at least one public hearing in the district in which the proposed Project District is located. The Commission shall

provide reasonable notice of the date of the hearing to the applicant. The Commission shall also publish notice of the hearing in accordance with the requirements of Section 25-2-5 of Chapter 25, Zoning Code.

- (c) Within ten days after receiving notice of the date of the public hearing, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 25-2-4 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). The applicant shall also serve notice on owners and lessees of record of interests in other properties which the Commission may find to be directly affected by the proposed Project District.
- (d) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 25-2-4 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). An additional two hundred fifty dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

15-5 Decision

Within ninety days after receipt of the application from the Director, unless a longer period is agreed to by the applicant, the Commission shall transmit the proposed Project District ordinance together with its recommendation thereon to the Council through the Mayor for the Council's consideration and action. The Commission shall recommend approval in whole or in part, with or without modifications, or rejection of such proposal.

15-6 Criteria for Establishing a Project District

A Project District may be established as an amendment to Chapter 25, Zoning Code, whenever the public necessity and convenience and the general welfare require that a comprehensive planning approach for an area should be adopted in order to establish a continuity in land uses and designs while providing a comprehensive network of infrastructural facilities and systems. In addition, a Project District may only be established if the proposed Project District:

- (a) Is consistent with the intent and purpose of Chapter 25, Zoning Code, and the General Plan; and
- (b) Will not result in a substantial adverse impact upon the surrounding area, community or region.

15-7 Amendments to Conditions and Standards

- (a) Any amendment to the conditions and standards contained in a Project District enabling ordinance shall be processed in the same manner as the Project District enabling ordinance, unless the Council in the ordinance authorizes the amendments to be made by the Director.
- (b) A request for any amendment to the Project District enabling ordinance shall be submitted in writing to the Director, in lieu of the application required for a Project District. The request shall be accompanied by a non-refundable filing fee of two hundred fifty dollars.
 - (1) The applicant shall submit a written request, which includes:
 - (A) The affected section of the Project District enabling ordinance;
 - (B) The specific amendment or length of time requested;
 - (C) The reasons for the request; and
 - (D) Any other information required by the Commission.
 - (2) The notice and hearing procedures and decision shall be the same as under Sections 15-4 and 15-5 of this rule.

RULE 16. PLANNED UNIT DEVELOPMENT (P.U.D.)

16-1 Authority

This rule governs Planned Unit Developments (P.U.D.) before the Commission as required by Chapter 25 (Zoning Code), Hawai'i County Code 1983 (2016 Edition, as amended).

16-2 Purpose

The purpose of P.U.D. is to encourage comprehensive site planning that is compatible with the surrounding community and that adapts the design of development to the land, by allowing diversification in the relationships of various uses, buildings, structures, open spaces and yards, building heights, and lot sizes in planned building groups, while still insuring that the intent of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended), is observed.

16-3 Minimum land area required

The minimum land area required for a P.U.D. shall be two acres.

16-4 Contents of Application for P.U.D Permits and Requirements

An application for a P.U.D. permit shall be on a form prescribed for this purpose by the Director on behalf of the Commission. The application shall be accompanied by:

- (a) A filing fee of \$500.
- (b) A written description of the proposed project, including the following information:
 - (1) Name of the applicant;
 - (2) A description of the property in sufficient detail to determine the precise location of the property involved;
 - (3) A statement of objectives and reasons for the requested P.U.D. permit including an analysis of how the request satisfies the standards contained in Section 16-9 of this rule;
 - (4) A list of all requested deviations from the requirements of Chapter 23 (Subdivisions) and Chapter 25 (Zoning), Hawai'i County Code 1983 (2016 Edition, as amended).

- (5) A schedule for the timetable of the proposed development; and
 - (6) An analysis of the relationship of the proposed development to the General Plan and any applicable, adopted community development plan, other adopted master plan, and if applicable, any other adopted design guidelines and/or standards affecting the project area.
- (c) A site plan, drawn to scale and fully dimensioned, comprising a general development plan covering the entire area of the P.U.D. indicating clearly the following information:
 - (1) The uses, dimensions, and locations of all existing and proposed structures;
 - (2) Widths, alignments, and improvements of existing and proposed streets and pedestrian and drainage ways, and existing access and utility easements;
 - (3) Any proposed subdivision of property for individual parcel sale;
 - (4) Parking areas, both on- and off-street;
 - (5) Public areas and uses; and
 - (6) Landscaping and open spaces.
- (d) Architectural drawings for all buildings demonstrating the design and character of the proposed buildings and uses. If the project area is within a district established under Section 16-5 of this rule for which design guidelines and/or standards have been adopted that are applicable to single-family dwellings, architectural drawings shall be required for all buildings including single-family dwellings.
- (e) A visual depiction of all of the requested deviations from code called for in section 16-4(b)(4).
- (f) Any other information or plans deemed relevant by the Planning Director to facilitate processing the application request.
- (g) A list of the names, addresses and tax map key numbers or all surrounding owners and lessees of property interests in property within the boundaries established by Section 25-2-4 of Chapter 25, Hawai'i County Code as amended. The Director, on behalf of the Commission, shall review, accept and process an application which has been

determined complete as to form and content and as provided by Section 25-2-3 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended).

16-5 P.U.D. permit application and processing requirements located within special districts with design guidelines and/or standards

- (a) In addition to the application requirements for a P.U.D. contained in Section 16-4, an application for a P.U.D. in any special district established under article 7 of Chapter 25, Hawai'i County Code, as amended, for which design guidelines or standards have been adopted by the Council, excluding any special district having adopted design guidelines and/or standards established under Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended), prior to adoption of this rule, shall include:
 - (1) Complete and accurate exterior elevations of all facades, drawn at a scale adequate to show clearly the appearance of all proposed buildings and structures;
 - (2) A description of exterior siding, roofing and finish materials;
 - (3) Exterior door and window specifications;
 - (4) Description, location, and renderings for any exterior signage;
 - (5) A streetscape rendering of the project site and adjacent properties suitable for evaluating the immediate spatial relationships. Photographic images may be substituted provided those images are adequate to serve the same purpose; and
 - (6) Other descriptive information as the director, on behalf of the Commission, finds necessary to determine consistency of the proposed project with the design guidelines and/or standards adopted for the special district in which the project building site is located.
- (b) The P.U.D. application and plans shall be subject to review and comment by the design review committee established under the respective special district section under Article 7 of Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended), for consistency with the adopted design guidelines and/or standards.
- (c) The director, on behalf of the Commission shall, within five days of acceptance of a P.U.D. application, provide the respective design review committee with a copy of the application and plans along with a

request for their review and comments on the consistency of the project with the adopted design guidelines and/or standards.

- (d) The written recommendations and plans stamped "Reviewed by" with the date and signature of the chair of the respective design review committee affixed shall be submitted to the director on behalf of the Commission within twenty-five calendar days of receipt by the design review committee of the final plans for any approval of a P.U.D. application.
- (e) Except as otherwise provided in Section 16-5, the director shall withhold providing a recommendation to the Commission on any P.U.D. application until having received the written recommendations and stamped and signed plans from the chair of the respective design review committee fix the application.
- (f) By written request to the director on behalf of the Commission, the chair of the respective design review committee may request an extension of time to complete the design review and to submit the recommendations of the design review committee which the Director on behalf of the Commission may grant only with the written approval of the applicant for P.U.D.
- (g) In the event that no design review committee is established, or if the design review committee, for whatever reason, fails to respond within the time limit prescribed in subsection (d), the director shall provide design review against the relevant design guidelines and/or standards as adopted by the Council.

16-6 Notice of filing and action on P.U.D. application and sign posting

The applicant shall serve notice on property owners and lessees of record of the surrounding properties as follows and as provided by Section 25-2-4, Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended).

- (a) The applicant shall first serve notice of the filing of the application on the surrounding owners and lessees within ten days after the Director on behalf of the Commission has officially acknowledged receipt of the application.
- (b) The applicant shall serve a second notice on the surrounding owners and lessees of record within ten days after receiving notice of the date of the public hearing and not less than ten days prior to the scheduled date of the public hearing. The applicant shall also serve notice on owners and lessees of record of interests in other properties which the Commission may find to be directly affected by the P.U.D. permit

sought.

The notices shall include the following information:

- (1) Name of the applicant;
 - (2) Precise location of the property involved, including tax map key identification, location map and site plan;
 - (3) Nature of the application and the proposed use of the property;
 - (4) Date on which the application was filed with the Commission;
 - (5) A form developed by the Planning Department that outlines the contested case procedure and who qualifies (entitled "Petition for Standing in Contested Case Hearing"). In addition, the notice shall state that interested parties have a right to file a written request for a contested case procedure;
 - (6) A statement indicating that should the landowner or lessee choose not to submit a written request for a contested case procedure, they may express their support/opposition in writing or by oral testimony at the Planning Commission public hearing to be scheduled; and
 - (7) Date, time and place that the scheduled public hearing will be held to consider the application (to be included in the second notice).
- (c) The applicant shall also post a sign for public notification on the property as provided by Section 25-2-12, Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended).
- (d) For each hearing continued at the request of the applicant, the applicant shall serve notice of the hearing on surrounding property owners and lessees of record as provided by Section 25-2-4, Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended). An additional two hundred fifty dollar processing fee shall be submitted by the applicant for each hearing continued at the request of the applicant.

16-7 Procedure for processing application when use not permitted in district

An application for a P.U.D. permit that proposes a use not permitted either directly or as a conditional use within a district may be considered by the Commission only if a separate application for a change of zone is filed concurrently with or prior to the P.U.D. permit application. The P.U.D. permit

application and the change of zone application shall be considered concurrently, and any P.U.D. approved by the Commission shall be effective only when the change of zone ordinance becomes effective.

16-8 Actions by Commission on P.U.D. permit applications

- (a) Within ninety days after acceptance of a P.U.D. permit application or within a longer time period as may be agreed to or requested by the applicant, the Commission shall conduct a public hearing(s), and within sixty days following the close of such public hearing(s), either deny or approve the application, subject to conditions as imposed by the Commission.
- (b) The conditions imposed by the Commission shall bear a reasonable relationship to the P.U.D. permit issued, and to the approved uses and plans of district standards; provided, however, that no improvements or alterations off-site of the project shall be required as a condition of a P.U.D. permit. The conditions may include, but are not limited to the following:
 - (1) Commencement and completion time frame for the project;
 - (2) Boundary and density reallocations approved for the project, which can include covenants or conservation easements to preserve open space areas in perpetuity;
 - (3) Uses that are prohibited or limited;
 - (4) Specifications for the minimum development standards;
 - (5) Specifications for street improvement and dedication;
 - (6) Utilities to be furnished;
 - (7) The extent and limitations upon the uses permitted; and
 - (8) Compliance with representations made by the applicant.
- (c) If the Commission fails to render a decision within the prescribed sixty day period, the application shall be considered as being approved, provided that no written objection to the P.U.D. permit application is received by the Commission.

16-9 Criteria for granting a P.U.D. permit

A P.U.D. permit may be granted by the Commission upon finding that:

- (a) The construction of the project can begin and be completed within a reasonable period of time from the date of approval.
- (b) The proposed development substantially conforms to the General Plan, any adopted community development plan or adopted master plan and, if applicable, any adopted design guidelines and/or standards affecting the project area.
- (c) Any residential or agricultural development shall constitute an environment of sustained desirability and stability for the district that is in harmony with the character of the surrounding area, that results in an intensity of land use no higher than that otherwise specified for the district, and that maintains the standards of open space at least as high as that otherwise specified for the district in which the development occurs.
- (d) Any commercial development shall not create traffic congestion which exceeds that which would have been produced under conventional development patterns, practices and standards in the district or interfere with any projected public improvements, shall provide for proper entrances and exits along with proper provisions for internal traffic and parking, and be an attractive center which does not adversely impact upon adjacent and surrounding existing or prospective developments.
- (e) Any industrial development shall be in conformity with desirable performance standards and shall constitute an efficient and well organized development with adequate provisions for freight service and necessary storage, and shall not adversely impact upon adjacent and surrounding existing or prospective development.
- (f) The development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of Chapter 23 and Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended), and the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.

16-10 Height exceptions authorized

- (a) A building approved under a P.U.D. permit may exceed the height limit specified under the zoning district of the property and the height limits under Section 25-4-22; Chapter 25, Hawai'i County Code 1983 (2016

Edition, as amended), provided, that the maximum height of the building shall not exceed seventy-five feet.

- (b) A building approved under a P.U.D. permit and situated within a zoning district which exceeds the height limits specified under subsection (a) may be permitted at the higher height limits prescribed for that zoning district.

16-11 Approvals issued under P.U.D. permit

- (a) No separate or additional permit or use permit, pursuant to Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended), shall be required for any use approved under a P.U.D. permit, and any use approved under a P.U.D. permit shall be considered to be in compliance with the required procedures for obtaining a use permit.
- (b) Plan approval shall be considered issued when completed drawings are approved under a P.U.D. permit, and no further action is required for the issuance of plan approval under Chapter 25 (Zoning Code), Hawai'i County Code. Completed drawings shall include all of the detail and requirements of plan approval as indicated in Section 25-2-72, Hawai'i County Code 1983 (2016 Edition, as amended).

16-12 Effect of P.U.D. permit on other zoning provisions

Any P.U.D. permit issued shall be subject to all of the conditions imposed in the permit and shall be exempted from other provisions of Chapter 23 and Chapter 25, Hawai'i County Code 1983 (2016 Edition, as amended), only to the extent specified in the permit.

16-13 Time extensions and amendments

- (a) A P.U.D. permit holder may apply to the Commission through the Department for an amendment to a P.U.D. permit or to any condition or conditions imposed therein.
- (b) In the case of time extensions, the P.U.D. permit holder shall file the request not less than ninety days prior to the expiration date of the applicable time condition or conditions setting forth:
 - (1) The affected condition or conditions;
 - (2) The length of time requested; and
 - (3) The reasons for the request.

If the Commission fails to act on a properly filed time extension request prior to the expiration date, the activity granted under P.U.D. permit may be continued unless the Commission specifically disallows the activity during the interim period.

- (c) In the case of an amendment to the P.U.D. permit or to any addition modification, and/or deletion of conditions of the P.U.D. permit, the P.U.D. permit holder shall set forth in writing:
 - (1) The affected condition or conditions;
 - (2) The specific amendment or amendments requested; and
 - (3) The reasons for the request.
- (d) Any such request shall be accompanied by a \$250 filing and processing fee, along with the request.
- (e) The hearing and notice procedures and action shall be the same as under Sections 16-6 and 16-8 of this rule.

16-14 Appeals

- (a) Any decision of the Commission so made within the context of this article shall be appealable to the Third Circuit Court. The notice of appeal shall be filed in the Third Circuit Court within 30 days after the person desiring to appeal is notified of the decision or order, or of the action taken in a manner provided by statute.
- (b) If a contested case hearing is held, a different appeal option is available. Refer to Planning Commission Rule 4-32 for appeal procedures.

16-15 Revocation

- (a) A P.U.D. Permit may be revoked by the Director in the event that any property owner who holds the permit sought to be revoked or any other person, with the property owner's consent, submits a written statement to the Director verifying that the development approved under the permit issued has either not been established or has been abandoned.
- (b) A P.U.D. Permit may be revoked by the Commission in the event that:
 - (1) The Director requests the revocation if:
 - (A) There has been noncompliance with the conditions of the permit; or

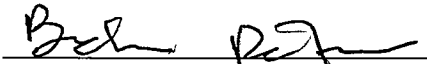
- (B) The use authorized under the permit is creating a threat to the health or safety of the community.
- (2) The proceeding to revoke a P.U.D. Permit, upon request of the Director, shall require written notice to the property owner and to the person who has been issued the permit prior to the Commission taking action to revoke the permit.

WINDWARD PLANNING COMMISSION


Dennis Lin, Chairman

6/16/2023
Date

LEEWARD PLANNING COMMISSION


Barbara DeFranco, Chairman

6-15-2023
Date

Notice of Public Hearing:

Hawai'i Tribune Herald: March 21, 2023

West Hawai'i Today: March 21, 2023

Date and Place of Joint Planning Commission Hearing: April 20, 2023

West Hawai'i Civic Center, Council Chambers, Building A

75-5044 Ane Keohokālole Highway, Kailua-Kona, Hawai'i

Interactive Conference Technology (ICT) Remotely

Notice of Public Hearing:

Hawai'i Tribune Herald: May 3, 2023

West Hawai'i Today: May 3, 2023

Date and Place of Joint Planning Commission Hearing: June 2, 2023

Hawai'i County Council Chambers in Hilo

25 Aupuni Street, Hilo, Hawai'i

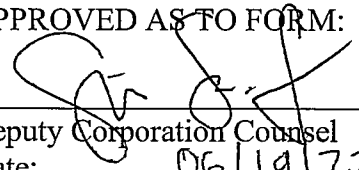
Interactive-Conference Technology (ICT) Remotely

APPROVED:


MAYOR, County of Hawai'i

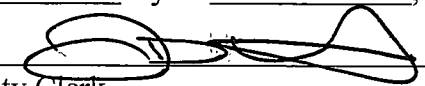
Date: 06/21/2023

APPROVED AS TO FORM:


Deputy Corporation Counsel

Date: 06/19/23

I hereby certify that the foregoing amendments and revisions to the Hawai'i County Planning Commission Rules of Practice and Procedure was received and filed in my Office this 22nd day of June, 2023.


County Clerk