

**RULES OF PRACTICE AND PROCEDURE  
OF THE KAUA‘I COUNTY PLANNING COMMISSION  
(Codified May 2014)**

NOTE: These version of the rules are codified as a convenience for individuals and applicants intending to appear before the Kauai Planning Commission, and are not the official rules. The official copy of the rules is on file with the Office of the County Clerk. The Planning Department is not responsible for reliance on this version of rules should disparities remain between this version and those on file with the Office of the County Clerk.

## CHAPTER 1

### GENERAL PROVISIONS

1-1-1 Purpose. The intent and purpose of the Rules of Practice and Procedures of the Kaua‘i County Planning Commission is to provide a systematic and democratic method of conducting meetings and hearings in order to insure that all persons and parties will have an opportunity to participate in an open and orderly manner.

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

- (1) "Agency" means the Planning Department of the County of Kaua‘i or its authorized representative.
- (2) "Commission," "Chair," "Chair," and "Commissioner" means the Planning Commission of the County of Kaua‘i, State of Hawai‘i, its Chair and a member thereof, respectively.
- (3) "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.
- (4) "Director" means the Planning Director of the County of Kaua‘i.
- (5) "Declaratory Ruling" means a ruling by the Commission determining the rights of a party on a question of law or any rule or order of the Commission.
- (6) "Ex Parte Communication" means private communications or arguments with members of the Commission or its Hearing Officer as to the merits of a proceeding with a view towards influencing the outcome of the case.
- (7) "Hearing"
  - (i) "Agency Hearing" refers only to such hearing held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS, including but not limited to Class IV, Use, and Variance Permits pursuant to the Comprehensive Zoning Ordinance of the County of Kaua‘i and other applicable laws.
  - (ii) "Public Hearing" means a quasi-legislative hearing regarding the adoption, repeal, and amendment of rules and ordinances and a means to solicit general public input on matters before the Commission pursuant to the HRS and Kaua‘i County Code, as Amended, 1987.
- (8) "Hearing Officer" means any person or persons designated and authorized by the Commission to conduct a hearing for the purpose of taking testimony and to

report his or their findings of facts and conclusions of laws with his or their recommendations to the Commission on matters that are within the jurisdiction of the Commission.

- (9) "HRS" means Hawai'i Revised Statutes.
- (10) "Intervenor" means a person who petitions to intervene in a Contested Case proceeding and is admitted as a Party.
- (11) "Meeting" means the convening of the Commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the Commission has supervision, control, jurisdiction, or advisory power.
- (12) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a Party in any court or agency proceeding.
- (13) "Person" means when appropriate to the context, not only individuals, but corporations, firms, associations, societies and federal, state and county departments or agencies.
- (14) "Petitioner" means a person who seeks permission or authorization which the Commission may grant under statutory or other authority delegated to it; and a person seeking relief not otherwise designated in these Rules.
- (15) "Presiding Officer" means and shall include any member of the Commission or a Hearing Officer duly designated as such. Unless otherwise designated, the Chair shall be the presiding officer.
- (16) "Proceeding" means any matter that is brought before the Commission in which it has jurisdiction.
- (17) "Public Record" means the same as defined in Chapter 92, HRS, and shall include maps, rules and regulations, written statements of policy or interpretation formulated, adopted or used by the commission in its functions, all decisions, orders, minutes of commission meetings and records of any docket on file with the Commission but shall not include records which invades the right of privacy or an individual.
- (18) "Rules" means the Rules of Practice and Procedure of the County of Kaua'i Planning Commission.

## CHAPTER 2

### ORGANIZATION AND PARLIMENTARY RULES

1-2-1 Organization. At the first regular January meeting of each year, the Commission shall elect a Chair and Vice Chair from among its members. They shall serve for a term of one year from January to December 31st of each year or until their successors are duly elected. No member shall succeed himself or herself as Chair, whether temporary or not. The terms of any committee Chair and members shall coincide with the term of the Commission Chair who appointed them. In the event the Commission is not able to elect a regular Chair or Vice-Chair from among its members at its first regular January meeting, the Commission may elect a temporary Chair and Vice-Chair whose terms shall not exceed ninety days.

#### 1-2-2 Meetings.

(a) Regular Meetings of the Commission shall generally be held on the second and fourth Tuesdays of each month, or on such day as the Commission may designate. The place of Meeting shall be designated by the Commission's Meeting agenda.

(b) A regular Meeting need not be held when the Agency determines that forthcoming hearing workloads and agenda items can be otherwise accommodated at an ensuing Meeting.

(c) Subject to the conditions prescribed by these Rules, special Meetings may be called at any time by the Chair, the Director, or a majority of the Commission, who shall state the subject thereof, and the acts and business of the Commission at such special Meeting shall be confined to such matters.

(d) Each member shall be given an oral or written notice at least one (1) day prior to a special Meeting, unless waived by such member.

(e) The Commission shall prepare and post an agenda for all Meetings of the Commission and its committees identifying the date, time, place and subjects to be considered in compliance with the provisions of Chapter 91 and 92, HRS.

1-2-3 Adjournment. Meetings may be adjourned at any time by vote, and unless otherwise specified in the motion, every adjournment shall be deemed to be to the next Meeting of the Commission.

1-2-4 Quorum and Number of Votes Necessary for a Decision. Unless otherwise provided by law, a majority of all members to which the Commission is entitled is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the Commission is entitled (four (4)) shall be necessary to make a Commission decision valid, failing which there shall have been no valid action taken.

1-2-5 Continuation of Decision Making. Any matter voted on by the commission which fails to be validated by a majority concurrence of the Commission shall be continued to the next subsequent regular Meeting, at which time it shall be made the special order of the day.

1-2-6 Effective Date of Commission Decision. Unless a specific effective date is set forth, the effective date of a decision rendered by the Commission shall be the date of the Meeting at which such valid decision was made.

1-2-7 Minutes and Transcripts.

(a) Meetings. In accordance to Chapter 92, HRS, the Commission shall keep written minutes of all Meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the Meeting and the views of the members.

(b) Public and Agency Hearings. Unless otherwise provided by law or specifically ordered by the Commission, it shall not be necessary to transcribe the record unless required for purposes of rehearing or court review. Should a Party in a contested case proceeding desire that transcripts be provided when not otherwise required, the Party may, prior to commencement of hearing, either: (1) deposit an amount sufficient to cover transcribing and printing costs as prepared by a certified court reporting service; (2) provide a certified court reporting service at the Contested Case proceeding; or (3) enter into an agreement with the County that will address the preparation and printing costs or transcripts.

(c) Recording of Hearings. None of the foregoing shall preclude all or part of any hearing from being recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a Meeting is closed pursuant to Chapter 92, HRS, and provided, however, that the recording does not actively interfere with the conduct of hearing.

(d) Copies of Recordings. In cases where copies of prerecorded tapes are requested, a fee of \$25.00 per hour (rounded off to the nearest half hour) of recording time shall be assessed in addition to the costs of the tapes used (rounded off to the nearest \$.50). Charges may be waived or modified when the requesting person provides the recording equipment, tapes, and performs the recording subject to conditions and supervision by the Planning Department.

1-2-8 Officers and Their Duties.

(a) Presiding Officer. The Chair shall be the presiding officer of the Commission and the Vice Chair shall act as the Presiding Officer in the absence of the Chair. In the event of the absence of both the Chair and Vice-Chair, the Chair and Vice-Chair of the Subdivision Committee in the order designated shall act as the Presiding Officer.

The Presiding Officer shall:

- (1) Open all Meetings of the Commission at the appointed hour by taking the chair and calling the Meeting to order;

- (2) Call for the approval of the minutes of any preceding Meetings when a quorum is present;
- (3) Maintain order and proper decorum;
- (4) Announce the business before the Commission in the order prescribed by these Rules;
- (5) Review all matters properly brought before the Commission, call for votes upon the same and announce the results;
- (6) Appoint all committees unless otherwise ordered by the Commission;
- (7) Authenticate by his signature all acts of the Commission as may be required by law, unless delegated to the Director.
- (8) Do and perform such other duties as may be required by law, or such as may properly appertain to such office;
- (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the Commission.
- (10) Take into consideration such matters as shall not be within the scope or the duties or powers or any standing committee of the Commission, or as may be referred by the Commission, and to report thereon, together with such recommendations relative thereto as deemed advisable; and
- (11) Represent the Commission in all functions, not otherwise directed by the Commission, as the titular head of the Commission.

(b) Clerk. The Director shall serve as Clerk of the Commission and shall be directly responsible, or through staff members, to provide the following services:

- (1) To receive, submit, and coordinate all matters properly brought before the Commission in consultation with the Chair;
- (2) To provide the agenda support materials for all Meetings;
- (3) To read bills, resolutions, and other matters to the Commission, if so required;
- (4) To forward at once to the proper parties all communications and other matters, either directly or through a committee, as the case may be:

- (5) To deliver immediately to the Chair of the appropriate committee all petitions, resolutions, bills or other matters, as may be duly referred to such committee;
- (6) To serve in all matters as ex-officio Clerk of the Commission and to do and perform all clerical duties and services pertaining to such position as the Commission shall from time to time direct, and such as shall by law or these Rules, or rules hereafter adopted, be assigned or such as properly pertain to such position;
- (7) To have charge of all records of the Commission and be responsible for the same.

1-2-9 Committees. There shall be two kinds of committees:

- (1) Standing Committees, which shall not exceed three (3) members each.
- (2) Select Committees, which shall not exceed three (3) members each.

1-2-10 Committee Organization.

(a) All committees of the Commission, contemplated under these Rules, shall be appointed by the Chair subject to confirmation by a majority vote of the members of the Commission.

(b) The first person named on a committee shall be the Chair unless otherwise designated. The Committee Chair shall call and preside over committee Meetings and may designate temporary alternate members in order to achieve a quorum and to take action in cases where members are absent.

(c) No member shall serve as Chair of more than one standing committee of the Commission.

(d) No committee shall meet while the Commission is in session.

(e) Committees shall be under the control and subject to the orders and appropriate Rules of the Commission, and shall faithfully carry out such orders.

(f) Vacancies on the standing committees shall be filled by the Chair of the Commission unless otherwise designated in Subsection (b) above and no member of the standing committee shall resign there from without the consent and approval of the Commission.

(g) A majority of the entire membership to which the committee is entitled shall constitute a quorum and the majority vote or the membership present shall be necessary to take any action.



1-2-11 Standing Committees. The Commission may appoint the necessary standing committees to further the responsibilities and functions of the Planning Commission. There shall be a Subdivision Committee whose purpose shall primarily be to check all applications for Subdivision and submit to the Commission its recommendations thereon.

1-2-12 Select Committees. The Select Committee shall consist of three (3) members, unless otherwise ordered by the Commission and shall be appointed from time to time as the occasion requires, serving until discharged after finally reporting on the special matter referred to it.

1-2-13 Committee Reports.

(a) All reports of committees shall be submitted in writing.

(b) Standing committees shall report from time to time upon all matters referred to them.

(c) Select committees shall report as required by the Commission upon all matters referred to them, unless further time is allowed by vote of the Commission.

(d) Whenever any matter is referred to a committee, it shall be the duty of such committee to make diligent inquiry into all of the facts and circumstances connected with such matter. If necessary, the County Attorney may be consulted, witnesses may be summoned and examined, documents and records searched, and everything done to bring all facts pertaining to such matter before the Commission.

(e) The report of the committee on any matter shall provide an evaluation and recommendation as to the disposal of such matter.

1-2-14 Voting.

(a) There shall be three methods of ascertaining the decision of the Commission upon any matter:

(1) 1st, by a call of the roll of the members and a record made by the Clerk of the vote of each member;

(2) 2nd, by via voice vote; or

(3) 3rd, by unanimous consent.

(b) Whenever the Commission is ready to vote on any question, the Chair, after stating the question, shall put such question to a vote, then announce the result of the vote to the Commission. Upon the request of any member of the Commission, the Clerk shall call the roll. Unless a member is excused from voting, his silence shall be recorded as an affirmative vote.

(c) No member shall refrain from voting unless excused by the Commission.

(d) Whenever the ayes and noes are called, no one, without the unanimous consent, shall be permitted to explain his vote.

#### 1-2-15 Standards of Conduct.

(a) Disclosure of Interest. Whenever a possible direct personal financial interest on any matter pending before the Commission or any of its committees becomes apparent, the affected member shall promptly make a disclosure to the Commission. When a member has made a disclosure of interest and is deemed by the Commission to have a conflict of interest, such conflict shall apply to all subsequent actions relating to said matter. A member with a conflict of interest shall refrain from voting except where the member's vote is required to constitute a quorum to act in which event he shall be permitted to vote.

(b) Code of Ethics. All Commission members and officers and employees of the Agency shall be subject and comply with the provisions of Chapter 3, Article I, of the Kaua‘i County Code, as amended, 1987.

#### 1-2-16 Petitions and Submittals to the Commission.

(a) Any Person may petition the Commission pursuant to these Rules. Petitions and other submittals shall be in writing, signed by the Petitioners or Persons presenting.

(b) Petitions, submittals and other matters addressed to the Commission, pursuant to these Rules, shall be appropriately disposed of by the Chair including the referral to the proper committee, unless otherwise directed by the Commission.

(c) Every petition, submittal or other matter must be filed pursuant to Chapter 91, Administrative Procedures Act and Chapter 92, HRS, and all other applicable state and county laws and provisions established herein. All Commission business must be filed with the Clerk.

1-2-17 Motions and Amendments. Motions and amendments may be verbal, but shall be reduced to writing if requested by the Chair, and shall be read from the Clerk's desk, if so desired.

#### 1-2-18 Motions and Priorities.

(a) No motion shall be received and considered by the Commission until the same has been seconded.

(b) After a motion is stated or read by the Chair, it shall be deemed in the possession of, and shall be disposed of by vote of the Commission. However, it may be withdrawn by the mover with the consent of the second at any time before a vote or amendment.

(c) Whenever any question shall be under discussion, the motions in order relative thereto prior to a vote shall be: first, to table; second, to previous question; third, to modify debate; fourth, to postpone definitely; fifth, to commit or recommit; and sixth, to amend; which motions

shall have precedence in the order named. The first four (4) motions shall be decided without debate, and shall be put as soon as made.

(d) When any of said motions shall be decided in the negative, the same shall not be revived at the same Meeting relative to the main question under discussion. If all are negative as aforesaid, the only remaining question shall be as to the passage or adoption of the application or any other main question.

(e) No member shall speak longer than five (5) minutes, nor more than twice on the same question without leave of the Commission, unless the member is the mover of the question pending in which case the member shall be permitted to speak in reply, but not until every member choosing to speak shall have had an opportunity to speak.

1-2-19 Reconsideration. When a motion has been once made and carried in the affirmative or negative, only a member who voted with the prevailing side may move, at the same meeting, or at the next meeting, to reconsider it, and such motion shall take precedence over all other questions except a motion to adjourn.

1-2-20 Order and Decorum.

(a) No Person shall sit at the desk of the presiding officer or Clerk, except by permission of the Chair, or at the desk of any commissioner, except by permission of that commissioner.

(b) While the Chair is putting any question or addressing the Commission, no one shall walk out of the meeting room or across the floor nor shall anyone entertain a private discourse, or pass between the member and the Chair while the member is speaking.

(c) When members are about to speak, they shall address themselves to the Chair, and shall confine their comments to the question under discussion, avoiding personalities.

(d) If any member, in speaking or otherwise, transgresses these Rules of procedure, the Chair, or any member, may call him to order, and when so called to order, he shall immediately quiet down. The Chair shall then decide the question or order without debate, subject to an appeal to the Commission. In addition, the Chair may call for the sense of the Commission on any question of order.

(e) Whenever any person shall be called to order while speaking, the member shall be deemed to be in possession of the floor when the question of order is decided, and may proceed with the matter under discussion within the ruling made on the question of order.

(f) No unauthorized person shall enter the floor of Commission, except by permission of the presiding officer. The term "floor of Commission" shall mean that portion of the meeting room generally occupied by the Commission and as may be specifically designated by the Presiding Officer.

(g) Any Person or Persons who willfully disrupt a Meeting or Hearing to prevent and compromise the conduct of the hearing may be removed from the room.

1-2-21 Order of Business.

(a) After roll-call and the approval of the agenda and minutes, the Presiding Officer shall call for business in the following order:

- (1) Public testimony on all agenda items as required by law;
- (2) Hearings;
- (3) Consent Calendar;
- (4) Executive Sessions;
- (5) General Business matters before the Commission;
- (6) Communications;
- (7) Committee Reports;
- (8) Unfinished Business;
- (9) New Business;
- (10) Announcements;

The Commission may place on the Commission's Meeting agenda a consent calendar of items that may be approved without presentations, clarifying questions or debate. All items on the consent calendar shall be considered approved upon adjournment of the meeting. Upon review of the consent calendar as posted in the agenda, a Commissioner and a concurring member may request that an item be moved from the consent calendar to new business for discussion and separate action.

Public testimony shall also be received at each agenda item. Should a person who has already testified at the time designated in the beginning of the agenda for the Commission to receive testimony wish to testify again on the same item at the time the agenda item is actually called, he or she may do so unless the Chairperson determines that the testimony is irrelevant, immaterial, or unduly repetitious.

(b) The Commission may, by previous motion, direct that any matter be made a special order or business, which shall take precedence as indicated in the order.

(c) The unfinished business in which the Commission was engaged at the time of the last adjournment shall have the preference in the order of the day except for general business and

announcements, communications, and committee reports, and no other business shall be received until such unfinished business is disposed of, unless by special leave of the Commission.

(d) All questions relating to priority of business to be acted upon by the Commission shall be decided without debate.

(e) Hearings may be scheduled at any time or the agenda pursuant to due notice requirements.

1-2-22 Question of Order. A question of order may be raised at any stage of the proceedings, except during a calling of the roll when the ayes and noes are called for. Such question shall be decided by the Chair without debate, subject to an appeal to the Commission.

1-2-23 Computation of Time. In computing any period of time under the Rules herein, by notice, or by any order or regulation of the Commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the close of business or the next day which is not a Saturday, Sunday, or holiday.

1-2-24 Attendance. No member shall be absent from the service of the Commission, unless the member has so advised the Chair prior to the Meeting or be sick and unable to attend.

1-2-25 News Reporters. News reporters wishing to take notes of the business of the Commission may be assigned such places by the Chair without interfering with the convenience of the Commission.

1-2-26 New Rules and Amendments. No rule of the Commission shall be altered or rescinded, nor shall any new rules be adopted without the affirmative vote of at least four (4) members of the Commission.

1-2-27 Suspension of Rules. For good cause, the Commission may waive or suspend by a majority vote any rule or procedure established herein.

1-2-28 When Rules Are Silent. Except for any applicable provisions of the laws of the State of Hawai'i, the Robert's Rules of Order, as revised, shall govern the Commission when not inconsistent with these Rules.

## CHAPTER 3

### GENERAL REQUIREMENTS IN PROCEEDINGS BEFORE THE PLANNING COMMISSION

#### 1-3-1 Appearance Before The Commission.

(a) Who May Appear. Any Party to a proceeding before the Commission may appear in his own behalf or as an authorized representative or a partnership, corporation, trust or association, and an officer or employee of a department or agency of the State or a political subdivision may represent that department or agency in any proceeding before the Commission. If a Party is to be represented by an attorney, any attorney who appears before the Commission shall be in good standing before the Hawai'i Supreme Court.

(b) Code of Ethics. Any Person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he is legally authorized to do so and shall comply with the laws of this State and the several Counties, and the rules and regulations of this Commission, and further, he shall maintain the respect due to the Commission and shall never deceive or knowingly present any false statements of fact or law to the Commission. The Commission may at any time require any Person appearing before the Commission in a representative capacity to show proof of his authority and qualification to act in such capacity.

#### 1-3-2 Requirements for Filing of Documents.

(a) Time and Place. All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda and other legal papers required to be filed with the Commission in any Proceeding shall be filed with the Clerk of the Commission at the Planning Department, within the time limit prescribed by statute, these Rules, other regulations, or by order of the Commission or its Hearing Officer. Unless otherwise ordered, the date on which the papers are accepted shall be regarded as the date of filing.

(b) Format. All submittals shall be clearly and permanently legible and in such form as may be prescribed by the Commission (unless otherwise prescribed shall be on 8-1/2 x 11 paper). The original shall be signed in ink by each Party or his counsel and show the address of such Person.

(c) Copies. Unless otherwise required by these Rules, there shall be filed with the Commission an original and twelve (12) copies of each submittal thereof. A digital version in PDF format shall also accompany the filing on a CD-Rom. Additional copies shall be promptly provided if the Chair or the Director so requests.

(d) Extensions of Time. Whenever a Party is required to file a pleading within the period prescribed or allowed by these Rules, by notice given thereunder or by an order or regulation, the Chair, or in the absence of the Chair, the Director may (1) for good cause before the

expiration of the prescribed period, with or without notice to the parties, extend such period; (2) pursuant to a stipulation between all of the Parties, extend such period; and (3) permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to be the result of excusable neglect. All requests for continuances, except for stipulations, should be by written motion, unless it is made during the course of a hearing.

(e) Amended Pleadings. All pleadings may be amended at any time prior to hearing. Amendments offered prior to hearing shall be served on all Parties and filed with the Commission. All parties shall have the opportunity to answer and be heard on amendments filed after the hearing commences, and the Commission shall decide whether such amendments shall be allowed.

### 1-3-3 Service of Process.

(a) By Whom Served, The Commission shall serve copies of all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the Parties filing them.

(b) Upon Whom Served. All papers served by either the Commission or any Party shall be filed and served upon all Parties or their counsel and shall contain a certificate of service attesting to such service. Any counsel entering an appearance subsequent to the initiation of such proceeding shall notify all other counsel then of record and all Parties not represented by counsel of such fact.

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

(d) Method of Service. Service of papers shall be made personally or, unless otherwise, provided by law, by certified mail to the last known address of the Party or his counsel of record.

(e) When Service Complete. Service upon parties, other than the Commission, shall be regarded as complete upon mailing unless otherwise specifically directed by the Commission.

## CHAPTER 4

### INTERVENTION PROCEEDINGS BEFORE THE PLANNING COMMISSION

1-4-1 Who May Intervene. All Persons who have hold interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed application that their interest in the Proceeding is clearly distinguishable from that of the general public, shall be admitted as Parties-Intervenors upon timely written application for intervention. In no such case shall intervention be allowed for appeals of actions from the Director pursuant to Chapter 9 of these Rules.

1-4-2 Intervention: Grounds for Denial. Leave to intervene may be granted, except in matters over which the Commission exercises only advisory functions, provided that the Commission or its Hearing Officer, if one is appointed, may deny an application to intervene when in the Commission's or Hearing Officer's sound discretion it appears that:

- (1) the position of the applicant for intervention concerning the proposal is substantially the same as the position of a Party-Intervenor already admitted to the proceeding;
- (2) the admission of additional Parties-Intervenors will render the proceedings inefficient and unmanageable; or
- (3) the intervention will not aid in the development of a full record and will overly broaden issues.

1-4-3 Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

1-4-4 Contents of Petition. The petition shall state:

- (1) The nature of Petitioner's statutory or other right.
- (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property.
- (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing.
- (4) The effects of any decision in the Proceeding on Petitioner's interest.

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



- (5) Other means available whereby Petitioner's interest may be protected.
- (6) Extent Petitioner's interest may be represented by existing parties.
- (7) Extent Petitioner's interest in Proceeding differs from that of the other parties.
- (8) Extent Petitioner's participation can assist in, development of a complete record.
- (9) Extent Petitioner's participation will broaden the issue or delay the Proceeding.
- (10) How the Petitioner's intervention would serve the public interest.

1-4-5 Consolidation of Parties. Petitioners deemed by the Commission to have similar intervention requests may be consolidated as a single Party represented by a single counsel or agent.

1-4-6 Filing Fees. Petitions for intervention shall be accompanied by a filing fee of \$25.00. In the event the petition for intervention is denied, such fees shall be reimbursed.

1-4-7 Arguments For or Against Intervention. The Petitioner for intervention shall be given an opportunity to argue on behalf of the petition to the Commission. The other Parties shall then be given an opportunity to comment on or oppose the petition. If any Party opposes the petition for intervention, the Party shall file objections thereto as soon as practicable or state the objections for the record.

1-4-8 Action. All petitions to intervene or in opposition to such intervention shall be reviewed and a decision rendered by the Commission prior to the commencement of the hearing.

1-4-9 Denial of Intervention. Upon denial or an intervention petition by the Commission, the Commission shall issue a written decision.

## CHAPTER 5

### PUBLIC HEARING PROCEDURES

1-5-1 Presiding Officer. The Public Hearing for the adoption, amendment, or repeal of rules and regulations, or ordinances shall be heard before the Commission and presided over by the Chair of the Commission, or, in his absence by another member designated by the Commission or by a Hearing Officer. The Public Hearing shall be conducted in such a way as to afford to interested persons a reasonable opportunity to offer testimony with respect to the matters specified in the notice of Public Hearing and so as to obtain a clear and orderly record. The Presiding Officer shall have authority to administer oaths or affirmations and to take all other actions necessary to assure the orderly conduct of the Public Hearing.

1-5-2 Continuance of Public Hearing. Each such Public Hearing shall be held at the time and place set in the notice of hearing but may at such time and place be continued by the Presiding Officer from day to day, or adjourned to a later date or to a different place without notice other than the announcement thereof at the Public Hearing.

1-5-3 Order of Public Hearing. At the commencement of the Public Hearing, the Presiding Officer may acknowledge the notice(s) of hearing and shall then conduct the Proceeding in the following manner:

- (a) Staff Findings. The Department shall present its findings.
- (b) Questions on Staff Findings. Staff findings shall be subject to questioning by Commissioners.
- (c) Open Public Hearing to Public. The Presiding Officer shall suspend the Rules and the Public Hearing shall then be opened to the public. Members of the public wishing to testify may be subject to questioning by the Commission and the Department. The applicant or his authorized representative shall be given the first opportunity to present testimony.
- (d) Reconvene Meeting. Upon completion of all testimony presented, the Presiding Officer shall close the Public Hearing and call the Meeting back to order.
- (e) Department Conclusion and Recommendation. The Department shall present its conclusion and recommendation based on the findings presented and after evaluating all pertinent testimony.
- (f) Motion on Application. The Presiding Officer shall entertain a motion on the Public Hearing matter. A motion to postpone may be made prior to presentation of the Department's conclusion and recommendation should findings of fact or testimony received warrant further study.

1-5-4 Submission of Testimony.

(a) Each witness before Proceeding to testify shall state clearly into the microphone his name, address, and whom he represents at the hearing, and shall give such information respecting his appearance as the Presiding Officer may request.

(b) The Presiding Officer shall confine the testimony to the matters for which the Public Hearing has been called. Testimony to be presented should be concise, factual and to the point.

(c) In order to allow persons to have an equal amount of time to testify, or to prevent cumulative unnecessary, unduly repetitive or irrelevant testimony, the Presiding Officer may limit the amount of time for testimony per individual. If more time is needed, testifiers may continue speaking after the last speaker is completed. In cases where a speaker is in agreement with testimony previously given, the speaker need not repeat the similar testimony but may state that he or she supports the testimony made previously.

(d) Every witness may be subject to questioning by the members of the Commission or by any other representative of the Commission; questions by persons or agencies shall be permitted only at the discretion of the Presiding Officer.

1-5-5 Oral and Written Presentation at Public Hearing. All interested Persons or agencies will be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. An original and twelve (12) copies are required when submitting written comments, recommendations, replies, or exhibits. The Chair may waive the reading of written testimony provided such was received by the Commission seven (7) days prior to the Public Hearing. The Presiding Officer shall allow the submission of additional written testimony up to seven (7) days after the close of the Hearing in cases where the Commission does not take action on the same day the Public Hearing was held.

1-5-6 Modification of Rules. The Presiding Officer may modify any of the foregoing rules to assure a fair hearing in the event circumstances of the Public Hearing make such modification desirable.

## CHAPTER 6

### AGENCY HEARING PROCEDURES

#### 1-6-1 Presiding Officer.

(a) In all Agency Hearings before the Commission, the Chair, or one of the Commissioners, or a Hearing Officer duly appointed and designated shall preside at the hearing.

(b) The Presiding Officer shall control the course of hearings, administer oaths, receive evidence, hold appropriate conferences before or during hearings, rule upon all objections or motions, receive offers of proof, fix the time for the filing of submittals, dispose of any other matter that normally and properly arises in the course of a hearing, and take all other actions authorized by law that are deemed necessary to the orderly and just conduct of a hearing.

1-6-2 Parties. The Planning Department, admitted intervenors and the petitioner shall in every case be parties to such proceedings.

1-6-3 Continuance. The Presiding Officer may, for good cause, postpone or continue any hearing from day to day, or to a later date, or to a different place without notice other than the announcement thereof at the Agency Hearing when an applicant for a Special Management Area, Class IV, Use, Variance Permit, or Special Permit submits significant data, reports or studies at the time of the hearing, in order to give the Commission and the public an opportunity to evaluate and consider the data, reports or studies.

1-6-4 Ex Parte Communication. No person whether or not a party to a Proceeding before the Commission shall communicate ex parte regarding any subject matter of the proceeding with any member of the Commission or Hearing Officer who will be a participant in the decision-making process.

#### 1-6-5 Notice of Agency Hearing.

(a) The notice of Agency Hearing will be served upon all Parties and persons on the mailing list for this purpose at their last recorded address at least fifteen (15) days prior to the Agency Hearing date, unless otherwise provided by law. Further, the notice will be filed at least six (6) days prior to the Agency Hearing with the Office of the County Clerk.

(b) The notice shall contain the appropriate information as required in Chapter 91, HRS.

1-6-6 Waiver of Procedure. 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, settlement, agreement, consent order, or default.

1-6-7 Prehearing Conference. A Presiding Officer or designated representative may hold a prehearing conference with the Parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of

schedules, exchanging names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the Proceeding.

1-6-6 Requests for Transcripts. Any Party may request transcripts according to the provisions set forth in Section 1-2-6 (b). Requests shall be made in writing at least seven (7) days prior to the Agency Hearing.

1-6-9 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.

1-6-10 Stipulation as to Findings of Facts, Conclusions of Law. Nothing in these rules shall prohibit Parties from entering into appropriate stipulations as to findings of fact, conclusions of law, and conditions, if any, concerning the subject petition.

- (1) A Petitioner who desires to enter into a stipulation shall prepare a stipulation as to any or all findings of fact, conclusions of law, and conditions, if any, concerning the subject petition.
- (2) All Parties shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, and conditions, and proposed decision and order, if at all, and shall submit such stipulation to the Commission seven (7) days prior to the Agency Hearing date, unless otherwise permitted by the Presiding Officer.
- (3) The Commission may require the parties to submit additional evidence concerning the stipulation and proposed decision and order.
- (4) The Commission may approve the proposed decision and order by amending or adopting the proposed decision and order.

1-6-11 Order of Agency Hearing Procedure. At the commencement of the Agency Hearing, the Presiding Officer may read the notice of hearing and then briefly outline the procedures to be followed, which shall be in the following manner:

(a) Entertain Requests for Intervention. All persons seeking to intervene as Parties shall be asked to identify themselves and their counsel. The Presiding Officer shall proceed in accordance with Chapter 4 herein.

(b) Presentation of Evidence. The Department shall first present evidence and shall be subject to questioning by all Parties and the Commission. The Petitioner may then make a presentation and be subject to questioning by all Parties and the Commission. In cases where intervention is allowed and a timetable for evidentiary Proceedings for the parties has been established, any questioning by the Parties and the Commission may be suspended until such time as designated by the Presiding Officer.

(c) Public Testimony. The presiding officer shall then suspend the rules and open the Agency Hearing to the public as required by law. Cross-examination of public witnesses shall not be allowed of the Petitioner and Intervenors.

(d) Close Public Testimony. Upon the admission of all public evidence, the Presiding officer shall close the public testimony portion of the Agency Hearing.

(e) Additional Testimony. The Presiding Officer shall allow the submission of additional written evidence from public witnesses up to seven (7) days after the close of the Agency Hearing in cases where the Commission does not take action on the same day.

(f) Request To Submit Proposed Findings of Fact, Conclusions of Law, Decision And Order When There Is No Intervention. In cases when there is no intervention, the Petitioner may, after the evidentiary portion but prior to the decision-making portion of the Meeting (when a duly-made motion by the Commission to act on the docket is made), request the opportunity to submit a proposed Findings of Fact, Conclusions of Law, Decision of Law. Should the Petitioner not submit a request at such time, the Petitioner's right to submit such document shall be deemed waived and the Commission may commence with appropriate decision-making action. If a request is made, the Presiding Officer may continue the docket and set a timetable for the conduct of the post-hearing Proceedings pursuant to Section 1-6-18.

(g) Reconvening of Contested Case Hearing Portion. In cases where there are Intervenors or adverse Parties and a Contested Case Hearing is reconvened to complete the presentation of evidence, the Presiding Officer may explain the Proceedings, note and discuss objections to the Proceedings from each Party, if any are submitted, and then administer the oath to witnesses.

(h) Order of Presentation. The Petitioner's presentation shall be first, followed by the Department and then the intervenors. In cases where there multiple Intervenors, the Presiding Officer shall establish the order of the Intervenors' presentations.

(i) Cross-Examination. Each Party shall have the right to conduct such cross-examination of other Parties and their witnesses as may be required for a full and true disclosure of the facts. The order of cross-examination and re-cross shall be determined by the Presiding Officer. The Commission shall have the right to question each Party after completion of re-cross by the other Parties.

(j) Rebuttal Evidence. Each Party shall be afforded the opportunity for rebuttal in the same order as item 1-6-11 (h) above.

(k) Close Contested Case Hearing. Upon completion of all testimony and evidence submitted by each party and their witnesses, the Presiding Officer shall close the Contested Case portion of the Hearing.

1-6-12 Co-Counsel. No more than two (2) counsels may appear for any Party at any Proceeding before the Commission. Where a Party is represented by more than one counsel, only

one of the counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.

#### 1-6-13 Requests For Subpoenas.

(a) Subpoenas of Witnesses. Requests for the issuance of subpoenas requiring the attendance of a witness for the purpose of taking oral testimony before the Commission shall be in writing, and shall state the reasons why the testimony or the witness is believed to be material and relevant to the issues involved. Only Parties or a Commissioner may request the issuance of a subpoena.

(b) Every subpoena shall state the title of the proceeding for which it is to be issued, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(c) Subpoenas Duces Tecum. Requests for the issuance or subpoenas for the production of documents or records shall be in writing; shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved.

(d) Who May Issue Subpoenas. Subpoenas may be issued by the Chair or in his absence, any Commissioner. No subpoena shall be issued unless the Party requesting the subpoena has complied with the provisions herein and gives the name and address of the desired witness. Signed and sealed blank subpoenas will not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall show at whose instance the subpoena is issued. The Parties at whose instance a subpoena is issued shall arrange for service thereof, and shall file a return and acknowledgment or service thereon.

(e) Fees and Mileage. Witnesses summoned shall be paid the same fee and mileage as are paid witnesses in Circuit Courts of the State of Hawai‘i and such fees and mileage shall be paid by the Party at whose instance the witness appear.

(f) Oath. Witnesses shall be sworn under oath or affirmation prior to testifying.

1-6-14 Consolidation. The Commission, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more Proceedings which involve substantially the same parties or issues which are the same or closely related if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the Proceedings.

1-6-15 Substitution of Parties. Upon motion and for good cause shown, the Commission may order substitution of Parties, except that in the case of death of a Party, substitution may be ordered without the filing of a motion.

1-6-16 Motions.

(a) Timing.

- (1) Motions Prior to the Start of the Contested Case Hearing. A motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be filed with the Commission and served on the opposing Party fourteen (14) calendar days before the first day of the Contested Case hearing.
- (2) Motions After the Start of the Contested Case Hearing. Motions may be filed following the start of a Contested Case hearing if the factual basis for the motion arises during the course of the Contested Case hearing. Motions made after a Hearing has started shall be made at least fourteen (14) days prior to the date set for final argument on the matter.
- (3) Motions that fail to meet the requirements set forth in this rule shall be deemed waived unless good cause is shown.

(b) Form and Contents. All motions shall be made in writing to the Commission or Hearing Officer, and shall state the relief sought and shall be accompanied by an affidavit or legal memorandum setting forth the grounds upon which they are based. For good cause shown the Commission may allow oral motions to be made during a Contested Case hearing.

(c) Service of Motions. The moving party shall serve a copy of all motions 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 (7) days after being served with motion. The Presiding Officer may order the memorandum in opposition to be filed earlier than the seven (7) day period. The Commission, for good cause shown, may continue the Hearing until the next meeting in order to give the Commission an opportunity to evaluate and consider the motion and memorandum in opposition to the motion.

(e) Waiver. Failure to serve or file a memorandum in opposition to a motion or failure to appear at the Hearing may be deemed a waiver of objection to the granting or denial of the motion. A Party who does not oppose the motion shall notify the Presiding Officer and opposing counsel or Party promptly.

1-6-17 Evidence.

(a) Form and Admissibility. The Commission shall not be bound by the Hawai'i Rules of Evidence relating to the admission or rejection of evidence, but may exercise its own discretion in such matter with a view towards insuring that justice is served.



(b) Burden of Proof. Except as otherwise provided by law, the Party initiating Commission consideration shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

(c) Exclusion of Irrelevant Material. As a matter of policy, the Commission shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(d) Ruling. The Presiding Officer shall rule on the admissibility of all evidence. Such ruling may be reviewed by the Commission in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the Commission is necessary to promote justice, the Presiding Officer may refer the matter to the Commission for determination.

(e) 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.

(f) 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.

(g) Prepared Testimony. With the approval of the Presiding Officer, a witness may read into the record his testimony on direct examination. Before any prepared testimony is read, unless excused by the Presiding Officer, the witness shall deliver copies thereof to the Presiding Officer, the clerk reporter, and all counsel or Parties. Admissibility shall be subject to the rules governing oral testimony. If the Presiding Officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all Parties and the Commission to permit proper cross-examination of the witness on matters contained in said prepared testimony.

(h) Documentary Evidence. If relevant and material matter offered in evidence is embraced in a document containing other matters, the Party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence, but at the discretion of the Presiding Officer, the relevant and material matter may be read into the record or copies thereof received as an exhibit. Other parties shall be afforded opportunity to examine the document, and to offer in evidence other portions thereof believed material and relevant.

(i) Exhibits.

- (1) Form-Size. Exhibits shall be clearly and permanently legible and in such form as may be prescribed by the Commission. Exhibits shall be bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular Form.

- (2) Copies. When exhibits are offered in evidence, and when practicable the original and twelve (12) copies shall be furnished to the Presiding Officer with a copy to each Party to the Proceeding other than the Commission, unless such copies have been previously furnished or the Presiding Officer otherwise.

(j) Commission Records. The file kept by the Department on the matter pending before the Commission shall constitute evidence for the purposes of an Agency Hearing.

(k) 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 and given notice either before or during the hearing or the material so noticed and afforded the opportunity to contest the facts so noticed.

(1) Additional Evidence. No supplemental evidence shall be accepted into the record after the Agency Hearing is closed. However, the Presiding Officer may, at the hearing, 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 a part of the record within a fixed time after submission reserving exhibit number therefor.

#### 1-6-18 Post Hearing Procedures for Hearing Conducted By Commission.

(a) Correction of Transcripts in Cases where Transcripts are Provided. Motions to correct a transcript shall be filed with the Commission within fourteen (14) days after receipt of the transcript unless otherwise directed by the Presiding Officer, and shall be served on all Parties. Motions to correct transcripts shall certify the date when the transcript was received. Any objections to proposed corrections must be served on all Parties and received by the Commission at least seven (7) days after the date of service of the corrections. If no objections are received, the transcript will, upon approval of the Commission, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration to the stenographic transcript of the hearing.

(b) Submittals of Proposed Decisions and Orders. Each Party to the proceeding may submit a proposed decision and order to the Commission which shall include findings of fact and conclusions of law. Said proposals shall be served to each Party to the proceeding.

(c) Timing of Submittals. Unless otherwise directed by the Presiding Officer, in proceedings where transcripts are not required, submittal of a proposed decision and order shall be made within thirty (30) days from the date of closing of the hearing. In proceedings whereby transcripts are required, submittal shall be made within fourteen (14) days from the date or service of the transcript.

(d) Submittal of Exceptions to Decision and Order. Submittal to the Commission of exceptions to a proposed decision and order shall be made within seven (7) days from the date of

service of said proposed decision and order, or within such period of time specified by the Presiding Officer. Such submittal shall be served on all parties.

(e) Final Arguments. The Presiding Officer shall establish the date for presentation of final arguments which shall occur in the following order, unless otherwise directed by the Presiding Officer:

- (1) Entertainment of submitted motions, exceptions or corrections to the transcript, if any, by the Commission;
- (2) Presentation of oral arguments by the Petitioner, Department, then Intervenor. In cases where there are multiple Intervenors, the Presiding Officer shall determine their order of presentation.
- (3) Closing arguments or rebuttal by the Petitioner.

The Presiding Officer may set appropriate time limitations for oral argument provided that not more than one (1) hour on each side of the Proceeding will be allowed for argument without special leave of the Commission.

(f) Issuance of Decision and Order. A Proceeding shall stand submitted for decision by the Commission after the taking of evidence and the presentation of such oral argument as may have been prescribed by the Presiding Officer. The Commission may:

- (1) Adopt a decision and order as submitted by any of the Parties, with or without revisions;
- (2) Take action on the matter and may require the Department or a Party to the proceeding to submit a written decision and order which conforms with the evidence; or
- (3) If no proposed findings of fact, conclusions of law, decision and order have been submitted by any party, take action on the matter and require the Director to notify the Parties.

(g) Service of Decisions. Decisions shall be served in writing by the Director by mailing copies thereof (return receipt) to the Parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a copy thereof. 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.

(h) Withdrawal of Application. In cases where an application is withdrawn by the Petitioner after an adverse decision is rendered by the Commission and prior to the ratification or effective date of such final decision and order, the application or substantially similar application shall not be resubmitted sooner than one (1) year following the withdrawal.

(i) Appeals. Any Party aggrieved by a final order and decision of the Planning Commission may obtain Judicial reviews thereof in the manner pursuant to Chapter 91, HRS.

1-6-19 Post Agency Hearing Procedures for Hearing Conducted by Hearing Officer.

(a) Recommendation of Hearing Officer:

- (1) Upon completion of taking of the evidence, the Hearing Officer shall prepare a report setting for the proposed findings of fact, conclusions of law, the reasons therefore, and a recommended order, and shall submit the report of the Proceeding to the Commission.
- (2) The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, if required, documentary evidence, stipulations, proposed findings, or other documents submitted by the Parties, objections to the conduct of the hearing and the report of the Hearing Officer and all other matters placed in evidence.
- (3) The Hearing Officer shall cause a copy of the report to be served upon all Parties to the Proceedings.

(b) Exception to Hearing Officer's Report and Recommendations.

- (1) Prior to seven (7) working days after service of the report and recommendations by the Hearing Officer, a Party may file with the Commission, exceptions to the report. Such Party shall serve copies of exceptions upon each party to the Proceeding.
- (2) The exceptions shall:
  - (i) Set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken;
  - (ii) Identify that part of the Hearing Officer's report and recommended order to which objections are made;
  - (iii) Designate by page citation to the portions of the record relied upon;
  - (iv) State all the grounds for exceptions to a ruling, finding, conclusion or recommendation. The grounds not cited or specifically urged are waived.

(c) Support of Hearing Officer's Report and Recommendations.

- (1) Prior to seven (7) working days after service of the exceptions taken to the Hearing Officer's report, any other Party may file with the Commission

arguments in support of the Hearing Officer's recommendations. Such Party shall serve copies upon each party to the Proceeding.

(2) The submittal shall:

(i) Answer specifically the points of procedure, fact, law or policy to which exceptions were taken;

(ii) State the facts and reasons why the report and recommendations must be affirmed; and

(iii) Designate by page citation the portions of the record relied upon.

(d) Oral Argument Before the Commission.

(1) If a Party desires to argue orally before the Commission, a written request with reasons therefore shall accompany the exceptions filed. The Commission may grant the request.

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

(e) Commission Action.

(1) In the event no statement of exceptions is filed, the Commission may proceed to reverse, modify, or adopt the recommendations of the Hearing Officer.

(2) Upon the filing of the exceptions and support documents, the Commission may:

(i) Render its decision upon the record;

(ii) If oral argument has been allowed, the Commission may render its decision after oral argument; or

(iii) Reopen the docket and take further evidence or may take such other disposition of the case that is necessary under the circumstances.

## CHAPTER 7

### PUBLIC RECORDS, INSPECTION AND AVAILABILITY

1-7-1 Inspection of Public Records. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that, except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation or the prosecution or defense of any action or proceeding, prior to its commencement, to which the state or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of the character or reputation of any person.

#### 1-7-2 Where Available.

(a) The public may obtain information on matters within the jurisdiction of the Department and Commission for the County of Kaua'i, by inquiring at the principle place of business of the Planning Department. All rules, orders or opinions of the agency are on file and available for public inspection at this office during business hours, or at the Office of the County Clerk.

(b) Inquiry may be made in person at the Agency during business hours or by submitting a request for information in writing to the Director.

1-7-3 Copies of Public Records. Copies of public records printed or reproduced for persons other than governmental agencies shall be given to any person provided the applicable fees or costs for publication and postage are paid.

1-7-4 Denial of Inspection. Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the Circuit Court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records.

## CHAPTER 8

### CENTRAL COORDINATING AGENCY

1-8-1 Authority. Pursuant to the authority of Chapter 46, HRS, and the Kaua‘i County Code, as Amended, 1987, these Rules are established. These Rules shall apply within the County of Kaua‘i, State of Hawai‘i.

1-8-2 Purpose. The purpose of these Rules are to improve the coordination and efficiency of land use and development control systems.

1-8-3 Definitions. For the purpose of these Rules, the following words or phrases shall have the meaning given in this rule unless it shall be apparent from the context that a different meaning is intended:

(a) "Control or Regulatory Powers" are any and all forms of written consent, sanction, or recommendation required by any government agency before implementation of a land development project. This includes, but is not limited to, permits, certificates, approvals, and clearances, whether discretionary or ministerial.

(b) "Cooperating Agency" means each federal, state, or county board, commission, department, or officer with control or regulatory powers over land development projects undertaken in the county.

(c) "Land Development Project" means the performance of any building or mining operation, the making of any material change in the use or appearance of any structure or land, the division of land into two or more parcels, and the creation or termination of rights of access or riparian rights.

(d) "Master File" means an up-to-date list of all active applications for building permits, subdivisions, zoning permits, special management area permits, variance permits, use permits; petitions for changes in state land use districts, general plan, development plan and zoning amendments; and special permit requests within the county.

(e) "Repository" means an up-to-date collection of all laws, rules and regulations, procedures, permit requirements and review criteria of all federal, state, and county agencies having any control or regulatory powers over land development projects within the county.

#### 1-8-4 Maintenance and Administration of the Repository.

(a) Responsibilities of the Agency. The Agency shall maintain and update the repository, and shall make it available during business hours to any person requesting information about the applicability of the repository to any proposed Land Development Project. The Agency shall refer interpretations of a legal or complex technical nature, questions concerning the extent of a Cooperating Agency's discretionary authority, and judgments concerning the acceptability or application materials to the appropriate Cooperating Agency. Copies of the repository shall be

made available to the public at a price to be fixed by the Agency to cover mailing and publication costs.

(b) Responsibilities of Cooperating Agencies. It shall be the responsibility of each Cooperating Agency to ensure that the agency is in receipt of all laws, rules and regulations, procedures, permit requirements, and review criteria pertaining to Land Development Projects within its jurisdiction. Cooperating Agencies shall also be responsible for keeping the Agency promptly informed of revisions to the above and for providing information to the applicant on matters directly related to the Cooperating Agency's jurisdiction.

1-8-5 Maintenance and Administration of the Master File.

(a) Responsibilities of the Agency. The Agency shall maintain and update the master file in accordance with a reasonable schedule as agreed to by the Agency and the appropriate Cooperating Agencies. Questions concerning the status of an application listed in the Master File shall, to the extent practicable, be responded to by the Agency before referring them to the appropriate the Cooperating Agency.

(b) Responsibilities of Cooperating Agencies. It shall be the responsibility of the appropriate Cooperating Agencies to ensure that the required applications within their jurisdiction are listed in the Master File maintained by the Agency. Each Cooperating Agency shall provide the Agency with updated information for the Master Files in accordance with a schedule deemed reasonable by both.

1-8-6 Other Coordination Services. (a) When requested by the applicant, the Agency shall endeavor to schedule and coordinate, to the extent practicable, any referrals, public informational meetings or any public hearings with those held by other federal, state and/or county commissions or agencies pursuant to existing laws pertaining to the County.

(b) It shall be the responsibility of each Cooperating Agency to designate a representative of its staff who is authorized to speak on its behalf and who is knowledgeable in those controls or regulatory powers within its jurisdiction to serve as liaison with the Agency in this and all other functions mandated by Chapter 46, HRS, and the Kaua'i County Code, as Amended, 1987.



## CHAPTER 9

### APPEALS FROM ACTIONS OF THE PLANNING DIRECTOR

1-9-1 Applicability. An applicant may petition to appeal an action of the Director in the administration of the Comprehensive Zoning and Subdivision ordinances as provided for in Chapter 8, Articles 17, 18, 19, 24, and 28 and Chapter 9, Articles 3 and 5 of the Kaua'i County Code, as Amended, 1987. Intervention, pursuant to Chapter 4 of these Rules, shall not be allowed in appeals from actions of the Director.

1-9-2 Submission of Appeal. The appeal shall be submitted to the Clerk of the Commission and shall be filed within twenty-one (21) days for appeals as provided for in the Comprehensive Zoning Ordinance and fifteen (15) days for appeals as provided for in the Subdivision Ordinance after the date of the adverse decision. The petition to appeal shall contain the following:

- (1) The name, address and telephone number of the appellant.
- (2) The identification of the property and the appellant's interest therein.
- (3) The particular provision of the zoning ordinance or subdivision ordinance or regulation in question.
- (4) All pertinent facts.
- (5) The action of the Director.
- (6) The reasons for the appeal, including a statement as to why the appellant believes that the Director's action was based on an erroneous finding of a material fact, or that the Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion.

1-9-3 Contested Case Hearing and Notice. If a petition contains the requirements prescribed in 1-9-2(1)-(6), the Director shall place the matter on the Commission agenda and the Commission shall afford the appellant an opportunity to be heard. Such Contested Case Hearing shall be conducted in conformity with the applicable provisions established herein for Contested Case hearings before the Commission in Chapter 6 of these Rules.

1-9-4 Commission Action.

(a) In cases where appeals are pursuant to the provisions of the Comprehensive Zoning Ordinance, the Commission shall consider the same within sixty (60) days of the filing of the notice of appeal. In the case where the Commission hears the matter, it must render a decision within thirty (30) days after the close of Hearing. In the case where a Hearing Officer is appointed, the Commission must act on its recommendation within thirty (30) days after receipt of the Hearing Officer's recommendation.

(b) In cases where appeals are pursuant to the provisions of the Subdivision Ordinance, the Commission shall consider the same within forty-five (45) days of the filing of the notice of appeal. In the case where the Commission hears the matter, it must render a decision within forty-five (45) days after the close of Hearing. In the case where a Hearing Officer is appointed, the Commission must act on its recommendation within thirty (30) days after receipt of the Hearing Officer's recommendation.

(c) A longer period to rendering any decision in Sections 1-9-4 (a) and (b) may be permitted by agreement of the applicant.

1-9-5 Decision and Order. The Director shall promptly notify the appellant of the decision of the Commission. If the Commission affirms the action of the Director, such order shall be accompanied by separate findings of fact and conclusions of law. A copy thereof shall be sent, return receipt, immediately to the applicant.

## CHAPTER 10

### DECLARATORY ORDERS

#### 1-10-1 Who May Petition.

(a) Petition by Person or Agency. On petition of an interested person, the Commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or regulation or order of the Commission.

(b) Declaratory Order on the Commission's Own Motion. Notwithstanding the other provisions of this section, the Commission may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty.

1-10-2 Form and contents. The petition shall conform to the requirements for filing documents before the Commission and shall contain the following:

- (1) Name;
- (2) Address;
- (3) Telephone number of each petitioner;
- (4) The signature of each petitioner;
- (5) A designation of the specific statutory provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
- (6) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (7) A statement of the petitioner's position or contention; and
- (8) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention.

1-10-3 Commission Action. Within forty-five (45) days after the submission of a petition for Declaratory Ruling, the Commission shall either deny the petition in writing, stating the reasons for such denial, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, however, that if the matter is set for Hearing, the Commission shall render its findings and decision within forty-five (45) days after the close of the Hearing.

1-10-4 Dismissal or Petition. The Commission may, without notice of hearing, dismiss a petition for Declaratory Ruling that fails in material respect to comply with the requirements of this section.

1-10-5 Refusal to Issue Declaratory Order. The Commission may, for good cause, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the Commission may so refuse where:

- (1) the question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
- (2) the Petitioner's interest is not of the type that would give him standing to maintain an action if he were to seek judicial relief;
- (3) the issuance of the declaratory order may affect the interests of the Commission in a litigation that is pending or may reasonably be expected to arise; or
- (3) the matter is not within the jurisdiction of the Commission.

1-10-6 Request for Hearing. Although in the usual course of disposition of a petition on for a Declaratory Ruling no formal Hearing will be granted to the Petitioner or to a Party in interest, the Commission may in its discretion order a Hearing. Any Petitioner or Party in interest who desires a Hearing on a petition for a Declaratory Ruling shall set forth in detail in his request the reasons why the matters alleged in the petition, together with supporting affidavits or other written briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition, and, to the extent that such request for a Hearing is dependent upon factual assertion, shall accompany such request by affidavit establishing such facts and shall deposit with the Department such amounts as deemed necessary to cover applicable publication costs. In the event a Hearing is ordered by the Commission, the rules relating to Agency Hearing procedures before the Commission shall govern the proceeding.

1-10-7 Applicability of Order. An order disposing of a petition shall be applicable only and strictly limited to the factual situation described in the petition or set forth in the order.

## CHAPTER 11

### RULE ADOPTION, AMENDMENT, OR REPEAL PROCEDURES

#### 1-11-1 Initiation of Rule-Making Proceedings.

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

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

1-11-2 Form and Contents. Petitions for rule-making shall contain the name, address, and telephone number of each Petitioner; the signature of each Petitioner; a draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; a statement of the Petitioner's interest in the subject matter; a statement of the reasons in support of the proposed rule, amendment, or repeal and shall deposit with the County funds sufficient to cover appropriate Hearing publication costs.

1-11-3 Action on Petition. The Commission shall, within forty-five (45) days after the filing of a petition for rule-making, either deny the petition in writing, stating its reasons for its denial or initiate Proceedings in accordance with Chapter 91, HRS.

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

(b) Acceptance of Petition. If the Commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rule making to justify the institution of rule-making Proceedings, the following procedure set forth and applicable statutes and law shall apply.

#### 1-11-4 Notice of Public Hearing.

(a) Publication and Mailing. When, pursuant to a petition therefor or upon its own motion, the Commission proposes to adopt, amend, or repeal a rule or regulation, a notice of proposed rule-making shall be published at least once in a newspaper of general circulation which is published and issued within the County of Kaua'i; and such notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the Commission's rule-making Proceedings at their last recorded address. The notices shall be published at least thirty (30) days prior to the date set for Public Hearing. The notice of hearing will also be filed with the Office of the County Clerk.

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

- (1) A statement of the date, time and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment, or repeal of a rule or regulation is proposed;
- (3) A statement of the substance of the proposed rules.

1-11-5 Commission Action. The Commission shall consider all relevant testimony and documents of record before taking final action in a rule-making Proceeding. Final action should be taken within forty-five (45) days after the end of period for submission of written comments or recommendations.

1-11-6 Effective Date. All rules shall be filed and take effect pursuant to Chapter 91, HRS.

1-11-7 Emergency Rule Making. Notwithstanding the foregoing rules, the Commission may adopt emergency rules in accordance to the provisions of Chapter 91, HRS, if the Commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule or regulation upon less than twenty (20) days notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule or regulation to be effective for a period not longer than one hundred twenty (120) days without renewal. The emergency rule shall become effective upon filing with the Office of the County Clerk.

## CHAPTER 12

### REVOCAION AND MODIFICATION OF PERMITS

1-12-1 Applicability. This chapter shall apply to all zoning permits, variances, use permits, subdivision approvals, special management area permits, special permits, state land use district boundary amendments, general plan amendments, zoning amendments and any other permit or approval within the jurisdiction of the Commission. For the purposes of this chapter, "permit" means any permit, amendment or other approval mentioned above.

1-12-2 Petition For Revocation of Permits. The Department, Commission, a person with interest in the land, who lawfully resides on the land, or a person or entity who otherwise can demonstrate that they will be so directly and immediately affected by the Permit that their interest is clearly distinguishable from that of the general public may file a petition for revocation of a permit with the Director.

#### 1-12-3 Form and Content of Petition.

(a) The petition for revocation of a permit shall be filed on a form prescribed by the Director which shall include the following information:

- (1) the identification of the permit in question and a statement concerning Section 1-12-2;
- (2) the specific term or condition of the permit alleged to have been violated or not complied with;
- (3) a detailed factual basis of the alleged violation; and
- (4) any other information that the Director requires for an adequate investigation into the matter.

(b) The Director may reject any petition which is incomplete, inaccurate or fails to comply with the Rules of the Commission. The rejected petition shall be returned to the petitioner.

1-12-4 Revocation of Class I, II and III Zoning Permits, or Special Management Area Minor Permits Issued by the Director. The Director shall review and investigate the basis for any petition for revocation of a Class I, II, or III zoning permit or Special Management Area Minor Permits, or any other permit which the Director is authorized to issue. If the Director finds that any term or condition of the subject permit has been violated or not complied with, the Director may in his discretion revoke, amend or modify the permit or may allow the permit holder a reasonable opportunity to correct, remedy or rectify the violation.

1-12-5 Revocation of Permits by the Planning Commission. The Director shall review and investigate the basis for any petition for revocation of a permit which the Commission has final authority to grant or which the Commission makes a recommendation and report to the Kaua'i County Council, State Land Use Commission or other agency which has the final authority to grant. The Director shall file his report with the Commission within sixty (60) days from the date of the acceptance of the petition, unless the Commission allows the Director more time to investigate the contents of the petition. The Commission shall review the Director's report and if the Commission finds that there is reasonable cause to believe that there currently is a failure to perform according to the conditions imposed, the Commission shall issue and serve upon the party bound by the conditions an Order to Show Cause why the permit should not be revoked or modified.

1-12-6 Form of the Order to Show Cause.

(a) The Commission shall serve the Order to Show Cause on the permit holder in writing by registered or certified mail with return receipt requested at least thirty (30) days before the Hearing. In the event that such method of service is unsuccessful, the Order to Show Cause may be served in any other manner provided by law. A copy shall be also sent to the Petitioner and all Parties to the hearing at which the permit or approval was granted.

(b) The Order to Show Cause shall include:

- (1) A statement of the date, time, place, and nature of the hearing;
- (2) A description and a map of the property to be affected;
- (3) A statement of the legal authority under which the Hearing is to be held;
- (4) The specific sections of the statutes or rules, or both, involved;
- (5) An explicit statement in plain language of the issues involved and the facts alleged by the Agency or Party in support thereof; and
- (6) A statement that any party may retain counsel if the party so desires.

1-12-7 Hearing on the Order to Show Cause. The Commission shall conduct an Agency Hearing on the Order to Show Cause in accordance with the requirements of Chapter 6 of these Rules.

1-12-8 Decision on Petition.

(a) For state land use boundary amendments, general plan amendments, zoning amendments or any other permit or approval for which the Commission operates only in an advisory capacity to the Kaua'i County Council, the State Land Use Commission or any other governmental agency having final authority, the following procedure shall apply:



- (1) After the conclusion of the Hearing on the Order to Show Cause, the Commission shall file a report of its findings and recommendations with the County Council, State Land Use Commission or other governmental agency. The Commission shall serve a copy of the report with the Parties as provided by Chapter 6 of these Rules. Such report shall be filed within sixty (60) days after the close of the Hearing on the Order to Show Cause.

(b) For Class III and IV zoning permits, variances, use permits, subdivision approvals, special management area permits, special permits, state land use boundary amendments, or any other permit or approval for which the Commission has final authority, the procedures as set forth in section 1-6-18 and 1-6-19 shall apply. If the Commission finds that any term or condition of a permit has been violated or not complied with, the Commission may revoke, amend or modify the permit or may allow the permit holder a reasonable opportunity to correct, remedy or rectify the violation.

#### 1-12-9 Modification or Deletion of Conditions.

(a) If a permit holder desires to have a modification or deletion of a condition that was imposed by the Commission, the permit holder shall file a motion in accordance with Section 1-6-16 of these Rules and serve a copy to all parties to the proceeding in which the condition was imposed. The Director shall have the discretion on whether to require a notice of hearing on the modification or deletion of conditions. In cases where the Director does not require a notice of hearing, the Commission, upon hearing the motion for modification or deletion of conditions, may require a notice of hearing.

(b) For good cause shown, the Commission may act to modify or delete any of the conditions imposed.

## CHAPTER 13

### SPECIAL PERMITS

1-13-1 Authority. This rule governs special permit procedures pursuant to authority conferred by Chapter 205-6, HRS, as amended.

1-13-2 Definition. Unless otherwise stated herein, definitions of terms used herein in this chapter shall mean the same as those defined in Section 8-1.5 Kaua'i County Code 1987, as amended, and in Chapter 205, HRS.

1-13-3 Standing to Submit a Petition for a Special Permit. Any applicant who desires to use its land within a State Land Use Agricultural or Rural district other than for an allowable agricultural or rural use as set forth in Chapter 205, HRS, may petition the Commission for permission to use its land in the manner desired.

1-13-4 Petition and Content. A petition for a Special Permit shall be filed with the Department and shall include the following:

- (1) A nonrefundable filing and processing fee of one hundred dollars (\$150).
- (2) Petitions for issuance of a Special Permit shall specify the use desired and state concisely the nature of the applicant's interest in the subject matter and the reasons for seeking the Special Permit and shall include, if applicable and appropriate, any facts, views, arguments, location map, plans drawn to scale, including a site plan of the project area with reference points (property lines, roadways, shoreline, etc.) and all existing and proposed uses and/or structures shown thereon, floor plans and elevations of the proposed structures, and a statement addressing native Hawai'ian customary and traditional rights under Article XII, Section 7 of the Hawai'i State Constitution, and relevant data and copies thereof as required by the Department in order to render a petition complete. A statement shall be submitted which addresses why existing properties that are properly designated or zoned are not suitable for the proposed use. The Department may route the petition to appropriate government agencies for comments and recommendations.
- (3) 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. In its petition, the applicant shall also address the guidelines set forth in Section 1-13-6 of this chapter.

1-13-5 Agency Hearing.

(a) The Commission shall conduct an Agency Hearing within a period of sixty (60) calendar days from the date of acceptance of a properly filed and completed petition as

determined by the Director, unless the sixty day period is extended by the applicant to the extent permitted by law. The Commission shall give written notice to the applicant and the Land Use Commission and notice shall also be published once within the County of Kaua'i, at least twenty (20) calendar days prior to the date of the Agency Hearing in a publication.

(b) The notice of the Agency Hearing shall state:

- (1) Location of the property involved;
- (2) Land area of proposed use;
- (3) Nature of the proposed use;
- (4) Date, time, and place of the Agency Hearing; and
- (5) That Persons may petition for intervention pursuant to the Planning Commission's Rules of Practice and Procedures, as amended.

(c) In the event a project being considered for a Special Permit also requires other permits or approvals, the Commission may conduct joint hearings.

(d) The applicant, at least twenty (20) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Real Property Assessment Notice List located at the Real Property Division of the Department of Finance of the County of Kaua'i, or by certified mail, written notice to the addresses shown on such Real Property Assessment Notice List for at least eighty-five per cent (85%) of all tax map key parcels within 300 feet from the nearest point of the tax map key parcel involved in the petition to the nearest point of the affected tax map key parcel. For purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same tax map key parcel. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Director:

- (1) date;
- (2) time;
- (3) location;
- (4) land area of proposed use;
- (5) purpose;
- (6) description or sketch of the property involved; and

- (7) that persons may petition for intervention pursuant to the Chapter 4 of these Rules.

(e) At least seven (7) days prior to the Agency Hearing date, the applicant shall file with the Commission an affidavit as to the mailing or delivery of such notice and a list of persons to whom such notices were sent.

(f) Should the applicant fail to comply with the foregoing notification requirements, the Agency Hearing shall be postponed. In this case, the applicant shall pay for the cost of republication and processing which shall be the same amount as set forth in Section 1-13-4 (1) above and shall follow the same notification requirements of this section in the renotification of affected persons. The Planning Commission shall reschedule another Agency Hearing within sixty (60) days of the receipt of the fee. The time between the initially scheduled Agency Hearing date and the date of a rescheduled and properly notified Hearing shall not be counted towards the maximum time period as designated in Section 1-13-7 of these Rules.

13-6. Guidelines for Issuance of Special Permit. The Commission may approve a Special Permit under such protective restrictions as may be deemed necessary if it finds 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. The Commission shall consider the following guidelines in determining unusual and reasonable use:

- (1) Such use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the rules of the Land Use Commission;
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- (4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district; and

(b) Would promote the effectiveness and objectives of Chapter 205, HRS, as amended.

1-13-7 Maximum Time Period.

(a) The Commission shall take a vote on a petition for Special Permit within sixty

(60) days after the close of the Agency Hearing but no later than two hundred and ten (210) days after the acceptance of the application, or within a longer period as may be agreed by the applicant. If a quorum or a majority vote on a petition is not obtained by the expiration of the applicable time period above, the Commission shall have a maximum time period of an additional forty-five (45) days to vote on the petition. Within this time period, the Planning Commission shall:

- (1) For a Special Permit involving fifteen (15) acres or less of land area, approve or approve with modification the petition by stating the reasons and attaching appropriate conditions; or
- (2) For a Special Permit involving more than fifteen (15) acres of land area, recommend to the State Land Use Commission approval or approval with modification of the petition and state the reasons for the said recommendation and attach appropriate conditions; or
- (3) Deny the petition and state the reasons.

(b) In cases where Contested Case/intervention Proceedings pursuant to these Rules are instituted, the timelines established for such proceedings shall apply and the maximum period of time for action by the Commission shall be within sixty (60) days after the presentation of final oral arguments or within a longer period as may be agreed by the Parties. If a quorum or a majority vote on a petition is not obtained by the expiration of the applicable time period above, the Commission shall have a maximum time period of an additional forty-five (45) days to vote on the petition.

(c) The Commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, and if appropriate, a time limit for the duration of the particular use, which shall be a condition of the Special Permit. If the permitted use is not substantially established to the satisfaction of the Planning Commission within the specified time, it may revoke the permit pursuant to Chapter 12 of these Rules.

#### 13-8. Action.

(a) Pursuant to Section 205-6, HRS, a decision in favor of the applicant shall require a majority vote of the total membership of the Commission. For purposes of Section 91-5, HRS, a vote by the Commission on a petition for Special Permit within the maximum time period specified in Section 1-13-7 of these Rules, shall be construed as the Commission having acted upon the petition.

- (1) If the Commission votes on an application and the application fails to obtain a majority vote of the total membership of the Commission, the matter may be continued to any subsequent regular meeting that is scheduled within the maximum time frame set forth in Section 1-13-7 of these Rules. If the application fails to obtain a majority vote of the total membership of the Commission by the expiration of the maximum time

frame, a subsequent vote adopting findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the Commission.

- (2) For purposes of Section 91-13.5, HRS, if the Commission fails to act upon the petition by failing to vote on the petition within the time period which is set forth in Section 1-13-7 of these Rules, the petition shall be deemed approved after an additional thirty (30) days subject to such protective restrictions and conditions as may be deemed necessary and as permitted under HRS 205-6( c). These conditions may be established by the Commission within the thirty (30) days. The Commission shall adopt findings of fact, conclusions of law, and decision and order reflecting approval and conditions of the petition.

(b) For petitions involving more than fifteen (15) acres which have been approved or approved with modification, the Commission shall forward a copy of the decision together with the complete record, including maps, charts, and other exhibits as evidence of the proceeding before the Commission to the Land Use Commission within sixty days (60) after the decision is rendered.

(c) The Commission shall not consider any petition for Special Permit covering substantially the same request for substantially the same land as had previously been denied by the Commission within six (6) months of the date of the order denying the petition. Provided, however, in cases where an order denying the petition pursuant to Section 1-13-8(a)(1) above is filed by the Commission, the petitioner may resubmit their petition at any time.

(d) Any Party may seek judicial review of the Commission's final decision in the manner set forth in Section 91-14, HRS, as amended.

## CHAPTER 14

### MISCELLANEOUS PROVISIONS

1-14-1 Repeal. These Rules shall repeal the previously enacted Rules of the Practice and Procedure of the County of Kaua‘i Planning Commission, as amended.

1-14-2 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property or circumstance is held invalid for any reason, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this and these Rules are declared to be severable.

1-14-3 Effective Date. The aforementioned rules shall become effective ten (10) days after filing with the Office of the County Clerk.

## CHAPTER 15<sup>1</sup>

### POLICIES AND PROCEDURES FOR RULES ON THE SELECTION, EVALUATION, AND DISMISSAL OF THE PLANNING DIRECTOR

- 1-15-1      Authority for Rule-making:  
Pursuant to Article XIV Section 14.03.E of the Kauai County Charter (“Charter”), the Planning Commission of the County of Kaua‘i (“Commission”) adopts the following administrative rules pertaining to the selection, evaluation, and dismissal of the Planning Director.
- 1-15-2      Authority to Appoint Planning Director:  
Pursuant to Article XIV Section 14.04 of the Charter, the Planning Director shall be appointed by the Planning Commission. Prior to the appointment of a Planning Director the Commission shall obtain certification from the Department of Personnel Services that each applicant meets the minimum qualifications set forth in Article XIV Section 14.04 of the Charter. The Commission shall develop and periodically review the position description for the Planning Director position. The Commission shall transmit a copy of the position description to the Department of Personnel Services.
- 1-15-3      Authority for the Planning Director to Appoint a Deputy:  
The Planning Director may appoint a Deputy Planning Director to assist with his or her duties as provided in Article XIV Section 14.05 of the Charter. The Planning Director shall develop and periodically review the position description for the Deputy Planning Director position. The Planning Director shall transmit a copy of the position description to the Department of Personnel Services.
- 1-15-4      Selection of the Planning Director:  
The Planning Director shall be selected in the following order:
1. First, by nomination of candidates to the Commission by any of the Planning Commissioners;
  2. Second, if no candidates are nominated by any Planning Commissioner or the Commission fails to take action on any of the nominated candidates, the Commission may:
    - a. Form a select committee to compile a list of candidates for recommendation to the Commission; or
    - b. Contract with a consultant, specializing in the recruitment of employees, to compile a list of candidates for recommendation to the Commission; or
    - c. Agree, by majority of the Commission, to develop its own process to select the Planning Director.

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<sup>1</sup> This chapter was approved as “Chapter 14” by the Planning Commission. The Office of the County Attorney has deemed the dual approval of two chapters with the same number as an inadvertent non-substantive error and by practice can refer to this chapter as “Chapter 15.”



- 1-15-5 Provisions for the Evaluation of the Planning Director and Deputy Planning Director:
1. The Commission shall annually evaluate the performance of the Planning Director.
  2. The Planning Director shall annually evaluate the performance of the Deputy Planning Director.
  3. The performance evaluations shall be conducted in accordance with the “Administrative Policies and Procedures” established by the Department of Personnel Services.

1-15-6 Dismissal of the Planning Director  
The Planning Director serves at the pleasure of the Commission and can be dismissed at any time without cause or hearing on the matter.