

TITLE MC-12
DEPARTMENT OF PLANNING
SUBTITLE 03
MOLOKAI PLANNING COMMISSION
CHAPTER 301
RULES OF PRACTICE AND PROCEDURE

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SUBCHAPTER 1

GENERAL PROVISIONS

§12-301-1 Title. The rules and regulations in this article shall be known as the "Rules of Practice and Procedure for the Molokai Planning Commission" (hereinafter referred to as the "Rules"). [Eff 10/8/89] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-301-2 Authority. The rules herein are established pursuant to the provisions of section 8-8.4 of the Maui County Charter and section 91-1, et. seq. of the Hawaii Revised Statutes. [Eff 10/8/89] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-301-3 Purpose. These rules and regulations govern practice before and procedures of the Molokai planning commission of the County of Maui and set forth general rules applicable to proceedings before the Molokai planning commission. [Eff 10/8/89] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-301-4 Construction. (a) These rules and regulations shall be construed to secure the just and efficient determination of proceedings before the Molokai planning commission. These rules and regulations should be read in conjunction with the provisions of the Hawaii Revised Statutes, the Charter of the County of Maui and the Maui County Code. If there is a conflict between state law, the County Charter, or the Maui County Code and the provisions herein, state law, the County Charter or the Maui County Code shall govern.

(b) If there are conflicts between the general provisions herein and specific rules of any other chapters, the specific rules shall govern. [Eff 10/8/89] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-301-5 Definitions. The following definitions shall apply for all matters before this authority:

"Agency" means any agency, board, commission, department or officer of the county or state government, including the commission.

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

"Applicant" means a person who seeks permission or authorization which the authority may grant under statute, ordinance or other authority; and a person seeking relief not otherwise designated in these rules and regulations.

"Authority" means the Molokai planning commission of the County of Maui.

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

"County" means the County of Maui.

"Department" means the department of planning of the County of Maui.

"Director" means the director of the department of planning of the County of Maui.

"Government record" means information maintained by an agency in written, auditory, visual, electronic or other physical form, or as otherwise defined in chapter 92F, Hawaii Revised Statutes, as amended.

"Hearing officer" means any person or persons designated and authorized by the authority to conduct a contested case hearing, to take testimony, and to report findings of fact and conclusions of law with recommendations to the authority on matters that are within the jurisdiction of the authority.

"Intervenor" means a person who petitions to intervene in a contested case hearing and is admitted as a party.

"Mayor" means the mayor of the County of Maui.

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

"Party" means any person named or admitted as a party.

"Person" means any agency, individual, partnership, firm, association, community group, trust, estate, private corporation, or other legal entity, whether or not incorporated, including governmental agencies.

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

- (1) Petitions for special management area permits under chapter 205A, Hawaii Revised Statutes;
- (2) Petitions for special permits pursuant to section 205-6, Hawaii Revised Statutes;
- (3) Petitions for state land use district boundary amendments of fifteen acres or less pursuant to section 205-3.1, Hawaii Revised Statutes;
- (4) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, Hawaii Revised Statutes;
- (5) Petitions for declaratory rulings;
- (6) An investigation or review instituted or requested to be initiated by the authority; and
- (7) Proceedings regarding shoreline setbacks pursuant to section 205-31 et. seq., Hawaii Revised Statutes. [Eff 10/8/89] (Auth: HRS §§46-5, 205A-22, 205A-41, 205-6) (Imp: HRS §§91-1, 91-2)

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

§12-301-6 Office. The office of the authority is at the Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, Molokai, Hawaii 96748. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §§46-5, 91-2) (Imp: HRS §91-2)

§12-301-7 Communications. Unless otherwise specifically directed, all communications to the authority shall be directed to the Molokai planning commission c/o the department of planning of the County of Maui, 2200 Main Street, Suite 315, Wailuku, Hawaii 96793. A single copy of all such communications shall be provided to P. O. Box 526, Kaunakakai, Hawaii 96748. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §§46-5, 91-2) (Imp: HRS §91-2)

§12-301-8 Organization. The authority shall elect a chairperson and vice-chairperson from among its members. Their terms shall be for one year and may continue for such time until their successors are duly elected. [Eff 10/8/89] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-301-9 Meetings. (a) The authority may meet and exercise its powers anywhere within its jurisdiction. Unless otherwise provided by law, all meetings shall be open to the public.

(b) The authority shall base the parliamentary procedures for conducting its meetings on the revised edition of Robert's Rules of Order. If there is a conflict between the provisions herein and Robert's Rules of Order, the provisions herein shall apply.

(c) Regular meetings shall be held at least once a month on the second Wednesday of each month at the Mitchell Pauole Center. This schedule may be altered by vote of the authority and the regular meeting held elsewhere on Molokai and on a different day or time when

necessary to enable the authority to effectively conduct its business.

(d) The authority shall allow all interested persons an opportunity to submit data, views, arguments or present oral testimony on any agenda item in an open meeting, unless such item is exempt from the provisions of chapter 92, Hawaii Revised Statutes. The authority may provide for the recordation of all presented oral testimony. A reasonable time limit may be placed on such testimony from the public which in any event shall be not less than three minutes per person.

(e) The authority shall comply with provisions of chapter 92, Hawaii Revised Statutes, as amended.

(f) Special meetings may be called by the chairperson, the director, or a majority of the authority members at any time and place as scheduled.

(g) Emergency meetings and executive meetings shall be held pursuant to the provisions of chapter 92, Hawaii Revised Statutes, as amended.

(h) Executive meetings closed to the public may be held by the authority upon affirmative vote, taken at an open meeting of two thirds of the members present; provided the affirmative vote constitutes the majority to which the board is entitled. The meeting closed to the public shall be limited to matters specifically allowed by law and the reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding the meeting closed to the public shall be recorded and entered into the minutes of the meeting.

(i) Social, informal gatherings of two or more members of the authority where official business is not discussed shall be considered chance meetings and not subject to these rules. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §46-5) (Imp: HRS §§91-2, 92-4, 92-5)

§12-301-10 Quorum. A majority of all members to which the authority is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the authority is entitled shall be necessary to take any action. [Eff 10/8/89] (Auth: HRS §46-5) (Imp: HRS §92-15)

§12-301-11 Minutes. The authority shall keep written minutes and may provide for the audio recordation or court reporter transcript of meetings. The written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members. The minutes shall include, but need not be limited to:

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

The written minutes shall be public records and shall be available within thirty days after the meeting, except where such disclosure would be inconsistent with section 92-5, Hawaii Revised Statutes, as amended, provided, that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purposes of the executive meeting. It shall not be necessary to transcribe the audio recording unless requested for the purpose of rehearing or judicial review in the event the recording is available. Any person shall be entitled to a copy of the full transcript of the audio recordation or the court reporter's transcript provided that the person pays the costs incurred in the preparation of the record in the event the recording is available. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §46-5) (Imp: HRS §92-9)

§12-301-12 Decisions and orders. (a) All decisions and orders shall be signed by the members of the authority who have heard and examined the evidence in the proceeding. Authority members who have not heard and examined all of the evidence may vote and sign only after the procedures set forth in section 91-11, Hawaii Revised Statutes, have been complied with.

(b) Unless otherwise indicated in the order, the effective date of a decision and order shall be the date of mailing or hand delivery.

(c) Official copies of decisions and orders and other authority actions shall be promulgated under the

signature of all members or the chairperson, director, or by such other person as may be authorized by the authority.

(d) All final decisions and orders should be issued in writing within sixty calendar days after the final vote of the authority, unless otherwise extended by vote of the authority for an additional fifteen days.

(e) All final decisions and orders shall contain a phrase informing the parties thereto of the time in which to appeal such order or decision to the court. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-11)

§12-301-13 Authority records. (a) Authority records which are "government records" as defined in chapter 92F, Hawaii Revised Statutes, as amended, shall be disclosed according to the provisions of that chapter. All costs required by any law, rule or ordinance shall be paid by the requesting party.

(b) Copies of government records printed or reproduced for persons other than governmental agencies shall be given to any person provided the fees or costs in the Hawaii Revised Statutes or any rules pursuant thereto and/or the Permanent Ordinances of the County of Maui are paid. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS Ch. 92-F)

§12-301-14 Computation of time. In computing any period of time under the rules herein, by notice, or by any order or regulation of the authority, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday. When the prescribed period of time is ten days or less, Saturdays, Sundays, or holidays within the designated period shall be excluded in the computation. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-15 Appearance before the authority. (a) Any person or party to a proceeding before the authority

may appear in his or her own behalf or as an authorized representative of an individual, partnership, corporation, trust or association, community group, and an officer or employee of the department or any agency may represent the department or agency in any proceeding before the authority. All attorneys who appear on behalf of any party before the authority shall be licensed to practice in the State of Hawaii.

(b) Any person or party who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the authority, by such act represents that he or she is legally authorized to do so and shall comply with all applicable state and county laws and the rules and regulations of this authority, and further, he or she shall maintain the respect due to the authority and shall never deceive or knowingly present any false statements of fact or law to the authority. The authority may at any time require any person appearing before the authority in a representative capacity to provide authority and qualification to act in such capacity. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-16 Formal requirements for filing of documents. (a) Time and place. All documents required to be filed with the authority in any proceeding shall be filed with the office of the authority at Wailuku, Maui, Hawaii, and a single copy to the office of the authority at Kaunakakai, Molokai, Hawaii, at the addresses provided in these rules, within the time limit prescribed by law or by order of the authority. Unless otherwise ordered, the date on which the documents are received shall be regarded as the date of filing.

(b) Format.

(1) Form and size. Documents shall be bound and typewritten upon paper 8-1/2 x 11 or 8-1/2 x 14 inches in size. Tables, maps, charts, exhibits, or appendices may be larger and shall be folded to that size where practical. The impression shall be double spaced, except that footnotes and quotations in excess of a few lines may be single-spaced. Copies shall be clear and permanently legible.

- (2) Title and number. Petitions, pleadings, briefs, and other documents shall show the title of the proceeding before the authority and the name and address of the person or attorney.
- (3) Signatures. The original of each application, petition, complaint, answer, or amendment shall be signed in ink by each party or each party's counsel or authorized representative. If such party is a corporation or association, the pleading may be signed by an officer thereof.

(c) Copies. Unless otherwise required by these rules or the authority, there shall be filed with the authority an original and fifteen copies of each pleading or amendment thereof. Additional copies shall be provided if the chairperson of the authority 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 hereunder or by an order or regulation, the chairperson of the authority, or in the absence of the chairperson, the vice chairperson, or in the absence of the vice chairperson, 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 authority. All parties shall have the opportunity to answer and be heard on amendments filed after hearing commences, and the authority shall decide whether such amendments shall be allowed.

(f) Retention of documents by the authority. All documents filed with or presented to the authority shall be retained in the files of the authority. However, the chairperson of the authority may permit the withdrawal of original documents upon submission of properly authenticated copies to replace said original documents. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-17 Service. (a) By whom served. The director shall cause to be served all orders, notices, and other papers issued by the authority together with any other papers required by law to be served by the authority. Every other paper shall be served by the filing party.

(b) Upon whom served. All papers served by either the authority or any other party shall be served upon all counsel of record at the time of such filing and upon all parties not represented by counsel or upon their designated agents, in fact or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall so notify all other counsel then of record and all parties not represented by counsel.

(c) Service upon parties. The final order and any other paper required to be served by the authority upon a party shall be served upon such party or upon his or her representative authorized to receive service of such papers.

(d) Method of service. Service of papers shall be made by first-class certified mail, or other means authorized by law.

(e) When service completed. Service by mail shall be regarded as complete when deposited in the United States mail properly addressed and stamped. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9.5, 91-11, 91-12)

§12-301-18 Officers and their duties. (a) Presiding officer. The chairperson shall be the presiding officer of the authority and the vice-chairperson shall act as the presiding officer in the absence of the chairperson. The presiding officer shall:

- (1) Open all meetings of the authority 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 authority;
 - (5) Review all matters properly brought before the authority, call for votes upon the same and announce the results;
 - (6) Appoint all hearings officers and any committee chairpersons with the approval of a majority of the members;
 - (7) Authenticate by his or her signature all acts of the authority as may be required by law, unless delegated to the planning director;
 - (8) Do and perform such other duties as may be required by law, or such as may properly appertain to such office; and
 - (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the authority.
- (b) Clerk. The director, or a person designated by the director, shall serve as clerk of the authority 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 authority in consultation with the chairperson;
 - (2) To provide the agenda support materials for all meetings;
 - (3) To read bills, resolutions, and other matters to the authority, 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 chairperson 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 authority and to do and perform all clerical duties and services pertaining to such position as the authority 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; and

- (7) To have charge of all records of the authority and be responsible for the same. [Eff 10/8/89]
(Auth: HRS §91-2) (Imp: HRS §§91-2, 92-3)

§12-301-19 Committees. The authority may appoint the necessary standing and select committees to discharge its responsibilities and functions. [Eff 10/8/89]
(Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-20 Voting. (a) All matters shall be determined by an affirmative vote of the proper majority of the members.

(b) Whenever the authority is ready to vote on any question the chairperson shall state the question, put the question to a vote, and announce the results to the authority. The clerk shall call the roll.

(c) Unless a present member is disqualified from voting pursuant to section 12-301-21 herein, their silence or refusal to vote shall be recorded as an affirmative vote. [Eff 10/8/89, am and comp 5/16/03]
(Auth: HRS §91-2) (Imp: HRS §92-15)

§12-301-21 Disclosure of conflict. Whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the authority, the affected member shall promptly make a full disclosure of the circumstances to the authority. When the member is deemed by the authority or the board of ethics to have a conflict of interest, that member shall be disqualified from voting in all actions relating to such matter. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-22 Motions. (a) Motions and amendments by commissioners may be verbal, but shall be reduced to writing if requested by the chairperson.

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

(c) After a motion is stated or read by the chairperson, it shall be deemed in the possession of, and shall be disposed of by vote of the authority. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-23 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 chairperson, without debate, subject to an appeal to the authority. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-24 Attendance. No member shall be absent from the service of the authority, unless the member is sick or otherwise unable to attend and has so advised the chairperson prior to the meeting. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 3

INTERVENTION AND CONTESTED CASES

§12-301-25 Petition; filing. Petitions to intervene shall be in conformity with §12-301-16 herein and shall be filed with the authority and served upon the applicant no less than ten days before the first public hearing date. Untimely petitions will not be permitted except for good cause, but in no event after the authority has taken the final vote on the matter before it. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-26 Intervenors. (a) All departments and agencies of the state and the county shall be admitted as parties upon timely application for intervention.

(b) All persons who have a property interest in land subject to authority action, who lawfully reside on said land, or can demonstrate they will be so directly and immediately affected by the matter before the authority that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.

(c) All other parties may apply to the authority for leave to intervene as parties.

(d) Leave to intervene shall be freely granted, provided that the authority or its hearing officer, if one is appointed, may deny an application to intervene when in the authority's or hearing officer's sound discretion it appears that:

- (1) The position or interest of the applicant for intervention is substantially the same as a party already admitted to the proceeding;
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable; or
- (3) The intervention will not aid in development of a full record and will overly broaden issues. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-27 Multiple intervenors. If more than one intervenor is admitted to a contested case proceeding, the hearing officer and/or authority may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The hearing officer or authority shall have the right to impose reasonable subject matter, as well as time, limitations on examination and cross-examination of witnesses, whether or not parties are represented by counsel. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-28 Contents of petition to intervene. (a) The petition shall contain the following:

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

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

- (4) Other means available whereby petitioner's interest may be protected;
- (5) Extent petitioner's interest may be represented by existing parties;
- (6) Extent petitioner's interest in the proceeding differs from that of the other parties;
- (7) Extent petitioner's participation can assist in development of a complete record;
- (8) Extent petitioner's participation will broaden the issue or delay the proceedings; and
- (9) How the petitioner's intervention would serve the public interest. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-29 Opposition to intervention. If any party opposes the petition for intervention, that party shall file his motion to oppose on the authority, all other parties and the intervenor within five days after

being served. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-30 Hearing. All petitions to intervene shall be heard prior to rendering a decision. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-31 Appeal from denial. A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to chapter 91-14, Hawaii Revised Statutes, as amended. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-14)

SUBCHAPTER 4

CONTESTED CASE PROCEDURES

§12-301-32 Purpose. This subchapter governs contested case procedures before the authority. These procedures may be modified or waived by the parties with the consent of a majority of the authority or presiding officer as the case may be. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-33 Pre-hearing procedures. All parties to a contested case proceeding shall be prepared for a prehearing conference and a contested case proceeding within a reasonable time as determined by the hearing officer. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-34 Hearing officer, powers. In all contested case proceedings, the chairperson, one or more members or any other person may be a hearing officer duly appointed and designated to preside at the hearing.

The hearing officer shall have the power to administer oaths, receive and rule on questions of evidence, set the dates for and hold prehearing conferences to formulate or simplify the issues, rule upon all objections or motions which do not involve a final determination of the proceeding, receive offers of proof, fix the length, form and time for the filing of briefs, dispose of any other matter that normally and properly arises in the course of a hearing, and take lawful action deemed necessary for the orderly and just conduct of a hearing. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-35 Notice of hearing. Unless otherwise provided by law, the notice of hearing will be served on all parties and persons on the mailing list for this purpose at their last recorded address as required by sections 91-9 and 91-9.5, Hawaii Revised Statutes. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-9.5)

§12-301-36 Transcripts. Should any of the parties to a contested case either request that transcripts be provided or appeal the decision of the authority, the hearing officer shall fairly allocate the transcription costs between the applicant, intervenors and the authority. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-37 Limiting testimony. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-38 Removal from proceeding. Any person or persons who willfully disrupts a hearing or otherwise compromises the conduct of the meeting shall be removed from the hearing room. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-39 Order of procedure. In hearings on applications and petitions, the applicant shall open and close. Intervenors shall be heard in such order as the hearing officer directs. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-40 Co-counsel. Where a party is represented by more than one counsel, they may allocate witnesses between them, but only one counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-41 Cross-examination. Each party shall have the right to conduct such cross-examination of the witnesses as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-10)

§12-301-42 Subpoenas. (a) Requests for the issuance of subpoenas, requiring the attendance of witnesses or the production of documents or records shall be presented to the hearing officer in writing, and shall state the reasons why the testimony or documents required are material and relevant. Only parties or the hearing officer may request the issuance of a subpoena.

(b) All subpoenas shall be presented to the hearing officer not less than ten calendar days before the scheduled hearing, unless otherwise ordered.

(c) No subpoena shall be issued unless the requesting party has complied with this section, gives the name and address of the subpoenaed witness or a complete description of the documents sought to be produced. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9, 92-16)

§12-301-43 Fees and mileage. Witnesses summoned by subpoena shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and such fees and mileage shall be paid by the party at whose instance the witness appears. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §92-16)

§12-301-44 Oath. Witnesses shall be placed under oath or affirmation prior to testifying. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §92-16)

§12-301-45 Consolidation. The authority, 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. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-46 Substitution of parties. Upon motion and for good cause shown, the authority may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-47 Motions. (a) Time. Motions may be made before, during or after a contested case hearing.

(b) Form; contents. All motions other than those made during a hearing shall be made in writing to the authority or hearing officer, and shall state the relief sought and be accompanied by an affidavit or legal memorandum setting forth the grounds upon which they are based. The authority or hearing officer shall set the time for hearing the motion.

(c) Service of motions. The moving party shall serve a copy of all motion papers on all other parties and shall file with the authority or hearing officer the original with proof of service.

(d) Memorandum in opposition. A memorandum in opposition or counter affidavit shall be served on all parties no less than two days before the hearing date. The original and proof of service shall be filed with the authority or hearing officer. The chairperson of the authority or hearing officer may extend or shorten the times herein for good cause.

(e) Waiver. Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing without good cause 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 hearing officer and opposing counsel or party promptly. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-48 Discovery. The parties to a contested case may request discovery in a manner consistent with the provisions of rules 26 through 32, 34, 36 and 37, Hawaii Rules of Civil Procedure. The chairperson of the authority will allow utilization of the discovery process where appropriate and where such would not unreasonably delay the proceedings. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-49 Informal settlements, mediation and arbitration. (a) In order to encourage and provide opportunities for settlement of disputes, there may be held at any time prior to or during contested case hearings, such informal conferences among the parties for the purpose of submission and consideration of facts, arguments, or offers of settlement, as the nature of the proceedings, time and public interest may permit. Nothing contained herein shall prevent the parties from voluntarily submitting factual issues to mediation or arbitration so long as the submission does not result in an improper delegation of powers of the authority or prevent the authority from making the final decision in the matter.

(b) Any party may submit an offer of settlement to any other party or request conferences for such purposes at any time.

(c) Rejected offers or proposals shall be privileged and shall not be admissible in evidence against any counsel or person claiming that privilege. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-50 Evidence. (a) Form and admissibility. The hearing officer shall not be bound by the rules of evidence, but may exercise his or her own discretion with a view to doing substantial justice.

(b) Ruling. The hearing officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the authority in determining the matter of the merits.

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

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

(e) Exhibits. Exhibits shall conform to the provisions of subsections 12-301-16(b) and (c), where applicable, and shall be filed with the hearing officer.

(f) Authority records. If any matter contained in a document on file as a government record is offered in

evidence such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document are specifically identified and otherwise competent, relevant and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the hearings officer.

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

(h) Additional evidence. The hearing officer may require the production of further evidence upon any issue. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-301-51 Correction of transcript. Motions to correct the transcript will be acted upon by the hearing officer or the authority, as the case may be. Motions shall be filed within seven days after receipt of the transcript unless otherwise directed and shall be served on all parties. Such motions shall certify the date when the transcript was received. If no objections are received within ten days after date of service, the transcript will, upon approval of the authority, 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. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 5

POST HEARING PROCEDURES

§12-301-52 Briefs. The hearing officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the hearing officer in writing, and a copy thereof served upon or mailed to the other parties to the proceeding. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the authority. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-53 Oral arguments. The authority may direct or permit the presentation of oral argument with applicant opening and concluding the argument. Not more than one hour on each side of the proceeding will be allowed for argument without special leave of the authority. If more than one person is participating on a side of the proceeding, those parties shall divide the hour. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-54 Recommendations of hearing officer. (a) Submission of recommendations. Upon completion of the contested case the hearing officer shall prepare and submit to the authority the record of the hearing and a report setting forth findings of fact, conclusions of law, and a proposed decision and order.

(b) Contents of record. The record shall include the application, notice of hearing, motions, rulings, orders, a transcript of the hearing, documentary evidence, the proposed findings and objections, the report of the hearing officer, and all other matters placed in evidence.

(c) Service of hearing officer's report. The hearing officer's report and proposed decision and order

shall be served upon all parties. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-55 Exceptions to hearing officer's report and recommendations. (a) File; form; copies; time; service. Within ten working days after service of the report and proposed decision and order, a party may file with the authority his exceptions and memorandum in support thereof. Copies shall be served upon each party to the proceeding.

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

- (1) Set forth specifically the grounds for each exception;
- (2) Identify the objectionable portions of the hearing officer's report and recommended order;
- (3) Identify the portions of the record relied upon by page citation; and
- (4) Grounds not stated and identified in the report and record are waived. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-56 Support of hearing officer's report and recommendations. (a) File; form; copies; time; service. Within ten working days after service of the exceptions, a party may file with the authority a brief in support of the hearing officer's recommendations. Copies shall be served upon each party to the proceeding.

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

- (1) Answer specifically the points to which exceptions were taken;
- (2) State the facts and reasons why report and recommendations must be affirmed; and
- (3) Designate by page citation the portions of the report record relied upon. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-57 Authority action. (a) If no statement of exceptions is filed as herein provided, the authority may proceed to reverse, modify or adopt the recommendations of the hearing officer.

(b) Upon the filing of the exceptions and briefs together with the briefs in support, the authority may render its decision forthwith upon the record; or if oral argument has been allowed, after oral argument; or may reopen the docket and take further evidence or may make such other disposition of the case that is necessary under the circumstances. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-2, 91-11)

§12-301-58 Issuance of decisions and orders. (a) A proceeding shall stand submitted for decision by the authority after the taking of evidence, the submission of a report by the hearing officer, and the filing of such briefs or the presentation of such oral argument as may have been allowed. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. Such proposals shall be mailed to each party to the proceeding and an opportunity given to each party to comment thereon.

(b) Every decision and order adverse to a party to the proceeding, rendered by the authority in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceedings has filed proposed findings of fact, the authority shall incorporate in its decision a ruling which addresses such findings. Such decisions and orders in contested cases shall be rendered within a reasonable time from the presentation of oral argument by the parties which may be set by the authority. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §91-2) (Imp: HRS §91-12)

§12-301-59 Service of decisions and orders. Decisions and orders shall be served by mailing certified copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to an application proceeding has appeared by a representative, service upon such representative shall be deemed to be service upon the party. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-12)

§12-301-60 Reconsideration of decisions and orders.

(a) The authority may entertain a written petition to consider the final order, decision, or ruling. Denial of such petitions shall be in writing with reasons stated therefor.

(b) Petitions for reconsideration of any final order, decision, or ruling of the authority shall be filed not later than ten days after service of said order, decision, or ruling upon the party filing the petition.

(c) Written decisions and orders shall be rendered by the authority within fifteen days of close of hearing on a motion for reconsideration, unless otherwise extended by the authority. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-61 Appeals. Parties to a contested case proceeding before the authority may obtain judicial review of decisions and orders issued by the authority in the manner set forth in chapter 91-14, Hawaii Revised Statutes. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §91-2) (Imp: HRS §91-14)

SUBCHAPTER 6

RULE MAKING PROCEDURES AND DECLARATORY RULINGS

§12-301-62 Authority. All rules and regulations of the authority shall be adopted by the authority and approved by the mayor in accordance with Hawaii Revised Statutes; provided, however, that such procedure shall not be applicable to regulations concerning only the internal management of the department or the authority not affecting the private rights of or procedures available to the public, to declaratory rulings, or to intra-agency memoranda. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §§91-1(4), 91-3)

§12-301-63 Petition and procedures for adoption, amendment, or repeal of rules and regulations. (a) The authority may adopt, amend, or repeal any of its rules by following the procedures outlined herein, except that the authority need not formally file a petition and need only submit a draft of the proposed changes.

(b) Any interested person may petition the authority requesting the adoption, amendment, or repeal of any provision of these rules and regulations.

(c) Filing of petition.

(1) Any person seeking the adoption, amendment, or repeal of any provision of these rules and regulations shall file a petition with the department on a form provided by the department, which petition shall include or be accompanied by the following information and documentation:

(A) A statement of the nature of the applicant's interest;

(B) A draft of the proposed rule or amendment or a designation of the provisions sought to be repealed;

(C) Statement of the reasons in support of the petition; and

(D) A public hearing and notice fee as set forth in the County budget.

(2) Upon receipt of all required fees, information, and documentation, the director shall certify

that the applicant's petition is complete and shall refer the petition to the authority.

(d) Disposition of petition. After the director finds that the application is complete, it shall be referred to the authority. The petition shall be considered submitted to the authority as of the first meeting it is properly placed on the agenda. Within thirty days after submission, the authority shall either deny the petition in writing and state the reasons for such denial or initiate proceedings for action according to the provisions herein.

(e) Public hearing; notice. When the authority proposes to adopt, amend, or repeal a rule, it shall schedule a public hearing by giving thirty days notice. Notice shall include a statement of the substance of the proposed rule, and the date, time, and place where interested persons may be heard. Notice shall be posted on at least one community notice board in each of the four districts on Molokai (Kaunakakai, Kualapuu, Maunaloa and East End) that is accessible to the general public, and shall be published at least once in a newspaper that is printed and issued at least once weekly on the Island of Molokai. If no such newspaper exists at the time of notification, notice shall be published in a newspaper which is printed and issued at least twice weekly in the County of Maui, and shall be mailed to all persons who have made a timely, written request of the authority for advanced notice of its rulemaking proceedings.

(f) Scope. All interested persons shall be given the opportunity to submit data, views, or written or oral argument. The authority shall incorporate in the record and consider all written or oral submissions regarding the proposed rule or amendment.

(g) Decision. The authority may make its decision at the public hearing or announce then the date it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the authority shall, if requested to do so by an interested person, issue a concise statement of reasons for and against its determination.

(h) Mayoral approval. The adoption, amendment, or repeal of these rules shall be subject to mayoral approval.

(i) Emergency rules. If the authority finds an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than

twenty days notice of hearing, and states its reasons in writing, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as practicable.

(j) Filing; effect. Upon mayoral approval, certified copies of all rules shall be filed in the office of the county clerk and shall become effective ten days thereafter.

(k) Emergency rules; effect; notice. Emergency rules shall be effective upon filing, but for not longer than one hundred twenty days without renewal. The authority shall post a copy of the emergency rule on at least one community notice board in each of the four districts on Molokai (Kaunakakai, Kualapuu, Maunaloa and East End) that is accessible to the general public, and shall publish a copy of the emergency rule at least once in a newspaper that is printed and issued at least once weekly on the island of Molokai within five days of filing herein. If no such newspaper exists at the time of notification, notice shall be published in a newspaper which is printed and issued at least twice weekly in the County of Maui. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4, 91-6)

§12-301-64 Declaratory rulings. a) Applicability. Any interested person may petition the authority for a declaratory order as to applicability of any statutory provision or of any rule or order of the department or the authority.

(b) Filing of petition.

(1) Any person seeking a declaratory ruling shall file a petition with the department on a form provided by the department. The petition shall include or be accompanied by the following information and documentation:

- (A) The name, address, and telephone number of the applicant;
- (B) A statement of the nature of applicant's interest, including reasons for the submission of the petition;
- (C) A designation of the specific provision, rule or order in question;
- (D) A complete statement of facts;
- (E) A statement of the position or contention of the applicant; and

- (F) A memorandum of authorities, including any legal authorities, containing a full discussion of the reasons in support of such position or contention.
- (2) Upon receipt of all required information and documentation, the director shall review the petition for completeness and refer the petition to the authority.
- (c) Disposition of petition.
 - (1) The authority may for good cause refuse to issue a declaratory ruling where:
 - (A) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future;
 - (B) The applicant's interest is not of the type which would give him standing to maintain an action if he were to seek judicial relief;
 - (C) The issuance of the declaratory ruling may adversely affect the interests of the County, the authority, the department or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise; or
 - (D) The matter is not within the jurisdiction of the authority.
 - (2) Where any question of law is involved, the authority may refer the petition to the corporation counsel. The authority may also refer the petition to other agencies where it deems it necessary or desirable.
 - (3) The authority shall promptly notify the applicant of the disposition of the petition.
- (d) Status of orders. Orders disposing of petitions shall have the same status as other agency orders. Orders shall be applicable only to the factual situation alleged in the petition or set forth in the order. They shall not be applicable to different factual situations or where additional facts not considered in the order exist. [Eff 10/8/89] (Auth: HRS §91-2) (Imp: HRS §91-7)

SUBCHAPTER 7

ORDER TO SHOW CAUSE FOR SPECIAL MANAGEMENT AREA
PERMITS AND EXEMPTIONS, SHORELINE SETBACK
VARIANCES, SPECIAL USE PERMITS, AND
OTHER PERMITS AND APPROVALS

§12-301-65 Purpose. This subsection is intended to outline the procedures and standards available to the authority to insure the continued authority to review special management area permits and exemptions, shoreline setback variances, special use permits, and any other permits or approvals where the commission is the final authority, and special use permit conditions after such permits or approvals are granted. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §205A-22) (Imp: HRS §91-2)

§12-301-66 Enforcement of conditions, representations, or commitments; order to show cause.

(a) The commission, on its own motion, may issue an order to show cause, or the director or any party or interested person may file a petition with the commission for an order to show cause, upon a showing that there has been a failure to perform a condition, representation, or commitment on the part of a permit holder or a person who received an approval where the commission was the final authority. The director, party, or person filing the petition shall serve a copy of the petition for an order to show cause upon the permit holder or the person who received an approval where the commission was the final authority, as the case may be. The petition for order to show cause shall state:

- (1) The interest of the petitioner;
- (2) The permit exemption or approval in question;
- (3) The condition, representation, or commitment that has not been performed or satisfied;
- (4) The basis upon which petitioner has standing to bring such petition;
- (5) Concisely and with particularity the facts, supported by an affidavit, giving rise to a belief that a condition, representation, or commitment has not been performed or satisfied;
- (6) A description and a map of the property affected;

- (7) The specific relief requested; and
- (8) Any other information that the commission requires for an adequate investigation into the matter.

(b) The commission may reject any petition that is incomplete, inaccurate, or fails to comply with the rules of the commission, or if it finds that petitioner lacks standing. The rejected petition shall be returned to the petitioner.

(c) The commission may request the assistance of the director and department staff in the investigation of any alleged breach of a condition, representation, or commitment.

(d) Whenever the commission has reason to believe that there has been a failure to perform according to conditions imposed, or representations or commitments made, the commission shall issue and serve upon the party or person bound by the conditions, representations, or commitments, an order to show cause why the permit should not be revoked, amended, or modified, or why the proposed action should not be deemed to be a development, as the case may be. The commission shall serve the order to show cause in writing at least thirty days before the hearing. 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 sections of the statutes, ordinances, or rules involved; and
- (5) A statement that any party may retain counsel if the party so desires.

(e) The commission shall conduct a hearing on an order to show cause in accordance with the requirements of subchapter 9 of these rules, where applicable. Any procedure in an order to show cause hearing may be modified or waived by stipulation of the parties and informal disposition may be made in any case by stipulation, agreed settlement, consent order, or default. [Eff 10/8/89, am and comp 7/27/14] (Auth: HRS §§91-2, §§205A-22, 205A-29)

§12-301-67 Repealed. [R 7/27/14]

SUBCHAPTER 8

MAXIMUM TIME PERIOD FOR REVIEW AND
DECISION-MAKING OF ALL BUSINESS AND
DEVELOPMENT-RELATED PERMIT APPROVALS AND LICENSES

§12-301-68 Maximum time period. Except for state administered permit programs delegated, authorized, or approved under federal law, the authority shall review and make a decision on business and development-related permit approvals and licenses within one hundred twenty days from:

(a) The date the application is deemed completed by the director;

(b) The closing of public hearing on the application; or

(c) The conclusion of a contested case proceeding, whichever is later.

This time period shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the authority from reviewing and making a decision within one hundred twenty days. This time period may be extended with the consent of the applicant or, if there is a contested case, the consent of all parties. [Eff 5/31/99, am and comp 7/27/14] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-301-69 Repealed. [R 7/27/14]

SUBCHAPTER 9

HEARINGS ON APPEALS OF NOTICES OF
VIOLATION AND HEARINGS ON ORDERS TO SHOW CAUSE

§12-301-70 Purpose. This subchapter governs procedures before the commission for the hearing of appeals of notices of violation and orders to show cause. These procedures may be modified or waived by the parties with the consent of the chairperson. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-71 Parties. The director and the parties served shall be parties to the proceedings. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-72 Contents of the notice of appeal from a notice of violation. The notice of appeal shall:

- (1) Identify the party or parties taking the appeal;
- (2) Designate the notice of violation appealed from, and provide a copy of the notice of violation attached as an exhibit;
- (3) Have affixed to the notice of appeal proof that service of the notice of appeal was made on all parties to the appeal. Administrative staff for the commission shall permit a notice of appeal to be filed without the proof of service, but the person who filed the notice of appeal shall file the proof of service within seven days after the filing of the notice of appeal;
- (4) Contain a concise statement setting forth the nature of the appeal, the facts material to consideration of the appeal presented, the alleged error committed by the director, and any relevant statutes, ordinances, or administrative rules pertaining to the matter under appeal;
- (5) Provide the following information:
 - (A) Documents identifying the owner of the subject parcel of land;

- (B) Owner's name, address and, if available, telephone numbers;
- (C) Agent's name, address and telephone numbers, if applicable;
- (D) Tax map key number of the parcel and its street address, if available; and
- (E) Map identifying the site, adjacent roadway, and landmarks. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-73 Service of the notice of appeal. The alleged violator shall serve a file-marked copy of the appeal upon the director and the department of the corporation counsel, in accordance with section 12-301-17, rules of practice and procedure for the Molokai planning commission. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-74 Notice of hearing. The commission shall give written notice of hearing to all parties in accordance with section 91-9.5(b), Hawaii Revised Statutes. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-75 Record. (a) For the purpose of commission decisions, the record shall include:

- (1) All pleadings, motions, and intermediate rulings;
- (2) Evidence received or considered, including oral testimony, exhibits, and matters officially noticed by the commission;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) Report of the officer who presided at the hearing; and
- (6) Staff memoranda submitted to the commission in connection with its consideration of the case.

(b) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(c) No matters outside the record shall be considered by the commission in making its decision except as provided in this chapter. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-76 Hearing procedure. Unless otherwise stipulated by the parties, and subject to orders of the commission, which may alter the sequence of presentation of a case when necessary, hearings under this subchapter shall proceed as follows:

- (1) The director may make an opening statement. The other party may also make an opening statement, either immediately after the director's statement or at the beginning of the other party's case;
- (2) After the opening statement or statements, the director shall produce the evidence in support of the director's case;
- (3) The other party may then produce the evidence in support of the party's case;
- (4) The parties may then respectively offer rebutting evidence only; and
- (5) When the presentation of evidence is concluded, the director may present final arguments, followed by the other party, and then the director in rebuttal, which shall be limited to matters raised in the other party's final argument. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-77 Failure to appear. In the event of a party's failure to appear before the commission after proper notice has been served upon the party, or when a party or a party's representative leaves the hearing while the hearing is in progress, the commission may proceed with such hearing without the party's presence. Failure of a party or a party's representative to appear before the commission after proper notice has been served, or the unauthorized departure of a party or a party's representative during a hearing, shall constitute waiver of a party's right to be heard in person or through counsel and of the party's right to present evidence and argument. [Eff 7/27/14] (Auth: HRS §205A-

27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-78 Failure of witness to appear. In the event of a witness's failure to appear before the commission to testify as a witness after being subpoenaed, the commission may continue the hearing and request that a contempt citation be issued by the circuit court to compel such witness to appear before the commission. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-79 Motions. (a) Time. Motions may be made before, during or after a contested case hearing.

(b) Form; contents. All motions other than those made during a hearing shall be made in writing to the commission, and shall state the relief sought and be accompanied by an affidavit or legal memorandum setting forth the grounds upon which they are based. The commission shall set the time for hearing the motion.

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

(d) Memorandum in opposition. A memorandum in opposition or counter affidavit shall be served on all parties no less than two days before the hearing date. The original and proof of service shall be filed with the commission. The chairperson may extend or shorten the times herein for good cause.

(e) Waiver. Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing without good cause 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 chairperson and opposing counsel or party promptly. [Eff 7/27/14] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-301-80 Evidence. (a) The admissibility of evidence at a hearing shall not be governed by the laws of evidence. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The commission shall give effect to the rules of privilege recognized by law.

(b) Each party may conduct such cross-examination as may be required for a full and true disclosure of facts.

(c) When objections are made to the admission or exclusion of evidence, the grounds for the objection shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken. The chair shall rule on the admissibility of evidence.

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

(e) Exhibits shall conform to the provisions of sections 12-301-16(b) and 12-301-16(c), rules of practice and procedure for the Molokai planning commission, where applicable, and shall be filed with the commission.

(f) Documentary evidence may be received in the form of copies, provided that, upon request, all other parties to the proceeding shall be given an opportunity to compare the copy with the original. If the original is not available, a copy may still be admissible, but the non-availability of the original and the reasons therefore may be considered by the commission when considering the weight of the documentary evidence.

(g) The commission may take notice of facts not subject to reasonable dispute in that they are either generally known within the County or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and generally recognized technical or scientific facts. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-81 Disclosure. (a) Any party may, by written demand, timely filed with the commission, and served upon any other party, request of any other party to the proceeding, the full disclosure of:

- (1) The identity of all witnesses to be called by the other party, unless prohibited by law; and
- (2) All exhibits, including, but not limited to copies of documents, photographs, and other tangible evidence to be introduced by the other party at the hearing.

(b) All demands for disclosure shall continue in effect for the duration of the proceeding and the party to whom the demand is directed shall be under a

continuing duty to disclose the information requested when it becomes available.

(c) The information requested shall be disclosed to the requesting party at least seven days before the hearing. Failure to comply with disclosure requirements may result in the exclusion of evidence subject to the disclosure request. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-82 Discovery. No depositions, interrogatories, or requests for production of documents or other discovery, except as provided by these rules, shall be allowed. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-83 Limiting testimony. To avoid unnecessary cumulative evidence, the chair may limit the number of witnesses and the time for testimony upon a particular issue. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-84 Removal from proceeding. Any person or persons who willfully disrupt a hearing or otherwise compromise the conduct of the hearing shall be removed from the hearing room. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-85 Co-counsel. Where a party is represented by more than one counsel, counsel may allocate witnesses between them, but only one counsel for a party may examine or cross-examine a witness or state any objections or make closing arguments. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-86 Subpoenas. (a) Requests for the issuance of subpoenas requiring the attendance of witnesses shall be presented to the chair in writing, and shall state the reasons why the testimony is material and relevant.

(b) Requests for the issuance of subpoenas shall be presented to the chair not less than ten calendar days before the scheduled hearing, unless otherwise ordered.

(c) No subpoena shall be issued unless the requesting party has complied with this section and gives the name and address of the witness. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-87 Fees and mileage. Witnesses summoned by subpoena shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii, and such fees and mileage shall be paid by the party requesting the subpoena. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-88 Oath. Witnesses shall be placed under oath or affirmation before testifying. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-89 Joint or consolidated appeals of a notice of violation. If two or more parties are entitled to appeal from a notice of violation and their interests are such as to make joinder practicable, they may file a joint notice of appeal and thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the commission upon the commission's own motion, upon motion of a party, or upon stipulation of the parties to the several appeals, if the consolidation will be conducive to the proper dispatch of business and to the ends of justice and will not unduly delay the proceedings. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-90 Substitution of parties. Upon motion and for good cause, the commission may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-91 Transcripts. Should any of the parties request transcripts or appeal the decision of the commission, the commission shall fairly allocate the transcription costs between the parties. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-92 Correction of transcript. Motions to correct a transcript shall be filed within seven working days after receipt of the transcript, unless otherwise directed, and shall be served on all parties. Such motions shall certify the date when the transcript was received. If no objections are received within ten days after date of service, the transcript will, upon approval of the commission, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration to the stenographic transcript of the hearing. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-93 Submission of proposed findings. 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 allowed. A party to the proceeding may submit to the commission proposed findings of fact, conclusions of law, and decision and order within ten days of the close of the hearing and shall serve copies of said proposals on all parties. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-94 Standard of review for appeals of notices of violation. Unless otherwise provided by law, the commission may affirm the notice of violation or the commission may reverse the notice of violation if the commission finds, by a preponderance of the evidence, that the notice of violation is:

- (1) Based on a clearly erroneous finding of material fact or erroneous application of the law; or
 - (2) Arbitrary or capricious in its application; or
 - (3) A clearly unwarranted abuse of discretion.
- [Eff 7/27/14] (Auth: HRS §205A-27; Charter

§§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-95 Order to show cause proceedings, revocation or modification of conditions, orders, or permit. If the commission finds by a preponderance of the evidence that there has been a failure to perform a condition, representation, or commitment on the part of the permit holder, the commission may revoke, amend, or modify the permit, or allow the permit holder a reasonable opportunity to correct or remedy the failure. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-96 Issuance of decision and order. (a) Every decision and order adverse to a party to the proceeding shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling that addresses such findings. Such decisions and orders shall be rendered within forty-five calendar days from the close of oral argument by the parties.

(b) If the commission affirms a notice of violation issued by the director, the appellant shall pay any penalty imposed by the director at the office of the department within ten calendar days of the receipt of the commission's findings of fact, conclusions of law, decision and order. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-97 Service of decisions and orders. Decisions and orders shall be served by mailing certified copies to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to a proceeding has appeared by a representative, service upon the representative or counsel shall be deemed to be service upon the party. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

§12-301-98 Appeals; record. (a) Any party aggrieved by the final decision and order of the commission may seek judicial review in accordance with section 91-14, Hawaii Revised Statutes. Any order to stay the enforcement of the commission's decision shall be by an order of the circuit court pursuant to section 91-14, Hawaii Revised Statutes.

(b) Any party requesting judicial review shall serve a copy of the request upon the commission and all other parties in accordance with the Hawaii Rules of Civil Procedure.

(c) Unless the commission has been notified in writing of a party's request for judicial review within the time permitted for requesting judicial review, the commission, after the time for requesting judicial review has passed, may cause exhibits to be returned to the party introducing the exhibits or order the disposal or destruction of the exhibits if the party does not wish its return, the party cannot be contacted, or if it is impractical or illegal to return such exhibits to the party. [Eff 7/27/14] (Auth: HRS §205A-27; Charter §§8-8.4, 13-2.15) (Imp: HRS §§91-9, 205A-21, 205A-26, 205A-28)

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