DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

Repeal of Chapter 15-16 and Adoption of Chapter 15-219
Hawaii Administrative Rules

February 1, 2012

Chapter 16 of Title 15, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is repealed.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 16

RULES OF PRACTICE AND PROCEDURE

Repealed

§§15-16-1 to 15-16-98 Repealed. [MAR 02 2012]

2989

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

Repeal of Chapter 15-16 and Adoption of Chapter 15-219
Hawaii Administrative Rules

February 1, 2012

Chapter 219 of Title 15, Hawaii Administrative Rules, entitled "Rules of Practice and Procedure", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

SUBTITLE 4

HAWAII COMMUNITY DEVELOPMENT AUTHORITY

CHAPTER 219

RULES OF PRACTICE AND PROCEDURE

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Historical note: Chapter 15-219 is based upon chapter 15-16. [Eff 6/25/81, 1/21/83, 5/31/84, 9/8/86, 10/3/94, R MAR 0 2 2012]

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§15-219-1 Purpose. These rules are adopted pursuant to chapters 91 and 92, Hawaii Revised Statutes ("HRS"), and implement chapter 206E, HRS. This chapter governs practice and procedure before the Hawaii community development authority, and shall be liberally construed to secure the just and efficient

determination of every proceeding. [Eff MAR 0 2 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-2 Definitions. As used in this chapter, except as otherwise required by context:

"Authority" or "HCDA" means the Hawaii community development authority as defined by section 206E-2, HRS;

"Chairperson" means the duly elected chief presiding officer of the authority;

"Community development district" means an area of land designated as a community development district by the legislature in accordance with section 206E-5, HRS;

"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;

"Days" means calendar days unless otherwise specified;

"Executive director" means the executive director of the authority or the executive director's designated representative;

"Hearings officer" means a person duly appointed and authorized by the authority to conduct proceedings on matters within the jurisdiction of the commission for purposes of holding a hearing, taking testimony, and reporting the person's findings and recommendations, together with a transcript of the hearing or a summary of the evidence, to the authority;

"Heeia community development district" means all real property located within the boundaries of the district as established by Session Laws of Hawaii 2011, Act 210;

"HRS" means the Hawaii Revised Statutes;

"Kakaako community development district" means all real property located within the boundaries of the district as established by section 206E-32, HRS;

"Kalaeloa community development district" means all real property located within the boundaries of the district as established by section 206E-191, HRS;

"Party" means any person or governmental agency named or admitted as a party, or properly seeking and

entitled as of right to be admitted as a party, in any proceeding before the authority;

"Person" means individuals, partnerships, corporations, trusts, associations, public or private organizations of any character other than governmental agencies;

"Petition" means an application to the authority by a party which seeks relief under these rules;

"Presiding officer" means any member of the authority or a hearings officer appointed by the authority as such. Unless otherwise designated, the chairperson of the authority shall be the presiding officer;

"Proceeding" means any matter brought before the authority or initiated by the authority which it has jurisdiction to entertain and dispose of;

"Repeated violation" means two or more occurrences of the same type of violation at the same location by the same violator;

"Violation" means nonconformance with the administrative rules of HCDA's community development districts with respect to land use, development standards, permit conditions or associated misrepresentations as follows:

(1) Land use - Utilization of any structure or land for an activity not permitted in the administrative rules of HCDA's community development districts;

(2) Development standards - Location or construction of any structure inconsistent with standards and procedures prescribed in the administrative rules of HCDA's community development districts;

(3) Permit conditions - Breach of a term or condition of any permit or other authorization issued pursuant to the administrative rules of HCDA's community development districts; or

(4) Misrepresentations - Misrepresentation of fact on any application, plan or other information submitted to obtain authority authorization or a permit, including but not limited to representations made in

affidavits, recorded covenants, parking agreements, and development agreements; and

"Violator" means any person or governmental agency that has an interest in the property upon which a violation occurs. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-3 Location and business hours. (a) The office of the authority is at 461 Cooke Street, Honolulu, Hawaii 96813. All communications to the authority shall be addressed to the authority's office, unless otherwise directed.

(b) The office of the authority shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except state holidays or unless otherwise provided by statute or executive order. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§206E-3, 206E-4)

§15-219-4 Applicability. (a) All parties to a proceeding before the authority shall comply with these rules of practice and procedure when appearing before the authority; provided that where these rules are inconsistent with the authority's rules under another chapter, these rules shall be superseded by the specific rule of the other chapter.

(b) For good cause shown and to the extent permitted by law, the authority may waive, modify, or suspend any of the provisions of this chapter. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-5 Delegation to the executive director. The authority may delegate to the executive director such power or authority vested in the authority as it deems reasonable and proper for the effective administration of chapter 206E, HRS, except the power to adopt, amend, or repeal rules, and any power or authority expressly reserved to the authority by statute or rule. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-6 Filing of pleadings and other papers. (a) All pleadings, submittals, petitions, reports, maps, exceptions, plans, memoranda, and other papers required to be filed with the authority in any proceeding shall be filed at the office of the authority within the time limits prescribed by statute, rules, or by order of the authority. Unless otherwise ordered, the date on which the pleading or other paper is received by the authority by hand delivery or by mail shall be regarded as the date of filing. The authority will not accept a facsimile of any document required to be filed with the authority.

(b) All pleadings and other papers filed with the authority shall be:

(1) Typewritten or printed on paper that is 8-1/2 x 11 inches in size, except that maps, charts, tables, exhibits, or appendices may be larger provided that it is folded to the size of the papers to which it is being attached;

(2) Double-spaced, except that footnotes and quotations may be single-spaced; and

(3) Bound.

(c) Reproduction may be by any process, provided all copies are clear and permanently legible.

(d) All pleadings and other papers filed by any party in any proceeding shall state on the first page the nature of the document and the name, mailing address, and telephone number of the party or party's counsel.

(e) The original of each pleading or other paper shall be signed in black ink by the party or an individual acting in a representative capacity for the party. The signature constitutes verification that the paper has been read and that to the best of the party's or the individual acting in a representative capacity for the party's knowledge:

(1) Every statement contained therein is true;

(2) No such statement is misleading; and

(3) That it is not interposed for delay.

(f) All pleadings shall contain a table of contents and table of authorities if the supporting legal memorandum exceeds twenty pages.

(g) Unless otherwise required by this chapter or the authority, there shall be filed with the authority an original plus thirty copies of each pleading or other paper, or amendment thereof. The presiding officer or executive director may require that additional copies be provided or served on other parties. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 91-9, 206E-4)

§15-219-7 Defective papers. Any papers filed with the authority which are not in compliance with these rules, orders, or any other applicable rules shall be accepted for filing; provided that the mere fact of filing shall not waive any defect in the papers. The authority may, on its own motion or on motion of any party, strike any defective papers or require their amendment. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-8 Amended pleadings. All pleadings may be amended at any time before service of a responsive pleading and shall be effective as of the date of the receipt of the amendment. The amended pleading shall be filed with the authority and served on all parties. [Eff MAR 02 2012] (Auth: HRS §§91-10, 206E-4) (Imp: HRS §§91-10, 206E-4)

§15-219-9 Retention of papers. All papers filed with the authority shall be retained by the authority in its files; provided that the executive director may permit the withdrawal of original copies of papers upon submission of properly authenticated copies to replace the original papers. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-10 Computation of time. In computing any period of time under the rules as provided in this chapter by notice, or by any order, or rule 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 state holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or state holiday. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-11 Continuances or extensions of time. Whenever a party is required to take action within the period prescribed or allowed by an applicable order, statute, or rule, the presiding officer may:

(1) With or without notice, extend such period before the expiration of the prescribed period;

(2) Upon written motion, permit the act to be done after the expiration of a specified period for good cause shown; or

(3) Approve a written stipulation signed by all parties to the proceeding extending such time period. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-12 Service of process. (a) The authority shall cause to be served all decisions, orders, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.

(b) All papers filed by a party shall be served upon all parties or their counsel of record and shall contain a certificate of service. Any counsel entering an appearance subsequent to the proceeding shall notify all other counsel then of record and all parties not represented by counsel of such fact.

(c) Service of papers shall be made personally or by certified mail with return receipt requested.

(d) Service upon a party, other than the authority, shall be deemed complete upon the occurrence of at least one of the following:

(1) The party or its counsel of record is personally served; or

(2) The document is properly stamped, addressed and mailed to the last known address of the party on file with the authority or to its attorney of record in accordance with subsection (c).

(e) Whenever a party has the right or duty to do some act or initiate proceedings within a prescribed period after the service of a notice or other paper, and the notice or paper is served by mail, two days shall be added to the prescribed period.

[Eff MAR 02 2012] (Auth: HRS §§91-9, 91-9.5, 206E-4) (Imp: HRS §§91-9, 91-9.5, 206E-4)

§§15-219-13 to 15-219-22 (Reserved).

SUBCHAPTER 2

PROCEEDINGS BEFORE THE AUTHORITY

§15-219-23 Appearances before the authority. (a) Any party to a proceeding before the authority may appear pro se if the party is an individual or through an authorized representative if the party is partnership, corporation, trust, association, or public or private organization. An officer or employee of a governmental agency which is a party to any proceeding before the authority may represent the agency in any proceeding before the authority.

(b) A party may be represented by an attorney in any proceeding before the authority. The attorney who appears before the authority shall be authorized to practice law in Hawaii and be a member in good standing with the Hawaii state bar. At the discretion of the authority, an attorney who is not authorized to practice law in Hawaii may be allowed to appear before the authority if the attorney is in good standing with

the bar of any state in which the attorney is authorized to practice and if the attorney associates with an attorney authorized to practice in Hawaii and who is in good standing of the Hawaii state bar.

(c) Any party or individual acting in a representative capacity for a party who signs a pleading or brief, enters an appearance at a proceeding, or transacts business with the authority, by such act represents that such party or individual is legally authorized to do so and shall comply with the laws of this State and the rules of the authority. The authority may at any time require any individual acting in a representative capacity before the authority to prove that individual's authority and qualification to act.

(d) All former employees of the State, as that term is defined in section 84-3, HRS, shall comply with the provisions of chapter 84, HRS, before appearing in a representative capacity before the authority.

[Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 91-9, 206E-4)

§15-219-24 Disqualification of authority member or hearings officer. (a) No authority member or hearings officer shall hear or participate in decision-making on a matter before the authority in which the authority member or hearings officer has a pecuniary or business interest in the matter being heard or is related within the first degree by blood or marriage to any party to the proceeding; provided, however, that if, after disclosing the nature of the circumstances of the pecuniary or business interest or consanguinity to the parties, the parties expressly agree to waive any objection, then the authority member or hearings officer may hear the matter and participate in decision-making.

(b) Any party to a proceeding before the authority may file a petition to disqualify an authority member or hearings officer pursuant to subsection (a) up to five days before the commencement of the hearing. The petition shall be accompanied by a signed declaration stating the facts supporting the party's petition to disqualify an

authority member or hearings officer. The authority member or hearings officer against whom the petition to disqualify is filed shall be afforded an opportunity to respond to the facts alleged in the petition. A majority of the remaining members of the authority entitled to vote on the particular matter shall decide whether the challenged authority member or hearings officer should be disqualified from the proceeding. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-25 Ex parte communications. (a) No person, whether or not a party to or participant in a proceeding before the authority, shall make an unauthorized ex parte communication, either written or oral, about the proceeding to any authority member or hearings officer who will be a participant in the decision-making process.

(b) All ex parte communications received by any authority member or hearings officer which are known or believed to be unauthorized at the time of receipt shall be immediately disclosed to all parties to the proceeding and made an official part of the record.

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

(1) Communications between an authority member and HCDA staff or HCDA counsel, except where there is a pending appeal from an action taken by the executive director, in which case communication between a hearings officer and HCDA counsel is permitted;

(2) Communications between a hearings officer and HCDA staff or HCDA counsel, except where there is a pending appeal from an action taken by the executive director, in which case communication between a hearings officer and HCDA counsel is permitted;

(3) Communications which relate solely to matters which an authority member or hearings officer is authorized by the authority to dispose of on an ex parte basis, including communications regarding scheduling or other

procedural matters regarding the course of the proceeding; and

(4) Communications which all parties to the proceeding agree after adequate notice and an opportunity for all parties to participate.

[Eff MAR 02 2012] (Auth: HRS §§91-13, 206E-4) (Imp: HRS §§91-13, 206E-4)

§15-219-26 Appointment of hearings officer. To the extent permitted by law, the authority may duly appoint a hearings officer pursuant to section 92-16, HRS. A hearings officer so appointed shall have all of the powers which would be held and enjoyed by the chairperson or authority or any member thereof in connection with the hearing. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-27 Notice of public hearing. Whenever the authority is required to conduct a public hearing, the authority shall give at least thirty days' notice in accordance with the requirements of sections 1-28.5 and 92-41, HRS, the cost of which shall be borne by the party initiating the public hearing.
[Eff MAR 02 2012] (Auth: HRS §§91-9, 91-9.5, 206E-4) (Imp: HRS §§91-9, 91-9.5, 206E-4)

§15-219-28 Board proceedings, generally. Unless otherwise provided in this chapter, the following shall apply to proceedings before the authority:

(1) The presiding officer shall control the schedule and course of the proceeding, administer oaths, receive offers of proof, receive evidence, hold appropriate conferences before and during proceedings, rule upon all objections or motions which do not involve a final determination of the proceedings, fix the time for the filing of papers, and dispose of any other matter or take all other actions authorized by law that are deemed necessary to the orderly and just conduct of a proceeding;

(2) Witnesses shall be placed under oath prior to testifying;
(3) To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue;
(4) The presiding officer may require the production of further evidence upon any issue or may call other competent witnesses to testify upon any issue;
(5) The presiding officer shall not be bound by the common law rules relating to the admission or rejection of evidence. The presiding officer may exercise discretion in these matters, limited only by considerations of relevancy, materiality, and repetition, and shall give effect to the rules of privilege recognized by law;
(6) The presiding officer may receive copies or excerpts of documentary evidence if the original is not readily available, provided that all parties are afforded the opportunity to compare the copy or excerpt with the original if so requested;
(7) The presiding officer may take notice of judicially recognizable facts or generally recognized technical or scientific facts within the authority's specialized knowledge, provided that the parties are notified before or during the hearing and are afforded an opportunity to contest the facts noticed;
(8) The presiding officer may postpone or continue any hearing to ensure the orderly and just conduct of a hearing;
(9) No matters outside the record shall be considered;
(10) The presiding officer may remove any person who willfully disrupts a proceeding; and
(11) All proceedings shall be recorded. It shall not be necessary to transcribe the record unless requested by a party to the proceeding or the presiding officer. If a party to the proceeding requests a court reporter, then the cost of the transcription shall be borne

by the requesting party. [Eff MAR 02 2012] (Auth: HRS §§91-9, 91-10, 206E-4) (Imp: HRS §§91-9, 91-10, 206E-4)

§15-219-29 Substitution of parties. Upon written motion and for good cause show, the presiding officer may order the substitution of parties. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-30 Consolidation and separation. The presiding officer, upon the presiding officer's own initiative or upon written motion, may consolidate for hearing two or more proceedings that involve related questions of fact or law or may separate matters in issue for hearing in two or more separate proceedings if the presiding officer finds that consolidation or separation will be conducive to the proper dispatch of the presiding officer's business, to the ends of justice, and will not unduly delay the proceedings. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-31 Subpoenas. (a) Upon written motion of a party to the proceedings or upon its own initiative, the authority shall have the power to issue subpoenas as provided by law, requiring the attendance of witnesses or the production of documents.

(b) A party requesting the issuance of a subpoena shall file its written motion no later than seven days before the date of the proceeding at which the subpoenaed witness is to testify or documents are to be produced. The motion shall identify the person or documents to be subpoenaed and state the reasons why the testimony of the witness or production of documents is believed to be material and relevant to the issues involved.

(c) The requesting party shall be responsible for having the subpoena served and paying a witness fee in the same manner as in the case of witness subpoenaed to

testify before a circuit court. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-32 Motions. (a) All motions, other than those made during a proceeding, shall:

(1) Be in writing;

(2) State the grounds for the motion;

(3) Set forth the relief or order sought; and

(4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of law.

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

(c) The moving party shall serve a copy of the motion on all other parties to the proceeding and shall file an original plus thirty copies and proof of service with the authority.

(d) An opposing party shall serve a counter declaration and a memorandum in opposition to the motion and of the authorities relied upon not later than seven days after being served with any written motion, or, if the hearing on the motion will occur less than seven days after the motion is served, at least forty-eight hours before the time set for hearing, unless otherwise ordered by the presiding officer. The presiding officer may order an opposing party to file its memorandum in opposition earlier than the expiration of the seven day period. The opposing party shall file an original plus thirty copies of its counter declaration, memorandum in opposition to the motion, and proof of service with the authority.

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

(f) 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.

(g) Motions that do not involve the final determination of a proceeding may be heard and determined by the presiding officer.

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

(i) If a hearing on the motion is not requested, the authority or presiding officer, if the motion does not involve the final determination of the proceeding, may decide the matter upon the pleadings, memoranda, and other documents filed with the authority.
[Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-33 Authority decision. (a) Official copies of authority decisions, orders, and other papers issued by it shall be effectuated under the signature of the chairperson or by such other person as may be authorized by the authority.

(b) Unless otherwise indicated in the decision, order or other paper issued by the authority, the effective date shall be the date of filing with the authority.

(c) Copies of authority decisions, orders, and other papers issued by it shall be available for public inspection in the office of the authority during business hours, or may be obtained upon request and upon the payment of a reasonable charge, if any.
[Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-34 Appeal from action of executive director. (a) Any party may appeal from an action or decision of the executive director to the authority by filing a petition within thirty days of the effective date of the executive director's action or decision.

(b) The petition shall be in writing and shall:

(1) State appellant's name, mailing address, telephone number;
(2) Identify the property subject to the executive director's action or decision, and the appellant's interest therein;
(3) Identify the action or decision of the executive director that is being appealed;
(4) State all pertinent facts; and
(5) State the reasons for the appeal, including a statement as to why the appellant believes that the executive director's action was based on an erroneous finding of a material fact, or that the executive director acted in an arbitrary or capricious manner, or engaged in an abuse of discretion.

(c) Upon filing of the petition, appellant shall be entitled to a contested case hearing, as provided for in subchapter 3. [Eff MAR 02 2012] Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 206E-4)

§§15-219-35 to 15-219-44 (Reserved).

SUBCHAPTER 3

CONTESTED CASES

§15-219-45 Contested cases; applicability. The right to a contested case hearing shall exist where provided for by an administrative rule of the authority or where required by law. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-46 Initiation of contested case by petition. A contested case shall commence upon the filing of a petition for permitted relief with the authority within thirty days of the action or decision for which the contested case hearing is sought. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-47 Contents of contested case petition.
(a) The petition shall state the following:
(1) Name, address, and telephone number of the petitioner and the petitioner's legal counsel, if any, which shall be updated by the petitioner at all times;
(2) A brief and concise factual statement of the petitioner's claim;
(3) The law or rule which affords petitioner the right to a contested case hearing;
(4) The names of all respondents or identities against whom the petition is brought; and
(5) A brief statement of the relief sought by the petitioner.
(b) If the petition is not in substantial compliance with subsection (a), the authority may request that the petitioner submit an amended petition in compliance thereto. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-48 Action by authority. Upon the commencement of a contested case proceeding, the authority shall assign the contested case for further proceedings before the authority or appoint a hearings officer as provided in section 15-219-26. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-49 Intervention in contested case.
(a) A person or governmental agency may move to intervene and become a party to a contested case proceeding by filing a timely written motion in accordance with section 15-219-32.
(b) The motion to intervene shall state the following:
(1) Name, address, and telephone number of the applicant and the applicant's legal counsel, if any, which shall be updated by the applicant at all times;

(2) The nature of the applicant's statutory or other right to participate in the contested case proceeding;
(3) The nature and extent of the applicant's property, financial, or other interest in the pending contested case proceeding;
(4) The other means by which applicant's interest may be protected;
(5) The extent to which applicant's interest will not be represented by existing parties to the contested case proceeding;
(6) The extent to which applicant's participation can assist in the development of a sound record;
(7) The extent to which applicant's participation will broaden the issues or delay the proceeding; and
(8) Whether applicant's position is in support of or in opposition to the relief sought.

(c) Where the contested case proceeding is to be conducted as a public hearing, a motion to intervene shall be filed by the deadline indicated in the published notice of public hearing.

(d) Where the contested case proceeding is initiated by petition pursuant to section 15-219-46, a motion to intervene shall be filed no later than twenty days after the petition is filed.

(e) Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-50 Notice of contested case hearing. (a) Where the contested case proceeding is to be conducted as a public hearing, the presiding officer shall provide notice of the contested case hearing in accordance with section 15-219-27.

(b) Where the contested case proceeding is initiated by petition pursuant to section 15-219-46, the presiding officer shall provide notice of the contested case hearing to the petitioner and any other parties of record in accordance with sections 91-9 and

91-9.5, HRS. [Eff MAR 02 2012] (Auth: HRS §§91-9, 91-9.5, 206E-4) (Imp: HRS §§91-9, 91-9.5, 206E-4)

§15-219-51 Response; contested case. By the time specified by the presiding officer, each respondent shall file and serve upon each party a written response stating briefly therein a counterstatement of the facts, circumstances, laws, rules, or reasons in defense thereof, and shall specifically admit or deny the allegations of the petition. The response shall be filed at least ten days prior to the contested case hearing. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-52 Procedure at contested case hearing. (a) Proceedings shall be held as provided in section 15-219-28 and in accordance with the requirements of sections 91-9 and 91-10, HRS.

(b) The hearing shall be deemed closed the end of the presentation of the evidence or upon completion of final arguments or upon the filing of post-hearing memoranda, whichever occurs later.

(c) The authority may re-open a contested case hearing which has been declared closed but before it renders its decision for the sole purpose of admitting new evidence relevant to the issues in the contested case with notice to all parties. The parties shall be allowed reasonable time in which to submit rebuttal evidence and arguments.

(d) Any procedure may be modified or waived by stipulation of the parties, and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-53 Proposed decision and order; contested case. (a) Where a decision is adverse to a party to the proceeding other than the authority itself and:

(1) Not all of the members of the authority entitled to vote on any given matter have heard and examined all the evidence; or

(2) A hearings officer presided over the contested case hearing, the decision shall not be made until a proposed decision and order is served upon all the parties and any party adversely affected is afforded an opportunity to file exceptions and present argument to the authority in accordance with section 91-11, HRS.

(b) Any party which files exceptions or submits written argument in support thereof shall do so within twelve days of the service of the proposed decision and order, or within such other time as may be designated by the presiding officer. [Eff MAR 02 2012] (Auth: HRS §§91-9, 91-11, 206E-4) (Imp: HRS §§91-9, 91-11, 206E-4)

§15-219-54 Authority decision in contested case. (a) The authority shall render its decision, order, or ruling within a period of not more than ninety days after the close of the contested case hearing or filing of exceptions by a party adversely affected by a proposed decision and order or upon completion of oral arguments, whichever occurs later, unless a longer period of time is agreed upon by all parties.

(b) If the authority's decision is adverse to a party to the proceeding, it shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law, and shall include a ruling on each proposed finding of fact if a party to the proceeding filed proposed findings of fact. Any proposed findings of fact not expressly ruled upon by the authority are deemed to be denied.

(c) The authority shall deliver or mail a certified copy of the decision and order and accompanying findings and conclusions to each party or party's attorney of record within a reasonable time after its adoption by the authority.
[Eff MAR 02 2012] (Auth: HRS §§91-9, 91-12, 206E-4) (Imp: HRS §§91-9, 91-12, 206E-4)

§15-219-55 Reapplication after withdrawal. The authority shall not accept a contested case petition for substantially the same project that was previously filed with the authority and subsequently withdrawn by the petitioner after the notice of a contested case hearing had been issued until two years have passed since the date of such withdrawal. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§91-9, 206E-4)

§15-219-56 Appeal from contested case. Parties to a contested case proceeding may seek judicial review thereof in the manner set forth in section 91-14, HRS. [Eff MAR 02 2012] (Auth: HRS §§91-13.1, 206E-4) (Imp: HRS §§91-13.1, 206E-4)

§§15-219-57 to 15-219-66 (Reserved).

SUBCHAPTER 4

RULEMAKING PROCEDURE

§15-219-67 Initiation of rulemaking procedure. (a) The authority may, at any time on its own motion, initiate proceedings to adopt, amend, or repeal any rule of the authority.

(b) Any interested person or governmental agency may petition the authority to adopt, amend, or repeal any rule of the authority. Petitions for rulemaking filed with the authority shall become matters of public record. [Eff MAR 02 2012] (Auth: HRS §§91-6, 206E-4) (Imp: HRS 91-6, 206E-4)

§15-219-68 Form and content of petition for rulemaking. Petitions for rulemaking shall conform to the requirements of section 15-219-6 and shall contain:

(1) The name, address, and telephone number of each petitioner;

(2) The signature of each petitioner;
(3) A draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired;
(4) A statement of the petitioner's interest in the subject matter; and
(5) A statement of the reasons in support of the proposed rule, amendment, or repeal.

[Eff MAR 02 2012] (Auth: HRS §§91-6, 206E-4) (Imp: HRS 91-6, 206E-4)

§15-219-69 Action on petition for rulemaking. The authority shall, within sixty days after the filing of a petition for rulemaking, either deny the petition in writing, stating its reasons for its denial, or initiate rulemaking proceedings in accordance with section 91-3, HRS. Denial of a petition shall not preclude the authority from acting on its own motion on any matter disclosed in the petition.
[Eff MAR 02 2012] (Auth: HRS §§91-6, 206E-4) (Imp: HRS §§91-2, 206E-4)

§15-219-70 Notice of public hearing on rulemaking. (a) Whenever pursuant to a petition or upon its own motion, the authority proposes to adopt, amend or repeal a rule of the authority, the authority shall give at least thirty days' notice for a public hearing on rulemaking.

(b) The notice of public hearing shall be published in accordance with the requirements of sections 1-28.5, 91-3, 92-14, and 206E-5.6, HRS. The notice of hearing shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the authority's rulemaking proceedings.

(c) The notice of public hearing and full text of the proposed rulemaking shall be made available on the website of the office of the lieutenant governor in accordance with section 91-2.6, HRS, and on HCDA's website in accordance with section 206E-5.6, HRS.
[Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-3, 92-41)

§15-219-71 Authority hearing procedures for rulemaking. (a) The authority shall render its decision on the proposed rulemaking at a public hearing separate from the hearing that the proposed rulemaking is presented.

(b) The public hearings before the authority shall be presided over by the chairperson or, in the chairperson's absence, the vice chairperson or, in the vice chairperson's absence, by another member designated by the authority.

(c) Each public hearing shall be held at the time and place set in the notice of hearing, but may be continued by the presiding officer to a later date or different place without notice other than the announcement at the hearing.

(d) At the commencement of the hearing, the presiding officer shall outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe. The presiding officer shall be authorized to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(e) Interested individuals and agencies shall have a reasonable opportunity to offer oral testimony at the public hearing with respect to the matters specified in the notice of hearing. To avoid unnecessary cumulative evidence or to ensure that each individual has an equal amount of time to testify, the presiding officer may limit the time for testimony per individual or per issue. Before proceeding to testify, witnesses shall state their name, address, and who they represent at the hearing, and shall give such information regarding their appearance as the presiding officer may request. Every witness may be subject to questioning by the members of the authority or by HCDA staff.

(f) Interested individuals or agencies shall also be afforded an opportunity to submit written testimony, comments, data, views, or arguments that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the

presiding officer for good cause. An original plus thirty copies shall be submitted.

(g) Unless otherwise specifically ordered by the authority, testimony given at the public hearing shall not be reported verbatim.

(h) All supporting written statements, maps, charts, tabulations, or similar data which are deemed by the presiding officer to be authentic and relevant shall be made part of the record. Unless the presiding officer finds that furnishing copies is impracticable, an original plus thirty copies of the exhibits shall be submitted. [Eff MAR 02 2012] (Auth: HRS §§91-2, 91-6, 206E-4) (Imp: HRS §§91-2, 91-6, 206E-4)

§15-219-72 Authority action. The authority shall consider all testimony, comments, and documents of record regarding the proposed rulemaking before engaging in final decision-making on the proposed rulemaking. Unless otherwise provided by law, final decision-making shall not occur earlier than five business days after the notice is published pursuant to section 15-219-70. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4) (Imp: HRS §§91-2, 91-3, 206E-4)

§§15-219-73 to 15-219-82 (Reserved).

SUBCHAPTER 5

DECLARATORY RULINGS

§15-219-83 Petition for declaratory relief. (a) Any interested person or governmental agency may petition the authority for a declaratory order as to the applicability of any statutory provision or rule or order of the authority.

(b) In addition to the requirements contained in section 15-219-6, the petition shall set forth the following:

(1) The name, address, and telephone number of each petitioner or petitioner's counsel of record;
(2) A designation of the specific statute, rule, or order in question;
(3) A statement of petitioner's interest in the subject matter, including the reasons for submitting the petition;
(4) A statement of the petitioner's position or contention;
(5) A memorandum of authorities, containing a full discussion of the reasons and legal authorities in support of petitioner's position or contention; and
(6) Whether a hearing is requested, and if so, the reasons why the matters alleged in the petition, together with supporting legal memoranda, will not permit the fair and expeditious disposition of the petition.

(c) If the petition is not in substantial compliance with subsection (b), the authority may request that the petitioner submit an amended petition in compliance thereto. [Eff MAR 02 2012] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-219-84 Authority action on declaratory rulings. (a) Within ninety days after the authority's receipt of a petition for declaratory order, the authority shall:
(1) Deny the petition in writing, stating the reasons for the denial;
(2) Issue a declaratory order on the matters contained in the petition; or
(3) Set the matter for hearing, provided that if the matter is set for hearing, the authority shall render its findings and decision within one hundred twenty days after the close of the hearing.

(b) The authority may refuse to issue a declaratory ruling for good cause. Without limiting the generality of the foregoing, the authority may so refuse where:

(1) The question is speculative or purely hypothetical and does not involve existing fact, or facts which can reasonably be expected to exist in the near future;
(2) The petitioner's interest is not a type which would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;
(3) The issuance of the declaratory ruling may affect the interests of the authority, or any of its officers or employees, in litigation that is pending or may reasonably be expected to arise; or
(4) The matter is not within the jurisdiction of the authority. [Eff MAR 02 2012] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§15-219-85 Notice of hearing on petition for declaratory ruling; procedure. (a) In the event a hearing is ordered by the authority, the presiding officer shall provide at least twenty days' notice of the hearing to the petitioner and any other parties of record.

(b) Proceedings shall be held as provided in section 15-219-28. [Eff MAR 02 2012] (Auth: HRS §§91-9, 206E-4) (Imp: HRS §§92-7, 206E-4)

§15-219-86 Applicability of declaratory order. An order disposing of a petition shall apply only to the fact situation described in the petition or set forth in the order. [Eff MAR 02 2012] (Auth: HRS §§91-8, 206E-4) (Imp: HRS §§91-8, 206E-4)

§§15-219-87 to 15-219-96 (Reserved).

SUBCHAPTER 6

ADMINISTRATIVE PROCEDURES RELATING TO THE ENFORCEMENT OF THE ADMINISTRATIVE RULES OF HCDA'S COMMUNITY DEVELOPMENT DISTRICTS

§15-219-97 Applicability. This subchapter is promulgated for the enforcement of the administrative rules for the authority's community development districts. Penalties for violations of such rules shall be imposed as set forth in this subchapter. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-219-98 Waiver or suspension of administrative rules. (a) Every petition for a waiver of any of the provisions of the administrative rules of HCDA's community development districts shall be in writing, signed by the petitioner, and submitted to the authority for approval.

(b) Every petition shall state:

(1) The name, address, and telephone number of the petitioner and the petitioner's legal counsel, if any, which shall be updated by the petition at all times;

(2) The specific provision of the administrative rules of HCDA's community development districts for which petitioner seeks a waiver;

(3) The effect of the strict application of the provision for which petitioner seeks a waiver;

(4) The reasons why the petitioner seeks to avoid the strict application of the provision for which petitioner seeks a waiver;

(5) An alternate plan or other means by which the spirit and intent of the provision for which petitioner seeks a waiver can be accomplished other than the strict application of the provision;

(6) The extent to which such waiver is in the best interest of the subject community development district; and

(7) The extent to which such waiver may endanger the health, safety, or welfare of the subject community development district.

(c) The authority may require the submission of additional information after the petition has been submitted. If a petition is deemed incomplete or otherwise deficient by the authority, the authority shall not consider or act upon the petition.

(d) The failure of the authority to act on a completed petition for a waiver within ninety days of receipt of the completed petition shall be deemed a denial of the petition.

(e) No waiver shall be granted by the authority unless the petition and supporting information demonstrate that:

(1) Granting the waiver will not endanger the health, safety, or welfare of the subject community development district; and

(2) There is either an alternate means for which the spirit and intent of the provision for which petitioner seeks a waiver can be accomplished or the waiver of the strict application of the provision is in the best interest of the subject community development district.

(f) If a petition is granted, the authority may impose terms and conditions on the grant of waiver including, but not limited to, the authority's ability to revoke the waiver at any time if the waiver creates a threat to the health, safety, or welfare of the subject community development district or a restriction on the transferability of the waiver.

[Eff MAR 0 2 2012] (Auth: HRS §206E-4) (Imp: HRS §206E-4)

§15-219-99 Issuance of notice of violation and intent to impose a citation. (a) Upon determination of a violation, the executive director may issue a notice of violation and intent to impose a citation.

(b) Service of the notice shall be made personally or by certified mail with return receipt requested.

(c) The notice shall include but is not limited to the following:

(1) Date of the notice;

(2) Name and address of the violator;

(3) Nature of the violation;

(4) The section number of the provision or rule, or the number of the permit which has been violated; and

(5) Location and time of violation.

(d) The notice may require the violator to do any or all of the following:

(1) Cease and desist from the violation;

(2) Correct the violation at the violator's own expense on or before a date specified in the citation;

(3) Pay a fine as determined in accordance with section 15-219-101 in the manner, place, and date specified in the notice if the violation persists after the date specified to correct the violation;

(4) Pay a fine as determined in accordance with section 15-219-101 for each day in which the violation persists after the date specified to correct the violation; and

(5) Pay for administrative costs incurred by the authority in the preparation of the notice of violation and citation and the collection of fines.

(e) The notice shall advise the violator that it may appeal to the authority in accordance with section 15-219-34 within thirty days from the date of receipt of the notice. No appeal shall be taken after thirty days from receipt of the notice. An appeal to the authority shall not stay any provision of the notice of violation and citation, or the fines imposed thereby. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-219-100 Time period for compliance.

(a) When determining the corrective action to be taken

and a reasonable deadline to correct the violation, the executive director shall use the following schedule as a guide:

Schedule for Correction of Violations

Type of Violation	Initial Violation	Repeated Violation
Land Use	15 days	7 days or less
Development Standard	30 days	15 days or less
Permit Condition	30 days	15 days or less

(b) This schedule is only a guide and may be modified in consideration of the following:

(1) The type and the degree of the violation, whether it is a repeated violation, and the number of violations cited in the citation;

(2) Whether the violation poses a threat or potential threat to human health and safety;

(3) Procedural requirements for obtaining a permit or authorization to carry out corrective action;

(4) The complexity of the corrective action required, including construction requirements and the legal prerogatives of landlords and tenants; and

(5) Any other circumstances beyond the control of the violator. [Eff MAR 0 2 2012] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-219-101 Administrative fines. (a) If a violation is not corrected by the date specified in the notice, the violator shall pay to the authority a fine prescribed by the executive director in accordance with

subsections (b) through (d) in an amount not to exceed $500.

(b) In determining the amount of the fine, the executive director shall consider the following:

(1) The nature and degree of the violation;

(2) Whether the violation involves a threat to public health and safety;

(3) Whether there is income derived from the violation; and

(4) Whether it is a repeated violation.

(c) The fine for an initial violation shall be in accordance with the following schedule:

Use	Development Standards/Permit Conditions	Misrepresentations
$50-$500	$200-$500	$100-$500

(d) The fine for repeated violations shall be the amount of the fine imposed for the initial violation plus the additional amount as indicated in the following schedule:

Violation	Use	Development Standards/ Permit Conditions	Misrepresentations
Second	$100	$100	$100
Third	$200	$200	$200
Fourth or more	$450	$300	$400

(e) When a violation is not corrected by the deadline specified in the citation, the executive

director may assess an additional fine not to exceed $500 per day for each day the violation remains uncorrected in accordance with the following schedule:

Per Day Fine Schedule for Number of Days After Deadline to Correct Violation

Violation	1-90	91-180	181-270	271-360	361-450	more than 450
Initial	$ 50	$100	$200	$300	$400	$500
Second	$100	$200	$300	$400	$500	$500
Third	$200	$300	$400	$500	$500	$500
Fourth or more	$300	$400	$500	$500	$500	$500

[Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§15-219-102 Administrative costs. Violators shall be liable for all administrative costs incurred by the authority in processing and levying the penalties set forth in this subchapter. Said costs shall include but not be limited to the cost incurred in the preparation of notices, the collection of fines, and the appeal of violations. [Eff MAR 02 2012] (Auth: HRS §§91-2, 206E-4, 206E-22) (Imp: HRS §§206E-5, 206E-7, 206E-22)

§§15-219-103 to 15-219-112 (Reserved).

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

The repeal of chapter 15-16, Hawaii Administrative Rules, and the adoption of chapter 15-219, Hawaii Administrative Rules, on the Summary Page dated February 1, 2012, were adopted on February 1, 2012, following public hearings held on January 4, 2012 and February 1, 2012, after public hearing notices were given in the Honolulu Star Advertiser, Hawaii Tribune-Herald, The Maui News, West Hawaii Today, and The Garden Island, on December 4, 2011.

The repeal of chapter 15-16, Hawaii Administrative Rules, and the adoption of chapter 15-219, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

ANTHONY J. H. CHING
Executive Director
Hawaii Community Development Authority

for RICHARD LIM
Director
Department of Business, Economic Development & Tourism

APPROVED AS TO FORM:

Deputy Attorney General

NEIL ABERCROMBIE
Governor
State of Hawaii

Date: 12.20.12

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LIEUTENANT GOVERNOR'S OFFICE

Filed

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