

Maui County Administrative Rule

Title 16, Chapter 102

RULES OF PRACTICE AND PROCEDURE FOR THE MAUI COUNTY BOARD OF WATER SUPPLY

SUBCHAPTER 1

GENERAL PROVISIONS

- §16-102-01 Title
- §16-102-02 Authority
- §16-102-03 Purpose
- §16-102-04 Construction
- §16-102-05 Definitions
- §16-102-05.5 Maximum time period for decision

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

- §16-102-06 Office and office hours
- §16-102-07 Chairperson and vice-chairperson
- §16-102-08 Public records
- §16-102-09 Meetings; generally
- §16-102-10 Executive meetings

- §16-102-11 Emergency meetings
- §16-102-12 Quorum and number of votes necessary for a decision
- §16-102-13 Removal of persons from meetings
- §16-102-14 Minutes of meetings
- §16-102-15 Computation of time
- §16-102-16 Officers and their duties
- §16-102-17 Committees
- §16-102-18 Voting
- §16-102-19 Disclosure of conflict
- §16-102-20 Motions
- §16-102-21 Questions of order
- §16-102-22 Attendance

SUBCHAPTER 3

PROCEEDINGS BEFORE THE BOARD

- §16-102-23 Waiver or suspension of rules
- §16-102-24 Appearance before the board
- §16-102-25 Decisions and orders
- §16-102-26 Formal requirements for filing documents
- §16-102-27 Formats for documents
- §16-102-28 Verification of pleadings
- §16-102-29 Copies of pleadings
- §16-102-30 Defective filings
- §16-102-31 Extension of time
- §16-102-32 Amended pleadings

§16-102-33 Retention of documents by the board

§16-102-34 Service of process

SUBCHAPTER 4

INTERVENTION AND CONTESTED CASE

§16-102-35 Petitions; filing

§16-102-36 Intervenors

§16-102-37 Multiple intervenors

§16-102-38 Contents of the petition

§16-102-39 Opposition to intervention

§16-102-40 Hearing

§16-102-41 Appeal from denial

SUBCHAPTER 5

CONTESTED CASE PROCEDURES

§16-102-42 Purpose

§16-102-43 Pre-hearing procedure

§16-102-44 Hearing officer, power

§16-102-45 Notice of hearing

§16-102-46 Transcripts

§16-102-47 Limited testimony

§16-102-48 Removal from proceeding

§16-102-49 Order of procedure

§16-102-50 Co-counsel

- §16-102-51 Cross-examination
- §16-102-52 Subpoenas
- §16-102-53 Fees and mileage
- §16-102-54 Oath
- §16-102-55 Consolidation
- §16-102-56 Substitution of parties
- §16-102-57 Motions
- §16-102-58 Discovery
- §16-102-59 Informal settlements, mediation and arbitration
- §16-102-60 Evidence
- §16-102-61 Correction of transcript

SUBCHAPTER 6

POST HEARING PROCEDURES

- §16-102-62 Briefs
- §16-102-63 Oral arguments
- §16-102-64 Recommendations of hearing officer
- §16-102-65 Exceptions to hearing officer's report and recommendations
- §16-102-66 Support of hearing officer's report and recommendations
- §16-102-67 Board action
- §16-102-68 Issuance of decisions and orders
- §16-102-69 Service of decision and orders
- §16-102-70 Appeals

SUBCHAPTER 7

RULE MAKING PROCEDURES AND DECLARATORY RULINGS

§16-102-71 Authority

§16-102-72 Petitions and procedures for adoption, amendment or repeal of rules and regulations

§16-102-73 Declaratory rulings

§16-102-74 Reserved

SUBCHAPTER 8

APPEALS TO THE BOARD

§16-102-75 Standing to appeal

§16-102-76 Filing to appeal

§16-102-77 Contents of written appeal

§16-102-78 Appeal hearing

§16-102-79 Standards of appeal

§16-102-80 Severability

SUBCHAPTER I

GENERAL PROVISIONS

§16-102-01 Title. The rules and regulations of this Article shall be known as the "Rules of Practice and Procedure for the Maui

County Board of Water Supply." [Eff. 10/26/92; ren §16-102-1, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-02 Authority. The rules herein are established pursuant to the provisions of Section 8-11.4(3) of the Charter of the County and Chapter 91-1, et. seq. of the Hawaii Revised Statutes. [Eff. 10/26/92; ren §16-102-2, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-03 Purpose. These rules and regulations govern the practice and procedure before the board of water supply for the County of Maui. [Eff. 10/26/92; ren §16-102-3, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-04 Construction. These rules and regulations shall be construed to secure the just and efficient determination of every proceeding before the board. These rules and regulations should be read in conjunction with the provisions of Hawaii Revised Statutes, the Charter of the County, and the Maui County Code. In any conflict between the general provisions herein and any other provision, the more specific provision shall govern. [Eff. 10/26/92; ren §16-102-4, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-05 Definitions. For the purpose of these rules and regulations, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein are defined as follows:

"Agency" means any board, commission, department, or office of the County, including the board of water supply of the County of Maui.

"Agency hearing" means a hearing held by an agency immediately prior to a judicial review of a contested case as provided in Hawaii Revised Statutes, Section 91-16.

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

"Board" means the board of water supply of the County of Maui.

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

"County" means the County of Maui.

"Council" means the council of the County of Maui.

"Department" means the department of water supply of the County of Maui.

"Director" means the director of the department of water supply of the County of Maui, or a duly authorized designee.

"Hearing Officer" means a person or persons designated and authorized by the board to conduct an agency hearing or a contested case hearing, to take testimony, and to report the findings of fact, conclusions of law with recommendation to the Board on matters within the jurisdiction of the board.

"Intervenor" means a person or agency who properly seeks by application to intervene and is admitted as a party in an agency

hearing or a contested case.

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

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

"Party" means a person named or allowed to participate in an agency hearing or contested case.

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

"Petitioner" means a person who seeks permission or authorization which the board may grant under statutory authority or other authority delegated to it; and a person seeking relief not otherwise designated in this chapter. [Eff. 10/26/92; ren §16-102-5, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-5.5 Maximum time period for decision.

(a) Except for state administered permit programs delegated, authorized, or approved under federal law, review and decision making for applications shall be as follows:

- (1) If the application does not require board actions, a decision shall be made within thirty days of the date the application is deemed complete by the director or the director's designee;
- (2) If the application requires board action, a decision

shall be made within forty days after the closing of the public hearing on the application; or

(3) If a contested case proceeding is conducted pursuant to subchapter 5 of these rules, the decision shall be rendered within the time specified by section 16-102-68.

(b) The time may be extended by a majority vote of the board by a motion to waive the rule(s). The time may also be requested to be extended by the applicant at any duly noticed meeting of the board.

(c) Time does not run until information requested from the applicant by the department is provided and the application request completed.

(d) The time will be extended in the event of a national disaster, a state of emergency or union strike that would prevent such authority from reviewing and making a decision within the specified time period. [Eff. 12/17/01; ren §16-102-5.5, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

§16-102-06 Office and office hours. (a) The office of the board is in Wailuku, Maui, Hawaii. All communications to the board shall

be addressed to 200 South High Street, Fifth Floor, Wailuku, Maui, Hawaii 96793, unless otherwise directed by the board.

(b) The office hours of the board shall be from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by statute or executive order. [Eff. 10/26/92; ren §16-102-6, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-07 Chairperson and vice-chairperson. (a) The members of the board shall elect a chairperson and vice-chairperson from its members. Their term shall be for one year and may continue for such time until their successors are duly elected.

(b) The chairperson and vice-chairperson shall have responsibilities and duties as prescribed in this chapter. [Eff. 10/26/92; ren §16-102-7, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-08 Public records (a) The term "public records" shall have the same meaning as is defined in Hawaii Revised Statutes, Chapters 92 and 92E, and shall include maps, rules, written statements of policy or interpretation formulated, adopted, or used by the board in its functions, all decisions, orders, minutes of board meetings, and records of any docket on file with the board, but shall not include records which invade the right or privacy of an individual.

(b) All public records shall be available for inspection by any person during established office hours unless public inspection of

such reports is in violation of any other federal, state or county law, provided that, except where such records are open under any rule of court, the corporation counsel or prosecuting attorney may determine which records may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the County is or may be a party, or when such records do not relate to a matter in violation of law and are necessary for the protection of the privacy of an individual.

(c) Copies of public records printed or reproduced for persons other than governmental agencies shall be given to any person provided the fees or costs that are delineated in the Maui County Code or other ordinance are paid. [Eff. 10/26/92; ren §16-102-8, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-09 Meetings; generally. (a) The board may meet and exercise its powers in any part of the County. Except as provided in Hawaii Revised Statutes, Sections 92-4 and 92-5, all of the board's meetings are open to the public. The parliamentary procedure to be observed by the board in the conduct of its business shall be based on the current edition of Robert's Rules of Order Newly Revised, only to the extent that it does not conflict with Hawaii Revised Statutes, chapters 91 and 92, or these rules.

(b) The board shall allow all interested persons an opportunity to submit data, views, arguments or present oral testimony on any

agenda item in an open meeting. The board may provide for the recordation of all presented oral testimony.

(c) The board shall comply with all provisions of Hawaii Revised Statutes, Section 92-7, by providing the required written public notice of any meeting. [Eff. 10/26/92; ren §16-102-9, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-10 Executive meetings. (a) The board may hold an executive meeting in which the public may be excluded, for those purposes permitted by Hawaii Revised Statutes, Section 92-5, but only if there is an affirmative vote of two-thirds of the members of the board present at the meeting; provided the affirmative vote constitutes a majority of the members to which the board is entitled. The reason for holding the executive session shall be publicly announced and the vote of the members shall be recorded and entered into the minutes of the meeting.

(b) The board shall not make any decision in an executive meeting, except as provided in Hawaii Revised Statutes, Section 92-5. [Eff. 10/26/92; ren §16-102-10, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-11 Emergency meetings. The board may hold an emergency meeting that does not comply with the notice requirement of Hawaii Revised Statutes, Section 92-7, under conditions specified in Hawaii

Revised Statutes, Section 92-8. [Eff. 10/26/92; ren §16-102-11, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-12 Quorum and number of votes necessary for a decision.

Unless otherwise provided by law, a majority of all of the members to which the board is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make a board decision valid. [Eff. 10/26/92; ren §16-102-12, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-13 Removal of persons from meeting. The presiding

officer may remove any person who willfully disrupts a meeting.

[Eff. 10/26/92; ren §16-102-13, 8/30/02] (Auth: HRS §54-33)

(Imp: HRS §54-33)

§16-102-14 Minutes of meetings. (a) The board shall keep

written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting shall be required, but 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 board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided;
- (4) A record, by individual member, of the votes taken; and
- (5) Any information, that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where the disclosure would be inconsistent with Hawaii Revised Statutes, Section 92-5. The board may withhold publication of the minutes of executive meetings so long as their publication would defeat the lawful purpose of the executive session. [Eff. 10/26/92; ren §16-102-14, 8/30/02] (Auth: HRS §54-33)
(Imp: HRS §54-33)

§16-102-15 Computation of time. In computing any period of time under these rules, by notice, or by order of the board, 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 legal holiday. When the prescribed period of time is not more than ten days, Saturdays, Sundays or legal holidays within the designated period shall be excluded in the computation. [Eff. 10/26/92; ren §16-102-15, 8/30/02] (Auth: HRS §54-33)
(Imp: HRS §54-33)

§16-102-16 Officers and their duties (a) Presiding officer.

The chairperson shall be the presiding officer of the board 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 board 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 meeting when a quorum is present;
- (3) Maintain order and proper decorum;
- (4) Announce the business before the board;
- (5) Review all matters properly brought before the board, call for the votes and announce the results;
- (6) Appoint all hearings officers and any committee chairperson with the approval of a proper majority of the members;
- (7) Authenticate by his or her signature all acts of the board as may be required by law, unless delegated to the director;
- (8) Do and perform such other duties as may be required by law, or such as may properly appertain to such office;
- (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the board.

(b) Clerk. The director, or a person designated by the director, shall serve as clerk of the board and shall be directly

responsible, or through staff members, to provide the following service:

- (1) To receive, submit, and coordinate all matters properly brought before the board in consultation with the chairperson;
- (2) To provide the agenda support material for all meetings;
- (3) To read bills, resolutions, and other matters to the board, 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 such matters, as may be duly referred to such committee;
- (6) To serve in all matters as ex-officio clerk of the board and to do and perform all clerical duties and services pertaining to such position as the board shall from time to time direct, and such other duties as shall be required by law or these rules, or rules hereafter adopted, be assigned or such as properly pertain to such position;
- (7) To have charge of all records of the board and be responsible for the same. [Eff. 10/26/92; ren §16-102-16, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-17 Committees. The board may appoint the necessary standing and select committees to discharge its responsibilities and functions. [Eff. 10/26/92; ren §16-102-17, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-18 Voting (a) All matters shall be determined by an affirmative vote of the proper majority of the members of the board.

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

(c) Unless a member present at a meeting is disqualified from voting pursuant to section 16-102-31 herein the member's silence or refusal to vote shall be recorded as an affirmative vote.

(d) If the board is unable to approve or deny any item after three meetings and no other motions regarding the matter are passed, the matter shall be considered denied. [Eff. 10/26/92; ren §16-102-18, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-19 Disclosure of conflict. Whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the board, the affected member shall promptly make full disclosure of the circumstances to the board. When a member is deemed by the board 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. 10/26/92; ren §16-102-19, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-20 Motions (a) Motions and amendments by members may be verbal, but shall be reduced to writing if requested by the chairperson.

(b) No motion shall be received and considered by the board 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 board. [Eff. 10/26/92; ren §16-102-20, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-21 Questions 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 board. [Eff. 10/26/92; ren §16-102-21, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-22 Attendance. No member shall be absent from the service of the board, unless the member is sick or otherwise unable to attend and has so advised the chairperson prior to the meeting.

[Eff. 10/26/92; ren §16-102-22, 8/30/02] (Auth: HRS §54-33)

(Imp: HRS §54-33)

SUBCHAPTER 3

PROCEEDINGS BEFORE THE BOARD

§16-102-23 Waiver or suspension of rules. For good cause shown, the board may by majority vote waive or suspend any rule or rules. No rules, however, relating to jurisdictional matters shall be waived or suspended by the board. [Eff. 10/26/92; ren §16-102-23, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-24 Appearance before the board (a) Any person or party to a proceeding before the board may appear in the person's own behalf or as an authorized representative of a person or party. An officer or employee of a department or agency may represent the department or agency in any proceeding before the board. Any attorney who represents a party before the board shall be in good standing before the Hawaii Supreme Court.

(b) Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the board, by such

act represents that the person is legally authorized to do so and shall comply with laws of this State, the County, and the rules of the board. The person shall maintain the respect due to the board, and shall not deceive or knowingly present any false statement of law or fact to the board. The board may at any time require any person appearing before the board in a representative capacity to prove the person's authority to act in that capacity.

(c) All former officers and employees of the County, as set forth in Section 13-1 of the Charter of the county, shall comply with the provisions of Article 10 of the Charter of the County, prior to and during an appearance in a representative capacity before the board. [Eff. 10/26/92; ren §16-102-24, 8/30/02] (Auth: HRS §54-33)
(Imp: HRS §54-33)

§16-102-25 Decisions and orders (a) All decisions and orders shall be signed by the chairperson or members of the board who have heard and examined the evidence in the proceeding. Board members who have not heard and examined all evidence may vote and sign only after the procedures set forth in Hawaii Revised Statutes, Section 91-11, have been complied with.

(b) Unless otherwise indicated in the order, the effective date of a decision and order shall be the date of service.

(c) Official copies of decisions and orders and other acts of the board shall be effectuated under the signature of the chairperson, vice-chairperson or such other person as may be authorized by the board.

(d) Notwithstanding the above or any provision in this chapter to the contrary, no decision, order or action of the board concerning the acquisition of land or water resources which results in the acquisition of water resources in the amount of 500,000 gallons per day or more, or the allocation and/or distribution of water resources in the amount of 500,000 gallons per day or more, shall occur or be rendered by the board unless and until the subject matter has been noticed on two regularly-scheduled board meeting agendas. [Eff. 10/26/92; ren §16-102-25, 8/30/02] (Auth: HRS §54-33)
(Imp: HRS §54-33)

§16-102-26 Formal requirements for filing documents (a) Time and place. All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda, and other legal papers required to be filed with the board in any proceeding shall be filed at the office of the board before or on the time limit prescribed by statute, ordinance, rule or order of the board. Unless otherwise ordered, the date on which the papers are received shall be regarded as the date of filing. [Eff. 10/26/92; ren §16-102-26, 8/30/02] (Auth: HRS §54-33)
(Imp: HRS §54-33)

§16-102-27 Formats for documents (a) Pleadings shall be bound at the top and typewritten upon paper 8 1/2" x 11" in size. Tables, maps, charts, exhibits, or appendices may be larger and shall be folded to that size where practical. The impression shall be on one side of the paper only and shall be doubled-spaced, except that footnotes and quotations in excess of a few lines may be singled-

spaced. Briefs shall be typewritten upon paper 8 1/2" x 11" in size. Reproduction may be by any process, provided all copies are clear and permanently legible.

(b) Petitions, pleadings, briefs, and other documents shall show the title of the proceeding before the board, case docket number and the name and address of the party filing said document.

(c) The original of each petition, complaint, answer, or amendment shall be signed in black ink by a party or the party's counsel. If the party is a corporation or association, the pleading may be signed by an officer thereof. Motions, notices and briefs may be signed by an attorney. [Eff. 10/26/92; ren §16-102-27, 8/30/02]
(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-28 Verification of pleadings (a) Petitions and other pleadings together with amendments thereto which initiate a proceeding shall be verified by at least one of the persons or officers of the party filing same.

(b) If the party filing the pleading is a corporation or association, the pleading may be verified by an officer thereof.

(c) The attorney for a party may sign and verify a pleading if the party is absent, or for some cause unable to sign and verify the pleading. [Eff. 10/26/92; ren §16-102-28, 8/30/02]
(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-29 Copies of pleadings. Unless otherwise required by these rules or by the board, all parties shall file with the board an

original and fifteen copies of each pleading and amendment thereof. Additional copies shall be promptly provided if the chairperson or director so requests. [Eff. 10/26/92; ren §16-102-29, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-30 Defective filings Petitions shall be filed with and accepted by the Director. The mere fact of filing shall not waive any failure to comply with the provisions of these rules and the board may require the amendment of any petition, or entertain motions by the parties in connection therewith. If the petition is in fact defective, the date of filing shall be as of the date the defects are cured. [Eff. 10/26/92; ren §16-102-30, 8/30/02] (Auth: HRS §54-33)

(Imp: HRS §54-33)

§16-102-31 Extension of time. (a) Whenever a party is required to file a pleading within the period of time prescribed or allowed by these rules, by notice given thereunder, or by an order, the 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 the period;
- (2) Pursuant to a stipulation between all of the parties, extend the period; or
- (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.

(b) Any request for a continuance, except by stipulations, shall be by written notice, unless made during the course of a hearing. [Eff. 10/26/92; ren §16-102-31, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-32 Amended pleadings. All pleadings may be amended at any time prior to the hearing date. Amendments offered prior to the hearing date shall be served on all parties and filed with the board. All parties shall have the opportunity to answer and be heard on the amendment filed after a hearing commences, and the board shall decide whether such amendments shall be allowed. [Eff. 10/26/92; ren §16-102-32, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-33 Retention of documents by the board. All documents filed with or presented to the board shall be retained in the files of the board. However, the chairperson may permit the withdrawal of original documents upon submission of properly authenticated copies to replace said original documents. [Eff. 10/26/92; ren §16-102-33, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-34 Service of process (a) By whom served. The director shall cause to be served all orders, notices and other documents issued by the board together with any other documents required by law to be served by the board. Every other document shall be served by the party filing same.

(b) Upon whom served. All papers served by either the board 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 document required to be served by the board upon a party shall be served upon such party or upon a representative authorized to receive service of such documents.

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

(e) When service is completed. Service by mail shall be regarded as complete when deposited in the United States mail properly addressed and stamped. [Eff. 10/26/92; ren §16-102-34, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

SUBCHAPTER 4

INTERVENTION AND CONTESTED CASE

§16-102-35 Petitions; filing. Petitions to intervene shall be in conformity with sections 16-02-27 and 16-02-28 herein and shall be

filed with the board and served upon the applicant not 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. 10/26/92; ren §16-102-35, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-36 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 can demonstrate they will be so directly and immediately affected by the matter before the board 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 board for leave to intervene as parties.

(d) Leave to intervene shall be freely granted, provided that the board or its hearing officer, if one is appointed, may deny an application to intervene when in the board's or the 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 proceeding inefficient and unmanageable; or

(3) The intervention will not aid in development of a full

record and will overly broaden issues. [Eff. 10/26/92; ren §16-102-36, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-37 Multiple intervenors. If more than one intervenor is admitted to a contested case proceeding, the hearing officer or board may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The hearing officer or board 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. 10/26/92; ren §16-102-37, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-38 Contents of the petition. The petition shall contain the following:

- (1) Nature of the petitioner's statutory or other right;
- (2) Nature and extent of the petitioner's interest in the proceeding;
- (3) Effect of any decision in the proceeding on the petitioner's interest.

If applicable, the petition shall 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 existing parties;
 - (7) Extent petitioner's participation can assist in development of a complete record;
 - (8) Extent petitioner's participation will broaden the issues or delay the proceeding; and
 - (9) How the petitioner's intervention would serve the public interest. [Eff. 10/26/92; ren §16-102-38, 8/30/02]
- (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-39 Opposition to intervention. If any party opposes the petition for intervention, the party shall file a motion in opposition with the board, and serve a copy of said motion upon all other parties within five days after being served a petition to intervene. [Eff. 10/26/92; ren §16-102-39, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-40 Hearing. All petitions to intervene shall be heard prior to rendering a decision. [Eff. 10/26/92; ren §16-102-40, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-41 Appeal from denial. A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to Hawaii Revised Statutes, Section 91-14. [Eff. 10/26/92; ren §16-102-41, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

SUBCHAPTER 5

CONTESTED CASE PROCEDURES

§16-102-42 Purpose. This subchapter governs contested case procedures before the board. These procedures may be modified or waived by the parties with the consent of a majority of the board or presiding officer as the case may be. [Eff. 10/26/92; ren §16-102-42, 8/30/02]
(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-43 Pre-hearing procedure. All parties to a contested case proceeding shall be prepared for a pro-hearing conference and a contested case proceeding within a reasonable time as determined by the board or the hearing officer. [Eff. 10/26/92; ren §16-102-43, 8/30/02]
(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-44 Hearing officer, power. The chairperson, one or more members of the board, 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 pro-hearing conferences to formulate or simplify 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 to the orderly and just conduct of a hearing.

[Eff. 10/26/92; ren §16-102-44, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-45 Notice of hearing. Unless otherwise provided by law, the notice of hearing shall be served on all parties and persons on the mailing list for this purpose at their last recorded address as required by Hawaii Revised Statutes, Sections 91-9 and 91-9.5.

[Eff. 10/26/92; ren §16-102-45, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-46 Transcripts. Should any of the parties to a contested case either request that transcripts be provided or appeal the decision of the board, the board or hearing officer shall fairly allocate the transcription costs between the applicant, intervenors and the board. [Eff. 10/26/92; ren §16-102-46, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-47 Limited 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. 10/26/92; ren §16-102-47, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-48 Removal from proceeding. Any person or persons who will fully disrupt a hearing or otherwise compromise the conduct of the hearing shall be removed from the hearing room. [Eff. 10/26/92;

ren §16-102-48, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-49 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. 10/26/92;

ren §16-102-49, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-50 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, to state any objection or to make closing arguments. [Eff. 10/26/92; ren §16-102-50, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-51 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. [Eff. 10/26/92; ren §16-102-51, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-52 Subpoenas. 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 to the proceeding. Only parties or the hearing officer may request the issuance of subpoenas.

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

ordered.

No subpoena shall be issued unless the requesting party has complied with this section, given the name and address of the subpoenaed witness and a complete description of the documents sought to be produced. [Eff. 10/26/92; ren §16-102-52, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-53 Fees and mileage. Witnesses summoned by subpoena shall be entitled to the same fees and mileage as are paid witnesses in Circuit Court of the State of Hawaii and such fees and mileage shall be paid by the party who caused said witness to appear. [Eff. 10/26/92; ren §16-102-53, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-54 Oath. Witnesses shall be placed under oath or affirmation prior to testifying. [Eff. 10/26/92; ren §16-102-54, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-55 Consolidation. The board, 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, to the ends of justice and will not unduly delay the proceedings. [Eff. 10/26/92; ren §16-102-55, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-56 Substitution of parties. Upon motion and for good cause shown, the board 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. 10/26/92; ren §16-102-56, 8/30/02]
(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-57 Motions (a) Time. Motions may be made before, during or after a contested case proceeding.

(b) Form; contents. All motions other than those made during a hearing shall be in writing to the board 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 board 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 board 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 not less than two days before the hearing date. The original and proof of service shall be filed with the board or hearing officer. The chairperson of the board or hearing officer may extend or shorten the times herein for good cause.

(e) Waiver. Failure to 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 not opposing the motion shall notify the hearing officer and opposing counsel or party promptly. [Eff. 10/26/92; ren §16-102-57, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-58 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 board or hearing officer may allow utilization of the discovery process where appropriate and where such would not unreasonably delay the proceedings. [Eff. 10/26/92; ren §16-102-58, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-59 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, 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 board or prevent the board 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 party claiming the privilege. [Eff. 10/26/92; ren §16-102-59, 8/30/02]
(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-60 Evidence. (a) Form and admissibility. The board and hearing officer shall not be bound by the rules of evidence, but shall exercise discretion with a view to doing substantial justice.

(b) Ruling. The hearing officer shall rule on the admissibility of evidence. Such rulings may be reviewed by the board 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 preferred evidence to which objection has been sustained.

(e) Exhibits. Exhibits shall conform to the provisions of sections 16-02-27 (a) and 16-02-29, 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 or 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 hearing 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 board'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 fact so noticed.

(h) Additional evidence. The hearing officer may require the production of further evidence upon any issue. [Eff. 10/26/92; ren §16-102-60, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-61 Correction of transcript. Motions to correct the transcript will be acted upon by the hearing officer or the board, as the case may be. Motions shall be filed within seven days after receipt of the transcript unless otherwise directed and shall be served upon all parties. Such motions shall certify the date when the transcript was received. If no objections are received ten days after the date of service, the transcript will, upon approval of the board, be changed to reflect such correction. If objections are received, the motion will be acted upon with due consideration to the stenographic transcript of the hearing. [Eff. 10/26/92; ren §16-102-61, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

SUBCHAPTER 6

POST HEARING PROCEDURES

§16-102-62 Briefs. The board or 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 board or 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 board or hearing officer. [Eff. 10/26/92; ren §16-102-62, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-63 Oral arguments. The board may direct or permit the presentation of oral argument with the applicant opening and concluding the argument. Not more than one hour on each side of the proceeding will be allowed for argument without special leave of the board. If more than one person is participating on a side of the proceeding, those parties shall divide the hour. [Eff. 10/26/92; ren §16-102-63, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-64 Recommendations of hearing officer (a) Submission

of recommendations. Upon completion of the contested case, the hearing officer shall prepare and submit to the board, 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 matters received 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. 10/26/92; ren §16-102-64, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-65 Exceptions to hearing officer's report and

recommendations (a) File, form, copies, time, and service. Within ten working days after service of the report and proposed decision and order, a party may file with the board exceptions and memorandum in support thereof. Copies shall be served upon each party to the proceeding.

(b) Contents of exception; 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;

- (4) Grounds not stated and identified in the report and record are waived. [Eff. 10/26/92; ren §16-102-23, 8/30/02]
(Auth: HRS §54-65) (Imp: HRS §54-33)

§16-102-66 Support of hearing officer's report and

recommendations. (a) File, form, copies, time, and service. Within ten working days after service of the exceptions, a party may file with the board 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 the report and recommendations should be affirmed.
- (3) Designate by page citation the portions of the report record relief upon. [Eff. 10/26/92; ren §16-102-66, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-67 Board action. (a) If no statement of exceptions is

filed as herein provided, the board may proceed to reverse, modify or adopt the recommendation of the hearing officer.

(b) Upon filing of the exceptions and brief together with the briefs in support, the board 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. 10/26/92; ren §16-102-67, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-68 Issuance of decisions and orders. (a) A proceeding shall stand submitted for decision by the board at the next duly noticed meeting after the introduction of evidence. Any party that has an interest may submit a proposed decision and order which shall include proposed findings of fact. The proposal shall be served upon each party to the proceeding and an opportunity given to each party to comment thereon.

(b) Every decision and order rendered by the board 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 proceeding has filed proposed findings of fact, the board shall incorporate in its decision a ruling which addresses such findings. Decisions and orders in such contested cases shall be rendered within sixty days from the acceptance of the presentation to the board.

(c) Upon action by the board, the director or his designate will act on the findings within five working days. [Eff. 10/26/92, am 12/17/01, ren §16-102-68, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-69 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 a proceeding has appeared by a representative, service upon such representative or counsel shall be deemed to be service upon the party. [Eff. 10/26/92; ren §16-102-69, 8/30/02] (Auth: HRS §54-33)
(Imp: HRS §54-33)

§16-102-70 Appeals. Parties to proceedings before the board may obtain judicial review of decisions and orders issued by the board in the manner set forth in Hawaii Revised Statutes, Section 91-14. [Eff. 10/26/92; ren §16-102-70, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

SUBCHAPTER 7

RULE MAKING PROCEDURES AND DECLARATORY RULINGS

§16-102-71 Authority. All rules and regulations of the board shall be adopted by the board, approved by the mayor and the council in accordance with Hawaii Revised Statutes and the Charter of the County. [Eff. 10/26/92; ren §16-102-71, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-72 Petitions and procedures for adoption, amendment or

repeal of rules and regulations. (a) The board may adopt, amend, or repeal any of its rules by following the procedures set forth herein, except that the board need not formally file a petition and need only submit a draft of the proposed changes.

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

(c) Filing of petition. 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;

- (1) A statement of the nature of the applicant's interest;
- (2) A draft of the proposed rule or amendment or a designation of the provisions sought to be repealed;
- (3) Statement of the reasons in support of the petition; and
- (4) A public hearing and notice fee of \$250.

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 board.

(d) Disposition of petition. After the Director finds that the application is complete, it shall be referred to the board. The petition shall be considered submitted to the board as of the first meeting of it is properly placed on the agenda. Within sixty days after submission, the board 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 board proposes to adopt, amend, or repeal a rule, it shall schedule a public hearing by giving a minimum of 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 published at least once pursuant to section 1-28.5, Hawaii Revised Statutes, and shall be mailed, faxed or e-mailed to all persons who have made a timely, written request either by mail, hand delivered, e-mailed, or faxed to the board for advanced notice of its rule making proceedings.

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

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

(h) Approval of the mayor and council. The adoption, amendment, or repeal or any rule shall be subject to the appropriate approval mandated by the Charter of the County, Section 8-11.8.

(i) Emergency rules. If the board finds an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than thirty days notice of hearing, and states 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 appropriate 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 with the county clerk, but for not longer than one hundred twenty days without renewal. The board shall publish a copy of the emergency rule at least once in a newspaper general circulation in the County within five days of its filing as set forth herein. [Eff. 10/26/92, am 12/17/01, ren §16-102-72, 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-73 Declaratory rulings. (a) Applicability. Any interested persons may petition the board for a declaratory order as to the applicability of any statutory provision or of any rule, order of the department or the board.

(b) Filing of petition. 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:

- (1) The name, address, and telephone number of the applicant;
- (2) A statement of the nature of the applicant's interest, including reasons for the submission or order in question;
- (3) A designation of the specific provision, rule or order in question;
- (4) A complete statement of facts;

- (5) A statement of the position or contention of the applicant;
and
- (6) A memorandum of authorities including any legal
authorities, containing a full discussion of the reasons in
support of such position or contention.

Upon receipt of all required information and documentation, the director shall review the petition for completeness and refer the petition to the board.

(c) Disposition of petition. The board may for good cause refuse to issue a declaratory ruling where:

- (1) 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;
- (2) The applicant's interest is not of the type which would give him standing to maintain an action if the applicant were to seek judicial relief;
- (3) The issuance of the declaratory ruling may adversely affect the interests of the County, the board, the department or any of their officers or employees in any litigation which is pending or may reasonably be expected to rise;
- (4) The matter is not within the jurisdiction of the board.

Where any question of law is involved, the board may refer the petition to the corporation counsel. The board may also refer the petition to other agencies when deemed necessary or desirable. The board 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 facts 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. 10/26/92; ren §16-102-73, 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-74 (Reserved)

SUBCHAPTER 8

APPEALS TO THE BOARD

§16-102-75 Standing to appeal. Any person aggrieved by a decision or order of the director may file a petition for appeal with the board.

[Eff, ren §16-102-75 and comp 8/30/02] (Auth: HRS §54-33)

(Imp: HRS §54-33)

§16-102-76 Filing of appeal. (a) Any person who has standing to appeal shall petition the board within thirty calendar days after actual notice or constructive notice, whichever is sooner, of action by the director. Appeals submitted after the time limits prescribed in this section shall not be acted upon.

(b) Appeals shall be filed with the office of the board at 200

South High Street, Wailuku, Hawaii 96793

(c) All other appeals shall include a processing fee in the amount

of three hundred dollars. [Eff, ren §16-102-76 and comp 8/30/02]

(Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-77 Contents of written appeal. The petition for appeal

shall provide the following in writing:

(1) Petitioner's name, address and telephone number, if applicable;

(2) Agent's name, address and telephone number, if applicable;

(3) Tax map key number of the parcel and its street address, if available.

(4) Locational map identifying the site, adjacent roadway, and identifying landmarks; and

(5) A written analysis as to why standards of appeal in section 16-102-79 have been met. [Eff, ren §16-102-77 and comp 8/30/02] (Auth: HRS §54-33) (Imp: HRS §54-33)

§16-102-78 Appeal hearing. An appeal shall be conducted in the

same manner as a contested case as provided in subchapter 5 of these rules. [Eff, ren §16-102-78 and comp 8/30/02] (Auth: HRS §54-33)

(Imp: HRS §54-33)

§16-102-79 Standards of appeal. The board shall review the director's

decision or order and, by a two thirds vote of its entire voting membership,

may reverse or modify the decision or order if the substantial rights of the petitioner may have been prejudiced because the decision or order is:

- (1) Based on a clearly erroneous finding of material fact, improper procedure, erroneous application of the law; or
- (2) Arbitrary or capricious in its application; or
- (3) A clearly unwarranted abuse of discretion. [Eff, ren §16-102-79 and comp 8/30/02] (Auth: HRS §54-33)
(Imp: HRS §54-33)

§16-102-80 Severability. If any portion of the foregoing rules or the applicability thereof to any person, property or circumstance is held invalid for any reason, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end these rules are declared to be severable.

[Eff 10/26/92, ren §16-102-80, 8/30/02] (Auth: HRS §54-33)

(Imp: HRS §54-33)

"By Water All Things Find Life"

Department of Water Supply
County of Maui
200 South High Street
Wailuku, HI 96793-2155
Telephone (808) 270-7816
Fax (808) 270-7951

[\[Back\]](#)