

TITLE MC-12
 DEPARTMENT OF PLANNING
 SUBTITLE 05
 MAUI COUNTY CULTURAL RESOURCES COMMISSION
 CHAPTER 530
 RULES OF PRACTICE AND PROCEDURE
 FOR THE MAUI COUNTY CULTURAL RESOURCES COMMISSION

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Subchapter 1 Authority, Purpose, and Definitions

- §12-530-1 Title
- §12-530-2 Authority
- §12-530-3 Purpose
- §12-530-4 Construction
- §12-530-5 Definitions

Subchapter 2 Organization and Parliamentary Rules

- §12-530-6 Office
- §12-530-7 Communications
- §12-530-8 Organization
- §12-530-9 Meetings
- §12-530-10 Quorum
- §12-530-11 Minutes
- §12-530-12 Decisions and orders
- §12-530-13 Commission records
- §12-530-14 Computation of time
- §12-530-15 Appearance before the commission
- §12-530-16 Formal requirements for filing of documents
- §12-530-17 Service
- §12-530-18 Officers and their duties
- §12-530-19 Committees
- §12-530-20 Voting
- §12-530-21 Disclosure of conflict
- §12-530-22 Motions
- §12-530-23 Question of order
- §12-530-24 Attendance

Subchapter 3 Intervention and Contested Cases

§12-530-25	Petition; filing
§12-530-26	Intervenors
§12-530-27	Multiple intervenors
§12-530-28	Contents of petition
§12-530-29	Opposition to intervention
§12-530-30	Hearing
§12-530-31	Appeal from denial

Subchapter 4 Contested Case Procedures

§12-530-32	Purpose
§12-530-33	Pre-hearing procedures
§12-530-34	Hearing officer, powers
§12-530-35	Notice of hearing
§12-530-36	Transcripts
§12-530-37	Limiting testimony
§12-530-38	Removal from proceeding
§12-530-39	Order of procedure
§12-530-40	Co-counsel
§12-530-41	Cross-examination
§12-530-42	Subpoenas
§12-530-43	Fees and mileage
§12-530-44	Oath
§12-530-45	Consolidation
§12-530-46	Substitution of parties
§12-530-47	Motions
§12-530-48	Discovery
§12-530-49	Informal settlements, mediation and arbitration
§12-530-50	Evidence
§12-530-51	Correction of transcript

Subchapter 5 Post Hearing Procedures

§12-530-52	Briefs
§12-530-53	Oral arguments
§12-530-54	Recommendations of hearing officer
§12-530-55	Exceptions to hearing officer's report and recommendations
§12-530-56	Support of hearing officer's report and recommendations
§12-530-57	Commission action
§12-530-58	Issuance of decisions and orders
§12-530-59	Service of decisions and orders
§12-530-60	Appeals

Subchapter 6 Rule Making Procedures and Declaratory Rulings

§12-530-61	Commission
§12-530-62	Petition and procedures for adoption, amendment, or repeal of rules and regulations
§12-530-63	Declaratory rulings
§12-530-64	Severability

SUBCHAPTER 1

AUTHORITY, PURPOSE, AND DEFINITIONS

§12-530-1 Title. These rules and regulations shall be known as the "Rules of Practice and Procedure for the Maui County Cultural Resources Commission." [Eff 2/14/92] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-530-2 Authority. The rules herein are established pursuant to the provisions of section 2.88.060 (J) of the Maui County Code and chapter 91-1, et. seq. of the Hawaii Revised Statues. [Eff 2/14/92] (Auth: HRS §46-5) (Imp: HRS §§6E-14, 6E-15, 91-2)

§12-530-3 Purpose. These rules and regulations govern practice before and procedures of the Maui County cultural resources commission and set forth general rules applicable to proceedings before the commission. [Eff 2/14/92] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-530-4 Construction. These rules and regulations shall be construed to secure the just and efficient determination of proceedings before the commission. These rules and regulations should be read in conjunction with the provisions of the Hawaii Revised Statues, the Revised Charter of the County of Maui and the Maui County Code. If there is a conflict between state law, the County Charter, or the Maui County Code and the provisions herein, state law, the County Charter, or the Maui County Code shall govern.

If there are conflicts between the general provisions herein and specific rules of any other chapters, the specific rules shall govern. [Eff 2/14/92] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-530-5 Definitions. The following definitions shall apply for all matters before this commission:

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

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

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

"Commission" means the Maui County cultural resources commission.

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

"County" means the County of Maui.

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

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

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

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

"Historic preservation" means the research, protection, restoration, rehabilitation and interpretation of districts, sites, buildings, structures, areas or objects, significant to the history, architecture, archaeology, or culture of the county, state or nation.

"Historic properties" means any prehistoric or historic district, site, building, structure, area or object significant in the history, architecture, archaeology, or culture of the county, state or nation.

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

"Meetings" means the convening of the commission for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which

the commission has supervision, control, jurisdiction, or advisory power.

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

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

"Proceeding" means any matter brought before the commission over which the commission has jurisdiction as defined by §12-531-1. [Eff 2/14/92] (Auth: HRS §46-5) (Imp: HRS §91-2)

SUBCHAPTER 2

ORGANIZATION AND PARLIAMENTARY RULES

§12-530-6 Office. The office of the commission is at Wailuku, Maui, Hawaii. [Eff 2/14/92] (Auth: HRS §§46-5, 91-2) (Imp: HRS §91-2)

§12-530-7 Communications. Unless otherwise specifically directed, all communications to the commission shall be directed to the office of the commission at the planning department of the County of Maui, 250 S. High Street, Wailuku, Hawaii 96793. [Eff 2/14/92] (Auth: HRS §§46-5, 91-2) (Imp: HRS §91-2)

§12-530-8 Organization. The commission shall elect a chairperson and vice-chairperson from among its members. Their terms shall be for one year and may continue for such time until their successors are duly elected. [Eff 2/14/92] (Auth: HRS §46-5) (Imp: HRS §91-2)

§12-530-9 Meetings. (a) The commission may meet and exercise its powers where authorized by law. Unless otherwise provided by law, all meetings shall be open to the public.

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

(c) Regular meetings shall be held at least once a month on the first Thursday of each month at the planning department hearing room, Kalana Paku'i Building, Wailuku, Maui. This schedule may be altered by vote of the commission and the regular meeting held elsewhere and on a different day or time when necessary to enable the commission to effectively conduct its business. Meetings should be held on each island within the County at least once a year.

(d) The commission 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 commission may provide for the recordation of all presented oral testimony. A reasonable time limit may be placed on such testimony from the public which in any event shall be not less than three minutes per person.

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

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

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

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

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

§12-530-10 Quorum. A majority of all members to which the commission is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all members to which the commission is entitled shall be necessary to take any action. [Eff 2/14/92] (Auth: HRS §46-5) (Imp: HRS §92-15)

§12-530-11 Minutes. The commission shall keep written minutes and may provide for the audio recordation or court reporter transcript of meetings. The written minutes shall give a true reflection of the matters discussed at the meeting and the views of the members. The minutes shall include, but need not be limited to:

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

The written minutes shall be public records and shall be available within thirty days after the meeting except where such disclosure would be inconsistent with section 92-5, Hawaii Revised Statutes, as amended, provided, that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting. Any person shall be entitled to a copy of the full transcript of the audio recordation or the court reporter's transcript provided that he pays the costs incurred in the preparation of the record. [Eff 2/14/92] (Auth: HRS §46-5) (Imp: HRS §92-9)

§12-530-12 Decisions and orders. (a) All decisions and orders in a contested case proceeding or any other such proceeding authorized by chapter 91, Hawaii Revised Statutes, shall be signed by the members of the commission who have heard and examined the evidence in the proceeding. Commission members who have not heard and examined all of the evidence may vote and sign only after the procedures set forth in section 91-11, Hawaii Revised Statutes, have been complied with.

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

(c) Official copies of decisions and orders and other commission actions shall be promulgated under the signature of all members or the chairperson, director or by such other person as may be authorized by the commission.

(d) Except as provided in §12-530-58 of these rules, for decisions rendered after a contested case proceeding, all final decisions and orders shall be issued in writing within one hundred twenty days from the date the application is deemed complete by the director.

(e) All final decisions and orders shall contain a phrase informing the parties thereto of the time in which to appeal such order or decision.

(f) All administrative approvals pursuant to §12-531-14 shall be signed by the director.

(g) All other approval, actions, decisions or communications may be signed by the chairperson, or the director as his agent. [Eff 2/14/92, am 5/25/00] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-11, 91-13.5)

§12-530-13 Commission records. Commission records shall be disclosed or kept confidential in accordance with chapter 92F, Hawaii Revised Statutes, as amended. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS Ch. 92F)

§12-530-14 Computation of time. In computing any period of time under the rules herein, by notice, or by any order or regulation of the commission, the time begins with the day following the act, event, or default, and includes the last day of the period unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-15 Appearance before the commission. (a) Any person or party to a proceeding before the commission may appear in his or her own behalf or as an authorized representative of any other person. All attorneys who appear on behalf of any party before the commission shall be licensed to practice in the State of Hawaii.

(b) Any person or party who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the commission, by such act represents that he or she is legally authorized to do so and shall comply with all applicable state and county laws and the rules and regulations of this commission, and further, he or she shall maintain the respect due to the commission and shall never deceive or knowingly present any false statements of fact or law to the commission. The commission may at any time require any person appearing before the commission in a representative capacity to provide commission and qualification to act in such

capacity. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-16 Formal requirements for filing of documents. (a) Time and place. All documents required to be filed with the commission in any proceeding shall be filed with the office of the commission at Wailuku, Maui, Hawaii, within the time limit prescribed by law or by order of the commission. Unless otherwise ordered, the date on which the documents are received shall be regarded as the date of filing.

(b) Format.

(1) Form and size. Documents shall be typewritten upon paper 8-1/2 x 11 or 8-1/2 x 13 inches in size. Tables, maps, charts, exhibits, or appendices may be larger and shall be folded to that size where practical. The impression shall be on one side of the paper only and shall be double spaced, except that footnotes and quotations in excess of a few lines may be single-spaced. Copies shall be clear and permanently legible.

(2) Title and number. Petitions, pleadings, briefs, and other documents shall show the title of the proceeding before the commission and the name and address of the person or attorney.

(3) Signatures. The original of each application, petition, complaint, answer, or amendment shall be signed in ink by each party or his or her counsel. If such party is a corporation or association, the pleading may be signed by an officer thereof.

(c) Copies. Unless otherwise required by these rules or waived by the director, there shall be filed with the commission an original and fifteen copies of each pleading or amendment thereof. Additional copies shall be provided if the chairperson of the commission or the director so requests.

(d) Extensions of time. Whenever a party is required to file a pleading within the period prescribed or allowed by these rules, by notice given hereunder or by an order or regulation, the chairperson of the commission, or in the absence of the chairperson, the vice chairperson, or in the absence of the vice

chairperson, the director may: (1) for good cause before the expiration of the prescribed period, with or without notice to the parties, extend such period; (2) pursuant to a stipulation between all of the parties, extend such period; and (3) permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to be the result of excusable neglect. All requests for continuances, except for stipulations, should be by written motion, unless it is made during the course of a hearing.

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

(f) Retention of documents by the commission. All documents filed with or presented to the commission shall be retained in the files of the commission. However, the chairperson of the commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace said original documents. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-17 Service. (a) By whom served. The planning director shall cause to be served all orders, notices, and other papers issued by the commission together with any other papers required by law to be served by the commission. Every other paper shall be served by the filing party.

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

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

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

(e) When service completed. Service by mail shall be regarded as complete when deposited in the United States mail properly addressed and stamped. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §§91-9.5, 91-11, 91-12)

§12-530-18 Officers and their duties. (a) Presiding Officer. The chairperson shall be the presiding officer of the commission 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 commission at the appointed hour by taking the chair and calling the meeting to order;
- (2) Call for the approval of the minutes of any preceding meetings when a quorum is present;
- (3) Maintain order and proper decorum;
- (4) Announce the business before the commission;
- (5) Review all matters properly brought before the commission, call for votes upon the same and announce the results;
- (6) Appoint all hearings officers and any committee chairpersons with the approval of a proper majority of the members;
- (7) Authenticate by his or her signature all acts of the commission as may be required by law, unless delegated to the planning director;
- (8) Do and perform such other duties as may be required by law, or such as may properly appertain to such office;
- (9) Make known all rules of order when so requested, and to decide all questions of order, subject to an appeal to the commission;

(b) Clerk. The planning director, or a person designated by the director, shall serve as clerk of the commission and shall be directly responsible, or through staff members, to provide the following services:

- (1) To receive, submit, and coordinate all matters properly brought before the commission in consultation with the chairperson;
- (2) To provide the agenda support materials for all meetings;

- (3) To read bills, resolutions, and other matters to the commission, if so required;
- (4) To forward at once to the proper parties all communications and other matters, either directly or through a committee, as the case may be;
- (5) To deliver immediately to the chairperson of the appropriate committee all petitions, resolutions, bills, or other matters, as may be duly referred to such committee;
- (6) To serve in all matters as ex-officio clerk of the commission and to do and perform all clerical duties and services pertaining to the position as the commission shall from time to time direct, and as shall be assigned by law or these rules, or rules hereafter adopted, or which properly pertain to such position;
- (7) To have charge of all records of the commission and be responsible for the same. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §§91-2, 92-3)

§12-530-19 Committees. The commission may appoint the necessary standing and select committees to discharge its responsibilities and functions. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-20 Voting. (a) Except as otherwise provided by law, all matters shall be determined by an affirmative vote of a majority of the membership to which the commission is entitled.

(b) Whenever the commission is ready to vote on any question the chairperson shall state the question, put the question to a vote, and announce the results to the commission.

(c) Unless a present member is disqualified from voting pursuant to provision §12-530-21 herein, their silence or refusal to vote shall be recorded as an affirmative vote. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §92-15)

§12-530-21 Disclosure of conflict. Whenever a conflict of interest or other ethical question is raised

by anyone regarding any member of the commission, the affected member shall promptly make a full disclosure of the circumstances to the commission. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-22 Motions. (a) Motions and amendments by commissioners may be verbal, but shall be reduced to writing if requested by the chairperson.

(b) No motion shall be received and considered by the commission 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 commission. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-23 Question of order. A question of order may be raised at any stage of the proceedings, except during a calling of the roll when the ayes and noes are called for. Such question shall be decided by the chairperson, without debate, subject to an appeal to the commission. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-24 Attendance. No member shall be absent from the service of the commission, unless the member is sick or otherwise unable to attend and has so advised the chairperson or the commission clerk prior to the meeting. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 3

INTERVENTION AND CONTESTED CASES

§12-530-25 Petition; filing. Petitions to intervene shall be in conformity with §12-530-16 herein and shall be filed with the commission and served upon the applicant before the commencement of the first public hearing. Untimely petitions will not be permitted except for good cause, but in no event after the commission has taken the final vote on the matter before it. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-26 Intervenors. (a) All departments and agencies of the state and the county shall be admitted as parties upon timely application for intervention.

(b) All persons who have a property interest in land subject to commission action, who lawfully reside on said land, or can demonstrate they will be so directly and immediately affected by the matter before the commission 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 commission for leave to intervene as parties.

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

- (1) The commission is acting in an advisory capacity only and is not the authority for the proceeding at issue;
- (2) The position or interest of the applicant for intervention is substantially the same as a party already admitted to the proceeding;
- (3) The admission of additional parties will render the proceedings inefficient and unmanageable; or
- (4) The intervention will not aid in development of a full record and will overly broaden issues. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-27 Multiple intervenors. If more than one intervenor is admitted to a contested case proceeding, the hearing officer and/or commission may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The hearing officer or commission shall have the right to impose reasonable subject matter, as well as time, limitations on examination and cross-examination of witnesses, whether or not parties are represented by counsel. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-28 Contents of petition. The petition shall contain the following:

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

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

- (4) Other means available whereby petitioner's interest may be protected;
- (5) Extent petitioner's interest may be represented by existing parties;
- (6) Extent petitioner's interest in proceeding differs from that of the other parties;
- (7) Extent petitioner's participation can assist in development of a complete record;
- (8) Extent petitioner's participation will broaden the issue or delay the proceedings; and
- (9) How the petitioner's intervention would serve the public interest. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-29 Opposition to intervention. If any party opposes the petition for intervention, that party shall file his motion to oppose on the commission, all other parties and the intervenor within five days after being served. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-30 Hearing. All petitions to intervene shall be heard prior to rendering a decision. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-31 Appeal from denial. A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to chapter 91-14, Hawaii Revised Statutes. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-14)

SUBCHAPTER 4

CONTESTED CASE PROCEDURES

§12-530-32 Purpose. This subchapter governs formal contested case procedures before the commission. These procedures may be modified or waived by the parties with the consent of a majority of the commission or presiding officer, as the case may be. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-33 Pre-hearing procedures. All parties to a contested case shall be prepared for a pre-hearing conference and a contested case hearing within a reasonable time, as determined by the hearing officer. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-34 Hearing officer, powers. In all contested case proceedings, the chairperson, one or more members or any other person may be a hearing officer duly appointed and designated to preside at the hearing.

The hearing officer shall have the power to administer oaths, receive, and rule on questions of evidence, set the dates for and hold prehearing conferences to formulate or simplify the issues, rule upon all objections or motions which do not involve a final determination of the proceeding, receive offers of proof, fix the length, form and time for the filing of briefs, dispose of any other matter that normally and properly arises in the course of a hearing, and take lawful action deemed necessary to the orderly and just conduct of a hearing. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-35 Notice of hearing. Unless otherwise provided by law, the notice of hearing will be served on all parties and persons who are entitled to such notice at their last recorded address as required by HRS §§91-9 and 91-9.5 at least fifteen days prior to hearing. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-9.5)

§12-530-36 Transcripts. Should any of the parties to a contested case either request that transcripts be provided or appeal the decision of the commission, the hearing officer shall fairly allocate the transcription costs between the applicant, intervenors and the commission. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-37 Limiting testimony. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-38 Removal from proceeding. Any person or persons who willfully disrupts a hearing or otherwise compromises the conduct of the hearing shall be removed from the hearing room. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-39 Order of procedure. In hearings on applications and petitions, the applicant shall open and close. Intervenors shall be heard in such order as the hearing officer directs. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-40 Co-counsel. Where a party is represented by more than one counsel, they may allocate witnesses between them, but only one counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-41 Cross-examination. Each party shall have the right to conduct such cross-examination of the witnesses as may be required for a full and true disclosure of the facts and shall have the right to submit rebuttal evidence. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §§91-9, 91-10)

§12-530-42 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. Only parties or the hearing officer may request the issuance of a subpoena.

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 and gives the name and address of the subpoenaed witness and a complete description of the documents sought to be produced. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §§91-9, 92-16)

§12-530-43 Fees and mileage. Witnesses summoned by subpoena shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii, and such fees and mileage shall be paid by the party who requested the subpoena be issued. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §92-16)

§12-530-44 Oath. Witnesses shall be placed under oath or affirmation before testifying. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §92-16)

§12-530-45 Consolidation. The commission, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-46 Substitution of parties. Upon motion and for good cause, the commission may order substitution of parties, except that in the case of death of a party,

substitution may be ordered without the filing of a motion. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-47 Motions. (a) Time. Motions may be made before, during or after a contested case hearing.

(b) Form; contents. All motions other than those made during a hearing shall be made in writing to the commission 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 commission 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 commission or hearing officer the original with proof of service.

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

(e) Waiver. Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing without good cause may be deemed a waiver of objection to the granting or denial of the motion. A party who does not oppose the motion shall notify the hearing officer and opposing counsel or party promptly. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-48 Discovery. The parties to a contested case may request discovery in a manner consistent with rules 26 through 32, 34, 36 and 37, Hawaii Rules of Civil Procedure. The hearing officer will allow utilization of the discovery process where appropriate and where such would not unreasonably delay the proceedings. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-49 Informal settlements, mediation and arbitration. (a) In order to encourage and provide opportunities for settlement of disputes, there may be

held at any time prior to or during contested case hearings, such informal conferences among the parties for the purpose of submission and consideration of facts, arguments, or offers of settlement, as the nature of the proceedings, time and public interest may permit. Nothing contained herein shall prevent the parties from voluntarily submitting factual issues to mediation or arbitration so long as the submission does not result in an improper delegation of powers of the commission or prevent the commission from making the final decision in the matter.

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

(c) Rejected offers or proposals shall be privileged and shall not be admissible in evidence against any counsel or person claiming that privilege. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-50 Evidence. (a) Form and admissibility. The hearing officer shall not be bound by the Hawaii Rules of Evidence, but may exercise his or her own discretion in accord with section 91-10, Hawaii Revised Statutes, and with a view toward doing substantial justice.

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

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

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

(e) Exhibits. Exhibits shall conform to the provisions of subsections 12-530-16(b) and (c), where applicable, and shall be filed with the hearing officer.

(f) Commission records. If any matter contained in a document on file as a government record is offered in evidence, such document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of such document

are specifically identified and otherwise competent, relevant and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy thereof shall be presented as an exhibit, unless otherwise ordered by the 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 commission's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(h) Additional evidence. The hearing officer may require the production of further evidence upon any issue. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-9)

§12-530-51 Correction of transcript. Motions to correct the transcript will be acted upon by the hearing officer or the commission, as the case may be. Motions shall be filed within seven days after receipt of the transcript unless otherwise directed and shall be served on all parties. Such motions shall certify the date when the transcript was received. If no objections are received within ten days after date of service, the transcript will, upon approval of the commission, be changed to reflect such corrections. If objections are received, the motion will be acted upon with due consideration to the stenographic transcript of the hearing. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

SUBCHAPTER 5

POST HEARING PROCEDURES

§12-530-52 Briefs. The hearing officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the hearing officer in writing, and a copy thereof served upon or mailed to the other parties to the proceeding. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the commission. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-53 Oral arguments. The commission may direct or permit the presentation of oral arguments with the applicant opening and concluding the argument. Not more than one hour on each side of the proceeding will be allowed for argument without special leave of the commission. If more than one person is participating on a side of the proceeding, those parties shall divide the hour. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-54 Recommendations of hearing officer. (a) Submission of recommendations. Upon completion of the contested case the hearing officer shall prepare and submit to the commission the record of the hearing and a report setting forth findings of fact, conclusions of law, and a proposed decision and order.

(b) Proposed findings of fact submitted by parties. Any party to the proceeding may submit its proposed findings of fact. Said proposals shall be mailed to each party to the proceeding. The hearing officer shall incorporate in his report a recommended ruling upon each proposed finding so presented.

(c) Contents of record. The record shall include the application, notice of hearing, motions, rulings, orders, a transcript of the hearing, documentary evidence, the proposed findings and objections, the

report of the hearing officer, and all other matters placed in evidence.

(d) Service of hearing officer's report. The hearing officer's report and proposed decision and order shall be served upon all parties. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-55 Exceptions to hearing officer's report and recommendations. (a) File; form; copies; time; service. Within ten working days after service of the report and proposed decision and order, a party may file with the commission his exceptions and memorandum in support thereof. Copies shall be served upon each party to the proceeding.

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

- (1) Set forth specifically the grounds for each exception.
- (2) Identify the objectionable portions of the hearing officer's report and recommended order.
- (3) Identify the portions of the record relied upon by page citation.
- (4) Grounds not stated and identified in the report and record are waived. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-56 Support of hearing officer's report and recommendations. (a) File; form; copies; time; service. Within ten working days after service of the exceptions, a party may file with the commission a brief in support of the hearing officer's recommendations. Copies shall be served upon each party to the proceeding.

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

- (1) Answer specifically the points to which exceptions were taken.
- (2) State the facts and reasons why report and recommendations must be affirmed.
- (3) Designate by page citation the portions of the report record relied upon. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

§12-530-57 Commission action. (a) If no statement of exceptions is filed as herein provided, the commission may proceed to adopt, modify and adopt as modified, or reverse the recommendations of the hearing officer. In addition, the commission may remand the matter to the hearing officer to conduct further fact finding on specific issues as may be determined by the commission.

(b) Upon the filing of the exceptions and briefs as provided for in sections 12-530-55 and 12-530-56, the commission shall schedule and hear oral argument upon the exceptions. After oral argument, the commission shall take action as provided for in subsection (a) of this section. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-11)

§12-530-58 Issuance of decisions and orders. A proceeding shall stand submitted for decision by the commission after the taking of evidence, the submission of a report by the hearing officer, and the filing of exceptions briefs or the presentation of oral argument. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. Said proposals shall be mailed to each party to the proceeding and an opportunity given to each party to comment thereon.

Every decision and order adverse to a party to the proceeding, rendered by the commission 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 commission shall incorporate in its decision a ruling which addresses such findings. Such decisions and orders in contested cases shall be rendered within forty-five days from the presentation of oral argument by the parties. [Eff 2/14/92, am 5/25/00] (Auth: HRS §91-2) (Imp: HRS §91-12)

§12-530-59 Service of decisions and orders. Decisions and orders shall be served by mailing certified copies thereof to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy thereof. When a party to an application proceeding has appeared by a representative, service upon such representative or counsel shall be

deemed to be service upon the party. [Eff 2/14/92]
(Auth: HRS §91-2) (Imp: HRS §91-12)

§12-530-60 Appeals. Parties to proceedings before the commission may obtain judicial review of decisions and orders issued by the commission in the manner set forth in chapter 91-14, Hawaii Revised Statutes. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-14)

SUBCHAPTER 6

RULE MAKING PROCEDURES AND DECLARATORY RULINGS

§12-530-61 Commission. All rules and regulations of the commission shall be adopted by the commission and approved by the mayor in accordance with Hawaii Revised Statutes; provided, however, that such procedure shall not be applicable to regulations concerning only the internal management of the department or the commission not affecting the private rights of or procedures available to the public, to declaratory rulings, or to intra-agency memoranda. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §§91-1(4), 91-3)

§12-530-62 Petition and procedures for adoption, amendment, or repeal of rules and regulations. (a) The commission may adopt, amend, or repeal any of its rules by following the procedures outlined herein, except that the commission need not formally file a petition and need only submit a draft of the proposed changes.

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

(c) Filing of petition.

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

- (A) A statement of the nature of the applicant's interest;
- (B) A draft of the proposed rule or amendment or a designation of the provisions sought to be repealed;
- (C) Statement of the reasons in support of the petition; and
- (D) A public hearing and notice fee of \$250; provided that such fee shall be returned if the commission denies the petition as provided for in subsection (d) of this section.

(2) Upon receipt of all required fees, information, and documentation, the director shall certify that the applicant's petition is complete and shall refer the petition to the commission.

(d) Disposition of petition. After the director finds that the application is complete, the application shall be referred to the commission. The petition shall be considered submitted to the commission as of the first meeting it is properly placed on the agenda. Within thirty days after submission the commission 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 commission proposes to adopt, amend, or repeal a rule, it shall schedule a public hearing by giving thirty days notice. Notice shall include a statement of the substance of the proposed rule, and the date, time, and place where interested persons may be heard. Notice shall be published at least once in a newspaper of general circulation in Maui County, and pursuant to section 1-28.5, Hawaii Revised Statutes, and shall be mailed to all persons who have made a timely, written request of the commission for advanced notice of its rulemaking proceedings.

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

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

(h) Mayoral approval. The adoption, amendment, or repeal of any rule by any county agency shall be subject to mayoral approval.

(i) Emergency rules. If the commission finds an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than twenty days notice of hearing, and states its reasons in writing, it may proceed without prior notice or hearing.

or upon such abbreviated notice and hearing as practicable.

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

(k) Emergency rules; effect; notice. Emergency rules shall be effective upon filing, but for not longer than one hundred twenty days without renewal. The commission shall publish a copy of the emergency rule within five days of filing herein. [Eff 2/14/92, am 5/25/00] (Auth: HRS §91-2) (Imp: HRS §§1-28.5, 91-3, 91-4, 91-6)

§12-530-63 Declaratory rulings. (a) Applicability. Any interested person may petition the commission for a declaratory order as to applicability of any statutory provision or of any rule or order of the department or the commission.

(b) Filing of petition.

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

(A) The name, address, and telephone number of the applicant;

(B) A statement of the nature of applicant's interest, including reasons for the submission of the petition;

(C) A designation of the specific provision, rule or order in question;

(D) A complete statement of facts;

(E) A statement of the position or contention of the applicant; and

(F) A memorandum of authorities including any legal authorities, containing a full discussion of the reasons in support of such position or contention.

(2) Upon receipt of all required information and documentation, the director shall review the petition for completeness and refer the petition to the commission.

(c) Disposition of petition.

- (1) The commission may for good cause refuse to issue a declaratory ruling where:
 - (A) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future.
 - (B) The applicant's interest is not of the type which would give the applicant standing to maintain an action if the applicant were to seek judicial relief.
 - (C) The issuance of the declaratory ruling may adversely affect the interests of the County, the commission, the department or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.
 - (D) The matter is not within the jurisdiction of the commission.
- (2) Where any question of law is involved, the commission may refer the petition to the department of the corporation counsel. The commission may also refer the petition to other agencies where it deems it necessary or desirable.
- (3) The commission shall promptly notify the applicant of the disposition of the petition.
- (d) Status of orders. Orders disposing of petitions shall have the same status as other agency orders. Orders shall be applicable only to the factual situation alleged in the petition or set forth in the order. They shall not be applicable to different factual situations or where additional facts not considered in the order exist. [Eff 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-7)

§12-530-64 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 2/14/92] (Auth: HRS §91-2) (Imp: HRS §91-2)

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Amendment to Chapter 12-30
Rules of Practice and Procedure for the
Maui County Cultural Resources Commission

1. Section 12-30-12, Rules of Practice and Procedure for the Maui County Cultural Resources Commission, is amended by amending subsection (d) to read as follows:

"(d) Except as provided in §12-30-58 of these rules for decisions rendered after a contested case proceeding, [All] all final decisions and orders [should] shall be issued in writing within [a reasonable time after the final vote of the commission] one hundred twenty days from the date the application is deemed complete by the director." [Eff 2/14/92, am] (Auth: HRS §91-2) (Imp: HRS §§91-2, 91-11, 91-13.5)

2. Section 12-30-58, Rules of Practice and Procedure for the Maui County Cultural Resources Commission, is amended to read as follows:

"§12-30-58 Issuance of decisions and orders. A proceeding shall stand submitted for decision by the commission after the taking of evidence, the submission of a report by the hearing officer, and the filing of exceptions briefs or the presentation of oral argument. A party to the proceeding may submit a proposed decision and order which shall include proposed findings of fact. Said proposals shall be mailed to each party to the proceeding and an opportunity given to each party to comment thereon.

Every decision and order adverse to a party to the proceeding, rendered by the commission 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 commission shall incorporate in its decision a ruling which addresses such findings. Such decisions and orders in contested cases shall be rendered within [a reasonable time] forty-five days from the presentation of oral argument by the parties." [Eff 2/14/92, am] (Auth: HRS §91-2) (Imp: HRS §91-12)

3. Section 12-30-62, Rules of Practice and Procedure for the Maui County Cultural Resources Commission, is amended by amending subsection (e) to read as follows:

"(e) Public hearing; notice. When the commission proposes to adopt, amend, or repeal a rule, it shall schedule a public hearing by giving thirty days notice. Notice shall include a statement of the substance of the proposed rule, and the date, time and place where interested persons may be heard. Notice shall be published [at least once in a newspaper of general circulation in Maui County,] pursuant to section 1-28.5, Hawaii Revised Statutes, and shall be mailed to all persons who have made a timely, written request of the commission for advanced notice of its rulemaking proceedings." [Eff 2/14/92, am] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4, 91-6)

4. Section 12-30-62, Rules of Practice and Procedure for the Maui County Cultural Resources Commission, is amended by amending subsection (k) to read as follows:

"(k) Emergency rules; effect; notice. Emergency rules shall be effective upon filing, but not longer than one hundred twenty days without renewal. The commission shall publish a copy of the emergency rule [at least once in a newspaper of general circulation in Maui County] within five days of filing herein." [Eff 2/14/92, am] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4, 91-6)

5. Material, except source notes, to be repealed is bracketed. New material is underscored.

6. Additions to update source notes to reflect these amendments are not underscored.

7. These amendments to chapter 12-30, Rules of Practice and Procedure for the Maui County Cultural Resources Commission, shall take effect ten days after filing with the Office of the County Clerk.

ADOPTED this _____ day of _____, 1999.

DEPARTMENT OF PLANNING
MAUI COUNTY CULTURAL RESOURCES COMMISSION

JACKIE PIAS CARLIN
Chairperson

JOHN E. MIN
Planning Director

JAMES H. APANA, JR.
Mayor

Approved this _____ day of
_____, 1999.

APPROVED AS TO FORM
AND LEGALITY:

KELLY A. CAIRNS
Deputy Corporation Counsel
County of Maui

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Received this _____ day of
_____, 1999.

DARYL T. YAMAMOTO
County Clerk
County of Maui

CERTIFICATION

I, JOHN E. MIN, Director of the Planning Department, County of Maui, do hereby certify:

1. That the foregoing is a full, true, and correct copy of the amendments of the rules of the Maui County Cultural Resources Commission drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted by the Commission on the _____ day of _____, 199__, by affirmative vote of the proper majority following a public hearing that closed on _____, 199__, and filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing amendments to the rules was published in the Maui News on the ___ day of _____, 199__.

COUNTY OF MAUI

JOHN E. MIN
Planning Director

