

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 8, HAWAII HISTORIC PLACES REVIEW BOARD

CHAPTER 197

PRACTICE AND PROCEDURE

BEFORE THE HAWAII HISTORIC PLACES REVIEW BOARD

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#### Subchapter 1 General Provisions

§13-197-1 Purpose. This chapter governs the practice of and the procedures before the Hawaii historic places review board under Chapter 91, Hawaii Revised Statutes. [Eff. 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §§91-2, 91-5, 91-6, 91-8)

§13-197-2 Definitions. As used in this chapter:

"Agency" means any board, commission, department, bureau, or political subdivision of the State or county governments.

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

"Owner or owners" means a person having fee simple title to the property being nominated for registration into the Hawaii register or national register, which interest is legally recorded at the bureau of conveyances or the land court at the State of Hawaii. If the property being nominated is publicly owned, the owner shall mean the department of land and natural resources or in cases where the public property is under the control and management (i.e. deed, executive order) of an agency, shall mean the administrative officer responsible for the control and management of the property. Owner shall not include persons holding less than fee interest in the property (i.e. lease, easement, permit, or license).

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party, in any proceeding before the review board.

"Person" or "persons" include individuals, partnerships, corporations, associations, or public or private organizations of any character other than an agency.

"Public records" shall be as defined in section 92-50, Hawaii Revised Statutes.

"Review Board" means the Hawaii historic places review board.

"Regular business hours" means from 7:45 a.m. to 4:30 p.m. of each day of the week except Saturdays, Sundays, and holidays.

"Rule" shall be as defined in section 91-1(4), Hawaii Revised Statutes.

"State" means the State of Hawaii. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §91-2, §91-1)

§13-197-3 Office. The office of the review board is in the office of the historic preservation division, department of land and natural resources, Kakuhihewa Building, 601 Kamokila Blvd., Room 555, Kapolei, Hawaii 96707. All communication to the review board shall be sent to the review board at that address, unless otherwise specifically directed. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §6E-5.5, 91-2) (Imp: HRS §91-2)

§13-197-4 Public records and information. (a) All public records shall be available for inspection at the office of the review board during regular business hours unless public inspection of those records is in violation of any state or federal law; provided that except where those records are open under any rule of court, the attorney general may determine which records may be withheld from public inspection when those records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State is or may be a party, or when those records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person.

(b) Public records printed or reproduced by the review board in quantity shall be given to any person requesting the same and paying the fees established by the review board or by law for those records. Photocopies of public records shall be made and given to any person requesting same, upon payment by that person of reasonable fees established by the review board or by law.

(c) Any person may obtain information on matters within the jurisdiction of the review board by inquiring in person, during regular business hours, at the office of the review board, or by submitting a written request to the office.

(d) Requests for public information, for permission to inspect official records, or for copies of public records shall be handled with due regard for the dispatch of other public duties. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-2) (Imp: HRS §§91-2, 92-51, 92-21)

## Subchapter 2 Rulemaking Proceedings

§13-197-5 Petitions for adoption, amendment, or repeal of rules. (a) Any interested person may petition the review board for the adoption, amendment, or repeal of any rule of the review board. The petition shall be submitted in duplicate and delivered to the office of the review board.

(b) The petition need not be in any special form but shall contain:

(1) A statement of the nature of each petitioner's interest in the subject matter;

(2) A draft or text of the proposed rule or amendment desired by petitioner or a specification of the rule that petitioner desires repealed;

(3) A designation of any existing rules or laws affected by the petition;

(4) An explicit statement of the reasons that the petitioner is seeking the adoption, amendment, or repeal of the rule;

(5) Any other facts, views, arguments, and data deemed relevant to the petition;

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

(7) The signature of each petitioner.

(c) Any petition which does not conform to the foregoing requirements may be rejected by the review board.

(d) Upon receipt of the petition, the staff or the review board shall cause it to be dated to determine the date of submission. Within thirty days after receipt of the petition, the review board shall either deny the petition in writing, stating its reasons for denial, or initiate proceedings for the adoption, amendment, or repeal of the rule as provided by law. No public hearing, oral arguments, or other form of proceedings shall be held directly on any petition. If the review board determines that the petition does not disclose sufficient reasons to justify the commencement of public rule making proceedings, or if the petition fails in material respect to comply with the requirements of these rules, the review board shall deny the petition and the petitioner shall be so notified. The provisions of this section shall not operate to prevent the review board, on its own motion, from acting on any matter disclosed in any petition. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-6) (Imp: HRS §91-6)

§13-197-6 Adoption, amendment, or repeal of rules. When, pursuant to a petition, or upon its own motion, the review board proposes to adopt, amend, or repeal a rule, the rule shall be adopted, amended, or repealed in accordance with the procedures set form in this chapter and in chapter 91 and section 92-41, Hawaii Revised Statutes. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §6E.5.5) (Imp: HRS §§91-3, 91-6, 92-41)

§13-197-7 Conduct of public hearing on proposed adoption, amendment, or repeal of rule. (a) Each public hearing on a proposed adoption, amendment, or repeal of a rule shall be presided over by the chairperson or other person designated by the chairperson. The hearing shall be conducted in a manner which affords interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and obtains a clear and orderly record.

(b) Each hearing shall be held at the time and place set in the notice but at that time and place may be continued from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of the hearing and shall outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notices in an order the presiding officer shall prescribe.

(d) All interested persons and agencies of the State or its political subdivisions shall be given reasonable opportunity to offer testimony, orally or in writing, with respect to the matters specified in the notice. All persons, before proceeding to testify, shall state their names, addresses, and whom they represent, and shall give such other information respecting their appearances as the presiding officer may request. Every

person testifying shall be subject to questioning by members of the review board but questioning by private persons shall not be permitted without the presiding officer's permission. The presiding officer shall confine the testimony to the subject matter of the hearing. All written testimony offered may be submitted to the review board at its office not less than twenty-four hours prior to the hearing. Persons submitting written testimony on the day of the hearing shall furnish twelve copies of the testimony to the review board prior to the hearing.

(e) Unless otherwise specifically ordered by the review board, testimony given at the hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, two copies of the exhibits shall be submitted.

(f) At the close of the final public hearing, the presiding officer shall announce the decision of the review board or announce the date when it intends to make a decision. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §6E-5.5, 91-2) (Imp: HRS §91-3)

### Subchapter 3 Declaratory Rulings

§13-197-8 Declaratory rulings. (a) Any interested person may petition the review board for a declaratory order as to the applicability of any statutory provisions administered by the review board or any rule or order of the review board.

(b) The petition shall be submitted in duplicate to the office of the review board. The petition need not be in any special form but shall contain:

(1) A full disclosure of the nature of the petitioner's interest, including reasons for the submission of the petition;

(2) A designation of the specific statutory provision, rule, or order in question; a complete statement of the relevant facts and the precise nature of the controversy;

(3) A statement of the interpretation given the statutory provision, rule or order by the petitioner;

(4) A memorandum containing the reasons, including any legal authorities, in support of the interpretation of the petitioner; and

(5) The name, address, telephone number, and signature of the petitioner.

(c) Any petition which does not conform to the requirements of subsection (b) may be rejected by the review board.

(d) Upon receipt of the petition, the review board may require the petitioner to file additional data or memoranda in support of the position taken by the petitioner.

(e) The review board may, for good cause, and without notice or hearing, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the review board may also refuse where:

- (1) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;
  - (2) The petitioner's interest is not of the type which would give standing to maintain an action in a court of law;
  - (3) The issuance of a declaratory order may adversely affect the interest of the State of Hawaii, the review board, or any of the board's officers or employees in any litigation which is pending or may be reasonably expected to arise; and
  - (4) The petition requests a ruling on a statutory provision not administered by the review board or the matter is not otherwise within the jurisdiction of the review board.
- (f) Where the petition involves a question of law, the review board may refer the matter to the attorney general of the State for a legal opinion.
- (g) No hearing need be granted to the petitioner or to any interested person in the usual course of disposition of a petition for a declaratory ruling.

However, the review board may, at its discretion, order a hearing on the disposition of the petition if the petitioner submits a written request stating, in detail, why a hearing is necessary for a fair consideration of the need for a declaratory ruling on the matter stated in the petition.

- (h) The review board shall, within a reasonable time after receipt of a petition for declaratory ruling, either deny the petition, stating the reasons therefor, or issue a declaratory ruling. Upon disposition of the petition, the review board shall promptly notify the petitioner.
- (i) Orders disposing of petitions shall be applicable only to the fact situation alleged in the petition or as set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist. [Eff 6/22/81; am and comp 3/9/89] (Auth: HRS §§6E-5.5, 91-8) (Imp. HRS §91-8)

#### Subchapter 4 Contested Case Proceedings

§13-197-10 Contested case hearings. When required by law or administrative rule, the review board shall hold a contested case hearing upon its own motion or upon the written petition of any interested person who is properly admitted as a party pursuant to section 13-197-13. Unless specifically prescribed in this chapter or by chapter 91, Hawaii Revised Statutes, the review board may adopt procedures which in its opinion will best serve the purposes of the hearings. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §91-9)

§13-197-11 Request for hearing. (a) A hearing on a contested matter may be requested by the review board on its own motion or any interested person who then properly qualifies to be admitted as a party. An oral or written request for a contested case hearing shall be made by the close of the review board

meeting at which the matter is scheduled for disposition. The person requesting the contested case hearing shall file (or mail and postmark) a written petition with the review board not later than ten days after the close of the review board meeting. The time for making an oral or written request and submitting a written petition may be waived by the review board.

(b) A petition requesting a contested case hearing shall contain concise statements of:

(1) The legal authority under which the proceeding, hearing, or action is to be held or made;

(2) The petitioner's interest that may be affected;

(3) The disagreement, denial, or grievance which is being contested by the petitioner;

(4) The basic facts and issues raised; and

(5) The relief to which the party or petitioner seeks or deems itself entitled. [Eff and comp 3/9/89] (Auth: HRS §§91-2; 6E-5.5) (Imp: HRS §91-9)

§13-197-12 Notice of hearing. After a determination is made that a contested case hearing is required, the written notice of hearing shall be served on parties in accordance with section 91-9.5, Hawaii Revised Statutes, and shall be served on all persons or agencies admitted as a party at their last recorded addresses at least fifteen days before the hearing date. Further, the notice shall be published as provided by law but not less than once in a newspaper of general circulation within the State and within the county provided that matters of internal management shall not be subject to the publication requirement. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §§91-9, 91-9.5)

§13-197-13 Parties. (a) The following persons or agencies shall be admitted as a party:

(1) The nominator shall be a party;

(2) The owner shall be a party in cases involving chapter 13-198; provided, however, that when the owner is an agency, it shall not have standing to petition for a contested case hearing for publicly-owned property;

(3) All persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application; and

(4) Other persons or agencies who can show a substantial interest in the matter may apply to be a party. The review board may approve the application only if the applicant's participation will substantially assist the review board in its decision making.

(b) The review board may deny any application to be a party when it appears that:

(1) The position of the applicant requesting participation is substantially the same as the position of a party already admitted to the proceedings; and

(2) The admission of additional parties will not add substantially new information or the addition will render the proceedings inefficient and unmanageable.

(c) All persons with similar interests seeking to be admitted as parties shall be considered at the same time so far as possible.

(d) Where a contested case hearing has been scheduled, any other interested person who qualifies to be a party under subsection (a) may apply to participate, in accordance with this subchapter, by filing a written application with the review board not later than ten days before the scheduled contested case hearing or at an earlier date as established by the review board. Except for good cause shown, late filings shall not be permitted.

(e) The application to become a party shall contain the following:

(1) The nature of the applicant's statutory or other right;

(2) The tax map key number of the applicant's property as well as the petitioner's or nominator's property. The nature and extent of the interest in applicant's property;

(3) The effect of any decision in the proceeding on applicant's interest; and

(4) The difference in the effect of the proposed action on the applicant's interest and the effects of the proposed action on the general public.

(f) If relevant, the applicant shall also address:

(1) Other means available whereby applicant's interest may be protected;

(2) The extent the applicant's interest may be represented by existing parties;

(3) The extent the applicant's interest in the proceedings differs from that of the other parties;

(4) The extent the applicant's participation can assist in the development of a complete record;

(5) The extent the applicant's participation will broaden the issue or delay the proceeding;

(6) How the applicant's intervention would serve the public interest; and

(7) Any other information the review board may add or delete.

(g) If any party opposes another person's application to be a party, the party may file objections for the record no later than ten days prior to the hearing.

(h) All applications to be a party shall be acted upon as soon as practicable and shall be decided not later than the commencement of the contested case hearing.

(i) A person whose petition to be admitted as a party has been denied may appeal that denial to the circuit court pursuant to section 91-14, Hawaii Revised Statutes. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §§91-9, 91-9.5)

§13-197-14 Conduct of hearing. (a) Contested case hearings shall be conducted in accordance with this subchapter, chapter 91, Hawaii Revised Statutes, and section 92-16, Hawaii Revised Statutes.

(b) The presiding officer shall have the power to give notice of the hearing, administer oaths, compel attendance of witnesses, and the production of documentary evidence, examine witnesses, certify to official acts, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents, briefs, and dispose of other matters that normally and properly arise and which are necessary for the orderly and just conduct of a hearing. The review board members may examine and cross-examine witnesses.

(c) The chairperson of the review board shall be the presiding officer. However, the chairperson may designate another review board member, an appointed representative or a master to be presiding officer unless prohibited by law.

(d) The review board may conduct the hearing or, unless otherwise prohibited by law, the review board in its discretion may designate a hearing officer or master to conduct contested case hearings.

(e) The presiding officer shall provide that a verbatim record of the evidence presented at any hearing is taken unless waived by all the parties. Any party may obtain a certified transcript of the proceedings upon payment of the fee established by law for a copy of the transcript.

(f) The petitioner shall make the first opening statement and the last closing argument unless the review board directs otherwise. Other parties shall be heard in an order the presiding officer directs.

(g) Where a party is represented by more than one counsel, they may allocate witnesses between them but only one of the counsel shall be permitted to cross-examine a witness or to state any objections or to make closing arguments.

(h) Each party shall have the right to conduct cross-examinations of the witnesses as required for a full of true disclosure of the relevant facts and shall have the right to submit rebuttal evidence, subject to limitation by the presiding officer.

(i) To avoid unnecessary or repetitive evidence, the presiding office may limit the number of witnesses, the extent of direct or cross examination, or the time for testimony upon a particular issue, subject to law.

(j) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §91-9, 92-16)

§13-197-15 Procedure for witnesses. (a) Witnesses may be subpoenaed as set forth in this subsection:

(1) Requests for the issuance of subpoenas, requiring the attendance of a witness for the purpose of taking oral testimony before the review board shall be in writing, and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only parties or a review board member may request the issuance of a subpoena;

(2) Requests for the issuance of subpoenas for the production of documents or records shall:

(A) Be in writing;

(B) Specify the particular document or record, or part thereof, desired to be produced; and

(C) State the reasons why the production thereof is believed to be material and relevant to the issues involved. Only parties or a review board member may request the issuance of a subpoena duces tecum.

(b) Subpoenas may be issued by the presiding officer. No subpoena shall be issued unless the party requesting the subpoena has complied with this section giving the name and address of the desired witness and tendered the proper witness and mileage fees. Signed and sealed blank subpoenas shall not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall state at whose request the subpoena is issued. Requests for subpoenas shall be filed not later than three days before the scheduled hearing.

(c) Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and the fees and mileage shall be paid by the party at whose request the witness appears. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §92-16)

§13-197-16 Motions. (a) All motions other than those made during a hearing shall be made in writing to the review board, shall state the relief sought, and shall be accompanied by an affidavit or memorandum setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing memorandum, if any.

(b) The moving party shall serve a copy of all motions on all other parties at least forty-eight hours prior to the hearing on the motion and shall file with the review board the original with proof of service.

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than twenty-four hours prior to the hearing. The original and proof of service shall be filed with the review board.

(d) Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion. [Eff and comp 3/9/89] (Auth: §§91-2, 6E-5.5) (Imp: HRS §91-9)

§13-197-17 Evidence. (a) The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view to doing substantial justice.

- (b) The presiding officer shall rule on the admissibility of all evidence. The rulings may be reviewed by the review board in determining the matter on its merits.
- (c) 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) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained, or the submission of the evidence itself.
- (e) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all counsel parties. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the presiding officer five days before the hearing or if prior service is waived, permit proper cross examination of the witnesses on matters contained in the prepared testimony.
- (f) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at that time to examine the document, and to offer in evidence other portions believed material and relevant.
- (g) Exhibits shall be prepared as follows:
- (1) Documents, pleadings, correspondence, and other exhibits shall be legible and shall be prepared on paper either 8-1/2 x 13 inches or 8-1/2 x 11 inches in size. Charts and other oversize exhibits shall be bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.
  - (2) When exhibits are offered in evidence, the original and twelve copies, unless otherwise waived by the board, shall be furnished to the presiding review officer or the review board's use with adequate copies for review by other parties, unless the copies have been previously furnished or the presiding officer directs otherwise.
- (h) If any matter contained in a document on file as a public record with the department is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of the 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 shall be presented as an exhibit, unless otherwise ordered by the presiding officer.
- (i) Official notice may be taken of matters judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts 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 noted.

(j) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as part of the record within a fixed time. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §§91-9, 91-10)

§13-197-18 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held pre-hearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §91-9)

§13-197-19 Correction of transcript. Motions to correct the transcript shall be made within five days after receipt of the transcript and shall be acted upon by the presiding officer. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §91-10)

§13-197-20 Disqualification. No review board member shall sit in any proceeding in which the member has any pecuniary or business interest involved in the proceeding or who is related within the first degree by blood or marriage to any party to the proceeding. If, after declaring any pecuniary interest or consanguinity to the parties, the parties do not oppose the member from sitting in a proceeding, the record shall note clearly the waiver by the parties. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §§84-14)

§13-197-21 Ex parte (single party) communications. (a) No party or person petitioning to be a party to a contested case hearing before the review board nor their employees, representatives or agents shall make an unauthorized ex parte communication either oral or written concerning the contested case to any member of the review board who will be a participant in the decision-making process.

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

(1) Those which relate solely to matters which a review board member is authorized by the review board to dispose of on ex parte basis.

(2) Requests for information with respect to the status of a proceeding.

(3) Those which all parties to the proceeding agree or which the review board has formally ruled may be made on an ex parte basis.

(4) Those with representatives of any news media on matters intended to inform the general public. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §91-13)

#### §13-197-22 Decisions and orders.

(a) A proceeding shall be deemed submitted for decision by the review board after the taking of evidence, the filing of briefs, the consideration of motions, and the presentation of oral argument permitted or prescribed by the presiding officer. Where a hearing officer has conducted the hearing, the hearing officer shall file a report with the evidence, or a summary thereof, as well as proposed findings of fact and conclusions of law which the review board may adopt, reject, or modify. A party to the proceedings may submit a proposed decision and order which shall include proposed findings of fact and conclusions of law. The proposals shall be filed with the review board and mailed to each party to the proceeding not later than ten days after the transcript is prepared and available, unless the presiding officer shall otherwise prescribe.

(b) Within the time established by law, if any, or within a reasonable time after the hearing, the review board shall render its findings of fact, conclusions of law and decision and order approving the proposal, denying the proposal, or modifying the proposal by imposing conditions. The vote of each member shall be recorded. Upon agreement by the parties, the examination and proposed decision provisions under section 91-11, Hawaii Revised Statutes, may be waived pursuant to section 91-9(d), Hawaii Revised Statutes.

(c) Every decision and order adverse to a party to the proceeding, rendered by the review 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 review board shall incorporate in its decision a ruling upon each proposed finding so presented.

(d) Decisions and orders shall be served by mailing 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. When a party has appeared by representative, service upon the representative or counsel shall be deemed to be service upon the party. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §91-12)

§13-917-23 Reconsideration. (a) The review board may reconsider a decision it has made on the merits only if the moving party can show:

- (1) New information not previously available would affect the result; or
- (2) That a substantial injustice would occur.

(b) In either case, a motion for reconsideration shall be made not later than five business days after the decision or any deadline established by law for the disposition of the subject matter, whichever is earlier. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §§91-11, 91-12)

§13-197-24 Appeals. Persons to proceedings who are aggrieved by the decision of the review board may obtain judicial review thereof in the manner set forth in section 91-14, Hawaii Revised Statutes, provided that the court may also reverse or modify a finding of the review board if such finding appears to be contrary to the clear preponderance of the evidence. [Eff and comp 3/9/89] (Auth: HRS §§91-2, 6E-5.5) (Imp: HRS §§91-14, 91-15)