

## [DOH Administrative Rules](#)

*Unofficial Version*

### Chapter 201 - Environmental Advisory Council Rules of Practice & Procedure

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Historical Note: Chapter 11-201, Administrative Rules, is based substantially on the Rules of Practice and Procedure of the Environmental Quality Commission. [Eff 6/2/75; R 12/6/85]

## Subchapter 1 - Purpose

### §11-201-1 Purpose

This chapter governs procedures before the environmental advisory council of the State of Hawaii under chapter 343, Hawaii Revised Statutes, and other related acts as may now or hereafter be administered by the council. They shall be construed to effectuate the purposes of chapter 343, Hawaii Revised Statutes, and to secure the just and speedy determination of every proceeding.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

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## Subchapter 2 - Definitions

### §11-201-2 Definitions

As used in this chapter, unless the context otherwise specifically requires:

"Appellant" means an applicant who appeals the non-acceptance by an agency of that person's environmental impact statement.

"Council" means the environmental advisory council of the State of Hawaii. Its membership shall be as provided in section 341-3, Hawaii Revised Statutes.

"Director" means the director of the office of planning and sustainable development (OPSD).

"Office" means the office of planning and sustainable development.

"Party" means each person or agency specifically affected by a proceeding other than as a member of the general public. The attorney general or the attorney general's representative shall be designated as "counsel for the council" and shall be party to all proceedings governed by this chapter.

"Petitioner" means the person or agency on whose behalf a petition is made to the council for a declaratory ruling or for the adoption, amendment, or repeal of any rule of the council.

"Proceeding" means the council's consideration of the relevant facts and applicable laws and its action thereupon with respect to a particular subject within its jurisdiction, initiated by a filing or submittal by petition, and applications by an interested person or agency or by a council notice or order, and shall include, but not be limited to:

Proceedings involving the adoption, amendment, or repeal of any rule of the council; and



Proceedings involving declaratory rulings.

[Eff 12/6/85] (Auth: HRS §343-6) (Imp: HRS §343-6)

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Subchapter 3 – Environmental  
Advisory Council

§11-201-3 Environmental Advisory  
Council

- A. The office of the environmental advisory council shall be located at such place and address as the council shall from time to time designate. All communications to the council shall be addressed to the environmental advisory council, unless otherwise specifically directed.
- B. The office of the council shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, with the exception of Hawaii state holidays and/or unless otherwise provided by statute or executive order.
- C. The council may meet and exercise its powers in any part of the State of Hawaii. All meetings of the council shall be open to the public, except that the council may meet in executive meetings, from which the public may be excluded, by a recorded vote of not less than two-thirds of the members present. An executive meeting shall be authorized only when, in accordance with law, it is deemed necessary for the protection of the character or reputation of any person or the protection of secret processes or methods of manufacture of any person or when the attorney general determines it is necessary for the preparation of the prosecution or defense of any action or proceeding. No order, ruling, appointment, contract, or decision shall be finally acted upon at an executive meeting. Meetings shall be held at times as the council deems advisable. Meetings may be scheduled by consensus of the council during the course of a meeting or during intervening days, at the call of the council chairperson or the director upon notifying the council chairperson. The public, petitioners, appellants, and respondents shall receive reasonable notice of all meetings. Notice of meetings of the council shall be posted as required under HRS Chapter 92 and any and all other applicable laws.
- D. A majority of all members to which the council is entitled shall constitute a quorum to transact business, and the concurrence of a majority of all the members to which the council is entitled shall be necessary to make valid any action of the council except those actions that the council authorizes, by concurrence of a majority of all members to which it is entitled, to be performed in its behalf by a limited number of duly designated council members, in which case the  concurrence of a majority of all the council members so designated shall be necessary to make an action valid.
- E. The council shall maintain minutes of its meetings, setting forth an accurate record of votes and actions taken at the meetings. Unless otherwise required by the governor, the minutes need not include a verbatim record of discussions at meetings. The minutes of the council shall be deemed public records, provided that the minutes of any executive meeting from which the public has been excluded may remain confidential, as long as their publication would defeat the lawful  purpose as stated in subsection (c), but no longer.
- F. All decisions, orders, and other actions of the council shall be authenticated or signed by the council members acting in the proceeding or by the chairperson upon delegation by the council members acting in the proceeding. Official copies of decisions, orders, and other council actions may be issued under the signature of the chairperson of the council or the chairperson's delegate.
- G. All documents required to be filed with the council shall be filed in the office of the council at

Honolulu, Hawaii within time limits as prescribed by law, rules, or by order of the council. Requests for public information, copies of official documents, or opportunity to inspect public records may be made in writing to the council office or in person at the office. [Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 92-4, 92-5, 92-7, 92-9, 343-3, 343-6)

#### §11-201-4 Delegation of Administrative Duties

- A. The council may delegate to any individual the power or authority vested in the council as it deems reasonable and proper for the effective administration of chapter 343, Hawaii Revised Statutes, except the power to adopt, amend, or repeal rules.
- B. The council by written resolution adopted by a majority of the members to which it is entitled, may appoint a hearing officer or officers, who may, but need not be, members of the council, or a disinterested attorney at law or other person or a combination of any of them to hold a hearing as provided in this chapter and take testimony upon the matters involved in the hearing and transmit to the council a record of the hearing, including a recording or transcript and a summary of the evidence taken at the hearing. After review of the testimony and evidence, a majority of the members to which the council is entitled shall render a decision on the matter.
- C. Any hearing officer may be paid a reasonable compensation as shall be determined by the council, provided that no member of the council shall be eligible to receive any compensation. [Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

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#### Subchapter 4 - Public Records

##### §11-201-5 Public Records

- A. The term "public records" as used in this chapter is defined as in section 92-50, Hawaii Revised Statutes, and shall include all maps, rules, environmental impact statements and related documents, written statements of policy or interpretation formulated, adopted, or used by the council all final opinions and orders, the minutes of meeting of the council, and any other material on file in the office of the council, which shall include all statements and other documents prepared under the provisions of chapter 343, Hawaii Revised Statutes, except materials and minutes submitted and reported in executive meetings of the council.
- B. All public records shall be available for inspection in the office of the council at Honolulu, Hawaii, during established office hours unless public inspection of those records is in violation of any state or federal law.
- C. Public records printed or reproduced by the council shall be given to any person requesting them and paying the reasonable cost thereof.
- D. Requests for public information, for permission to inspect official records, or for copies of public records shall be handled expeditiously. [Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6, 92-50)

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#### Subchapter 5 - Proceedings Before Council or Hearing Officer

##### §11-201-6 Proceedings Before Council or Hearing Officer

- A. The council on its own motion, or upon the petition of any interested person or any agency of the federal, state, or county government, may hold such proceedings as it may deem necessary from time to time in the performance of its duties, or the formulation of its rules. Procedures to be followed by the council, unless specifically prescribed in this chapter or by chapter 91, Hawaii Revised Statutes, shall be as in the opinion of the council will best serve the purposes of the proceeding.
- B. An individual may appear in the individual's own behalf or as an authorized representative of a partnership, corporation, trust or association, and an officer or employee of an agency of the state or a political subdivision of the state may represent the agency in any proceeding before the council.
- C. A person or agency may be represented by or with any person, counsel, or consultant in any proceeding under this chapter, except as provided in subsection (e).
- D. When an individual acting in a representative capacity appears in person or signs a paper in practice before the council, that individual's personal appearance or signature shall constitute a representation to the council that under this chapter and the applicable statute, that individual is authorized and qualified to represent the particular person on whose behalf the individual acts. The council at any time may require any person transacting business with the council in a representative capacity to show in writing that person's authority and a qualification to act in that capacity.
- E. Bar to appearance.
  - 1. No individual, whether associated with the council as a member, officer, employee, or counsel shall be permitted to appear before the council on behalf of or to represent in any manner any party in connection with any proceeding or matter that the individual has handled or passed upon while associated in any capacity with the council after June 2, 1975;
  - 2. Any person or agency appearing before the council in any proceeding or matter shall not in relation thereto knowingly accept assistance from and compensate any individual who would be precluded by paragraph (1);
  - 3. No individual who has been associated with the council as a member, officer, employee, or counsel thereof, shall be permitted to appear before the council in behalf of, or to represent in any manner, any person or agency in connection with any proceeding or matter that was pending before the council at the time of the individual's association with the council unless that individual shall first have obtained the written consent of the council upon a verified showing that the individual did not give personal consideration to the matter or proceeding as to which consent is sought or gain particular knowledge of the facts thereof during that individual's association with the council;
  - 4. This subsection shall not apply to any individual or agency whose association with the council has been terminated for a period of at minimum one year. [Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§84-18, 343-6)

#### §11-201-7 Disqualification of Council Member or Hearing Officer

Any party to a hearing, up to fifteen days before the proceeding, may file an affidavit that one or more of the council members or a hearing officer has a personal bias or prejudice. The council member against whom the affidavit is so filed may answer the affidavit or may file a disqualifying certificate with the council. If the council member or hearing officer chooses to answer the affidavit, the remaining council members shall decide by a majority of all the members to which the council is entitled whether that council member or hearing officer shall be disqualified from the proceeding. Every affidavit shall state the facts and reasons for the belief that bias or prejudice exists and shall be filed at least five days before the hearing, or good cause shall be shown for the failure to file it within the time. Any council

member or hearing officer may request disqualification by filing with the chairperson a certificate that deems that person unable for any reason to preside with impartiality in the pending hearing.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-8 Consolidations

The council, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-9 Filing of Documents

- A. All requests, pleadings, submittals, petitions, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed with the council in any proceeding shall be filed electronically with the office of the council at Honolulu, Hawaii, within the time limits prescribed by law, this chapter, or by order of the council. Filings shall also be submitted in a searchable portable document format (PDF) with optimal character recognition (OCR). The date on which the papers are received shall be regarded as the date of filing.
- B. If electronic filing is not possible, all requests filed with the council shall be written in black ink, typewritten, or printed; shall be plainly legible; and shall be no larger than 8-1/2" X 11" in size, except that maps, charts, tables, and other like documents may be larger.
- C. All documents shall be signed in indelible ink or electronically by the party signing or by a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that the person has read the document; that to the best of that person's knowledge, information, and belief, every statement contained therein is true, and no such statement is misleading; and that it is not interposed for delay. Upon request, the party must provide original signature.
- D. Unless otherwise specifically provided by a particular rule or order of the council, only one electronic and searchable copy of all papers shall be filed.
- E. All documents filed by any person or agency in any proceeding shall state on the first page thereof the name, title, mailing address, email address, and telephone number, if any, of the individual or individuals who may be served with any documents filed in the proceeding. [Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-10 Amendment of Documents and Dismissal

If any document filed in a proceeding is not in substantial conformity with the applicable rules of the council as to contents thereof, or is otherwise insufficient, the council, on its own motion or on motion of any party, may strike the document or require its amendment. If amended, the document shall be effective as of the date of the receipt of the amendment.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-11 Retention of Documents

All documents filed with or presented to the council shall be retained in the files of the council. The council may permit the withdrawal of original documents upon submission of properly authenticated

copies to replace the documents.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-12 Service of Process

- A. The council shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.
- B. All papers served by either the council or any party shall be served upon all parties or their counsel. Any counsel entering an appearance subsequent to the proceeding shall notify all other counsel then of record and all parties not represented by counsel, of the fact.
- C. The final order, and any other paper required to be served by the council upon a party, shall be served upon the party and a copy shall be furnished to counsel of record.
- D. Service of papers shall be made personally or, unless otherwise provided by law, by first-class mail.
- E. Service upon parties, other than the council, shall be regarded as complete, by mail, upon deposit in the United States mail, properly stamped and properly addressed to the parties involved. [Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-13 Council Decision

All final orders, opinions, or rulings entered by the council in the proceeding and rules adopted by the council shall be served upon the parties participating in the proceeding by regular mail or personal delivery by the council and shall be released for general publication. Copies of the published material shall be available for public inspection in the office of the council or may be obtained upon request and upon payment of reasonable charges.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-14 Computation of Time

In computing any period of time prescribed or allowed by this chapter, order of the council, or by any applicable statute, the day of the act, event, or default after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Sunday or legal holiday in the State of Hawaii.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-15 Continuance or Extensions of Time

Whenever a person or agency has a right or is required to take action within a period prescribed or allowed by this chapter, the council, upon motion and the concurrence of a majority of all the members to which the council is entitled, may permit the act to be done after expiration of the specified period if the delinquency is clearly shown to have been the result of excusable neglect and the council will still have enough time to comply with applicable statutory time limits.

[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 343-6)

#### §11-201-16 Court Reporter Fees

An individual requesting a Court Reporter to be present to take minutes of the proceedings shall bear the costs of the Court Reporter minutes. If copies of the transcript are requested the Court Reporter will be reimbursed according to state laws.

## Subchapter 6 Rulemaking

### §11-201-17 Initiation of Rulemaking Proceedings

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- A. The council, at any time on its own motion, may initiate proceedings for the adoption, amendment, or repeal of any rule of the council. Procedures to be followed in rulemaking proceedings shall be set forth in this chapter and applicable law.
- B. Any interested person or agency may petition the council for the adoption, amendment, or repeal of any rule of the council. Petitions for rulemaking filed with the council shall become matters of public record.
- C. Petitions for rulemaking shall conform to section 11-201-9 and shall contain:
  - 1. The name, title, address, email address, and telephone number of each petitioner;
  - 2. The signature of each petitioner;
  - 3. A draft or the substance of the proposed adoption or amendment or a designation of the provisions the repeal of which is desired;
  - 4. A statement of the petitioner's interest in the subject matter; and
  - 5. A statement of the reasons in support of the proposed adoption, amendment, or repeal.
- D. The council, within thirty days after the filing of a petition for rulemaking, shall either deny the petition or initiate public rulemaking proceedings in accordance with chapter 91, Hawaii Revised Statutes.
- E. Any petition that fails in any material respect to comply with the requirements of this section or that fails to disclose sufficient reasons to justify the institution of public rulemaking proceedings shall not be considered by the council. The council shall notify the petitioner in writing of the denial, stating the reasons therefore. Denial of a petition shall not operate to prevent the council from acting, on its own motion, on any matter disclosed in the petition. The petitioner may seek a review of the denial through the circuit court pursuant to chapter 91, Hawaii Revised Statutes.
- F. If the council determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in sections 11-201-17 to 11-201-19 and applicable law.  
[Eff 12/6/85] (Auth: HRS §§91-2, 91-6, 343-6) (Imp: HRS §§91-2, 91-6, 343-6)

#### §11-201-18 Notice of Public Hearing

- A. When, pursuant to a petition therefor or upon its own motion, the council proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking shall be published at least once in a newspaper of general circulation in the State and at least once in a newspaper which is printed and issued at least twice a week in the county affected by the proposed action. The notice shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the council's rulemaking proceedings. All notices shall be published at least twenty days prior to the date set for public hearing.
- B. A notice of the proposed adoption, amendment, or repeal of a rule shall include:
  - 1. A statement of the date, time, and place where the public hearing will be held;
  - 2. Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed; and
  - 3. A statement of the substance of the proposed rulemaking.  
[Eff 12/6/85] Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 92-41, 343-6)

#### §11-201-19 Conduct of Hearing

- A. The public hearing for the adoption, amendment, or repeal of rules shall be heard before the council and presided over by the chairperson of the council, or, in the chairperson's absence by another member designated by the council. The hearing shall be conducted in a manner as to afford to interested persons and agencies a reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.
- B. Each hearing shall be held at the time and place set in the notice of hearing but at the time and place may be continued by the presiding officer 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 hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in the order as the presiding officer shall prescribe.
- D. Each witness, before proceeding to testify, shall state the witness' name, address, and whom the witness represents at the hearing, and shall give the information respecting the appearance of the witness as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called but shall not apply the technical rules of evidence. Every witness shall be subject to questioning by the members of the council or by any other representative of the council. Cross-examination by persons or agencies shall be permitted only at the discretion of the presiding officer.
- E. All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. The period for filing written comments or recommendations may be extended beyond the hearing date by the presiding officer for good cause. One copy of written comments, recommendations, or replies shall be submitted electronically in PDF.
- F. Unless otherwise specifically ordered by the council, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. One copy of the exhibits shall be submitted electronically.  
[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)


#### §11-201-20 Council Action

The council shall consider all relevant comments and materials of record before taking final action in a rulemaking proceeding. Final action should be taken within forty-five working days after:

1. The final public hearing; or
2. The expiration of any extension period for submission of written comments or recommendations.  
[Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)

#### §11-201-21 Emergency Rulemaking

The council may adopt emergency rules pursuant to section 91-3, Hawaii Revised Statutes.

 [Eff 12/6/85] (Auth: HRS §§91-2, 343-6) (Imp: HRS §§91-2, 91-3, 343-6)

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## Subchapter 7 Declaratory Rulings

### § 11-201-22 Petitions for Declaratory Rulings

A. On petition of an interested person or agency, the council may issue a declaratory order as to the applicability of any statutory provision or any rule or order of the council and may also make determinations under chapter 343, Hawaii Revised Statutes. The petition shall conform to the requirements of section 11-201-9 and shall contain:

1. The name, title, address, email address, and telephone number of each petitioner;
2. The signature of each petitioner;
3. A designation of the specific provision, rule, or order in question, together with a statement of the controversy or uncertainty involved;
4. A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
5. A statement of the petitioner's position or contention; and
6. A memorandum containing a full discussion of reasons and legal authorities in support of the position or contention.

B. The council shall inform the public regarding petitions for declaratory rulings in the office's periodic bulletin. Within sixty days after the submission of a petition for declaratory ruling, the council shall either deny the petition in writing, stating the reasons for the denial, or issue a declaratory order on the matters contained in the petition, or set the matter for hearing, as provided in section 11-201-23, provided that if the matter is set for hearing, the council shall render its findings and decision within sixty days after the close of the hearing. Any determination by the council regarding the petition for declaratory ruling shall be published in the office's periodic bulletin.

C. The council, without notice or hearing, may dismiss a petition for declaratory ruling that fails in material respect to comply with the requirements of this section.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

### § 11-201-23 Refusal to Issue a Declaratory Order

The council, for good cause, may refuse to issue a declaratory order with specific reasons for the determination. Without limiting the generality of the foregoing, the council may so refuse where:

1. The question is speculative or purely hypothetical and does not involve existing facts, or facts that can be expected to exist in the near future;
2. The petitioner's interest is not of the type that would give the petitioner standing to maintain an action if judicial relief is sought;
3. The issuance of the declaratory order may affect the interests of the council in a litigation that is pending or may reasonably be expected to arise; and
4. The matter is not within the jurisdiction of the council.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

### § 11-201-24 Request for Hearing

Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing shall be granted to the petitioner or to a party in interest, the council may order the proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for a declaratory ruling shall set forth in detail in the request the reasons, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, why the matters alleged in the petition will not permit the fair and expeditious disposition of the petition. To the extent that the request for a hearing is dependent upon factual assertion, the request shall be accompanied by affidavits establishing these

facts. In the event a hearing is ordered by the council, chapter 91, Hawaii Revised Statutes, shall govern the proceedings.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

#### §11-201-25 Applicability of Order

An order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

#### §11-201-26 Declaratory Ruling on Council's Own Motion

Notwithstanding this chapter, the council, on its own motion or upon request but without notice or hearing, may issue a declaratory order to terminate a controversy or to remove uncertainty.

[Eff 12/6/85] (Auth: HRS §§91-2, 91-8, 343-6) (Imp: HRS §§91-2, 91-8, 343-6)

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Hawaii Office of Planning and  
Sustainable Development