

**PUBLIC LAND DEVELOPMENT CORPORATION
NOTICE OF BOARD MEETING
OCTOBER 11, 2012 at 2:30 PM
KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM #132
HONOLULU, HAWAII 96813**

AGENDA

1. CALL TO ORDER/ROLL CALL
2. APPROVAL OF MINUTES OF THE SEPTEMBER 20, 2012 MEETING
3. REQUEST TO ADOPT RESOLUTION NO. 01, APPROVING THE PUBLIC LAND DEVELOPMENT CORPORATION'S (PLDC) STRATEGIC PLAN AND PROJECT FLOWCHART
4. SUMMARY OF TESTIMONY RECEIVED AT PLDC PUBLIC HEARINGS ON DRAFT ADMINISTRATIVE RULES (SUMMARY ATTACHED)
5. CHANGES TO PLDC'S DRAFT ADMINISTRATIVE RULES
 - a. Request to approve the attached revisions to the PLDC draft administrative rules (Revisions to Hawaii Administrative Rules (HAR) Title 13, Chapters 301 & 302; defer adoption of HAR 13-303) (Draft changes are attached)
 - b. Request to appoint PLDC Executive Director Haraguchi as the Public Hearings Officer to take the revised PLDC draft administrative rules (HAR Title 13, Chapters 301 & 302; defer adoption of HAR 13-303) to public hearing.
6. ADJOURNMENT

Submitting public testimony on PLDC's website: the PLDC welcomes public testimony, in person, on PLDC agenda items. Public testimony will also be accepted through our website at <http://hawaii.gov/dlnr/pldc/meetings>, by facsimile at 586-2589, or via the US Postal System at the Public Land Development Corporation, P.O. Box 2359, Honolulu, HI 96804

Individuals requiring special assistance or accommodations for this meeting are asked to contact PLDC by phone at (808) 587-2766 at least three working days in advance of the meeting.

The agenda for the PLDC October 11, 2012 Board Meeting, draft minutes of the PLDC September 20, 2012 Board Meeting, PLDC Strategic Plan and Flowchart, revised PLDC draft administrative rules, PLDC Public Hearing Summary and all submittals for the October 11, 2012 PLDC Board Meeting will be posted on the PLDC website at <http://hawaii.gov/dlnr/pldc/meetings>. Hard copies of the above documents, as well as submittals are available upon request for a fee.

STATE OF HAWAII
PUBLIC LAND DEVELOPMENT CORPORATION
Honolulu, HI 96813

October 11, 2011

Board of the Public Land Development Corporation
State of Hawaii
Honolulu, HI

SUBJECT: REQUEST TO APPROVE 1) THE SUBSTANTIVE CHANGES TO THE PUBLIC LAND DEVELOPMENT CORPORATION'S DRAFT ADMINISTRATIVE RULES, CHAPTER 13-301, "PLDC RULES OF PRACTICE AND PROCEDURE" AND CHAPTER 13-302, "PLDC DEVELOPMENT PROGRAM"; 2) DEFERRAL OF THE ADOPTION OF CHAPTER 13-303, "PUBLIC FACILITY PROGRAM"; 3) TAKING THE DRAFT ADMINISTRATIVE RULES BACK FOR PUBLIC HEARING; AND 4) TO APPOINT THE EXECUTIVE DIRECTOR, LLOYD HARAGUCHI AS PUBLIC HEARING'S OFFICER.

SUMMARY:

The Public Land Development Corporation (PLDC) requests Board approval for the substantive changes to the Draft Administrative Rules, HAR Chapter 13-301 "PLDC Rules of Practice and Procedure" (Attachment 1), HAR Chapter 13-302 "PLDC Development Program" (Attachment 2) and deferral of adoption of HAR Chapter 13-303 "Public Facility Program." As the changes are substantive changes, the PLDC further requests Board approval to proceed back to public hearing for public testimony on the revised Draft Administrative Rules and to appoint Executive Director Haraguchi as the Public Hearings Officer.

BACKGROUND:

The PLDC was created by the passage of Act 55 in the 2011 the Legislature and codified as HRS 171C. PLDC was created to assist state and county agencies and departments to increase public benefit by facilitating partnerships that allow for reinvestment and enhancement of existing state asset; to work with agencies to establish new programs and initiatives of public benefit; to assist other state agencies in achieving their core missions and increasing their department's revenues; and to help create jobs and small business opportunities that are achieved through partnerships with state agencies and departments. HRS 171C-4 allows the PLDC to adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties.

The PLDC began working on its' administrative rules in January 2012 and submitted them to the Board for review in April 2012. At the April 19, 2012 Board meeting, the PLDC Board approved the Draft Administrative Rules, HAR Chapter 13-301 "PLDC Rules of Practice and Procedure", HAR Chapter 13-302 "PLDC Development Program" and HAR Chapter 13-303 "PLDC Project Facility Program" as presented and discussed, and appointed Executive Director Haraguchi as the Public Hearing's Officer with the intent that the Executive Director will take the Rules to public hearings.

The PLDC held six public hearings on the following date and locations:

- **Hawaii, Hilo: Monday, August 20, 2012 at 6:00pm**, Waiakea High School Cafeteria, 155 West Kawili Street, Hilo, HI 96720;
- **Hawaii, Kona: Tuesday, August 21, 2012 at 6:00pm**, Konawaena High School Cafeteria, 81-1043 Konawaena School Road, Kealahou, HI 96750;
- **Maui: Friday, August 24, 2012 at 6:00pm**, Maui Waena Intermediate School Cafeteria, 795 Onehee St., Kahului, HI 96732;
- **Molokai: Monday, August 27, 2012 at 6:00pm**, Mitchell Pauole Community Center, 90 Ainoa Street, Kaunakakai, HI 96748;
- **Oahu: Wednesday, August 29, 2012 at 6:00pm**, Dept. of Land and Natural Resources, Kalanimoku Building, Land Board Conference Room 132, 1151 Punchbowl Street, Honolulu, HI 96813; and
- **Kauai: Friday, August 31, 2012 at 6:00pm**, Elsie H. Wilcox Elementary School, 4319 Hardy Street, Lihue, HI 96766;

DISCUSSION:

The PLDC received extensive comments from both the public hearings and written comments from groups such as the Office of Hawaiian Affairs, Sierra Club, and the International Assoc. of Bridge, Structural, Ornamental and Reinforcing Iron Workers. In addition, Senators Malama Solomon and Donovan Dela Cruz worked with the PLDC to develop a strategic plan and project flowchart.

In response to the concerns raised during the public hearing process and in light of the strategic plan and project flowchart, the PLDC has made substantial changes to the draft administrative rules. The changes made to the draft administrative rules address many of the concerns raised in the public hearings, such as clearly defining the project review and approval process, expanding the amount of community input during that process, and identifying environmental safeguards contained within the process. These changes are consistent with the PLDC Strategic Plan and Project Flowchart.

The concerns raised regarding HAR Chapter 13-303, "Project Facilities Program," made staff take a renewed look at that rules chapter. Staff's recommendation is that the PLDC defer the adoption of HAR Chapter 13-303 to allow the corporation to evaluate the need for these rules or ways to address the concerns raised regarding these rules.

Attached are HAR Chapters 13-301 and 13-302 that show the revisions that have been made to the draft rules by the current version.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

PUBLIC LAND DEVELOPMENT CORPORATION

CHAPTER 301

RULES OF PRACTICE AND PROCEDURE

Subchapter 1 General Provisions

§13-301-1	Purpose
§13-301-2	Definitions
§13-301-3	Location and business hours
§13-301-4	Applicability of rules
§13-301-5	Delegation to the administrator
§13-301- 56	Meetings
§13-301- 67	Agenda <u>Limiting Testimony at public hearings and meetings</u>
§13-301-8	Inclusion on agenda
§13-301- 79	Quorum
§13-301- 810	Authentication
§13-301- 911	Submittal and filing of documents
§13-301- 1012	Access to corporation records
§13-301- 113	Computation of time
§13-301- 124	Service
§13-301- 135	Additional time after service by mail
§13-301- 146	Continuances or extensions of time
§13-301- 157	Amendment required or refusal of documents
§13-301- 168	Retention of documents

Subchapter 2 Proceedings Before the Board

§13-301-31	General rule
§13-301-32	Appearance before the board
§13-301-33	Disqualification of corporation member or hearings officer
§13-301-34	Ex parte communications
§13-301-35	Appointment of hearings officer
§13-301-36	Proceedings before the board; generally
§13-301-37	Substitution of parties
§13-301-38	Consolidation or separation
§13-301-39	Subpoenas
§13-301-40	Motions
§13-301-41	Board decision
§13-301-42	Request for reconsideration of board's decision

Subchapter 3 Contested Case Proceedings

§13-301-51	Contested cases; applicability
§13-301-52	Petition for hearing
§13-301-53	Contents of contested case petition
§13-301-54	Action by board
§13-301-55	Response
§13-301-56	Notice
§13-301-57	Burden of proof
§13-301-58	Prehearing conference; exchange of exhibits; briefs
§13-301-59	Procedure at hearing
§13-301-60	Decisions and orders
§13-301-61	Procedure before hearings officer; transmittal to board
§13-301-62	Appeal from contested case

Subchapter 4 Declaratory Rulings

§13-301-71	Petition for declaratory ruling
§13-301-72	Action on declaratory ruling
§13-301-73	Notice of hearing on petition for declaratory ruling; procedure
§13-301-74	Proposed findings of fact and conclusions of law
§13-301-75	Board's final decision, order, findings of fact, and conclusions of law
§13-301-76	Procedure before a hearings officer; transmittal to board
§13-301-77	Order, effect

Subchapter 5 Rule Relief

§13-301-81	General provisions; contents of petition for rule relief
§13-301-82	Disposition
§13-301-83	Additional facts or supplemental memorandum
§13-301-84	Notice of determination
§13-301-85	Determination final

Subchapter 6 Other Provisions

§13-301-91	Forms
§13-301-92	Gender and number
§13-301-93	Severability

GENERAL PROVISIONS

§13-301-2 Definitions. (a) As used in this chapter, unless the context requires otherwise:

"Administrator" means the executive director of the corporation or the executive director's designated representative.

"Board" means the board of directors of the public land development corporation established under chapter 171C, HRS.

"Chairperson" means the chairperson of the board of directors of the Public land development corporation.

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

"Corporation" means the public land development corporation established under chapter 171C, HRS.

"County" includes the counties of Kauai, Maui, Hawaii, and the city and county of Honolulu, and unless the context requires a different meaning, it shall mean the county in which the project is situated.

"Department" means that department of land and natural resources.

"Government records" is defined in section 92F-3, HRS. The term shall include all rules, written statements of policy or interpretation formulated, adopted, or used by the corporation, all final opinions and orders, the minutes of meetings of the board and any other material required by law to be kept on file in the office of the corporation unless accorded confidential treatment pursuant to law.

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

"HRS" means the Hawaii Revised Statutes.

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

"Person" means as appropriate individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies.

"Petition" means application to the corporation by a party which seeks relief under these rules.

"Petitioner" means a party who initiates a proceeding.

"PLDC" means the public land development corporation.

"Presiding officer" means the person conducting the hearing, which shall be the chairperson or the chairperson's designated representative.

"Proceeding" means the board's consideration of the relevant facts and applicable law and action thereon with respect to a particular subject within the board's jurisdiction, initiated by a filing or submittal or request or a board's notice or order, and shall include but not be limited to:

- (1) Petitions for the granting or declaring of any right, privilege, authority, or relief under or from any provision of law or any rule or requirement made pursuant to authority granted by law;
- (2) An investigation or review instituted or requested to be instituted by the board; or
- (3) Proceedings involving the adoption, amendment, or repeal of any rule of the board whether initiated by board order or notice or by petition of an interested person.

"Public hearing" means a hearing required by law in which members of the public generally may comment upon the subject matter of the hearing.

"Rules" means these rules.

"State" means the State of Hawaii.

[Eff] (Auth: HRS §§91-2, 171C-4) (Imp: HRS §§91-2, 171C-4)

§13-301-3 Location and business hours. (a) The principal office of the corporation is No. 1 Capitol District, Fifth Floor, 250 South Hotel Street, Honolulu, Hawaii 96813. The board may change the location of the principal offices. All communications to the corporation shall be addressed to the corporation's office, unless otherwise specifically directed.

(b) The office of the corporation shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except state holidays or unless otherwise provided by statute or executive order. [Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-301-4 Applicability of rules. The rules under this chapter shall apply to all practices and procedures of the corporation, provided that where these rules are inconsistent with the corporation's rules under another chapter, these rules shall be superseded by the specific rule of practice and procedure of the other chapter. The board shall refer to Robert's Rules of Order for guidance on procedural matters not addressed in the corporation's rules or in law. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

~~§13-301-5 Delegation to the administrator. The corporation may delegate to the administrator such power or authority vested in the corporation as it deems reasonable and proper for the effective administration of chapter 171C, HRS, except the power to adopt, amend, or repeal rules, and any power or authority expressly reserved to the corporation by statute or rule. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §171C-4)~~

§13-301-56 Meetings. (a) The board may meet and exercise its powers in any part of the State of Hawaii.

(b) Regular meetings of the board shall be held in Honolulu, on the third Thursday of each month; provided, however, that the board may establish another place or date for any regular meeting and shall give prior notice of the proposed changes by posting it on the state online calendar.

(c) Special meetings may be convened by the chairperson of the board at any time by giving notice pursuant to section 92-7, HRS.

(d) All meetings of the board shall be open to the public; provided, that the board may meet, pursuant to sections 92-4 and 92-5, HRS, in executive session, from which the public may be excluded, by a recorded vote of two-thirds of the members present. No order, ruling, contract, appointment, or decision shall be finally acted upon in the executive session. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 92-3, 92-4, 92-5)

~~§13-301-7 Agenda. The administrator shall prepare the agenda for the meetings of the board, as directed by the chairperson. [Eff _____] (Auth: HRS §171C-4) (Imp: §171C-4)~~

§13-301-67 Limiting testimony at public hearings and meetings. Interested persons shall have an opportunity to submit written and oral data, views, or arguments on agenda items in board meetings and on the subject matter specified in notices of public hearings or meetings. The presiding officer shall confine oral testimony to agenda items in board proceedings. Oral testimony at public hearings or meetings shall be confined to the matters for which the hearing or meeting has been called. In order to allow persons to have an equal amount of time to testify, the presiding officer may limit the amount of time for testimony per individual or per issue. [Eff and comp 2/27/09] (Auth: HRS §171C-4) (Imp: HRS §§91-2, 92-16)

~~§13-301-8 Inclusion on agenda. (a) Requests from members of the public to be included on the agenda of a board meeting shall be in writing and must be received by the administrator at least twenty calendar days before the scheduled board meeting. The request shall be summarized, and shall include the action being requested by the board.~~

~~(b) The name of the requesting party shall be placed on the agenda for the next scheduled board meeting except when the chairperson determines that the volume or substance of the items scheduled for the next meeting or the location thereof warrant the placement of the requesting party's name on the agenda of a subsequent board meeting.~~

~~(c) The corporation shall maintain a list of all names and addresses of persons who have requested, in writing, notification of the board's meetings. The list shall be updated annually.~~

~~(d) Written requests to the board requiring a response shall be accompanied by a stamped, self-addressed envelope. [Eff] (Auth: HRS §171C-4) (Imp: HRS §92-7)~~

§13-301-~~79~~ Quorum. Unless provided otherwise by statute, three members of the board shall constitute a quorum to transact business and the concurrence of a simple majority of the members of the board shall be necessary to make any action of the board valid.
[Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-3)

§13-301-~~810~~ Authentication. The administrator is authorized to certify as to the authenticity of documents on file in the offices of the corporation.
[Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-301-~~911~~ Submittal and filing of documents.
(a) All pleadings, applications, submittals, petitions, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed with the corporation in any proceeding shall be filed at the corporation's office within the time limits prescribed by statute, rules, or by order of the corporation. These papers may be sent by mail or

hand-carried to the corporation office within the time limits prescribed by statute, rules, or by order of the corporation. The date on which the papers are actually received by the corporation as established by the corporation's time-date stamp on the document shall be the date of filing.

(b) All papers shall be written, typewritten or printed and signed in ink by the party signing the same or the party's duly authorized agent or attorney. The signature shall be legible. 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 in the document is true and no statements are misleading; and that the document is not interposed for delay.

(c) Unless otherwise specifically provided by a rule or order of the corporation, an original and six copies of all papers shall be filed.

(d) The board may develop and authorize the use of Internet-based or other electronic filing procedures. Once developed, the board may authorize the use of such Internet-based or other electronic filing procedures for the filing of documents.

[Eff] (Auth: HRS §§91-2, 171C-4) (Imp: HRS §§91-2, 91-9, 171C-4)

| §13-301-102 Access to corporation records. (a) All government records of the corporation shall be available for inspection in the principal office of the corporation during established business hours, unless public inspection of these records is restricted or prohibited by law; provided that except where the records are open under any rule of court, the attorney general may determine which records may be withheld from public inspection when the records pertain to the preparation of the prosecution or defense of any action or proceeding to which the State

is or may be a party or to maintain the attorney-client and attorney work product privileges.

(b) A request for access to or copies of government records shall be made in writing to the administrator and shall include a clear and concise description of the records sought. All such requests must be signed by the requesting party or the party's authorized representative.

(c) The corporation shall not be required to prepare a compilation or summary of its records in response to a request for records.

(d) Copies of the government records shall be available in accordance with subsection (b), and payment of the reasonable costs of reproduction ~~set forth in section 92-21, HRS~~ which shall be \$.10 per page for paper copies and \$5.00 per disc for electronic copies, and the fee for searching, reviewing, or segregating the records as set forth by the office of information practices, in chapter 2-71, Hawaii Administrative Rules. Reasonable costs of reproduction shall include, but are not limited to, actual time for reproduction, material costs, including electricity cost, equipment and equipment rental costs, costs for certification, and labor costs for monitoring the public inspection of the records to prevent theft, loss, defacement, or alteration of the records. [Eff] (Auth: HRS §92F-11) (Imp: HRS §§92-21, 92F-11)

| §13-301-113 Computation of time. Computation of time shall be as established by section 1-29, HRS. [Eff] (Auth: HRS §171C-4) (Imp: HRS §§1-29, 91-2)

| §13-301-124 Service. (a) Service of documents may be by mail or personal delivery. When a person is represented by an attorney, service shall be made upon the attorney.

(b) Service by mail is complete upon mailing.
[Eff] (Auth: HRS §171C-4) (Imp: HRS §91-2)

| §13-301-135 Additional time after service by mail. Whenever a person has the right or is required to do some act within a prescribed period after the service of a document upon the person and the document is served by mail, two days shall be added to the prescribed period. [Eff] (Auth: HRS §171C-4) (Imp: HRS §91-2)

| §13-301-146 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order, the board or its chairperson may, for good cause, unless prohibited by law:

- (1) Before the expiration of the prescribed period, with or without notice, extend the period; or
- (2) Upon application, permit the act to be done after the expiration of a specified period.
[Eff] (Auth: HRS §171C-4)
(Imp: HRS §91-2)

| §13-301-157 Amendment required or refusal of documents. If any document filed with the board is not in substantial conformity with rules of the board as to its contents, or is otherwise insufficient, the board may refuse to accept the document, or may require its amendment. [Eff] (Auth: HRS §171C-4) (Imp: HRS §91-2)

| §13-301-168 Retention of documents. All documents filed with or presented to the corporation

maybe retained in the files of the corporation. The board may permit the withdrawal of original documents upon submission of properly authenticated copies to replace the documents. [Eff] (Auth: HRS §171C-4) (Imp: HRS §§91-2, 171C-4)

DRAFT

SUBCHAPTER 2

PROCEEDINGS BEFORE THE BOARD

§13-301-31 General rule. All persons and parties shall comply with these rules of practice and procedure when appearing before the board. The board may waive, modify, or suspend any of the provisions of this chapter to the extent permitted by law. All persons and parties shall have a reasonable opportunity to present evidence and argument on all the issues involved. [Eff: _____] (Auth: HRS §171C-4) (Imp: HRS §§91-9(d), 171C-4)

§13-301-32 Appearance before the board. (a) A person may appear in the person's own behalf, a partner may represent the partnership, an officer, trustee, or authorized employee of a corporation or trust or association may represent the corporation, trust or association, and an officer or employee of an agency may represent the agency in any proceeding before the board.

(b) A party may be represented by counsel in any proceeding under these rules.

(c) A person shall not be represented in any proceeding before the board or a hearing officer except as stated in subsections (a) or (b).

(d) When a person acting in a representative capacity appears in person or signs any document or other papers in practice before the board, the person shall show the person's authority to act in that capacity.

(e) No person who has been associated with the board as a member, officer, employee, or counsel shall be permitted at any time to appear before the board in behalf of or to represent, in any manner, any party in connection with any proceeding or matter which the person has handled or passed upon while associated in any capacity with the board.

(f) No person who has been associated with the board as a member, officer, employee, or counsel, shall be permitted to appear before the board in behalf of, or to represent in any manner, any person in connection with any proceeding or matter which was pending before the board at the time of the person's association with the board unless the person shall first have obtained the written consent of the board upon a verified showing that the person did not give personal consideration to the matter or proceeding which the consent is sought or gain particular knowledge of the facts thereof during the person's association with the board. [Eff]
(Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-301-33 Disqualification of corporation member or hearings officer. (a) No corporation member or hearings officer shall hear or participate in decision-making on a matter before the corporation in which the corporation member or hearings officer has a pecuniary or business interest in the matter being heard or is related within the third degree by blood or marriage to any party to the proceeding; provided, however, that if, after disclosing the nature of the circumstances of the pecuniary or business interest or consanguinity to the parties, the parties expressly agree to waive any objection, then the corporation member or hearings officer may hear the matter and participate in decision-making.

(b) Any party to a proceeding before the corporation may file a petition to disqualify a corporation member or hearings officer pursuant to subsection (a) up to five days before the commencement of the hearing. The petition shall be accompanied by a signed declaration stating the facts supporting the party's petition to disqualify a corporation member or hearings officer. The corporation member or hearings officer against whom the petition to disqualify is filed shall be afforded an opportunity to respond to the facts alleged in the petition. A majority of the remaining members of the corporation entitled to vote on the particular matter shall decide whether the challenged corporation member or hearings officer should be disqualified from the proceeding.
[Eff] (Auth: HRS §§91-2, 171C-4)
(Imp: HRS §§91-2, 171C-4)

§13-301-34 Ex parte communications. (a) No person, whether or not a party to or participant in a proceeding before the corporation, shall make an unauthorized ex parte communication, either written or oral, about the proceeding to any corporation member or hearings officer who will be a participant in the decision-making process.

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

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

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

rule upon all objections or motions which do not involve a final determination of the proceedings, fix the time for the filing of papers, and dispose of any other matter or take all other actions authorized by law that are deemed necessary to the orderly and just conduct of a proceeding;

- (2) Witnesses shall be placed under oath prior to testifying;
- (3) To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue;
- (4) The presiding officer may require the production of further evidence upon any issue or may call other competent witnesses to testify upon any issue;
- (5) The presiding officer shall not be bound by the common law rules relating to the admission or rejection of evidence. The presiding officer may exercise discretion in these matters, limited only by considerations of relevancy, materiality, and repetition, and shall give effect to the rules of privilege recognized by law;
- (6) The presiding officer may receive copies or excerpts of documentary evidence if the original is not readily available, provided that all parties are afforded the opportunity to compare the copy or excerpt with the original if so requested;
- (7) The presiding officer may take notice of judicially recognizable facts or generally recognized technical or scientific facts within the corporation's specialized knowledge, provided that the parties are notified before or during the hearing and are afforded an opportunity to contest the facts noticed;

- (8) The presiding officer may postpone or continue any hearing to ensure the orderly and just conduct of a hearing;
 - (9) No matters outside the record shall be considered;
 - (10) The presiding officer may remove any person who willfully disrupts a proceeding; and
 - (11) All proceedings shall be recorded. It shall not be necessary to transcribe the record unless requested by a party to the proceeding or the presiding officer. If a party to the proceeding requests a court reporter, then the cost of the transcription shall be borne by the requesting party.
- [Eff _____] (Auth: HRS §§91-9, 91-10, 171C-4) (Imp: HRS §§91-9, 91-10, 171C-4)

§13-301-37 Substitution of parties. Upon written motion and for good cause shown, the presiding officer may order substitution of parties; provided that in case of death of a party, substitution may be ordered without the filing of a motion.

§13-301-38 Consolidation or separation. The presiding officer, upon its own initiative or upon written motion, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues which are the same or closely related, or may separate matters in issue for hearing in two or more separate proceedings, if the presiding officer finds that the consolidation or separation will be conducive to the proper dispatch of its business, to the ends of justice, and will not unduly delay the proceedings. [Eff _____] (Auth: HRS §§91-9, 171C-4) (Imp: HRS §§91-9, 171C-4)

§13-301-39 Subpoenas. (a) Upon written motion of a party to the proceedings or upon its own initiative, the corporation shall have the power to issue subpoenas as provided by law, requiring the attendance of witnesses or the production of documents.

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

(c) The requesting party shall be responsible for having the subpoena served and paying a witness fee in the same manner as in the case of witness subpoenaed to testify before a circuit court.
[Eff] (Auth: HRS §§91-9, 171C-4) (Imp: HRS §§91-9, 171C-4)

§13-301-40 Motions. (a) All motions, other than those made during a proceeding, shall:

- (1) Be in writing;
- (2) State the grounds for the motion;
- (3) Set forth the relief or order sought; and
- (4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of law.

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

(c) The moving party shall serve a copy of the motion on all other parties to the proceeding and

shall file an original plus six copies and proof of service with the corporation.

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

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

(f) Failure to serve or file a memorandum in opposition to a motion or failure to appear at the hearing may be deemed a waiver of objection to the granting or denial of the motion.

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

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

(i) If a hearing on the motion is not requested, the corporation or presiding officer, if the motion does not involve the final determination of the proceeding, may decide the matter upon the pleadings, memoranda, and other documents filed with the

corporation. [Eff] (Auth: HRS §§91-9, 171C-4) (Imp: HRS §§91-9, 171C-4)

§13-301-41 Board decision. (a) Official copies of corporation decisions, orders, and other papers issued by it shall be effectuated under the signature of the chairperson or by such other person as may be authorized by the corporation.

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

(c) Copies of corporation decisions, orders, and other papers issued by it shall be available for public inspection in the office of the corporation or may be obtained upon request and upon payment of charges, if any. [Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-301-42 Request for reconsideration of board's decision. (a) Any request for reconsideration of an order, ruling, decision, or action of the board shall be made in writing and shall be filed with the corporation within ten days of the order, ruling, decision, or action. The request shall state the grounds for the request for reconsideration and may be summarily denied if it appears from the request that there is no new, relevant evidence on the matter to present to the board.

(b) Upon receipt of the request, the chairperson shall:

- (1) Assign the request for reconsideration for further proceedings either before the board or before a hearings officer; or
- (2) Deny the request on the ground that no new, relevant evidence exists to support the request for reconsideration.

(c) Notice pursuant to section 91-9, HRS, shall be provided to all parties upon the scheduling of a hearing before the board or a hearings officer.

(d) When the hearing is held before a hearings officer, the entire record shall be transmitted to the board for action together with the recommended decision, any timely filed exceptions, and any timely filed statement in support of the reconsideration.

[Eff] (Auth: HRS §171C-4) (Imp: HRS §§91-11, 17C-4)

SUBCHAPTER 3

CONTESTED CASE PROCEEDINGS

§13-301-51 Contested cases; applicability. (a) When required by law or where provided for by administrative rule of the corporation, the board shall hold a contested case hearing upon its own motion or on a written petition of any government agency or any interested person.

(b) The right to hearing shall only be afforded to the person affected by the action or decision of the corporation, unless otherwise provided by rule of the corporation or by law.

(c) Any procedure in a contested case may be modified or waived by stipulation of the parties.
[Eff] (Auth: HRS §§91-2, 91-9, 171C-4)
(Imp: HRS §91-9)

§13-301-52 Petition for hearing. A contested case shall commence by the filing of a petition for permitted relief with the board. Unless otherwise provided by rule of the corporation or by law, the petition shall be filed within thirty days of the action or decision for which the contested case hearing is sought. Upon the filing of a petition, the

corporation shall docket the petition and assign a docket number to the petition. [Eff]
(Auth: HRS §§91-9, 171C-4) (Imp: HRS §§91-9, 171C-4)

§13-301-53 Contents of contested case petition.

- (a) The petition shall state the following:
- (1) Name, address, and telephone number of the petitioner and the petitioner's legal counsel, if any, which shall be updated by the petitioner at all times;
 - (2) A brief and concise factual statement of the petitioner's claim;
 - (3) The law or rule which affords petitioner the right to a contested case hearing;
 - (4) The names of all respondents or identities against whom the petition is brought; and
 - (5) A brief statement of the relief sought by the petitioner.
- (b) If the petition is not in substantial compliance with subsection (a), the corporation may request that the petitioner submit an amended petition in compliance thereto. [Eff] (Auth: HRS §§91-9, 171C-4) (Imp: HRS §§91-9, 171C-4)

§13-301-54 Action by board. Upon the filing of the petition, the chairperson shall assign the petition for further proceedings before the board or assign the matter to a hearings officer and afford all parties in the matter an opportunity for hearing after reasonable notice. [Eff] (Auth: HRS §171C-4) (Imp: HRS §§91-9, 171C-4)

§13-301-55 Response. Each respondent may file a written response to the petition with the board or hearings officer if the case has been assigned to one. The response shall state briefly a counterstatement of the facts, circumstances, law, rules, or reasons in

defense thereof, and shall specifically admit or deny the allegations of the petition. The response shall be filed at least five working days prior to the hearing. [Eff] (Auth: HRS §171C-4)
(Imp: HRS §171C-4)

§13-301-56 Notice. The board or hearings officer shall, as soon as possible, provide notice pursuant to section 91-9.5, HRS, to all parties of the scheduled hearing in such form and manner as provided by law. [Eff] (Auth: HRS §171C-4)
(Imp: HRS §§91-9, 91-9.5)

§13-301-57 Burden of proof. Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. [Eff] (Auth: HRS §171C-4) (Imp: HRS §91-10(5))

§13-301-58 Prehearing conference; 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, 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]
(Auth: HRS §§91-2, 171C-4) (Imp: HRS §91-9)

§13-301-59 Procedure at hearing. (a) All hearings shall be held as provided in section 13-301-36 and in accordance with the requirements of sections 91-9 and 91-10, HRS.

(b) The hearing shall be deemed closed after completion of all final arguments or upon filing of all permitted memoranda and other post-hearing submissions or upon the expiration of the time allowed for filing submissions, unless the time is extended, or upon the completion of taking further evidence, whichever is later.

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

(d) Any procedure may be modified or waived by stipulation of the parties, and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

[Eff] (Auth: HRS §§91-9, 171C-4) (Imp: HRS §§91-9, 91-10, 171C-4)

§13-301-60 Decisions and orders. (a) After all evidence has been taken, the parties may submit, within the time set by the presiding officer, a proposed decision and order which shall include proposed findings of facts and conclusions of law. A party to the proceedings may submit a proposed decision and order that shall include proposed findings of fact and conclusions of law. The proposals shall be filed with the 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 parties have had an opportunity to file objections and exceptions, if applicable, to file briefs and to present oral argument as may have been permitted, the board shall render its findings of fact, conclusions of law and decision and order approving the application, denying the application, or modifying the application by imposing conditions. The vote of each member shall be recorded. Upon agreement by the parties, the provisions of section 91-11, HRS, concerning the examination of evidence and proposed decision, may be waived pursuant to section 91-9(d), HRS.

(c) Every decision and order adverse to a party to the proceeding, rendered by the board in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the board shall incorporate in its decision a ruling upon the proposed findings so presented.

(d) Decisions and orders shall be served by mailing certified copies thereof to each party at the party's address of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy. When a party to a contested case has appeared by a representative or by counsel, service upon the representative or counsel shall be deemed to be service upon the party.

[Eff] (Auth: HRS §§91-2, 171C-4) (Imp: HRS §§91-9, 91-11, 91-12)

§13-301-61 Procedure before hearings officer; transmittal to board. (a) Upon conclusion of the proceedings before the hearings officer and following the timely submittal of proposed findings of fact, conclusions of law, and decision and order, the

(b) If the recommended decision is adverse to any party to the proceeding other than the corporation, the recommended decision shall contain a statement of the reasons therefor and shall include a determination of each issue of fact or law necessary to the recommended decision and it shall be served upon all parties. Any party adversely affected by the recommended decision may file exceptions thereto and may submit written argument in support of the exceptions to the board, provided that the exceptions and argument shall be filed within ten days of the service of the recommended decision, or within such other time as may be designated by the hearings officer.

(c) Following the expiration of the time specified in subsection (b), or if not applicable, following preparation of the recommended decision, the hearings officer shall transmit the entire record to the board for action together with the recommended decision, any timely filed exceptions thereto, and any timely submitted written arguments in support of the exceptions. [Eff: _____] (Auth: HRS §171C-4) (Imp: HRS §91-11)

301-28

SUBCHAPTER 4

DECLARATORY RULINGS

§13-301-71 Petition for declaratory ruling. (a) On the petition of an interested person, the board may issue a declaratory order regarding the applicability of any statutory provision or of any rule or order of the board.

(b) The petition shall contain the following:

- (1) The name, address, and telephone number of the petitioner;
- (2) A statement of the nature of the petitioner's interest, including reasons for submission of the petition;
- (3) A designation of the specific provision, rule, or order in question;
- (4) A clear and concise statement of the position or contention of the petitioner;
- (5) A memorandum of authorities, containing a full discussion of the reasons, including legal authorities, in support of such position or contention; and
- (6) The signature of each petitioner.

(c) Any petition that does not conform to the foregoing requirements may be rejected.

(d) The board may order the petitioner to give notice of the petition to designated persons and the public or may itself provide such notice.

[Eff] (Auth: HRS §§91-8, 171C-4) (Imp: HRS §§91-8, 171C-4)

§13-301-72 Action on declaratory ruling. (a) Within ninety days after the corporation's receipt of a petition for declaratory order, the corporation shall:

- (1) Deny the petition in writing, stating the reasons for the denial;

- (2) Issue a declaratory order on the matters contained in the petition; or
 - (3) Set the matter for hearing, provided that if the matter is set for hearing, the corporation shall render its findings and decision within one hundred twenty days after the close of the hearing.
- (b) The board may, for good cause, refuse to issue a declaratory order. Without limiting the generality of the foregoing, the board may so refuse where:
- (1) The question is speculative or purely hypothetical and does not involve existing facts or facts which can reasonably be expected to exist in the near future;
 - (2) The petitioner's interest is not of the type which would give the petitioner standing to maintain an action if such petitioner were to seek judicial relief;
 - (3) The issuance of the declaratory order may adversely affect the interests of the board or any of its officers or employees in litigation which is pending or may reasonably be expected to arise; or
 - (4) The matter is not within the jurisdiction of the board. [Eff _____] (Auth: HRS §§91-8, 171C-4) (Imp: HRS §§91-8, 171C-4)

§13-301-73 Notice of hearing on petition for declaratory ruling; procedure. (a) If the board orders a hearing it may require the petitioner to give twenty days notice of the hearing to designated persons or to the public or may itself provide such notice.

(b) Proceedings shall be held as provided in section 13-301-36. [Eff _____] (Auth: HRS §§91-9, 171C-4) (Imp: HRS §§92-7, 171C-4)

§13-301-74 Proposed findings of fact and conclusions of law. The prevailing party shall file proposed findings of fact, conclusions of law, decisions, and orders with the board no later than seven working days after the day the proceedings were concluded, or such other time as may be established by the board or hearings officer. [Eff]
(Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-301-75 Board's final decision, order, findings of fact, and conclusions of law. (a) The board shall issue its final decision and order together with findings of fact and conclusions of law. The findings of fact, conclusions of law, final decision, and order shall be based upon the whole record or such portions thereof as may be cited by the parties, and shall be supported by reliable, probative and substantial evidence, including facts on which the board properly took judicial notice.

(b) If the proceedings were held before a hearings officer and exceptions were filed to the recommended decision, the board shall afford the parties oral argument as to the exceptions, prior to the board's adoption of a decision and order and findings of fact and conclusions of law.

(c) If any party has timely filed proposed findings of fact, the board shall incorporate in its decision a ruling upon each proposed finding so presented, provided that a separate ruling on each proposed finding shall not be required.

(d) The board shall cause to have a certified copy of the decision and order and accompanying findings and conclusions, delivered or mailed within a reasonable time after their adoption by the board, to each party or to the party's authorized representative. [Eff] (Auth: HRS §171C-4) (Imp: HRS §91-8)

§13-301-76 Procedure before a hearings officer; transmittal to board. (a) Upon conclusion of the proceedings before the hearings officer and following the timely submittal of proposed findings of fact, conclusions of law, and decision and order, the hearings officer shall prepare a recommended decision in the matter for the board.

(b) If the recommended decision is adverse to any party to the proceeding other than the corporation, the recommended decision shall contain a statement of the reasons therefor and shall include a determination of each issue of fact or law necessary to the recommended decision and it shall be served upon all parties. Any party adversely affected by the recommended decision may file exceptions thereto and may submit written argument in support of the exceptions to the board, provided that the exceptions and argument shall be filed within ten days of the service of the recommended decision, or within such other time as may be designated by the hearings officer.

(c) Following the expiration of the time specified in subsection (b), or if not applicable, following preparation of the recommended decision, the hearings officer shall transmit the entire record to the board for action together with the recommended timely submitted written arguments in support of the exceptions. [Eff] (Auth: HRS§171C-4)
(Imp: HRS §91-11)

§13-301-77 Order, effect. Any decision and order of declaratory relief, whether granting or denying the petition, shall have the same force and effect as other decisions and orders issued by the corporation. [Eff] (Auth: HRS §171C-4)
(Imp: HRS §91-8)

SUBCHAPTER 5

RULE RELIEF

§13-301-81 General provisions; contents of petition for rule relief. Any interested person may petition the corporation for the amendment, adoption, or repeal of a rule. The petition for rule relief shall set forth the text of the rule to be repealed, or the text of any proposed rule, the adoption of which is being sought, or the text of any existing rule, the amendment of which is being sought, together with the proposed amendment. The petition shall further state concisely and with particularity the facts and circumstances giving rise to the petition, including the petitioner's interest and reasons for filing the petition, the necessity for the relief and anticipated effect or impact of the relief, the questions or issues raised and petitioner's position or contentions with respect thereto.
[Eff] (Auth: HRS §171C-4) (Imp: HRS §91-6)

§13-301-82 Disposition. (a) Within thirty days of the filing of a petition, the corporation, with the approval of the chairperson, shall either deny the petition in writing stating its reasons therefor, or initiate public rulemaking procedures in accordance with chapter 91, HRS.

(b) Without limiting the generality of the foregoing, the corporation may deny any petition which:

- (1) Fails to substantially conform with the requirements of section 13-301-81;
- (2) Discloses insufficient reasons which would justify the institution of public rulemaking procedures; or

(3) Is frivolous. [Eff] (Auth: HRS §171C-4) (Imp: HRS §91-6)

§13-301-83 Additional facts or supplemental memorandum. The corporation may require the petitioner or any person to submit a statement of additional facts or a memorandum, the purpose of which is to clarify a specific factual issue, position, or contention. [Eff] (Auth: HRS §171C-4) (Imp: HRS §91-6)

§13-301-84 Notice of determination. The corporation shall promptly notify the petitioner in writing of its decision not to consider the petition, in the time prescribed by law, and the reasons for its denial. [Eff] (Auth: HRS §171C-4) (Imp: HRS §91-6)

§13-301-85 Determination final. Unless otherwise provided by law, the petitioner shall have no right to request the board to reconsider the action nor to seek judicial review of the action. [Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

SUBCHAPTER 6

OTHER PROVISIONS

§13-301-91 Forms. The corporation may prescribe and use such forms as it may reasonably require to carry out its functions. The corporation may at any time create, modify, amend, or delete any forms in order to effectuate the purposes herein. [Eff] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

§13-301-92 Gender and number. In any rule of the corporation, all words used in the masculine or singular shall extend to and include the feminine or plural. [Eff] (Auth: HRS §171C-4)
(Imp: HRS §1-15)

§13-301-93 Severability. If any rule of the corporation is found in whole or in part by a court of competent jurisdiction to be invalid under law, such finding shall not affect the remaining rules or any part therein. [Eff] (Auth: HRS §171C-4)
(Imp: HRS §1-23)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-301
Hawaii Administrative Rules

_____, 2012

SUMMARY

Chapter 13-301, Hawaii Administrative Rules,
entitled "Rules of Practice and Procedure", is
adopted.

DEPARTMENT OF LAND AND NATURAL RESOURCES

The adoption of chapter 13-301, Hawaii Administrative Rules, on the Summary Pages dated _____, 2012, took place on _____, 2012, following a public hearing held on _____, 2012, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers on _____, 2012.

The adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

KALBERT K. YOUNG
Chairperson
Public Land Development
Corporation

APPROVED:

NEIL ABERCROMBIE
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 14

PUBLIC LAND DEVELOPMENT CORPORATION

CHAPTER 302

PUBLIC LAND DEVELOPMENT PROGRAM

Subchapter 1 General Provisions

§13-302-1	Purpose
§13-302-2	Definitions
§13-302-3	Definitions applied
§13-302-4	Fees
§13-302-5	Recovery of administrative expenses and —attorneys fees

Subchapter 2 Development of Projects by
Corporation

§13-302-21	Purpose
§13-302-22	Development by corporation
§13-302-23	Eligible developer; criteria
§13-302-24	Eligible developer; information required
§13-302-25	Eligible project; guidelines
§13-302-26	Project concept; minimum requirements
§13-302-27	Project proposal; additional

~~302-~~ 302-1

~~information~~
~~§13-302-28 Community input on project proposals~~
~~§13-302-29 Developer initiated projects;~~
~~processing of preliminary project~~
~~proposals and determination by~~
~~corporation~~
~~§13-302-30 Letter of intent; conditions~~
~~§13-302-31 Processing of project proposals;~~
~~determination by corporation~~
~~§13-302-32 Agreement with eligible developer;~~
~~form of agreement~~

~~Subchapter 3 Financing of Projects~~

~~§13-302-51 Purpose~~
~~§13-302-52 Revenue bonds; financing of projects~~

~~Subchapter 4 Financial Assistance by the~~
~~Corporation~~

~~§13-302-61 Purpose~~
~~§13-302-62 General guidelines~~
~~§13-302-63 Types of investment~~
~~§13-302-64 Enterprise application; who may submit~~
~~§13-302-65 Eligible enterprise, information~~
~~required; determination by the~~
~~corporation~~
~~§13-302-66 Processing of enterprise application~~
~~§13-302-67 Agreement with enterprise~~
~~§13-302-68 Terms and restrictions~~

~~Subchapter 5 Severability~~

~~§13-302-22 Eligible project; guidelines~~
~~§13-302-23 Project applications; minimum~~
~~requirements~~
~~§13-302-24 Processing project applications~~

~~302-~~

<u>§13-302-25</u>	<u>Initial project proposals</u>
<u>§13-302-26</u>	<u>Processing initial project proposals</u>
<u>§13-302-27</u>	<u>Project partners; when a project partner is required</u>
<u>§13-302-28</u>	<u>Project applicants as project partners</u>
<u>§13-302-29</u>	<u>Project partner; criteria</u>
<u>§13-302-30</u>	<u>Project partner; information required</u>
<u>§13-301-31</u>	<u>Solicitation for and selection of project partners</u>
<u>§13-302-32</u>	<u>Community input on project proposals</u>
<u>§13-302-33</u>	<u>Letter of intent; conditions</u>
<u>§13-302-34</u>	<u>Final project proposal</u>
<u>§13-302-35</u>	<u>Agreement with project applicant and project partner; form of agreement</u>

Subchapter 3 Severability

§13-302-81	Severability
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SUBCHAPTER 1

GENERAL PROVISIONS

§13-302-1 Purpose. These rules are adopted under chapter 91, HRS, and implement the provisions of chapter 171C, HRS, providing for appropriate and culturally-sensitive programs for the ~~optimal~~ use of public land for the economic, environmental, and social benefit of the people of Hawaii.

~~These~~Acknowledging that each project is unique and shall be treated in accordance with its needs, these rules establish a procedure for the corporation to assist in the development and financing of projects.
[Eff _____](Auth: HRS §171C-4)(Imp: HRS §171C-4)

§13-302-2 Definitions. As used in this chapter, unless the context requires otherwise:

"Administrator" means the executive director of the corporation or the executive director's designated representative.

"Board" means the board of directors of the public land development corporation established under chapter 171C, HRS.

"Chairperson" means the chairperson of the board of directors of the public land development corporation.

"Contractor" means a general engineering contractor or general building contractor licensed under chapter 444, HRS.

~~—"Coordinating entrepreneur" means a qualified person capable of organizing, operating, and assuming the risk for enterprises, including securing land and seed capital, developing or managing commercial or~~

~~302-~~ _____
302-4

~~recreational facilities or projects, arranging concession agreements, supplying materials, maintaining equipment and infrastructure, and providing for the processing and marketing of services or products.~~

"Corporation" means the public land development corporation established under chapter 171C, HRS.

"County" includes the counties of Kauai, Maui, Hawaii, and the city and county of Honolulu, and unless the context requires a different meaning, it shall mean the county in which the project is situated.

~~"Coventure" means an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure. An investment made by the corporation, which is a direct investment, may later be classified as a coventure upon an investment by a professional investor.~~

~~"Culturally sensitive" means being sensitive to the culture and history of the lands to be developed.~~

"Culturally sensitive" development is development that ensures that the diverse types of cultural resources, whether burials, archaeological sites, trails and access ways or endemic species, are protected and preserved according to the laws of the State of Hawaii.

"Department" means that department of land and natural resources.

"Develop" or "development" means the planning, financing, acquisition of real property, demolition of existing structures, clearance of real property, construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and

services or other site improvements, or construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures or any combination of the foregoing, of any project. It also includes any and all undertakings necessary therefore.

~~"Direct investment" means an investment by the corporation in qualified securities of an enterprise in which no investment is being or has been made by a professional investor to provide seed capital to the enterprise.~~

"Enterprise" means a business with its principal place of business in Hawaii, which is or proposes to be engaged in recreational and commercial area development, development of new value-added products, enhancement of existing recreational or commercial commodities, and the application of existing recreation or commercial areas and appurtenance facilities to productive uses.

"HRS" means the Hawaii Revised Statutes.

"Improvement" means an addition, renovation, replacement, repairs or maintenance which enhances the value of the property, and for which labor and capital are expended.

~~"Party" means each person or agency named or admitted as a party.~~

"Person" means as appropriate individuals, partnerships, corporations, associations, or public or private organizations ~~of any character other than or~~ agencies.

"Plans and specifications" includes construction plans and specifications and any other documents that may be required by the county in the processing of the plans and specifications for the issuance of permits for construction and building of improvements within a project.

~~"Professional investor" means any bank, bank holding company, savings institution, farm credit institution, trust company, insurance company, investment company registered under~~

~~"Preliminary approval" means approval in concept from an applicable state or county agency. Preliminary approval may include conditions or requirements imposed by the federal Investment Company Act of 1940, financial services loan company, pension or profit-sharing trust or other financial institution or institutional buyer, licensee under the federal Small Business Investment Act of 1958, as amended, or any~~

~~person, partnership, or other entity whose resources,~~
~~a substantial amount is dedicated to investing in~~
~~securities or debt instruments, and whose net worth~~
~~exceeds \$250,000~~approving agency.

~~302-~~

302-8

"Project" means a specific undertaking, improvement, or system consisting of work or improvement, including personal property or any interest therein acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by the corporation.

~~"Qualified appraiser" means a real estate appraiser licensed or certified to practice in the State of Hawaii subject to the requirements of section 466K-4, Hawaii Revised Statutes.~~

~~"Qualified person" means any individual, partnership, corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible qualifications, as may be deemed desirable by the corporation.~~

~~"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.~~

~~"Revenue bonds" means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any project facility.~~

~~"Seed capital" means financing that is provided for the development, refinement, and commercialization of a product or process and other working capital needs.~~

"Project applicant" means the person who submits a project application. A project applicant may also

be the project partner for the project proposed in a project application.

"Project partner" means an eligible person chosen to undertake a specific project either with or without a project applicant.

"Revenue bonds" means bonds, notes, or other evidence of indebtedness of the corporation issued to finance any project facility.

"Rules" means these rules.

"State" means the State of Hawaii.

~~"Subdivision and construction documents" includes all subdivision documents and plans and specifications.~~

~~"Subdivision documents" includes preliminary maps, final maps, subdivision construction plans and specifications, and any other document that may be required by the State or county in the processing of applications and permits relating to the development of the project.~~

~~"SubsidiesTitle agency" means the difference between all costs expended bystate or county agency that has title to or management over state or county lands from which the corporation, less any recoveries by the corporation. It also includes unrecovered acquires development, land, financing and carrying costs.~~

~~"Value" means the value of a property as determined by a qualified appraiser.~~

~~"Value-added" means any activity that increases, by means of development or any other means, the value of public lands rights.~~ [Eff

HRS §171C-4)(Imp: HRS §171C-4)

§13-302-3 Definitions applied. (a) Unless otherwise specifically stated, the terms used in the rules adopted by the board pursuant to powers granted

by statute shall have the meanings given them by such statutes.

(b) A rule which defines a term without express reference defines the terms for all purposes as used both in the statute and in these rules, unless the context otherwise specifically requires.

[Eff _____] (Auth: HRS §171C-4)(Imp: HRS §171C-4)

§13-302-4 Fees. (a) The corporation may charge reasonable fees and require reimbursements for expenses incurred for processing any instrument or taking any action required under this chapter. These fees shall be nonrefundable.

(b) Fees shall be as prescribed by the exhibit at the end of this chapter entitled "Fees", dated _____, and may be waived or adjusted by the board. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §171C-4)

§13-302-5 Recovery of administrative expenses and attorneys fees. The corporation may recover all relevant administrative expenses and attorneys' fees from the ~~developer~~project partner in administering and implementing this chapter. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

SUBCHAPTER 2

~~DEVELOPMENT OF PROJECTS BY CORPORATION~~ PROJECT PROCEDURES

§13-302-21 Purpose. The purpose of this subchapter is to establish a ~~procedure for the~~

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302-11

~~corporation to initiate by itself or with an eligible developer, process~~ for the development and implementation of ~~public lands optimization~~ projects where appropriate public lands may be used or developed ~~or managed to create revenue-generating centers or exploit potential local, national~~ for the economic, environmental, and international markets ~~social benefit of the people of Hawaii.~~

[Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)

~~§13-302-22 Development by corporation. The corporation may develop projects in accordance with the provisions set forth in chapter 171C, HRS:~~

- ~~(1) On its own behalf; or~~
- ~~(2) With an eligible developer through direct negotiation, a competitive selection process, or upon initiation by an eligible developer.~~

~~[Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)~~

~~§13-302-23 Eligible developer; criteria. The corporation may enter into an agreement with an eligible developer that qualifies by experience and financial responsibility and support to develop a project of the size and type proposed to be developed. The corporation shall determine that the eligible developer:~~

- ~~(1) Has demonstrated compliance with all applicable laws, ordinances, rules, and other governmental requirements that the developer is required to meet;~~
- ~~(2) Has the necessary experience;~~
- ~~(3) Has adequate and sufficient financial resources and support and has secured or has~~

~~302-~~ _____
302-12

~~demonstrated the ability to secure a performance or payment bond, or other surety to develop projects of the size and type which the applicant proposes to develop; and~~
(4) ~~Has met all other requirements that the corporation determines to be appropriate and reasonable. [Eff:] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)~~

~~§13-302-24 Eligible developer; information required. A qualified person that desires to be considered to develop a project, shall submit to the corporation an application, on forms provided by the corporation, along with any additional information that the corporation determines to be applicable. The required information may include, but is not necessarily limited to:~~

- ~~(1) Name, address, email address, and telephone number of the applicant and each member of the project team, and evidence of the applicant's status as a corporation, partnership, joint venture, sole proprietorship or other business organization;~~
- ~~(2) A summary of the role and responsibilities of each team member as it pertains to the project;~~
- ~~(3) If the applicant is a corporation, certified copies of the articles of incorporation, and the names, addresses, email addresses, and telephone numbers of each of the officers and directors of the corporation, and of any shareholder of the corporation holding more than twenty-five per cent of the outstanding shares issued by the corporation. If the applicant is a partnership, joint venturer, or sole proprietorship, certified copies of~~

~~the partnership agreement, joint venture agreement or evidence of ownership, as applicable, and the names, addresses, email addresses, and telephone numbers of each of the individual partners, joint venturers, or owners;~~

- ~~(4) A resume of the applicant's experience in the development of projects including a list and a brief description of the projects in which the applicant participated;~~
- ~~(5) The name, title, address, email address, and telephone number of the person to whom communications should be addressed;~~
- ~~(6) Evidence of the applicant's legal authority to incur obligations and to sign and deliver such documents as may be necessary to finance, develop, and construct the project;~~
- ~~(7) A current certificate of good standing from the department of commerce and consumer affairs, tax clearance from the department of taxation, and certification of compliance with department of labor and industrial relations requirements;~~
- ~~(8) Evidence of the applicant's capability to develop, own, manage, and provide appropriate services in connection with the project;~~
- ~~(9) Evidence of the applicant's credit worthiness including the following financial information, which shall be kept confidential to the extent permitted by law:~~
 - ~~(A) The most recent year's financial statements. If the statements are unaudited, tax returns shall be provided. In the event the applicant is an entity not yet formed, federal and state tax returns and financial statements for the previous year of the~~

- ~~principals, or additional information the corporation may require;~~
- ~~(B) Interim balance sheets and income statements of the applicant and principal developer if the fiscal year-end data is over nine months old;~~
 - ~~(C) Tax returns if the applicant or guarantor is an individual;~~
 - ~~(D) Articles of incorporation, bylaws, resolutions, and certificates of good standing as are appropriate to support corporate actions;~~
 - ~~(E) Evidence of up front capitalization sufficient to demonstrate the developer's ability to complete the project; and~~
 - ~~(F) Any other financial data deemed appropriate by the corporation for proper credit-worthiness analysis; provided the board may accept alternate evidence for items (A), (B), (C), (D) and (E) that it determines to be appropriate for establishing credit worthiness;~~
- ~~(10) The applicant's ties to the community;~~
 - ~~(11) A description of all projects or facilities owned or operated by the applicant;~~
 - ~~(12) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the applicant or its principals;~~
 - ~~(13) A description of the applicant's past or current business experience or involvement in any programs or of its provision of services, if any, that would give evidence of the applicant's management capabilities;~~
 - ~~(14) Evidence of ability to secure the necessary performance or payment bond or other~~

~~evidence of surety and the ability to perform the work required to be performed in the proposed project;~~

- ~~(15) A statement of the applicant's past or current involvement with the corporation, and the assistance, if any, received; and~~
- ~~(16) Any other information that the corporation deems necessary to determine the qualification of the applicant.~~

~~[Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)~~

~~§13-302-25~~ Eligible project; guidelines. The corporation may ~~develop~~undertake or enter into an agreement with an eligible ~~developer~~project partner for the development of a project if the project:

- (1) ~~Makes or seeks to make optimal use of public land for the~~Has value and significance to the community; helps preserve culture, agriculture, conservation, or preservation; has long term value; has a positive economic, environmental, or social benefit of the people of Hawaii impact; or helps a department or agency achieve its goals;
- (2) ~~Generates~~Is either self sustaining or generates a consistent and sustainable source of revenue for the State, as applicable;
- (3) To the extent feasible, implements sustainability practices to ensure resource efficiency, including energy (maximize energy efficiency and renewable energy), water, and other resources in planning, design, construction, and operations. Completes the U.S. Green Building Council's Leadership in Energy and Environmental Design or the Green Communities Programs

~~302-~~ _____

checklist(s) or other equivalent sustainable building evaluation guidelines to the extent reasonable and practicable;

- (4) Encourages development that is sensitive to the cultural or historical resources and the community at or near the proposed location of the project;
- (5) Is appropriate and suitable for the development at the proposed location;
- (6) ~~Follows existing laws, charter provisions, ordinances, and rules and is~~Is consistent with the county community or development plan for the area, as closely as is practical;
- (7) Is consistent with minimum standards of good planning, zoning, and design;
- (8) Assesses environmental impacts as required under chapter 343, HRS; and
- (9) ~~Uses indigenous species of plants whenever and wherever feasible in the landscaping of the project; and~~
- ~~(10)~~ Meets other minimum requirements established by the corporation. [Eff]
(Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)

§13-302-2623 Project ~~concept~~applications; minimum requirements. A ~~qualified~~ person that desires to be considered by the corporation for the processing of a project proposal under the provisions of chapter 171C, HRS, shall submit a ~~preliminary~~ project proposal application, on forms provided by the corporation, along with any additional information that the corporation may determine to be applicable. The required information may include, but is not necessarily limited to:

- (1) Name and address of the applicant ~~or eligible developer~~;
- (2) A description of the proposed project including, but not limited to, location, land area, scope, and ~~development~~ concept;
- (3) A justification of the need for the proposed project including estimated revenues ~~that or cost savings derived by the title agency or the corporation may derive~~ from such development project, if applicable;
- (4) A description of how the proposed project may impact benefit the surrounding neighborhood;
- ~~(5) The extent to which the, including whether such proposed project promotes agriculture or is culturally sensitive;~~
- ~~(6) Estimated development costs including a 5)~~
A proposed budget and cash flow including management costs;
- ~~(76)~~ Proposed financing of the project during development and construction and upon completion;
, if applicable;
- ~~(87)~~ Time and activity milestones for ~~development of~~ the proposed project;
- ~~(98)~~ Identification of necessary government approvals;
- ~~(10) Specific requests to the corporation for (9)~~
Whether the project applicant will request participation by the corporation for financial or other assistance, description of the state subsidies required and applied for, and financial and other assistance provided for by other governmental agencies;
- ~~(10)~~ Whether the project applicant will need a project partner to complete the project;
- (11) ~~Preliminary proposal application~~ Application fee as provided in section 13-302-4; and

302-

(12) Any other information that the corporation finds necessary. [Eff ~~_____~~] ~~_____~~] (Auth: ~~HRS §171C-4~~) (Imp: HRS ~~§§171C-4, 171C-6~~)

~~§13-302-27 Project proposal; additional information. A project proposal made by an eligible developer, in order to be considered for approval by §13-302-24 Processing project applications. (a) The administrator shall, upon receipt of a project application, time stamp the same as received and review the board for processing under the provisions of chapter 171C, HRS, shall contain, as project application for completeness. A project application may be deemed incomplete if any of the items in the corporation may determine to be applicable application form or required pursuant to 13-302-23 have not been submitted.~~

~~(b) Within 10 business days of receiving a completed project application, the administrator shall transmit the project application to the title agency for review and preliminary approval. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)~~

~~§13-302-25 Initial project proposals. (a) Upon receipt of preliminary approval by the title agency of the proposed project, which approval may include conditions imposed or required by the title agency, the administrator shall determine whether an initial project proposal is necessary. If determined to be necessary, the administrator shall have the applicant prepare an initial project proposal.~~

~~(b) The initial project proposal shall contain the following information, except as otherwise required by the administrator:~~

~~(1) Name and address of the eligible developer;~~

~~302-_____~~

~~(2)~~—A plan of the proposed project, which shall show all or as much of the following information as may be required by the corporation:

- (A) To the extent the proposed project encompasses other lands not owned by the state, evidence of site control (such as a deed, agreement of sale, commitment letter, or development agreement), and names and addresses of all legal and equitable holders of an interest in the land and a complete description of each holder's interest in the land;
- (B) An accurate description of the land, preferably the metes and bounds, boundary description of the property, file plan, or preliminary plat, its geographic and relative location within a larger tract of land, with descriptions of adjacent or surrounding subdivisions or other improvements on land;
- (C) The total area of the proposed project and whether legislative approval will be required pursuant to HRS section 171C-16;
- (D) Preliminary site plan showing the general development of the site, including the locations and descriptions of proposed and existing buildings, parking areas, and service areas; unusual site features; proposed and existing major streets in and adjacent to the proposed project; and proposed and existing major drainage facilities;

- (~~F~~) ~~Methods~~ E) Sources of water and methods of sewage and solid waste disposal and ~~sources of water and~~ other utilities;
- (~~G~~) Description of land contours;
- (~~H~~) Location and description of known existing historical or significant landmarks or their natural features within and adjacent to the proposed project;
- (~~I~~) Description of existing improvements within and adjacent to the proposed project, as well as off-site and on-site infrastructure and improvements requirements;
- (~~J~~) Proposed and existing uses of each phase of the proposed project, and existing uses of lots adjacent to the proposed project for parks and other public places or spaces within adjoining properties; and
- (~~K~~) Shoreline setbacks as may be required by chapter 205A, HRS.
- (~~3~~) Schematics of the improvements in the project, including number and types of structures, the number of stories, any special features or amenities, natural resource conservation devices and energy efficient designs to be utilized, a description of the types of indigenous land plant species which shall be used for the landscaping of the project, if applicable, and the projected lease revenues or cost savings derived by the title agency or the corporation from the project, if any;
- (~~4~~) Proposed financing of the project, including:

- (A) The manner in which the project will be financed during the development and construction of the project and upon completion of the project;
- (B) The sources of repayment of such financing, if required;
- (C) Estimated start-up expenses and the sources of funds to meet these expenses;
- ~~(D) The net equity, if any, which the developer intends to contribute to the proposed project; and~~
- ~~(E) Budgets and cashflow requirements;~~
- ~~(5) Development timetable, market analysis, marketing program, and other activities relating to a successful development of the project to completion;~~
- ~~(6) Final environmental impact statement or final environmental assessment and finding of no significant impact pursuant to chapter 343, HRS;~~
- ~~(7) Specific requests to the corporation for participation by the corporation for financial or other assistance, description of the state subsidies required and applied for, and financial and other assistance provided by other governmental agencies;~~
- ~~(8) A summary of comments from the community or community groups including those obtained from the public meeting conducted pursuant to section 13-302-28;~~
- ~~(9) If the proposal for the development will cause early termination of any lease, permit or easement and displacement of the holder of such interest prior to the existing termination date, the proposal shall include a relocation program or strategy for such displaced person;~~

- ~~(10) Applicable provisions of existing state and county general plans, development plans, community development plans, and other comparable plans developed or adopted by the state or county government in which the proposed project is situated, county zoning of the area and other applicable land use requirements, and if known, any substantial difference in the proposed project from the respective county general plan or development, or community development plan, or other county plans and zoning and other land use requirements, and the reasons for varying from the respective county requirements;~~
- ~~(11) A description of how land planning activities for the project will be coordinated with the county planning departments and the county land use plans, policies, and ordinances;~~
- ~~(12) Specific project related requests for exemption from existing laws, charter provisions, ordinances and rules of any government agency relating to special improvement district assessments or requirements; land use, zoning, and construction standards for subdivisions, development, and improvement of lands; and the construction, improvement, and sale of homes thereon;~~
- ~~(13) The extent to which the proposed project will create revenue-generating centers or opportunities exist to exploit potential local, national, and international markets.~~
- ~~(14) Eligible developer's project proposal fee; and~~
- ~~(15) Any other information that the corporation finds necessary to determine whether or not~~

~~the proposed project complies as closely as possible with existing laws, charter provisions, ordinances, and rules, and is suitable under, and meets the intent and purposes of, chapter 171C, HRS.~~

~~[Eff _____] (Auth: HRS §171C-4)
(Imp: HRS §§171C-4, 171C-6)~~

~~§13-302-28 Community input on project proposals. An eligible developer or the corporation shall conduct or participate in at least one public meeting in the county community or development plan area in which the proposed project is located to solicit community input on the proposed project. The public meeting shall take place prior to corporation action on the project proposal. The eligible developer or the corporation shall consult with affected community groups such as neighborhood boards, business associations, homeowners' associations, surrounding property owners, and the state and county legislators for the region.
[Eff _____] (Auth: HRS §171C-4)(Imp: HRS §171C-4)~~

~~§13-302-29 Developer initiated projects; processing of preliminary project proposals and determination by corporation. (a) A qualified person may submit a preliminary project proposal to the corporation.~~

~~(b) The preliminary project proposal shall include information on the developer and the project concept as listed in sections 13-302-24 and 13-302-26.~~

~~(c) Upon receipt of the preliminary project proposal, the administrator shall time stamp and review the same for completeness. The preliminary project proposal may be deemed incomplete if any of~~

~~the items listed in sections 13-302-24 or 13-302-26 have not been submitted.~~

~~(d) Within ten working days of receipt, the administrator shall make a determination on the completeness of the preliminary project proposal and notify the applicant.~~

~~(1) A complete preliminary project proposal shall be accepted for processing.~~

~~(2) An incomplete preliminary project proposal shall be returned to the applicant.~~

~~(e) Within sixty days of acceptance of the preliminary project proposal for processing, the administrator shall make a preliminary determination on the qualification of the applicant as an eligible developer and the proposed project, and forward a recommendation to the board for action. The administrator may invite comments from appropriate agencies in the review of the proposed project for cultural sensitivity, appropriateness, technical compliance, and feasibility. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-8)~~

~~§13-302-30 Letter of intent; conditions. (a) Upon approval of the preliminary project proposal by the board, the administrator may negotiate and execute a letter of intent, memorandum of understanding, or other agreement which preliminarily commits to a proposed project if the applicant is deemed to be an eligible developer pursuant to section 13-302-23.~~

~~(b) The eligible developer shall submit the information set forth in section 13-302-27 in order for the corporation to make a final determination on the proposed project. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)~~

~~§13-302-31 Processing of project proposal; determination by corporation. (a) In order for the corporation to process a project proposal, the eligible developer shall submit the additional information required in section 13-302-27.~~

~~(b) The administrator shall, upon receipt of the additional information for the project proposal, time stamp the same as received and review the project proposal for completeness. A project proposal may be deemed incomplete if any of the items listed in section 13-302-27 have not been submitted.~~

~~(c) The administrator shall make a determination on the project proposal using the guidelines set forth in section 13-302-25 and forward a recommendation to the board for action. The administrator may invite comments from appropriate agencies in the review of a project proposal for cultural sensitivity, appropriateness, technical compliance, and feasibility. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-8)~~

~~§13-302-32 Agreement with eligible developer; form of agreement. (a) The administrator, upon approval by the board, may enter into an agreement with an eligible developer to develop a project.~~

~~(D) The net equity, if any, which the partner intends to contribute to the proposed project; and~~

~~(E) Budgets and management costs for a minimum of 5 years, or as otherwise required by the administrator, based on (a) the scale of the project, (b) the scope of work, and (c) the cost of the project;~~

~~(4) Project timetable, market analysis, marketing program, and other activities~~

302-_____

demonstrating that the project shall be financially viable;

- (5) Final environmental impact statement or final environmental assessment and finding of no significant impact pursuant to chapter 343, HRS, if applicable to the project at this stage;
- (6) Specific requests to the corporation for participation by the corporation for financial or other assistance, description of the state assistance required and applied for, and financial and other assistance provided by other governmental agencies^[AI];
- (7) A summary of comments from the community or community groups including those obtained from any public meeting conducted pursuant to section 13-302-32, if required by the title agency in its preliminary approval;
- (8) A description of how land planning activities for the project will be coordinated with the county planning departments and the county land use plans, policies, and ordinances;
- (9) Conditions imposed by the title agency in connection with the title agency's preliminary approval of the proposed project;
- (10) Project proposal fee; and
- (11) Any other information that the corporation finds necessary or any additional information required by county agencies where the proposed project is located.

[Eff _____] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-6)

§13-302-26 Processing initial project proposals.

- (a) Upon receipt of the initial project proposal, the

302-_____

302-27

administrator shall time stamp and review the same for completeness. The initial project proposal may be deemed incomplete if any of the items listed in section 13-302-25 have not been submitted.

(b) Within ten business days of receipt, the administrator shall make a determination on the completeness of the initial project proposal and notify the applicant.

(1) A complete initial project proposal shall be accepted for processing.

(2) An incomplete initial project proposal shall be returned to the applicant.

(c) Within 10 business days of acceptance of the initial project proposal for processing, the administrator shall submit the initial project proposal to the applicable county departments for review and comment regarding infrastructure requirements, including any conditions that may be imposed in connection with the infrastructure requirements for the proposed project. [Eff] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-8)

§13-302-27 Project partners; when a project partner is required. The corporation shall determine whether a project requires a project partner based on the project application and the initial project proposal. If the project applicant is unable to undertake the scope of work required to complete the project, a project partner shall be required.

§13-302-28 Project applicants as project partners. Where a project applicant has indicated in its project application that it is able to undertake the scope of work required to complete the project, the project applicant may be approved by the corporation to be the project partner. The project

302-

302-28

applicant must submit the information required by the administrator, as set forth in 13-302-30. Upon receipt of all required information, the administrator shall present the completed project partner application to the board for its consideration and approval of the project applicant as the project partner. Disclosure of information pursuant to this section shall be subject to HRS Chapter 92F.

§13-302-29 Project partners; criteria. The corporation may enter into an agreement with an eligible project partner that qualifies by experience and financial responsibility and support to participate in a proposed project. The corporation shall determine that the eligible project partner:

- (1) Has demonstrated compliance with all applicable laws, ordinances, rules, and other governmental requirements that the project partner is required to meet;
- (2) Has the necessary experience;
- (3) Has adequate and sufficient financial resources and support and has secured or has demonstrated the ability to secure a performance or payment bond, or other surety to complete the proposed project; and
- (4) Has met all other requirements that the corporation determines to be appropriate and reasonable. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)

§13-302-30 Project partner; information required. When the corporation has determined, pursuant to 13-302-27, that a proposed project requires a project partner, the corporation shall solicit for a project partner. A person that desires to be considered to be a project partner on a proposed

project, shall submit to the corporation an application, on forms provided by the corporation, along with any additional information that the corporation determines to be applicable. The required information may include, but is not necessarily limited to:

- (1) Name, address, email address, and telephone number of the project partner and each member of the project team, and evidence of the project partner's status as a corporation, partnership, joint venture, sole proprietorship or other business organization;
- (2) A summary of the role and responsibilities of each team member as it pertains to the project;
- (3) If the project partner is a corporation, certified copies of the articles of incorporation, and the names, addresses, email addresses, and telephone numbers of each of the officers and directors of the corporation, and of any shareholder of the corporation holding more than twenty-five per cent of the outstanding shares issued by the corporation. If the project partner is a partnership, joint venturer, or sole proprietorship, certified copies of the partnership agreement, joint venture agreement or evidence of ownership, as applicable, and the names, addresses, email addresses, and telephone numbers of each of the individual partners, joint venturers, or owners;
- (4) A resume of the project partner's experience in the development of projects including a list and a brief description of the projects in which the project partner participated;

- (5) The name, title, address, email address, and telephone number of the person to whom communications should be addressed;
- (6) Evidence of the project partner's legal authority to incur obligations and to sign and deliver such documents as may be necessary to finance, develop, and construct the project;
- (7) A current certificate of good standing from the department of commerce and consumer affairs, tax clearance from the department of taxation, and certification of compliance with department of labor and industrial relations requirements;
- (8) Evidence of the project partner's capability to own, manage, and provide appropriate services in connection with the project;
- (9) Evidence of the project partner's credit worthiness including the following financial information, which shall be kept confidential to the extent permitted by law:
 - (A) The most recent year's financial statements. If the statements are unaudited, tax returns shall be provided. In the event the project partner is an entity not yet formed, federal and state tax returns and financial statements for the previous year of the principals, or additional information the corporation may require;
 - (B) Interim balance sheets and income statements of the project partner and principal developer if the fiscal year-end data is over nine months old;
 - (C) Tax returns if the project partner or guarantor is an individual;

- (D) Articles of incorporation, bylaws, resolutions, and certificates of good standing as are appropriate to support corporate actions;
- (E) Evidence of up front capitalization sufficient to demonstrate the project partner's ability to complete the project; and
- (F) Any other financial data deemed appropriate by the corporation for proper credit-worthiness analysis; provided the board may accept alternate evidence for items (A), (B), (C), (D) and (E) that it determines to be appropriate for establishing credit worthiness;
- (10) The project partner's ties to the community;
- (11) A description of all projects or facilities owned or operated by the project partner;
- (12) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the project partner or its principals;
- (13) A description of the project partner's past or current business experience or involvement in any programs or of its provision of services, if any, that would give evidence of the project partner's management capabilities;
- (14) Evidence of ability to secure the necessary performance or payment bond or other evidence of surety and the ability to perform the work required to be performed in the proposed project;
- (15) A statement of the project partner's past or current involvement with the corporation; and

(16) Any other information that the corporation
deems necessary to determine the
qualification of the project partner.
[Eff _____] (Auth: HRS §171C-
4)(Imp: HRS §§171C-4, 171C-6)

§13-302-31 Solicitation for and selection of
project partners. The process for solicitation and
selection of a project partner shall encompass a
publicly advertised request for applications, an
evaluation of submitted applications, and the
selection of a qualified project partner based upon
submitted applications. The selection process shall
be as follows:

(a) The form of project partner application for
a particular project shall be prepared by the
administrator based on the information required
pursuant to section 13-302-30.

(b) A public notice of the solicitation shall
include the following information:

- (1) A general description of the project, the
location of the project and the public
purposes it is intended to serve;
- (2) A statement that any party interested in
being a project partner is required to
submit an application in the form specified
by the administrator;
- (3) A statement of when, where and during what
times the project partner application form
may be picked up or downloaded;
- (4) A statement that a copy of the project
partner application form will be mailed to
any person who requests a copy, pays the
required fee and postage, if any;
- (5) A statement of when, where, and during what
times the project application or the initial

project proposal may be viewed in person;
and

(6) The deadline for submitting the completed
project partner application.

(c) Notice of the solicitation for project
partner applications shall be published not less than
two times in a newspaper of statewide general
circulation.

(d) The administrator shall, upon receipt of a
project partner application, time stamp the same as
received and review the project partner application
for completeness. A project partner application may
be deemed incomplete if any of the items in the
application form have not been submitted.

(e) After the date established for receipt of
project partner applications, the administrator shall
present the completed project partner applications to
the board for its consideration and approval of the
project partner for a particular project. Information
in the completed project partner applications may be
withheld from public disclosure pursuant to HRS
chapter 92F.

§13-302-32 Community input on project proposals.

(a) An eligible project applicant or project partner
shall conduct or participate in at least one public
meeting in the county community or development plan
area in which the proposed project is located to
solicit community input on the proposed project. The
public meeting shall take place prior to final
determination by the corporation on the final project
proposal.

(b) Notice of the community public meeting
required in subsection (a) shall be placed in a paper
of general circulation in the community of the
proposed project at least 15 calendar days prior to
the meeting. The notice shall contain the following:

302-

302-34

- (1) A description of the area to be affected, and a general description of the project and the public purposes it is intended to serve;
- (2) The date, time, and place where the public meeting will be held and where interested persons may be heard on the project proposal;
- (3) A statement that a copy of the project proposal will be mailed to any person who requests a copy, pays the required fee and postage, if any, together with a description of where and how the request may be made; and
- (4) A statement of when, where, and during what times the project proposal may be viewed in person. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §171C-4)

§13-302-33 Letter of intent; conditions. Upon approval of the project partner by the board, the administrator may negotiate and execute a letter of intent, memorandum of understanding, or other agreement which preliminarily commits the corporation to the proposed project with the approved project partner, subject to the final project proposal. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)

§13-302-34 Final project proposal. The project applicant and project partner shall develop the final project proposal. Prior to completion of the final project proposal, the project applicant and the project partner shall conduct at least one community meeting pursuant to section 13-302-32.

The final project proposal shall contain the following:

302-_____
302-35

(a) All of the conditions imposed by the title agency or agencies as part of each agency's approval of the proposed project;

(b) All of the conditions or restrictions suggested by the county pursuant to its review of the initial project proposal;

(c) All of the conditions imposed by the corporation as part of the corporation's preliminary approval of the proposed project'

(d) All of the information required for initial project proposals pursuant to section 13-302-25, unless otherwise required by the administrator;

(e) A summary of comments from the community or community groups including those obtained from any public meeting conducted pursuant to section 13-302-32; and

(f) The following information, except as otherwise required by the administrator:

- (1) A full description and map of the project area, including metes and bounds description and TMK number. The description and map shall include all lands connected with the project including those lands not owned by the state;
- (2) The term of the proposed partnership agreement and term of lease for the project;
- (3) All of the components and improvements associated with the project;
- (4) Final environmental impact statement or final environmental assessment and finding of no significant impact pursuant to chapter 343, HRS, if not previously completed;
- (5) The status of all actions required to comply with HRS chapter 6E, including whether written concurrence from the Department of Land and Natural Resources has been received;

- (6) Fees to be paid to the corporation pursuant to the partnership agreement prior to a lease being issued to the project partner, if applicable;
- (7) Lease rents to be paid, if applicable;
- (8) Description of all changes between the initial project proposal and the final project proposal;
- (9) Current and projected financing commitments for the project;
- (10) Financial pro forma and development schedule, consisting of:
 - (A) Summary pro forma, during construction and for the first ten operating years of the proposed project, including specific estimates of development and construction costs; and
 - (B) Proposed development schedule and project phasing, including supportive, technical and logical rationale for such schedule and phasing;
- (11) If the project is to be completed in multiple phases, the actions proposed for each phase and an anticipated timeline for the various phases of the project, if applicable; and
- (12) Any other information that the corporation finds necessary.

§13-302-35 Agreement with project applicant and project partner; form of agreement. (a) The administrator, upon approval by the board, may enter into an agreement with a project applicant and a project partner to develop a project.

(b) The agreement may be subject to modification, and shall include, but not be limited to

the following applicable terms, conditions, and covenants:

- (1) Purpose of the agreement;
- (2) A description of the role and responsibility of the corporation, the eligible developerproject applicant, the project partner, and other parties to the agreement, including the manner of compensating each party ~~and the amount of profit for work performed~~;
- (3) Project concept and cost;
- (4) Time required to complete the project, including a projected schedule of work identifying appropriate milestones to ensure timely completion;
- (5) Anticipated lease rents, if any;
- (6) Construction agreements (when one of the parties is a contractor);
- (7) Insurance and bonding or surety requirements;
- (8) Inspection requirements and procedures;
- (9) Such standard clauses that the corporation determines to be required, including, but not limited to, the following:
 - (A) Indemnity;
 - (B) Severability;
 - (C) Termination; and
 - (D) Assignability; and
- (10) The developerproject applicant and project partner shall be bound by all representations made in seeking approval. Failure to satisfy these representations shall be considered a material default and may result in termination of the agreement.
[Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-6)

SUBCHAPTER 3

~~FINANCING OF PROJECTS~~

~~§13-302-51 Purpose. The purpose of this subchapter is to set forth rules relating to the issuance of revenue bonds to finance the cost of a project or purchase non-public lands to sustain and preserve leisure or recreational enterprises within a contiguous geographic area. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-17)~~

~~§13-302-52 Revenue bonds; financing of projects. (a) The corporation may issue revenue bonds to finance the cost of a project, including the acquisition of non-public lands to sustain and preserve leisure or recreational enterprises within a contiguous geographic area, and to provide for the security thereof, in the manner and pursuant to the procedure prescribed in chapter 171C, HRS.~~

~~(b) The bonds shall be authorized by resolution of the corporation and issued pursuant to part III of chapter 39, HRS, except as provided in chapter 171C, HRS. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171C-9)~~

~~SUBCHAPTER 4~~

~~FINANCIAL ASSISTANCE BY THE CORPORATION~~

~~§13-302-61 Purpose. The purpose of this subchapter is to establish a procedure for the corporation to invest or reinvest funds to raise seed capital; make grants, loans, or provide other monetary forms of assistance; or purchase securities to finance or enhance development opportunities.~~
~~{Eff _____} (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171C-17)~~

~~§13-302-62 General guidelines. Investments by the corporation with persons shall be made on the basis of solicitation and a competitive technical review process, subject to the availability of funds allocated to the corporation for making investments. Any enterprise applying for an investment shall meet the following standards:~~

- ~~(1) Have bylaws or policies that describe the manner in which business is conducted;~~
- ~~(2) Be licensed and accredited, as applicable, in accordance with requirements of federal, state, and county governments;~~
- ~~(3) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, sex, including gender identity or expression, color, religion, marital status, familial status, ancestry, disability, age, or human immunodeficiency virus infection; and~~
- ~~(4) Comply with any other requirements as the board may prescribe. {Eff _____}~~
~~(Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171-17)~~

~~§13-302-63 Types of investment. (a) The corporation may make the following types of investments:~~

~~(1) Indirect or coventure investments; or~~

~~(2) Direct investments.~~

~~(b) A coventure is an investment by the corporation in qualified securities of an enterprise in which a substantial investment is also being made or has been made by a professional investor to provide seed capital to an enterprise. A guarantee by the corporation of qualified securities provided by a professional investor shall be classified as a coventure.~~

~~(c) Direct investment by the corporation is an investment in qualified securities of an enterprise in which no investment is being or has been made by a professional investor to provide seed capital to the enterprise. A direct investment made by the corporation may later be classified as a coventure upon an investment by a professional investor after 180 days. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171-17)~~

~~§13-302-64 Enterprise application; who may submit. (a) The corporation may solicit applications for the purchase of qualified securities, advertise, accept referrals or unsolicited applications as the board deems appropriate.~~

~~(b) Any enterprise may submit application with the corporation as required by section 13-302-64, for review and approval by the corporation. [Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171-17)~~

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302-41

~~§13-302-65 Eligible enterprise, information required; determination by the corporation. (a) An enterprise that desires the corporation to purchase its qualified securities, shall submit to the corporation an enterprise application, on forms provided by the corporation, along with any additional information that the corporation determines to be applicable. Information requested shall include, but is not necessarily limited to:~~

- ~~(1) Name, address, email address, and telephone number of the applicant and each member of the enterprise team, and evidence of the applicant's status as a corporation, partnership, joint venture, sole proprietorship or other business organization;~~
- ~~(2) A business plan, which is consistent with the business and public land development plan, including a description of the enterprise and its management, product, and market;~~
- ~~(3) A statement of the amount, timing, and projected use of the capital required;~~
- ~~(4) A statement of the potential economic impact of the enterprise, including the number, location, and types of jobs expected to be created; and~~
- ~~(5) Any other information as the corporation shall require.~~

~~(b) The board may approve the purchase of an enterprise's qualified securities if the board finds that:~~

- ~~(1) The proceeds of the investment will be used only to cover the seed capital needs of the enterprise, except as authorized in chapter 171C, HRS;~~
- ~~(2) The enterprise has a reasonable chance of success;~~

- ~~(3) The enterprise has the reasonable potential to create employment within the State and offers employment opportunities to residents;~~
- ~~(4) The coordinating entrepreneur and other founders of the enterprise have already made or are prepared to make a substantial financial and time commitment to the enterprise;~~
- ~~(5) The securities to be purchased are qualified securities as defined in this chapter;~~
- ~~(6) There is a reasonable possibility that the corporation will recoup at least its initial investment; and~~
- ~~(7) Binding commitments have been made to the corporation by the enterprise for adequate reporting of financial data to the corporation, which shall include a requirement for an annual or other periodic audit of the books of the enterprise, and for control by the corporation that it considers prudent over the management of the enterprise, in order to protect the investment of the corporation, including membership on the board of directors of the enterprise, ownership of voting stock, input in management decisions, and the right of access to the financial and other records of the enterprise. [Eff _____]
(Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171-17)~~

~~§13-302-66 Processing of enterprise application.~~

~~(a) The administrator shall, upon receipt of an enterprise application, time stamp the same as received and review the application for completeness.~~

~~(b) Upon completion of the review pursuant to subsection (a), the administrator shall determine whether the application is complete and is accepted for processing. The application may be deemed incomplete by the administrator if any of the items listed in section 13-302-65 have not been submitted.~~

~~(c) The administrator shall notify an applicant of its determination within ten working days. An incomplete application shall be returned to the applicant.~~

~~(d) The administrator shall, within ninety days of acceptance of the application, make a recommendation to the board for action.~~

~~[Eff _____] (Auth: HRS §171C-4)(Imp: HRS §§171C-4, 171-17)~~

~~§13-302-67 Agreement with enterprise. (a) The administrator, upon approval by the board, may enter into an agreement with the enterprise to purchase qualified securities.~~

~~(b) The agreement may be subject to modification, and shall include, but not be limited to the following applicable terms, conditions, and covenants:~~

~~(1) Purpose of the agreement;~~

~~(2) The manner of repayment by the enterprise of the funds advanced, granted, loaned, or received from the corporation.~~

~~(A) The manner of repayment may include the payment of dividends, returns from the public sale of corporate securities or products, royalties, and other methods of repayment acceptable to the corporation, including the liquidation of collateral.~~

~~(B) In determining the manner of repayment, the corporation shall establish a rate~~

~~of return or rate of interest commensurate with the level of risk to be paid on any investment, loan, or grant of corporation funds under this subchapter. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)~~

~~§13-302-68 Terms and restrictions. (a) General investment limits and restrictions upon the corporation include the following:~~

- ~~(1) Not more than \$500,000 shall be invested in the securities of any one enterprise, except if, after its initial investment, the corporation finds that (i) additional investments in that enterprise are required to protect the initial investment of the corporation, and (ii) the criteria set forth in subsection 13-302-65(b) are met;~~
- ~~(2) The corporation shall not own securities representing more than forty-nine per cent of the voting stock of any one enterprise at the time of purchase by the corporation after giving effect to the conversion of all outstanding convertible securities of the enterprise, except that if a severe financial difficulty of the enterprise occurs which threatens the investment of the corporation in the enterprise, a greater percentage of those securities may be owned by the corporation; and~~
- ~~(3) Not more than fifty per cent of the assets of the corporation shall be invested in direct investments at any time.~~

~~(b) Direct investments of the corporation shall be subject to a conclusive finding that a reasonable effort has been made to find a professional investor~~

~~to make an investment in the enterprise as a coventure, and that the effort was unsuccessful.~~

~~(c) Investments may be used for any purposes consistent with the purposes and objectives of this chapter and on such terms and conditions as the corporation shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this chapter.~~

~~(d) No investment, loan, grant, or use of corporation funds for the purposes of this chapter shall be subject to chapter 42F, HRS.~~

~~[Eff _____] (Auth: HRS §171C-4) (Imp: HRS §§171C-4, 171-17)~~

~~SUBCHAPTER 5~~

SEVERABILITY

§13-302-81 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [Eff _____] (Auth: HRS §171C-4) (Imp: HRS §171C-4)

FEES

[Effective _____]

Fees are nonrefundable and may be charged by the corporation as follows:

PURPOSE	AMOUNT CHARGED
Developer's Preliminary Proposal/Project Application fee	\$500 100.00
Eligible Developer's Initial Project Proposal fee	\$2,000.00
Enterprise's Application Fee Administrative Fee (assessed to project partners)	\$2,000.00 \$0 to 500 per unit
Administrative Fee (assessed to developers)	\$0 to \$2,500 per unit
Consent to Mortgage	\$250.00
Lease Consent	\$250.00
Assignment of Lease	\$250.00
Amendment of Lease	\$250.00
<i>Fees may be adjusted by the Board on a case-by-case basis.</i>	

302- _____
302-47

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-302
Hawaii Administrative Rules

_____, 2012

SUMMARY

Chapter 13-302, Hawaii Administrative Rules,
entitled "Public Land Development Program", is
adopted.

DEPARTMENT OF LAND AND NATURAL RESOURCES

The adoption of chapter 13-302, Hawaii Administrative Rules, on the Summary Pages dated _____, 2012, took place on _____, 2012, following a public hearing held on _____, 2012, after public notice was given in the Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald newspapers on _____, 2012.

The adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

KALBERT K. YOUNG
Chairperson
Hawaii Public Land
Development Corporation

APPROVED:

NEIL ABERCROMBIE
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed