

SUBCHAPTER 1

GENERAL PROVISIONS

§20-26-1 Purpose. The purpose of these rules is to provide for the proper use, management, and protection of cultural, natural, and scientific resources of the UH management areas; to promote public safety and welfare by regulating public and commercial activity within the UH management areas; and to ensure safe and appropriate access to the UH management areas for the public.

[Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105) (Imp: HRS §304A-1903)

§20-26-2 Definitions. As used in these rules, unless context requires otherwise:

“Board” means the board of regents of the University of Hawai‘i.

“Camping” means the use of UH management areas (other than designated facilities at Halepōhaku) for living accommodation purposes such as sleeping activities, or making preparations to sleep (including but not limited to the laying down of bedding for the purpose of sleeping), or storing personal belongings, or using any tents or shelter or other structure or vehicle for sleeping or carrying on cooking activities, between one hour after sunset and sunrise. The activities indicated constitute camping when it reasonably appears, in light of the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

“Commercial activity” means a use or purpose designed for profit, which includes the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic or commerce in general; provided, however, that the use of land for utility purposes shall not be considered a commercial activity. Commercial activities include but are not limited to activities whose base of operations are outside the boundaries of the UH management areas, or provide transportation to, from, or within the UH management areas.

“Commercial tours” means the transport of people for compensation for the purpose of engaging in public not limited to transport by cars, sport utility vehicles, trucks, taxis, vans or buses. activities within the UH management areas, including but

“Compensation” includes, but is not limited to, monetary payments, barter, or services in-kind. Bona fide sharing of resources or expenses among participants in research-related activities, including but not limited to astronomical observatory operations, does not constitute compensation.

“Comprehensive management plan” means the Mauna Kea comprehensive management plan approved by the board of land and natural resources, including any sub-plans, as may be amended.

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

“Final decisionmaker” means the individual or entity with the authority to render and issue a final decision and order, and final findings of fact and conclusions of law in a contested case.

“Forest reserve” means those lands designated as forest reserves by the department of land and natural resources.

“Game mammals and birds” means those animals that have been designated as such by the department of land and natural resources.

“Halepōhaku” means the Halepōhaku (also known as Hale Pōhaku) mid-level facilities as described in the lease between the board of land and natural resources and the university.

“Hazardous materials” means any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof or subsequently enacted.

“Hearings officer” means the individual or entity designated to conduct hearings.

“Kahu Kū Mauna” means the advisory community-based council that advises the Maunakea Management Board, OMKM, and the chancellor of the University of Hawai‘i at Hilo on Hawaiian cultural matters affecting the UH management areas.

“Maunakea Management Board” or “MKMB” means the community-based advisory body established by the board to provide the Hawai‘i Island community with a direct voice to the university for the management of the UH management areas.

“Motorized vehicle” means a vehicle of any shape or form that depends on a motor (gas, electric, or other fuel) for propulsion.

“Natural area reserve” means those state lands that have been designated as part of the Hawaii natural area reserves system by the department of land and natural resources.

“Non-motorized vehicle” means a vehicle of any shape or form that depends on human, animal, wind, spring, and other non-motorized means for propulsion.

“Notice of violation” refers to a written notice issued to an individual or organization providing formal notice alleging a violation of these rules or the conditions of a permit issued in accordance with these rules and requiring the alleged violator to respond in accordance with these rules.

“Office” or “OMKM” means the office of Maunakea management as authorized by the board to manage the UH management areas.

“Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as party, in a contested case proceeding.

“Person” includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than government agencies.

“Private vehicle” means any vehicle operated by a person not acting in an official capacity, including but not limited to private cars and trucks, rental cars and trucks, commercial tour vehicles, taxis, limousines, buses, and other transportation for hire. It does not include vehicles operated by employees or agents of government agencies on official business.

“Public activities” means activities of the general public that are not governed by contract or other legal agreement with the university (other than a permit issued under these rules or the rules of the department of land and natural resources, if applicable).

“Public enforcement agencies” means any agency authorized by federal, state, or county law to enforce laws, rules and regulations, including but not limited to the U.S. National Guard, U.S. military police, department of land and natural resources conservation officers, state sheriffs, and county fire and police personnel.

“Ranger” means an employee of the university or the Research Corporation of the University of Hawai‘i whose job responsibilities include patrolling the UH management areas to monitor and enforce compliance with these rules, provide information to visitors for the purpose of protecting resources and public safety, and such other duties as are assigned by the university.

“Respondent” means the party in a contested case against whom a notice of violation was issued.

“Security officer” means an individual retained and authorized by the university or the Research Corporation of the University of Hawai‘i to enforce laws, rules and regulations.

“Solicit” means to ask, implore, plead for; to endeavor to obtain by asking; to importune; or to try to obtain.

“Spark arresting equipment” means a device constructed of nonflammable materials specifically for the purpose of removing and retaining carbon and other flammable particles over 0.0232 of an inch in size from the exhaust flow of an internal combustion engine that is operated by hydrocarbon fuels.

“UH management areas” means the lands on Maunakea under lease or easement from the board of land and natural resources to the university, including the summit area designated as the Maunakea Science Reserve, the Halepōhaku mid-level site, the connecting roadway corridor between Halepōhaku and the Maunakea Science Reserve, and any other lands on Maunakea that the university leases or over which the university has management control or authority.

“University” means the state university established under article X, section 5 of the Hawai‘i State Constitution and section 304A-101 of the Hawai‘i Revised Statutes. The university is governed by the board and acts through the board or person to whom the authority of the board has been duly delegated.

“Written permit” or “written permission” means a permit or permission issued by the board or its authorized representative unless otherwise indicated. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-3 Application. (a) These rules shall apply to all public and commercial activities in the UH management areas as defined in these rules.

(b) These rules do not apply to proprietary activities of the university conducted in accordance with a lease or sublease from the department of land and natural resources or the university. Such activities are subject to management and oversight by the department of land and natural resources and the university in their respective capacities as lessor and sublessor of the UH management areas or portions thereof and by the department of land and natural resources under its conservation district rules and, where applicable, forest reserve rules (e.g., for the connecting roadway corridor between Halepōhaku and the Maunakea Science Reserve). [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105) (Imp: HRS §304A-1903)

§20-26-4 Consistency with other rules. These rules shall be interpreted consistently with the rules of other agencies having jurisdiction over the UH management areas, including but not limited to conservation district rules, and where applicable, forest reserve and natural area reserve rules. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-5 Orientation. As set forth in the comprehensive management plan, all persons accessing the UH management areas may be required to complete an orientation regarding cultural and natural resources, safety matters, and other relevant information prior to entering the UH management areas. [Eff:] (Auth: HRS §§304A-1903, 304A-103, 304A-105) (Imp: HRS §304A-1903)

§20-26-6 Fees. Fees, as established by the board, may be charged for: permits, parking, entrance and for the use of facilities and programs related to the UH management areas.

[Eff:](Auth: HRS §§304A-1902, 304A-1903, 304A-103, 304A-105) (Imp: §§304A-1902, 304A-1903)

§20-26-7 Mauna Kea lands management special fund. (a) All money collected pursuant to these rules shall be deposited into the Mauna Kea lands management special fund.

(b) The proceeds of the Mauna Kea lands management special fund shall be used as provided in chapter 304A, Hawaii Revised Statutes. [Eff:] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-2170)

[§§20-26-8 to 20-26-20 (Reserved).]

SUBCHAPTER 2

PUBLIC ACTIVITIES

§20-26-21 Traditional and Customary Rights. These rules are not intended to diminish or abrogate the provisions of article XII, section 7 of the Hawaii State Constitution, which provides that the State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Eff:] (Auth: HRS §§304A-1903, 304A-103, 304A-105) (Imp: HRS §304A-1903)

§20-26-22 Preservation of natural and cultural resources. The following activities are prohibited within the UH management areas:

- (1) To remove, injure, disturb, or kill any form of plant or animal life, either in whole or in part, except game mammals and birds hunted according to rules of the department of land and natural resources;
- (2) To introduce any form of plant or animal life, except dogs when permitted by the hunting rules of the department of land and natural resources and service animals accompanying their handlers;
- (3) To remove, damage, or disturb any natural feature or resource;
- (4) To remove, damage, or disturb any geological or paleontological features or substances;

- (5) To remove, damage, or disturb any historic or prehistoric property or remains;
- (6) To remove, damage, or disturb any private or university property, notice, marker, or structure;
- (7) To enter into any cave, as defined in section 6D-1, Hawaii Revised Statutes, or any portion thereof;
- (8) To have or possess the following tools, equipment or implements: cutting or harvesting tools or gear, including but not limited to chainsaws, axes, loppers, any mechanized or manual sawtooth tool, seed pickers, or machete, that may be used for the taking, injuring, or killing of plant life, and hunting gear or tools that may be used for the taking, injuring, or killing of wildlife, except as permitted by the hunting rules of the department of land and natural resources;
- (9) To engage in any improvement or construction, including but not limited to buildings, features, stacking or piling rocks, except as authorized by written permit and, if applicable, a permit issued by the department of land and natural resources or by the board of land and natural resources;
- (10) To hike, conduct nature study, or conduct any activity with a group larger than ten in size, except by written permit.
- (11) To hike, conduct nature study, or conduct any activity on puu (cinder cones) unless on designated trails or roads, except by written permit.
- (12) To introduce any material from outside the UH management areas, including but not limited to manmade items such as balls, plastic flowers, glass, metal and rocks, except by written permit and, if applicable, a permit issued by the department of land and natural resources. [Eff] (Auth: HRS §§304A-1903, 304A- 103, 304A-105)(Imp: HRS §304A-1903)

§20-26-23 Preservation of property. The following activities are prohibited within the UH management areas:

- (1) To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool without permission from its owner or the university;
- (2) To remove, damage, disturb, deface or attempt to remove, damage, disturb or deface any building, structure, facility, motorized vehicle, machine, equipment, or tool without permission from its owner or the university;
- (3) To enter and remain within any portion of the UH management areas developed or used by the university for educational or research purposes, or developed or used for educational or research purposes by a third party sublessee of the university, after being asked to leave such area by a ranger, security officer, or other authorized representative of the university, a public enforcement agency, or a sublessee on said sublessee's subleased property. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-24 Preservation of scientific and educational resources. The following

activities are prohibited within the UH management areas:

- (1) The use of any electro-magnetic device, including but not limited to radio transmitters and cellular telephones, except for use in an emergency;
- (2) The use of wireless communication technologies, except for use in an emergency;
- (3) The use of artificial illumination, except for headlights on licensed motorized vehicles.
- (4) Conducting any other activity that materially interferes with the scientific and educational operations of the astronomical facilities or research equipment or with the protection of the scientific resources within the UH management areas. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-25 Litter and sanitation. The following activities are prohibited within the UH management areas:

- (1) To litter, or to deposit any garbage, trash, refuse, waste material, or rubbish in any place other than receptacles provided for this purpose;
- (2) To deposit any bodily waste in areas without comfort stations without digging a hole and covering all signs of the waste;
- (3) To deposit any bodily waste within 200 feet of any body of water, building, road, or trail;
- (4) To leave or abandon a vehicle, any other large refuse such as refrigerators or stoves, household garbage or trash, or other forms of waste, debris, personal effects, or unattended items. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§2-26-26 Fire use restrictions. The following acts are prohibited within the UH management areas:

- (1) To start or maintain a fire or deposit or discard any potential fire-producing material such as matches, cigarette butts, embers, or coals, except as otherwise provided in section 20-26-37;
- (2) To use any motorized vehicle, motorized equipment, internal combustion engines, or electric motors unless equipped with efficiently operating fire or spark arresting equipment.[Eff] (Auth: HRS §§304A-1903, 304A- 103, 304A-105)(Imp: HRS §304A-1903)

§20-26-27 Explosives. The use or possession of fireworks, firecrackers, or explosive devices within the UH management areas is prohibited. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-28 Firearms or other weapons. Firearms, bows and arrows, knives with blade length greater than three (3) inches, and other weapons are prohibited within the UH management areas, except when permitted by the hunting rules of the department of land and natural resources. The use and possession of any such weapons are subject to all applicable federal, state, and county statutes, ordinances, and rules. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-29 Vehicles and transportation. (a) The following acts are prohibited within the UH management areas:

- (1) To exceed posted speed limits;
- (2) To drive, operate, or use any motorized or non-motorized land vehicle in areas and on roads or trails unless designated for that use;
- (3) To launch or land an air conveyance of any shape or form including but not limited to aircraft, gliders, hang gliders, helicopters, balloons, parachutes, parasails, or other similar means of transportation in any portion of the UH management areas not designated for that purpose, including but not limited to roads or trails;
- (4) To park any motorized or non-motorized vehicle or trailer except in designated areas;
- (5) To operate any motorized or non-motorized vehicle in violation of existing state or county traffic regulations, including but not limited to having a valid vehicle license plate, registration and safety check as required;
- (6) To operate any motorized or non-motorized vehicle on a closed roadway or in violation of any usage restriction established pursuant to these rules;
- (7) To fail to comply with any posted sign or any posted equipment requirement based on roadway conditions (such as a requirement to use or carry tire chains when snow or ice is present or anticipated).

(b) The types of vehicles allowed above Halepōhaku shall be limited to those set forth in the comprehensive management plan, such as vehicles equipped with a functioning four wheel (4WD) drive system;

(c) Any vehicle or property left unattended within the UH management areas for longer than forty-eight (48) hours without prior written permission from the office of Maunakea management shall be considered abandoned. Any abandoned vehicle or property may be impounded or towed away at the expense of the owner. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-30 Unmanned aerial vehicles, drones and air toys. The use or operation of unmanned aerial vehicles, drones, or air toys, including but not limited to kites, balloons, boomerangs, frisbees, gliders, rockets, and remote controlled models, is prohibited within the UH management areas. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-31 Outdoor sports activities. Golfing, hitting or driving golf balls, and other outdoor sports activities involving balls or other items that could result in injury to others or damage to existing structures or equipment, or that are likely to be lost or misplaced, are prohibited within the UH management areas.[Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-32 Hazardous materials. The introduction, use, disposal, release, spill, or transportation of hazardous materials is prohibited within the UH management areas, other than fuel or lubricants contained within a licensed motorized vehicle or as otherwise used in the ordinary course of lawful activities in a manner sanctioned by law

and compliant with all applicable legal requirements. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-33 Animals. (a) Dogs, cats, and other animals are prohibited within the UH management areas except for hunting dogs when permitted by department of land and natural resources hunting rules and legally authorized service animals.

(b) All dogs used for hunting shall be crated, caged, or leashed or otherwise under restrictive control during transportation while in transit at all times, to and from hunting areas in the UH management areas.

(c) Dogs, cats or other domestic animals, observed to be running at large or in the act of killing, injuring, or molesting humans, wildlife, or property, may be disposed of in the interest of public safety and the protection of resources. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-34 Audio devices and noise. Creating noise or sound within the UH management areas, either vocally or otherwise, e.g., public address systems, radios, television sets, musical instruments, or use of any noise producing devices, e.g., electric generating plants or other equipment driven by motors or engines, in a manner and at times which creates a nuisance is prohibited. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-35 Disorderly conduct. Disorderly conduct, as defined in section 711-1101, Hawaii Revised Statutes, is prohibited within the UH management areas. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-36 Use of drugs or alcohol. (a) The use or possession of narcotics and drugs is prohibited within the UH management areas, except the use or possession of drugs legally prescribed by a physician or lawful non-prescription medications used in accordance with applicable law.

(b) The use or possession of alcohol is prohibited in public areas. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-37 Use of tobacco. The use of tobacco products is prohibited within the UH management areas. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-38 Camping. Camping is prohibited within the UH management areas. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-39 Access. (a) Roadway access control. Upon approval of the board of land and natural resources, a gate or other access control structure shall be installed as set forth in the comprehensive management plan to manage vehicular access to portions of the Mauna Kea Access Road within the UH management areas.

(b) Road closures or usage limitations.

(1) The board or its authorized representative may close or limit access to all or portions of the Mauna Kea Access Road within the UH

management areas when needed for protection from hazardous conditions, including but not limited to inclement weather conditions, construction or maintenance activities on or near the roadway or at observatory sites, transportation of wide, heavy, or otherwise hazardous loads, or roadway congestion. Notice of road closures or usage limitations shall be provided through signage, road blocks, closed gates, or other means reasonably calculated to provide public notice of the location and extent of closure. The road shall remain closed until it is determined the hazardous condition no longer exists.

- (2) Access by private vehicles may be restricted for public safety and welfare, for the protection of resources, and to reduce congestion. Restrictions may include, but are not limited to, setting a maximum number of private vehicles allowed within the UH management areas at a time, restricting the areas in which private vehicles may operate, or utilizing shuttle vehicles in lieu of private vehicles.
- (3) No person shall operate a vehicle on a closed roadway or in violation of a usage restriction.

(c) Public access hours. Public access hours for the UH management areas shall be adopted as set forth in the comprehensive management plan after consultation with the department of land and natural resources. All persons shall abide by the officially posted signs designating public access hours. Being present within the UH management areas outside of public access hours without a written permit is prohibited.

(d) Closing of areas.

- (1) The board or its authorized representative may close any portion of the UH management areas as necessary or appropriate for the protection of the resources of the area or for the safety and welfare of persons or property, by posting appropriate signs indicating the duration, extent, and scope of closure.
- (2) All persons shall abide by the officially posted signs designating closed areas. Being present in an area closed pursuant to this section without a written permit is prohibited.

(e) Public access conditions. The board or its authorized representative may establish conditions on access to the UH management areas to maintain public safety and welfare and protect resources. Conditions may include, but are not limited to, requiring execution of a liability waiver, setting standards of cleanliness for invasive species prevention, requiring compliance with protocols to prevent the accidental introduction of non-native species, or designating approved transportation methods. Conditions shall be published on the OMKM website. [Eff _____] (Auth: HRS §§304A-1903, 304A-103, 304A-105) (Imp: HRS §304A-1903)

§20-26-40 Snow play. (a) Skiing, snowboarding, sledding, and other similar winter or snow sports may be restricted to maintain public safety and welfare, to prevent damage to resources, and to minimize conflicts among visitors. The use of devices that are not equipped with braking mechanisms or which do not provide directional control on snow or ice is prohibited.

(b) Skiing, snowboarding, sledding or other forms of snow recreation or snow activities may be prohibited in specific designated zones or areas in order to maintain public safety and welfare, and protect resources.

(c) Formally or informally organized contests, meets, or competitions, snow play tours, or other similar events for skiing, snowboarding, sledding or other forms of snow recreation or snow activities are prohibited.

(d) Operating a snowmobile, an all-terrain vehicle, or other motorized vehicle used for snow recreation is prohibited anywhere in the UH management areas.

(e) Towing persons on skis, sleds, or other sliding devices by any motorized vehicle is prohibited. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-41 Scattering of cremated remains. The scattering of cremated human remains is allowed within the UH management areas by written permit. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105) (Imp: HRS §304A-1903)

§20-26-42 Interference with government function. The following acts are prohibited within the UH management areas:

- (1) To threaten, resist, intimidate, or intentionally interfere with a ranger, public enforcement agency officer, security officer or other individual engaged in the performance of official duties under the direction of the board or its authorized representative;
- (2) To disobey or refuse to heed the lawful instructions or orders of a ranger, public enforcement agency officer, or security officer engaged in the performance of official duties under the direction the board or its authorized representative to manage public access and movement, to maintain public safety and welfare or to protect resources;
- (3) To knowingly give a false or fictitious report or other false information:
 - (i) to a person investigating an accident or violation of these rules, or
 - (ii) in an application for a permit; or
- (4) To knowingly give a false report for the purpose of misleading a ranger, public enforcement agency officer or security officer in the conduct of their official duties, or to make a false report that causes a response by a ranger, public enforcement agency officer or security officer or State or county officials to a fictitious event.

[Eff] (Auth: HRS §304A-1903, 304A-103, 304A-105) (Imp: HRS § 304A-1903)

§20-26-43 Compliance with laws. All persons entering the boundaries of the UH management areas shall comply with all federal, state, and county laws, ordinances, and rules. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105) (Imp: HRS §304a-1903)

[§§20-26-44 to 20-26-50 (Reserved).]

SUBCHAPTER 3

COMMERCIAL ACTIVITIES

§20-26-51 Commercial activities generally. Soliciting or engaging in commercial activities of any kind within the UH management areas without a written permit is prohibited. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §304A-1903)

§20-26-52 Selling, advertising, and solicitation. (a) Selling of goods of any nature is prohibited within the UH management areas.

(b) Posting or distribution of commercial notices or advertising material of any nature, or soliciting the purchase or sale of goods or services, including but not limited to transportation, is prohibited within the UH management areas.

(c) Any commercial notice or advertising material soliciting the purchase or sale of goods or services for a commercial activity that has received a permit pursuant to these rules, including but not limited to transportation, shall conspicuously provide the permit number and the name of the permittee to whom the permit is issued.

[Eff](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §304A-1903).

[§§20-26-53 to 20-26-60 (Reserved).]

SUBCHAPTER 4

PERMITS FOR PUBLIC AND COMMERCIAL ACTIVITIES

§20-26-61 General provisions. (a) The board or its authorized representative may issue the following types of permits:

- (1) Group use;
 - (2) Group use permits for public assemblies and meetings;
 - (3) Research activities not otherwise permitted by, or excluded from, these rules;
 - (4) Special use;
 - (5) Commercial tour activity.
- (b) All permits shall be subject to the following provisions:
- (1) Permits shall be subject to denial, suspension, cancellation, or revocation or termination at any time by the board or its authorized representative upon violation of these rules or any conditions of the permit or any federal, state, or county statutes, ordinances, and rules, or for public safety reasons arising from weather or other natural or human-created conditions in the UH management areas.

- (2) Permits shall not be transferable.
- (3) Persons or organizations to which permits are issued shall be responsible for all conditions stipulated in the permit.
- (4) Only persons eighteen (18) years of age or older shall be eligible to be issued a permit.
- (5) The size of groups as well as the length of time any permit is in effect may be limited.
- (6) All payments of fees and charges, as established under section 20-26-6, shall be in U.S. funds, and by postal money order, bank money order, or credit card, provided that personal or business checks may be used to pay for activities that will occur thirty (30) or more days after the date of payment.
- (7) Permits shall be subject to such other procedures, terms and conditions as may be established from time to time by the board or its authorized representative to carry out the provisions of chapter 304A, Hawaii Revised Statutes, this chapter, or any applicable federal, state, or county statute, ordinance, or rule. Conditions may include, but are not limited to, restricting access for children under sixteen (16) years of age, requiring execution of a liability waiver, setting standards of cleanliness for invasive species prevention, requiring compliance with protocols to prevent the accidental introduction of non-native species, or designating approved transportation methods.
- (8) All permittees shall, upon request, show the permit to any ranger, public enforcement agency officer, security officer, or other person authorized by the university to manage and regulate public and commercial activities within the UH management areas.
- (9) For activities that also involve the use of the adjacent Mauna Kea Ice Age Natural Area Reserve or Mauna Kea Forest Reserve, permit applicants, if required, shall obtain a permit from the department of land and natural resources.
- (10) Permits shall not create a property interest in favor of the permittee of an unrestricted use of the UH management areas.
 - (c) Permit applications shall be submitted in the form prescribed by the OMKM. The board or its authorized representative may determine numbers of permits to be issued based on consideration of impacts of permitted activities on resources, and public safety and welfare.
 - (d) Permits may be denied, canceled or terminated at any time without advance notice when:
 - (1) A state of emergency is declared by the Governor or other proper authority;
 - (2) Natural or civil disturbances occur or threaten to occur, including, but not limited to, tsunamis, floods, earthquakes, storms, riots, demonstrations, and employee strikes;
 - (3) The permittee violates permit conditions or provisions of this chapter;
 - (4) The permitted activity damages or threatens serious damage to the integrity of the resources of the UH management areas or threatens the

(c) The board or its authorized representative shall, without unreasonable delay and provided an application is submitted with reasonable timeliness, issue a permit on proper application, unless:

- (1) A prior application for a permit for the same time and place has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular location;
- (2) It reasonably appears that the event will present a clear and present danger to the public health or safety; or
- (3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as probable damage to the UH management areas and their resources or facilities, interference with existing approved uses, or impairment of public use facilities or services of university sublessees, concessionaires or contractors.

(d) If a permit is denied, the applicant shall be informed in writing, with the reason(s) for the denial set forth.

(e) The permit may contain such conditions as are reasonably consistent with protection and use of the UH management areas for the purposes for which the areas are managed. It may also contain reasonable limitations on equipment to be used and the time and area within which the event is allowed.

(f) No permit shall be allowed for a period in excess of seven consecutive days, provided that a permit may be extended for a like period, upon a new application, unless another applicant has previously requested use of the same location for the same time period and multiple occupancy of that location is not reasonably possible.

(g) No person shall engage in activities covered under this section so as to obstruct or impede public or vehicular access, or harass visitors to the UH management areas, either verbally or with physical contact.

(h) Should the number of applications for a permit exceed the available area at a particular location and time, the board or its authorized representative reserves the right to allocate spaces for which permit applications were received in the board or its authorized representative's sole discretion, on the basis of a shared use concept.

(i) A permit may be revoked under any of the conditions listed in subparagraph (c) of this section that constitute grounds for the denial of a permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension of the permit may be made, to be followed by written confirmation within seventy-two (72) hours.

(j) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

[Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-64 Research permits. (a) Research permits may be issued to engage in activities for scientific, educational, or management purposes, that may otherwise be prohibited by this chapter.

(b) Applications for research permits shall adequately describe the planned research activity, including but not limited to the scope, duration, and location of the

research and shall be submitted at least one hundred twenty (120) calendar days in advance of the date the permit is to be in effect.

(c) Applications for research shall be evaluated for duplication with existing or previously approved research, for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans, for the potential effect on the surrounding resources, the existing facilities, and the public's use of the UH management areas, for compatibility with existing approved uses, and the applicant's prior record of non-compliance with permit conditions or of violations. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested shall be grounds for permit denial.

(d) Fees may be assessed in accordance with section 20-26-6 and additional terms and conditions necessary to protect the resources of the UH management areas and to protect safety and welfare may be imposed. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-65 Special use permits. (a) Special use permits may be issued to engage in activities otherwise prohibited by this chapter.

(b) Special uses are all types of uses, other than group use, group use for public assemblies and meetings, research, and commercial tour activities, which are considered compatible with the functions and purpose of the UH management areas and are consistent with the approved management plans for the UH management areas.

(c) Applications for special use permits shall adequately describe the planned use, including but not limited to the scope, duration, and location of the activity, and shall be submitted at least thirty (30) calendar days in advance of the date the permit is to be in effect.

(d) Each special use permit application shall be evaluated on its own merits for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans, for the potential effect on the surrounding resources, the existing facilities, and the public's use of the UH management areas, for compatibility with existing approved uses, for compatibility with scheduled or ongoing construction, repairs, or maintenance activities, and the applicant's prior record of non-compliance with permit conditions or of violations. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested shall be grounds for permit denial.

(e) Fees may be assessed in accordance with section 20-26-6 and additional terms and conditions necessary or appropriate to protect the resources of the UH management areas and to protect safety and welfare may be imposed. [Eff] (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: HRS §304A-1903)

§20-26-66 Commercial tour activity permits. (a) Commercial tour activity permits for conducting commercial tours or transporting passengers for hire within the UH management areas may be issued for a period not to exceed five (5) years.

(b) Permits for commercial tours or passenger transportation for hire may be issued on such terms and conditions as shall be determined by the board or its authorized representative. Applications for commercial tour or passenger transportation permits shall

adequately describe the proposed commercial tour or transportation activity, including but not limited to the permit duration, the area of use, and the proposed activity. The application shall include at a minimum the requested frequency of visitation, e.g., once a week, daily, etc., the maximum number of persons per visit, the number and size of the commercial transport vehicle(s), the times of access to the UH management areas and length of stay, the nature and theme of the tour, and seasonal or weather restrictions. Applications shall be submitted at least ninety (90) calendar days in advance of the date the permit is sought to be in effect.

(c) Each permit application shall be evaluated on its own merits for compatibility with the functions and purpose of the UH management areas, for consistency with existing approved management plans, for the potential effect on the surrounding resources, the existing facilities and infrastructure, and the public's use of the UH management areas, for compatibility with existing approved uses, for compatibility with scheduled or ongoing construction, repairs, or maintenance activities, and the applicant's prior record of non-compliance with permit conditions or of violations. In addition, each permit application shall also be evaluated for the quality of the educational aspects of the activity, the comprehensiveness of planned staff training, the inclusion of safety protocols, and the extent to which additional practices are incorporated to ensure customer and public safety and welfare and to protect the resources of the UH management areas. Additional information may be required from the applicant to make this evaluation. Failure to provide additional information when requested shall be grounds for permit denial.

(d) If the number of applicants determined to be qualified for commercial tour or passenger transportation permits in accordance with the process described in subparagraph (c) of this section exceeds the total number of permits available for issuance, permits shall be allocated among the qualified applicants by drawing or lottery.

(e) The board or its authorized representative may elect to manage commercial tour activities through issuance of one or more concession agreements in lieu of, or in addition to, commercial tour activity permits. Any such concession agreements shall be consistent with these rules and applicable law.

(f) The board or its authorized representative may enter into an agreement with another public agency to manage commercial tour activities and transportation of passengers for hire within the UH management areas, on such terms and conditions deemed appropriate, which shall be consistent with these rules and applicable law. Such an agreement may be in lieu of, or in addition to, written permits or concession agreements for such purposes.

(g) Fees may be assessed in accordance with section 20-26-6 and additional terms and conditions necessary or appropriate to reduce congestion, protect the resources of the UH management areas and protect safety and welfare may be imposed, including but not limited to insurance and licensing requirements, and loading restrictions.

(h) Commercial tour activity permits in force as of the effective date of these rules shall remain in effect through their stated expiration dates or such earlier termination date as may apply in accordance with their terms. Upon expiration, any future application shall be submitted in accordance with these rules. [Eff _____] (Auth: HRS §§304A-1903, 304A-103, 304A-105) (Imp: HRS §304A-1903)

§20-26-67 Commercial film and recordings. (a) Use for commercial purposes of video, digital, film, still photography, or any other visual and audio recordings taken within the UH management areas is prohibited without a written permit issued by the state film office of the department of business, economic development and tourism.

(b) The OMKM shall review all permit applications involving the UH management areas that are submitted to the state film office of the department of business, economic development and tourism. The OMKM shall recommend approval or denial of each permit application, may require specific conditions, and may request fees or deposits to cover administrative and personnel expenses or potential damages to resources associated with the proposed activity.

[Eff (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §304A-1903)

§20-26-68 Period of validity and renewal of permit. (a) Permits shall be valid for the term set forth therein, as established by the board or its authorized representative. Upon expiration of the stated term, the permit and all rights of the permittee thereunder shall automatically terminate.

(b) No permit shall be renewed unless the permittee has submitted a timely application to renew the permit, all the conditions or covenants of the original issuance, including but not limited to the requirement of prompt payment of fees or charges, have been met, and the rules governing the UH management areas have been fully complied with.

(c) The renewal of an existing permit is discretionary, and applications for renewal of an existing permit shall be evaluated by the criteria provided in these rules for the issuance of new permits.

[§§20-26-69 to 20-26-70 (Reserved).]

SUBCHAPTER 5

ADMINISTRATION AND ENFORCEMENT

§20-26-71 Purpose of subchapter; statement of policy. This subchapter shall govern the university's practices and procedures relating to the administrative proceedings for civil violations of these rules and the assessment of administrative sanctions for such violations. This subchapter shall effectuate and carry out the purposes and policies of section 304A-1903, Hawaii Revised Statutes, and these rules, and shall be construed and interpreted in the manner most favorable to the promotion of justice, expeditious processing and cost-effective resolution in every case involved. [Eff

(Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-72 Applicability. (a) This subchapter shall apply to violations of these rules and to violations of the conditions of permits issued pursuant to these rules.

(b) Any criminal prosecution against a person shall not preclude the university

from imposing administrative sanctions pursuant to this subchapter against the same person for any civil violation committed in the same course of conduct.

(c) Any administrative proceeding against a person under this subchapter shall not preclude the state from pursuing a separate criminal prosecution against the same person for a criminal offense committed in the same course of conduct. [Eff

](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-73 Penalties, administrative fines and other administrative sanctions. (a) The board or its authorized representative shall have the power to impose one or more of the following sanctions for violations of these rules or of the conditions of a permit issued pursuant to these rules:

- (1) Immediate expulsion from the UH management areas;
 - (2) Exclusion from the UH management areas for a specified period or until the violation has been corrected;
 - (3) An administrative fine determined in accordance with subparagraph (b) of this section;
 - (4) A monetary assessment to recover costs of mitigation or restoration required as a result of the violation and to recover the costs of enforcement proceedings;
 - (5) Revocation or suspension of a permit;
 - (6) Imposition of additional permit conditions.
- (b) Administrative fines shall be established by the board as follows:
- (1) For a first violation, not more than \$2,500;
 - (2) For the second violation within five (5) years of a previous violation, not more than \$5,000;
 - (3) For the third violation within five years of a previous violation and any subsequent violation, not more than \$10,000.

The board may establish a more detailed schedule of administrative fines for specified infractions, subject to the limitations set forth in this subparagraph.

(c) For parking violations, the driver or the registered owner of the motorized vehicle, or both, shall be subject to the applicable penalties described in above.

(d) All administrative fines and cost assessments shall be paid to the office of Maunakea management, in the form and manner outlined in the notice of violation.

[Eff](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-74 Notice of violation; issuance, service and amendment. (a) A written notice of violation shall be issued to any person who is charged with having violated these rules or having violated the conditions of a permit issued pursuant to these rules.

(b) Any person cited pursuant to subsection (a) above shall be required to answer to the notice of violation and any citation contained therein, and to submit to administrative proceedings conducted pursuant to this subchapter.

(c) Issuance and service of the notice of violation may be conducted by any

person authorized by the board or its authorized representative to do so, and may be effectuated by one of the following methods:

- (1) By personal service on the respondent, with or without the respondent's signature acknowledging the service;
- (2) By certified mail, return receipt requested, to the respondent's last known address;
- (3) If the respondent is a domestic or foreign corporation or a partnership or other unincorporated association, by delivering a copy of the violation notice to an officer, a managing or general agent or partner, or to any other agent or partner authorized by appointment or by law to receive service of process; or
- (4) Where a violation involves an unattended vehicle or property, service may be conducted by conspicuously affixing the violation notice to the vehicle or property for the owner to receive and answer.

(d) In any pending case, the board or its authorized representative may amend a violation notice at any time prior to the filing of the respondent's answer to the original notice. [Eff](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-75 Notice of violation; contents. A notice of violation shall include, at a minimum, the following:

- (1) The respondent's name and current address, and phone number and email address if available;
- (2) A statement that the notice is being issued pursuant to section 304A-1903, Hawaii Revised Statutes, and these rules;
- (3) A statement of the specific violation alleged, including a brief statement of the facts for which the notice is issued and a citation to the rule or permit condition that are alleged to have been violated;
- (4) The amount of the civil fine to be assessed against the respondent, and/or other administrative sanctions to be imposed upon the respondent and a citation of the legal basis for such civil fine and/or other sanctions;
- (5) A statement of the options and procedures provided herein for answering the notice;
- (6) A summons to the respondent to answer the notice within twenty-one (21) calendar days of the service of the notice;
- (7) The name and signature of the individual issuing the notice;
- (8) The date of the issuance of the notice;
- (9) A statement that all violations alleged and civil fines and/or other administrative sanctions to be imposed pursuant to the notice shall be final and conclusive unless contested by the respondent within twenty-one (21) days of service of the violation notice;
- (10) A statement that failure to timely answer the notice of violation and comply with all sanctions assessed may result in the entry of a default decision in favor of the university;
- (11) A statement that a request for mitigation without contesting the notice of violation shall be examined and decided by the board or its authorized

representative without holding any hearing, and that the decision on any such request for mitigation shall be final and shall not be subject to any administrative or judicial review thereafter;

- (12) A statement that any administrative action against the respondent for any civil violation shall not preclude the state from pursuing a separate criminal prosecution in a court of law for an offense committed in the same course of conduct; and
- (13) A space for the respondent's statement and signature. [Eff
(Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-76 Answer to notice of violation required. (a) A respondent cited in a notice of violation shall, within twenty-one (21) calendar days of the service of the notice of violation, answer the notice by a method indicated in the notice of violation.

(b) For good cause shown, the period allowed for answering a notice of violation may be extended. Any such extension shall be in writing and signed by the board's authorized representative. Any purported oral extension shall have no force or effect. [Eff
(Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-77 Respondent's options when answering. (a) In an answer to a notice of violation, the respondent shall choose from one of the following options:

- (1) Waive any contest to the notice of violation and comply with all monetary and non-monetary sanctions assessed therein;
- (2) Waive any contest to the notice of violation, but request mitigation of sanctions based on written justifications; or
- (3) Contest the notice of violation. An answer contesting the notice of violation shall state the factual and legal grounds for contesting the notice of violation, request a contested case and be accompanied by a non-refundable filing fee in the amount of one hundred dollars (\$100.00).

(b) The respondent shall not be entitled to assert any counterclaim or any other affirmative claim against any person, including, without limitation, the university or any officer or employee of the university, in the respondent's answer to the notice of violation. Any such claims shall be stricken and disregarded without further notice to the respondent. [Eff
(Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-78 Default. (a) When a respondent fails to answer a notice of violation within twenty-one (21) calendar days of the violation notice or such further period granted by the board or its authorized representative pursuant to section 20-26-76, or fails to attend any hearing or other proceeding after proper service of notice, or otherwise fails to defend against a notice of violation, the respondent shall be deemed to have waived the right to contest the notice of violation, and the board or its authorized representative shall enter the respondent's default, and may

- (1) Enter a finding of a violation in accordance with the notice of violation;
- (2) Impose sanctions for the violation, not to exceed those set forth in the

notice of violation; and

(3) Enter a decision by default, which shall be final and conclusive.

(b) For good cause shown, the board or its authorized representative may set aside an entry of default or a default decision on the written request of the respondent within a reasonable time after the entry of default or default decision. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-79 Proceedings after answer. (a) When a respondent in an answer waives contest to the notice of violation and has complied with all sanctions assessed, the decision shall be recorded as a satisfaction of the violation notice and the case concluded.

(b) An answer waiving contest but requesting mitigation shall be considered by the board or its authorized representative on the basis of the information provided in the notice of violation and in the respondent's answer. A written decision shall be issued within thirty (30) calendar days after service of the answer. The written decision shall state the determination regarding the request for mitigation and may adopt, modify, or reverse any sanctions contained in the notice of violation. The written decision shall be final and conclusive, and no further administrative or judicial review shall be allowed. When all sanctions imposed in the written decision have been complied with, the decision shall be recorded as a satisfaction of the violation notice and the case concluded.

(c) When a respondent's answer is timely filed and contests the violation notice, the board or its authorized representative shall assign the case to a hearings officer who shall proceed to conduct a contested case proceeding pursuant to subchapter 7 of this chapter, except as otherwise provided herein. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

[§§20-26-80 to 20-26-81 (Reserved).]

SUBCHAPTER 6

CONTESTED CASE PROCEEDINGS

§20-26-82 Contested case proceedings generally. (a) The board or its authorized representative shall hold a contested case proceeding upon its own motion or on a written petition by an interested person when:

(1) The respondent cited in a notice of violation contests the violation in a timely-filed answer to the petition in accordance with §20-26-77; or

(2) A contested case is required by law.

(b) Contested case proceedings shall be conducted in accordance with this subchapter and chapter 91, Hawaii Revised Statutes.

(c) The contested case proceeding shall be conducted by a hearings officer appointed by the board or its authorized representative, who may be, but is not required to be, an employee of the university. The hearing officer shall conduct the hearing and any related pre-hearing and post-hearing activities as may be required or appropriate.

(d) The final decisionmaker shall be the board or its authorized representative.

(e) Any procedure in a contested case may be modified or waived by stipulation of the parties.

(f) All or part of any contested case may be resolved by stipulation, settlement, consent order, or default. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§ 20-26-83 Filing of documents. (a) All pleadings, applications, submittals, petitions, reports, maps, exceptions, briefs, memoranda, and other papers required to be filed with the hearings officer or final decisionmaker in any proceeding under these rules shall be filed as directed by the hearings officer or final decisionmaker, within the time limit, if any, for filing. The date on which the papers are actually received by the hearings officer or final decisionmaker as appropriate shall be deemed to 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 placed immediately above the signatory's typewritten or printed name. 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 hearings officer or final decisionmaker, an original and one copy of all papers shall be filed.

(d) The board or its authorized representative may develop and implement Internet-based or other electronic filing procedures. If such procedures are available, the hearings officer or final decisionmaker may authorize the use of such Internet-based or other electronic filing procedures for the filing of documents. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-84 Request for hearing. (a) The board or its authorized representative may hold a contested case proceeding on its own motion. Others must request a contested case proceeding as follows:

- (1) In a case arising from a notice of violation, by filing a timely answer in accordance with section 20-26-77; or
- (2) In all other cases, by filing a written petition to hold a contested case proceeding within thirty (30) calendar days after the action or decision for which a contested case is requested, together with a non-refundable filing fee in the amount of one hundred dollars (\$100.00). If the petition is submitted by mail, the postmark date shall be considered the date of filing. The board or its authorized representative may extend the time for submitting a petition by up to an additional thirty (30) calendar days upon a showing of good cause why additional time is necessary to enable the party seeking a contested case proceeding to submit the petition.

(b) A formal written petition for a contested case pursuant to subsection (a)(2) above shall contain concise statements of:

- (1) The nature and extent of the requestor's interest that may be affected by university action on the subject matter that entitles the requestor to participate in a contested case;

- (2) The disagreement, if any, the requestor has with the action or decision of the university;
- (3) The facts and issues raised;
- (4) The relief the requestor seeks or to which the requestor deems itself entitled;
- (5) How the requestor's participation would serve the public interest; and
- (6) Any other information that may assist the board or its authorized representative in determining whether the requestor meets the criteria to be a party pursuant to section 20-26-87. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-85 Determination of entitlement to a contested case proceeding. The board or its authorized representative may deny a request for a contested case without a hearing when it is clear as a matter of law that the requestor does not have a legal right, duty, or privilege entitling them to contested case proceeding. [Eff _____] (Auth: HRS §§99-2, 304A-1903, 304A-103, 304A-105) (Imp: §91-9, 304A-1903, 304A-1904)

§20-26-86 Appearances. (a) A person may appear on 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 under these rules.

(b) In any proceeding under these rules, a person may be represented by counsel qualified to practice law in the State of Hawaii.

(c) A person shall not be represented in any proceeding under these rules except as stated in subsections (a) or (b) of this section.

(d) An individual's personal appearance or signature on a document filed with the hearings officer constitutes a representation that the individual is authorized and qualified to represent the particular person on whose behalf the individual claims or appears to act. The hearings officer may at any time require any individual acting in a representative capacity to prove the individual's authority and qualification to act in that capacity.

[Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-87 Decision on petition for contested case proceeding; parties. (a) Within a reasonable time after the filing of a petition for contested case in accordance with section 20-26-84, the board or its authorized representative shall:

- (1) Determine whether a contested case proceeding will be held;
- (2) Notify all persons who timely petitioned for the contested case proceeding of the determination; and
- (3) If a contested case hearing will be held, notify all persons who timely petitioned for the contested case proceeding of the date and time for a hearing to determine whether any or all of the persons seeking to participate in the contested case proceeding are entitled to be parties in the contested case. Such notice shall also set the time for filing any objections to the admission of any requestor as a party to the contested case.

(b) The following persons shall be admitted as parties:

- (1) In the case of a university action or decision involving a permit, the applicant or holder of the permit;
- (2) Any other person who has filed a timely petition and who can demonstrate that they will be so directly and immediately affected by the university's action or decision that their interest in the proceeding is clearly distinguishable from that of the general public and that they are entitled by law to be admitted as a party.

(c) Other persons who can show a substantial interest in the matter may be admitted as parties in the discretion of the hearings officer or final decisionmaker if it is determined that the requestor's participation will substantially assist the hearings officer or final decisionmaker in its decision making. The hearings officer or final decisionmaker may deny any request to be a party when it appears that:

- (1) The position of the requestor is substantially the same as the position of a party already admitted to the proceedings; and
- (2) The admission of additional parties will not add substantially new relevant information or will make the proceedings inefficient and unmanageable.

(d) In a contested case proceeding arising from a timely answer contesting a notice of violation in accordance with section 20-26-82(a)(1), no person other than the university and the alleged violator shall be admitted as a party.

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

(f) If any party opposes another person's request to be a party, the party may file objections within the time set forth by the hearings officer.

(g) The hearing to determine parties shall be conducted by the hearings officer appointed in accordance with section 20-26-82(c). At such hearing, evidence and argument shall be limited to matters necessary to determine whether the requestor shall be admitted as a party. Only a party objecting to a requestor's admission as a party shall have the opportunity to cross-examine a requestor or the requestor's witness; provided, however, that the hearings officer may cross-examine any witness at such hearing. The hearing to determine parties may be waived by the hearings officer upon concurrence of all requestors.

(h) If the hearings officer recommends that any person requesting to be a party should not be allowed to participate in the contested case, such recommendation and the reasons therefore shall be immediately submitted in writing to the final decisionmaker. The requestor whose request is recommended for denial shall have the opportunity to file objections to the recommendation. Such recommendation shall be acted upon by the board or its authorized representative as soon as practicable and shall be decided, by written order, not later than the commencement of the contested case proceeding.

(i) A person whose request to be admitted as a party has been denied may appeal that denial to the circuit court in accordance with section 91-14, Hawaii Revised Statutes. [Eff (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-88 Notice of hearing. After a determination is made that a contested case proceeding is required and the parties have been determined, a written notice of hearing

shall be served on parties by registered or certified mail in accordance with section 91-9.5(a), Hawaii Revised Statutes, and shall be served on all persons or agencies admitted as a party at their last recorded addresses at least fifteen (15) calendar days before the hearing date. [Eff (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-89 Conduct of hearing. (a) Contested case proceedings shall be conducted in accordance with this subchapter and chapter 91, Hawaii Revised Statutes.

(b) The contested case proceeding shall be conducted by the hearings officer.

(c) The hearings officer shall have the power to give notice of the proceeding, administer oaths, compel attendance of witnesses and the production of documentary evidence, examine witnesses, certify official acts, issue subpoenas, rule on offers of proof, receive relevant evidence, hold conferences before and during hearings, rule on objections or motions, fix times for submitting documents or briefs, and dispose of other matters that normally and properly arise in the course of a proceeding authorized by law that are necessary for the orderly and just conduct of a proceeding.

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

(e) In hearings, the parties shall be heard in such order as the hearings officer directs.

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

(g) Each party shall have the right to conduct such cross-examinations of witnesses as may be required for a full and true disclosure of the relevant facts and shall have the right to submit rebuttal evidence, subject to limitations by the hearings officer.

(h) To avoid unnecessary or repetitive evidence, the hearings officer may limit the number of witnesses, the extent of direct or cross examination or the time for testimony upon a particular issue. [Eff (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-90 Conduct of hearing with only one party. When a permit applicant is the sole party in the contested case, the hearings officer shall consider and give appropriate weight to the records on file directly relating to the application, including, but not limited to, staff reports, if any; provided, however, that the staff shall not be made parties to the contested case nor be compelled to give testimony on any documents within the file unless the hearings officer deems it necessary to a just disposition of the case. [Eff (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-91 Enforcement by university. In contested cases involving alleged violation of these rules, to the extent necessary, the university shall be treated as a party for the purpose of establishing the alleged violation, and staff members may be called as

witnesses. The university's activities in relation to the enforcement action shall be performed or supervised by a person designated by the board or its authorized representative who has no involvement in adjudicating the contested case. [Eff

](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-92 Discovery. Depositions of witnesses and interrogatories shall not be allowed except upon agreement of the parties. The hearings officer may require parties to file and serve upon all other parties written witness statements and exhibits and may establish a schedule for such filings. [Eff (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-93 Procedure for witnesses. (a) Witnesses may be subpoenaed as set forth below:

- (1) Requests for the issuance of subpoenas, requiring the attendance of a witness for the purpose of taking oral testimony before the hearings officer shall be in writing, and shall state the reasons why the testimony of the witness is believed to be material and relevant to the issues involved. Only parties or the hearings officer may request the issuance of a subpoena.
- (2) Requests for the issuance of subpoenas for the production of documents or records shall be in writing, shall specify the particular document or record, or part thereof, desired to be produced; and shall state the reasons why the production thereof is believed to be material and relevant to the issues involved. Only parties or the hearings officer may requests the issuance of a subpoena duces tecum.

(b) Subpoenas may be issued by the hearings officer. No subpoena shall be issued unless the party requesting the subpoena has complied with this section giving the name and address of the desired witness and tendering the proper witness and mileage fees. Signed and sealed blank subpoenas shall not be issued to anyone. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall state at whose request the subpoena is issued. Requests for subpoenas shall be filed not later than three (3) business days before the scheduled hearing.

(c) Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in circuit courts of the State of Hawaii and such fees and mileage shall be paid by the party at whose request the witness appears. [Eff (Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-94 Motions. (a) All motions other than those made during a hearing shall be made in writing, shall state the relief sought, and shall be accompanied by an affidavit, or declaration, or memorandum setting forth the grounds upon which they are based. The hearings officer shall set the time for filing all motions and opposing memoranda, if any.

(b) Copies of all motions, affidavits, declarations, and memoranda shall be served on all other parties to the hearing within the time set by the hearings officer. The original shall be filed with the hearings officer with a certificate of service.

(c) Failure to serve or file an affidavit, declaration, or memorandum in opposition

to a motion or failure to appear at the hearing on the motion, if held, shall be deemed a waiver of objection to the granting or denial of the motion. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-95 Evidence. (a) The hearings officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

(b) The hearings officer shall rule on the admissibility of all evidence. The rulings may be reviewed by the final decisionmaker in determining the matter on its merits.

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

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

(e) With the approval of the hearings officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the hearings officer, the witness shall deliver copies thereof to the hearings officer and all parties. Admissibility shall be subject to the rules governing oral testimony. If the hearings officer deems that substantial saving in time will result, a copy of the prepared testimony may be received in evidence without reading, provided that copies thereof shall have been served upon all parties and the hearings officer at least five (5) calendar days before the hearing or if such prior service is waived, to permit proper cross examination of the witnesses on matters contained in the prepared testimony.

(f) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the hearings officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(g) Exhibits shall be prepared as follows:

(1) Documents, pleadings, correspondence and other exhibits shall be legible and must be prepared on paper 8-1/2 x 11 inches in size. Charts and other oversized exhibits must be bound or folded to the respective approximate size, where practical. Wherever practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form.

(2) When exhibits are offered in evidence, the original and one copy, unless otherwise waived by the hearings officer, shall be furnished to the hearings officer with adequate copies for review by other parties, unless the copies have been previously furnished or the hearings officer directs otherwise.

(h) If any matter contained in a document on file as a government record with the university is offered in evidence, unless directed otherwise by the hearings officer, the document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of the document are specifically identified and otherwise competent, relevant, and material. If testimony in proceedings other than

the one being heard is offered in evidence, a copy shall be presented as an exhibit, unless otherwise ordered by the hearings officer.

(i) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts within the specialized knowledge of the university when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(j) At the hearing, the hearings officer may require the production of further evidence upon any issue. Upon agreement of the parties, the hearings officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.

(k) The party initiating the proceeding and, in the case of proceedings on alleged violations of these rules, the university, shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The quantum of proof shall be a preponderance of the evidence. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-96 Prehearing conference; exchange of exhibits; briefs. (a) The hearings 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 hearings officer may request briefs setting forth the issues, facts and legal arguments upon which the parties intend to rely and the hearings 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 §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-97 Ex parte (single party) communications. (a) No party or person petitioning to be a party in a contested case, nor the party's or person's representatives or agents, shall make an unauthorized ex parte communication, either oral or written, concerning the contested case to the hearings officer or the final decisionmaker.

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

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

(2) Those which all parties to the proceeding agree or which the final decisionmaker has formally ruled may be made on an ex parte basis. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-98 Recommendation of hearings officer. (a) Upon completion of taking of evidence, the hearings officer may ask the parties to submit their proposed findings of fact, conclusions of law, and decision and order. Proposed decisions and orders submitted shall be served upon each party to the proceedings and an opportunity given to each party

to comment thereon. If requested, and upon receipt of the proposed decision and orders and any comments from the parties, the hearings officer shall prepare a report setting forth proposed findings of fact, conclusions of law, and the reasons therefore, and a recommended order, and shall present the report of the proceeding to the final decisionmaker.

(b) The record shall include the petition, notice of hearing, motions, rulings, orders, transcript of the hearing, stipulations, documentary evidence, proposed findings, or other documents submitted by the parties, objections to the conduct of the hearing, the report of the hearings officer, and all other matters placed in evidence.

(c) The hearings officer shall cause a copy of the report to be served upon all parties to the proceedings. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-99 Exception to the hearings officer's report and recommendations. (a) Except as otherwise ordered by the final decisionmaker, within twenty-one (21) calendar days after service of the report and recommendations by the hearings officer, a party may file exceptions to the report with the final decisionmaker, together with a brief in support of such exceptions. Such party shall serve copies of exceptions and briefs upon each party to the proceeding.

(b) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken;
- (2) Identify that part of the hearing officer's report and recommended order to which objections are made; and
- (3) State all the grounds for exceptions to a ruling, finding, conclusion, or recommendation. The grounds not cited or specifically urged are waived. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-100 Support of hearings officer's report and recommendations. (a) Except as otherwise ordered by the final decisionmaker, within twenty-one (21) calendar days after service of the exceptions to the hearings officer's report, any party may file with the final decisionmaker a brief in response to the exceptions. Such party shall serve copies of the brief upon each party to the proceeding.

(b) The brief shall:

- (1) Answer specifically the points of procedure, fact, law, or policy to which exceptions were taken; and
- (2) State the facts and reasons why the report and recommendation should be affirmed. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-101 Oral argument before the final decisionmaker. (a) Any party upon its request shall be afforded an opportunity to present oral arguments to the final decisionmaker.

(b) The final decisionmaker may call for oral argument on the final decisionmaker's own motion.

(c) Responding arguments will be allowed. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-102 Final decision; exceptions. (a) In the event no statement of exceptions is filed, the final decisionmaker may proceed to reverse, modify, or adopt the recommendations of the hearings officer.

(b) Upon the filing of the exceptions and briefs together with the briefs in support, the final decisionmaker may:

- (1) Render a decision upon the record;
- (2) If oral argument has been held, render its decision after oral argument;
- (3) Reopen the docket and take further evidence; or
- (4) Make such other disposition of the case as is necessary or appropriate under the circumstances. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-103 Reconsideration. (a) Upon a motion of a party, the final decisionmaker may reconsider a decision it has made on the merits only if the party can show that:

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

(b) In either case, a motion for reconsideration shall be made not later than five (5) business days after the decision or not less than fourteen (14) calendar days prior to any deadline established by law for the disposition of the subject matter, whichever is earlier. [Eff _____](Auth: HRS §§304A-1903, 304A-103, 304A-105)(Imp: §§304A-1903, 304A-1904)

§20-26-104 Enforcement and stay of a final decision. (a) Unless otherwise stated in a final decision, all administrative fines, other monetary assessments, and non-monetary sanctions shall be due and enforceable within thirty (30) calendar days of the service of the final decision imposing such fines and sanctions.

(b) Upon request filed by a party, the final decisionmaker may stay enforcement of a final decision pending a judicial review of the case. The decision as to the request for stay is final.

(c) The board or its authorized representative may take any legal action to collect any overdue monetary sanctions or enforce any non-monetary sanctions imposed in an administrative proceeding under this chapter. [Eff _____](Auth: HRS §§ 304A-1903, 304A-103, 304A-105)(Imp: §§ 304A-1903, 304A-1904, 304A-1005)

§20-26-105 Severability. These rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff _____](Auth: HRS §§ 304A-1903, 304A-103, 304A-105)(Imp: §§ 304A-1903, 304A-1904, 304A-1005)

The adoption of chapter 20-26, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

Chairperson
Board of Regents
University of Hawaii

Approved for public hearing:

University General Counsel

DRAFT for REVIEW