

**Proposed Amendments to HAR Title 10  
Chapters 10-1, 10-2, 10-5.1, and 10-7**

**Chapter 10-1**

Language Change (Ramseyer Format)	Justification
<p><b>§10-1-2 Information.</b> (a) Information about the department, submittals, or requests may be obtained from:</p> <p>(1) The main office, P.O. Box 1879, Honolulu, Hawaii 96805, [twelfth and twentieth floors, 1099 Alakea Street Honolulu, Hawaii;] <u>91-5420 Kapolei Parkway, Kapolei, Hawaii 96707;</u> or</p> <p>(2) Neighbor island district offices as follows:</p> <p>(A) West Hawaii: P.O. Box 125, Kamuela, Hawaii 96743; <u>64-756 Mamalahoa Highway, Kamuela, Hawaii 96743;</u></p> <p>(B) East Hawaii: 160 Baker Avenue, Hilo, Hawaii 96720;</p> <p>(C) Kauai: 3060 Eiwa Street, Room 203, Lihue, Kauai 96766;</p> <p>(D) Maui: [Puuhone Plaza, Room C-206, 1063 East Main Street,] <u>655 Kaunualii Street, Suite 1, Wailuku, Maui 96793;</u> or</p> <p>(E) Molokai: P.O. Box [198, Hoolehua, Hawaii 96729 Puukapele Street, Hoolehua, Molokai 96729.] <u>2009, Kaunakakai, Hawaii 96748; 600 Maunaloa Highway, Suite D-1, Kaunakakai, Hawaii 96793.</u></p>	<p>This change brings the office addresses up-to-date.</p>
<p><b>§10-1-4 Terms.</b> Unless otherwise specifically stated, the meaning of terms used in [Title 10] <u>this title</u> shall have the same meaning as provided by law.</p>	<p>LRB recommended revision.</p>
<p><b>§10-1-5 Definitions.</b></p> <p><u>"Priority and preference for awards of leases" means the department's lease award process prior to 1976 that awards leases, according to ranking, to applicants in one of three priority groups categorized under the priority ranking system and defined as follows: Priority I includes applicants and their spouses and children who are 100 percent Hawaiian; Priority II includes applicants and their spouses and children who are no less than 50 percent Hawaiian; Priority III includes only applicants who are no less than 50 percent Hawaiian.</u></p> <p><u>"Successor" means a person designated by a lessee or by the department to succeed to a lease.</u></p> <p><u>"Undivided interest" means an award of a tract of land that has not been divided into parts to a group of applicants.</u></p>	<p>Adds definitions for the following terms:</p> <ol style="list-style-type: none"> <li>1. Priority and preference for awards of leases;</li> <li>2. Successor; and</li> <li>3. Undivided Interest.</li> </ol> <p>This is intended to provide a greater degree of clarity to the public when these terms are utilized.</p>
<p><b>§10-1-7 Severability.</b> If any section, sentence, clause, or phrase of [Title 10] <u>this title</u> be for any reason held by a court of competent jurisdiction to be invalid, the decision shall not affect the validity of the remaining portion of this title."</p>	<p>LRB recommended revision.</p>

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**Chapter 10-2**

Language Change (Ramseyer Format)	Justification
<p><b>§10-2-11 Requests for appearance at commission meeting.</b>  <u>(e) Should the commission act on an item that is the topic of a person's written or oral testimony, the commission shall respond to said person in writing within 90 days of the action being taken.</u></p>	<p>The rules currently allow for an individual to appear before the commission to present oral or written testimony. The rules, however, are silent as to what is required of the commission should they take any action in response to the testimony provided. This amendment clarifies what is required of the commission and provides a clear time frame as to when the commission must respond to the individual providing the testimony. The revised language is intended to minimize any confusion the public may have as to what is required of the commission.</p>
<p><b>§10-2-12 Time allowed at commission meetings.</b> Persons who have requested to appear before the commission at its meeting as provided in section 10-2-11 will have fifteen minutes to present such information, data, material, and testimony relevant to and as set forth in the request. The chairman may provide additional time if so desired by the requesting person and if time permits. When time permits, the chairman may allow any other person to speak before the commission whether or not such person has requested to appear as provided in section 10-2-11.</p>	<p>Adds a comma after material.</p>
<p><b>§10-2-16 Delegation of duties to chairman.</b> (a) It is the desire of the commission that functions and duties, administrative in nature, be delegated to the chairman and duties requiring the exercise of [judgement] <u>judgment</u> or discretion continue to reside with the commission.            (b) The commission shall be deemed to have delegated to the chairman duties, powers, and authority as may be lawful or proper for the performance of functions vested in the commission, including the following:            (1) To appoint special committees and prescribe their powers and duties;            (2) To preside over all meetings of the commission;            (3) To approve and sign all vouchers, and to approve the assignment of funds to be received;            (4) To approve leaves of absence;            (5) To approve plans for construction of homes and improvements;            (6) To screen matters referred to the chairman by staff and to select those of sufficient importance to place on the agenda for consideration by the commission; [and]            (7) To sign commission resolutions, licenses, leases, and contracts approved by the commission[.];  <u>(8) To schedule contested case hearings; and</u></p>	<p>The amended language would delegate to the chairman the authority to schedule a contested case hearing and approve the designation of successors. It would also allow the chairman to sign contracts for projects that received prior commission approval through the budget process subject to commission ratification of the chairman's action. Currently, the commission must schedule a contested case hearing, and must ratify the chairman's approval of designated successors. This results in unnecessary delay for routine actions since the commission can only take these actions during their meetings which usually occur only once a month.</p>

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<p><b>(9) To approve the designation of successors.</b>            (c) Subject to the provisions of section 10-2-17, the chairman may:            (1) Grant loans from any loan fund;            [(2) Approve the designation of successors;            (3)]<b>(2)</b> Accept surrenders of homestead leases; and            [(4)]<b>(3)</b> Approve, in regards to general leases, plans, assignments, subleases, and mortgages.            (d) The chairman or a designee may approve and sign contracts [under \$25,000] <b>for specific projects</b> which are included in the commission's prior approved budget.</p>	<p>By delegating responsibility for both actions to the chairman the process is expedited resulting in enhanced service to the public. By delegating to the chairman the authority to sign contracts for specific projects with prior commission approval subject to the commission's ratification, implementation of these prior approved projects is expedited. Other changes to this section correct spelling errors.</p>
<p><b>§10-2-32 Hours.</b> The office of the department shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, unless otherwise provided by [the] statute or executive order.</p>	<p>Eliminates [the] for better readability.</p>
<p><b>§10-2-33 Personnel.</b> <b>(a)</b> All personnel on the department's staff are under the direction of and are responsible to the chairman. The chairman, subject to law and civil service rules, shall select and discharge personnel for the department's staff. The commission shall be informed of all changes in staff personnel.  <b>(b) All personnel shall conduct operations pursuant to section 5-7.5, HRS.</b></p>	<p>The amended language provides for staff to conduct official operations in a respectful and culturally appropriate manner, consistent with the aloha spirit law.</p>
<p><b>§10-2-42 Chairman to sign for department.</b> The [chairman shall approve and sign all vouchers and assignment of funds to be received under pineapple or grazing contracts. After approval of the commission,] chairman shall sign all licenses, leases, loan contracts, [assignments of pineapple and grazing contracts,] contracts with other governmental agencies, and [commission] resolutions <b>authorized by the commission.</b></p>	<p>The proposed amendments update and improve the readability of the section.</p>
<p><b>§10-2-45 Chairman to present annual report.</b> The chairman shall present <b>the annual report of the department</b> to the commission[, ] before [submission] <b>submitting the report</b> to the governor and <b>the</b> legislature[, , the annual report of the department].</p>	<p>The proposed amendments improve the readability of the section.</p>

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### Chapter 10-5.1

Language Change (Ramseyer Format)	Justification
<p><b>§10-5.1-1 Scope of rules.</b> This chapter governs practice and procedure before the commission and department pursuant to the act and chapter 91, Hawaii Revised Statutes. These rules shall be construed to effect a just, speedy, and inexpensive determination of every proceeding.</p>	<p>NOTE: DHHL proposed a number of amendments to Chapter 10-5 to do the following:</p> <ul style="list-style-type: none"> <li>▪ incorporate revisions due to statutory changes;</li> <li>▪ improve the readability of the chapter (including spelling and punctuation changes);</li> <li>▪ enhance the clarity of the department’s current rules by clarifying procedures, and specifying time frames.</li> </ul> <p>Because the proposed amendments were extensive, following the changes, particularly in ramseyer format, became cumbersome. To assist the public with reviewing the proposed chapter for comment, the DHHL decided to repeal the existing Chapter 10-5 and replace it with a new Chapter 10-5.1 instead of proceeding with proposed amendments to Chapter 10-5. The new proposed language for Chapter 10-5.1 only is listed in the column to the left.</p> <p>NOTE:            §§10-5.1-15 to 10-5.1-20 (Reserved)            §§10-5.1-27 to 10-5.1-30 (Reserved)            §§10-5.1-44 to 10-5.1-50 (Reserved)</p> <p>When sections are delineated as “Reserved,” DHHL is reserving these sections for future rules.</p>
<p><b>§10-5.1-2 Commission procedures.</b> The commission, on its own motion or on petition of any interested person or agency, may hold proceedings as it deems necessary for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties, or the formulation of its rules. It may subpoena witnesses and require the production of evidence. Unless specifically prescribed in these rules or by chapter 91 HRS, the commission shall follow procedures that, in its opinion, will best serve the purposes of the proceedings.</p>	
<p><b>§10-5.1-3 Suspension, waiver of rules.</b> Any person or agency may submit a signed request that any rule contained in this chapter not be applied. The commission or the hearing officer before whom the matter is presented may suspend or waive a particular rule to prevent hardship.</p>	
<p><b>§10-5.1-4 Appearances before the commission.</b> (a) Any individual or agency may appear, in person or by designated representative, before the commission or hearing officer in any proceeding, unless otherwise provided in subsection (c).            (b) When a person acting as a representative appears in person or signs a paper before the commission or hearing officer, the appearance or signature shall constitute a representation to the commission or hearing officer that, under the provisions of these rules or applicable law, the individual is authorized and qualified to act as a representative.            (c) No person who has been associated with the commission or department as a member, officer, employee, or counsel shall represent any party in connection with any proceeding or matter which was handled or passed upon by that person while associated in any capacity with the commission.            (d) Unless a person has first obtained a written consent from the commission, no person who has been associated with the commission or department as a member, officer, employee, or counsel shall represent any party in connection with any proceeding or matter which was pending before the commission or hearing officer at the time of the person’s association with the commission.            (e) No person appearing before the commission or hearing officer in any proceeding or matter shall knowingly accept assistance from any person who would be precluded by this section from appearing before the commission or hearing officer in that proceeding or matter.</p>	
<p><b>§10-5.1-5 Filing of documents.</b> (a) Documents required or permitted to be filed with the commission in any proceeding or matter shall be filed at the commission’s office in</p>	

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<p>Honolulu. Documents may be sent by mail addressed to the Hawaiian homes commission, as provided in section 10-1-2(1)(a), or hand carried to the commission office within the time limit for filing. The date of actual receipt by the commission secretary shall be deemed to be the date of filing.</p> <p>(b) Documents filed with the commission shall be plainly legible and shall be signed by the party or a designated representative.</p> <p>(c) The signature of the person signing a filed document shall represent that, to the best of the individual's knowledge, information, and belief, every statement contained in the instrument is true and that no statements are misleading, and that the document is not interposed for delay.</p> <p>(d) A party filing a document shall file the original and nine copies, unless otherwise specifically directed by a particular rule or order of the commission. A party may file an additional copy to be time-stamped by the commission, and mailed back to the filing party via a self-addressed stamped envelope.</p> <p>(e) The initial document filed by any person in any proceeding shall state on the first page the name, mailing address, and telephone number of the person or persons who may be served with any documents filed in the proceeding.</p>	
<p><b>§10-5.1-6 Docket.</b> The commission shall assign a number to each proceeding and maintain a docket of all proceedings.</p>	
<p><b>§10-5.1-7 Time computation.</b> (a) In computing any period of time prescribed or allowed by these rules, by order of the commission, or by any applicable law, the day of the act, event, or default after which the designated period of time is to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a holiday designated in section 8-1, Hawaii Revised Statutes, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than ten days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.</p> <p>(b) On written request clearly showing good cause, additional time may be granted to take actions or to file documents required or allowed by these rules.</p>	
<p><b>§10-5.1-8 Amendments, dismissal of documents.</b> The commission or hearing officer, on its own motion or on motion of any party, may strike, dismiss, or require amendments of any filed document that is not in substantial compliance with these rules or is otherwise insufficient. If amended, the document shall be effective as of the day of the original filing.</p>	
<p><b>§10-5.1-9 Document retention.</b> Documents filed with or presented to the commission may be retained in the files of the commission. The commission may permit replacement of original documents with properly authenticated copies.</p>	
<p><b>§10-5.1-10 Commission decisions.</b> All final orders, opinions or rulings entered by the</p>	

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commission in a proceeding and rules adopted by the commission as a result of a contested case hearing shall be released for general publication. Copies of published materials shall be available for public inspection in the department office or may be obtained upon a signed request and payment of fees imposed by law.	
<b>§10-5.1-11 Commission counsel.</b> The attorney general or a designated representative shall serve as counsel for the commission.	
<b>§10-5.1-12 Substitution of parties.</b> On motion and for good cause shown, the commission may order substitution of parties, except that, in the case of death of a party, substitution may be ordered without the filing of a motion.	
<b>§10-5.1-13 Consolidations.</b> The commission, on its own motion or on motion of any party, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings which involve closely-related or substantially the same parties or issues, if it finds that consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business, promote justice, and will not unduly delay the proceedings.	
<b>§10-5.1-14 Ex parte communications.</b> In any proceeding to be determined by the commission after the notice and hearing and upon a record: (1) No person, either in private life or public life, shall communicate privately on the merits of the case to any member of the commission or its staff or to the hearing officer designated to hear and decide the matter unless specifically provided by law; (2) No member of the commission's staff or any other governmental agency who participates in the hearing as a witness or counsel shall communicate privately on the merits of the case to a member of the commission or to the hearing officer designated to hear and decide the matter, unless specifically provided by law; and (3) It shall be improper for any person interested in a case to seek to sway the judgment of the commission by attempting to influence or bring pressure to bear upon any member of the commission or its staff, or for an interested person or any member of the commission's staff directly or indirectly to give statements to the press, radio, or television, via paid advertisements or otherwise, designed to influence the commission's judgment in the case.	
§§10-5.1-15 to 10-5.1-20 (Reserved).	
<b>§10-5.1-21 Rule change petitions, procedures.</b> (a) Any person or agency may petition the commission for the adoption, amendment, or repeal of any rule. The petition shall set forth the text of any proposed rule or amendment desired or shall specify the rule the repeal of which is desired, and state concisely the nature of petitioner's interest in the subject matter and the reasons for seeking the change. A petition that is not in substantial compliance with these rules or is otherwise insufficient will not be considered by the commission.	

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<p>(b) Petitions for rulemaking shall become matters of public record on filing. The commission shall either deny the petition in writing or initiate public rulemaking procedures as soon as practicable. No other public hearing, oral arguments, or other form of proceeding shall be held as a result of the petition. Where the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceeding, the procedures to be followed shall be as set forth in this chapter. Where the commission determines that the petition does not disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in material respect to comply with the requirements of these rules, the commission shall deny the petition and the petitioner will be so notified, together with the grounds for denial. The provisions of this section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition.</p>	
<p><b>§10-5.1-22 Proposed rulemaking notice.</b> (a) When, pursuant to a petition or on its own motion, the commission proposes to adopt, amend, or repeal a rule, the commission shall publish a notice of proposed rulemaking at least once in a newspaper of general circulation in the State. All rulemaking notices shall be issued at least thirty days before the date set for public hearing.</p> <p>(b) The proposed rulemaking notice shall include:</p> <ol style="list-style-type: none"> <li>(1) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved;</li> <li>(2) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy and pays in advance for the copy and the postage, together with a description of where and how the requests may be made;</li> <li>(3) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed in person; and</li> <li>(4) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.</li> </ol> <p>(c) The notice shall be mailed to all persons, agencies, or organizations that have made timely written requests for advance notice of the commission's rulemaking proceedings, given at least once statewide. Proposed rule adoption, amendment, or repeal shall also be posted on the Internet as provided in section 91-2.6, HRS.</p> <p>(d) Copies of the proposed adoption, amendment, or repeal of a rule shall be sent at least thirty days before the date set for public hearing to the following:</p> <ol style="list-style-type: none"> <li>(1) Five copies to each district office;</li> <li>(2) Fifteen copies to the state library, main branch, for distribution to selected libraries as suggested by the department;</li> <li>(3) Two copies to each registered and recognized homestead association; and</li> <li>(4) Five copies to the main office identified in section 10-1-2(a)(1).</li> </ol>	
<p><b>§10-5.1-23 Hearing conduct.</b> (a) The chairman shall preside over the public hearing or,</p>	

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<p>in the absence of the chairman, another member designated by the commission. The hearing shall be conducted to allow interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary for the orderly conduct of the hearing.</p> <p>(b) Each hearing shall be held at the time and place set in the notice of hearing, but may be continued by the chairman from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing.</p> <p>(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in the order prescribed by the presiding officer. Persons testifying shall be limited to fifteen minutes. Whenever time permits, the presiding officer may allow additional time upon request. After all persons who have requested to appear before the commission hearing have testified, any person whose request for additional time has been granted may present additional relevant testimony.</p> <p>(d) Submission of evidence shall include the following:</p> <p>(1) Before giving testimony, every witness shall state the individual's name, address, and any representative capacities in which the witness serves, and shall give any other information regarding the witness' appearance as the presiding officer may request. The presiding officer shall confine the evidence presented to the questions before the hearing and may receive evidence whether or not the evidence would be admissible in a court of law; and</p> <p>(2) Every witness shall be subject to questioning by the members of the commission, but cross-examination by private persons shall not be permitted unless expressly permitted by the presiding officer.</p> <p>(e) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments which, in the opinion of the presiding officer, are relevant to the matters specified in the notice of the hearing. In addition, persons or agencies may also file with the commission signed written protests, comments, or recommendations in support of or in opposition to the proposed rulemaking. The period for filing written protest, comments, or recommendations may be extended beyond the hearing date by the presiding officer for good cause.</p> <p>(f) Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the public hearing shall not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing which are deemed by the presiding officer to be authentic and relevant shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, ten copies of the exhibits shall be submitted.</p>	
<p><b>§10-5.1-24 Commission action.</b> The chairman or presiding officer shall announce the date when its decision shall be made. The commission shall fully consider all relevant comments</p>	



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and material of record before taking final action in a rulemaking proceeding. Upon adoption, amendment, or repeal of a rule, the commission, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.	
<b>§10-5.1-25 Emergency rulemaking.</b> Subject to chapter 91, HRS, and notwithstanding the foregoing rules, if the commission finds that an imminent peril to public health, safety, or morals requires issuance, amendment, or repeal of a rule upon less than thirty days notice of hearing and states in writing its reason for the finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the Internet as provided in section 91-2.6, HRS, as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.	
<b>§10-5.1-26 Governor's approval.</b> The adoption, amendment, or repeal of any rule by the commission is subject to the approval of the governor.	
§§10-5.1-27 to 10-5.1-30 (Reserved)	
<b>§10-5.1-31 Petition for contested case, decision to hold hearing.</b> (a) The commission, on its own motion or on the written petition of any interested person or agency, may request a contested case hearing. A person or agency requesting a contested case hearing challenging an action taken at a public hearing or commission meeting must file a written petition with the commission within forty-five days after the close of the public hearing or commission meeting. A written petition may be filed after forty-five days for good cause. Once the commission approves a request for a contested case hearing, the commission shall schedule the hearing and serve notice within ninety days. (b) A petition for contested case shall be in writing and signed by the petitioner. It shall contain a short and simple statement of: (1) The legal authority under which the hearing is to be held, or a short statement describing the issue; (2) If possible, the particular sections of the statutes and rules involved; (3) The basic facts and issues raised; and (4) The relief sought by the petitioner. (c) On receipt of the petition, the commission may initiate an independent investigation of the matters contained in the petition. The commission shall determine, on the basis of the contents of the petition, the recommendations of the department, and any investigator's report, whether proceedings shall be initiated and the matter set for hearing. (d) The commission shall hold a contested case hearing whenever it finds that: (1) A hearing is required by chapter 91, HRS; (2) There is a reason to believe that a law or rule of the department has been violated; (3) A hearing would be in the best interest of one or more of the beneficiaries of the act; or	

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<p>(4) A proceeding by the commission would be in the interest of the department.</p> <p>(e) It is the policy of the commission not to initiate proceedings where the petition concerns a private controversy redressable in the courts or where it is clear on the face of the petition that there has not been a violation of law or any rule of the department.</p> <p>(f) If an ongoing investigation precludes a decision within this time period, the commission shall keep the petitioner apprised of the delay.</p>	
<p><b>§10-5.1-32 Notice of hearing, response to petition.</b> (a) If the commission orders the matter to be set for hearing, the commission shall serve all respondents with a notice of hearing and a true and correct copy of the petition. The notice shall include the statements required by section 91-9, HRS, but may incorporate by reference statements made in the petition.</p> <p>(b) Service of the notice of hearing may be made by hand-delivery or by registered or certified mail with return receipt requested. The return receipt must be dated at least fifteen days before the hearing. If service by hand-delivery or by registered or certified mail cannot be made with reasonable diligence, service by publication may be made under the terms of section 91-9.5, HRS.</p> <p>(c) The petitioner shall file with the commission evidence that the notice of hearing was served on all respondents at least fifteen days before the hearing.</p> <p>(d) The respondent may file and serve on all other parties a written response to the petition at least five days before the hearing or shall respond orally at the hearing, specifically admitting or denying or explaining the allegations contained in the petition. Respondent may assert any other matters constituting an avoidance or affirmative defense.</p> <p>(e) Any party may retain counsel if the party so desires.</p>	
<p><b>§10-5.1-33 Hearing officer.</b> (a) No hearing officer shall be assigned to serve in any proceeding who:</p> <p>(1) Has any pecuniary interest in any matter or business involved in the proceeding;</p> <p>(2) Is related within the third degree by blood or marriage to any party to the proceeding;</p> <p>(3) Has participated in the investigation proceeding, the institution of the proceeding or in a determination that it should be instituted, or in the preparation of the notice of hearing or order to show cause, or in the development of the evidence to be introduced therein; and</p> <p>(4) A hearing officer assigned by the commission or the chairman to hold a hearing and to make a recommended decision shall withdraw from a proceeding at any time the hearing officer is deemed disqualified; or the hearing officer may be withdrawn by the commission or chairman for good cause found after timely affidavits alleging personal bias or other disqualifications have been filed and the matter has been heard by the commission or chairman.</p> <p>(b) The hearing officer shall conduct the proceeding in a fair and impartial manner and, except to the extent required for the disposition of ex parte matters as authorized by law, no hearing officer shall consult any person or party on any fact in issue unless upon</p>	

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<p>notice and opportunity for all parties to participate.</p> <p>(c) A hearing officer designated by the commission or chairman to hold a hearing and to make a recommended decision in a proceeding shall have the following powers:</p> <ol style="list-style-type: none"> <li>(1) To hold hearings;</li> <li>(2) To administer oaths and affirmations;</li> <li>(3) To examine witnesses;</li> <li>(4) To issue subpoenas;</li> <li>(5) To rule upon offers of proof and to receive relevant evidence;</li> <li>(6) To regulate the course and conduct of the hearing;</li> <li>(7) To hold conferences before or during the hearing, for the settlement or simplification of issues;</li> <li>(8) To rule on motions and to dispose of procedural request or similar matters;</li> <li>(9) Within the hearing officer's discretion, or upon the direction of the commission, to certify any question to the commission for its consideration and disposition;</li> <li>(10) To make a recommended decision to the commission in writing to be acted upon by the commission; and</li> <li>(11) To dispose of any other matter that normally and properly arises in the course of the proceedings.</li> </ol> <p>(d) In the case of the absence of the hearing officer or in the hearing officer's inability to act, the powers and duties to be performed under this section in connection with the proceeding may, without abatement of the proceeding, be assigned to another hearing officer duly designated by the commission or chairman, unless otherwise ordered.</p>	
<p><b>§10-5.1-34 Mediation, conferences, settlement, briefs.</b> (a) The commission may appoint a mediator in accordance with these rules and section 91-8.5, HRS to seek a solution to a dispute.</p> <p>(b) At any time before or during a contested case hearing, the presiding officer may hold, or cause to be held, conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging names of witnesses, limiting the number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.</p> <p>(c) No pre-hearing statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the case, including the contested case or a court proceeding. Whenever a petition has been satisfied or a settlement has been reached by all parties, a signed statement to that effect, stating when and how the petition has been satisfied or the settlement has been reached, shall be filed with the commission and served on all parties of record. The statement may be by letter. Satisfied petitions may be dismissed at the discretion of the commission with due regard to the interests of the public.</p> <p>(d) The presiding officer may request briefs setting forth the issues, facts, and legal arguments on which the parties intend to rely. The presiding officer may also fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be</p>	

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<p>reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities.</p>	
<p><b>§10-5.1-35 Service of papers.</b> (a) The commission shall cause to be served all orders, notices, and other papers issued by the commission, together with any other papers required by law to be served by the commission. The filing party shall serve every other paper and file a certificate of service with the commission.</p> <p>(b) All papers served by either the commission or any party shall be served on all counsel of record at the time of filing and all parties not represented by counsel or their designated agent. Any counsel entering an appearance subsequent to the initiation of the proceeding shall so notify all other counsel then of record and all parties not represented by counsel.</p> <p>(c) The final order, and any other paper required to be served by the commission on a party, shall be served in person or by certified mail on the party or on the representative authorized to receive service of papers, and a copy shall be furnished to all agents designated in fact or by law.</p> <p>(d) Service on parties shall be regarded as complete by mail when deposited in the United States mail properly stamped and addressed.</p>	
<p><b>§10-5.1-36 Deposition.</b> (a) On application of a party to a proceeding, and for good and exceptional cause shown, the presiding officer may order, at any time after service of the notice of hearing, the taking of testimony by oral deposition or by deposition on written interrogatories.</p> <p>(b) Any party desiring to take the deposition of a witness shall make application in writing to the commission or hearing officer setting out the reasons why the deposition should be taken; the character of the deposition; the time when; the place where; the name and mailing address of the person before whom the deposition should be taken; the name and mailing address of each witness; and the subject matter concerning which the witness is expected to testify. If good and exceptional cause is shown, an order containing instructions will be made and served on the parties.</p> <p>(c) On application granted, the deposition may be taken before a person having power to administer oaths other than the person designated in the notice, provided reasonable written notice of the change is given to all parties. Each witness so testifying shall be duly sworn and the adverse party shall have the right to cross-examine the witness. The answers thereto shall be reduced to writing, and read to the witness in the presence of the officer taking the deposition. The written responses shall be subscribed to by the witness and certified in the usual form by the officer. Thereafter the officer shall forward the deposition and two copies endorsed with the title of the case in an envelope under seal to the office of the commission.</p> <p>(d) A deposition ordered and taken in accord with this section may be used in a proceeding if the presiding officer finds that the evidence is otherwise admissible and:</p> <ol style="list-style-type: none"> <li>(1) The witness is dead;</li> <li>(2) The witness is outside the State of Hawaii, unless it appears that the absence of the</li> </ol>	

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<p>witness is procured by the party offering the deposition;</p> <p>(3) The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;</p> <p>(4) The party offering the deposition has endeavored and has been unable to procure the attendance of the witness by subpoena; or</p> <p>(5) In any event, on application and notice that exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony orally before the presiding officer, to allow the deposition to be used.</p> <p>(e) If any part of the deposition is put in evidence by the offering party, any other party may require the production of the remainder of any other portions of the deposition.</p>	
<p><b>§10-5.1-37 Subpoenas.</b> (a) Subpoenas requiring the attendance of a witness or the production of documentary evidence from any place within the State at any designated place of hearing may be issued by the chairman, any member of the commission, or hearing officer designated to preside at the hearing. Application may be made either to the commission or hearing officer.</p> <p>(b) The application must be reasonable in scope, must specify as precisely as possible the documents desired, and must show their general relevancy. The application shall be verified by oath or affirmation.</p>	
<p><b>§10-5.1-38 Witnesses, fees.</b> Witnesses summoned shall be paid the same fees and mileage as are paid witnesses in courts of the State. The fees and mileage shall be paid by the party at whose instance the witnesses appear. Fees for depositions shall be paid by the party at whose instance the depositions are taken.</p>	
<p><b>§10-5.1-39 Hearings.</b> (a) All contested cases shall be heard either before the commission or a hearing officer duly designated by the commission or chairman.</p> <p>(b) All contested case hearings shall be held on the island where the affected lessee or applicant resides.</p> <p>(c) The record of the hearing shall be compiled in conformance with section 91-9, HRS. The commission shall make provision for stenographic recording of the testimony, but it shall not be necessary to transcribe the recording unless requested for the purposes of rehearing or court review. Any person shall be entitled to a copy of the record of a hearing provided that any costs incurred to prepare the record are paid for by the requesting party.</p> <p>(d) Each party or the party's representative shall have the following rights:</p> <p>(1) To examine all documents. Documents which a party does not have an opportunity to see shall not be made part of the hearing record and shall not be used in making a decision in the case;</p> <p>(2) To bring witnesses to testify for the party;</p> <p>(3) To establish all relevant facts and circumstances through verbal testimony or documents;</p>	

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<p>(4) To advance any arguments without undue interference;</p> <p>(5) To question or refute any testimony or evidence presented by another party including the opportunity to cross-examine witnesses called by another party; and</p> <p>(6) To be notified either before or during the hearing if the commission or hearing officer plans to consider facts not in evidence.</p>	
<p><b>§10-5.1-40 Contested case hearing procedures.</b> (a) The following procedures shall be followed in conducting a contested case hearing before the commission or its duly appointed hearing officer:</p> <p>(1) The chairman or hearing officer shall convene the hearing and shall read the complaint and shall inquire whether there are any amendments to be made;</p> <p>(2) The complainant or petitioner and the respondent shall have the opportunity to challenge for bias any member of the commission or hearing officer; and</p> <p>(3) Before presentation of the case, the parties shall have the opportunity to make opening statements. The usual order of making statements shall be as follows:</p> <p>(A) Opening statement by the complainant or petitioner; and</p> <p>(B) Opening statement by the respondent, unless the respondent reserves the opportunity to make an opening statement until after the witnesses for the petitioner have been presented. Opening statements may be waived by a party.</p> <p>(b) Witnesses shall testify in the following order:</p> <p>(1) Witnesses for complainant or petitioner;</p> <p>(2) Witnesses for the respondent;</p> <p>(3) Witnesses for the complainant or petitioner in rebuttal;</p> <p>(4) Witnesses for the respondent in rebuttal; and</p> <p>(5) Additional witnesses as the commission or the hearing officer may deem necessary.</p> <p>(c) Witnesses shall be examined in the following order:</p> <p>(1) Direct examination by the party calling the witness;</p> <p>(2) Cross-examination by the other party;</p> <p>(3) Redirect examination by the party calling the witness;</p> <p>(4) Re-cross examination by the other party; and</p> <p>(5) Examination by the commission or hearing officer.</p> <p>(d) After the evidence has been presented, the commission or hearing officer shall give the parties opportunity to summarize. The usual order of final argument shall be as follows:</p> <p>(1) Final argument by the complainant or petitioner;</p> <p>(2) Final argument by the respondent; and</p> <p>(3) Rebuttal argument by the complainant or petitioner.</p> <p>(e) Rebuttal argument shall be limited to countering whatever may have been said by the other party during final argument.</p> <p>(f) A reasonable time limit may be imposed by the commission or hearing officer for the final argument.</p> <p>(g) Final arguments may be waived by a party.</p> <p>(h) At the close of the presentation of evidence before the hearing officer in all</p>	

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<p>contested cases, or within a reasonable time thereafter, the hearing officer may permit the filing of proposed findings and conclusions together with the reasons therefore. The proposal shall be in writing and shall be furnished to all parties; ten copies including the signed original shall be filed with the commission.</p> <p>(i) Oral argument may be allowed at the discretion of a hearing officer.</p> <p>(j) Within a reasonable time, after final arguments have been completed and all requested memoranda submitted, the commission or hearing officer shall bring the matter to a close.</p> <p>(k) At any time before the filing of a recommended decision, the hearing officer, for good cause shown, may reopen the case for the reception of further evidence.</p>	
<p><b>§10-5.1-41 Recommended decision of hearing officer.</b> (a) Except when the individual shall become unavailable to the commission, the recommended decision shall be made by the hearing officer who presided at the hearing. All findings, conclusions, and orders recommended by the hearing officer shall be based on the whole record and supported by the reliable, probative, and substantial evidence, including facts of which the hearing officer may take official notice.</p> <p>(b) The hearing officer shall as soon as practicable, and not later than sixty days after the close of the reception of evidence, make and file a recommended decision which shall become a part of the record. The recommended decision shall include separate findings of fact and conclusions of law as well as reasons or basis therefore on all the material, issues of fact, law, or discretion presented on the record. If any party to the proceeding has been permitted to file proposed findings of fact, the hearing officer shall incorporate in the recommended decision a ruling on each proposed finding.</p> <p>(c) A copy of the hearing officer's recommended decision shall be served on each party or the counsel of record.</p> <p>(d) Any party may file and serve exceptions to the hearing officer's recommended decision specifying the portions of the record and authorities relied on to sustain each point of exception, and may request a review by the commission. The original and nine copies shall be filed with the commission within fifteen days after service of a copy of the hearing officer's recommended decision and shall become part of the record. In addition, a copy of the exceptions and request for review shall be served on the hearing officer and each of the parties.</p>	
<p><b>§10-5.1-42 Commission decision, reconsideration.</b> (a) On filing of exceptions by a party adversely affected by the recommended decision, the commission shall grant the party an opportunity to present argument and the commission shall personally consider the whole record or those portions cited by the party.</p> <p>(b) If no exceptions or requests for review are filed within the time specified, the recommended decision of the hearing officer shall become final on approval of the commission, unless the commission on its own motion orders further proceedings to be held.</p> <p>(c) Where the hearing is held before the commission or where exceptions to the recommended decision and a request for review have been filed with the commission, the commission will consider the whole record, including, where applicable, the recommended decision of the</p>	

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<p>hearing officer and exceptions thereto, and will resolve all questions of fact by what it deems to be the greater weight of evidence. The commission shall make a final decision stating the reasons or basis for its decision, and shall enter an appropriate order within ninety days of the hearing.</p> <p>(d) The commission may entertain a written petition to reconsider its final order, decision, or ruling. A timely petition for reconsideration shall toll the time to appeal for judicial review. The commission's order granting or denying reconsideration shall be in writing and shall constitute the final order for purposes of appeal. A certified copy shall be served on all parties of record.</p> <p>(e) A petition to reconsider any final order, decision, or ruling of the commission shall be filed not later than ten days after service of a certified copy of the final decision and order of the commission.</p>	
<p><b>§10-5.1-43 Court appeal.</b> Any appeal to court for judicial review of a final decision of the commission shall be made within thirty days after service of a certified copy of either the final decision and order of the commission or the final decision on a timely reconsideration petition, as the case may be.</p>	
<p>§§10-5.1-44 to 10-5.1-50 (Reserved).</p>	
<p><b>§10-5.1-51 Form and content.</b> On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory authority involved, and include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of the petitioner's interest.</p>	
<p><b>§10-5.1-52 Additional data, supporting authority.</b> Upon receipt of the petition, the commission may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.</p>	
<p><b>§10-5.1-53 Dismissal.</b> Without notice or hearing, the commission may dismiss a petition for declaratory ruling which fails in material respect to comply with the requirements of this chapter.</p>	
<p><b>§10-5.1-54 Hearing request.</b> (a) Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the commission may order a proceeding set down for hearing. Any petitioner or party in interest who desires a hearing on a petition for declaratory ruling, shall set forth in detail:</p> <p>(1) The reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition; and</p> <p>(2) To the extent that a request for hearing is dependent upon factual assertion, affidavits establishing such fact shall accompany such request.</p>	



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(b) In the event a hearing is ordered by the commission, section 91-9, HRS and sections 10-5.1-31 through 10-5.1-43 shall govern the proceedings.	
§10-5.1-55 <b>Declaratory motion on commission's own motion.</b> Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request but without notice of hearing, issue a declaratory order to terminate a controversy or to remove uncertainty."	

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### Chapter 10-7

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<p><b>§10-7-1 Definitions.</b> The following definitions apply in this chapter:</p> <p>"Adjusted income" means the annual income that remains after adjusting for exclusions as outlined in 24 CFR §1006.10, as amended. Adjusted income applies when calculating monthly payments for rental housing or lease-purchase housing as described under section 10-7-10(b) and (c).</p> <p>"Affordable housing" means housing that complies with the requirements of NAHASDA. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, single room occupancy housing, or other housing as described in the Native Hawaiian housing plan and approved by the commission and HUD.</p> <p>"Elderly person" means an individual who is at least 62 years of age.</p> <p>"Family" includes, but is not limited to, a family with or without children, an elderly family or a near-elderly family as defined by 24 CFR §1006.10 as amended, a disabled family, a single person, as determined by the department.</p> <p>"HUD" means the U. S. Department of Housing and Urban Development.</p> <p>"Income" means income from all sources of each member of the household as determined in accordance with criteria prescribed by the Secretary, except that the following amounts may not be considered as income under this paragraph:</p> <p>(1) Any amounts not actually received by the family;</p> <p>(2) Any amounts that would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b).</p> <p>"Low income family" means a family whose annual household income does not exceed 80 per cent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 80 per cent of the median for the area on the basis of the findings of HUD or the department that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.</p> <p>"Median income" means the greater of the median income for the area as determined by HUD or the median income for the State of Hawaii.</p> <p>"Native American Housing Assistance and Self-Determination Act (NAHASDA)" means Title VIII-Housing Assistance for Native Hawaiians-of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (25 U.S.C. 4221 et seq).</p> <p>"Native Hawaiian Housing Block Grant (NHHBG) funds" means funds made available under NAHASDA, plus program income.</p> <p>"Near elderly person" means an individual who is at least 55 years of age and less than 62 years of age.</p> <p>"Nonprofit" means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.</p> <p>"ONAP" means the Office of Native American Programs, which is within HUD.</p> <p>"Secretary" means the Secretary of Housing and Urban Development.</p> <p>"Transitional housing" means housing that:</p> <p>(1) Is designed to provide housing and appropriate supportive services to persons,</p>	<p>NOTE: In 1996 the Native American Housing Assistance and Self-Determination Act (NAHASDA) was enacted. This sweeping piece of legislation transformed the way the Federal Government provided for affordable housing in rural Indian reservations and Alaska Native villages by extending the federal policy of self-determination to affordable housing. Under NAHASDA formula-based affordable housing block grants are disbursed directly to tribes or tribally designated housing entities to implement affordable housing programs. The language of proposed chapter 10-7 is attached as Attachment C.</p> <p>In 2000, NAHASDA was amended by Congress to add Title VIII, Housing Assistance for Native Hawaiians. Title VIII provides for a similar program for Native Hawaiian families who are eligible to reside on Hawaiian home lands. Under Title VIII, Native Hawaiian housing block grants (NHHBG) are made available to DHHL, the sole authorized recipient, to fund affordable housing activities that benefit eligible families.</p> <p>To remain in compliance with federal guidance regarding the implementation of this program, DHHL must develop rules related to the implementation of Native Hawaiian Housing Block Grant program at the state level. Chapter 7, therefore, is the proposed rules associated with this new federal program. Much of the language closely mirrors the language utilized at the federal level.</p>

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<p>including but not limited to de-institutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and            (2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the department before occupancy.</p>	
<p><b>§10-7-2 Primary objectives.</b> (a) The primary objectives of the Native Hawaiian Housing Block Grant (NHHBG) program are:            (1) To assist and promote affordable housing activities to develop, maintain, and operate affordable housing in safe and healthy environments for occupancy by low-income Native Hawaiian families;            (2) To ensure better access to private mortgage markets and to promote self-sufficiency of low-income Native Hawaiian families;            (3) To coordinate activities to provide housing for low-income Native Hawaiian families with federal, state, and local activities to further economic and community development;            (4) To plan for and integrate infrastructure resources on the Hawaiian home lands with housing development; and            (5) To:            (A) Promote the development of private capital markets; and            (B) Allow the markets referred to in subparagraph (A) to operate and grow, thereby benefiting Native Hawaiian communities.            (b) The primary objectives outlined in this section are consistent with the national objectives as outlined in NAHASDA. (25 U.S.C. 4101 et seq.).</p>	<p>The new chapter 10-7 will require that the department prepare written five-year and one-year Native Hawaiian Housing Plans (NHHP) that outline how the NHHBG will be utilized. In addition, each year an annual performance report regarding the use of the NHHBG funds must be submitted to the U.S. Department of Housing and Urban Development (HUD). With such plans and review, DHHL will be able to systematically track and assess the activities funded under this program and implemented by the department or one of its sub-recipients.</p>
<p><b>§10-7-3 Funding.</b> (a) Funding for the NHHBG program is appropriated by the U.S. Congress. The NHHBG program is administered by HUD. Each fiscal year, to the extent that amounts are made available by Congress, HUD will make a grant to the department under NAHASDA to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on Hawaiian home lands if:            (1) The chairman has submitted to HUD a housing plan for that fiscal year; and            (2) HUD has determined that the housing plan is in compliance with the appropriate federal requirements.            (b) These funds shall not be subject to section 216(c) of the Hawaiian Homes Commission Act of 1920, as amended, and loans made with these funds will not be required to be in first lien position.            (c) These funds shall not be subject to that portion of section 215(2) of the Hawaiian Homes Commission Act of 1920, as amended; section 10-3-47(c); or section 10-3-50 that address interest rates for loans. Interest rates for loans made with NHHBG funds may be set lower than two and one-half per cent with commission approval for a program or programs that provide for lower interest rates on loans.</p>	
<p><b>§10-7-4 Native Hawaiian housing plan.</b> (a) The department must submit a housing plan for each federal fiscal year grant. The Native Hawaiian housing plan has two components, a five-year plan and a one-year plan.</p>	

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<p>(b) The five-year plan must include:</p> <p>(1) A general statement of the mission of the department to serve the needs of the low-income Native Hawaiian families eligible to live on the Hawaiian home lands to be served by the department;</p> <p>(2) A statement of the goals and objectives of the department to serve the needs identified in paragraph (1) during the five-year period; and</p> <p>(3) An overview of the activities planned during the five-year period including an analysis of the manner in which the activities will enable the department to meet its mission, goals, and objectives outlined in paragraphs (1) and (2).</p> <p>(c) The one-year plan must include the following information for the fiscal year corresponding to each federal fiscal year grant:</p> <p>(1) A statement of the goals and objectives to be accomplished by the department with its annual grant allocation that are measurable in a quantitative way;</p> <p>(2) A statement of the housing needs of the low-income families served by the department and the means by which those needs will be addressed during the period covered by the plan;</p> <p>(3) An operating budget for the department;</p> <p>(4) A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan; and</p> <p>(5) Any required certifications of compliance.</p> <p>(d) The specific requirements of the Native Hawaiian housing plan are more fully described at 24 CFR §1006.101, as amended.</p> <p>(e) The Native Hawaiian housing plan requires the approval of the commission before submission to HUD for its review.</p>	
<p><b>§10-7-5 Eligible activities.</b> NHHBG funds may only be used for eligible activities that are consistent with the department's Native Hawaiian housing plan. Eligible affordable housing activities are development, housing services, housing management services, crime prevention and safety activities, and model activities. NHHBG funds may also be used to fund administrative and planning expenses of the department related to carrying out NAHASDA and activities assisted with NHHBG funds. The total amount that may be spent by the department on administrative and planning expenses may be limited by HUD or by statute. These eligible activities are described in greater detail at 24 CFR §§1006.201 to 1006.235, as amended.</p>	
<p><b>§10-7-6 Grants review committee.</b> The department may establish a grants review committee to assist in the evaluation of grant proposals received by the department for NHHBG funding. Membership of the committee shall include at least three and no more than seven individuals that are appointed by the department and represent the diverse beneficiary constituencies and diverse geographic areas where Hawaiian home lands are located. The committee's purpose is to advise the department on matters related to grant proposals received by the department for NAHASDA-related activities. Appointment terms and all other procedural issues associated with the grants review committee shall be defined by the department.</p>	

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<p><b>§10-7-7 Procedures for obtaining assistance.</b> (a) Annually, the department shall post a notice of funding availability on the Internet pursuant to chapter 103D, HRS. The notice shall state that funds are available to qualified nonprofit or for-profit organizations or government agencies to implement eligible activities identified in the Native Hawaiian housing plan.</p> <p>(b) The department may convene the grants review committee to evaluate any proposals that are received and to submit to the department appropriate funding recommendations related to the evaluated proposals. Any funding recommendations received by the department require the approval of the commission before funds are distributed.</p> <p>(c) The department may enter into contracts for approved proposals, which shall be monitored in accordance with federal regulations and guidelines. The department will provide monitoring and reporting documents to any organizations receiving assistance.</p>	
<p><b>§10-7-7 Procedures for obtaining assistance.</b> (a) Annually, the department shall post a notice of funding availability on the Internet pursuant to chapter 103D, HRS. The notice shall state that funds are available to qualified nonprofit or for-profit organizations or government agencies to implement eligible activities identified in the Native Hawaiian housing plan.</p> <p>(b) The department may convene the grants review committee to evaluate any proposals that are received and to submit to the department appropriate funding recommendations related to the evaluated proposals. Any funding recommendations received by the department require the approval of the commission before funds are distributed.</p> <p>(c) The department may enter into contracts for approved proposals, which shall be monitored in accordance with federal regulations and guidelines. The department will provide monitoring and reporting documents to any organizations receiving assistance.</p>	
<p><b>§10-7-8 Use of nonprofit organizations and public-private partnerships.</b> (a) The department must, to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with NHHBG funds that are consistent with the Native Hawaiian housing plan.</p> <p>(b) The department must make all reasonable efforts to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing the Native Hawaiian housing plan.</p>	
<p><b>§10-7-9 Eligibility.</b> (a) Assistance for eligible housing activities under the NHHBG program is limited to low-income Native Hawaiian families who are eligible to reside on Hawaiian home lands. Limited exceptions to this requirement are specified in 24 CFR §1006.301, as amended.</p> <p>(b) Additional requirements for specific types of assistance include:</p> <p>(1) Grants shall only be awarded to public agencies, for-profit organizations, and nonprofit organizations recognized as tax-exempt by the U.S. Internal Revenue Service.</p>	

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Language Change (Ramseyer Format)	Justification
<p>Organizations who are recognized by the State as nonprofit but whose operations do not require recognition from the U.S. Internal Revenue Service may also be eligible to receive a grant; and</p> <p>(2) Technical assistance and partnerships shall be available to any type of organization or public agency provided that the purpose of the assistance is to benefit Native Hawaiians who are eligible to reside on Hawaiian home lands.</p>	
<p><b>§10-7-10 Program requirements.</b> (a) Any affordable housing activity funded with NHHBG funds must be included in a commission- and HUD-approved Native Hawaiian housing plan before implementation of the activity can begin.</p> <p>(b) If NHHBG funds are used to develop rental housing:</p> <p>(1) The department shall develop and follow written procedures governing rents for rental housing units assisted with NHHBG funds, including methods by which rents are determined. These procedures shall require commission approval;</p> <p>(2) The maximum monthly rent for low-income families may not exceed 30 per cent of the family's monthly adjusted income;</p> <p>(3) Leases for rental units shall meet the lease requirements as outlined in 24 CFR §1006.315, as amended;</p> <p>(4) The department shall develop and enforce procedures governing the management and maintenance of rental housing assisted with NHHBG funds. These procedures shall require commission approval.</p> <p>(c) If NHHBG funds are used to assist low-income families to become homeowners of rental housing through a long-term lease (i.e., ten or more years) with an option to purchase the housing:</p> <p>(1) The department shall develop and follow written procedures governing lease-purchase payments for rental housing units assisted with NHHBG funds, including methods by which payments are determined. These procedures shall require commission approval;</p> <p>(2) The maximum monthly payment for a low-income family may not exceed 30 per cent of the family's monthly adjusted income.</p> <p>(d) If NHHBG funds are used to assist low-income families with homeownership activities:</p> <p>(1) Procedures governing the eligibility, admission, and selection of families participating in homeownership activities shall comply with sections 10-3-1 through 10-3-67;</p> <p>(2) Low-income families who receive homeownership assistance other than the assistance described in subsection (c) are not subject to the limitation placed on the maximum monthly payment;</p> <p>(3) The department may provide assistance to Native Hawaiian families who are not low-income families, as approved by HUD, to address a need for housing for those families that cannot be reasonably met without that assistance. Commission approval and HUD approval are required before this assistance can be provided. Homeownership payments for families who are not low-income are not subject to the requirement that homebuyer payments may not exceed 30 per cent of the monthly adjusted income of that family.</p> <p>(e) The department shall adopt and use written tenant and homebuyer selection procedures</p>	

**Proposed Amendments to HAR Title 10  
Chapters 10-1, 10-2, 10-5.1, and 10-7**

Language Change (Ramseyer Format)	Justification
<p>and criteria that:</p> <p>(1) Are consistent with the purpose of providing housing for low-income families;</p> <p>(2) Are reasonably related to program eligibility and the ability of the tenant or homebuyer assistance applicant to perform the obligations of the lease; and</p> <p>(3) Provide for:</p> <p>(A) The selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the Native Hawaiian housing plan. The waiting lists and application and award procedures outlined in sections 10-3-1 through 10-3-67 may be used for the purposes of this section; and</p> <p>(B) The prompt notification in writing of any rejected applicant of the grounds for that rejection.</p> <p>(f) The department shall require adequate insurance coverage for housing units that are owned, operated, or assisted with more than \$5,000 of NHHBG funds, including a loan of more than \$5,000 that includes a payback provision. Additional information regarding this insurance requirement is provided at 24 CFR §1006.330, as amended.</p>	
<p><b>§10-7-11 Affordability period.</b> Eligible activities that are funded utilizing NHHBG funds may be required to assist a low-income family for a specified period of time called the affordability period. This affordability period may vary depending upon the activity funded. Affordability periods for eligible activities shall be specified in the Native Hawaiian housing plan.</p>	
<p><b>§10-7-12 Periodic reviews and monitoring.</b> (a) At least annually, the department shall review the activities conducted and housing assisted with NHHBG funds to assess compliance with the requirements of NAHASDA and the federal regulations governing the NHHBG program.</p> <p>(b) Each review under subsection (a) must include on-site inspection of housing to determine compliance with applicable requirements.</p> <p>(c) The results of each review under subsection (a) must be included in a performance report submitted to HUD by the department, and made available to the public.</p>	
<p><b>§10-7-13 Performance reports.</b> (a) For each fiscal year, the department shall:</p> <p>(1) Review the progress the department has made during that fiscal year in achieving goals stated in its housing plan;</p> <p>(2) Submit to HUD a report describing the conclusion of the review conducted in paragraph (1). The report shall be submitted in a form acceptable to HUD no later than August 30 of each year, or a date approved by HUD.</p> <p>(b) Each report submitted for a fiscal year shall:</p> <p>(1) Describe the use of grant amounts provided to the department for that fiscal year;</p> <p>(2) Assess the relationship of the use referred to in paragraph (1) to the goals identified in the Native Hawaiian housing plan;</p> <p>(3) Indicate the programmatic accomplishments of the department; and</p> <p>(4) Describe the manner in which the department would change the Native Hawaiian housing plan as a result of its experiences.</p>	

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<p>(c) The department shall make the report prepared pursuant to this section publicly available to Native Hawaiians who are eligible to reside on Hawaiian home lands, and shall provide these individuals with an opportunity to submit written comments on the report.</p> <p>(d) The report must include a summary of any comments received by the department under subsection (c), and shall require the approval of the commission prior to submission to HUD for review."</p>	