# UNIVERSITY OF HAWAII  
**Suggested Rules Relating to Public and Commercial Activities Within the University’s Management Lands on Maunakea**

## General Provisions
- **Preamble** .................................................................................................................................................. 1  
- **Purpose** ....................................................................................................................................................... 1  
- **Definitions** ..................................................................................................................................................... 1  
- **Delegation of authority** .................................................................................................................................. 4  
- **Conflicts with other agencies or rules** ............................................................................................................. 4  
- **Fees** ............................................................................................................................................................... 4  
- **Maunakea lands management special fund** ..................................................................................................... 4  

## Protection of Native Hawaiian Rights
- **Protection of Native Hawaiian rights** ............................................................................................................... 4  
- **Reasonable regulation** ..................................................................................................................................... 5  
- **Scattering of cremated remains** ....................................................................................................................... 5  

## Public Activities
- **Preservation of natural and cultural resources** ................................................................................................. 5  
- **Preservation of property** ..................................................................................................................................... 6  
- **Preservation of scientific resources** ................................................................................................................ 6  
- **Memorialization** ................................................................................................................................................. 6  
- **Litter and sanitation** .......................................................................................................................................... 6  
- **Fire use restrictions** .......................................................................................................................................... 6  
- **Explosives** .......................................................................................................................................................... 7  
- **Firearms or other weapons** ................................................................................................................................. 7  
- **Vehicles and transportation** ............................................................................................................................... 7  
- **Drones and air toys** ............................................................................................................................................. 7  
- **Golfing** ............................................................................................................................................................... 7  
- **Hazardous materials** .......................................................................................................................................... 7  
- **Use of alcohol or drugs** ...................................................................................................................................... 8  
- **Use of tobacco** .................................................................................................................................................... 8  
- **Camping** ........................................................................................................................................................... 8  
- **Compliance with laws** ....................................................................................................................................... 8  
- **Visiting hours** .................................................................................................................................................... 8  
- **Closing of areas** .................................................................................................................................................. 8  
- **Access** ............................................................................................................................................................... 9  
- **Snow play** ........................................................................................................................................................... 9  
- **Interference with government function** ......................................................................................................... 10  

## Commercial Activities
- **Advertisements** .................................................................................................................................................... 10  
- **Soliciting** ......................................................................................................................................................... 10  
- **Business operations** ......................................................................................................................................... 10
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial activities</td>
<td>10</td>
</tr>
<tr>
<td>Commercial film and recordings</td>
<td>10</td>
</tr>
<tr>
<td><strong>Permits</strong></td>
<td></td>
</tr>
<tr>
<td>General provisions</td>
<td>12</td>
</tr>
<tr>
<td>Hierarchy of use</td>
<td>13</td>
</tr>
<tr>
<td>Group use permits</td>
<td>13</td>
</tr>
<tr>
<td>Research permits</td>
<td>13</td>
</tr>
<tr>
<td>Special use permits</td>
<td>14</td>
</tr>
<tr>
<td>Commercial activity permits</td>
<td>14</td>
</tr>
<tr>
<td>Period of validity and renewal of permit</td>
<td>15</td>
</tr>
<tr>
<td><strong>Administration and Enforcement</strong></td>
<td></td>
</tr>
<tr>
<td>Purpose</td>
<td>16</td>
</tr>
<tr>
<td>Penalties</td>
<td>16</td>
</tr>
<tr>
<td>Enforcement</td>
<td>16</td>
</tr>
<tr>
<td>Notice of violation</td>
<td>16</td>
</tr>
<tr>
<td>Answer to notice of violation</td>
<td>17</td>
</tr>
<tr>
<td>Request for mitigation</td>
<td>17</td>
</tr>
<tr>
<td>Default</td>
<td>17</td>
</tr>
<tr>
<td>Trespass</td>
<td>18</td>
</tr>
<tr>
<td><strong>Contested Case Proceedings</strong></td>
<td></td>
</tr>
<tr>
<td>Contested case proceedings generally</td>
<td>18</td>
</tr>
<tr>
<td>Hearings; scheduling; requests and complaints; notice</td>
<td>18</td>
</tr>
<tr>
<td>Determination of entitlement to a contested case hearing</td>
<td>19</td>
</tr>
<tr>
<td>Hearings officer; duties and powers</td>
<td>19</td>
</tr>
<tr>
<td>Disqualification</td>
<td>20</td>
</tr>
<tr>
<td>Substitute hearings officer</td>
<td>21</td>
</tr>
<tr>
<td>Docket</td>
<td>21</td>
</tr>
<tr>
<td>Ex parte communications with hearings officers and final</td>
<td></td>
</tr>
<tr>
<td>Decisionmaker</td>
<td>21</td>
</tr>
<tr>
<td>Representation and appearances</td>
<td>21</td>
</tr>
<tr>
<td>Intervention</td>
<td>22</td>
</tr>
<tr>
<td>Substitution of parties</td>
<td>22</td>
</tr>
<tr>
<td>Consolidation and severance</td>
<td>22</td>
</tr>
<tr>
<td>Conduct of hearing</td>
<td>23</td>
</tr>
<tr>
<td>Filing of documents</td>
<td>23</td>
</tr>
<tr>
<td>Amendment of documents and dismissal</td>
<td>24</td>
</tr>
<tr>
<td>Retention of documents</td>
<td>24</td>
</tr>
<tr>
<td>Public access; documents and hearings</td>
<td>24</td>
</tr>
<tr>
<td>Prehearing conferences</td>
<td>24</td>
</tr>
<tr>
<td>Motions</td>
<td>25</td>
</tr>
<tr>
<td>Evidence</td>
<td>25</td>
</tr>
<tr>
<td>Subpoena of witnesses</td>
<td>26</td>
</tr>
<tr>
<td>Continuance of contested case hearing</td>
<td>27</td>
</tr>
</tbody>
</table>
Defaults, dismissals, and summary decisions.................................................................................. 27
Proposed and final decisions; exceptions and argument................................................................. 27
Transcripts; fees; corrections ........................................................................................................ 28
Enforcement and stay of a final decision ....................................................................................... 28

Appendix A.................................................................................................................................. 29
GENERAL PROVISIONS

Preamble
Maunakea is a special place. It is culturally significant and environmentally unique. But not all who visit are knowledgeable about Maunakea and how to visit with respect and without harm to the resources. Rules are put in place to assure Maunakea is protected. It is a privilege to be on Maunakea and with that privilege comes personal responsibility.

Purpose
(a) The purpose of these rules is to provide for the proper use, management, and protection of natural, cultural, and scientific resources and to maintain public safety and welfare by regulating public and commercial activity within the Maunakea lands.

(b) Access for traditional and customary native Hawaiian cultural and religious purposes, as protected by article XII, section 7 of the Hawaii State Constitution, shall be accommodated as provided by law. These rules are not intended to diminish or abrogate the provisions of the Hawaii State Constitution or of section 7-1, Hawaii Revised Statutes, relating to certain traditional and customary Hawaiian practices.

(c) These rules shall apply to all public and commercial activities on the Maunakea lands.

Definitions
As used in these rules, unless context requires otherwise:

“Board” means the board of regents of the University of Hawaii.

“Camping” means being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, any time after one hour after sundown until sunrise in the Maunakea lands.

“Chancellor” means the chancellor of the University of Hawaii at Hilo.

“Commercial activity” means economic activities for which compensation is received for goods and services or both, that are generally geared to a mass or specialized market, that are ordinarily intended to result in a profit, and that are not part of, or ancillary to, the university’s educational, research, and management activities. Commercial activities include activities whose base of operations are outside the boundaries of the Maunakea lands, or provide transportation to, from, or within the Maunakea lands. Commercial activities do not include research-related activities or activities that support research or University public programs.

“Compensation” includes but is not limited to, monetary payments, barter, or services in-kind.

“Complainant” means the person or entity upon whose complaint action by the board or its
authorized representative is instituted.

“Complaint” refers to a notice of violation, finding of violation, order or such other document by which the board or its authorized representative starts action against any person or entity.

“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 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, previously enforced, or subsequently enacted.

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

“Kahu Kū Mauna” means the advisory community-based council who advises the Maunakea Management Board, OMKM, and the chancellor on Hawaiian cultural matters affecting the Maunakea lands.

“Maunakea lands” or “UH Management Areas at Maunakea” means the lands on Maunakea under lease and easement from the board of land and natural resources to the university, including the Maunakea Science Reserve, Halepōhaku, 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 control or jurisdiction.

“Maunakea Management Board” or “MKMB” means the advisory body established by the board to provide the community with a direct voice to the university for the management of the Maunakea lands.

“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.

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

“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, including 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 by ordinary people in general, the community, or the population, which are not governed by contract or other legal agreement.

“Public areas” means the areas and buildings, including the Onizuka Center for International Astronomy, also referred to as the Visitor Information Station, used by the public within Halepōhaku.

“Public enforcement agencies” means any agency authorized by federal, state, or county law to enforce rules and regulations, including but not limited to 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 staff of OMKM who perform the full range of duties required for on-site management of the Maunakea lands, to protect the resources and provide for public safety, including enforcing provisions of this chapter.

“Respondent” means the party in a contested case against whom the complaint is filed, any party against whom relief is being sought, or any party who contests or controverts a proceeding initiated by another party.

“Spark arrester” 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.

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

“University” means the state university established under HRS §304A-101 and is constituted as a body corporate under the direction of the board of regents.

**Delegation of authority**
The board delegates its authority to the chancellor to properly manage and regulate public and commercial activities within the Maunakea lands, to enforce the rules established by this chapter, and to administer and collect any fees, fines, or monetary assessments established by this chapter; the board further authorizes the chancellor to designate a representative to act on behalf of the chancellor in implementing these rules.

**Conflict with other agencies or rules**
The university shall have authority to make all decisions regarding the proper use, management, and protection of natural, cultural, and scientific resources and the maintenance of public health and safety on the Maunakea lands. Any other rules described in this chapter shall be read consistently with the rules of other agencies with jurisdiction over the Maunakea lands. The chancellor may enter into memoranda of understandings with other agencies to address jurisdiction, law enforcement, or other issues regarding the Maunakea lands.

**Fees**
Fees, as set by the board, may be charged for:

1. Permits;
2. Parking; and
3. Entrance.

**Maunakea lands management special fund**
(a) All money collected under these rules shall be deposited into the Maunakea lands management special fund.
(b) The proceeds of the Maunakea lands management special fund shall be used as provided in HRS Chapter 304A.

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**PROTECTION OF NATIVE HAWAIIAN RIGHTS**

**Protection of Native Hawaiian rights**
Nothing in this chapter is intended to restrict Native Hawaiians from exercising their traditional and customary rights. These rules should be read in conformance with Hawaii Constitution Article XII, §7, HRS §§1-1 and 7-1, and applicable case law.
**Reasonable regulation**
For cultural practices that involve changes to the landscape, the chancellor in consultation with the department of land and natural resources shall establish a review process that accommodates those wishing to exercise their cultural practices, while ensuring compliance with HRS Chapters 6E, 183C, and 195D, and HAR Chapter 13-5, to prevent the disturbance of or damage to existing historic sites and to preserve the cultural and natural landscape.

**Scattering of cremated remains**
The scattering of cremated human remains is allowed within the Maunakea lands by permit.

**PUBLIC ACTIVITIES**

**Preservation of natural and cultural resources**
The following activities are prohibited within the Maunakea lands:

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, disturb, alter, deface or harm any natural feature or resource;
4. To remove, damage, disturb, alter, deface or harm any geological or paleontological features or substances;
5. To remove, damage, disturb, alter, deface or harm any historic or prehistoric property or remains;
6. To remove, damage, disturb, alter, or tamper with any 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;
10. To hike, conduct nature study, or conduct any activity with a group larger than ten in size;
11. To introduce any material from outside the Maunakea lands, including but not limited to manmade items and rocks;
12. To conduct any other activity inconsistent with the protection of the integrity of the natural, cultural, and scientific resources of the Maunakea lands and the adjacent

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natural area reserve.

**Preservation of property** The following activities are prohibited within the Maunakea lands:

1. To enter, occupy, or use any building, structure, facility, motorized vehicle, machine, equipment, or tool within the Maunakea lands without permission; and
2. To remove, damage, disturb, deface or attempt to remove, damage, disturb or deface any building, structure, facility, motorized vehicle, machine, equipment, or tool within the Maunakea lands without permission.

**Preservation of scientific resources**
The following activities are prohibited within the Maunakea Science Reserve:

1. The use of any electro-magnetic device, including radios 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 approved vehicles;
4. Conducting any other activity inconsistent with the optimal operation of the astronomical facilities or research equipment or with the protection of the scientific resources of the Maunakea lands.

**Memorialization**
It is prohibited to install any monument, memorial, tablet, or other commemorative installation, or to leave offerings of any type within the Maunakea lands.

**Litter and sanitation**
The following activities are prohibited within the Maunakea lands:

1. To litter or to deposit refuse or any other substance;
2. To deposit any body waste in areas without comfort stations without digging a hole and covering all signs of the waste;
3. To deposit any body waste within 200 feet of water, buildings, roads, or trails;
4. To leave or abandon a vehicle or any other large refuse such as refrigerators or stoves, household garbage or trash, or other forms of waste or debris.

**Fire use restrictions**
The following acts are prohibited within the Maunakea lands:

1. To start or maintain a fire;
2. To deposit or discard any potential fire-producing material such as cigarette butts, embers, coals, or ashes that are too hot to touch;
3. To use any motor vehicle, motorized equipment, internal combustion engines, or electric motors unless equipped with efficiently operating fire or spark arresting equipment.
Explosives
The use or possession of fireworks, firecrackers, or explosive devices within the Maunakea lands is prohibited.

Firearms or other weapons
Firearms, bow and arrow, and other weapons are prohibited within the Maunakea lands, 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.

Vehicles and transportation
(a) The following acts are prohibited within the Maunakea lands:
   (1) To drive, operate, or use any motorized vehicle not equipped with functioning four-wheel drive (4WD);
   (2) To drive, operate, or use any motorized or non-motorized land vehicle or air conveyance of any shape or form in any area, including roads or trails, not designated for that purpose;
   (3) To park any motorized or non-motorized vehicle or trailer except in designated areas; and
   (4) To operate any motorized or non-motorized vehicle in violation of existing State, county, or university traffic regulations.
   (5) To operate any motorized or non-motorized vehicle in violation of the sections of closing of areas and access of these suggested rules.
(b) Any vehicle or property left unattended within the Maunakea lands for longer than forty-eight hours without prior written permission from the chancellor shall be considered abandoned. Any abandoned vehicle or property may be impounded or towed away by the chancellor at the expense of the owner.

Drones and air toys
The use or operation of unmanned aerial vehicles (UAV), drones, or air toys, including but not limited to kites, balloons, boomerangs, gliders, rockets, and remote controlled models, is prohibited within the Maunakea lands.

Golfing
Golfing, or hitting or driving golf balls, is prohibited within the Maunakea lands.

Hazardous materials
The introduction, use, disposal, release, spill, or transportation of hazardous materials is prohibited within the Maunakea lands.
Use of alcohol or drugs
The use or possession of narcotics, drugs, or alcohol is prohibited within the Maunakea lands, except the use or possession of drugs legally prescribed by a physician and used in accordance with state law.

Use of tobacco
The use of tobacco products is prohibited within the Maunakea lands, except in designated areas.

Camping
Camping is prohibited within the Maunakea lands.

Compliance with laws
All persons entering the boundaries of the Maunakea lands shall comply with all federal, state, and county laws, ordinances, and rules.

Visiting hours
The chancellor, in consultation with the Maunakea Management Board, may establish a reasonable schedule of visiting hours for all or portions of the Maunakea lands, by the posting of appropriate signs indicating the days and hours during which the Maunakea lands may be accessed. All persons shall abide by the officially posted signs designating visiting hours; it is prohibited to be present within the Maunakea lands outside visiting hours established pursuant to this rule without a written permit issued by the chancellor.

Closing of areas
(a) The chancellor, in consultation with the Maunakea Management Board, may close all or any portion of the Maunakea lands for up to two years, where deemed necessary for the protection of the natural, cultural, or scientific resources of the area or for the safety and welfare of persons or property, by the posting of appropriate signs indicating the duration, extent, and scope of closure. Closures may be renewed with the approval of the chancellor.

(b) A ranger or any other person authorized by the chancellor may temporarily restrict public use within all or any portion of the Maunakea lands for up to 15 days, to protect the natural, cultural, and scientific resources from imminent harm, to protect the public from hazardous conditions, or to conduct scheduled construction, repairs, or maintenance activities by the posting of appropriate signs indicating the duration, extent, and scope of closure.

(c) The chancellor shall close areas where construction activities are ongoing by the posting of appropriate signs indicating the extent and scope of closure. The closure shall last until construction is complete and the area is safe for public use and visitation.

(d) All persons shall abide by the officially posted signs designating closed areas; it is prohibited to
be present in an area closed pursuant to this section without a written permit issued by the chancellor

**Access**

(a) Nothing in this section is intended to prevent public access into the Maunakea lands, but instead is to provide for safe and appropriate access for visitors to the Maunakea lands.

(b) The chancellor, in consultation with the Maunakea Management Board, may establish conditions on access to the Maunakea lands for public safety and welfare and for the protection of the natural, cultural, and scientific resources. Conditions include, but are not limited to, restricting access for children under 16, requiring a liability waiver, requiring completion of an approved orientation, requiring compliance with protocols to prevent the accidental introduction of non-native species, or designating approved transportation methods. Conditions shall be published on the office of Maunakea management website.

(c) The chancellor may restrict vehicular access into or within the Maunakea lands, during periods of heavy usage, transportation of heavy equipment, road maintenance, construction activities, hazardous conditions, or when otherwise necessary for public safety and resource protection, by the posting of appropriate signs or the placement of physical barriers.

(d) The chancellor, in consultation with the Maunakea Management Board, may restrict access by private vehicles for public safety and welfare, for the protection of the natural, cultural, and scientific resources, and to reduce congestion. Restrictions include, but are not limited to, setting a maximum number of private vehicles allowed within the Maunakea lands at a time or restricting the areas in which private vehicles may operate.

(e) All persons shall abide by the established restrictions or conditions; it is prohibited to access the Maunakea lands in violation of this section.

**Snow play**

(a) Skiing, snowboarding, sledding, and other similar winter or snow sports may be restricted by the chancellor to maintain public health and safety, to prevent damage to natural, cultural, and scientific 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) Formally or informally organized contests, meets, or competitions, or other similar events for skiing, snowboarding or other forms of snow recreation or snow activities are prohibited.

(c) Operating a snowmobile, an all terrain vehicle, or other motorized vehicle used for snow recreation is prohibited anywhere in the Maunakea lands.

(d) Towing persons on skis, sleds, or other sliding devices by any motorized vehicle is prohibited.
Interference with government function
The following acts are prohibited within the Maunakea lands:

(1) To threaten, resist, intimidate, or intentionally interfere with a Ranger, public enforcement agency officer, or security officer authorized by the chancellor engaged in performing an official duty;

(2) To disobey or refuse to heed the lawful instructions or orders of a Ranger, public enforcement agency officer, or security officer authorized by the chancellor to manage public access and movement where the instructions are necessary to maintain public safety and welfare or to protect the natural, cultural, and scientific 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 or public enforcement agency officer in the conduct of official duties, or making a false report that causes a response by a ranger or the State or county to a fictitious event.

COMMERCIAL ACTIVITIES

Advertisements
(a) It is prohibited to display, post, or distribute notices or advertisements within the Maunakea lands.

(b) It is prohibited to advertise commercial activities within the Maunakea lands without a written permit issued by the chancellor.

Soliciting
Soliciting and the sale of gifts, money, goods, or services, including but not limited to transportation, within the Maunakea lands is prohibited without a written permit issued by the chancellor.

Business operations
It is prohibited to engage in or solicit any business within the Maunakea lands, without a written permit issued by the chancellor or other written agreement authorized by the board.

Commercial activities
It is prohibited to engage in commercial activities of any kind within the Maunakea lands without a written permit issued by the chancellor.

Commercial film and recordings
(a) Video, film, still photography, or any other visual and audio recordings taken within the
Maunakea lands may not be used for commercial purposes without a written permit issued by the Department of Business, Economic Development, and Tourism.

(b) The chancellor shall review all permit applications involving the Maunakea lands submitted to the state film office of the department of business, economic development and tourism and recommend approval or denial, and may require specific conditions, and request fees or deposits to cover administrative and personnel expenses or potential damages to natural, cultural, and scientific resources associated with the proposed activity.
PERMITS

General provisions
(a) The chancellor may issue the following types of permits:
   (1) Group use;
   (2) Research;
   (3) Special use; and
   (4) Commercial activity.
(b) All permits are subject to the following provisions:
   (1) Permits are subject to denial, suspension, cancellation, or termination at any time by
       the chancellor upon violation of these rules or any conditions of the permit or any
       federal, state, or county statutes, ordinances, and rules, or for danger to the public or
       because of natural causes.
   (2) Permits shall not be transferable.
   (3) Persons or organizations to whom permits are issued shall be held responsible for all
       conditions stipulated on the permit.
   (4) All persons eighteen years of age or older shall be eligible to secure a permit.
   (5) The size of groups as well as the length of time any permit may be in effect may be
       limited by the chancellor.
   (6) All payments of fees and charges, shall be in US funds, and by credit card, postal money
       order, or bank money order, provided that personal or business checks may be used to
       pay for events that will occur thirty or more days after the date of payment.
   (7) Other procedures, terms and conditions deemed by the chancellor necessary to carry
       out the provisions of chapter 304A, HRS, these rules, or any applicable federal, state, or
       county statute, ordinance, or rule.
   (8) All permittees shall, upon request, show the permit to any ranger, law enforcement
       officer, or any other person authorized by the chancellor to manage and regulate public
       and commercial activities within the Maunakea lands.
   (9) The chancellor may require permit applicants for activities that also involve the use of
       the adjacent Mauna Kea Ice Age Natural Area Reserve or Mauna Kea Forest Reserve to
       secure a valid permit from the department of land and natural resources before
       processing the permit application.
(c) Permit applications shall be submitted on a form determined by the chancellor.
(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) Permittees violate permit conditions or provisions of this chapter;
   (4) The permitted activity damages or threatens serious damage to the integrity of the
       natural, cultural, or scientific resources of the Maunakea lands or threatens the safety of
       the permittee or the general public;
   (5) Fees are not paid when required; and
   (6) Applicant’s prior record or conduct within the Maunakea lands is contrary to university
       or department and land and natural resources' policy to protect that natural, cultural
       and scientific resources of the Maunakea lands, including failure to respond to official
notices to cease and desist.

Hierarchy of use
Permit applications within the Maunakea lands shall be evaluated in the context of the following hierarchy of priorities:

1. Protection and stewardship of natural and cultural resources is the highest priority;
2. Access for general public activities in a manner that does not damage these resources is the second priority; and
3. Access for commercial activities in a manner that does not damage these resources or significantly compromise the general public's activities is the third priority.

Group use permits
(a) Any group larger than ten members shall be required to obtain a group use permit.
(b) Applications for group use permits shall identify the maximum size of the group and the planned day and duration and shall be submitted at least fifteen calendar days in advance of the date the permit is to be in effect.
(c) Applications for group use shall be evaluated for compatibility with the functions and purpose of the Maunakea lands, for consistency with existing approved management plans, for the potential effect on the surrounding natural, cultural, and scientific resources, the existing facilities, and the public's use of the Maunakea lands, 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. The chancellor may require additional information from the applicant to make this evaluation. Failure to provide additional information when requested is grounds for permit denial.
(d) The chancellor may require the permittee at the permittee's own cost, to provide licensed security services or certified medical professionals in the interest of public safety and welfare and for the protection of property, when the number of persons under the permit is twenty or more.
(e) The chancellor may impose fees and additional terms and conditions necessary to protect the natural, cultural, and scientific resources of the Maunakea lands and to protect health and safety.

Research permits
(a) The chancellor may issue research permits to engage in activities otherwise prohibited by law or this chapter for scientific, educational, or management purposes.
(b) Applications for research permits shall adequately describe the planned research activity, including the scope, duration, and location of the research and shall be submitted at least thirty 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, compatibility with the functions and purpose of the Maunakea lands, for consistency with existing approved management plans, for the potential effect on the surrounding natural, cultural, and scientific resources, the existing facilities, and the public's use of the Maunakea
lands, for compatibility with existing approved uses, and the applicant's prior record of non-compliance with permit conditions or of violations. The chancellor may require additional information from the applicant to make this evaluation. Failure to provide additional information when requested is grounds for permit denial.

(d) The chancellor may impose fees and additional terms and conditions necessary to protect the natural, cultural, and scientific resources of the Maunakea lands and to protect health and safety.

Special use permits
(a) The chancellor may issue special use permits to engage in activities otherwise prohibited by this chapter.
(b) Special uses are all types of uses, other than group use, research, and commercial activity, which are considered compatible with the functions and purpose of the Maunakea lands and are consistent with the approved management plans for the Maunakea lands. Special uses include, but are not limited to, activities such as weddings or visiting a closed area.
(c) Applications for special use permits shall adequately describe the planned special use, including the scope, duration, and location of the activity, and shall be submitted at least thirty calendar days in advance of the date the permit is to be in effect.
(d) Each permit application shall be evaluated on its own merits for compatibility with the functions and purpose of the Maunakea lands, for consistency with existing approved management plans, for the potential effect on the surrounding natural, cultural, and scientific resources, the existing facilities, and the public’s use of the Maunakea lands, 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. The chancellor may require additional information from the applicant to make this evaluation. Failure to provide additional information when requested is grounds for permit denial.
(e) The chancellor may impose fees terms and conditions necessary to protect the natural, cultural, and scientific resources of the Maunakea lands and to protect health and safety.

Commercial activity permits
(a) The chancellor may issue a commercial activity permit to authorize commercial activity in designated areas within the Maunakea lands for any period up to, but not exceeding, five years.
(b) Commercial activities include but are not limited to stargazing tours, hiking tours, biking tours, transportation services to, from or within the Maunakea lands, filming and photography, and the sale or provision of other goods and services.
(c) Applications for commercial activities shall adequately describe the proposed commercial activity, including the permit duration, the area of use, and proposed activity. For tours, the application shall include at 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, the times of use and length of stay, the nature and theme of the tour, and seasonal or weather restrictions. Applications shall be submitted at least ninety calendar days in advance of the date the permit is to be in effect.
(d) Each permit application shall be evaluated on its own merits for compatibility with the
functions and purpose of the Maunakea lands, for consistency with existing approved management plans, for the potential effect on the surrounding natural, cultural, and scientific resources, the existing facilities and infrastructure, and the public's use of the Maunakea lands, 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 aspect 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 health and safety. The chancellor may require additional information from the applicant to make this evaluation. Failure to provide additional information when requested is grounds for permit denial.

(e) The chancellor may impose fees and additional terms and conditions necessary to protect the natural, cultural, and scientific resources of the Maunakea lands, to protect health and safety, and to reduce congestion, including but not limited to insurance and licensing requirements, and designation of timing or loading restrictions.

(f) The issuance of any commercial activity permit by the chancellor shall not create a property interest in favor of the permittee to an unrestricted use of the Maunakea lands.

(i) Permits may be revoked or terminated for failure to comply with permit conditions or applicable requirements or these rules; and

(ii) The chancellor may impose fines for failure to comply with the terms of the permit.

(g) The owner of a valid commercial activity permit on the effective date of the rule amendments may retain and apply for reissuance of the commercial activity permit provided that all other requirements of these rules are met.

(i) The chancellor may enter into agreements with other government agencies for the purposes of issuing and administering commercial activity permits.

**Period of validity and renewal of permit**

(a) The chancellor may issue or renew a permit for a set period. Upon expiration of the period stated therein, the permit and all rights of the permittee thereunder shall automatically terminate.

(b) No commercial activity 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 the requirement of prompt payment of fees or charges, have been met, and the rules governing the Maunakea lands 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 under Group use, Research, Special use and Commercial activity permits as appropriate.
ADMINISTRATION AND ENFORCEMENT

Purpose of Administration and Enforcement
The purpose of this subchapter is to create an administrative enforcement system that encourages compliance with these rules and facilitates effective and expeditious settlement of violations.

Penalties
(a) Violators shall be subject to immediate removal from the Maunakea lands, a fine, a monetary assessment to recover the costs of mitigation or restoration required as a result of the violation and to recover the costs associated with enforcement proceedings, revocation or suspension of a permit, or a combination of or all of the foregoing.
(b) The most common violations and their corresponding fines shall be as reflected in Exhibit A, entitled “Violations and Schedule of Penalties for the Maunakea lands” dated ___, which is made a part hereof and located at the end of this chapter.
(c) Additional penalties may be imposed, including exclusion from the Maunakea lands until the notice(s) of violation is resolved, for repeated violations within a one-month period or if the fine or monetary assessment is not paid or contested within twenty-one calendar days after the issuance of the notice of violation.
(d) For parking violations, the driver or the registered owner of the motor vehicle, or both, shall be subject to the applicable penalties described in subsections (a), (b), and (c).
(e) All fines shall be paid to the office of Maunakea management, in the form and manner outlined in the notice of violation.
(f) Any action taken to impose or collect the penalty provided for shall be considered a civil action.

Enforcement
These rules shall be enforced by rangers, by public enforcement agencies, or by any other person authorized by the chancellor to manage and regulate public and commercial activities on the Maunakea lands through the issuance of notices of violations.

Notice of violation
(a) A notice of violation may be issued to any person who violates these rules.
(b) A notice of violation shall be in a form prescribed by the chancellor and at minimum, shall include the following:
   (1) A statement that the notice is being issued pursuant to chapter 304A, HRS.
   (2) A description of the violation, including a brief statement of the facts for which the notice is issued and a reference to the rule that has been violated;
   (3) A list of administrative fines to be assessed against the respondent;
   (4) A statement of the options provided for answering the notice and the procedures necessary to exercise the options;
   (5) A summons to the respondent to answer the notice within twenty-one days of the service of the notice;
   (6) Name and signature of the employee or official who issues the notice; and
(7) Date of the issuance of the notice.

(c) Service of the notice of violation may be conducted by a ranger, a public enforcement agency officer, or by any other person authorized by the chancellor by one of the following methods:

(1) By personal service on the respondent, with or without the respondent's signature acknowledging 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 notice of violation 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 notice of violation involves an unattended vehicle, service may be conducted by a ranger who shall conspicuously affix the notice of violation to the vehicle for the registered owner to receive and answer.

Answer to notice of violation

(a) A respondent who receives a notice of violation shall, within twenty-one days of the service of the notice of violation, answer the notice by a method indicated in the notice of violation.

(b) 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 the 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;

(3) Contest the notice of violation.

Request for mitigation

A timely filed answer that waives contest to the notice of violation, but requests mitigation of sanctions based on written justification shall be reviewed by the chancellor, who shall examine the mitigating circumstances and make a decision without the holding of any hearing or the attendance of parties or their representatives or any witnesses. The chancellor may adopt, modify, or reverse any sanctions, and shall transmit a decision to respondent in writing. The chancellor's decision shall be final, with no further administrative review. Respondent shall have twenty-one days to respond with appropriate payment or compliance with other sanctions to avoid default.

Contest of notice of violation

A timely filed answer submitted with the required filing fee of $100 shall be assigned to a hearings officer, who shall proceed to the conduct of contested case hearing pursuant to subchapter 7 of this chapter.

Default

(a) When a person fails to respond to a notice of violation within twenty-one calendar days or such further period granted by the chancellor, or otherwise fails to defend against a notice of violation, the person shall be deemed to have waived the right to appeal, and the chancellor shall enter the respondent's default, and may
(1) Enter a finding of a violation;
(2) Impose any monetary sanctions for the violation not to exceed those that have been assessed in the notice of violation;
(3) Impose additional penalties for failure to respond, including exclusion from the Maunakea lands and revocation or suspension of a permit, until the respondent has complied with all sanctions assessed; and
(4) Enter a decision by default, which shall be final.

(b) For good cause shown, the chancellor may set aside an entry of default or a default decision.

**Trespass**

Any person who remains on the Maunakea lands after being ordered to remove themselves or who enters the Maunakea lands after an entry of default imposing exclusion from the Maunakea lands pursuant to the section titled Default, is considered to be remaining unlawfully within the Maunakea lands for purposes of HRS §§708-814.5 and 708-815, and may be subject to additional penalties.

**CONTESTED CASE PROCEEDINGS**

**Contested case proceedings generally**

(a) Contested case hearings shall be conducted in accordance with this subchapter, and chapter 91, HRS. Cases shall be conducted fairly and impartially.
(b) The board or its authorized representative may act as the hearings officer and conduct the hearing of a contested case or may appoint a representative to be the hearings officer. The hearings officer shall conduct the hearing and any related pre-hearing and post-hearing activities as may be required or appropriate. The board shall be the final decisionmaker unless the board delegates that responsibility.
(c) Any procedure in a contested case may be agreed to, modified, or waived by stipulation of the parties, and informal disposition may be made of all or part of any contested case by stipulation, settlement, consent order, or default.
(d) The board or its authorized representative may voluntarily withdraw or dismiss a case it brings, and any other party may voluntarily withdraw or dismiss a case upon such terms and conditions that the board or its authorized representative deems proper.

**Hearings; scheduling; requests and complaints; notice**

(a) The board or its authorized representative may schedule a contested case hearing on its own initiative or may schedule one when required by law based upon a complaint.
(b) A complaint may set or request a hearing and shall contain concise statements of:
   (1) The legal authority under which the proceeding, hearing, or action is to be held or made;
   (2) The disagreement, denial, grievance, or other matter that is being contested by the complainant;
   (3) The facts and issues raised; and
(4) The relief requested. The board or its authorized representative may prepare and require the use of forms that may be substituted for any complaint.

(c) No hearing on a contested case shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS. (d) Within the time specified in the complaint, a respondent may request a contested case hearing and shall notify the board or its authorized representative of such request in writing.

**Determination of entitlement to a contested case hearing**

(a) 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 petitioner does not have a legal right, duty, or privilege entitling one to a contested case proceeding.

**Hearings officer; duties and powers**

(a) In any contested case, the hearings officer may:

(1) Give notice of a prehearing conference or the hearing and any continuation of a conference or the hearing;

(2) Require that a complaint be answered or be made more definite;

(3) Impose time limits on any phase or aspect of the proceedings;

(4) Issue subpoenas for people, documents, and things as authorized by law;

(5) For good cause shown, upon motion or the hearings officer's own initiative, order a party to produce non-privileged evidence, and may draw inferences against the party if the evidence is not produced without good cause being shown;

(6) Administer oaths;

(7) Examine witnesses and inspect sites;

(8) Certify official documents and acts;

(9) Rule on motions, requests, and offers of proof;

(10) Admit, receive, and exclude evidence;

(11) Regulate the course and conduct of the hearing and related proceedings, including:

   (i) Allowing or directing the use of telephone or videoconference meetings, hearings, and testimony;

   (ii) Regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals;

   (iii) Specifying the time, place, and method of filing documents;

(12) Enter such orders and rulings against any party who fails to comply with these rules or any other order of the hearings officer, including without limit orders described under Prehearing conference; and

(13) Perform such other functions and duties, and issue such orders necessary for the proper conduct of the hearing and the resolution of the case.

(b) Any provision of this chapter may be suspended or waived by the hearings officer, to prevent undue hardship in any particular instance.

(c) The hearings officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of the evidence presented at any hearing. If a stenographer or other
person of similar skill is not engaged, the hearings officer shall have the hearing recorded by audiotape, videotape, or comparable means.

(d) Except as provided for under subsection (a)(5), the hearings officer shall not order or approve civil style discovery against non-parties; and unless stipulated to by all parties, the hearings officer shall not order or approve civil style discovery between parties. Civil style discovery refers to procedures initiated by parties under judicial rules of civil procedure, specifically including but not limited to, depositions on oral or written questions, written interrogatories, requests for production of documents or things, requests to enter land or other property, physical and mental examinations, and requests for admissions.

(e) 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.

(f) 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.

(g) The hearings officer may require parties to file and serve upon all other parties written witness statements and exhibits and to establish a schedule for such filings.

Disqualification

(a) A hearings officer is disqualified from hearing or deciding a contested case if the hearings officer:

(1) Has a substantial financial interest as defined by section 84-3, Hawaii Revised Statutes, in a business or other undertaking that will be directly affected by the decision of the contested case;

(2) Is related within the third degree by blood or marriage to any party to the proceeding or any party’s representative or attorney;

(3) Has participated in the investigation preceding the institution of the contested case proceedings or has participated in the development of the evidence to be introduced in the hearing; or

(4) Has substantially participated in making the decision or action contested; or

(5) Has a personal bias or prejudice concerning a party or matter that will prevent a fair and impartial decision involving that party or matter.

(b) A hearings officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the allegedly disqualified individual need not voluntarily withdraw, and the party seeking the disqualification may file a motion to disqualify.

(c) A motion to disqualify shall be filed promptly after discovery of the alleged disqualifying facts. The motion shall be filed first with the challenged hearings officer who shall rule on the motion.

(d) If a hearings officer appointed by the board or its authorized representative is disqualified, the board or its authorized representative shall appoint another representative to serve as the hearings officer. If the board is disqualified, the board shall appoint another representative to serve as the hearings officer, final decisionmaker, or both.
**Substitute hearings officer**

If a hearings officer is absent from a scheduled hearing, is incapacitated from performance of duty, or for other good cause, the board or its authorized representative may appoint another representative to serve as a substitute hearings officer without abatement of the proceedings.

**Docket**

The board or its authorized representative shall maintain a docket of all contested cases, and each case shall be assigned a number.

**Ex parte communications with hearings officer and final decisionmaker**

(a) No person shall have ex parte communications with the hearings officer or final decisionmaker regarding any substantive or disputed factual or legal matter to be heard or decided with the intent, or the appearance of the intent, to influence the decision of the hearings officer or final decisionmaker, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the hearings officer or final decisionmaker.

(b) If a communication is made privately with the hearings officer or final decisionmaker in violation of subsection (a), the hearings officer or final decisionmaker shall disclose the communication to all parties on the record and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication.

**Representation and appearances**

(a) An individual may appear in the individual’s own behalf; a general partner of a partnership may represent the partnership; a bona fide officer, trustee, or managerial level employee of a corporation, trust, or association may represent the corporation, trust or association; the manager of a manager-managed limited liability company and a member of a member-managed limited liability company may represent the limited liability company; and an officer or employee of an agency of the state or a political subdivision of the state may represent that agency in any hearing before the department. A legal guardian may appear on behalf of a ward, within the scope of the guardian’s duties, and a parent may appear on behalf of his or her minor child, unless the parent’s rights have been terminated by court order.

(b) In any hearing under these rules, a party may be represented by a lawyer or lawyers qualified to practice before the Supreme Court of Hawaii or an attorney who is allowed to appear pro hac vice. Any attorney actively licensed to practice law by the highest court of a state or territory of the United States or District of Columbia who is not a resident of or regularly employed in the State of Hawaii may be permitted to associate himself or herself with a member or members of the Hawaii bar in the presentation of the specific contested case at the discretion of the hearings officer or final decisionmaker.

(c) A party shall not be represented in any hearing except as stated in subsections (a) and (b).

(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 party 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.

(e) No past officer, employee, or lawyer of the board or the office of maunakea management shall
in any manner represent or appear on behalf of any person regarding any matter or proceeding which was pending when the individual was associated with the board or the office of maunakea management, unless the individual first obtains the written consent of the board or its authorized representative. To obtain that consent, the individual shall submit a sworn statement showing that the individual did not personally consider or gain particular knowledge of the facts of the matter or proceeding during the individual’s association with the board or the office of maunakea management.

(f) No individual appearing before the hearings officer in any proceeding or matter shall knowingly accept assistance from another individual regarding that proceeding or matter, if the second individual would be precluded by this section from appearing in such proceeding or matter

**Intervention**

(a) Any person or agency not a party to the contested case hearing may seek to become a party by filing a motion for leave to intervene. The motion shall state the grounds upon which the person or agency claims to have an interest in the proceeding. The person or agency shall file the motion at least ten days before the hearing and shall serve the motion upon the hearings officer and all parties or their attorneys. Motions for intervention will be granted to persons or agencies properly seeking and entitled as of right to be admitted as a party; otherwise, at the discretion of the hearings officer, they may be denied. As a general policy, such motions shall be denied unless the person or agency shows that it has an interest in a question of law or fact involved in the contested matter and the disposition of the contested case may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

(b) The hearings officer may permit intervention to such an extent and upon such terms as the hearings officer may deem proper and shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) When a violation is alleged for which an administrative remedy is provided, a contested case shall be held upon the petition of the alleged violator, provided that the petition is made in accordance with the provisions under contest of notice of Violation. No person or government agency other than the alleged violator and the office of maunakea management shall be admitted as parties in such proceedings.

**Substitution of parties**

Upon motion and for good cause shown, the hearings officer may order substitution of parties, except that when an individual party dies or a government officer is replaced, substitution may be ordered without the filing of a motion.

**Consolidation and severance**

(a) The hearings officer, upon the officer’s own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if the hearings officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of business and to the ends of justice and will not unduly delay or harm the proceedings.
(b) The hearings officer, upon the officer's own initiative or upon motion, for good cause, may order any proceedings severed with respect to any or all parties or issues

**Conduct of hearing**

(a) In contested cases involving alleged violations of law, to the extent necessary, the office of maunakea management shall be treated as a party for the purpose of establishing the case and staff members may be called as witnesses.

(b) In hearings on violations, the office of maunakea management shall make the first opening statement and the last closing argument, unless the hearings officer directs otherwise. Otherwise, in hearings on complaints, the complainant shall make the first opening statement and the last closing argument unless the hearings officer directs otherwise. Other parties shall be heard in such order as the hearings officer directs.

(c) The party initiating the proceeding or, in the case of proceedings on alleged violations of law, the office of maunakea management, 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.

**Filing of documents**

(a) All pleadings, submittals, complaints, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any contested case shall be filed with the chancellor's office, unless otherwise specified by the hearings officer and shall comply with the time limit, if any, set forth in any statute, rule, or order for that filing. The date on which the papers are actually received is the date of filing, unless otherwise provided under subsection (g).

(b) Complaints, notices of violation and orders, and similar documents may be issued by rangers or other authorized persons in enforcement cases without first filing under subsection (a), but the original document shall be transmitted to the hearings officer after a hearing is requested and the hearings officer is appointed.

(c) All papers shall be written in black ink, typewritten, photocopied, or printed, shall be plainly legible, and shall be on strong durable paper, no larger than 8-1/2" x 11" in size, except that tables, maps, charts and other documents may be larger, but shall be folded, if possible, to the size of the documents to which they are attached, and that photos, maps, and other appendices may be submitted in color.

(d) All papers must be signed in indelible ink by the party or the party's duly authorized agent or attorney. The signature shall be legible and constitutes a certification that the person has read the document; that to the best of person's knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for improper purpose, such as harassment, unnecessary delay, or increase in cost.

(e) Unless otherwise specifically provided by a particular rule or order of the board or its authorized representative, an original and one copy of all papers shall be filed. Properly authenticated copies of documents may be received in evidence and attached to papers filed with the department.

(f) The initial document filed by any party in any proceeding shall state on the document's first
page the name, mailing address, phone number, and e-mail of the individual or individuals who may be served with any documents filed in the proceeding. All documents filed afterwards shall contain a certification by the party filing the document that a copy was served on the opposing party. The certification shall contain the name and address of the person served; the method of service (i.e., personal service, U.S. mail, postage prepaid, courier, etc.), the date service was or will be made, and the certification shall be signed by the party making the service. If an attorney represents a party, the document shall be served upon the party’s attorney at the attorney’s business address.

(g) In a specific case under a hearings officer’s jurisdiction, the hearings officer may authorize facsimile or electronic filing and service of documents and may specify the means and effective filing dates. The hearings officer shall require that any facsimile or electronic documents be sufficiently legible and authentic and have a signature equivalent, and the hearings officer may require the contemporaneous or later submission of the original signed paper versions. The hearings officer shall provide that a durable paper record of any facsimile and electronic communications be maintained as needed.

**Amendment of documents and dismissal**

(a) If any document initiating, or filed in, a contested case is not in substantial conformity with these rules, or is otherwise insufficient, the hearings officer, on its own motion or on motion of any party, may reject or dismiss the document or require its amendment.

(b) If amended under subsection (a) or otherwise, a document shall be effective as of the date of the original filing.

**Retention of documents**

All documents filed with or presented to the hearings officer may be retained in the files of the board or its authorized representative. Documents, which are part of a contested case record, shall be retained at least until the time for any appeal has expired. However, the hearings officer may permit the withdrawal of original documents upon submission of properly authenticated copies as replacements.

**Public access; documents and hearings**

(a) Documents filed with the board or its authorized representative in a contested case shall be available for public inspection.

(b) Hearings shall be open to the public unless otherwise provided by law. Prehearing and post hearing conferences shall be closed to the public. Hearings may be closed to the public for the time necessary to address information and documents that are confidential pursuant to law.

(c) Confidential treatment may be requested where authorized by statute or rule. For good cause shown, the hearings officer may grant such a request.

**Prehearing conferences**

(a) The hearings officer may order and hold prehearing conferences with the parties to formulate or simplify issues, obtain stipulations of facts, arrange the exchange of proposed exhibits or
written testimony, set schedules, exchange names of witnesses, limit the number of witnesses, and determine such other matters as may expedite the orderly conduct and disposition of the case as permitted by law.

(b) The hearings officer may request memoranda 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 memoranda and the number of pages. Exhibits may be reproduced in an appendix to a memorandum. A memorandum of more than twenty pages, exclusive of exhibits, shall contain a table of contents and table of authorities.

c) If a party fails to abide by any prehearing or other order of the hearings officer or final decisionmaker, the hearings officer or final decisionmaker may enter an order refusing the disobeying party from supporting or opposing claims or defenses, or prohibiting the disobeying party from calling witnesses and/or introducing designated matters into evidence.

**Motions**

(a) All motions, other than those made during a hearing, shall be made in writing to the hearings officer, shall state the relief sought, and shall be accompanied by an affidavit, declaration, or memorandum setting forth the grounds upon which they are based. The hearings officer shall determine whether a motion shall be heard or decided upon written submissions, and may set the time for filing all motions and opposing memoranda, if any.

(b) Unless otherwise specified by the hearings officer, the moving party shall serve a copy of all motions, affidavits, declarations, and memoranda on the hearings officer and all other parties not less than ten working days before any hearing.

(c) Unless otherwise specified by the hearings officer, a memorandum in opposition or a counter affidavit or declaration may be filed and served on all parties not later than three working days before any hearing. The original and proof of service shall be filed with the hearings officer. No party may file any papers less than three days before the date set for the hearing unless otherwise permitted or ordered by the hearings officer.

(d) No reply or supplemental memoranda shall be filed unless specifically allowed by the hearings officer.

(e) When service is made by mail, two calendar days shall be added to the periods required in subsections (b) and (c).

(f) 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.

**Evidence**

(a) The hearings officer shall follow section 91-10, Hawaii Revised Statutes, with respect to evidence submitted or objected to in contested case hearings. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

(b) The hearings officer shall rule on the admissibility of all evidence.

(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 or at the direction of the hearings officer, a witness may submit written testimony into the record on direct examination. Before any prepared testimony is read or submitted, unless excused by the hearings officer, the witness shall deliver copies thereof to the hearings officer and all counsel or parties. Admissibility shall be subject to the rules governing oral testimony. The hearings officer may order that copies of the prepared testimony be served upon all parties and the hearings officer a set number of days before the hearing to permit proper cross examination of the witnesses on matters contained in the prepared testimony. The hearings officer may order the submission of written direct examination if the officer deems that substantial savings in time will result, or for other good cause.

(f) If relevant and material information is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other information in the document would burden the record, at the discretion of the hearings officer, the relevant and material information may be read into the record, or copies of the redacted document 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) If testimony in a proceeding 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.

(h) Exhibits shall be prepared as follows: 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.

(i) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii.

(j) The hearings officer may disregard or strike direct testimony if opposing parties do not have an opportunity for cross-examination.

(k) 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.

Subpoena of witnesses

(a) Witnesses may be subpoenaed to give oral testimony, produce documents and things, or both. Requests for the issuance of subpoenas requiring the attendance of a witness for the purpose of taking oral testimony 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. 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 document or record is believed to be material and relevant to the issues involved.

(b) Subpoenas may be issued by the hearings officer. No subpoena shall be issued unless the party requesting the subpoena provides the name and address of the witness; identifies the document, record or thing sought, if any; and tenders the proper, required 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.

(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, except that State and county agencies are exempt from paying witness fees and mileage.

**Continuance of contested case hearing**
The contested case hearing shall be held at the time and place set in the notice of hearing. The hearings officer may continue the hearing based on a stipulation, motion, or the hearings officer’s own initiative, and at the hearing may continue the hearing from day to day or adjourn the hearing to a later day or to a different place without notice other than an announcement at the hearing.

**Defaults, dismissals, and summary decisions**
(a) For good cause shown or upon failure of a party to appear after proper notice, a hearings officer may find a party in default, or dismiss a complaint, whether or not a party requests such relief.
(b) If a party fails to request a hearing within the time specified in the notice of violation or by statute, a party shall be in automatic default and subject to the order without the need for a finding or any other action by a hearings officer.
(c) Upon motion or the hearings officer’s own initiative and proposal, and after the parties have an opportunity to present their arguments, a hearings officer may render a summary decision and order where no genuine issue of material fact exists and a party is entitled to a decision as a matter of law.
(d) A default, dismissal, or summary decision may apply to only some parties or may resolve only some issues, and the hearings officer shall specify which parties or what legal issues and facts remain for hearing.
(e) If a default other than an automatic default under subsection (b), dismissal, or summary decision resolves all issues, then the hearings officer shall issue or propose appropriate decisions and orders, and for summary decisions, findings of fact and conclusions of law.

**Proposed and final decisions; exceptions and argument**
(a) After all evidence has been taken, the parties may submit, within the time set by the hearings officer, a proposed decision and order which shall include proposed findings of facts and conclusions of law (collectively, “proposal”).
(b) A hearings officer shall:
   (1) Render and serve on the parties or their attorneys a certified copy of the hearings officer’s proposed decision and order, findings of fact, and conclusions of law within thirty days after the end of the hearing or the parties’ submission of the parties’ proposals, whichever is later. The board or its authorized representative may extend this time if the hearings officer shows good cause in writing; and
   (2) Set a time limit for any party adversely affected by the hearings officer’s proposal to file and serve specific exceptions to the proposal, designation of parts of the record to
consider, and a request for argument before the board or authorized representative who will make the final decision. The hearings officer shall consider the time necessary for any transcription of the record when setting time limits.

(c) Exceptions or objections to the proposal shall be in writing and shall state, with particularity, the specific finding, conclusion, decision or order being challenged and the reasons why the proposal, or any portion thereof, is erroneous or not warranted based upon the evidence presented at the hearing or the law and shall identify the parts of the record which support the exception or objection.

(d) When the hearings officer is not the final decisionmaker, the final decisionmaker:
   (1) Shall consider any exceptions that a party files,
   (2) Shall consider the whole hearing record or those parts that the parties designate,
   (3) Shall hear any argument that has been requested, and
   (4) Should issue a final decision, order, findings of fact, and conclusions of law within thirty days after the hearings officer files the officer’s proposal or the parties file exceptions and present argument, whichever is later.

(e) When the hearings officer is also the final decisionmaker, the final decisionmaker should issue final decisions, orders, findings of fact, and conclusions of law within thirty days after the end of the hearing or the parties’ filing of proposed findings, conclusions, decision, and order, whichever is later.

(f) All final decisions, orders, findings of fact, conclusions of law, opinions, or rulings issued at the conclusion of a contested case shall be served upon the parties in the hearing by mailing a certified copy within a reasonable time to each party or to the party’s attorney of record.

**Transcripts; fees; corrections**

(a) When a stenographic or other record is taken, any party may request a certified transcript of the hearing. The party making the request shall be responsible for the fees for the transcript, unless the party is initiating an appeal to circuit court, in which case the office shall provide for a copy of the transcript of the hearing to be transmitted to the court for the appeal.

(b) Motions to correct the transcript shall be made within five days after receipt of the transcript, and motions shall be acted upon by the hearings officer within ten days.

**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 days of the service of the final decision imposing such fines and sanctions.

(b) Upon request filed by a party, the board or its authorized representative 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, or may refer the case to the university general counsel, the attorney general, or the county prosecutor for such an action.
Exhibit A
Violations and Schedule of Penalties
for the Maunakea Lands

(a) Violations and Schedule of Penalties:

Penalties for violations of this chapter is based on the severity of the harm to the resources or to public safety:

<table>
<thead>
<tr>
<th>Violation Description</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>No harm to natural, cultural or scientific resources or property</td>
<td>$100.00</td>
</tr>
<tr>
<td>Minor harm to natural, cultural, or scientific resources or property</td>
<td>$500.00</td>
</tr>
<tr>
<td>Significant harm to natural, cultural, or scientific resources or property</td>
<td>$2,500.00</td>
</tr>
<tr>
<td>Second violation within five years of a previous minor or significant violation</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Third violation within five years of a prior minor or significant violation and any subsequent violation</td>
<td>$10,000.00</td>
</tr>
</tbody>
</table>

Where “minor” harm is defined where the damage is valued $1,000.00 or less (utilizing cost of replacement, cost of repair, or other appropriate valuation methods), and “significant” harm is defined as where the damage is valued at more than $1,000.00.

(b) Violators shall be subject to any of the following:

1. a citation and fine as outlined in section a above;
2. immediate removal from the Maunakea lands,
3. a monetary assessment to recover the costs of mitigation or restoration required as a result of the violation,
4. a monetary assessment to recover the costs associated with enforcement proceedings,
5. revocation or suspension of permit, or
6. any combination of the above.