

COUNTY COUNCIL

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September 12, 2024

Lieutenant Governor Sylvia Luke
State of Hawaii
Hawaii State Capitol
Honolulu, Hawaii 96813

SEP 12 '24 AM 10:52
PLANNING DEPT

Dear Lieutenant Governor Luke:

In compliance with Section 91-4, H.R.S., we are transmitting for your files, two copies of the *Amendments to the Rules of Practice and Procedure of the County of Kauai Planning Commission* which was adopted by the County of Kauai Planning Commission on September 10, 2024.

Upon your receipt of these rules, please send us a confirmation of receipt. Thank you.

Respectfully submitted,

JADE K. FOUNTAIN-TANIGAWA
County Clerk, County of Kauai

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Enclosure

cc: County of Kauai Planning Commission w/ enclosure
Supreme Court Law Library, w/ enclosure

Subchapter 4 Intervention

- § 1-4-1 Applicability**
- § 1-4-2 Petition Filing**
- § 1-4-3 Contents of Petition to Intervene**
- § 1-4-4 Multiple Petitioners and Intervenors**
- § 1-4-5 Arguments For or Against Intervention**
- § 1-4-6 Action on Petition for Intervention**

SUBCHAPTER 4

PETITION TO INTERVENE

1-4-1 Applicability.

(a) All departments and agencies of the state and the county shall be admitted as parties upon timely application for intervention.

(b) A person who demonstrates an actual or threatened injury that is fairly traceable to the applicant's action, for which the Commission maintains authority to provide redress, may be admitted as Parties-Intervenors upon timely written application for intervention in conformity with these Rules.

(c) The Commission may deny an application to intervene when in the Commission's or Hearing Officer's sound discretion it appears that:

- (1) the position or interest of the applicant for intervention is substantially the same as a party-already admitted to the proceeding;
- (2) the admission of additional Parties-Intervenors will render the proceedings inefficient and unmanageable; or
- (3) the intervention will not aid in the development of a full record and will overly broaden issues.

(d) Upon admission of any intervenor, the Planning Department shall be automatically admitted as a party to the contested case.

(e) In no case shall intervention be allowed for appeals from actions of the Director pursuant to Subchapter 9 of these Rules, matters over which the Commission exercises only advisory functions, or the Planning Department exercises only ministerial functions.

1-4-2 Petition Filing.

(a) Petitions to intervene shall be in writing and conform with these Rules.

(b) The petition for intervention with Certificate of Service shall be filed with the Commission no less than seven (7) days prior to the first public hearing for which notice to the public has been published pursuant to law or no later than four (4) days prior to the first public hearing for matters that do not require notice by publication.

(c) Untimely petitions for intervention will not be accepted except for good cause or excusable neglect shown, but in no event will intervention be permitted after the Commission has taken the final vote on the matter. A finding of good cause or excusable neglect will depend upon the circumstances and will be determined at the discretion of the Commission.

- (1) Good cause is a sufficient reason beyond the control of the petitioner including acts of God.
- (2) Excusable neglect is due to extenuating circumstances within the control of the petitioner. Carelessness, ignorance of the rules, and deliberate or willful conduct do not constitute excusable neglect.

(d) A Certificate of Service shall verify and attest that all papers filed with the petition for intervention were served upon the applicant, Office of the County Attorney, and Planning Department in accordance with Section 1-3-3 of these Rules.

(e) Petitions for intervention shall be accompanied by a non-refundable filing and processing fee of \$300.00. In the event the petition for intervention is denied, such fees shall not be reimbursed.

1-4-3 Contents of Petition to Intervene.

(a) The petition shall contain the following:

- (1) The nature of Petitioner's statutory or other right;
- (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property;
- (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing; and
- (4) The effects of any decision in the Proceeding on Petitioner's interest.

(b) If applicable, the petition shall also refer to the following:

- (1) Other means available whereby Petitioner's interest may be protected;
- (2) Extent Petitioner's interest may be represented by existing parties;
- (3) Extent Petitioner's interest in Proceeding differs from that of the

other parties;

- (4) Extent Petitioner's participation can assist in, development of a complete record;
- (5) Extent Petitioner's participation will broaden the issue or delay the Proceeding; and
- (6) How the Petitioner's intervention would serve the public interest.

1-4-4 Multiple Petitioners and Intervenors.

(a) Multiple Petitioners. Petitioners deemed by the Commission to have similar intervention requests may be consolidated as a single Party represented by a single counsel or agent.

(b) Multiple Intervenors. If more than one intervenor is admitted to a contested case proceeding, the Hearing Officer or Commission may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The Hearing Officer or Commission shall have the right to impose reasonable subject matter limitations and time limitations on examination and cross-examination of witnesses, whether parties are represented by counsel.

1-4-5 Arguments For or Against Intervention.

(a) The petitioner shall be given an opportunity to argue on behalf of the petition to the Commission. The other parties shall then be given an opportunity to comment on or oppose the petition.

(b) If any party opposes the petition for intervention, the party shall file their motion opposing the petition as soon as practicable or state the objections for the record.

1-4-6 Action on Petition for Intervention.

(a) All petitions to intervene or in opposition to such intervention shall be reviewed and a decision rendered by the Commission prior to the commencement of the first public hearing.

(b) The Commission shall issue a written decision upon its denial of a petition for intervention.

(c) A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to chapter 91-14, HRS, as amended.

AMENDMENT TO THE RULES OF PRACTICE AND PROCEDURE OF THE KAUAI COUNTY PLANNING COMMISSION, CHAPTER 4 RELATING TO PETITIONS TO INTERVENE

Amendment to the Rules of Practice and Procedure of the Kauai County Planning Commission, Chapter 4 Petitions to Intervene were adopted by a vote of 5 to 0, with 2 absent members of the Planning Commission of the County of Kaua'i, State of Hawai'i at its meeting held on the 10th day of September, 2024 as follows:


FOR	AGAINST	ABSTAIN/ABSENT
Gerald Ako, Helen Cox, Francis DeGracia, Jerry Ornellas, Lori Otsuka		Donna Apisa, Glenda Nogami Streufert

The amendments shall become effective ten (10) days upon filing with the County Clerk of the County of Kauai.


BY ORDER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUA'I, STATE OF HAWAII.


Gerald Ako, Vice Chair


APPROVED AS TO FORM AND LEGALITY:


Laura Barzilai
Deputy County Attorney

APPROVED THIS 11th DAY OF September, 2024


Derek S.K. Kawakami
Mayor of the County of Kauai

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN THE OFFICE OF THE COUNTY CLERK THIS 12th DAY OF September, 2024.


Jade K. Fountain-Tanigawa
County Clerk

PUBLIC NOTICE: June 7, 2024 (Posted with Office of County Clerk); June 7, 2024 (Publications, Garden Island Newspaper and Star Advertiser)

PUBLIC HEARING: July 9, 2024 and September 10, 2024