

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
REIKO MATSUYAMA, MANAGING DIRECTOR

SPECIAL PERMITS

○ **What is a Special Permit?**

§205-6(a): The county Planning Commission may permit certain unusual and reasonable uses within State Agricultural and Rural land use districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition. Copies of the special permit petition shall be forwarded to the State Land Use Commission, the State Office of Planning, and the State Department of Agriculture for their review and comment.

§205-6(d): Special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the State Land Use Commission. The Land Use Commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.

○ **Chapter 13 of the County of Kaua'i, Planning Commission Rules and Regulations:**

13-1. Authority. This rule governs special permit procedures pursuant to authority conferred by Chapter 205-6, Hawai'i Revised Statutes (HRS), as amended.

13-2. Definition. Unless otherwise stated herein, definitions of terms used herein in this chapter shall mean the same as those defined in Section 8-1.5 Kaua'i County Code (1987), as amended, and in Chapter 205, HRS.

13-3. Standing to Submit a Petition for a Special Permit. Any applicant who desires to use its land within a State Land Use Agricultural or Rural district other than for an allowable agricultural or rural use as set forth in Chapter 205, HRS, may petition the Planning Commission for permission to use its land in the manner desired.

13-4. Petition and Content. A petition for a Special Permit shall be filed with the Planning Department and shall include the following:

- (1) A nonrefundable filing and processing fee of one hundred fifty dollars (\$150).

- (2) Petitions for issuance of a Special Permit shall specify the use desired and state concisely the nature of the applicant's interest in the subject matter and the reasons for seeking the special permit and shall include, if applicable and appropriate, any facts, views, arguments, location map, plans drawn to scale, including a site plan of the project area with reference points (property lines, roadways, shoreline, etc.) and all existing and proposed uses and/or structures shown thereon, floor plans and elevations of the proposed structures, and a statement addressing Hawaiian customary and traditional rights under Article XII, Section 7 of the Hawaii State Constitution, and relevant data and copies thereof as required by the Planning Department in order to render a petition complete. A statement shall be submitted which addresses why existing properties that are properly designated or zoned are not suitable for the proposed use. The Planning Department may route the petition to appropriate government agencies for comments and recommendations.
- (3) A statement of the reasons for the granting of the Special Permit citing how the proposed use would promote the effectiveness and objectives of Chapter 205, HRS and why the proposal is an unusual and reasonable use of the land. In its petition, the applicant shall also address the guidelines set forth in Section 13-6 of this chapter.

13-5. Public Hearing.

(a) The Planning Commission shall conduct a public hearing within a period of sixty (60) calendar days from the date of acceptance of a properly filed and completed petition as determined by the Planning Department, unless the sixty day period is extended by the applicant to the extent permitted by law. The Planning Commission shall give written notice to the applicant and the Land Use Commission and notice shall also be published once within the County of Kaua'i, at least twenty (20) calendar days prior to the date of the public hearing in a publication pursuant to Section 1-28.5, Hawaii Revised Statutes, as amended.

(b) The notice of the public hearing shall state:

- (1) Location of the property involved;
- (2) Land area of proposed use;
- (3) Nature of the proposed use;
- (4) Date, time, and place of the hearing; and
- (5) That persons may petition for intervention pursuant to the Planning Commission's Rules of Practice and Procedures, as amended.

(c) In the event a project being considered for a Special Permit also requires other permits or approvals, the Planning Commission may conduct joint hearings.

(d) The applicant, at least twenty (20) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Real Property Assessment Notice List located at the Real Property Division of the Department of Finance of the County of Kaua'i, or mail, by certified mail, written notice to the addresses shown on such Real Property Assessment Notice List for at least eighty-five per cent (85%) of all tax map key parcels within 300 feet from the nearest point of the tax map key parcel involved in the petition to the nearest point of the affected tax map key parcel. For purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same tax map key parcel. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

- (1) date;
- (2) time;
- (3) location;
- (4) land area of proposed use;
- (5) purpose;
- (6) description or sketch of property involved; and
- (7) that persons may petition for intervention pursuant to the Planning Commission's Rules of Practice and Procedures, as amended.

(e) At least seven (7) days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to whom such notices were sent.

(f) Should the applicant fail to comply with the foregoing notification requirements, the public hearing shall be postponed. In this case, the applicant shall pay for the cost of republication and processing which shall be the same amount as set forth in Section 13-4 (l) above and shall follow the same notification requirements of this section in the renotification of affected persons. The Planning Commission shall reschedule another hearing within sixty (60) days of the receipt of the fee. The time between the initially scheduled public hearing date and the date of a rescheduled and properly notified public hearing shall not be counted towards the maximum time period as designated in Section 13-7 of these Rules.

13-6. Guidelines for Issuance of Special Permit. The Planning Commission may approve a Special Permit under such protective restrictions as may be deemed necessary if it finds that the proposed use:

(a) Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be. The Planning Commission shall consider the following guidelines in determining unusual and reasonable use:

- (1) Such use shall not be contrary to the objectives sought to be accomplished. By Chapters 205 and 205A, HRS, and the rules of the Land Use Commission;
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- (4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district; and

(b) Would promote the effectiveness and objectives of Chapter 205, HRS, as amended.

13-7. Maximum Time Period.

(a) The Commission shall take a vote on a petition for Special Permit within sixty (60) days after the close of the public hearing but no later than two hundred and ten (210) days after the acceptance of the application, or within a longer period as may be agreed by the applicant to the extent permitted by law. If a quorum or a majority vote on a petition is not obtained by the expiration of the applicable time period above, the Commission shall have a maximum time period of an additional forty-five (45) days to vote on the petition. Within this time period, the Planning Commission shall:

- (1) For a Special Permit involving fifteen (15) acres or less of land area, approve or approve with modification the petition by stating the reasons and attaching appropriate conditions; or
- (2) For a Special Permit involving more than fifteen (15) acres of land area, recommend to the State Land Use Commission approval or approval with modification of the petition and state the reasons for the said recommendation and attach appropriate conditions; or
- (3) Deny the petition and state the reasons.

(b) In cases where contested case/intervention proceedings pursuant to these Rules are instituted, the time lines established for such proceedings shall apply and the maximum period of time for action by the Commission shall be within sixty (60) days after the presentation of final oral arguments or within a longer period as may be agreed by the parties to the extent permitted by law. If a quorum or a majority vote on a petition is not obtained by the expiration of the applicable time period above, the Commission shall have a maximum time period of an additional forty-five (45) days to vote on the petition.

(c) The Planning Commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, and if appropriate, a time limit for the duration of the particular use, which shall be a condition of the Special Permit. If the permitted use is not substantially established to the satisfaction of the Planning Commission within the specified time, it may revoke the permit pursuant to Chapter 12 of these Rules.

13-8. Action.

(a) Pursuant to Section 205-6(c), HRS, a decision in favor of the applicant shall require a majority vote of the total membership of the County Planning Commission. For purposes of Section 91-13.5, HRS, a vote by the Commission on a petition for Special Permit within the maximum time period specified in Section 13-7 of these Rules, shall be construed as the Commission having acted upon the petition.

(1) If the Commission votes on an application, and the application fails to obtain a majority vote of the total membership of the Commission pursuant to Section 205-6(c), HRS, the matter may be continued to any subsequent regular meeting that is scheduled within the maximum time frame set forth in Section 13-7 of these Rules. If the application fails to obtain a majority vote of the total membership of the Commission by the expiration of the maximum time frame, a subsequent vote adopting findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the Commission.

(2) For purposes of Section 91-13.5, HRS, if the Commission fails to act upon the petition by failing to vote on the petition within the time period which is set forth in Section 13-7 of these Rules, the petition shall be deemed approved after an additional thirty (30) days subject to such protective restrictions as may be deemed necessary and as permitted under HRS 205-6(c). These conditions may be established by the Commission within the thirty (30) days. The Commission shall adopt findings of fact, conclusions of law, and decision and order reflecting approval and conditions of the petition.

(b) For petitions involving more than fifteen (15) acres which have been approved or approved with modification, the Planning Commission shall forward a copy of the decision together with the complete record, including maps, charts, and other exhibits as evidence of the proceeding before the Planning Commission to the Land Use Commission within sixty days (60) after the decision is rendered.

(c) The Planning Commission shall not consider any petition for Special Permit covering substantially the same request for substantially the same land as had previously been denied by the Planning Commission within six (6) months of the date of the order denying the petition. Provided, however, in cases where an order denying the petition pursuant to subsection 13-8(a)(l) above is filed by the Commission, the petitioner may resubmit their petition at any time.

(d) Any party may seek judicial review of the Commission's final decision in the manner set forth in Section 91-14, Hawaii Revised Statutes, as amended.

13-9. Severability. If any portion of the foregoing rules or the applicability thereof to any person, property or circumstance is held invalid for any reason, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this and these rules are declared to be severable.

13-10. Effective Date. The aforementioned rules shall become effective ten (10) days after filing with the County Clerk of the County of Kaua'i.

○ **ELECTRONIC DOCUMENT SUBMITTALS:**

The submittal of electronic documents, either in whole or in part of this application IS REQUIRED. Electronic document submittals shall adhere to the following formats: PDF (Adobe Reader), JPEG, or Word. However, .PDF files are highly encouraged. ALL maps, drawings and/or plan **must** be drawn to an appropriate scale (architectural or engineering) and must be indicated on the document.

Pre-Application Meeting: The department encourages Applicant(s) to schedule a pre-application meeting with staff to discuss the application and processing requirements.

APPLICATION CHECK LIST

a.	Pre-Application meeting with Department of Planning	
b.	Completed Zoning Permit Application	
c.	Fees	
d.	Project Description/Petition	
e.	Scaled Drawings: <ul style="list-style-type: none"> ○ Site/Plot Plan ○ Location Map ○ Building/Floor Plans 	
f.	Photos (labeled and keyed to a general site map)	

NOTE: The above provides a general summary and overview of the requirements for a Use Permit application. Other requirements will apply during the process and instructions will be made available. Please verify with the Department of Planning at (808) 241-4050 for any additional details, requirements, and questions before preparing/submitting a Use Permit application.