

County Special Use Permits (SUP)
in Agricultural Districts:
Land Mines for the Unwary

Overview of SUP Requirements
and Application Process

Presented by:
Elizabeth Haws Connally, Esq.



State Law

- HRS Chapter 205
 - Defines State law and outlines what counties may regulate

State Land Use Commission
("LUC")

- LUC sets standards for land use districts
- 4 Land use districts
 - 1. Urban
 - 2. Conservation
 - 3. Rural
 - 4. Agricultural

[HRS § 205 -2, HAR § 15-15]

What is a Special Use Permit?
aka Special Permit or Use Permit

Permit obtained from the County Planning Commission to allow activities or uses in an agricultural district, which are not specifically allowed by statute or county regulations

HRS § 205-6 (a)

§ 205-6. Special permit.

(a) Subject to this section, the county planning commission may permit certain **unusual and reasonable uses** within agricultural and rural 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 land use commission, the office of planning, and the department of agriculture for their review and comment.

Is the Proposed Use "Unusual and Reasonable"?

- Certain "unusual and reasonable" uses within agricultural district may be permitted - Individual exemptions
- HAR § 15-15-95 (b) provides guidelines to determine "unusual and reasonable" uses – allow for exemptions from the permissible uses in agricultural district as described in HRS § 205-4.5

What are standard activities and uses in an agricultural district?

(16 permissible uses by State statute)

1. Cultivate crops
2. Game and Fish propagation
3. Raising Livestock
4. Farm Dwelling used in connection with farm
5. Public institution buildings necessary for agricultural practices
6. Public recreational areas, parks picnic grounds
7. Public utility stations
8. Retention of buildings of historical interest

9. Roadside Stands
10. Agricultural Processing facilities
11. Agricultural Parks
12. Plantation communities
13. Agricultural tourism – conducted on working farm
- must be "accessory and secondary to principal ag use
- only applies to a county that has adopted ordinances regulating ag tourism [H.R.S. § 205-2(d)]
14. Windfarm
15. Biofuel processing facilities
16. Wireless communication antennas

Who is Required to Obtain a Special Use Permit?

Anyone in an agricultural district who wants to engage in activities not specifically listed as an approved use

Examples:

More than a roadside stand

- sales room for value-added products;
- dinners featuring locally produced products

Why should I go through the permit process?

- Won't it take time?
- Won't it cost money?
- Why can't I do what I want?
It's my land.

County Can Order Cease & Desist

- Shut down operations until compliant – Loss of \$\$
- Possible Fines
- Forced to deal with violation
- Submit Special Use Permit Application

Know Your Permitting Requirements Before You Start

- Each county has a different set of regulations. State granted counties power to enact ordinances [HRS § 46-1.5(13)]
- Special Use Permit
 - If more than 15 acres – also need approval from State Land Use Commission
 - Other operational permits needed for business:
 - Building Permits
 - Plumbing
 - Electrical
 - Food Service

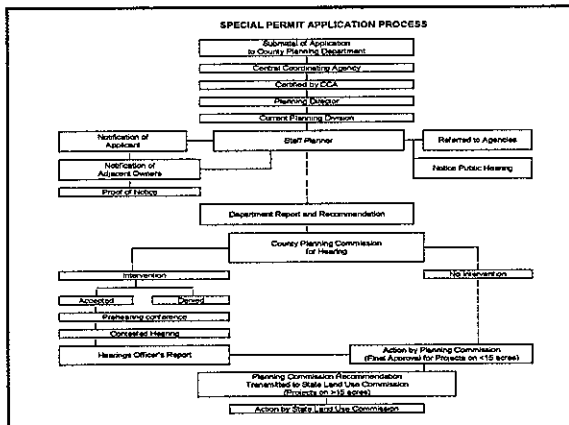
What's In A SUP Application?

All counties have different requirements
Applications Provided

The following are items required by all counties:

- > Filing Fee
- > Description and size of the Property, TMK
- > Plot Plan
- > Detailed explanation of existing use and proposed use(s), impact on traffic, environment and public services
- > Explain how the proposed use is "unusual and reasonable," but within the objectives of land use laws

What's the Special Permit Application Process?



Where Do I Find More Information?

See Handout

- Zoning References
- HRS § 205-6 – Special Permit
- HAR § 15-15-95 – Special Permits
- Case Law

This presentation provides general information only – it does not constitute legal advice. You should seek legal advice to determine your own obligations.

Questions?

Thank You

Elizabeth Haws Connally
Alston Hunt Floyd & Ing
(808)-524-1800
ehaws@ahfi.com



SPECIAL PERMIT APPLICATION PROCESS

