



SPECIAL PERMITS



Special Permits

- For activity that is not specifically allowed in a district but is consistent with the designation.
- Usually in agricultural land (conservation land is governed by DLNR)
- Proceeding is initiated and heard at county level.
- LUC then holds a hearing to confirm, deny or modify the county decision based on the record made at the county level.
- Examples include rock quarries, dump, churches, processing facilities, etc.
- Recent changes to chapter 205 require a SP when solar panels are to be placed on class B or C lands regardless of the acreage involved.

SPECIAL USE PERMIT FLOWCHART

[Part 1: County Planning Department]

Applicant Files SP Application with the
County Planning "PC" Department

HRS §205-6
HAR §15-15-95

County PC Holds Hearing on Application

County PC Acts on the Application

Does Application Involve
Land Area Greater Than 15 Acres

HRS §205-6(d)
HAR §15-15-95(b)

NO

YES

IF NO: County Decision is Final.
No Action is Required by the LUC

HRS §205-6(e)
HAR §15-15-95(b)

IF YES: If Approval is Recommended County Planning Department Forwards Copy of
PC Decision and Complete Record to the LUC withing 60 Days for Final Disposition

[Part 2: Land Use Commission]

Has Complete Record Been Transmitted

NO

YES

IF NO: LUC Staff
Informs County of
Lack of Complete
Record in Writing.

IF YES: LUC Schedules a Hearing Upon
Receipt of the Complete Record

LUC Acts on the Application
Within 45 Days

HRS §205-6(e)
HAR §15-15-96(a)

HAR §15-15
Subchapter 5

LUC Issues Decision & Order

If Denial,
Modification
or Remand

LUC Issues D&O. Applicant May Appeal Denial or
Modification to Circuit Court. If Remanded, PC Must Hold
Further Proceedings to Address Issues Raised on Remand.



Permissible Uses

Chapter 205 provides what activities (uses) can be undertaken in the different districts.

If a use is listed in chapter 205 as an allowed use, no LUC permits are required to undertake the activity or build the associated structure.

NOTE: County building/zoning etc. permits may still be required. County zoning codes can be MORE restrictive than chapter 205 (but not less).



Permissible Uses In the Agricultural District (205-4.5)

There are 21 allowed uses set forth in 205-4.5 ranging from activities that are generally associated with agricultural undertakings to infrastructure to utility needs to processing facilities to plantation communities. In certain cases, energy producing facilities are allowed as well.

Ocean Vodka processing facility with solar panels

However:

(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless those A and B lands within the subdivision are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

As an Aside

If the land is classified as C,D,E or U then the limitations on use are governed by 205-5 which gives the county leeway to further define the uses in 205-4.5 to include agricultural tourism uses and what is an accessory use on a farm IF there is a bona fide farming operation...



205-6 Allows Other Uses

The LUC only gets involved with SP's for land "the area of which is greater than 15 acres" OR lands designated important agricultural lands.

The County planning commission hears the matter first pursuant to a petition (regardless of acreage the petition is forwarded to the LUC for comment).

If the area is over 15 acres, the planning commission must then transmit a complete record of the proceedings to the LUC for its approval.

Within 45 days the LUC must:

- approve
- deny or
- approve with additional restrictions



Special Permit proceedings before the LUC are *not* contested case hearings



The decision is based on the record of the county proceedings and the evidence presented at that level.

The Commission can ask for clarification

The Commission can ask for additional information from the parties. However, this may trigger a remand to the County for further proceedings.

No new parties may be admitted from those at the county level.

No formal evidentiary proceeding.

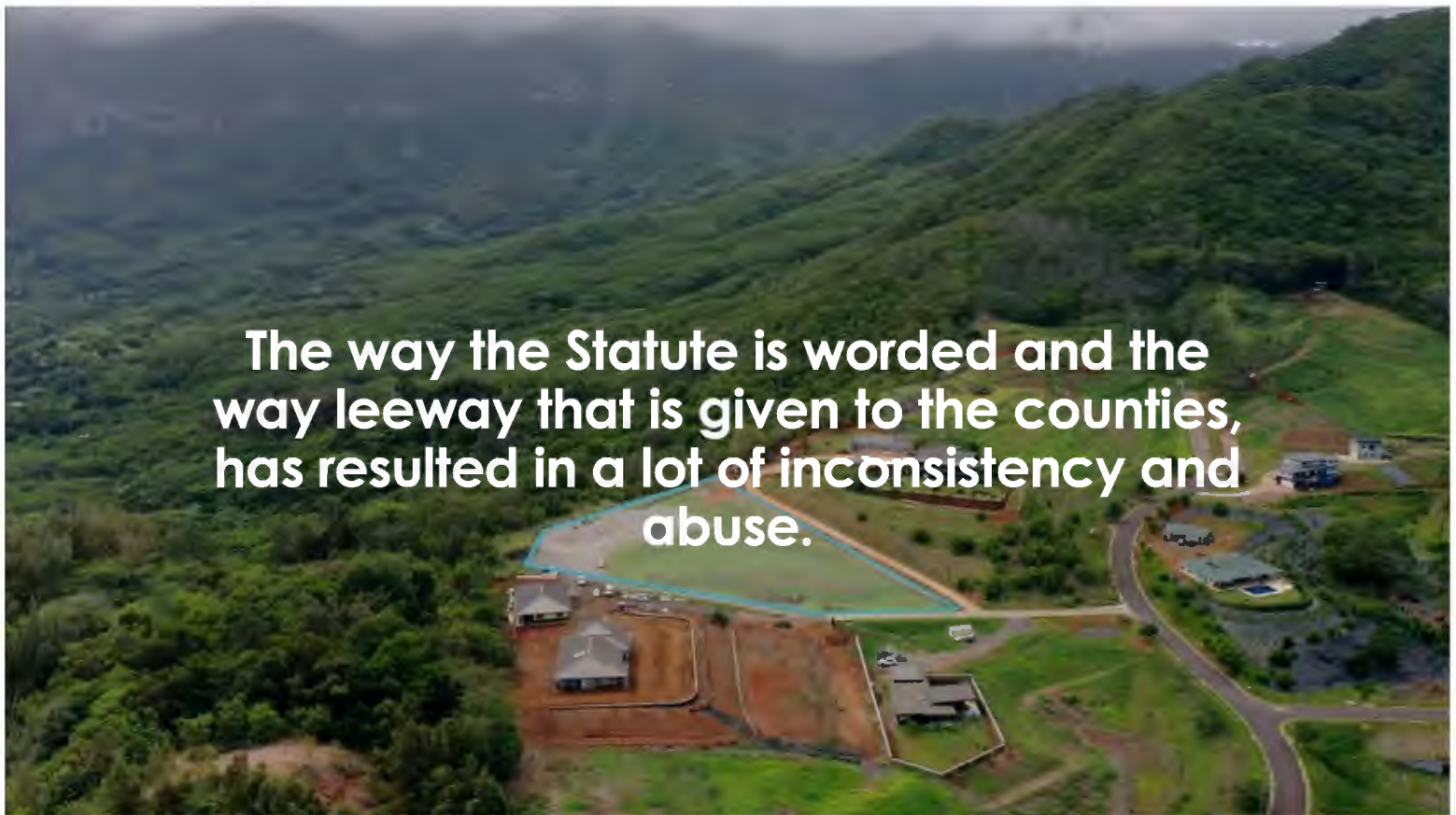
The decision **MUST** be based on, and supported by the record (Waimanalo Gulch case).

Decision and Orders

A Decision and Order is prepared by staff after the proceedings and a second hearing is held to adopt the order.



The way the Statute is worded and the way leeway that is given to the counties, has resulted in a lot of inconsistency and abuse.





What does “land the area of which is greater than fifteen acres” mean?

- The counties have interpreted this top mean that the fifteen-acre provision refers to the use not the lot size

What is an “unusual and reasonable use within an agricultural district”?

- Some counties see this as a catch-all allowing everything, even if it is prohibited by another statutory section.
- Allowed uses? Churches? Repair shops? Auto repair shops? B&Bs? Yoga studios? Wellness centers? Energy production?
- Some of these uses are urban or industrial uses—is an SP the right mechanism?

“Parceling” issue (rock quarry)

Agricultural Subdivisions?