

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 1 ADMINISTRATION

CHAPTER 5

CONSERVATION DISTRICT

Subchapter 1 General Provisions

- §13-5-1 Purpose
- §13-5-2 Definitions
- §13-5-3 Appeals
- §13-5-4 Mediation
- §13-5-5 Amendments
- §13-5-6 Penalty
- §13-5-7 to 13-5-9 (Reserved)

Subchapter 2 Subzones

- §13-5-10 Subzones; generally
- ~~§13-5-11 Protective (P) subzone~~
- §13-5-12 Limited (L) subzone
- §13-5-13 Resource (R) subzone
- §13-5-14 General (G) subzone
- §13-5-15 Special (S) subzone
- §13-5-16 Designation of subzones
- §13-5-17 Boundary determinations; criteria
- §13-5-18 to 13-5-21 (Reserved)

Subchapter 3 Identified Uses and Required Permits

- §13-5-22 Identified land uses in the protective subzone
- §13-5-23 Identified land uses in the limited subzone
- §13-5-24 Identified land uses in the resource subzone
- §13-5-25 Identified land uses in the general subzone
- §13-5-26 to 13-5-29 (Reserved)

§13-5-1

Subchapter 4 Procedures for Permits, Site Plan Approvals and Management Plans

- §13-5-30 Permits, generally
- §13-5-31 Permit applications
- §13-5-32 Fees
- §13-5-33 Departmental permits
- §13-5-34 Board permits
- §13-5-35 Emergency permits
- §13-5-36 Temporary variance
- §13-5-37 Nonconforming uses
- §13-5-38 Site plan approvals
- §13-5-39 Management plan approvals
- §13-5-40 Hearings
- §13-5-41 Single family residence; standards
- §13-5-42 Standard conditions
- §13-5-43 Time extensions
- §13-5-44 Revocation of permits
- §13-5-45 Severability

Historical Note: This chapter is based substantially upon chapter 13-2 [Eff 6/22/81; am and comp 12/27/90; comp 12/5/91; am and comp 12/31/92; R]

SUBCHAPTER 1

~~GENERAL PROVISIONS~~

§13-5-1 Purpose. The purpose of this chapter is to regulate land-use in the conservation district for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-1)

§13-5-2 Definitions. As used herein unless otherwise provided:

"Accessory use" means use of land or of a building or a portion thereof that is customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

"Aquaculture" means the cultivation and production of aquatic life in a controlled salt, brackish, or fresh water environment.

"Artificial reef" means an area of the sea where objects have been placed on the ocean bottom to create a habitat for fish and other marine organisms.

"Board" means the board of land and natural resources.

"Board permit" means a permit approved by the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Commercial purpose" means those land uses which entail or comprise the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic in goods and services or commerce in general; provided, however, that the use of land for public utility purposes shall not be considered a commercial purpose.

"Communications systems" means towers, antennas, buildings, cables and other accessory structures for electronic, radio frequency or microwave transmissions or receptions.

"Conservation district" means those lands within the various counties of the State and state marine waters bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii, 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto.

~~"Department" means the department of land and natural resources.~~

"Departmental permit" means a permit approved by the chairperson.

"Forest reserves" means those lands set aside as forest reserves by the department pursuant to section 183-11, HRS.

"Hearing officer" means a person or persons designated or appointed by the board or chairperson to conduct public hearings or proceedings on behalf of the board.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old.

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled "An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges," as originally enacted and amended.

"Land" means all real property, fast or submerged, and all interests therein, including fauna, flora,

§13-5-2

minerals and all such natural resources, unless otherwise expressly provided.

"Landowner" means an owner of land, or of any estate or interest in that land.

"Land use" means:

- (1) The placement or erection of any solid material on land if that material remains on the land more than fourteen days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, mining or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, non-commercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS relating to certain traditional and customary Hawaiian practices.

"Management plan" means a comprehensive plan for carrying out multiple land uses.

"Mooring" means a device for holding a vessel in place, where an anchor, concrete block or similar device is placed or dropped on submerged land with a line attached to a buoy to which the vessel is attached.

"Natural area reserve" means those state lands that have been designated as part of the Hawaii natural area reserve system by the department pursuant to section 195-4, HRS.

"Natural resource" means resources such as plants, aquatic life and wildlife, cultural, historic and archeological sites and minerals.

"Nonconforming use" means the lawful use of any building, premises or land for any trade, industry, residence or other purposes which is the same as and no greater than that established immediately prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

"Plant sanctuary" means an area of land set aside to preserve, protect, conserve, and manage particular plant species.

"Scenic area" means areas possessing natural, scenic, or wildland qualities.

"Single family residence" means a building or structure used or designated and intended to be used as a home or dwelling place for a family.

"Site plan" means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.

"State marine waters" means all waters of the State, including the water column and water surface, extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"Subdivision" means a division of a parcel of land into more than one parcel.

"Submerged lands" means lands from the upper reaches of the waves on shore seaward to the extent of the State's jurisdiction.

"Subzone" means a zone established within the conservation district which is identified by boundaries and resource characteristics.

"Temporary variance" means an exception to zoned use, ~~where good cause is shown~~ and where the proposed variance is for a use determined to be in accordance with good conservation practices.

"Topographical features" means natural and artificial geographical features that appear on a topographical map, such as mountains, hills, valleys, streams, wetlands, shorelines, roads, and other such structures.

"Transportation system" includes the means to transport people, animals or goods or any combination thereof from one place to another, including roads, harbors, airways, and their related facilities.

"Water system" means a network of pipelines, storage, pumps, water sources, and other appurtenances (e.g. ditches, channels, canals, flumes, siphons, telemark lines, drainage systems, etc., all of which are part of a surface water collection system) which furnishes a supply of water to consumers. The water sources may include diversions, impoundments, or wells, and may include water treatment facilities to achieve necessary water quality standards.

"Wilderness area" means an area designated by the department having a diversity and abundance of native

flora and fauna, geological formation, or both, largely undisturbed by human influences, in which the introduction of non-indigenous plants and animals, mining, grazing of domestic animals, removal of vegetation, overnight camping, and the construction of roads or structures is prohibited or restricted.

"Wildlife sanctuary" means an area of land or water designated by the department to preserve, protect, conserve, and manage wildlife, where hunting and other activities may be restricted. [Eff. DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-2)

§13-5-3 Appeals. Any final order of the department based upon this chapter may be appealed to the circuit court of the circuit in which the land in question is found. [Eff. DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-8)

Note: See chapter 91, Hawaii Revised Statutes and Hawaii Rules of Civil Procedure.

§13-5-4 Mediation. Upon receipt of a request or on the board's own initiative, the board may request that the petitioner and any affected persons identified as necessary to the resolution of the dispute to participate in mediation. Participation by the parties shall be voluntary. All requests dealing with the same subject matter shall be consolidated in a single mediation. [Eff. DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-5 Amendments. (a) Whenever any landowner or government agency whose property is directly affected by this chapter makes an application to change the boundaries or identified land uses of any subzone, rezone a subzone, establish a new subzone with certain identified land uses or when a person seeks to otherwise amend this chapter, or where the board proposes to make a change or changes itself, such change or changes shall be put in the form of a proposed amendment of this chapter by the applicant, complete with necessary maps, four copies of which shall be filed with the board.

(b) Procedures for amending this chapter are prescribed in section 183C-4, Hawaii Revised Statutes, as amended and chapter 13-1, subpart 3.

§13-5-11

[Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-6 Penalty. (a) Any person, firm, government agency, or corporation violating any of the provisions of this chapter or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS.

(b) The board may delegate to the department or a hearing officer the authority to adjudicate violations of the provisions of this chapter or any permit issued pursuant thereto.

(c) No permit shall be processed by the department until any violations pending against the subject parcel are resolved. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-7)

SUBCHAPTER 2

SUBZONES

§13-5-10 Subzones; generally. (a) There are hereby established subzones within the conservation district, as listed in Exhibit 1, entitled "Subzone Designations, dated June 9, 2006." Subzone designations of conservation district lands are delineated on maps on file with the department. [Eff JUL 28 2006] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

(b) Lands in the conservation district are classified into one of the following subzones:

- (1) Protective;
- (2) Limited;
- (3) Resource;
- (4) General; or
- (5) Special.

(c) Land uses permitted in a subzone shall be restricted to those uses provided for in this chapter. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-11 Protective (P) subzone. (a) The objective of this subzone is to protect valuable resources in designated areas such as restricted water-sheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated

objectives of the subzone.

P-12 TREE REMOVAL

- (A-1) Removal of dead or diseased:
 - (1) Non-native trees; or
 - (2) Native trees less than six inches in diameter measured at ground level.
- (A-2) Removal of trees which pose a hazard to public safety; provided, however, that the landowner shall be required to provide documentation for the need to remove the tree if it was six inches or greater in diameter measured at ground level.
- (C-1) Removal of not more than five trees or more than five trees less than six inches in diameter measured at ground level;
- (D-1) Removal of more than five trees, six inches or greater in diameter measured at ground level. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-23 Identified land uses in the limited subzone. (a) In addition to the land uses identified herein, all identified land uses and their associated permit or site plan approval requirements listed for the protective subzone also apply to the limited subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in section 13-5-22, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the limited subzone and their required permits (if applicable), are listed below:

- (1) Identified land uses beginning with letter (A) require no permit from the department or board;
- (2) Identified land uses beginning with letter (B) require a site plan approval by the department;
- (3) Identified land uses beginning with letter (C) require a departmental permit; and
- (4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

L-1 AGRICULTURE

- (C-1) Agriculture within an area of one acre or less, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry.
- (D-1) Agriculture within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry. A management plan is also required.

L-2 BOTANICAL GARDENS AND PRIVATE PARKS

- (D-1) Botanical gardens and private parks under an approved management plan.

L-3 EROSION CONTROL

- (D-1) Erosion control, flood control, and other hazard prevention devices or facilities.

L-4 LANDSCAPING AND REMOVAL OF NOXIOUS PLANTS

- (C-1) Landscaping, defined as alteration (including clearing) of plant cover.
- (C-2) Removal of noxious plants for maintenance purposes in an area less than ten thousand square feet that results in significant ground disturbance (e.g. clearing or grubbing).
- (D-1) Removal of noxious plants for maintenance purposes in an area of more than ten thousand square feet that results in significant ground disturbance (e.g. clearing or grubbing).

L-5 SEAWALLS AND SHORELINE PROTECTION

- (D-1) Seawalls, shoreline protection devices, and shoreline structures.

L-6 SINGLE FAMILY RESIDENCE

- (D-1) A single family residence in a floodplain or coastal high hazard area that conforms to applicable county regulations regarding the

§13-5-23

National Flood Insurance Program and single family residential standards as outlined in this chapter.

L-7 STRUCTURES, ACCESSORY

- (B-1) Construction or placement of structures accessory to an existing structure, building, or facility under an existing conservation district use permit. Accessory uses shall be allowed only if they are consistent with the purpose of the conservation district.
[Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-24 Identified land uses in the resource subzone. (a) In addition to the land uses identified herein, all identified land uses and their associated permit or site plan approval requirements listed for the protective and limited subzones also apply to the resource subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in sections 13-5-22 or 23, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the resource subzone and their required permits (if applicable), are listed below:

- (1) Identified land uses beginning with letter (A) require no permit from the department or board;
- (2) Identified land uses beginning with letter (B) require a site plan approval by the department;
- (3) Identified land uses beginning with letter (C) require a departmental permit; and
- (4) Identified land uses beginning with letter (D) require a board permit, and where indicated, a management plan.

R-1 AQUACULTURE

- (D-1) Aquaculture under an approved management plan.

R-2 ARTIFICIAL REEFS

- (D-1) Artificial reefs.

R-3 ASTRONOMY FACILITIES

- (D-1) Astronomy facilities under an approved management plan.

R-4 COMMERCIAL FORESTRY

- (D-1) Commercial forestry under an approved management plan.

R-5 LANDSCAPING

- (B-1) Landscaping, defined as alteration of plant cover, including trees, in an area of ten thousand square feet or less.

- (C-1) Landscaping, defined as alteration of plant cover, including trees, in an area of more than ten thousand square feet.

R-6 MARINE CONSTRUCTION

- (C-1) Maintenance dredging not to exceed the dredging limits for the area as previously authorized by board permit.

- (D-1) Marine construction, dredging, filling, or any combination thereof of submerged lands.

R-7 MINING AND EXTRACTION

- (D-1) Mining and extraction of any material or natural resource.

R-8 SINGLE FAMILY RESIDENCE

- (D-1) A single family residence that conforms to design standards as outlined in this chapter.
[Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-25 Identified land uses in the general subzone. (a) In addition to the land uses identified herein, all identified land uses and their associated permit or site plan approval requirements listed for the protective, limited and resource subzones also

§13-5-25

apply to the general subzone, unless otherwise noted.

(b) If a proposed use subzone is not presented below or in sections 13-5-22, 23 or 24, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the general subzone and their required permits (if applicable), are listed below:

- (1) Identified land uses with the prefix (A) require no permit from the department or board;
- (2) Identified land uses with the prefix (B) require site plan approval by the department;
- (3) Identified land uses with the prefix (C) require a departmental permit; and
- (4) Identified land uses with the prefix (D) require a board permit and, and where indicated, a management plan.

G-1 OPEN SPACE

- (D-1) Land uses promoting natural open space and scenic value including those with accessory structures; provided, however, that no new golf courses shall be developed in the conservation district.

G-2 LAND USES NOT PREVIOUSLY IDENTIFIED

- (D-1) Land uses not previously identified in sections 13-5-22, 23 or 24, which are consistent with the objectives of the general subzone. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

SUBCHAPTER 4

PROCEDURES FOR PERMITS, SITE PLAN APPROVALS
AND MANAGEMENT PLANS

§13-5-30 Permits, generally. (a) Land uses requiring comprehensive review by the board are processed as board permits, management plans and temporary variances. Departmental permits and emergency permits are processed by the department and

approved by the chairperson. Site plans are processed by the department and approved by the chairperson, or his designated representative.

(b) Unless provided in this chapter, land uses shall not be undertaken in the conservation district. The department shall regulate land uses in the conservation district by issuing one or more of the following approvals:

- (1) Departmental permit (see section 13-5-33);
- (2) Board permit (see section 13-5-34);
- (3) Emergency permit (see section 13-5-35);
- (4) Temporary variance (see section 13-5-36);
- (5) Nonconforming uses (see section 13-5-37);
- (6) Site plan approval (see section 13-5-38); or
- (7) Management plan (see section 13-5-39).

(c) In evaluating the merits of a proposed land use, the department or board shall apply the following criteria:

- (1) The proposed land use is consistent with the purpose of the conservation district;
- (2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;
- (3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management," where applicable;
- (4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region;
- (5) The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;
- (6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;
- (7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and
- (8) The proposed land use will not be materially detrimental to the public health, safety and welfare.

The applicant shall have the burden of demonstrating

§13-5-30

that a proposed land use is consistent with the above criteria.

(d) For uses on submerged lands and in state marine waters the requirements of this chapter are satisfied by complying with provisions of chapters 171 (public lands), 184 (state parks), 187A, 188, 189, and 190 (marine life management), 190D (ocean leasing), 195 (natural area reserves system), 195D (conservation of aquatic life and wildlife), and 200 (boating and ocean recreation), or their implementing rules. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3, 183C-6)

Note: For regulation of activities in:
 State Parks; see Chapter 13-146.
 Forest Reserves; see Chapter 13-104.
 Natural Area Reserves System; see Chapter 13-209.
 Unencumbered Lands; see Chapter 13-221.
 Marine Life Conservation Districts; see Title 13, Subtitle 4, Part 1.
 Marine Fisheries Management Areas; see Title 13, Subtitle 4, Part 2.
 Freshwater Fisheries Management Areas; see Title 13, Subtitle 4, Part 3.
 Ocean Waters, Navigable Streams and Beaches; see Title 13, Subtitle 11, Part 3.

§13-5-31 Permit applications. (a) Applications for all permits provided for in this chapter shall be submitted to the department on the form prescribed by the department. The application shall contain:

- (1) A draft environmental assessment, or environmental impact statement, as applicable;
- (2) Associated plans such as location map, site plan, floor plan, elevations and landscaping plans drawn to scale;
- (3) The proposed land use shall address their relationship with county general plans and development plans;
- (4) Any other information as determined by the department;
- (5) Signature of the landowner;
- (6) Applicable fees; and
- (7) A minimum of twenty copies of the application and all attachments.

(b) For State and public lands, the State of Hawaii or government entity with management control

over the parcel shall sign as landowner. For private lands with multiple landowners of the subject parcel(s), the application shall be signed by landowners whose property interests constitute or exceed eighty-five percent of the fee ownership of the subject parcel(s).

(c) Any application submitted to the department pursuant to this chapter shall be reviewed by the department for completeness within thirty days from the date that the application was filed with the department. If it is found to be incomplete, the applicant shall be so notified by a letter stating the reasons therefor. If an application is accepted for processing, the applicant shall be notified by letter stating the commencement and completion dates for the processing of the application. The one hundred and eighty day time period provided by law shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance.

(d) If within one hundred and eighty days, or a time period as provided by law, after the department's acceptance of a completed application, the department, the chairperson, or the board shall fail to render a decision thereon, the landowner may automatically put the land to the use or uses requested in the application, subject, however, to the conditions contained in section 13-5-42.

(e) No permit application shall be processed by the department until any violations pending against the subject parcel are resolved.

(f) The burden of proving that a parcel of land is a kuleana rests with the applicant. The following information shall accompany an application in which the applicant is requesting nonconforming use of kuleana land as defined in this chapter:

- (1) Deed of property;
- (2) Land Commission Award (LCA) number;
- (3) Land Patent Grant documentation;
- (4) Documentation showing current ownership of the kuleana;
- (5) Tax map key number;
- (6) Documentation showing modern metes and bounds of the kuleana (if required by the department);
- (7) Identify legal access to the kuleana; and
- (8) Identification of uses to which the kuleana land was historically, customarily, and actually found on the particular lot

§13-5-31

including, if applicable, a single family residence. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-5, 183C-6)

§13-5-32 Fees. Each application shall be accompanied by such filing fees as specified in this chapter. All fees shall be in the form of cash, certified or cashier's check, and payable to the State of Hawaii. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-33 Departmental permits (a) Applications for departmental permits shall be submitted to the department in accordance with section 13-5-31.

(b) In those applications whose identified land uses require a combination of board permit(s) and departmental permit(s), a board permit shall be required covering all of the proposed uses.

(c) The application for a departmental permit shall be accompanied by:

(1) An application fee of \$50; and

(2) A public hearing fee of \$250, if applicable.

(d) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(e) The department shall provide notice of the application for a departmental permit through the publication of a notice in the office of environmental quality control (OEQC) bulletin. The OEQC disclosure shall identify:

(1) Type of permit sought;

(2) Applicant;

(3) Location of affected land (by island, district, and tax map key number);

(4) Preliminary environmental determination; and

(5) A brief description of their proposed use, including specifically any proposed use of public lands.

(f) Interested persons who wish to comment upon or receive notice of the department's determination on a particular application shall submit their comments or written request for notification during the thirty day comment period after the notice appears in the OEQC bulletin for a preliminary environmental determination. The request for notification shall include:

(1) The name and address of the requestor;

(2) The departmental permit for which the requestor would like to receive notice of

- departmental determination; and
 (3) The date the notice was published in the OEQC bulletin.

The department is not obligated to notify any person of its determination who does not strictly comply with this section. The department will use its best efforts to notify any interested person who complies with this section. However, failure of the department to comply with this subsection shall not invalidate any departmental permit issued under this chapter.

(g) Any person may appeal the chairperson's decision by filing a written appeal to the department not later than fourteen days after the date of the department's determination of the departmental permit. The written appeal shall provide all relevant information and shall state with specificity the reasons for the appeal.

(h) Where the appellant under subsection (g) sets forth facts or law, or both, showing that the chairperson's decision is arbitrary and capricious, the board may affirm, amend or reverse the decision of the chairperson, or order a contested case hearing or other procedure to be conducted prior to the board's decision on the appeal. All contested case hearings or other proceedings so ordered by the board shall be conducted in accordance with chapter 13-1.

(i) Except as provided in subsection (h), no contested case hearings shall be provided for departmental permits.

(j) A board permit shall be required when the chairperson determines that the scope of the proposed use, the necessity of an environmental impact statement, or the public interest requires a board permit. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3, 183C-6)

§13-5-34 Board permits. (a) Applications for board permits shall be submitted to the department in accordance with section 13-5-31.

(b) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(c) The application for a board permit shall be accompanied by:

- (1) An application fee of \$100, plus an additional \$100 per potential developed acre, or major fraction thereof, up to a maximum of \$2,000; and
- (2) A public hearing fee of \$250, if applicable.

§13-5-34

(d) Contested case hearings, if applicable, and as required by law, shall be held as provided in chapter 13-1, subpart 5. The aggrieved appellant or person who has demonstrated standing to contest the board action may request a contested case hearing pursuant to chapter 13-1. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

§13-5-35 Emergency permits. (a) In the event of an emergency, repair and reconstruction shall be expedited via the issuance of an emergency permit.

(b) The following actions shall be processed as a departmental permit:

- (1) Repair or reconstruction of a structure to the same condition as existed prior to the damage. Permits under this clause shall be expedited by the department;
- (2) Reconstruction involving minor deviations (no more than twenty per cent increase in footprint) of the damaged structure, such as enlargements of a dwelling or additions to the structure; and
- (3) The chairperson may designate a time frame during which authorization shall not be required for activities exempt from the building permit requirements as set forth in the applicable county building code, provided that repairs exempt from the building code requirements shall not include any addition, change, or modification in construction or land use.

(c) The department may elect to route certain applications as board permits. This may occur when an application involves one or more of the following situations:

- (1) Substantial enlargement of a structure (twenty per cent or more);
- (2) Change in land use;
- (3) Substantial change in the height of the structure (for example, second floor additions); or
- (4) Where the department determines that a potential for substantial adverse environmental impact exists.

(d) The repair, reconstruction, or modification under this chapter are only for land uses that have been established or are legally nonconforming. If there is a question regarding legality, the burden of

proof shall be upon the applicant. For nonconforming structures, this section shall not supersede the provisions contained in section 13-5-37.

(e) Repair and replacement of any structure being investigated for possible violation of this chapter, or in situations in which fines for a violation have not been collected, shall not be processed until the violation is resolved.

(f) This section shall be effective for the period of time specified by the chairperson.

(g) The application fee for an emergency permit shall be waived. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3, 183C-5, 183C-6)

§13-5-36 Temporary variance. (a) Notwithstanding any provision of this chapter to the contrary, the board may grant temporary variances from identified land uses when the board determines that:

- (1) There are special and unique circumstances applying to the proposed land use at its particular location;
- (2) The applicant proves with clear and compelling evidence that the proposed land use is for the benefit of public health and safety or that there are no other reasonable economic uses of the property;
- (3) No reasonable and prudent alternative promotes the public interest as well as the proposed land use; and
- (4) The variance and any conditions imposed on the land use authorized by the temporary variance is not inconsistent with the intent and purpose of the subzone in which the land use is located.

(b) No temporary variance shall be approved for more than one year, and no extension thereof or reapplication therefore shall be approved.

(c) Temporary variances require a board permit.

(d) This section shall not apply to the removing, harvesting, dredging, mining, or extraction of any material or natural resource on land.

(e) The application for temporary variance shall be accompanied by:

- (1) An application fee of \$100.
- (2) A public hearing fee of \$250, if applicable. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3, 183C-4)

[Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

§13-5-40 Hearings. (a) Public hearings shall be held:

- (1) On all applications for a proposed use of land for commercial purposes;
- (2) On changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter;
- (3) On applications requiring a board permit in the protective subzone; and
- (4) On all applications determined by the chairperson that the scope of proposed use, or the public interest requires a public hearing on the application.

(b) The hearing shall be held in the county in which the land is located. The hearing may be conducted by the board or may be delegated to an agent or representative of the board as designated by the chairperson and shall afford all interested persons a reasonable opportunity to be heard.

(c) Notice of hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and in the county in which the property is located.

(d) The department shall have the power to summon witnesses, administer oaths, and enjoy all other powers as authorized by law. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3, 183C-4, 183C-6)

§13-5-41 Single family residences; standards. (a) Single family residential uses approved by the board shall comply with the design standards contained in Exhibit 4, entitled "Single Family Residential Standards, dated September 9, 2005.

(b) Not more than one single family residence shall be authorized within the conservation district on a legal lot of record. [Eff NOV 14 2005] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

§13-5-42 Standard conditions. (a) Any land use allowed within the conservation district is subject to

the following standard conditions:

- (1) The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
- (2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
- (3) The applicant shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
- (4) The applicant shall comply with all applicable department of health administrative rules;
- (5) The single family dwelling shall not be used for rental or any other commercial purposes unless approved by the board;
- (6) The applicant shall provide documentation ~~(e.g. book and page or document number)~~ that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
- (7) Before proceeding with any work authorized by the department or the board, the applicant shall submit four copies of the construction plans and specifications to the chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the applicant. Plan approval by the chairperson does not constitute approval required from other agencies;
- (8) Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and, unless otherwise authorized, shall be completed within three years of the approval of such use. The

- applicant shall notify the department in writing when construction activity is initiated and when it is completed;
- (9) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
 - (10) The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
 - (11) In issuing the permit, the department and board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
 - (12) When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the board of water supply;
 - (13) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
 - (14) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
 - (15) Obstruction of public roads, trails, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;
 - (16) Except in case of public highways, access roads shall be limited to a maximum of two lanes;
 - (17) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
 - (18) Cleared areas shall be revegetated within thirty days unless otherwise provided for in a plan on file with and approved by the department;

§13-5-42

- (19) Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
- (20) Animal husbandry activities shall be limited to sustainable levels in accordance with good soil conservation and vegetation management practices; and
- (21) Other terms and conditions as prescribed by the chairperson.

(b) Failure to comply with any of these conditions shall render a permit void under the chapter.

(c) Deviation from any of the conditions provided herein may be considered by the board, only when supported by a satisfactory written justification stating:

- (1) The deviation is necessary because of the lack of practical alternatives;
- (2) The deviation shall not result in any substantial adverse impacts to natural resources;
- (3) The deviation does not conflict with the objective of the subzone; and
- (4) The deviation is not inconsistent with the public health, safety, or welfare.

Failure to secure board approval for a deviation before such a deviation occurs constitutes cause for permit revocation. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-4, 183C-6)

§13-5-43 Time extensions. (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

(b) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.

(c) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.

(d) All time extensions shall be submitted to the department thirty days before the expiration deadline. If a request is received less than thirty

days before the due date the request for time extension shall be forwarded to the board for review.

(e) Temporary variances are excluded from this provision. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

§13-5-44 Revocation of permits. In any case where a permittee has failed to comply with any of the conditions contained in a permit, the board may direct the chairperson to revoke the permit. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3, 183C-7)

§13-5-45 Severability. The provisions of these rules are declared to be severable, and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected. [Eff DEC 12 1994] (Auth: HRS §183C-3) (Imp: HRS §183C-3)