

PLANNING COMMISSION  
COUNTY OF HAWAII

RULES OF PRACTICE AND PROCEDURE

RULE 12. GEOTHERMAL RESOURCE PERMITS

12-1 Purpose and Authority

This rule governs geothermal resource permit procedures pursuant to authority conferred by section 205-5.1, Hawaii Revised Statutes, as amended, upon the Planning Commission to determine whether proposed geothermal development activities should be allowed. The Planning Commission is the issuing authority for geothermal resource permits in geothermal resource subzones located within Agricultural, Rural and Urban State Land Use Districts in the County.

The Planning Commission's approval of an application for a geothermal resource permit shall not in any way abrogate nor supercede the provisions of Chapters 182 and 183, HRS, and rules promulgated thereunder.

12-2 Definitions

As used herein, "geothermal development activities," whether for research or commercialization purposes, means exploration, development, or production of electrical energy from geothermal resources, or as otherwise defined in Hawaii Revised Statutes, Section 205-5.1.

12-3 Contents of Application

Any person who desires to conduct geothermal development activities on land that is located within a geothermal resource subzone and located within either the Agricultural, Rural or Urban State Land Use Districts shall apply to the Planning Commission for a geothermal resource permit. An application for a geothermal resource permit shall be filed in the Planning Department's office and shall include the following:

- (a) Non-refundable filing and processing fee of one thousand dollars.
- (b) Original and twenty-five copies of:
  - (1) Application form;
  - (2) Written and appropriate graphic descriptions of the property and the proposed geothermal development activities including, but not limited to:
    - (A) A description of the property for which a permit is being requested to include the property's real property tax map key designation and a description of the property's location within the County.
    - (B) A written statement describing the scope of the planned activities and presenting the applicant's reasons for requesting the permit.

- (C) A preliminary plot or site plan of the property, drawn to scale, showing all existing and proposed uses and locations of structures including, but not limited to, drilling sites, wells, access roadways, water sources, waste water collection and disposal systems, the geothermal steam and/or brine collection and disposal systems, power plant(s) and electrical power distribution systems.
- (D) Preliminary elevation drawings of the proposed temporary and permanent structures.
- (E) The proposed locations and elevations and depths of all superstructures and drilling rigs, bottom hole locations, casing program, proposed well completion program, size and shape of drilling sites, and location of all existing and proposed access roads.
- (F) Areas of potential temporary and/or permanent surface disturbance, including, but not limited to, excavation and grading sites, the location of camp sites, airstrips, and other support facilities, excavation and borrow pits for roads and other construction activities.
- (G) A written description of the methods for disposing of well effluent and other wastes.
- (H) A geologist's report on the site and surrounding area's surface and subsurface geology, nature and occurrence of known or potential geological hazards and geothermal resources, surface and ground water resources, topographic features of the land, and drainage patterns.
- (I) Pre-exploration meteorological, ambient air quality and noise level measurements that demonstrate the potential effects on surrounding properties through air quality and noise impact analysis.
- (J) A written description of the measures proposed to be taken for protection of the environment, including, but not limited to, the prevention and/or control of:
  - (i) Fires,
  - (ii) Soil erosion,
  - (iii) Surface and ground water contamination,
  - (iv) Damage to fish and wildlife or other natural resources,
  - (v) Air and noise emissions,
  - (vi) Hazards to public health and safety,
  - (vii) Socio-economic impact(s), and

- (viii) Impact(s) on public infrastructure and services.
- (K) Statement(s) addressing how the proposed development would mitigate or reconcile:
  - (i) Any effects to residents or surrounding properties in the areas of health, environment and socio-economic activities;
  - (ii) The burdening of public agencies to provide support infrastructure such as roads, sewers, water, drainage, school and related services and police and fire protection.
- (L) Preliminary provisions and/or plans for the monitoring of environmental effects such as noise and air and water quality during each proposed phase of the project (exploration, development and production) demonstrating how the applicant intends to comply with this rule, the rules of the State's Department of Health, and the rules of the State Board of Land and Natural Resources.
- (M) A preliminary plan of action for emergency situations which may threaten the health, safety, and welfare of employees and other persons in the vicinity of the proposed project site including, but not limited to, procedures to facilitate coordination with appropriate Federal, State and County officials and the evacuation of affected individuals.
- (N) Preliminary timetable(s) and/or schedule(s) for each proposed phase of the project.
- (O) Method(s) of presenting timely progress reports to the Planning Commission.
- (P) Other pertinent information or data such as an archaeological survey which the Planning Director may require to support the application for the utilization of geothermal resources and the protection of the environment.
- (c) Graphic representations suitable for both staff analysis and public presentation, including the depiction of the project boundaries, reference points (roadways, shoreline, etc.), existing and proposed structures and appurtenances. Graphics for public presentation shall be a minimum of 2 feet by 3 feet in dimension, drawn to scale on a map or maps of 1:24,000 scale, or larger when required by the Commission.

12-4 Properly Filed Application

Within twenty days of receipt of an application, the Planning Director shall review it to determine if it is complete in that it includes the supporting data required pursuant to Section 12.3 of this rule. An application that is determined to be complete shall be officially accepted within twenty days of receipt of the application and the applicant shall be so notified in writing.

12-4A Posting of Signs for Public Notification.

- (a) Within ten days of being notified of the acceptance of an application, the applicant shall post a sign on the subject property notifying the public of the following:
  - (1) The nature of the application;
  - (2) The proposed use of the property;
  - (3) The size of the property;
  - (4) The tax map key(s) of the property;
  - (5) That the public may contact the planning department for additional information; and
  - (6) The address and telephone number of the planning department.
- (b) The sign shall remain posted until the application has been granted, denied, or withdrawn. The applicant shall remove the sign promptly after such action.
- (c) Notwithstanding any other provisions of law, the sign shall be not less than nine square feet and not more than twelve square feet in area, with letters not less than one inch high. No pictures, drawings, or promotional materials shall be permitted on the sign. The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property, the applicant shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with chapter 3 (signs) Hawaii County Code 1983 (2005 edition).
- (d) The applicant shall file an affidavit with the planning department not more than five days after posting the sign stating that a sign has been posted in compliance with this section, and that the applicant and its agents will not remove the sign until the application has been granted, denied, or withdrawn. A photograph of the sign in place shall accompany the affidavit.

12-5 Hearing and Notification

- (a) The Planning Director, on behalf of the Planning Commission, shall set a date for a public hearing to be held within a period of ninety days from the date of official acceptance of a properly filed and completed application.
- (b) The Planning Commission shall conduct a public hearing. Upon appropriate request for mediation from any party who submitted comment at the public hearing, the Planning Commission shall order the requesting party or parties, the

applicant and the appropriate agencies to submit to the mediation process outlined in Section 12.5.1 of this rule.

- (c) Promptly after the Planning Director fixes a date for the public hearing and at least 15 days before the date of the public hearing, the applicant shall mail a notice of the hearing to owners of interests in properties, as shown on the current real property tax rolls at the County Real Property Tax Office, within a minimum of three hundred feet of the perimeter boundary of the property for which a permit is being requested (or as determined by the Planning Director), and to other interested persons or groups as may be determined by the Planning Director. The applicant shall also make a reasonable attempt or best effort in notifying residents within one thousand feet of the perimeter boundary of the property of the public hearing. Such notice shall state:
  - (1) Name of the applicant;
  - (2) Precise location of the property involved;
  - (3) Nature of the proposed geothermal development activities; and
  - (4) Date, time, and place of the hearing.
- (d) If the notification requirement set forth in section 12.5 (c) has not been met, the Planning Commission shall not conduct a hearing and further action on the application shall be deferred until the notification requirement is met.
- (e) In addition to said notice and at least fifteen days prior to the date of the hearing, the Planning Commission shall publish notice of the hearing in a newspaper of general circulation in the County which includes the information provided under section 12.5(c)(1-4) of this rule.

#### 12-5-1 Mediation

- (a) **Persons Entitled to Request Mediation.** Any person, including interested government agencies, who submitted comment at the public hearing may, upon appropriate request, seek mediation of issues raised by that person at the initial public hearing. Upon receipt of an appropriate request, the Planning Commission shall require the parties to participate in mediation. All appropriate requests for mediation shall be consolidated in a single mediation conference. The Planning Commission shall not be a party to the mediation, and shall not be permitted to attend mediation conferences. The Planning Department may be a party to the mediation if it makes an appropriate request.
- (b) **Requests for Mediation.** A request for mediation shall be made in writing to the Planning Commission, shall contain a brief statement of the issue or issues raised by that person at the public hearing, and shall contain the name, address, phone number and signature of the person requesting mediation.
- (c) **Time for Submission of Request.** The original and ten (10) copies of the request for mediation shall be filed with the Planning Commission within five days after the close of the initial public hearing and one copy of the request shall be served on the applicant.

- (d) Appointment of a Mediator. Within five days after receipt of a timely request, the Planning Commission shall appoint a qualified mediator. Appointment of the mediator by the Planning Commission shall be final, except as provided in Section 12.5.1(e).
- (e) Qualifications of Mediator. No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the mediation. Prior to accepting an appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent the prompt completion of the mediation. Upon receipt of such information, the Chairperson shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event the parties are unable to agree as to whether the mediator shall serve, or in the event the appointed mediator becomes unable or unwilling to serve, the Chairperson will appoint another mediator. The mediator shall not be an employee of any County agency or its staff.
- (f) Notice of Mediation Conference. The applicant and any person submitting a timely request for mediation shall be notified by the Planning Commission of the date, time, and place of the first mediation conference by depositing such notice in the mail to the return address stated in the application and in the request for mediation. The notice shall be mailed no later than ten days before the start of the mediation conference.
- (g) Mediation Conference. The initial mediation session shall be held within 15 days after the appointment of the mediator. The mediator shall fix the time and place of each subsequent mediation session. The conference shall be held within the County of Hawaii unless all parties and the mediator agree otherwise. The mediation period shall not extend beyond thirty days after the initial mediation session, except by order of the Planning Commission. Mediation shall be confined to the issues raised at the public hearing by the respective party or parties requesting mediation.
- (h) Authority of Mediator. The mediator shall attempt to help the parties reach a satisfactory resolution of their dispute, but shall not have authority to impose a settlement upon the parties. The mediator may conduct joint and separate meetings with the parties and make oral and written recommendations for settlement.
- (i) Privacy. Mediation sessions shall be private. The parties and their representatives shall have the right to attend the joint mediation sessions. Other persons may attend only with the permission of all parties to the mediation and the consent of the mediator.
- (j) Confidentiality. Confidential information disclosed to a mediator by any party in the course of the mediation shall not be divulged by the mediator to anyone, including other parties to the mediation. All records, reports, or other documents received by a mediator while serving in such capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any administrative proceedings or judicial forum.

- (k) The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, administrative, or other proceeding:
  - (i) views expressed or suggestions made by any other party with respect to a possible settlement of any disputed issue;
  - (ii) statements or admissions made by any other party in the course of mediation proceedings;
  - (iii) proposals made or views expressed by the mediator;
  - (iv) the fact that the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- (l) Stenographic Record. There shall be no stenographic record or electronic recordation of the mediation process.
- (m) Recommendation of Mediator. The mediator shall submit a written report containing recommendations to the Planning Commission, based upon any mediation agreement reached between the parties or stating that no agreement was reached, for consideration by the Planning Commission in its final decision. The written report of the mediator shall be filed with the Planning Commission and served on all parties to the mediation within 10 days of the close of the mediation conference.
- (n) Second Public Hearing. If there is no mediation agreement, or if the mediation agreement does not resolve all issues submitted for mediation, the Planning Commission may, in its sole discretion, hold a second public hearing to receive additional comment related to the unresolved mediation issues. The second public hearing, if to be conducted, shall be held within thirty (30) days after receipt of the mediator's report. Within 10 days after the second public hearing, the Planning Commission may receive additional written comment on the unresolved mediation issues raised at the second public hearing by any party.
- (o) If a second hearing is held, the Planning Commission shall consider the comments raised at the second hearing before rendering its final decision. The Planning Commission shall then determine whether a geothermal resource permit shall be granted for geothermal development activities described in the application.
- (p) Expenses. The parties shall each bear their respective costs, fees and expenses.

12-6 Criteria for Issuance of Geothermal Resource Permit

The Planning Commission shall grant a geothermal resource permit if it finds that the applicant has demonstrated that:

- (a) The proposed geothermal development activities would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property; and
- (b) The proposed geothermal development activities would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection; and

- (c) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

12-7 Action

- (a) Unless there is mutual agreement to extend the period of time for the Planning Commission's action, the Planning Commission shall take action on a properly filed and complete application within six months (180 days) of the date a complete application is filed; provided that the time limit may be extended by agreement between the applicant and the Planning Commission.
- (b) The Planning Commission's action shall either:
  - (1) Grant the geothermal resource permit as requested by the applicant based upon the satisfaction of criteria in section 12.6 above and stating the reasons therefore, subject to performance, reporting and other appropriate conditions imposed by the Commission.
  - (2) Grant the geothermal resource permit as may be modified from the applicant's request and stating the reasons therefore, subject to performance, reporting, and other appropriate conditions imposed by the Commission.
  - (3) Grant the geothermal resource permit in phases or increments dependent upon the timely and progressive completion of a precedent phase or increment and stating the reasons therefore, subject to performance, reporting, and other appropriate conditions imposed by the Commission.
  - (4) Deny the geothermal resource permit and stating the reasons therefore.
- (c) The Chairperson of the Commission shall issue official written notification to the applicant of the Commission's action including any performance, reporting, and other appropriate conditions imposed by the Commission.

12-8 Requirements Prior to Initiating Construction

Prior to initiating construction of an approved project or any phase of an approved project, the applicant shall submit the following to the Planning Director:

- (a) Copies of approved permits and other applicable approvals for the project or any phase of the project from other County, State or Federal agencies as applicable.
- (b) Final plans or provisions for monitoring environmental effects of the project or any phase of the project such as noise, air and water quality as may be required to insure compliance with County rules and the rules of the State's Department of Health and Board of Land and Natural Resources, and other permit-issuing agencies.
- (c) A final plan of action to deal with emergency situations which may threaten the health, safety, and welfare of the employees and other persons in the vicinity of the proposed project site. The plan shall include procedures to facilitate coordination with appropriate State and County officials and the evacuation of affected individuals.

- (d) A final site plan and elevations of proposed temporary and/or permanent structures for the project or any phase of the project.

12-9 Amendments of Permit and Conditions

- (a) For any amendments to the geothermal resource permit or its conditions the permittee shall set forth in writing:
  - (1) The specific amendment requested;
  - (2) The reasons for the request, including statements addressing the criteria listed under section 12.6(1) through (3) of this rule; and
  - (3) Any other applicable information requested by the Planning Director.
- (b) In the case of any amendment concerning a time extension to the permit or its conditions, the permittee shall file the request not less than ninety days prior to the deadline for performance of the condition, setting forth:
  - (1) The affected condition;
  - (2) The length of time requested; and
  - (3) The reasons for the request.

If either the Planning Director or the Planning Commission is not able to act on a properly filed time extension request prior to the deadline for a time extension, the geothermal development activities allowed by the Geothermal Resource Permit may be continued by the Planning Director.

- (c) All of the procedures set forth in sections 12.4 through 12.12 of this rule and the procedures set forth in other applicable Planning Commission rules shall apply.

12-10 Enforcement of Permit and Conditions

- (a) If the Planning Director determines that there is noncompliance with the geothermal resource permit or its conditions, the Planning Director shall so inform in writing the permittee and, if applicable, other appropriate County, State or Federal agencies, setting forth the grounds of his determination. Upon receiving notice of the determination of noncompliance, the permittee shall have five days to provide a written response to the notice of determination of noncompliance.
- (b) Notwithstanding any written response submitted by the permittee, if the Planning Director affirms the determination of noncompliance, he shall so advise the permittee in writing. The permittee shall have five days thereafter to correct the noncompliance; provided that the Planning Director may allow a longer period upon a finding of good cause, such as where circumstances beyond the permittee's control will prevent compliance within the five-day period.
- (c) The permittee may request a hearing with the Planning Commission to amend the permit, should compliance be impossible or impractical to meet.

- (d) If the permittee fails to correct the noncompliance within the required time period, the Planning Director shall refer the matter with his recommendations to the Planning Commission for further disposition, which may include, but is not limited to, either the revocation or the modification of the permit.
- (e) Notwithstanding any other provision of this section, pending a hearing by the Planning Commission the Planning Director may immediately and temporarily suspend the permit and operations allowed thereunder. Notice of a temporary suspension shall be provided in writing or orally with subsequent written confirmation within three days to the permittee and shall set forth the reasons for the temporary suspension. The Planning Director may reactivate the permit upon a subsequent finding of the permittee's compliance with the permit condition. Subject to the Planning Commission rules, the permittee may at any time request a hearing before the Planning Commission for its review and action with regard to the permit's temporary suspension or any subsequent refusal of the Planning Director to reactivate the permit. Referrals by the Planning Director to the Planning Commission and reviews by the Planning Commission of the Planning Director's action shall be heard at the Commission's next meeting when the matter can be placed on the Commission's agenda.

#### 12-11 Penalties

If a permittee, its successors or assigns do not comply with any provision of a permit or its conditions issued under this Rule they may be subject to a civil fine not to exceed those provided for by applicable statutes.

#### 12-12 Appeals

- (a) Any decision made by the Planning Commission pursuant to a public hearing or hearings under this rule may be appealed directly on the record to the supreme court for final decision and shall not be subject to a contested case hearing. Sections 91-14(b) and (g), Hawaii Revised Statutes, as amended, shall govern the appeal, notwithstanding the lack of a contested case hearing on the matter. The Planning Commission shall provide a court reporter to produce a transcript of the proceedings at all public hearings under this rule for purposes of an appeal.
- (b) For the purposes of an appeal from a decision from a public hearing, the record shall include:
  - (1) The application for the permit and all accompanying supporting documents, including but not limited to; reports, studies, affidavits, statements, and exhibits.
  - (2) Staff recommendations from County agencies submitted to the Planning Commission in consideration of the application.
  - (3) Oral and written public testimony received at the public hearings.
  - (4) Written transcripts of the proceedings at the public hearings.
  - (5) The written recommendation received by the Planning Commission from the mediator with any mediation agreement.

- (6) A statement of relevant matters officially noticed by the Planning Commission and/or any of its members at the public hearings.
- (7) The written decision of the Planning Commission issued in connection with the application and public hearings.
- (8) Other documents required by the Planning Commission.