February 19, 2016

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ATTORNEY/CLIENT COMMUNICATION

Land Use Commission
State of Hawaii
235 South Beretania Street, Rm. 406
Honolulu, Hawaii 96813

Re:  Petition for Declaratory Ruling, Docket No. DR15-54
Interpretation of Hawai‘i Revised Statutes
Section 205-4.5(a)(6)

Dear Commissioners:

This letter relates to the Petition for Declaratory Ruling, DR No. 15-54, and the interpretation of Hawai‘i Revised Statutes ("HRS") § 205-4.5(a)(6) in relation to HRS § 205-6, the statute that authorizes the issuance of special permits.

For the reasons discussed below, we believe that HRS § 205-4.5(a)(6) prohibits overnight campgrounds on lands with soil classified by the land study bureau's detailed land classification system as overall (master) productivity rating class B and C and that the special permit process authorized in HRS § 205-6 cannot be used to override that prohibition. To authorize overnight camping on class B and C lands would require a district boundary amendment.

Therefore, we believe that the Petition for Declaratory Ruling should be GRANTED.

HRS § 205-6 was enacted in 1963 and last amended in 2005. HRS § 205-4.5(a)(6) was enacted in 1976, as Act 199. Act 199 amended chapter 205 by adding a new section, which became HRS § 205-4.5. What became HRS § 205-4.5 provided in pertinent part:

Sec. 205- Permissible uses within the agricultural district. (a)
Within the agricultural district all lands with soil classified by the Land Study Bureau's Detailed Land Classification as Overall (Master) Productivity Rating Class A or B shall be restricted to the following permitted uses:
(6) Public and private open area types of recreational uses including day camps, picnic grounds, parks and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;

(b) Uses not express permitted in this section 205- (a) shall be prohibited, except the uses permitted as provided in section 205-6 and 205-8, ... 1

[Emphases added.]

We believe that submitting an application to the County of Maui for a special permit to allow the establishment of overnight camp facilities on class A and class B agricultural lands despite the language clearly prohibiting overnight camps on class A and B land flies in the face of general principles of statutory construction. It results in treating a clear and explicit statutory prohibition as a nullity, and it results in treating an implicit determination of the legislature that overnight camps on land classified as A and B is an unreasonable use on such land as a nullity, and as such must be rejected. The only way that overnight camp facilities can be allowed on the land in question is to change the land use classification to one where overnight camps would be permitted. A change in the land use classification would require a district boundary amendment.

The general rule is when a plainly irreconcilable conflict arises between a general and a specific statute covering the same subject matter, the general statute must yield; however, where the statutes simply overlap in their application, effect will be given to both, if possible, as repeal by implication is disfavored. Ohana Pale Ke Ao v. Board of Agriculture, State of Haw. 118 Hawai‘i 247, 188 P.3d 761 (Haw.App. 2008). Pursuant to the principle of statutory construction of amendment by implication, the legislature will be held to have changed a law that it did not have under consideration while enacting a later law when the terms of the subsequent act are so inconsistent with the provisions of the prior law that they cannot stand. In re Water Use Permit Applications, Petitions for Interim Instream Flow Standard Amendments, 113 Hawai‘i 52, 147 P.3d 836 (2006). When there is a plainly irreconcilable conflict between a general and a specific statute concerning the same subject matter, the specific will be favored. Metcalf v. Voluntary Employees' Ben. Ass'n. of Hawaii, 99 Hawai‘i 53, 52 P.3d 823 (2002). When faced with a plainly irreconcilable conflict between a general and a specific statute concerning the same subject matter, the courts invariably favor the specific. Kinkaid v. Board of Review of City and County of Honolulu, 106 Hawai‘i 318, 104 P.3d 905 (2004), as amended; In re Robert's Tours & Transp., Inc., 104 Hawai‘i 98, 85 P.3d 623 (2004).

1 The quoted statutory language above from Act 199 for item (a)(6) and the quoted language above from Act 199 of subsection (b) are the same in 2016 as they were in 1977. The introductory language of subsection (a) has not changed in relevant part; it currently reads as follows: "Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:"

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In this case, the clear prohibition of overnight camp facilities on A and B rated land is irreconcilable with the provisions of HRS § 205-6 that permit certain "unusual and reasonable uses" within agricultural districts other than for which the district is classified. By expressly prohibiting overnight camp facilities on A and B rated land, the legislature effectively determined that the use of overnight camp facilities on A and B rated lands is unreasonable.

Implicit in the task of statutory construction is a court's foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Awakuni v. Awana, 115 Hawai‘i 126, 165 P.3d 1027 (2007); Sierra Club v. Office of Planning, State of Haw., 109 Hawai‘i 411, 126 P.3d 1098 (2006). The statutory language must be read in the context of the entire statute and construed in a manner consistent with its purpose. Aluminum Shake Roofing, Inc. v. Hirayasu, 110 Hawai‘i 248, 131 P.3d 1230 (2006); Kaho‘ohanohano v. Dept. of Human Services, State of Haw., 117 Hawai‘i 262, 178 P.3d 538 (2008). Legislative intent may be determined from a consideration of the entire act, its nature, its object, and the consequences that would result from construing it one way or the other. Narmore v Kawafuchi, 112 Hawai‘i 69, 143 P.3d 1271 (2006). A rational, sensible, and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable, inasmuch as the legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality. Morgan v. Planning Dept., County of Kauai, 104 Hawai‘i 173, 86 P.3d 982 (2004). One must consider the reason and spirit of the law and the cause which induced the legislature to enact it, to discover its true meaning. Kaho‘ohanohano, supra.

One should not fashion a construction of statutory text that effectively renders the statute a nullity or creates an absurd or unjust result. E & J Lounge Operating Co., Inc. v. Liquor Com’n of City and County of Honolulu, 118 Hawai‘i 320, 189 P.3d 432 (2008).

To conclude that despite the legislature's clear prohibition of overnight camp facilities on A and B rated land, nevertheless the special permit process can be used to nullify that legislative determination would render HRS § 205-4.5(a)(6) a nullity, contrary to holdings of the Hawaii Supreme Court.

In addition, one can look to the legislative history to try to ascertain the meaning of a statute. Senate Conference Committee Report No. 2-76 on H.B. 3262-76 (which became Act 199) provides in part:

The purpose of this bill is to provide additional protection to parcels of prime agricultural land within the agricultural district, which prime agricultural lands are defined as lands with soils classified by the Land Study Bureau as Class A or Class B...
After careful consideration your Committee finds there is a danger that agricultural subdivisions may be approved by the counties and thus, put agricultural lands to uses other than for an agricultural pursuit. . . .

To avoid possible abuse within the agricultural district, this bill more clearly defines the uses permissible within the agricultural district. **Except for those uses permitted under special permits in Section 205-6, uses not specifically permitted by this bill shall be prohibited. . . .**

The intent of this bill is to give additional protection to those lands within the agricultural district which are classified as A or B.

1976 Senate Journal 836 [Emphases added; underscoring in original.]

Reading chapter 205 as a whole, it should be noted that section 205-2(a)(3) establishes the boundaries of the agricultural district with the provision that "...the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation." Section 205-4.5(a) further restricts the use of agricultural lands with A and B rated soils.

Based upon the language of HRS chapter 205, the intent of the legislature in prohibiting overnight camp facilities on class A and class B lands, and upon principles of statutory construction, we conclude that the special permit process of HRS § 205-6 cannot be used to circumvent a clear prohibition on the use of A and B rated lands for overnight camp facilities. Such construction of the overlapping statutes provides a rational, sensible, and practicable interpretation of the statutes as opposed to one which is unreasonable and impracticable. *Southern Foods Group, L.P. v. Dept. of Education*, 89 Hawai‘i 443, 974 P.2d 1033 (1999)

Therefore, in order to allow overnight camp facilities, a land use district boundary amendment would be required.

If you have additional questions, please let us know.

Very truly yours,

Diane Erickson
Deputy Attorney General

APPROVED:

Douglas S. Chin
Attorney General

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