



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of:

Linda K. Rosehill, Et.al.,¹ for a Declaratory Order
Whether the Minimum Rental Period of "Farm
Dwellings" are Regulated Under Hawai'i Revised
Statutes Chapter 205 and §205-4.5

COUNTY OF HAWAI'I, for a Declaratory Order that
"Farm Dwellings" May Not Be Operated As Short-Term
Vacation Rentals Under Hawai'i Revised Statutes §§
205-2 and 205-4.5, and Hawai'i Administrative Rules
§15-15-25

Docket Nos. DR 20-69 & DR 20-70

CONSOLIDATED ORDER

**DENYING ROSEHILL, ET.AL IN
DOCKET NO. DR20-70**

AND

**GRANTING COUNTY OF HAWAI'I IN
DOCKET NO.20-69**

CONSOLIDATED DECLARATORY ORDER DENYING ROSEHILL, ET.AL. AND
GRANTING COUNTY OF HAWAI'I

This matter is a consolidation of Petitioner Linda K. Rosehill, Trustee of the Linda K. Rosehill
Revocable Trust dated August 29, 1989, et. al.'s ("Petitioners") Petition for Declaratory Order

¹ Linda K. Rosehill, Trustee of the Linda K. Rosehill Revocable Trust dated August 29, 1989, as amended; Thomas B. and Rea A. Wartman; Mark A. Dahlman; Mark B. Chesebro and Caroline Mitchel, Trustees of the First Amendment and Restatement of the 1999 Mark Brendan Chesebro and Caroline Mitchel Revocable Trust U/D/T dated January 6, 1999; Sontida S. Salim, Trustee of the Sontida Salim Living Trust dated February 15, 2007; Todd M. Moses; Psalms 133 LLC; John T. Fenton, Trustee of the John T. Fenton Revocable Trust dated February 27, 2014; Frances T. Fenton, Trustee of the Frances T. Fenton Revocable Trust dated February 27, 2014; Donald J. K. and Stacey S. Olgado; Dirk and Laura Bellamy Hain, Trustees of the Bellamy-Hain Family Trust dated September 13, 2017; Peter A. Gunawan; Janti Sutedja; Neil Almstead; Doyle Land Partnership; James T. Kelnhofer; Charles E. and Nancy E. Rosebrook; Michael Cory and Eugenia Maston; Paul T. and Delayne M. Jennings, Trustees of the Jennings Family Revocable Trust dated January 5, 2010; Maggholm Properties LLC; Nettleton S. and Diane E. Payne, III

and Incorporated Memoranda, filed May 22, 2020 (DR 20-70); and Petitioner County of Hawai‘i’s (“County”) Petition for Declaratory Order, filed May 19, 2020 (DR 20-69).

This Commission, having heard and examined: the testimony and evidence presented by Petitioners Rosehill, et.al. and the County of Hawai‘i (“County”), the State Office of Planning (“OP”), and other public witnesses; and the filings and public testimony submitted via electronic mail; at its meetings on June 25, July 23, and August 13, 2020, using video-conferencing technology, hereby makes the following findings:

FINDINGS

I. Procedural Matters

1. On February 13, 2020, the County of Hawai‘i ("Petitioner - County" or “County”) filed a Petition for Declaratory Order, and Memorandum of Authorities, requesting the Commission to address the issue of “farm dwellings” being used as short-term vacation rentals (“STVR”) pursuant to Hawai‘i Revised Statutes (“HRS”) §§205-2 and 205-4.5, and Hawai‘i Administrative Rules (“HAR”) §15-15-25.²
2. On March 20, 2020, the County withdrew without prejudice their previous filing.
3. On May 19, 2020, the County resubmitted a Petition for Declaratory Order and Memorandum of Authorities to address the same issues contained in the initial filing.³

² Due to the 2020 health pandemic and Governor’s Emergency Proclamations, the parties were advised to withhold filing their Petitions until the State and County restrictions were lifted to allow public meetings and inter-island air travel. The County’s Petition for Declaratory Order filed on February 13, 2020 was designated DR20-68.

³ The County’s Petition for Declaratory Order is designated DR20-69.

4. On May 22, 2020, Rosehill filed a Petition for Declaratory Order, and Incorporated Memoranda, and Exhibits 1-2, requesting the Commission clarify and affirm that the rental of farm dwellings for periods of thirty days or less was not prohibited in the State Agricultural District as of June 4, 1976.⁴
5. On June 12, 2020, the County and Rosehill filed a Stipulation to Consolidate (“Stipulation”) for their separate Declaratory Order requests signed by the attorneys representing both parties. The Stipulation asks the Commission to consolidate the proceedings and decision-making for their separate requests for Declaratory Order.
6. On June 16, 2020, the Commission filed and mailed an Agenda and Notice of Meeting to the parties, and the Statewide, O‘ahu, and Hawai‘i mailing and email distribution lists for a hearing to be held via video-conferencing technology on June 24-25, 2020.
7. On June 17, 2020, Mr. Stephen Bell filed public testimony and exhibits (received on June 18, 2020) in support of the County’s request for a declaratory ruling. His letter and exhibits were submitted on behalf of twenty-five owners within Kohala Ranch.
8. On June 18, 2020, the State Office of Planning (“OP”) filed OP’s Response to Petitioner’s and County of Hawai‘i’s Petition for Declaratory Order (“OP Response”).
9. On June 19, 2020, Rosehill filed a Statement of Position Regarding Petition in Docket DR20-69.
10. On June 19, 2020, Mr. Peter Eising filed public testimony in support of the County’s request for a declaratory ruling.
11. On June 22, 2020, Mr. Peter Eising filed additional testimony.

⁴ Rosehill, et.al. Petition for Declaratory Order is designated DR20-70.

12. On June 23, 2020 Rosehill filed Statement of Position by Petitioners in Docket No. DR20-70 Regarding the Office of Planning's Response to Petitioner's and County of Hawai'i's Petitions for Declaratory Order.
13. On June 24, 2020, Kurt Wollenhaupt filed public testimony.
14. On June 25, 2020, the Commission met via "ZOOM" virtual conferencing technology to consider Petitioners County of Hawai'i's and Linda Rosehill et al.'s Stipulation to Consolidate Order and Petitioners County of Hawai'i's and Linda Rosehill et al.'s Petitions for Declaratory Orders regarding Short Term Vacation Rentals as Farm Dwellings pursuant to HAR§ 15-15-100. Calvert Chipchase, Esq, appeared on behalf of Rosehill. Peter Eising, and Stephen Bell provided oral/written testimony. The Commission also heard testimony on the Petition from Dawn Takeuchi-Apuna, Esq. on behalf of OP. In its discussion on the Stipulation to Consolidate, the Commission heard arguments from John Mukai, Esq. on behalf of the County of Hawai'i and Mr. Chipchase. It was determined that the stipulation was sufficient to consolidate the dockets.
15. Also on June 25, 2020, the Commission heard the arguments of the County of Hawai'i on why the Commission should agree with County's interpretation on Short Term Vacation Rentals ("STVR") and testimony from County Planning Director, Michael Yee, and Acting Deputy Director, April Surprenant. The Commission also heard arguments from Mr. Chipchase on why the Commission should agree with Rosehill's interpretation on STVR in agricultural designated lands and how the Commission might consider its statute instead of agreeing with the County and OP's perspective. Due to time constraints, the Commission determined that the matter should be continued to July 23,

- 2020 and that the Parties be allowed to continue to file briefs providing the Commission with additional information and deliver them to the LUC by July 9, 2020.
16. On July 10, 2020 County of Hawai‘i filed Supplemental Submission.
 17. On July 10, 2020 Rosehill filed Proposed Findings of Fact, Conclusions of Law, and Decision and Order (1) Denying County of Hawai‘i’s Petition for Declaratory Order in Docket No. DR20-69 and (2) Granting Petition for Declaratory Order in Docket No. DR20-70; Declaration of Calvert G. Chipchase; and Exhibits 1-4.
 18. On July 14, 2020, the Commission filed and mailed an Agenda and Notice of Meeting to the parties, and the Statewide, O‘ahu, and Hawai‘i mailing and email distribution lists for a hearing to be held via video-conferencing technology on July 22-23, 2020.
 19. On July 15, 2020, the Commission filed and mailed an amended Agenda and Notice of Meeting to the parties, and the Statewide, O‘ahu, and Hawai‘i mailing and email distribution lists for a hearing to be held via video-conferencing technology on July 22-23, 2020.
 20. On July 17, 2020, OP filed OP’s Supplemental Response to County’s and Petitioner Rosehill, et al.’s Position for Declaratory Order.
 21. On July 21, 2020, Rosehill filed a Response to County of Hawai‘i’s Supplemental Submission; Declaration of Calvert G. Chipchase, and Exhibit 1.
 22. Between July 28-31, 2020, the Commission received public testimony from: Dana Heltz and Mark Gordon.
 23. On August 4, 2020, the Commission filed and mailed an Agenda and Notice of Meeting to the parties, and the Statewide, O‘ahu, Maui, and Hawai‘i mailing and email

distribution lists for a hearing to be held via video-conferencing technology on August 12-13, 2020.

24. On August 6, 2020, the Commission received public testimony from Steve Lopez.
25. On August 10, 2020, Rosehill filed its Response in Docket No. DR20-70 to the County of Hawai‘i’s Argument During the Meeting on July 24, 2020; Declaration of Calvert G. Chipchase, and Exhibits 1-2.
26. On August 10, 2020, County of Hawai‘i filed its 2nd Supplemental Submission.
27. On August 10, 2020, the Commission received public testimony from Maui County and Kaua‘i County.
28. On August 11, 2020, Rosehill filed a Response in Docket No. DR20-70 to the County of Hawai‘i’s Second Supplemental Submission.
29. Between August 11-13, 2020, the Commission received late testimony from: City and County of Honolulu; Gary Robb; Janice Palma-Glennie; Phaethon Keeney; F.K. Finn; Mark Koppel; Axel Kratel; Cory Harden; and, Len Gambla.
30. On August 13, 2020, the Commission met via “ZOOM” virtual conferencing technology to continue consideration of Petitioners County of Hawai‘i’s and Linda Rosehill et al.’s Petitions for Declaratory Orders regarding Short Term Vacation Rentals as Farm Dwellings pursuant to HAR §15-15-100. Calvert Chipchase, Esq, appeared on behalf of Rosehill et al. and John Mukai, Esq. on behalf of County. In the discussion on the Petition, the Commission also heard comments from Dawn Takeuchi-Apuna, Esq. on behalf of OP. Thereafter, a motion was made and seconded pursuant to HAR §15-15-100(a)(1)(C) to deny the Rosehill, et al., Petition without prejudice and grant the County’s Petition. Following a discussion by the Commissioners, the Motion was

amended to deny the Rosehill, et al., Petition and grant the County's Petition and a vote was taken on the Motion. There being a vote tally of 8 ayes, 0 nays, the motion carried.

II. RELIEF REQUESTED.

31. The COUNTY OF HAWAI'I petitioned the Land Use Commission for a Declaratory Order that "farm dwellings" may not be used as short-term vacation rentals pursuant to Hawai'i Revised Statutes ("HRS") §§205-2 and 205-4.5, and Hawai'i Administrative Rules ("HAR") §15-15-25.
32. The ROSEHILL PETITIONERS sought to have the Land Use Commission declare invalid the COUNTY OF HAWAI'I's amendment of its Code which prohibited the a "short term vacation rental" on agricultural land.
33. The argument of the ROSEHILL PETITIONERS was stated in their Petition:

The County of Hawai'i (the ("**County**") has usurped the responsibility of the State Land Use Commission (the "**LUC**" or "**Commission**") by attempting to interpret and enforce the State Land Use Law, Hawai'i Revised Statutes ("**HRS**") chapter 205. On April 1, 2019, the County amended the Hawai'i County Code ("**HCC**") to bar every owner of land within the State Agricultural District from renting any dwelling for a period of 30 consecutive days or less, unless the lot was created before June 4, 1976. HCC §§25-1-5, 25-4-16.1(e).

III. STANDARD OF REVIEW AND APPLICABLE LAW.

A. A specific factual situation must be presented to support a request for a declaratory order.

34. The Land Use Commission may issue a Declaratory Order if presented with a specific factual situation.

35. HAR §15-15-98(a) provides:

(a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission **to a specific factual situation**. (Emphasis added.)

36. A petition which presents a speculative question does not support the issuance of a declaratory order.

37. HAR §15-15-100(a)(1)(A) provides

§15-15-100 Consideration of petition for declaratory order. (a) The commission, within ninety days after submission of a petition for declaratory order, shall:

(1) **Deny the petition where:**

(A) The **question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;**
or ***

(Emphasis added.)

B. The law regarding statutory interpretation.

38. The Hawai'i Supreme Court stated the following with respect to the interpretation of a statute:

Statutory interpretation is "a question of law reviewable de novo." State v. Levi, 102 Hawai'i 282, 285, 75 P.3d 1173, 1176 (2003) (quoting State v. Arceo, 84 Hawai'i 1, 10, 928 P.2d 843, 852 (1996)). This court's statutory construction is guided by established rules:

First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our 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. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

Peterson v. Hawaii Elec. Light Co., Inc., 85 Hawai‘i 322, 327–28, 944 P.2d 1265, 1270–71 (1997), superseded on other grounds by HRS § 269–15.5 (Supp.1999) (block quotation format, brackets, citations, and quotation marks omitted).

In the event of ambiguity in a statute, “the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.” Id. (quoting HRS § 1–15(1) (1993)). Moreover, the courts may resort to extrinsic aids in determining legislative intent, such as legislative history, or the reason and spirit of the law. See HRS § 1–15(2) (1993).

Del Monte Fresh Produce (Hawai‘i), Inc. v. Int’l Longshore & Warehouse Union, Local 142, AFL-CIO, 112 Hawai‘i 489, 499, 146 P.3d 1066, 1076 (2006)

39. With respect to the deference which should be accorded to an administrative agency, the Hawai‘i Supreme Court has stated the rule that under HRS § 91-14(g)(6) an administrative agency’s exercise of discretion will not be disturbed unless

“[a]rbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Paul’s Electrical Serv., Inc. v. Befitel, 104 Hawai‘i 412, 417, 91 P.3d 494, 499 (2004). The Court went on further to say:

Administrative agencies are created by the legislature, and the legislature determines the bounds of the agency’s authority. Thus, before we can determine whether an agency abused its discretion pursuant to HRS §91–14(g)(6), we must determine whether the agency determination under review was the type of agency action within the boundaries of the agency's delegated authority.

To the extent that the legislature has authorized an administrative agency to define the parameters of a particular statute, that agency's interpretation should be accorded deference.

Paul’s Electrical Serv., Inc. v. Befitel, 104 Hawai‘i 412, 417, 91 P.3d 494, 499 (2004) (internal citation omitted).

Thus, when reviewing an agency's determination, this court has stated:

The standard of review for decisions of administrative agencies therefore consists of two parts: first, an analysis of whether the legislature empowered the agency with discretion to make a particular determination; and second, if the agency's determination

was within its realm of discretion, whether the agency abused that discretion (or whether the agency's action was otherwise “arbitrary, or capricious, or characterized by ... [a] clearly unwarranted exercise of discretion,” HRS §91-14(g)(6)). If an agency determination is not within its realm of discretion (as defined by the legislature), then the agency's determination is not entitled to the deferential “abuse of discretion” standard of review. If, however, the agency acts within its realm of discretion, then its determination will not be overturned unless the agency has abused its discretion.

Id.

C. Within an agricultural use district, a dwelling must be related to an agricultural activity or is a “farm dwelling”.

40. HRS §205-5 states:

(a) Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C.

(b) Within agricultural districts, **uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted**; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 **may be further defined by each county by zoning ordinance**. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in section 165-2. Ordinances shall include but not be limited to:

(1) Requirements for access to a farm, including road width, road surface, and parking;

(2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants;

(3) Activities that may be offered by the farming operation for visitors;

(4) Days and hours of operation; and

(5) Automatic termination of the accessory use upon the cessation of the farming operation.

(Emphasis added.)

41. HRS § 205-2(d) provides:

(d) Agricultural districts shall include:

(1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;

(2) Farming activities or uses related to animal husbandry and game and fish propagation;

(3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;

(4) Wind-generated energy production for public, private, and commercial use;

(5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;

(6) Solar energy facilities; provided that:

(A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and

(B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6;

(7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other small-scale renewable energy systems producing energy

solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12);

(8) Wind machines and wind farms;

(9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;

(10) Agricultural parks;

(11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(12) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, “bona fide agricultural activity” means a farming operation as defined in section 165-2;

(13) Open area recreational facilities;

(14) Geothermal resources exploration and geothermal resources development, as defined under section 182-1;

(15) Agricultural-based commercial operations registered in Hawaii, including:

(A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural

products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

(B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items;

(C) A retail food establishment owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;

(D) A farmers' market, which is an outdoor market limited to producers selling agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii; and

(E) A food hub, which is a facility that may contain a commercial kitchen and provides for the storage, processing, distribution, and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph; and

(16) Hydroelectric facilities as described in section 205-4.5(a)(23).

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

42. The Land Use Commission previously held that “Chapter 205, Hawaii Revised Statutes, does not authorize residential dwellings as a permissible use within an agricultural use district, unless the dwelling is related to an agricultural activity or is a “farm dwelling.”

DECLARATORY ORDER, In the Matter of the Petition of JOHN GODFREY, Docket No. DR94-17. COL 5 at p. 17.

D. The State and the Counties have Concurrent jurisdiction over land in the Agricultural district.

43. The Legislature has authorized zoning powers to the counties, pursuant to the Zoning Enabling Act. As described by the Hawai'i Supreme Court,

The counties of our state derive their zoning powers from HRS § 46-4(a) (Supp.1988), referred to as the Zoning Enabling Act. It states in pertinent part:

Zoning in all counties shall be accomplished within the framework of a long range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner.

....

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accord with a long range, comprehensive, general plan, and to insure the greatest benefit for the State as a whole. (Emphasis added.)

Kaiser Hawaii Kai Dev. Co. v. City & Cty. of Honolulu, 70 Haw. 480, 483-84, 777 P.2d 244, 246 (Hawaii 1989).

44. The Hawai'i Supreme Court further explained:

The language of the Zoning Enabling Act clearly indicates the legislature's emphasis on comprehensive planning for reasoned and orderly land use development. This emphasis on planning was reiterated in the statement of policy adopted as part of the legislation enacting the Zoning Enabling Act. There, the legislature stated:

The pressure of a rapidly increasing population in the Territory of Hawaii requires an orderly economic growth within the various counties and the conservation and development of all natural resources. Adequate controls must be established, maintained and

enforced by responsible agencies of government to reduce waste and put all of our limited land area, and the resources found thereon, to their most beneficial use. [¶] It is the intent and purpose of the legislature, by means of zoning ordinances and regulations enacted by or under this act, and in accord with a long range, comprehensive general plan, to promote the health, safety, convenience, order, welfare and prosperity of the present and future inhabitants of the Territory.

§ 1, Act 234, 1957 Session Laws of Hawaii.

Kaiser Hawaii Kai Dev. Co. v. City & Cty. of Honolulu, 70 Haw. 480, 484, 777 P.2d 244, 246–47 (Hawaii 1989).

45. Hawai‘i’s system of land use regulation is a dual system, administered concurrently by the Land Use Commission and the respective county. The Hawai‘i Supreme Court explained:

In Hawai‘i’s land use system the legislature’s statutory districts constitute more of a general scheme, and, presumably, by delegating authority to zone to the counties, the legislature intended that specific zoning be enacted at the county level. We believe that the “consistency doctrine” enunciated in Gatri is somewhat instructive in the instant case. Because the uses allowed in country zoning, are prohibited from conflicting with the uses allowed in a State agriculture district, only a more restricted use as between the two is authorized. By adopting a dual land use designation approach, the legislature envisioned that the counties would enact zoning ordinances that were somewhat different from, but not inconsistent with, the statutes.

Save Sunset Beach Coal. v. City & Cty. of Honolulu, 102 Hawai‘i 465, 482, 78 P.3d 1, 18 (Hawai‘i 2003).

46. Because of the foregoing, the county zoning provision and the State Land Use law must be evaluated side by side, and **“only a more restricted use as between the two [county zoning and State Land Use law, HRS chapter 205] is authorized”**. Save Sunset Beach Coal. v. City & Cty. of Honolulu, 102 Hawai‘i 465, 482, 78 P.3d 1, 18 (Hawai‘i 2003) (emphasis added).

47. Accord: DECLARATORY ORDER, In the Matter of the Petition of JOHN GODFREY, Docket No. DR94-17. COL 5 at p. 17-18 (“[a]ny county ordinance, rule, or law that authorizes any residential dwelling as a permissible use within an agricultural use district is preempted by State law, unless the dwelling is related to an agricultural activity or is a “farm dwelling.”).

IV. APPLICATION TO THE PENDING PETITIONS.

A. The provisions of County of Hawai‘i, Ordinance No. 18-114.

48. The Petitions filed in this matter concern Ordinance No. 18-114 enacted by the County of Hawai‘i in 2018.
49. The Council of the County of Hawai‘i made the following Findings when it adopted Ordinance No. 18-114.

SECTION 1. Findings and Purpose. The short-term rental of residential units, as an alternative to traditional resort and hotel accommodations, is an emerging trend in the visitor industry that continues to grow in popularity.

The purpose of this ordinance is to manage the impacts of these short-term vacation rentals by: 1) defining where this use will be allowed; 2) establishing provisions and standards to regulate this use; and 3) providing an avenue for an existing use deemed to be improper by this ordinance, to apply for a nonconforming use certificate that would allow them to continue to operate in a non-permitted district.

50. The Ordinance provided the following definition of a short-term vacation rental (“STVR”).

SECTION 3. Chapter 25, article 1, section 25-1-5, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by adding new definitions to be appropriately inserted and to read as follows:

"Short-term vacation rental" means a dwelling unit of which the owner or operator does not reside on the building site, that has no more than five bedrooms for rent on the building site, and is rented for a period of thirty consecutive days or less. This definition does not include the short-term use of an owner's primary residence as defined under section 121 of the Internal Revenue Code.

51. The Ordinance describes where Short-term vacation rentals would be allowed.

Section 25-4-Short-term vacation rentals.

(a) Short-term vacation rentals; where permitted, specific prohibitions.

(1) Short-term vacation rentals shall be permitted in the:

(A) V, CG, and CV districts;

(B) Residential and commercial zoning districts, situated in the General Plan Resort and Resort Node areas; and

(C) RM district, for multiple family dwellings within a condominium property regime as defined and governed by chapters 514A or 514B, Hawaii Revised Statutes.

(2) Private covenants prohibiting use of any unit as a short-term vacation rental shall not be invalidated by this chapter.

52. The Ordinance required registration of all STVRs.

(b) Registration of all short-term vacation rentals.

(1) Short-term vacation rentals in existence on or before the effective date of this ordinance shall register with the director and pay a one-time fee of \$500. The registration form and associated fee shall be submitted to the planning department no later than one hundred eighty days after the effective date of this ordinance.

(2) Any new short-term vacation rental established in a zoning district after the effective date of this ordinance, where such use is permissible pursuant to this section, shall register with the director and pay a one-time fee of \$500 prior to use of such rental.

(3) Short-term vacation rentals shall only be established within a dwelling that has been issued final approvals by the building division for building, electrical, and plumbing permits.

(4) Owners of short-term vacation rentals shall register by submitting a form to the planning department in a format

prescribed by the director. The registration form, at a minimum, shall require:

(A) Verification that State of Hawai'i general excise tax and transient accommodations tax licenses are in effect and verification that County property taxes are paid in full;

(B) Certification that the requisite amount of parking pursuant to section 25-4-51, is available;

(C) Submittal of a site plan showing the location of the rooms for rent and requisite parking; and

(D) Verification that notification letters from nonconforming use applicants have been sent to all owners and lessees of record of all lots of which any portion is within three hundred feet of any point along the perimeter boundary of the short-term vacation rental property. The notification letter shall provide detailed information about the short term vacation rental operation including: number of units being rented; maximum number of guests permitted; number and location of required parking spaces; and instructions on how to submit complaints to the planning department about the subject rental operation.

(5) Owners of short-term vacation rentals shall notify the director when a short-term vacation rental establishment permanently ceases to operate for any reason.

(6) Upon change in ownership, the new owner shall notify the director forthwith of the change in ownership and provide contact information for the reachable person. Registration shall automatically continue, subject to termination by the new owner.

(7) Any short-term vacation rental that has not lawfully registered within the deadlines set forth in this section shall be considered an unpermitted use and subject to the penalties set forth in this chapter until such time as proper registration and compliance with applicable requirements of this section are obtained.

53. The Ordinance included provisions for issuance of nonconforming use certificates. The Ordinance stated:

(c) Issuance of initial nonconforming use certificate.

(1) The director shall determine whether to issue a short-term vacation rental nonconforming use certificate for a short-term vacation rental based on the evidence submitted and other pertinent information.

(2) Issuance of an initial nonconforming use certificate may be denied if the director verifies any of the following:

(A) The applicant has violated pertinent laws, such as not securing and finalizing necessary building permits for the dwelling;

(B) The owner is delinquent in payment of State of Hawai‘i general excise tax, transient accommodations tax, or County property taxes, fees, fines, or penalties assessed in relation to the short-term vacation rental; or

(C) Evidence of non-responsive management, such as issuance of a notice of violation, police reports, or verified neighbor complaints of noise or other disturbances relating to the short-term rental operations.

54. The Ordinance also specifically provided that STVR would be allowed: in RS districts (“SECTION 5. Chapter 25, article 5, division 1, section 25-5-3, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows: ‘(a) The following uses shall be permitted in the RS district: *** (13) Short-term vacation rentals situated in the general plan resort and resort node areas’”); in RD districts (“SECTION 6. Chapter 25, article 5, division 2, section 25-5-22, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows: ‘(a) The following uses shall be permitted in the RD district: *** (15) Short-term vacation rentals situated in the general plan resort and resort node areas’”); in RM districts (“SECTION 7. Chapter 25, article 5, division 3, section 25-5-32, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows: ‘(a) The following uses shall be permitted in the RM district: *** (18) Short-term vacation rentals situated in any of the following: (A) General

plan resort and resort node areas. (B) Outside the general plan resort and resort node areas, in multiple family dwellings within a condominium property regime as defined and governed by chapters 514A or 514B, Hawai‘i Revised Statutes.’”); in RCX districts (“SECTION 8. Chapter 25, article 5, division 4, section 25-5-42, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows: ‘(a) The following uses shall be permitted in the RCX district: *** (24) Short-term vacation rentals situated in the general plan resort and resort node areas”); in V districts (“SECTION 9. Chapter 25, article 5, division 9, section 25-5-92, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows ‘(a) The following uses shall be permitted in the V district: *** (32) Short-term vacation rentals”); in CN districts (“SECTION 10. Chapter 25, article 5, division 10, section 25-5-102, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows: ‘(a) The following uses shall be permitted in the CN district: *** (34) Short-term vacation rentals situated in the general plan resort and resort node areas”); in CG districts (“SECTION 11. Chapter 25, article 5, division 11, section 25-5-112, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows: ‘(a) The following uses shall be permitted uses in the CG district: *** (52) Short-term vacation rentals”); and in CV districts (“SECTION 12. Chapter 25, article 5, division 12, section 25-5-122, of the Hawai‘i County Code 1983 (2016 Edition, as amended), is amended by amending subsection (a) to read as follows: ‘(a) The following uses shall be permitted in the CV district: *** (45) Short-term vacation rentals”).

B. In evaluating the provisions of County of Hawai‘i, Ordinance No. 18-114, the Land Use Commission recognizes that the State and the Counties have concurrent jurisdiction over land in the Agricultural district.

55. Hawai‘i’s system of land use regulation is a dual system, administered concurrently by the Land Use Commission and the respective county. Save Sunset Beach Coal. v. City & Cty. of Honolulu, 102 Hawai‘i 465, 482, 78 P.3d 1, 18 (Hawai‘i 2003).
56. Due to the foregoing, the county zoning provision and the State Land Use law must be evaluated side by side, and **“only a more restricted use as between the [county zoning and State Land Use law, H.R.S. Chapter 205] is authorized”**. Save Sunset Beach Coal. v. City & Cty. of Honolulu, 102 Hawai‘i 465, 482, 78 P.3d 1, 18 (Hawai‘i 2003) (Emphasis added).
57. To the extent that the Hawai‘i County Council has exercised its legislative judgment to regulate STVR to protect and preserve agricultural land in a manner more restrictive than that provided by the Land Use Commission, the County Ordinance controls and must be followed. Sunset Beach Coal. v. City & Cty. of Honolulu, 102 Hawai‘i 465, 482, 78 P.3d 1, 18 (Hawai‘i 2003).
58. In any event, with respect to property designated Agriculture, unless the actual use of the property is authorized by HRS §205-4.5, that actual use is impermissible, it violates the law and it is illegal.
59. Within the Agricultural District, the Counties may not permit the use of property if that use is not permitted by HRS chapter 205.
60. To this end, unless the dwelling is in fact a “farm dwelling”, namely, a “single-family dwelling located on and **used in connection with a farm**,” the dwelling is not a “farm

dwelling” and is not permissible on land which is designated Agriculture as a “farm dwelling”.

61. A farm dwelling may not be used as a short-term vacation rental (“STVR”).
62. The farm dwelling use and a STVR use are not compatible uses. A farm dwelling defined under HRS §205-4.5(a)(4) as a single-family dwelling that either must be located on and used in connections with a farm, or where agricultural activity provides income to the family occupying the dwelling.
63. In the present proceedings, no facts were submitted which would contradict the conclusion that a STVR use is basically a transient accommodation effectively for vacation or tourist use, which has no connection to a farm and is not accessory to an agricultural use, and does not meet either of the requirements of the farm dwelling definition. A STVR use would therefore improperly displace the required agricultural use of a farm dwelling.
64. A STVR is not a permitted use of a farm dwelling in the Agricultural District under HRS chapter 205. HRS §§205-2(d) and 205-4.5(a) expressly lists the permitted uses in the Agricultural District as a matter of law. If a use is not listed, it is prohibited. STVRs are not listed permitted uses of a farm dwelling under HRS chapter 205, and therefore, are prohibited.
65. Residential use of a farm dwelling without any connection to an agricultural use has never been allowed in the agricultural District. The law has always required that a farm dwelling be used in connection with a farm or accessory to an agricultural use.
66. A dwelling in the Agricultural District must be used in connection with a farm where agricultural activity provides income to the persons occupying the dwelling. In In the

Matter of ~ Declaratory Ruling to determine whether a single family dwelling may be established within the State Land Use Agricultural District if the agricultural activity proposed to be conducted by the family occupying the dwelling is for personal consumption and use only, DR83-8, the Land Use Commission held that:

Based on the above, the Land Use Commission rules that a single-family dwelling can be defined as a farm dwelling only if the dwelling is used in connection with a farm where agricultural activity provides income to the family occupying the dwelling and that a single-family dwelling, which use is accessory to an agricultural activity for personal consumption and use only, is not permissible within the Land Use Agricultural District. This ruling is applicable to all lands located within the State Land Use Agricultural District.

In the Matter of ~ Declaratory Ruling to determine whether a single family dwelling may be established within the State Land Use Agricultural District if the agricultural activity proposed to be conducted by the family occupying the dwelling is for personal consumption and use only, DR83-8, at 3.

67. The Land Use Commission explained that subsequent history supported its ruling.

8. Senate Bill No, 993 (1983) purported to amend Section 205—4.5 to permit the raising of crops for both commercial and personal use. Governor Ariyoshi's veto of this bill is an expression of the State's policy that the agricultural activity must be commercial to be a permitted use on lands in the Agricultural District having an A or B soil productivity rating.

In the Matter of ~ Declaratory Ruling to determine whether a single family dwelling may be established within the State Land Use Agricultural District if the agricultural activity proposed to be conducted by the family occupying the dwelling is for personal consumption and use only, DR83-8, at 3.

68. A STVR is an incompatible use of a farm dwelling.
69. A STVR is not a permitted use as a farm dwelling under HRS chapter 205.
70. Purely residential uses, with no connection to agricultural use, such as STVR use, have never been allowed in the Agricultural District.

71. The counties are empowered to more restrictively regulate farm dwellings to not be used as STVRs.

C. The insufficiency of the ROSEHILL Petition.

72. The ROSEHILL PETITIONERS have not submitted a sufficient record demonstrating that their use or intended use of their subject properties are uses permitted in an Agricultural district by HRS chapter 204, including HRS §§205-2(d) and 205-4.5(a).
73. The ROSEHILL PETITIONERS have not submitted a sufficient record demonstrating that their use or intended use of their subject properties are “farm dwellings” or related to agriculture.
74. The ROSEHILL PETITIONERS did not present to the Commission a specific factual situation on which the Commission could issue the declaratory order they requested.
75. The ROSEHILL PETITIONERS were required to set forth a proper question for the Commission to consider and make a declaratory ruling on. HAR §15-15-98(a) states, “[o]n petition of any interested person, the [C]ommission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the [C]ommission to a specific factual situation.” In considering a petition for declaratory order, the Commission may deny the petition where “[t]he question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future.” HAR §15-15-100(a)(1)(A). Additionally, “[a]n order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts not considered in the order exist.”

76. The ROSEHILL PETITIONERS' Petition for Declaratory Order asks the Commission to compare the County's definition of a "STVR" with the definition of "farm dwelling" under HRS §205-5.4(a)(4), to determine whether the definition of "farm dwelling" regulated the rental period of a farm dwelling. No specific situation was presented. The ROSEHILL PETITIONERS' question is very narrow and limited to a strict reading of the statute and County ordinance relative to rental timeframe without considering the ROSEHILL PETITIONERS' actual use of their dwellings.
77. The ROSEHILL PETITIONERS' actual use of their dwellings is essential because it provides the facts and basis upon which to apply the requested interpretation of the "farm dwelling" definition. The ROSEHILL PETITIONERS' question is not a "specific factual situation" upon which this Commission can apply the definition of "farm dwelling" because relevant facts and circumstances were not provided. Whether the occupants are renters farming the land or whether there is agricultural activity providing income to the renters, or whether the renters are instead vacationers or tourists who are not engaged in and do not derive income from farming on the premises are some of the "specific factual situations" which must be presented in the record before the Land Use Commission could grant the ROSEHILL PETITIONERS the relief they requested.
78. Without limiting the foregoing, the ROSEHILL PETITIONERS did not present a record sufficient to demonstrate that any of their proposed uses fell within the definition of a "farm dwelling" or uses permitted in an agricultural district, or that the ROSEHILL PETITIONERS are entitled to the relief they requested.

D. The County of Hawai‘i is entitled to the relief it requested.

79. Without a “specific factual situation” presented to the Commission, the ROSEHILL PETITIONERS are putting forth a speculative or purely hypothetical scenario “which does not involve an existing situation or one which may reasonably be expected to occur in the near future.” Therefore, the ROSEHILL PETITIONERS’ request for relief should be denied, leaving only the County’s question of whether a farm dwelling may be used as a STVR for the Commission’s consideration.
80. The elements of a “STVR” as defined by the County’s ordinances are:
- (1) The owner or operator doesn’t reside on the building site;
 - (2) That has no more than five bedrooms for rent on the building site; and
 - (3) Is rented for a period of thirty consecutive days or less.
81. The elements of a “farm dwelling” under HRS §205-4.5(a)(4) are, a single-family dwelling:
- (1) Located on and used in connection with a farm; or
 - (2) Where agricultural activity provides income to the family occupying the dwelling.
82. None of the elements of the “STVR” directly align with those of the “farm dwelling”.
83. To the extent that the Hawai‘i County Council has exercised its legislative judgment to regulate STVR to protect and preserve agricultural land in a manner more restrictive than that provided by the Land Use Commission, the County Ordinance controls and must be followed. Sunset Beach Coal. v. City & Cty. of Honolulu, 102 Hawai‘i 465, 482, 78 P.3d 1, 18 (Hawai‘i 2003).

84. The County of Hawai‘i has met its burden to demonstrate it is entitled to the relief requested by the County of Hawai‘i.
85. For the reasons stated above and other good cause shown in the record, the Commission finds that the ROSEHILL petition was speculative, and the Land Use Commission therefore exercises its discretion and DENIES the relief requested by the ROSEHILL PETITIONERS.
86. For the reasons stated above and other good cause shown in the record, the Commission finds that the COUNTY OF HAWAI‘I has met its burden under the law and the Land Use Commission therefore GRANTS the relief requested by the COUNTY OF HAWAI‘I.

RULING ON PROPOSED FINDINGS OF FACT

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

Jurisdiction

1. HRS §91-8 allows any interested person to petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of an agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their

submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.

2. Petitioners County of Hawai‘i and Rosehill, et al. are interested persons pursuant to HRS §91-8 and HAR §15-15-98(a), and thus have standing to bring this Petition before the Commission.
3. The Commission has jurisdiction to issue this declaratory order. HRS §91-8, as implemented by the Commission’s administrative rules, HAR §§15-15-98 through 15-15-104.1, authorize the Commission to issue a declaratory order “as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation.” The Commission’s statutes, the applicability of which are put at issue in this Petition, are those sections of HRS chapter 205 that govern the authority to reclassify land and to govern the permitted uses on State Conservation District lands.
4. HAR §15-15-98(c) allows the Commission to issue a declaratory order “...without notice of hearing” to terminate a controversy or to remove uncertainty. The Commission concludes that based on the facts presented at the meeting, the testimony of public witnesses, the pleadings filed, together with the exhibits, the opportunity of Petitioners to present their views, and the fact that neither Petitioner requested a hearing pursuant to HAR §15-15-103, a hearing is not necessary before issuing a declaratory order in this matter.
5. HAR §15-15-100(a)(1)(A) provides that the Commission can deny a petition where “the question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;...”

Jurisdiction to Identify Uses in the State Agricultural District

6. HRS §205-4.5(a) provides that:

“...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:”

7. HRS §205-4.5(b) provides that:

“...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.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restrictions on uses and the conditions shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.”

8. HRS §205-5(a) provides what government entities have authority over uses within each of the land use districts:

“Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C.”

9. HRS §205-5(b) addresses the dual nature of jurisdiction over uses within the agricultural district:

“Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in section 165-2. Ordinances shall include but not be limited to:

- (1) Requirements for access to a farm, including road width, road surface, and parking;
- (2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants;
- (3) Activities that may be offered by the farming operation for visitors;
- (4) Days and hours of operation; and
- (5) Automatic termination of the accessory use upon the cessation of the farming operation.”

Jurisdiction to Enforce Uses in the State Agricultural District

10. HRS §205-12 addresses enforcement responsibility:

“The appropriate officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the land use commission and the restriction on use and the condition relating to agricultural districts under section 205-4.5 and shall report to the commission all violations.”

11. HRS §205-15 addressed any conflicts created:

“Except as specifically provided by this chapter and the rules adopted hereto, neither the authority for the administration of chapter 183C nor the authority vested in the counties under section 46-4 shall be affected.”

ORDER DENYING ROSEHILL ET AL PETITION AND GRANTING COUNTY OF
HAWAI‘I PETITION FOR DECLARATORY ORDER

Following discussion by the Commission, at the Commission’s consolidated meeting on the Petitions on August 13, 2020, a motion was made and seconded to DENY the Rosehill et al. Petition and to GRANT County of Hawai‘i’s Petition. A vote was then taken on the motion. There being a vote tally of 8 ayes, 0 nays, and 0 excused⁵, the motion carried.

⁵ The Commission normally is comprised of nine members, however, an at-large position is currently vacant.

ORDER

Having duly considered the Petition and the written and oral arguments presented by Rosehill, et al. and the County of Hawai‘i, as well as the pleadings filed by OP, written and oral public testimony, and a motion having received the affirmative votes required by § 15-15-13, HAR, and there being good cause for the motion, this Commission orders that the Rosehill Petition be DENIED and that the County of Hawai‘i’s Petition be GRANTED.

ADOPTION OF DECLARATORY ORDER

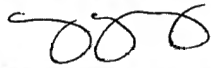
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, O'ahu, Hawai'i, this 20TH, day of MAY, 2021, per
motion on August 13, 2020.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI'I



Deputy Attorney General

By



JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on:

5/20/2021

Certified by:



DANIEL ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of:

Linda K. Rosehill, Et.al., for a Declaratory Order
Whether the Minimum Rental Period of "Farm
Dwellings" are Regulated Under Hawai'i Revised
Statutes Chapter 205 and §205-4.5

COUNTY OF HAWAI'I, for a Declaratory Order that
"Farm Dwellings" May Not Be Operated As Short-Term
Vacation Rentals Under Hawai'i Revised Statutes §§
205-2 and 205-4.5, and Hawai'i Administrative Rules
§15-15-25

Docket Nos. DR 20-69 & DR 20-70

CONSOLIDATED ORDER

**DENYING ROSEHILL, ET.AL IN
DOCKET NO. DR20-70**

AND

**GRANTING COUNTY OF HAWAI'I IN
DOCKET NO.20-69**

CONSOLIDATED DECLARATORY ORDER DENYING ROSEHILL, ET AL. AND
GRANTING COUNTY OF HAWAI'I

AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE
STATE LAND USE COMMISSION, HONOLULU, HAWAI'I.

Date 5/20/2021

BY
DANIEL E. ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of:

Linda K. Rosehill, Et.al., for a Declaratory Order
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§15-15-25

Docket Nos. DR 20-69 & DR 20-70

CONSOLIDATED ORDER

**DENYING ROSEHILL, ET.AL IN
DOCKET NO. DR20-70**

AND

**GRANTING COUNTY OF HAWAI'I IN
DOCKET NO.20-69**

CONSOLIDATED DECLARATORY ORDER DENYING ROSEHILL, ET AL. AND
GRANTING COUNTY OF HAWAI'I

AND

CERTIFICATE OF SERVICE



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of:

Linda K. Rosehill, Et.al., for a Declaratory Order
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CONSOLIDATED ORDER

**DENYING ROSEHILL, ET.AL IN
DOCKET NO. DR20-70**

AND

**GRANTING COUNTY OF HAWAI'I IN
DOCKET NO.20-69**

CERTIFICATE OF SERVICE

I hereby certify that a CONSOLIDATED DECLARATORY ORDER DENYING ROSEHILL, ET AL. AND GRANTING COUNTY OF HAWAI'I was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted:

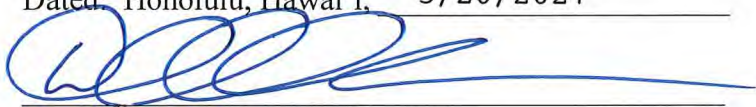
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MAIL: Deputy Attorney General
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Honolulu, HI 96813

Dated: Honolulu, Hawai'i, 5/20/2021



DANIEL E. ORODENKER
Executive Officer