

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)
CASTLE & COOKE, INC.)
For a Declaratory Order Relating)
to Applicability of Sections)
205-2, 205-5(c)(2), Hawaii)
Revised Statutes, and Sections)
15-15-25 and 15-15-27, Hawaii)
Administrative Rules)

DOCKET NO. DR87-11
CASTLE & COOKE, INC.

LAND USE COMMISSION
STATE OF HAWAII
APR 16 11 02 AM '88

DECLARATORY ORDER

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_____)	

DECLARATORY ORDER

PETITIONER'S INTEREST

The Petitioner is Castle & Cooke, Inc., a Hawaii corporation, which filed a Petition for Declaratory Order pursuant to Section 91-8, Hawaii Revised Statutes (HRS) and Chapter 15, Subchapter 14, Hawaii Administrative Rules (HAR), (popularly referred to as Hawaii Land Use Commission Rules).

Petitioner is the owner in fee simple of certain lands situated on the island of Lanai in the Manele area. It desires to include a golf course as part of its development on lands, a portion of which lie within the Rural district. The questions presented are:

1. Are golf courses and golf driving ranges permitted uses within the Rural district in the same manner as they are permitted in the Agricultural district?

2. If golf courses and golf driving ranges are permitted uses in a Rural district in the same manner as they

are permitted in the Agricultural district, do such uses include all of the activities usually and customarily related and accessory to golf courses and golf driving ranges including pro shop, maintenance sheds, golf clubhouse with restaurant and bar, and retail shop for sale of golf equipment and accessories?

PROCEDURAL HISTORY

1. Petitioner filed its Petition for Declaratory Order and Memorandum in Support of its Position Relating to Golf Course and Golf Driving Range as Permissible Uses Within Rural Districts on November 2, 1987.

2. The Land Use Commission conducted its action meeting on the subject Petition on December 17, 1987, pursuant to its agenda filed at the Lieutenant Governor's Office on November 27, 1987.

3. The State Department of Business and Economic Development (DBED) filed its memorandum in opposition to Petitioner's position that golf course and golf driving range are permissible uses within the Rural Districts on December 16, 1987.

4. On December 17, 1987, the Commission allowed DBED to participate as a party to the proceeding.

5. No other parties or witnesses testified at the Commission's meeting.

APPLICABLE PROVISIONS

The pertinent provisions of §205-2, HRS are:

- (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
- (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and

. . .

Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private and commercial use; services and uses accessory to the above activities including but not limited to living quarters or dwellings,

mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; agricultural parks; and open area recreational facilities, including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.

The pertinent provisions of §205-5(c), HRS, are:

(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

. . . .
(2) Agricultural uses; and

Section 15-15-25, HAR, provides:

§15-15-25 Permissible uses within the "A" agricultural district. (a) Permissible uses within agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be those uses set forth in section 205-4.5, HRS.

(b) Permissible uses within the agricultural district land classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E and U shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section §205-2, HRS.

Section 15-15-27, HAR, provides:

§15-15-27 Permissible uses within the "R" rural district. (a) Permissible uses within the rural district shall include the following activities:

- (1) All uses permitted under section 15-15-25 relating to agricultural uses and those uses that are compatible within the agricultural district;
- (2) Low-density residential uses with a minimum lot size of one-half acre. The commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential

density, provided all other lots in the subdivision have the minimum lot size of one-half acre. A petition for variance may be processed under the special permit procedure pursuant to subchapter 12. This exception shall apply to lots of record existing prior to January 1, 1977, and of not more than two acres. There shall be no more than one single-family dwelling per one-half acre, except as may be provided for in this section.

POSITION OF THE PARTIES

Department of Business and Economic Development opposed the position contained in the Petition for Declaratory Order. It argued that golf courses and golf driving ranges are not permissible uses within the Rural district.

FINDINGS OF FACT

Petitioner contends that golf courses and golf driving ranges are permitted uses within the Rural district pursuant to §205-2, HRS, §15-15-25 and §15-15-27, HAR. It argues that §15-15-27, governing uses within the Rural district, contains a broader standard to include those uses because they are permitted within the Agricultural district. Its argument is based primarily on statutory construction.

After a review of the applicable provisions of the statute and the rules of the Land Use Commission, for the reasons set forth below, the Commission has determined that golf courses and golf driving ranges are not agricultural uses within the meaning of Section 205-5(c)(2) and that §15-15-27 does not include golf courses and golf driving ranges as permitted uses within the Rural district.

Chapter 205 does not contain a definition of an "agricultural use." By definition, golf courses and golf driving ranges are not agricultural uses of land. The meaning of the word, agricultural, as found in the dictionary is:

la: Of, relating to, or used in agriculture . . . b: characterized by or engaged in farming as the chief occupation . . . Webster's Third International Dictionary, Unabridged, 43 (3rd ed. 1967)

Agriculture is defined as:

la: the science or art of cultivating the soil, harvesting crops, and raising livestock: tillage, husbandry, farming
b: the science or art of the production of plants and animals useful to man and in varying degrees the preparation of these products for man's use and their disposal (as by marketing) . . .
Ibid., 44

Since golf courses and golf driving ranges are not activities described as agricultural in nature, they do not appear to be permitted within rural districts as provided in Section 205-5(c)(2).

Although §15-15-27 states that permissible uses within the rural district shall include ". . . [A]ll uses permitted under Section 15-15-25 relating to agricultural uses and those uses compatible within the agricultural district," the Commission does not read this provision to be a substantive standard intended to create a new standard in the absence of one in the statute. The rule was originally adopted a decade prior to the adoption of the statutory provision. When the

Commission reissued the rule as §15-15-27, the identical language of the old section was carried over without modification. The administrative rules, like the statute under which they are promulgated, nowhere set out to enlarge the statutory provision and allow the particular uses as permitted uses within the Rural district.

No Hawaii courts have interpreted the particular provisions in question. It is axiomatic that an administrative rule cannot contradict or conflict with the statute it attempts to implement. Agsalud v. Blalack, 67 Haw. 558, 591, 699 P. 2d 17, 19 (1985); Pacific Legal Foundation v. California Unemployment Insurance Appeals Board, 29 Cal. 3d 101, 111, 624 P. 2d 244, 248, 172 Cal. Rptr. 194, 198 (1981); Mooney v. Pickett, 4 Cal. 3d 669, 679, 483 P. 2d 1231, 1237, 94 Cal. Rptr. 279, 285 (1971). "Rules and procedures adopted by the Commission under its rule-making authority must ineluctably comport with the requirements of the Hawaii Administrative Procedure Act (HAPA) and Chapter 205, Hawaii Revised Statutes." Life of the Land, Inc. v. West Beach Dev. Corp., 63 Haw. 529, 531, 631 P. 2d 588, 589 (1981). The Commission's authority, therefore, is limited to enacting rules which carry out and further the purposes of the legislation and do not enlarge, alter, or restrict the provisions of the statute being administered. Puana v. Sunn, 737 P. 2d 867 (1987).

While the Commission concedes that §205-2, §15-15-25 and §15-15-27 can legitimately be read as permitting golf

course and golf driving range uses within the Rural district, it finds the more logical and plausible interpretation is that no broader standard is implied to allow for such uses. As Chapter 205 does not expressly provide for golf courses and golf driving ranges as permitted uses within the rural district, and as there is no authority in state case law, suggesting the inclusion of such uses within the Rural district, the Commission cannot conclude that the Legislature intended, or that the courts would imply golf course and golf driving range use as permitted uses within the Rural district.

Having determined that golf courses and golf driving ranges are not permitted uses within the Rural district, it does not become necessary to address the second question posed.

CONCLUSIONS OF LAW

Sections 205-2 and 205-5(c)(2), HRS, sections 15-15-25 and 15-15-27, HAR, do not permit golf course and golf driving range uses within the Rural district.

Golf courses and golf driving ranges are not agricultural uses within the meaning of Section 205-5(c)(2), HRS.

ORDER

FOR GOOD CAUSE APPEARING, it is hereby ordered that the foregoing declaratory ruling be issued, addressing the subject matter of the Petition concerning golf course and golf driving range uses within the Rural district.

DOCKET NO. DR87-11 - CASTLE & COOKE, INC.

Done at Honolulu, Hawaii this 16th day of March
1988, per motion on December 17, 1987.

LAND USE COMMISSION
STATE OF HAWAII

By *J. P. Tacbian*
TEOFILO PHIL TACBIAN
Chairman and Commissioner

By *Robert S. Tamaye*
ROBERT S. TAMAYE
Commissioner

By *Richard B. F. Choy*
RICHARD B. F. CHOY
Commissioner

By *Lawrence F. Chun*
LAWRENCE F. CHUN
Commissioner

By *Renton L. K. Nip*
RENTON L. K. NIP
Commissioner

By *Toru Suzuki*
TORU SUZUKI
Commissioner

By *Everett L. Cuskaden*
EVERETT L. CUSKADEN
Commissioner

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Administrative Rules)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

ROGER A. ULVELING, Director
Department of Business and Economic Development
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

cert. ROBERT A. MARKS, Supervising Deputy Attorney General
465 South King Street, Room 200
Honolulu, Hawaii 96813

cert. DONALD A. CLEGG, Chief Planning Officer
Department of General Planning
City and County of Honolulu
650 South King Street
Honolulu, Hawaii 96813

cert. CHRISTOPHER L. HART, Planning Director
Planning Department, County of Maui
200 South High Street
Wailuku, Hawaii 96793

cert. ALBERT LONO LYMAN, Planning Director
Planning Department
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

DOCKET NO. DR87-11 - CASTLE & COOKE, INC.

cert. TOM H. SHIGEMOTO, Planning Director
Planning Department, County of Kauai
4280 Rice Street
Lihue, Hawaii 96766

cert. JAMES FUNAKI, Esq.
Attorney at Law
Grosvenor Center, Suite 1400
733 Bishop Street
Honolulu, Hawaii 96813

cert. GEORGE YIM, President
Lanai Company, Inc.
P. O. Box 2990
Honolulu, Hawaii 96803

Dated: Honolulu, Hawaii, this 16th day of March, 1988.



ESTHER UEDA, Executive Officer