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IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

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HOʻOMOANA FOUNDATION,
Respondent/Respondent/Appellant-Appellee,

vs.

LAND USE COMMISSION, STATE OF HAWAIʻI,
Respondent/Petitioner/Appellee-Appellant,

and

PUʻUNOA HOMEOWNERS ASSOCIATION, INC.; AND COURTNEY L. LAMBRECHT,
Petitioners/Respondents/Appellees-Appellees.

SCWC-17-0000181

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-17-0000173 consolidated with CAAP-17-0000181;
CIV. NO. 16-1-0160)

MARCH 10, 2023

NAKAYAMA, WILSON, AND EDDINS, JJ.,
AND McKENNA, J., DISSENTING, WITH WHOM RECKTENWALD, C.J., JOINS

OPINION OF THE COURT BY NAKAYAMA, J.

This case concerns a proposed overnight campground development for unhoused and commercial campers on "class B" land in an agricultural district near Lahaina, Maui. At issue

is whether the Hoʻomoana Foundation's (the foundation) proposed campground project can be authorized by special use permit or whether a district boundary amendment is required. The specific exclusion of overnight camps from permitted uses in Hawaiʻi Revised Statutes (HRS) § 205-4.5(a)(6)[1] means that the public and private recreational use of overnight camps is not permitted in class A and B land in agricultural districts, and cannot be permitted by special use permit. In addition, Mahaʻulepu v. Land Use Commission, 71 Haw. 332, 790 P.2d 906 (1990), superseded by statute, 2005 Haw. Sess. Laws Act 205, §§ 2-3 at 669-71, which held that a use not permitted under HRS § 205-4.5(a)(6) could be authorized by special use permit, is overruled because it was

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[1] Hawaiʻi Revised Statutes (HRS) § 205-4.5 (Supp. 2015) "Permissible uses within the agricultural districts" provides in relevant part:

> (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 and for solar energy facilities, class B or C, 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 expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8[.]
>
> . . . .

incorrectly decided. Because the foundation's proposed campground project includes a public or private recreational overnight camp use, the project requires a district boundary amendment.

I. BACKGROUND

A. Factual Background

The Land Use Commission (LUC) described the foundation's proposed campground project as follows:

> DESCRIPTION OF THE PROPERTY
>
> 8. The Property is situated along Hokiokio Place, adjacent to and bounded by the Lahaina Bypass Road between the Puamana Planned Unit Development and the agriculturally zoned Puʻunoa Subdivision . . . at Lahaina, Maui, Hawaiʻi. Kauaʻula Stream flows on one side of the Property. The lots within the Puʻunoa Subdivision are situated immediately mauka of the Property.
>
> 9. The Property consists of approximately 7.9 acres of land and represents a portion of the approximately 22.678-acre parcel[].
>
> 10. The Property is situated within the State Land Use Agricultural District.
>
> 11. The Property is owned by Kauaula Land Company, LLC, and is leased to Hoʻomoana.
>
> 12. The Property has soil classified by the [Land Study Bureau's] detailed land classification as overall (master) productivity rating class B. Specifically, the Property is situated on "B87i" rated land.
>
> 13. The Property was previously used for sugarcane cultivation.
>
> 14. In addition to the Property, [the parcel] includes an approximately 9-acre area used as a retirement stable for horses and approximately 5.8 acres that are part of the Lahaina Watershed Flood Control project area.
>
> PROPOSED USE OF THE PROPERTY
>
> 15. Hoʻomoana plans to develop the Project as an overnight campground for homeless and commercial campers with an

> agricultural field for possible future uses by the campers on the Property. The name of the Project is Kauaula Campground.
>
> 16. Under Hoʻomoana's proposal, the Project would consist of 2 acres, while the remaining adjacent 5.9 acres would be reserved as an agricultural field to be used by the campground occupants for therapy and work. It is envisioned that the [homeless] campers may work in the agricultural field to supplement their rental fees. Homeless campers are expected to pay $10 a night, while the commercial campers would be charged more. The camping fees are anticipated to underwrite the expenses of the campground. Although some of the campers may wish to participate in farming activities on the Property, there is no guarantee that the agricultural field would result in future agricultural productivity nor is there a current requirement placed upon the campers to engage in agricultural pursuits.
>
> 17. The 2-acre area of the Project would have up to 26 pods for tents accommodating up to 80 people. Tents are to be provided by the campers. It is intended that both the homeless campers and the commercial campers would be camping alongside each other. In addition to the pods, showers, toilet facilities, fire pits or camp stove areas, a paved parking area, and a charging station for campers are proposed. Homeless campers would be allowed to stay for two to three months or more as approved by the campground manager. It is unclear how long commercial campers would be allowed to use the grounds, but any stay would need to be approved by the manager.
>
> 18. Hoʻomoana does not know whether there will be sufficient use to justify continued operations, nor does Hoʻomoana know whether the Project will prove successful in addressing some of the needs of the homeless [people] in West Maui.
>
> 19. The Project is being initiated on a trial basis.

(Footnotes omitted.)[2]

[2] No party challenged the LUC's Findings of Fact describing the property and the proposed campground project before the circuit court or before the Intermediate Court of Appeals (ICA). Findings of fact that are not challenged on appeal are binding on the appellate court. See Bremer v. Weeks, 104 Hawaiʻi 43, 63, 85 P.3d 150, 170 (2004).

B. Procedural History

1. Administrative Proceedings

The foundation filed an application for a special use permit with the Maui Planning Commission, which held a hearing regarding the application on July 28, 2015.

On December 4, 2015, the Puʻunoa Homeowners Association and its president Devonne Lane (the homeowners[3]) filed a petition with the LUC seeking a declaratory order that the campground project required a district boundary amendment and could not be authorized by a special use permit. The homeowners live next to the proposed project site. The homeowners argued that the foundation's proposed use did not promote the objectives of chapter 205 because there was no guarantee of agricultural activity at the proposed campground, making a special use permit unwarranted.

The County of Maui Department of Planning (Maui Planning Department); the Office of Planning, State of Hawaiʻi (State Planning Office); and the foundation all filed position statements with the LUC arguing that a special use permit, not a

[3] Reference to "the homeowners" includes the Puʻunoa Homeowners Association and Devonne Lane until Ross Scott was substituted for Devonne Lane during the ICA proceedings on February 5, 2019. From February 5, 2019 until February 8, 2023, "the homeowners" refers to the Puʻunoa Homeowners Association and Ross Scott. On February 8, 2023, Courtney L. Lambrecht was substituted for Ross Scott. From February 8, 2023 onward, "the homeowners" refers to the Puʻunoa Homeowners Association and Courtney L. Lambrecht.

district boundary amendment, is appropriate. The foundation also petitioned to intervene in the action.

On February 24, 2016, the LUC heard the homeowner's petition and the foundation's petition to intervene at a public meeting. The LUC heard testimony from nearby residents, and from the homeowners' counsel, the Maui Planning Department's counsel, the State Planning Office's counsel, and the foundation's counsel. A majority of the LUC voted to grant the homeowners' petition, and then unanimously voted to deny the foundation's motion to intervene as moot.

The LUC's March 3, 2016 declaratory order concluded that the campground project could not be permitted by special use permit and required a district boundary amendment. The LUC determined:

> 5. In this case, the clear prohibition of overnight camps on class A and class B rated lands 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 camps on class A and class B rated lands, the legislature effectively determined that the use of overnight camp facilities on class A and class B rated lands is unreasonable.
>
> 6. To adopt the interpretation of Hoʻomoana, [the State Planning Office], and the [Maui Planning Department] that a special use permit may be used to allow the Project on class A and class B rated agricultural lands despite the clear language to the contrary would mean that the counties could define away completely any statutory restrictions on agricultural uses. 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 class A and class B is an unreasonable use on such land as a nullity, and as such must be rejected. The only way that overnight camps such as those proposed in the Project can be allowed

> on the Property is to change its 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 LUC also filed an order denying the foundation's petition to intervene as moot.

2. Circuit Court Proceedings

On March 29, 2016, the foundation appealed the LUC's declaratory order and order denying the foundation's motion to intervene to the Circuit Court of the Second Circuit (circuit court). The foundation asked the circuit court to reverse the LUC's orders. The foundation argued the plain language of HRS § 205-4.5(a)(6) does not mean that overnight camps can never be allowed, but rather means that overnight camps are not an "open area type of recreational use" and may be permitted if determined to be an "unusual and reasonable use[]." The foundation also argued the LUC failed to follow Mahaʻulepu, which "found that HRS § 205-4.5(b) allows uses for which special permits may be obtained under HRS § 205-6"[4] and applies to the present matter.

[4] HRS § 205-6 (2017) provides in relevant part:

> (a) Subject to this section, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may

The LUC countered it properly interpreted HRS §§ 205-4.5 and 205-6: the more specific restrictions against overnight camps should prevail against the more general provisions for special use permits, and overnight camps can never be "reasonable" uses under HRS § 205-6 because they are explicitly excluded in HRS § 205-4.5. Further, a contrary reading would render the specific restrictions against overnight camps a nullity, which should be avoided.

The homeowners argued the foundation was attempting to circumvent the land use laws and achieve spot zoning by seeking a special use permit. The homeowners emphasized the Hawaiʻi Constitution and HRS chapter 205 both enshrine the protection of agricultural lands.

> establish the appropriate fee for processing the special permit petition. Copies of the special permit petition shall be forwarded to the land use commission, the office of planning, and the department of agriculture for their review and comment.
>
> . . . .
>
> (c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.
>
> . . . .

On February 16, 2017, the circuit court entered its Final Judgment in favor of the foundation, pursuant to its January 4, 2017 Findings of Fact, Conclusions of Law, and Order Vacating the Land Use Commission, State of Hawaiʻi's Decisions and Orders Entered on March 3, 2016. The circuit court held that overnight camps are allowable by special use permit. The circuit court held HRS § 205-4.5(a)(6) unambiguously means that overnight camps are not "open area types of recreational uses" and noted the relevant statutory language had been directly addressed in Mahaʻulepu.

3. Intermediate Court of Appeals Proceedings

The LUC and the homeowners appealed the circuit court's Final Judgment to the ICA.

Before the ICA, the LUC asserted that HRS § 205-4.5(a) creates three categories of uses: (1) expressly permitted uses, (2) uses not mentioned in HRS § 205-4.5(a) that are prohibited by default per HRS § 205-4.5(b) but can be approved by special permit, and (3) uses expressly not permitted under HRS § 205-4.5(a). Regarding the third category, the LUC explained, "[b]ecause the use is specified, that implies that the Legislature disapproves of the use and considers it inconsistent with the purposes of the land use statutes and the agricultural classification. Therefore, such a use should not be subject to the special permit process." (Footnote and citations omitted.)

The LUC argued that because the third category of uses fails to satisfy the criteria applicable to special permits as a matter of law, allowing such uses to go through the special permit process would be pointless. The LUC noted HRS § 205-4.5(b) applies to uses subsection (a) is silent on, but does not apply to uses expressly not permitted. As to Mahaʻulepu, the LUC argued that because the legislature clarified that golf courses cannot be authorized by special permit in 2005, the same should be presumed for the other uses excluded in HRS § 205-4.5(a)(6).

The homeowners contended that Mahaʻulepu is no longer good law and emphasized that the relevant legislative history evinces an intent to protect agriculture.

The foundation maintained the statute refers to two categories of uses: (1) expressly permitted uses and (2) all other uses that are prohibited by default, because the statute does not refer to "expressly not permitted" uses. The foundation also noted that overnight stays on agricultural lands are not contrary to the objectives of chapter 205 because HRS § 205-4.5(a)(14) permits "[a]gricultural tourism activities, including overnight accommodations of twenty-one days or less . . . ."

On May 23, 2022 the ICA issued a memorandum opinion vacating the circuit court's decision with regard to the intervention issue and remanded. The ICA concluded it was bound

by Mahaʻulepu, making the LUC's decision contradicting Mahaʻulepu palpably erroneous. However, the ICA observed that the specific exclusion of overnight camps should control over the general availability of special permits in keeping with canons of statutory construction and furthering the statutory scheme. The ICA issued its Judgment on Appeal on June 24, 2022.

4. Application for Writ of Certiorari

In timely applications, the LUC and the homeowners both argue Mahaʻulepu should be overruled and special permits should not be used to approve expressly not permitted uses on class A and B agricultural land.

In response, the foundation argues the doctrine of stare decisis is particularly strong regarding statutory interpretation because if the legislature disagrees with a court's interpretation of a statute, the legislature can amend the law. The foundation further contends overruling Mahaʻulepu is unwarranted.

The foundation's procedural due process argument regarding intervention raised before the circuit court and the ICA was not raised on certiorari, and as such will not be addressed.

II. STANDARDS OF REVIEW

A. Review of agency decisions

> [T]he standard of review, as set forth in HRS § 91-14, is as follows:
>
> > Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:
> >
> > (1) In violation of constitutional or statutory provisions;
> >
> > (2) In excess of the statutory authority or jurisdiction of the agency;
> >
> > (3) Made upon unlawful procedure;
> >
> > (4) Affected by other error of law;
> >
> > (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> >
> > (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.
>
> HRS § 91-14(g).
>
> Conclusions of law are reviewed de novo, pursuant to subsections (1), (2) and (4); questions regarding procedural defects are reviewable under subsection (3); findings of fact (FOF) are reviewable under the clearly erroneous standard, pursuant to subsection (5), and an agency's exercise of discretion is reviewed under the arbitrary and capricious standard, pursuant to subsection (6). Mixed questions of law and fact are reviewed under the clearly erroneous standard because the conclusion is dependent upon the facts and circumstances of the particular case.

In re Hawaiʻi Elec. Light Co., 145 Hawaiʻi 1, 10–11, 445 P.3d 673, 682–83 (2019) (cleaned up).

B. Statutory interpretation

"The interpretation of a statute is a question of law which this court reviews de novo." State v. Thompson, 150 Hawaiʻi 262, 266, 500 P.3d 447, 451 (2021) (citing State v. Ruggiero, 114 Hawaiʻi 227, 231, 160 P.3d 703, 707 (2007)).

> 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.

Ito v. Invs. Equity Life Holding Co., 135 Hawaiʻi 49, 61, 346 P.3d 118, 130 (2015) (quoting Haw. State Tchrs. Ass'n v. Abercrombie, 126 Hawaiʻi 318, 320, 271 P.3d 613, 615 (2012)).

III. DISCUSSION

A. The uses specifically not permitted by HRS § 205-4.5(a)(6) cannot be authorized by special use permit.

The state-level land use system is set out in HRS chapter 205. Land in Hawaiʻi is divided into four land use districts: urban, rural, agricultural, and conservation. HRS § 205-2(a) (2001). Agricultural lands are further classified by soil productivity level from "A" to "E," with class A denoting the highest productivity level and class E denoting the lowest. Neighborhood Bd. No. 24 (Waianae Coast) v. State Land Use Comm'n, 64 Haw. 265, 267 n.2, 639 P.2d 1097, 1099 n.2 (1982). Under HRS § 205-4.5, agricultural districts are restricted to

certain uses, which depend on the productivity rating. Subsection (a) of HRS § 205-4.5 provides that class A and B agricultural lands "shall be restricted to the following permitted uses . . . ." Subsection (a) then enumerates permitted uses, such as "(1) [c]ultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;" and "(2) [g]ame and fish propagation . . . ." At issue here is the sixth enumerated use: "(6) [p]ublic 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 . . . ." (Emphasis added.)

Next, subsection (b) provides: "Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 [special permits] and 205-8 [nonconforming uses] . . . ."

HRS § 205-6 sets forth the law on special use permits. It provides: "the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified." HRS § 205-6(a) (emphasis added). Further, "[t]he county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use,

but only when the use would promote the effectiveness and objectives of this chapter . . . ." HRS § 205-6(c) (emphasis added).

The question before this court is whether the public and private open area types of recreational uses explicitly not permitted in HRS § 205-4.5(a)(6) – dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps – can be permitted by special use permit under HRS §§ 205-4.5(b) and 205-6.

"[T]he fundamental starting point for statutory interpretation is the language of the statute itself. . . . [O]ur foremost obligation [is] 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." Invs. Equity Life Holding Co., 135 Hawaiʻi at 61, 346 P.3d at 130 (quoting Abercrombie, 126 Hawaiʻi at 320, 271 P.3d at 615).

Special use permits are available only for "unusual and reasonable uses" and "only when the use would promote the effectiveness and objectives of this chapter." HRS § 205-6(a) and (c). HRS § 205-4.5(a)(6) specifically lists uses that are not permitted in class A and B agricultural district land. By explicitly banning certain uses in HRS § 205-4.5(a)(6), the legislature indicated those uses on class A and B agricultural land are inherently not reasonable. Therefore, a plain reading

of the text demonstrates that special use permits are unavailable to authorize the public and private recreational uses of "dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps" because those are not reasonable uses on class A and B agricultural land.

Further, the statutory rule against superfluity establishes that special use permits are unavailable for the public and private recreational uses of "dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps" on class A and B agricultural land. "It is a cardinal rule of statutory construction that courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous." State v. Bautista, 86 Hawaiʻi 207, 213, 948 P.2d 1048, 1054 (1997) (quoting State v. Ganal, 81 Hawaiʻi 358, 372, 917 P.2d 370, 384 (1996)). If special use permits were available for the explicitly not permitted uses listed in HRS § 205-4.5(a)(6), HRS § 205-4.5(a)(6)'s clause banning such uses would be superfluous. Therefore, to give effect to HRS § 205-4.5(a)(6)'s clause excluding the public and private recreational uses of "dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps" from

permitted uses on class A and B agricultural land, such uses cannot be permitted by special use permit.

Another principle of statutory interpretation confirms that HRS § 205-4.5(a)(6)'s specific list of not permitted uses controls over the general default rule and special use permit exception of HRS § 205-4.5(b).

> It is the generally accepted rule of statutory construction that unless a legislative intention to the contrary clearly appears, special or particular provisions control over general provisions, terms or expressions. . . . It is also elementary that specific provisions must be given effect notwithstanding the general provisions are broad enough to include the subject to which the specific provisions relate.

In re R Child., 145 Hawai'i 477, 485, 454 P.3d 418, 426 (2019) (quoting State v. Coney, 45 Haw. 650, 662, 372 P.2d 348, 354 (1962), overruled on other grounds by City and Cnty. of Honolulu v. Bonded Inv. Co., 54 Haw. 385, 507 P.2d 1084 (1973)). HRS § 205-4.5(a)(6)'s express list of not permitted uses is more specific than HRS § 205-4.5(b)'s default prohibition and general special use permit exception. As such, HRS § 205-4.5(a)(6)'s express list of not permitted uses controls.

A closer examination of HRS § 205-6 reinforces that special use permits are unavailable for the public and private recreational uses of "dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps" on class A and B agricultural land. Using class A and B agricultural land for such uses of "dragstrips, airports, drive-

in theaters, golf courses, golf driving ranges, country clubs, and overnight camps" does not appear to promote the objectives of HRS chapter 205, which is required by HRS § 205-6(c) to qualify for a special use permit. See HRS § 205-6(c) ("The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter . . . ." (emphasis added)).

The "overarching purpose" of HRS chapter 205 is to "protect and conserve natural resources and foster intelligent, effective, and orderly land allocation and development." Kauaʻi Springs, Inc. v. Planning Comm'n of Cnty. of Kauaʻi, 133 Hawaiʻi 141, 169, 324 P.3d 951, 979 (2014) (quoting Curtis v. Bd. of Appeals, Cnty. of Haw., 90 Hawaiʻi 384, 396, 978 P.2d 822, 834 (1999)). Relevant here, HRS chapter 205 is intended in part to protect agricultural land for agricultural use. See HRS § 205-2(a)(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[.]"); Curtis, 90 Hawaiʻi at 396, 978 P.2d at 834 (noting that one of the purposes of HRS chapter 205 is to "[u]tilize the land resources in an intelligent, effective manner based upon the capabilities and characteristics of the soil and the needs of the economy" (emphasis added) (quoting H. Stand. Comm. Rep. No.

395, in 1961 House Journal, at 855-56)). Moreover, the legislature declared that "the people of Hawaii have a substantial interest in the health and sustainability of agriculture as an industry in the State. There is a compelling state interest in conserving the State's agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use . . . ." HRS § 205-41 (2017). HRS § 205-41 was enacted pursuant to article XI, section 3 of the Hawaiʻi Constitution, which enshrines the protection of agricultural lands: "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands."

Thus, in addition to the foregoing reasons, it appears special use permits cannot authorize the public and private recreational uses of "dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps" on class A and B agricultural land, because these uses of class A and B agricultural land do not appear to promote the objectives of chapter 205, as required by HRS § 205-6(c).

In sum, HRS §§ 205-4.5(a)(6) and 205-6 are clear: the "public and private open area types of recreational uses" of "dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps" are not

permitted on class A and B agricultural land, and cannot be permitted by special use permit.[5]

B. A district boundary amendment is required for the foundation's proposed campground.

Public and private recreational uses of "dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps" are not permitted uses on class A and B rated agricultural land and cannot be subject to a special use permit. (Emphasis added.)

The foundation's proposed campground is clearly an "overnight camp" within the meaning of HRS § 205-4.5(a)(6). The LUC found that "Hoʻomoana plans to develop the Project as an overnight campground . . . The name of the Project is Kauaula Campground."[6] The campground project is intended for recreational use by commercial campers, in addition to use by unhoused campers. Because the campground project includes a

[5] This opinion does not construe "overnight accommodations" within the meaning of HRS § 205-2(d)(12), relating to agricultural tourism activities, because this issue was not raised on certiorari, except briefly by the foundation in the separate context of arguing Mahaʻulepu v. Land Use Commission, 71 Haw. 332, 790 P.2d 906 (1990), superseded by statute, 2005 Haw. Sess. Laws Act 205, §§ 2-3 at 669-71, was not abrogated.

[6] In its answering briefs before the ICA, the foundation argued the record is inadequate because it does not include the special use permit application. The special use permit application is not in the record, though the homeowners appear to have attached excerpts of the special permit application as an exhibit. The foundation did not raise the issue on certiorari. Given our disposition in this case – that the special use permit procedure is not available for overnight camps on class A and B rated agricultural district land – the fact that the special use permit is not in the record is inconsequential. Throughout its briefing, the foundation admitted it is "seeking a special use permit for the operation of an overnight campground."

recreational use of an overnight camp, the project cannot be authorized by special use permit. Accordingly, the proposed campground requires a district boundary amendment to change the land use classification to one where recreational overnight camps are permitted. See generally HRS § 205-3.1 (2005).

C. Mahaʻulepu v. Land Use Commission is overruled.

Mahaʻulepu v. Land Use Commission, 71 Haw. 332, 790 P.2d 906 (1990), superseded by statute, 2005 Haw. Sess. Laws Act 205, §§ 2-3 at 669-71, rests on flawed statutory analysis and was incorrectly decided.

> "[A] court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it." Dairy Rd. Partners v. Island Ins. Co., 92 Hawaiʻi 398, 421, 992 P.2d 93, 116 (2000) (quoting State v. Stocker, 90 Hawaiʻi 85, 95, 976 P.2d 399, 409 (1999)). Nevertheless, "there is no necessity or sound legal reason to perpetuate an error under the doctrine of stare decisis." State v. Garcia, 96 Hawaiʻi 200, 206, 29 P.3d 919, 925 (2001) (quoting Robinson v. Ariyoshi, 65 Haw. 641, 653 n.10, 658 P.2d 287, 297 n.10 (1982)). The doctrine is "subordinate to legal reasons and justice and we should not be unduly hesitant to overrule a former decision when to do so would bring about what is considered manifest justice." Ariyoshi, 65 Haw. at 653 n.10, 658 P.2d at 297 n.10 (quoting McBryde Sugar Co. v. Robinson, 54 Haw. 174, 180, 504 P.2d 1330, 1335 (1973)).

State v. Chang, 144 Hawaiʻi 535, 553, 445 P.3d 116, 134 (2019). Mahaʻulepu is overruled because inescapable logic and the cogent reasons enumerated above require it. The statutory analysis in Mahaʻulepu is flawed, and "there is no necessity or sound legal reason to perpetuate an error under the doctrine of stare decisis." Garcia, 96 Hawaiʻi at 206, 29 P.3d at 925.

Mahaʻulepu held that golf courses on class A and B agricultural land can be authorized by special use permit under HRS §§ 205-4.5(b) and 205-6, despite the fact that golf courses are not a permitted use on class B agricultural land under HRS § 205-4.5(a)(6). Mahaʻulepu, 71 Haw. at 336–37, 790 P.2d at 908-09. The opinion did not reconcile HRS § 205-4.5(a)(6)'s list of explicitly not permitted uses with HRS § 205-4.5(b)'s and HRS § 205-6's special use permit provisions. Instead, the opinion analyzed the effect of Act 298 - the 1985 amendment to HRS § 205-2 relating to golf courses - on HRS § 205-4.5(b). Id. at 337-38, 790 P.2d at 909-10. Because Mahaʻulepu failed to engage with the plain language of HRS § 205-4.5(a)(6) prohibiting certain uses in class A and B agricultural districts, ignored principles of statutory interpretation, and failed to effectuate the purpose of the statutory scheme, it is overruled.[7]

IV. CONCLUSION

The specific exclusion of overnight camps from permitted uses in HRS § 205-4.5(a)(6) means that the public and private recreational use of overnight camps is not permitted, even by special use permit, on class A and B agricultural district land. Accordingly, the foundation's proposed

[7] The LUC's contention that the foundation waived its argument regarding Mahaʻulepu will not be addressed in light of this decision overruling Mahaʻulepu.

campground project requires a district boundary amendment. Further, Mahaʻulepu v. Land Use Commission, 71 Haw. 332, 790 P.2d 906 (1990), superseded by statute, 2005 Haw. Sess. Laws Act 205, §§ 2-3 at 669-71, was incorrectly decided and is overruled.

Accordingly, we reverse the ICA's June 24, 2022 Judgment on Appeal.

/s/ Paula A. Nakayama

/s/ Michael D. Wilson

/s/ Todd W. Eddins

Robert T. Nakatsuji (Kimberly T. Guidry on the briefs) for petitioner Land Use Commission

Douglas R. Wright (Deborah K. Wright on the briefs) for petitioners Puʻunoa Homeowners Association, Inc. and Courtney L. Lambrecht

James W. Geiger for respondent Hoʻomoana Foundation

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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HO'OMOANA FOUNDATION,
Respondent/Respondent/Appellant-Appellee,

vs.

LAND USE COMMISSION, STATE OF HAWAI'I
Respondent/Petitioner/Appellee-Appellant,

and

PU'UNOA HOMEOWNERS ASSOCATION, INC.; AND COURTNEY L. LAMBRECHT,
Petitioners/Respondents/Appellees-Appellees.

SCWC-17-0000181

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-17-0000173 consolidated with CAAP-17-0000181;
CIV. NO 16-1-0160)

MARCH 10, 2023

DISSENTING OPINION BY McKENNA, J.,
IN WHICH RECKTENWALD, C.J., JOINS

I. Introduction

Today, the majority chooses to overrule Maha'ulepu v. Land Use Commission, 71 Haw. 332, 790 P.2d 906 (1990).[1]

In doing so, the majority avoids our own stare decisis jurisprudence. Maha'ulepu was decided more than thirty years ago. Whether or not we agree with its reasoning, we have repeatedly held that where the legislature fails to act in response to our statutory interpretation, that statutory interpretation must be considered to have the legislature's tacit approval. See, e.g., State v. Hussein, 122 Hawai'i 495, 529, 229 P.3d 313, 347 (2010) (citing Gray v. Admin. Dir., 84 Hawai'i 138, 143 n.9, 931 P.2d 580, 585 n.9 (1997)); State v. Dannenberg, 74 Haw. 75, 83, 837 P.2d 776, 780 (1992) (citations omitted), superseded by statute on other grounds as stated in State v. Klie, 116 Hawai'i 519, 174 P.3d 358 (2007). In addition, we have held that when we decide a matter of statutory interpretation, and the legislature does not alter what we have done, "[c]onsiderations of stare decisis have special force[.]" See State v. Garcia, 96 Hawai'i 200, 206, 29 P.3d 919, 925 (2001) (quoting Hilton v. S.C. Pub. Rys. Comm'n, 502 U.S. 197, 202 (1991)). These principles govern this case.

[1] Maha'ulepu held that golf courses, which are deemed an impermissible use on class A and B agricultural lands by Hawai'i Revised Statutes ("HRS") § 205-4.5(a)(6) (1985), can still be authorized by special permit pursuant to HRS §§ 205-4.5(b) (1985) and 205-6 (1985). Maha'ulepu, 71 Haw. at 336-37, 790 P.2d at 908-09.

The majority holds that because Hoʻomoana Foundation's ("the foundation") "proposed campground project includes a public or private recreational overnight camp use, the project requires a district boundary amendment." Majority op. at Introduction. The majority thus acknowledges that with respect to unsheltered persons,[2] the foundation's proposed project is not a "recreational" use prohibited by HRS § 205-4.5(a)(6) (Supp. 2015), which would require a district boundary amendment based on the majority's overruling of Mahaʻulepu. Even with respect to "recreational" overnight campers, however, HRS § 205-4.5(a)(14) (Supp. 2015) specifically permits "agricultural tourism activities, including overnight accommodations of twenty-one days or less[.]"

But the foundation was precluded from fully explaining why a district boundary amendment is not required because the Land Use Commission ("LUC") denied the foundation's intervention petition as moot after granting Puʻunoa Homeowners Association and Devonne Lane's (collectively, "the homeowners")[3] petition for

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[2] As I said in my dissent in State v. Keanaaina, 151 Hawaiʻi 19, 508 P.3d 814 (2022) (McKenna, J., dissenting), "I use the term 'unsheltered persons' to mean those 'without traditional housing.' I avoid the terms 'homeless' and 'houseless' because for an increasing number of our citizens, tent-like structures have become their homes and houses." 151 Hawaiʻi at 29 n.1, 508 P.3d at 824 n.1.

[3] Like in the Majority opinion, reference to "the homeowners" includes Devonne Lane until Ross Scott, and then Courtney L. Lambrecht, were substituted for Devonne Lane during the proceedings before the ICA and this

a declaratory order. The foundation is not precluded from submitting a revised proposal. But because the majority chooses to overrule Maha'ulepu while ignoring our precedent on stare decisis principles, and chooses to do so in this case, I respectfully dissent.

II. Discussion

A. Overruling Maha'ulepu violates our stare decisis precedent

Our foremost obligation in interpreting HRS § 205-4.5(a)(6) is "to ascertain and give effect to the intention of the legislature[.]" See Gillan v. Gov't Emps. Ins. Co., 119 Hawai'i 109, 115, 194 P.3d 1071, 1077 (2008) (citation omitted). We have held that "[w]here the legislature fails to act in response to our statutory interpretation, the consequence is that the statutory interpretation of the court must be considered to have the tacit approval of the legislature and the effect of legislation." Hussein, 122 Hawai'i at 529, 229 P.3d at 347 (citation omitted).

Also, when this court decides a matter of statutory interpretation, and the legislature does not alter what we have done, "[c]onsiderations of stare decisis have special force[.]" Garcia, 96 Hawai'i at 206, 29 P.3d at 925 (citation omitted).

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court; it then includes the respective substituted parties. See Majority op. at note 3.

"While there is no necessity or sound legal reason to perpetuate an error under the doctrine of stare decisis, . . . a court should not depart from the doctrine of stare decisis without some compelling justification." Id. (cleaned up). Stare decisis "maintain[s] public faith in the judiciary as a source of impersonal and reasoned judgments." 96 Hawai'i at 205, 29 P.3d at 924 (citation omitted).

This court decided Maha'ulepu over thirty years ago. In Maha'ulepu, we interpreted chapter 205 and held it provides authority for the issuance of special use permits for golf courses on class A and B rated agricultural lands. See 71 Haw. at 336-37, 790 P.2d at 908-09. We reviewed HRS § 205-4.5(a)(6), which provides that golf courses, along with dragstrips, airports, drive-in theaters, golf driving ranges, country clubs, and overnight camps, are not a permitted use on class A and B agricultural lands. See id.; HRS § 205-4.5(a)(6). We stated that "Section 205-4.5(b) nonetheless allows those uses for which special permits may be obtained under § 205-6." Maha'ulepu, 71 Haw. at 336, 790 P.2d at 909.[4] Maha'ulepu thus held that uses expressly deemed impermissible under HRS § 205-4.5(a)(6),

[4] Maha'ulepu also addressed whether the authority to issue a special use permit for golf courses on class B lands was negated by language in HRS § 205-2 (1985). See Maha'ulepu, 71 Haw. at 337-39, 790 P.2d at 909-10.

including overnight camps, can be authorized by a special use permit. See id.

Whether or not this reasoning was faulty, our precedent clearly states the legislature is "presumed to be aware" of this court's interpretation of HRS § 205-4.5(a)(6) in Maha'ulepu. See State v. Nesmith, 127 Hawai'i 48, 60, 276 P.3d 617, 629 (2012). The legislature then "has had abundant opportunities to amend the statute if it intended" for the uses expressly excluded from subsection (a)(6) to not be available through special use permits. See id.

Since 1990, the legislature has amended the relevant sections of chapter 205 dozens of times.[5] And although the

[5] Since this court published the Maha'ulepu opinion in 1990, the legislature has made the following amendments to HRS § 205-4.5: 1991 Haw. Sess. Laws Act 281, § 3 at 674-75; 1997 Haw. Sess. Laws Act 258, § 11 at 572-73; 2005 Haw. Sess. Laws Act 205, § 3 at 670-71; 2006 Haw. Sess. Laws Act 237, § 4 at 1052-53; 2006 Haw. Sess. Laws Act 250, § 2 at 1082-83; 2006 Haw. Sess. Laws Act 271, § 1 at 1124-26; 2007 Haw. Sess. Laws Act 159, § 3 at 295-96; 2007 Haw. Sess. Laws Act 171, § 1 at 332-34; 2008 Haw. Sess. Laws Act 145, § 3 at 388-90; 2009 Haw. Sess. Laws Act 53, § 1 at 93-96; 2011 Haw. Sess. Laws Act 217, § 3 at 703-05; 2012 Haw. Sess. Laws Act 97, § 7 at 211-13; 2012 Haw. Sess. Laws Act 113, § 3 at 409-11; 2012 Haw. Sess. Laws Act 167, § 2 at 592-95; 2012 Haw. Sess. Laws Act 329, § 4 at 1113-16; 2014 Haw. Sess. Laws Act 52, § 1 at 133-36; 2014 Haw. Sess. Laws Act 55, § 3 at 144-47; 2015 Haw. Sess. Laws Act 228, § 3 at 661-65; 2016 Haw. Sess. Laws Act 173, § 3 at 551-55; 2017 Haw. Sess. Laws Act 12, § 1 at 20; 2018 Haw. Sess. Laws Act 49, § 4 at 174-78; 2021 Haw. Sess. Laws Act 77, § 2 at 247-52; 2022 Haw. Sess. Laws Act 131, § 3 at 308-12.

In addition, since 1990, the legislature has made the following amendments to HRS § 205-2 (which classifies the four major agricultural land districts): 1991 Haw. Sess. Laws Act 191, § 1 at 462; 1991 Haw. Sess. Laws Act 281, § 2 at 674; 1995 Haw. Sess. Laws Act 69, § 8 at 105-06; 2005 Haw. Sess. Laws Act 205, § 2 at 669-70; 2006 Haw. Sess. Laws Act 237, § 3 at 1051-52; 2006 Haw. Sess. Laws Act 250, § 1 at 1081-82; 2007 Haw. Sess. Laws Act 159, § 2 at 294-95; 2008 Haw. Sess. Laws Act 31, § 2 at 138-39; 2008 Haw. Sess. Laws Act 145, § 2 at 387-88; 2011 Haw. Sess. Laws Act 217, § 2 at 702-

legislature amended chapter 205 to specifically disallow golf courses on agricultural lands, it did not do so for other unpermitted uses in HRS § 205-4.5(a).[6] In other words, none of

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03; 2012 Haw. Sess. Laws Act 97, § 6 at 209-11; 2012 Haw. Sess. Laws Act 113, § 2 at 407-09; 2012 Haw. Sess. Laws Act 167, § 1 at 591-92; 2012 Haw. Sess. Laws Act 329, § 3 at 1112-13; 2014 Haw. Sess. Laws Act 55, § 2 at 143-44; 2015 Haw. Sess. Laws Act 228, § 2 at 660-61; 2016 Haw. Sess. Laws Act 173, § 2 at 550-51; 2017 Haw. Sess. Laws Act 12, § 15 at 28-30; 2017 Haw. Sess. Laws Act 129, § 2 at 500-02; 2018 Haw. Sess. Laws Act 49, § 3 at 174; 2022 Haw. Sess. Laws Act 131, § 2 at 306-08.

Finally, since 1990, the legislature has made the following amendments to HRS § 205-6 (which authorizes special use permits): 1998 Haw. Sess. Laws Act 237, § 6 at 815-16; 2005 Haw. Sess. Laws Act 183, § 5 at 589; 2021 Haw. Sess. Laws Act 153, § 8 at 584.

[6] The LUC argues that the legislature's 2005 and 2006 amendments to chapter 205 rejected Maha'ulepu.

The 2005 and 2006 amendments clearly established that golf courses and driving ranges are prohibited on all classes of agricultural lands, except for legacy golf courses and driving ranges approved before July 1, 2005. See 2005 Haw. Sess. Laws Act 205, §§ 2-3 at 669-71; 2006 Haw. Sess. Laws Act 250, § 1 at 1082. The 2005 amendment amended HRS § 205-2(d) to include the following sentence: "For the purposes of this chapter, golf courses and golf driving ranges are prohibited in agricultural districts, except as provided in section 205-4.5(d)." 2005 Haw. Sess. Laws Act 205, § 2 at 670. It also added a new subsection (d) to HRS § 205-4.5: "(d) Notwithstanding any other provision of this chapter to the contrary, golf courses and golf driving ranges approved by a county before July 1, 2005, for development within the agricultural district shall be permitted uses within the agricultural district." Id. § 3 at 671. In 2006, the legislature amended HRS § 205-2(d) to read in part: "Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d)." 2006 Haw. Sess. Laws Act 250, § 1 at 1082.

Even though the amendments expressly addressed only golf courses and driving ranges, and not the other excluded uses in HRS § 205-4.5(a)(6), the LUC contends the amendments show the legislature's disapproval of all the excluded uses in subsection (a)(6), including overnight camps. The LUC invokes the maxim noscitur a sociis, which means "words of a feather flock together," or, "the meaning of a word is to be judged by the company it keeps." See State v. Aluli, 78 Hawai'i 317, 321, 893 P.2d 168, 172 (1995) (quoting State v. Deleon, 72 Haw. 241, 244, 813 P.2d 1382, 1384 (1991)).

The maxim noscitur a sociis falls flat here. The plain language of the 2005 and 2006 amendments addresses only golf courses and driving ranges, not overnight camps — overnight camps do not "keep company" with golf courses in the amendments. See id. "[T]he contrast between a specific subject matter which is expressed and one which is not mentioned leads to an inference that

the amendments rejected Maha'ulepu's statutory interpretation that the list of uses expressly excluded from permitted open area recreational uses in HRS § 205-4.5(a)(6) could be authorized through a special use permit. Thus, although legislative inaction can be a poor barometer of legislative intent,[7] in this case, the nature and sheer number of post-Maha'ulepu legislative amendments buttress the legislature's tacit approval of this court's statutory interpretation. See

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the latter was not intended to be included within the statute." State v. Choy Foo, 142 Hawai'i 65, 74, 414 P.3d 117, 126 (2018) (quoting Int'l Sav. & Loan Ass'n v. Wiig, 82 Hawai'i 197, 201, 921 P.2d 117, 121 (1996)). Here, we must infer that if the legislature intended to prohibit the authorization of overnight camps through a special use permit as well as golf courses and driving ranges, it would have done so. See id. Maha'ulepu's reasoning applied to all the uses excluded in HRS § 205-4.5(a)(6), and we must presume the legislature knew this. See Nesmith, 127 Hawai'i at 60, 276 P.3d at 629.

Moreover, the legislative history indicates the legislature was specifically concerned with golf courses and driving ranges as part of its efforts to address "gentlemen's estates" and other luxury estates developed on agriculturally-zoned lands under the guise of permitted "farm dwellings." A House Conference Committee Report, for example, indicates, "[t]he original intent of this bill is primarily to prohibit luxury estates[] on agriculturally classified lands[.]" H. Conf. Comm. Rep. No. 135, in 2005 House Journal, at 959. And a Senate Standing Committee Report noted the bill would protect "Hawaii's farmers and agricultural lands from increased land speculation and development of fake farms or gentlemen's estates[.]" S. Stand. Comm. Rep. No. 1278, in 2005 Senate Journal, at 1637. Indeed, an earlier draft of the 2005 amendment established a rebuttable presumption that subdivisions are not agricultural, and do not consist of farm dwellings, if they include certain enumerated features, including a golf course or private country club facilities. See H.B. 109, H.D. 1, 23rd Leg., Reg. Sess. (Haw. 2005). It is clear that in making the foregoing 2005 and 2006 amendments, the legislature was not concerned with rejecting Maha'ulepu's statutory interpretation — or primarily concerned with special use permits at all.

[7] "[L]egislative inaction is a notoriously poor barometer of legislative intent--even when we can assume the legislature is aware a statute is being misinterpreted." Goran Pleho, LLC v. Lacy, 144 Hawai'i 224, 250, 439 P.3d 176, 202 (2019) (citation omitted).

Hussein, 122 Hawai'i at 529, 229 P.3d at 347. Maha'ulepu therefore has the effect of legislation. See id.

B. The foundation was precluded from fully explaining why a district boundary amendment is not required

The foundation was precluded from fully explaining why a district boundary amendment is not required because the LUC denied the foundation's intervention petition as moot after granting homeowners' petition for declaratory order. Perhaps the foundation could have made the following arguments.

1. A campground for unsheltered persons is not a "recreational" use

The majority's holding and LUC's declaratory order are premised on HRS § 205-4.5(a)(6), which restricts class A and B agricultural lands to, inter alia, "[p]ublic 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[.]" (Emphases added.) The majority holds that "[b]ecause the foundation's proposed campground project includes a public or private recreational overnight camp use, the project requires a district boundary amendment." Majority op. at Introduction.

According to the LUC's findings of facts, the foundation's proposed project consists of "an overnight campground for

homeless and commercial campers with an agricultural field for possible future uses by the campers[.]"

An overnight campground for unsheltered persons is not a "recreational" use. See HRS § 205-4.5(a)(6). The majority acknowledges that with respect to unsheltered persons, the foundation's proposed project is not a "recreational" use prohibited by HRS § 205-4.5(a)(6). See Majority op. at Section III.B (holding the foundation's project cannot be authorized by a special permit because it "includes a recreational use" by commercial overnight campers).

In this regard, "the fundamental starting point for statutory interpretation is the language of the statute itself." Ito v. Invs. Equity Life Holding Co., 135 Hawai'i 49, 61, 346 P.3d 118, 130 (2015) (quoting Haw. State Tchrs. Ass'n v. Abercrombie, 126 Hawai'i 318, 320, 271 P.3d 613, 615 (2012)). "[W]here the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning." Id. "In conducting a plain meaning analysis, 'this court may resort to legal or other well accepted dictionaries as one way to determine the ordinary meaning of certain terms not statutorily defined.'" State v. Guyton, 135 Hawai'i 372, 378, 351 P.3d 1138, 1144 (2015) (quoting State v. Pali, 129 Hawai'i 363, 370, 300 P.3d 1022, 1029 (2013)).

The phrase "recreational uses" in HRS § 205-4.5(a)(6) is clear and unambiguous. See id. As such, "its plain language must control." See id. (citations omitted). Oxford Advanced Learner's Dictionary defines "recreational" as "connected with activities that people do for pleasure when they are not working[.]" Recreational, Oxford Advanced Learner's Dictionary (10th ed. 2020) (emphasis added).[8]

Shelter is a basic human necessity; it is not used for "pleasure." See id. Tent-like shelters used as house and homes for living are no more "recreational" than traditional homes, regardless of how they are structured or labeled, or whether located on a "campground." Thus, if the project consisted purely of campgrounds for unsheltered persons, it would not be a "recreational" "overnight camp[]" excluded by HRS § 205-4.5(a)(6).

Based on the limited factual record before the LUC,[9] however, the commercial camping aspect of the foundation's project appears to constitute a recreational overnight camp. The LUC found "there is no . . . current requirement placed upon

[8] Similarly, Webster's Unabridged Dictionary defines "recreation" as "a pastime, diversion, exercise, or other resource affording relaxation and enjoyment." Recreation, Random House Webster's Unabridged Dictionary (2d ed. 2005).

[9] See Majority op. at note 6 (explaining that the homeowners presented only excerpts of the foundation's special permit application as an exhibit before the LUC).

the campers to engage in agricultural pursuits." The foundation did not challenge this finding on appeal, so we are bound by it. See In re Doe, 99 Hawai'i 522, 538, 57 P.3d 447, 463 (2002) ("Unchallenged findings are binding on appeal." (quoting Poe v. Haw. Lab. Rels. Bd., 97 Hawai'i 528, 536, 40 P.3d 930, 938 (2002))).

2. Even for commercial campers, "agricultural tourism" is expressly allowed

With respect to recreational overnight campers, subsection (a)(14) of HRS § 205-4.5 expressly permits:

> 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[.]

(Emphasis added.)[10]

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[10] Under its plain language, HRS § 205-4.5(a)(14) applies to Maui County.

HRS § 165-2 (2011 & Supp. 2012) defines a "farming operation" as:

> [A] commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" includes but shall not be limited to:
>
> > (1) Agricultural-based commercial operations as described in section [205-2(d)(15)];

Hence, subsection (a)(14) expressly permits "overnight accommodations" of 21 days or less in connection with agricultural tourism. Id. HRS § 205-4.5(a) does not prohibit commercial camping where the camping qualifies as agricultural tourism in compliance with subsection (a)(14). Webster's Unabridged Dictionary defines "accommodations" broadly as "lodging." Accommodations, Random House Webster's Unabridged Dictionary, supra. It defines "lodging," in turn, as "a temporary place to stay; temporary quarters." Lodging, Random House Webster's Unabridged Dictionary, supra. Pursuant to the plain language of the statute, tent-like structures can be "overnight accommodations." See HRS § 205-4.5(a)(14); Guyton, 135 Hawai'i at 378, 351 P.3d at 1144.

3. A modified version of the project could comply with chapter 205

The foundation was not given a full opportunity to make these types of arguments due to the denial of its petition for intervention. But a modified version of the foundation's project could potentially comply with chapter 205. The

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(2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit;
(3) Operation of machinery and irrigation pumps;
(4) Ground and aerial seeding and spraying;
(5) The application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and
(6) The employment and use of labor.

majority's opinion does not prohibit the foundation from amending and resubmitting its proposal. The majority merely reverses the ICA's June 24, 2022 judgment on appeal and, consequently, reinstates the LUC's March 3, 2016 declaratory order that the project as constituted cannot be permitted by a special use permit. See Majority op. at Part IV. The foundation could present a modified project consisting only of campgrounds for unsheltered persons, but not commercial campers. A special use permit application could be authorized because, as explained above, the proposed use would not be a "recreational" use under HRS § 205-4.5(a)(6). If a modified proposal includes uses expressly permitted by section 205-4.5(a), that portion of the project should not require a district boundary amendment or a special use permit. Thus, if the foundation proposes a campground with bona fide agricultural activity, commercial camping in the same project area could potentially comply with subsection (a)(14) as agricultural tourism. See HRS § 205-4.5(a)(14).

III. Conclusion

Today, the majority overrules Mahaʻulepu while ignoring important stare decisis principles. It does so in a case involving a proposed overnight campground development for unsheltered people in our community brought by adjoining homeowners, some of whom asserted "not in my backyard"

concerns.[11] Respectfully, in my view, our resolution of this case should be guided by the motto enshrined in the Constitution of the State of Hawaiʻi, "Ua mau ke ea o ka ʻāina i ka pono."[12]

For all these reasons, I respectfully dissent.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

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[11] Homeowner testimony before the LUC on the petition for declaratory order included statements such as "we feel that [the proposed development is] very detrimental to our property values, and to our safety."

[12] The Preamble to the Constitution of the State of Hawaiʻi provides:

> We, the people of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono."
>
> We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.
>
> We reaffirm our belief in a government of the people, by the people and for the people, and with an understanding and compassionate heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii.