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RK II PARTNERS LLC

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

IN THE MATTER OF:

RK II PARTNERS LLC

Docket No. DR24-77

PETITION FOR DECLARATORY
ORDER; VERIFICATION OF
PETITION;
CERTIFICATE OF SERVICE

PETITION FOR DECLARATORY ORDER

RK II PARTNERS LLC ("RK II Partners" or "Petitioner"), as an interested person, by and through its attorneys, submits this Petition for Declaratory Order ("Petition") to the State of Hawaii Land Use Commission (the "LUC") pursuant to Hawaii Revised Statute ("HRS") § 91-8 and Hawaii Administrative Rules ("HAR") § 15-15-98, et seq. The Petition seeks an order from the

LUC confirming that the Parcel, as identified below, shall, by prior order of the LUC, be designated as State Land Use Urban District, in perpetuity.

RK II Partners respectfully requests that all correspondence and communications in regard to this Petition be addressed to, and served upon, the undersigned counsel at:

Lee & Martin, LLLP
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In connection with the filing of this Petition, RK II Partners has authorized the undersigned counsel to act on their behalf with respect to this matter.

I. PETITIONER AND PETITIONER'S INTEREST

RK II Partners is the current fee owner of that parcel of real property identified as TMK No. (1) 9-4-002-001 (the "Parcel"). The Parcel is approximately 5,388,895 square feet (approximately 123.712 acres) and is zoned as Industrial and B-1 by the City and County of Honolulu. The Parcel was part of the larger area of land reclassified by the LUC from Agriculture to Urban, as explained in greater detail below. As such, RK II Partners is an interested person as successor owner of the Parcel. RK II Partners respectfully requests a declaratory ruling from the LUC to clarify and affirm that the land classification for the Parcel shall remain a State Land Use Urban District in perpetuity.

II. STATUTORY PROVISIONS, STATEMENT OF FACTS, AND STATEMENT OF ISSUES PRESENTED.

A. Statutory Provisions.

Under HAR § 15-15-98(a), "[o]n 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." Thus, the LUC has jurisdiction to interpret the applicability and meaning of its own order, including the 2004 Order referenced below, and may issue a declaratory order as sought by the Petition.

B. Statement of Facts.

In 1993, Halekua Development Corporation ("Halekua") petitioned the LUC to reclassify approximately 504.865 acres of land located at Waikele and Hoaeae, Ewa, Oahu ("Petition Area") from the State Land Use Agricultural District into the State Land Use Urban District. Such petition was Docket No. A92-683. On December 9, 1993, the LUC issued a Findings of Fact, Conclusions of Law and Decision and Order that reclassified the land to State Land Use Urban District ("1993 Order"). Part of the 1993 Order included approval of a light industrial park.

As part of the 1993 Order, the LUC's reclassification was conditioned upon several points including conveying 150 acres of the Petition Area to the State of Hawaii Department of Agriculture for an agricultural park. Specifically, Condition Number 19 of the 1993 Order states "[Halekua] shall convey the agricultural park to the State of Hawaii, and provide off-site infrastructure to the agricultural park, pursuant to the terms of the Memorandum of Understanding dated March 30, 1993 entered into by [Halekua] and the Department of Agriculture."

Halekua eventually sold off the Petition Area in pieces to different entities including HRT, Ltd. ("HRT") and Haseko Royal Kunia, LLC ("Haseko"). HRT specifically purchased the Parcel

to build a light industrial park as approved in the 1993 Order. On February 23, 2004, the LUC issued Order Granting the Office of Planning's Amended Motion to Exempt HRT, Ltd.'s Property from the Order to Show Cause Granted on February 26, 2003, Pursuant to The Stipulation filed on December 30, 2003 (“2004 Order”). The 2004 Order states “on December 29, 2003, [Office of Planning] and HRT **entered into a Stipulation**, which provides that should Halekua Development Corporation [*sic*] fail to perform its obligation to convey 150 acres of agricultural land to the State of Hawai'i by January 31, 2004, then HRT shall proceed to acquire the 150-acre site from the Robinson Estate and other owners related to the Estate for conveyance to the State of Hawai'i no later than February 28, 2004; ii) **in return for the 150-acre site, [Office of Planning] agreed to request from this Commission that the lands owned by HRT located within the Petition Area should not be reclassified for any use other than the present designation unless requested by HRT...**” (Emphasis added).

The 2004 Order goes on to state that “HRT asked this Commission to i) acknowledge that if [Halekua] fails to convey the 150-acre agricultural site to the State of Hawai'i by January 31, 2004, HRT will acquire the site at its own expense and convey it to the State of Hawai'i no later than February 28, 2004, as required by part (a) Condition Number 19, and ii) **as a condition to the conveyance, agree not to reclassify or downzone lands in the Petition area presently owned by HRT.**” (Emphasis added).

However, the 2004 Order states “[f]ollowing discussion by the Commissioners, the **motion was restated to clarify** that... (ii) the HRT lands within the Petition Area at the time of filing of the Motion shall not be reclassified to the Agricultural District **for purposes of this Commission's Order to Show Cause proceedings in this docket** unless requested by HRT, its successors or interests, or HRT violates other conditions of approval.” (Emphasis added). The 2004 Order also

states “this Commission ORDERS as follows: OP’s Amended Motion is GRANTED, that **for purposes of this Commission’s Order to Show Cause proceedings in this docket**, i) in the event[Halekua] fails to comply with Condition Number 19 with respect to the conveyance of the 150-acre agricultural park site to the State of Hawai’i by January 31, 2004, HRT shall proceed to acquire the site and convey it to the State of Hawai’i no later than February 28, 2004; ii) the **HRT lands within the Petition Area at the time of filing of the Motion shall not be reclassified to the Agricultural District unless requested by HRT**, its successors or interests, or HRT violates other conditions of approval.” (Emphasis added).

On February 27, 2004, HRT caused to be conveyed 150 acres to the State of Hawaii for an agricultural park and is identified as TMK No. 1-9-4-002-080, by way of the deeds recorded in immediate succession from HRT to Halekua and from Halekua to the State of Hawaii. In 2023, Ho‘ohana Solar 1, LLC (“Ho‘ohana”), a subsequent interested party for the Petition Area, completed the infrastructure to the agricultural park. In 2021, RK II Partners purchased the Parcel.

C. Issue Presented.

This Petition presents a single issue for determination: clarification and affirmation that the land classification for the Parcel shall remain a State Land Use Urban District, in perpetuity.

III. Memorandum of Authorities.

The declaratory ruling procedure of HAR § 15-15-98, et seq., provides a means to clarify a previous LUC order raised by an interested person. By this Petition, a clarification is sought on whether the land classification for the Parcel shall remain a State Land Use Urban District, in perpetuity.

A. Ambiguity.

RK II Partners respectfully submits that under the applicable Hawaii law, any ambiguity in the terms of the 2004 Order, if any, as to the duration of the land designation of the Parcel, must be construed in the “entire context” of the proceedings. Therefore, when construed accordingly, the LUC should declare that under the 2004 Order, the land classification for the Parcel shall remain a State Land Use Urban District, in perpetuity.

The rules of ambiguity are well established. “An ambiguity may arise from words plain in themselves but uncertain when applied to the subject matter of the instrument. In short, such an ambiguity arises from the use of words **of doubtful or uncertain meaning or application.**” *Hokama v. Relinc Corp.*, 57 Haw. 470, 475, 559 P.2d 279, 282 (1977) (citations omitted) (emphasis added). Additionally, “[a] word or phrase within a contract is ambiguous if, examining the word or phrase in the context of the entire contract, the word or phrase is reasonably susceptible to more than one meaning. In other words, ‘ambiguity is found to exist . . . only when the contract, taken as a whole, is reasonably subject to differing interpretation.’ So, ‘an agreement should be construed **as a whole and its meaning determined from the entire context and not from any particular word, phrase or clause.**’” *United Truck Rental Equip. Leasing v. Kleenco Corp.*, 84 Hawai‘i 86, 92, 929 P.2d 99, 105 (App. 1996) (citations omitted) (emphasis added).

The December 29, 2003 Stipulation between the Office of Planning and HRT (“Stipulation”) clearly indicated that HRT would convey 150 acres for an agricultural park in return for a guarantee from the LUC that HRT lands, including the Parcel, would not be reclassified. There were no other terms, conditions, or timeframes added to such Stipulation. However, the 2004 Order states that “for purposes of **this Commission’s Order to Show Cause proceedings in this docket**... the HRT lands within the Petition Area at the time of filing of the Motion shall not be reclassified to the Agricultural District unless requested by HRT...” (Emphasis

added). The additional phrase “for the purposes of this Commission’s Order to Show Cause proceedings in this docket” perhaps creates an ambiguity because the phrase may be susceptible to an uncertain meaning and application. That is, one might ponder whether the Parcel’s Urban District classification was limited to the 2004 Order to Show Cause proceedings or if the classification continues in perpetuity.

However, when viewed in the entire context, HRT and the Office of Planning intended for the classification to remain as an Urban District forever. The Stipulation makes no reference to limiting the reclassification guarantee to the 2004 Order to Show Cause proceedings. Additionally, it defies logic and common sense that HRT would have agreed to acquire and convey valuable 150 acres of land to the State of Hawaii for free in return for a temporary or potentially indeterminate land classification guarantee.

Lastly, the operative language in the 2004 Order stating: “for purposes of this Commission's Order to Show Cause proceedings in this docket . . . the HRT lands within the Petition Area at the time of filing of the Motion shall not be reclassified to the Agricultural District unless requested by HRT, its successors or interests” (emphasis added), would be nonsensical - unless such language is interpreted to be consistent with the intent that the Parcel’s Urban District classification continue in perpetuity. If the effect of the 2004 Order was intended to be limited to the 2004 Order to Show Cause proceedings (i.e., that moment in time), any subsequent events would have no relevance to the issue of reclassification of the Parcel. So, stating such reclassification could occur later upon request by HRT, its successors or interests would make no sense, unless the intent of the 2004 Order is to confirm that the Urban District classification remains forever.

The basis for the LUC’s decision was the Stipulation. In any later proceeding to reclassify the Parcel, RK II Partners or its successor-in-interest would once again rely upon the Stipulation. Because the Stipulation was approved by the LUC in 2004, absent any violation by RK II Partners or its successor-in-interest of a condition of approval, under the law of the case doctrine, the LUC would be bound to accept the terms of the Stipulation as determinative of the issues resolved therein. *Pennymac Corp. v. Godinez*, 148 Haw. 323, 331 (2020) (“[A] fundamental precept of common-law adjudication is that an issue once determined by a competent court is conclusive.’ [citation omitted]. This ‘general principle[] of finality and repose’ is embodied in the law of the case doctrine, which provides that ‘when a court decides upon a rule of law that decision should continue to govern the same issues in subsequent stages in the same case.’”).

B. Substantial Commencement of the Use of Land

Moreover, a declaration that the 2004 Order intended that the Parcel’s Urban District classification remain in perpetuity comports with the Hawaii law regarding potential reversion to the Parcel’s former classification, where the parties have made substantial use of the land, including the Parcel.

The LUC must also comply with the requirements in HRS §§ 205-2, 205-16, and 205-17 before it can revert land to its former classification if the landowner has substantially commenced use of the land. Specifically, the Hawaii Supreme Court found “[t]he express language of HRS § 205-4(g) and its legislative history establish that the LUC may revert property without following those procedures, **provided that the petitioner has not substantially commenced use of the property in accordance with its representations.**” *DW Aina Le'a Dev., LLC v. Bridge Aina Le'a, LLC*, 134 Haw. 187, 209. Such requirements include justification of reclassification, the impacts

of reclassification, and conformity with the Hawaii state plan and other applicable laws. *See* Haw. Rev. Stat. §§ 205-2; -16; -17.

Ho‘ohana spent approximately \$1.25 million for the installation of a new waterline for the agricultural park. Haseko commenced planning and engineering for the temporary and permanent infrastructure for the agricultural park. These actions are in accordance with Condition 19 of the 1993 Order. Haseko has also submitted master plans, drainage master plans, traffic analysis, historic preservation surveys, archaeological inventory surveys, and affordable housing plans. Additionally, Haseko has submitted and received Department of Planning and Permitting permits and Development Plan approvals. Such actions by Haseko and Ho‘ohana clearly indicate a substantial commencement of use of the Petition Area.

An immediate LUC reversion of the Parcel’s classification would violate the Hawaii Supreme Court’s ruling in the *DW Aina* case. If the LUC wishes to revert the Parcel’s classification, it must follow the requirements set forth in HRS §§ 205-2, 205-16, and 205-17 since there has been substantial commencement of use of the Petition Area.

Similarly, RK II Partners has substantially commenced use of the Parcel. As detailed in its Updated Mater Plans and Schedule for Development of the Royal Kunia Industrial/Retail Subdivision dated May 29, 2024, and filed with the LUC on May 31, 2024, RK II Partners has prepared and received from the City and County of Honolulu Department of Planning and Permitting tentative subdivision approval and is proceeding with all necessary design endeavors, including civil engineering, grading, roadways, drainage and various on-site infrastructure at considerable cost and expense.

In light of the foregoing, Petitioner respectfully submits it would be next to impossible for the requirements in HRS §§ 205-2, 205-16 and 205-17 to be met, as mandated by the Hawaii

Supreme Court in *DW Aina*, in any potential attempt to reclassify the Parcel from Urban to Agricultural.

IV. NAMES OF POTENTIAL PARTIES.

The potential parties of which RK II Partners is aware of are (1) **Haseko Royal Kunia, LLC**; (2) **Robinson Kunia Land LLC**; (3) **RKES, LLC**; (4) **Ho'ohana Solar 1, LLC**; and (5) **State of Hawaii** through its Department of Agriculture. These parties are the other current owners of the Petition Area.

V. RELATION TO OTHER COMMISSION DOCKETS.

RK II Partners is not aware of any other docket for a district boundary amendment or for a special permit that is related to this Petition.

VI. CONCLUSION.

In 2004, HRT agreed to convey 150 acres to the State of Hawaii for an agriculture park. In return, HRT expected to receive a guarantee that its lands would remain an Urban District in perpetuity.¹ Such agreement was memorialized in the Stipulation. However, the 2004 LUC Order included an additional phrase potentially ambiguous and perhaps subject to construction contrary to the Stipulation and the bargain negotiated by HRT. RK II Partners respectfully requests that the LUC grant this Petition and declare and affirm that when viewed in the entire context, the 2004

¹ RK II Partners acknowledges that if it (or its successor-in-interest) violates a condition of approval, the LUC may seek reversion of the classification to Agricultural.

Order shall be construed such that the Parcel's Urban District classification shall remain in perpetuity.

DATED: Honolulu, Hawaii, June 26, 2024.

/s/ Terrence M. Lee

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VERIFICATION OF PETITION

VERIFICATION OF PETITION

TERRENCE M. LEE, being duly sworn on oath, deposes and says that I am an attorney for RK II Partners LLC, and as such am authorized to make this verification on behalf of RK II Partners LLC. I have reviewed the foregoing Petition and have full knowledge of the contents thereof, and the same is true to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, June 26, 2024.

/s/ Terrence M. Lee
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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof I caused a copy of the foregoing to be duly served on this date upon the following persons by U.S. Mail - Certified, postage prepaid:

MARY ALICE EVANS, DIRECTOR
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DATED: Honolulu, Hawaii, June 26, 2024.

/s/ Terrence M. Lee

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