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September 30, 2024

Daniel E. Orodenker, Executive Officer
Land Use Commission, State of Hawai'i
235 South Beretania Street, Suite 406
Honolulu, Hawai'i 96813



Re: DR24-77, In the matter of RKII Partners LLC

Dear Mr. Orodenker:

This office represents Haseko Royal Kunia, LLC ("Haseko") in connection with the above-referenced matter. Please find this letter as Haseko's response to RKII Partners LLC's Petition for Declaratory Order filed on August 2, 2024 ("Motion") with the State Land Use Commission ("LUC").

Haseko agrees with RK II Partners' argument that the Petition Area in LUC docket number A92-683 has substantially commenced pursuant to HRS § 205-4(g). Accordingly, Haseko believes that the issue presented for declaratory order should be reformed as follows: clarification and affirmation that the entire Petition Area in A92-683 has substantially commenced pursuant to HRS § 205-4(g).

RKII Partners' petition for declaratory order currently seeks clarification and affirmation that its lands shall remain in the State Land Use Urban District in perpetuity. HRS chapter 205, however, does not authorize the LUC to forever freeze land use districts in perpetuity. The word "perpetuity" does not even appear in HRS chapter 205. In contrast, the LUC does have the legal authority to determine whether a petition area has substantially commenced under HRS § 205-4(g), and such a determination would provide RK II Partners with the protection and benefits that it is seeking.

The risk that RK II Partners is attempting to mitigate in its petition for declaratory order is the risk of having its land reverted back to the State Land Use Agricultural District in an order to show cause proceeding.

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An order to show cause is issued when the LUC believes that there has been a violation of one of its conditions. The order is served upon the petitioner who is ordered to show cause why the petition area should not revert to its prior classification or reclassified to a more appropriate classification. If the LUC determines that there is a violation and the project has not substantially commenced, then it may revert the land. *DW Aina Lea Development, LLC v. Bridge Aina Lea, LLC*, 134 Hawaii 187, 339 P.3d 685 (2014).

But if the petition area has substantially commenced, then the LUC may not simply revert the land pursuant to HRS § 205-4(g), and instead, must follow the more strict requirements of HRS § 205-4(a), (b) and (h). *DW Aina Lea*, 134 Hawaii at 213.

“Substantial commencement” is not defined in HRS chapter 205, but the Hawaii Supreme Court noted that “substantial” is defined as “considerable in amount or value; large in volume or number”, and that “the legislature did not require that the use be substantially completed, but rather that it be substantially commenced.” (original emphasis). *DW Aina Lea*, 134 Hawaii at 213, 214.

RK II Partners correctly points out in its petition that RKII Partners, Ho ‘ohana and Haseko have all substantially commenced with their projects.

On May 31, 2024, RK II Partners filed with the LUC its Updated Master Plans and Schedule for Development of the Royal Kunia Industrial/Retail Subdivision dated May 29, 2024, which provided that RK II Partners has received tentative subdivision approval for its Phase I of the industrial park from DPP on April 5, 2024; and is currently pursuing and designing the civil engineering, grading, roadways, drainage and various on-site infrastructure. Phase II of the industrial and retail/commercial subdivision is in the early planning stages.

On March 18, 2024, Ho ‘ohana filed with the LUC its Status Report dated March 18, 2024, which provided that its solar farm is more than substantially complete and Ho ‘ohana spent approximately \$150,000,000 on the component parts of the solar farm and approximately \$50,000,000 on land preparation and construction. In addition, Ho ‘ohana has spent approximately \$1,250,000 for the installation of the waterline for the State Department of Agriculture.

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On February 15, 2024, Haseko filed with the LUC its Motion for Order Amending the Memorandum of Understanding's Offsite Infrastructure Date in Condition A.1., along with the memorandum in support of motion and exhibits "1" - "12", which provided that after Haseko acquired its 211 acres of the Petition Area on August 12, 2020, Haseko has performed the following:

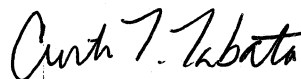
1. Confirmed prior agreement with its predecessors;
2. Submitted its drainage master plans to DPP in July of 2021
3. Submitted its traffic impact analysis report to DPP on August 23, 2021;
4. Submitted its revised master plan to the LUC on January 3, 2022;
5. Received its Cluster Housing Permit No. 2022/CL-2 from DPP on August 1, 2022;
6. Submitted its proposed affordable housing agreement to DPP in December of 2022;
7. Prepared a draft reconnaissance level survey at the request of the State Historic Properties Preservation Division ("SHPD");
8. Prepared a revised archaeological inventory survey testing strategy at the request of SHPD; and
9. Submitted an updated master plan phasing to the LUC on February 7, 2024.

In addition, Haseko has paid \$1,020,000 for its share of the non-potable irrigation waterline for the State Department of Agriculture, which is in addition to the \$1,250,000 paid by Ho 'ohana. The non-potable irrigation waterline was substantially completed by August 31, 2024, and we are only waiting for HECO to energize the power connection to run the mechanical pumps pending their final approval.

Thank you for the opportunity to submit our response, and please do not hesitate to contact the undersigned should there be any questions.

Very truly yours,

MATSUBARA, KOTAKE & TABATA



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cc: Mary Alice Evans, Director, Katia Balasiano, Office of Planning and Sustainable
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Ho'ohana Solar 1, LLC c/o Jennifer A. Lim, Esq.

RKES, LLC c/o Patrick Kobayashi

RK II Partners LLC c/o Terrence M. Lee, Esq., Ernest Y. Martin, Esq., Mike M.
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