



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

IN THE MATTER OF

RK II PARTNERS, LLC.

Petition for a Declaratory Order for the Commission's opinion on whether the land classification for TMK No. (1) 9-4-002:001, approximately 123.712 acres located in the City and County of Honolulu, State of Hawai'i, can remain within the State Land Use Urban District in perpetuity

Docket No. DR24-77

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITION FOR DECLARATORY ORDER FILED AUGUST 2, 2024; and CERTIFICATE OF SERVICE

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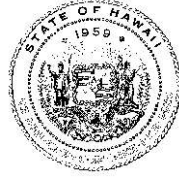
AND

CERTIFICATE OF SERVICE

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

Date Oct 31, 2024

BY _____
DANIEL E. ORODENKER
Executive Officer



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

IN THE MATTER OF

RK II PARTNERS, LLC.

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Docket No. DR24-77

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING PETITION FOR DECLARATORY ORDER FILED AUGUST 2, 2024;

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Hearing

Date: October 9, 2024

Time: 9:00 a.m.

Location: Airport Conference Center
(Hawaiian Airlines Terminal Building)
400 Rodgers Blvd., 7th Floor, IIT Suite 700,
Room #3, Honolulu, Hawai'i

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On August 2, 2024, RK II Partners, LLC ("RKII" or "Petitioner") submitted the subject Petition for Declaratory Order, Verification of Petition, and Certificate of Service ("[DR](#)" or "[DR Petition](#)") pursuant to Hawaii Revised Statutes ("HRS") § 91-8, and Hawaii Administrative Rules ("HAR"), §§ 15-15-98, *et seq.* This Land Use Commission, having heard and examined the pleadings and files in the record, the testimony and evidence presented by Petitioner, written public testimony by the State Office of Planning and Sustainable Development ("OPSD"), the City and County of Honolulu ("County"), Haseko Royal Kunia, LLC ("Haseko"), Ho'ohana Solar 1, LLC ("Ho'ohana"), and other oral public testimony and evidence presented at its

meeting on October 9, 2024, hereby issues its Findings of Fact (“FOF”), Conclusions of Law (“COL”), and Order Denying RKII’s Petition.

FINDINGS OF FACT

1. To the extent any of these FOFs are deemed to be COLs, they shall be so construed.
2. In its DR Petition, RKII asks the Commission to clarify language in an Order filed February 23, 2004 in in [Docket No. A92-683](#) (the “[2004 Order](#)”) and then affirm that the language effectively sets the State Land Use District classification for Tax Map Key (“TMK”) No. (1) 9-4-002:001 (the “Parcel”), with RKII owns, to State Urban District in perpetuity.

Relevant Factual Background of Docket No. A92-863

3. Docket No. A92-683 was initiated by Halekua Development Corporation (“Halekua”), which sought to reclassify approximately 504.865 (later amended to 503.886) acres of land located in ‘Ewa, O‘ahu (the “Petition Area”), from the State Land Use Agricultural District into the State Land Use Urban District.
4. The Petition Area has since been divided into multiple parcels of land—TMK Nos. (1) 9-4-002:001, :052 (portion), :070, and :071—only one of which is owned by RKII.
5. On December 9, 1993, the Commission issued a FOF, COL and Decision and Order (“[1993 Order](#)”) granting Halekua’s request and reclassifying the Petition Area, subject to certain conditions.
6. As part of the 1993 Order, the reclassification was subject to conditions, including a condition later renumbered to “Condition 19,” *see* [Am. FOF, COL, and Decision & Order \(Oct. 1, 1996\)](#), which required Halekua to “convey [a 150-acre] 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.”

7. Meanwhile, Halekua sold off portions of the Petition Area to different entities including Haseko and HRT, Ltd (“HRT”), which in 2001 purchased the Parcel that was designated to build a light industrial park approved in the 1993 Order.

8. On December 29, 2003, HRT entered into a “Stipulation” with the State Office of Planning, now called the Office of Planning and Sustainable Development (“OPSD”), to insure that if Halekua failed to perform its obligation with respect to conveyance of the 150 acres of land for the agricultural park by January 31, 2004, then HRT would proceed to acquire the lands for conveyance to OPSD no later than February 28, 2004. In return, OPSD agreed to request that HRT lands within the Petition Area should not be reclassified for any use other than the present designation unless requested by HRT.

9. On February 23, 2004, the Commission issued its 2004 Order, in which the Commission which granted OPSD’s Amended Motion to Exempt HRT, Ltd.’s Property from the Commission’s February 26, 2003 [Order to Show Cause](#), “*for purposes of this Commission’s Order to Show Cause proceedings in this docket [no. A92-863]*” only. See [Commission Meeting Minutes at 7–8 \(Jan. 15, 2004\)](#) (emphasis added).

10. In 2021, RKII purchased the Parcel from HRT.

Procedural History of Docket No. DR24-77

11. On June 26, 2024, Petitioner RKII filed its initial Petition for Declaratory Order, Verification of Petition, and Certificate of Service (the “initial filing”).

12. On July 3, 2024, the City and County of Honolulu, Department of Planning and Permitting (“County”) requested for an extension of time to respond to Petitioner’s initial filing until August 23, 2024.
13. On July 5, 2024, Commission staff, after review, informed Petitioner that its initial filing was incomplete as it was not ADA compliant with the Americans with Disabilities Act (“ADA”) and failed to contain the required filing fee. HAR § 15-15-45.1.
14. On August 2, 2024, Petitioner resubmitted its Petition for Declaratory Order, Verification of Petition, and Certificate of Service, which this time was ADA compliant and included the required filing fee (“[DR](#)” or “[DR Petition](#)”), in which Petitioner asked the Commission to confirm that the Parcel, by the 2004 Order, be designated as “State Land Use Urban District,” in perpetuity.¹
15. On August 7, 2024, Haseko Royal Kunia, LLC (Haseko) requested an extension of time to respond to the DR Petition until September 9, 2024.
16. On August 12, 2024, the Office of Planning and Sustainable Development (OPSD) requested an extension of time to respond to the DR Petition until September 9, 2024.
17. On August 12, 2024, the Petitioner filed an Amended Certificate of Service.
18. On September 30, 2024, the Commission filed and mailed an Agenda and Notice of Meeting to the parties, and the Statewide, and O‘ahu mailing and email distribution lists for a hearing to be held on October 9-10, 2024.
19. On September 30, 2024, Haseko filed its comments and recommendation on the Petition for Declaratory Order.
20. On October 3, 2024, OPSD filed testimony and recommendations.

¹ The subject Petition for Declaratory Order is designated DR24-77.

21. On October 3, 2024, Petitioner filed a meeting handout showing its industrial and retail plan phasing.
22. On October 4, 2024, a [Staff Report](#) was made available for public review, as required by law.
23. On October 7, 2024, the County filed its testimony.
24. On October 8, 2024, Ho‘ohana Solar 1, LLC, filed its testimony.
25. On October 9, 2024, the Commission heard the DR Petition during a public meeting. Terrence Lee, Esq., Ernest Martin, Esq., and Mike Matsuura, Esq., appeared on behalf of Petitioner.
26. There were no Commissioner disclosures.
27. At the start of the meeting, the Commission Chair acknowledged receipt of written public testimony and that they had been posted to the Commission’s [website](#).
28. There was no oral public testimony during the initial opportunity provided by the Commission.
29. Alison Kato, Esq. appeared on behalf of OPSD with OPSD representative Katia Balassiano provided public testimony after Petitioner had completed its presentation.

Description of the Request

30. In the DR Petition, the Petitioner presented the Commission with a single issue for determination—Whether to “clarify[y] and affirm[] that the land classification for the Parcel shall remain a State Land Use Urban District, in *perpetuity*.”
31. Petitioner argued that the Commission’s 2004 Order is ambiguous because the language, “...for the purposes of this Commission’s Order to Show Cause proceedings in this docket.”, could be interpreted as either meaning that the Parcel’s Urban District classification was limited

only to the 2004 Order to Show Cause proceedings or meaning that the classification should continue in perpetuity.

32. The Commission, by motion, went into executive session to consult with the deputy Attorney General concerning the powers, duties, immunities, privileges, and liabilities [Tr. 10/09/24, p. 17].

33. Upon exit from executive session, it was noted that, as indicated in the Staff Report, Petitioner had not identified any specific statutory authority or court ruling granting the Commission the ability to affirm a State Land Use District boundary *in perpetuity* and that Petitioner had not shown good cause or provided any legal authority in support of their request. [Tr. 10/09/24, pgs. 18-20]

34. Petitioner indicated agreement with the assessment, admitting that it had been “overzealous in asking for the reclassification to remain in perpetuity. Clearly that’s not permissible.” [Tr. 10/09/24, p. 25]

35. OPSD asserted that “...the Commission does not – is not going to be able to – does not have the authority to act on this petition to approve it or anything.” [Tr. 10/09/24, p. 32]

CONCLUSIONS OF LAW

1. To the extent that any of the following COLs shall be determined to be FOFs, they shall be so construed.

2. Section 91-8, HRS, and HAR § 15-15-98(a) provide that any interested person may petition an agency, including the Land Use Commission, for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Here, pursuant to HRS § 91-1 and as an owner of the property identified in the Petition for declaratory order (the Parcel), RKII meets the definition of an interested person. Therefore RKII has standing.

3. Pursuant to HAR § 15-15-99, the petitioner is required to meet several form and content provisions. Here, the DR Petition has met each of the minimum form and content requirements pursuant to HAR § 15-15-99. In addition, Petitioner has met the additional form and content requirements in HAR § 15-15-38, -39, and -40. Thus, the Commission does not summarily dismiss the request for DR on this basis.

4. The Commission's statutes, the applicability of which are put at issue in this Petition, are those sections of HRS chapter 205 that govern the authority to establish land use districts and reclassify land.

5. According to HAR § 15-15-100(a), the Commission is entitled to, within ninety days after submission of a petition for declaratory order, deny the petition in writing, issue a declaratory order on the matters contained in the petition, or set the matter for contested case hearing, as provided in HAR § 15-15-103. The Commission has chosen the second alternative and by this FOF, COL, and Order denies the petition in writing without a contested case hearing based on the following analysis:

a. Pursuant to HAR § 15-15-101, the Commission may dismiss the DR Petition, without notice or hearing, if it deems that the Petition fails in material respect to comply with the declaratory order requirements of HAR subchapter 14. Here, the DR Petition meets the minimum requirements for standing and form and contents pursuant to HAR §§ 15-15-38, -39, -40, and -99. Thus, the Commission does not summarily dismiss the request for DR on this basis.

b. Sections 15-15-100(a)(3) and 15-15-103, HAR, allow the Commission, on its discretion, to conduct a contested case hearing on a petition for declaratory order. In order to do so, a petitioner or party in interest should set forth in detail why the matters

alleged in the petition cannot be disposed of in a fair and expeditious manner without a formal contested case hearing. Here, the Commission concludes that based on the facts presented at the meeting, the pleadings filed together with the exhibits by the Petitioner, Haseko, Ho‘ohana, OPSD, and the County, the opportunity of Petitioner and the public to present their views, and the fact that the Petitioner had not requested a contested case hearing pursuant to HAR §15-15-103, a contested case hearing is not necessary before issuing the instant written declaratory order in this matter.

c. The Commission also may not deny the DR and refuse to issue a declaratory order if one of the four circumstances outlined in HAR § 15-15-100(a) provides good cause for doing so. Here, the fourth circumstances applies, so this written declaratory order is appropriate:

i. The first circumstance pursuant to HAR § 15-15-100(a)(1)(A) does not apply, because the question raised in the DR Petition—requesting clarification of language contained in its 2004 Order and asking the Commission to confirm that it effectively grants State Land Use Urban District classification in perpetuity pursuant to HRS §§ 205-2, -4, -16, and -17—is not speculative or purely hypothetical and it does not involve an existing situation or one which may reasonably be expected to occur in the near future.

ii. The Commission does not summarily dismiss pursuant to the second circumstance set forth in HAR § 15-15-100(a)(1)(B) because RKII has standing that would be sufficient in a court of law. That is, because “partnerships” and “private organizations” are “persons” within the meaning of HRS § 91-1, and because RKII owns the property identified in the petition for declaratory order,

RKII meets the definition of an interested person for purposes of HRS § 91-8 and HAR § 15-15-98(a).

- iii. The third circumstance does not apply because the issuance of a declaratory order will not adversely affect the interest of the State, the Commission, or any of the officers or employees in any litigation which is pending (there is none on this particular issue) or may reasonably be expected to arise. HAR § 15-15-100(a)(1)(C).
- iv. HAR §15-15-100(a)(1)(D) provides that the Commission can deny the petition where “the petition requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission.” The DR Petition requests interpretation of a prior order of the Commission, as subsequently amended, and the applicability of the Commission’s statutory authority under HRS §§ 205-2, -4(g), -16, and -17, and HAR chapter 15-15. The authority to interpret its decisions and to redistrict State Land Use boundaries pursuant to the referenced statutes and rules is within the Commission’s statutory jurisdiction. *See generally* HRS chapter 205. Thus, the fourth circumstance does apply.

6. The Commission therefore has jurisdiction to issue this declaratory order.

7. Section 91-10(5), HRS, provides “Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. *The degree or quantum of proof shall be a preponderance of the evidence.*” (Emphasis added.)

8. There is a lack of specific statutory authority or guidance granting the Commission the

ability to grant or affirm State Land Use District boundaries in perpetuity.

9. Petitioner has not shown good cause by a preponderance of the evidence or provided any specific statutory authority or other basis for their request for the Commission to impose an in-perpetuity designation.

10. Such a designation would frustrate the ability of landowners, the Commission, the State and the counties and their respective agencies from adequately responding to future events if State Land Use District boundaries, once established, were to remain unchangeable, in perpetuity.

11. Thus, the Commission lacks authority to “affirm” that the Parcel’s State Land Use District boundary classification within the State Urban District is in perpetuity.

12. Moreover, the Hawai‘i Supreme Court has held that declaratory ruling procedure enshrined in HRS § 91-8 was “not intended to be utilized to seek review of agency determinations that have already been made and which have not been timely appealed.” Citizens Against Reckless Dev. v. Zoning Bd. of Appeals of Honolulu, 114 Hawai‘i 184, 196–97, 159 P.3d 143, 155–56 (2007). Here, the time has long since passed for any appeal from the 2004 Order.

13. Pursuant to HAR § 15-15-82.1(3), after a hearing, the Commission may adopt a proposed stipulation, and if it adopts the stipulated decision and order the commission may amend, accept, modify or reject in-part or in-whole any of the FOFs, COLs, conditions of boundary amendment, and anything else contained in the stipulation. In this instance, by its 2004 Order, the Commission amended the language contained in the HRT-OPSD Stipulated Agreement to clarify that if HRT followed through in honoring the commitment (conveyance of 150 acres for an agricultural park), then the Parcel would not be considered for reclassification during the Order

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Commission
HEREBY DENIES THE PETITION FOR DECLARATORY ORDER as follows:

Having duly considered the Petition, the written and oral arguments presented by
Petitioner, the pleadings filed by Haseko Royal Kunia, LLC, the State Office of Planning and
Sustainable Development, Ho‘ohana Solar 1, LLC, and the City and County of Honolulu,
Department of Planning and Permitting, as well as any public comments received at its duly
noticed public meeting conducted at the Airport Conference Center on October 9, 2024, the
Commission voted on a motion to deny the declaratory relief as requested by Petitioner. Having
received the affirmative votes required by HAR § 15-15-13 on the motion, the Commission
granted the motion and finds good cause to deny the declaratory relief requested by Petitioner
pursuant to HAR § 15-15-100(a)(1)(D).

This ORDER shall take effect upon the date of certification appearing below.

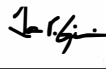
DATED: Honolulu, O‘ahu, Hawai‘i, this day Oct 31, 2024.

APPROVED AS TO FORM



Melissa D. Goldman
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAI‘I

By 

DAN GIOVANNI
Chairperson and Commissioner

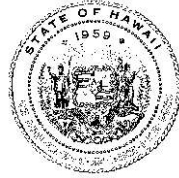
Filed and effective on:

Oct 31, 2024

Certified by:



DANIEL E. ORODENKER
Executive Officer



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Docket No. DR24-77

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the individuals listed below by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted:

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DATED: Honolulu, Hawai'i, Oct 31, 2024



DANIEL E. ORODENKER
Executive Officer of the Land Use Commission