

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 there has been substantial use of the Petition Area, including the Parcel, as identified below, and thus, any reclassification by the LUC must be done in accordance with HRS § 205-4. The Petition also seeks an order from the LUC confirming that the Parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park, as further explained below.

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:

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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 affirm that there has been substantial use of the Petition

Area, including the Parcel, and thus, any reclassification by the LUC must be done in accordance with HRS § 205-4. RK II Partners also respectfully requests a declaratory ruling from the LUC to affirm that the Parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park.

**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 and to determine whether HRS § 205-4 applies.

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, which Petitioner is developing at the Parcel.

As part of the 1993 Order, the LUC’s reclassification was subject to several conditions, including conveying 150 acres of the Petition Area to the State of Hawaii Department of Agriculture (“**DOA**”) for an agriculture park. Specifically, Condition Number 22 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**”). However, Halekua failed to convey 150-acres to the DOA for an agriculture park. HRT specifically purchased the Parcel to build a light industrial park as approved in the 1993 Order. On October 1, 1996, the LUC issued an Amended Findings of Fact, Conclusions of Law, and Decision and Order (“**1996 Order**”). Condition 19 in the 1996 Order remained identical to Condition 22 in the 1993 Order.

On December 29, 2003, the Office of Planning and HRT entered into a Stipulation (“**Stipulation**”) which in Section 3 stated: “[t]hat as a condition to the conveyance [of the 150 acres] by [HRT], the [LUC] shall enter an Order providing that (1) the [Parcel] shall not be reclassified for any use other than the presently designated uses of [the Parcel], unless such reclassification is made at the request of [HRT], (2) that Halekua’s failure to fulfill any of the terms and conditions of the [1996 Order] shall have no adverse effect upon the [Parcel].”¹ 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] [*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

¹ Petitioner acknowledges that the LUC lacks the authority to order that the Parcel will remain classified as Urban in perpetuity.

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, **that [Halekua]'s failure to fulfill any of the terms and conditions of the Decision and Order would have no adverse effect upon HRT's lands**, and that should Petitioner not comply with any other conditions of the Decision and Order, HRT would be given notice and have a right to cure any default... v) **conveyance of the land to the State of Hawai'i would fulfill only that portion of Condition Number 19, and that the portion pertaining to [Halekua]'s obligation to provide offsite infrastructure to the 150 acres would continue to remain in full force and effect; and vi) this Commission approve the Stipulation along with all the terms therein.**" (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; and iii) HRT shall report back to this Commission in six months regarding the status of Petitioner's bankruptcy proceedings. **All other conditions to the Decision and Order shall continue to run with the land and remain in full force and effect.**" (Emphasis added).

On February 27, 2004, HRT conveyed 150 acres to the State of Hawaii for an agricultural park and is identified as TMK No. 1-9-4-002-080. In 2021, RK II Partners purchased the Parcel from HRT's successor. In 2023, Ho'ohana Solar 1, LLC ("**Ho'ohana**"), a subsequent interested party for the Petition Area, completed its requirements to provide certain infrastructure to the agricultural park.

C. Issues Presented.

This Petition presents two issues for determination: clarification and affirmation.

1. That there has been substantial use of the Petition Area, including the Parcel, and thus, any reclassification by the LUC must be done in accordance with HRS § 205-4.
2. Clarification and affirmation that the Parcel is not encumbered by the requirement to provide off-site infrastructure to the 150-acre agriculture park.

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 there has been substantial use of the Petition Area, including the Parcel, and thus, any reclassification by the LUC must be done in accordance with HRS § 205-4. Additionally, by this Petition, a clarification is sought on whether RK II Partners and its successors are required to provide off-site infrastructure to the 150-acre agriculture park.

A. Substantial Commencement of the Use of Land

The LUC must comply with the requirements in HRS § 205-4 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 "if the LUC seeks to revert property **after use of**

the land has substantially commenced, then the LUC is bound by the requirements of HRS § 205-4.” *DW Aina Le'a Dev., LLC v. Bridge Aina Le'a, LLC*, 134 Haw. 187, 209 (emphasis added). 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; -4; -16; -17.

Ho‘ohana spent approximately \$200 million to build and develop a solar farm located within the Petition Area and \$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.

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.

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 § 205-4 since there has been substantial commencement of use of the Petition Area.

B. Off-Site Infrastructure for DOA's Agriculture Park

The Parcel is not encumbered by the requirement to provide off-site infrastructure to the agricultural parcel. In Section 6 of the Stipulation, it states “[t]hat with respect to Condition No. 19 set forth in the 1996 LUC Order, **upon conveyance of the 150 acre Agriculture Park Site as herein set forth**, the portion of said Condition No 19 dealing with the conveyance of the 150 acre Agriculture Park Site to the State of Hawaii shall be deemed to be fully satisfied; **provided, however, that the portion of Condition No 19 dealing with providing off-site infrastructure shall continue to apply to and encumber lands other than the HRT Lands**.” (Emphasis added).

Additionally, the 2004 Order states “HRT further asked this Commission to disregard the relief sought for all of the other conditions that were specified in the Stipulation and have them remain in full force and effect. HRT clarified that this request would address that portion of Condition Number 19 pertaining to the conveyance of the site to the State of Hawai'i, **but that [Halekua]'s obligation to provide infrastructure to the site as required by said condition would remain in full force and effect. OP stated that it agreed with HRT's proposal and amended its Motion ("Amended Motion") consistent with HRT' s request in this matter.**” (Emphasis added). However, the last sentence of the 2004 Order overbroadly states “[a]ll other conditions to the Decision and Order shall continue to run with the land and remain in full force and effect.”

As stated earlier, HRT conveyed 150 acres to the DOA for an agriculture park, thus fulfilling its requirement under Condition 19 of the 1996 LUC Order. The responsibility for off-

site infrastructure remained with Halekua. However, pursuant to the Stipulation and 2004 Order, this responsibility does not encumber HRT's lands. The Office of Planning (now known as the Office of Planning and Sustainable Development) agreed with HRT in the Stipulation and 2004 Order that HRT's land would not be encumbered by the off-site infrastructure responsibility for the agriculture park. HRT eventually sold its land, including the Parcel, to a successor, who in turn, sold the Parcel to RK II Partners in 2021.

However, the last sentence of the 2004 Order overlooks and disregards the agreement made in the Stipulation and understanding between HRT and Office of Planning in the 2004 Order. As indicated in the 2004 Order at p.3, the Office of Planning explicitly requested that “[the LUC] approve the Stipulation along with all the terms therein.” Thus, it is clear that the Parcel should not be encumbered by the off-site infrastructure responsibilities for the agricultural park.

It is worth noting that a material inducement for HRT to acquire the 150 acres and have it conveyed to DOA was the condition that HRT's land would no longer be encumbered by Condition 19's off-site infrastructure requirements for the agricultural park. If the LUC refuses to recognize this condition, RK II Partners could arguably seek to rescind the conveyance of the 150 acres to DOA. Obviously, this is not in any party's interests and something RK II Partners would not pursue unless it was compelled to do so by the repudiation of this condition by the LUC.

In light of the foregoing, Petitioner respectfully submits that the Parcel is not encumbered by Condition 19's off-site infrastructure requirements.

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.

Haseko, Ho'ohana, and RK II Partners have spent millions developing the Petition Area. RK II Partners respectfully requests that the LUC grant this Petition and declare and affirm there has been substantial use of the Petition Area, including the Parcel. Accordingly, any reclassification of the Parcel (or any other lands in the Petition Area) must be done in accordance with HRS § 205-4.

Further, in 2004, HRT agreed to convey 150 acres to the State of Hawaii for an agriculture park. In return, the responsibility for the agriculture park's off-site infrastructure would remain with Halekua and its successors. Such agreements were memorialized in the Stipulation and 2004 Order. However, the last sentence of the 2004 Order contradicts the previously stated agreements. Accordingly, RK II Partners respectfully requests that the LUC

grant this Petition and further declare and affirm that the Parcel is not encumbered by Condition 19's requirements for off-site infrastructure to the 150-acre agriculture park.

DATED: Honolulu, Hawaii, December 3, 2024, 2024

/s/ Terrence M. Lee

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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

IN THE MATTER OF:

RK II PARTNERS LLC

Docket No. **DR24-78**

VERIFICATION OF PETITION

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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, December 3, 2024.

/s/ Terrence M. Lee

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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII



IN THE MATTER OF:

RK II PARTNERS LLC

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CERTIFICATE OF SERVICE

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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, postage prepaid:

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DATED: Honolulu, Hawai'i, November 11, 2024.

/s/ Terrence M. Lee

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