

# **DOCKET NO. DR24-78**

## **RK II Partners LLC**

### **PETITION FOR DECLARATORY ORDER**

To consider a petition for declaratory ruling (“Petition”) requesting the Commission’s opinion on whether there has been substantial use of the Petition Area and any reclassification by the LUC must be done in accordance with Section 205-4, Hawai‘i Revised Statutes (“HRS”). The Petition also seeks the Commission’s opinion confirming that the parcel, identified as TMK No. (1) 9-4-002:001, approximately 123.712 acres located in the City and County of Honolulu, State of Hawai‘i, is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park.

### **Staff Report**

**ACTION MEETING**  
**January 8-9, 2024**



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**Daniel E. Orodener**  
**Executive Officer**

**Approved for Submittal: January 6, 2024**

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## 1. EXPLANATION OF THE PROCEEDING BEFORE THE LAND USE COMMISSION

On November 11, 2024, the Land Use Commission (“LUC” or “Commission”) received a petition for declaratory order, DR24-78 (“Petition” or “DR Petition”) filed by RKII Partners LLC (“Petitioner” or “RKII”). The Petition asks the Commission to confirm that there has been substantial use of the Petition Area, including the Parcel<sup>1</sup>, and that any reclassification by the LUC must be done in accordance with HRS section 205-4. The Petition also asks the Commission to confirm that the Parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agricultural park.

The basis of the Petition is rooted in LUC Docket No. A92-683, which has a long and complicated history, which is summarized below. Significantly, LUC Docket No. A92-683 resulted in, among other things, the reclassification of approximately 504.865 (later amended to 503.886) acres of land (“Petition Area”). Today, the Petition Area is divided into multiple parcels of land, which are also known by their multiple Tax Map Key (“TMK”) numbers (1) 9-4-02:001, 052 (portion), 070, and 071, and which are owned by multiple entities.

Pursuant to the following discussion, staff of the LUC, with concurrence of the reviewing Deputy Attorney General assigned to this public meeting, recommends that the Commission exercise its discretion to schedule the matter for a contested case hearing pursuant to HAR §§ 15-15-100(a)(3) and 15-15-103. Staff further recommends that the Commission decline to discuss or decide any issues that fall outside the narrow scope of this Petition.

### BACKGROUND

#### *Factual Background of LUC Docket No. A92-683*

As stated above, LUC Docket No. A92-683 has a long and complicated history. Significant events providing context for the instant Petition are briefly summarized as follows:

- On December 9, 1993, the LUC issued a Decision and Order, in favor of Halekua Development Corporation (“Halekua”) reclassifying approximately 504.865 acres of land located in `Ewa, O`ahu (Petition Area) into the State Urban District (“[1993 Order](#)”). The 1993 Order was subject to conditions; specifically, “Condition 19” required Halekua to convey a 150-acre agricultural park to the State of Hawai`i; and provide off-site infrastructure to the agricultural park, pursuant to a Memorandum of Understanding between Halekua and the State Department of Agriculture. [RKII DR, pg. 3]
- On March 30, 1993 a [Memorandum of Understanding](#) was signed between Halekau and the State Department of Agriculture (DOA), required by Condition 22<sup>2</sup> in the 1993 D&O, requiring Halekua to convey a 150-acre agricultural park (Ag Park) to DOA and provide necessary off-site infrastructure to the Ag Park.
- On September 12, 1995, Halekua purchased 347.036 acres of the Petition Area, but not the proposed Ag Park site from the Robinson Estate.

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<sup>1</sup> Tax Map Key (TMK) No. (1) 9-4-002:001, approximately 123.712 acres, located in the City and County of Honolulu.

<sup>2</sup> This condition was originally Condition 22 in the 1993 D&O and later renumbered to Condition 19 in the LUC’s Amended Findings of Fact, Conclusions of Law, and [Decision and Order filed on October 1, 1996](#).

- On September 19, 1995, the LUC issued an Order Granting Motion to Change Ownership Interest in the Petition Area ([1995 Order](#)). Halekua represented that the change in ownership would provide necessary funding allow Halekua to complete the residential portion of the Phase II Project and allow new owner HRT to complete the industrial portion of the Phase II Project.
- On April 5, 1996, Halekua conveyed approximately 123.712 acres of the Petition Area to HRT and related companies, and approximately 13.304 acres to HRT, Ltd. [RKII DR, pgs. 3-4]
- On June 25, July 2, and September 4, 1996, Halekua filed three successive motions to Amend the 1993 D&O to revise the Phase II Project by increasing the number of single family units, lowering the number of multi-family units, and eliminating the golf course. The LUC approved the amendments subject to 25 conditions, including the renumbered Condition 19 pertaining to the Ag Park, on October 1, 1996 ([1996 D&O](#)).
- Annual Reports in [1998](#), [1999](#), [2000](#), and [2001](#) all reported no progress on compliance with Condition 19 pertaining to the Ag Park.
- On July 11, 2001, Halekua conveyed approximately 36.660 acres of land to HRT.
- On October 15, 2002, OPSD filed a Motion For an Order to Show Cause to Rescind the Decision and Order dated on October 1, 1996, to revert the entire Petition Area to its former designation within the State Agricultural District. OPSD argued that Halekua had failed to secure financing for the proposed project and to convey the 150-acre Ag Park as required by Condition 19. And, that despite Halekua’s sale of a portion of the Petition Area, Halekua did not use the funds to obtain and transfer the Ag Park.
- On February 26, 2003, the LUC issued an Order to Show Cause ([OSC](#)) and set hearing dates on April 24-25, 2003. At the start of the hearing, Halekua notified the LUC that it had filed for voluntary bankruptcy. The LUC stayed its hearing indefinitely pending outcome of federal bankruptcy proceedings.
- On December 29, 2003, HRT entered into a stipulation ([Stipulation](#))<sup>3</sup> with the State Office of Planning (“OPSD”)<sup>4</sup> 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 the State 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.
- On January 12, 2004, OPSD filed a 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 (Motion to Exempt).
- On February 23, 2004, the LUC issued the [2004 Order](#), which granted OPSD’s Amended Motion to Exempt HRT, Ltd.’s Property from the Order to Show Cause Granted on February 26, 2003,<sup>5</sup> Pursuant to The Stipulation filed on December 30, 2003.
- The 2004 Order contains language that clarified the LUC’s motion and Order that it was intended “...for the purposes of this Commission’s Order to Show Cause proceedings in this docket...” [[LUC Meeting Minutes, January 15, 2004](#)]

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<sup>3</sup> See OPSD Testimony, Attachment 2

<sup>4</sup> For clarity we use the current acronym for the State Office of Planning and Sustainable Development; formerly known as the State Office of Planning.

<sup>5</sup> The [2003 Order to Show Cause](#) was approved based on a petition by OPSD identifying failures by Halekua and successor landowners from performing conditions imposed and representations and commitments made to the Commission in obtaining reclassification of the Petition Area (see pg. 2, of 2003 Order))

- On February 27, 2004, HRT conveyed 150 acres to the State of Hawai‘i for an agricultural park. In 2023, Ho‘ohana Solar 1, Inc. (“Ho‘ohana”), a subsequent interested party in the Petition Area, completed the infrastructure to the agricultural park.
- On January 28, 2015, the Commission issued its Order Granting Successor Petitioner (to Parcel 52), Ho‘ohana’s Motion for Order Amending the Amended Findings of Fact, Conclusions of Law, and Decision and Order filed October 1, 1996 (“2015 Order”). The 2015 Order provided a 30-year interim use of parcel 52 for a solar farm, including related utility and other infrastructure, and decommissioning. The 2015 Order also established several new conditions regarding agricultural park offsite infrastructure, revised master plans, and status report; and, several new conditions that applied only to the solar farm to be developed on Parcel 52.
- On October 3, 2017, Canpartners informed the Commission that RP2 Ventures, LLC (“RP2”), had become the new owners of approximately 161.36 acres identified as TMK No. (1) 9-4-002)071.
- On April 9, 2018, the Commission received correspondence from the State Department of Agriculture requesting the Commission schedule a status conference on RP2’s efforts to fulfill past Halekua Orders and particularly the 2015 Order.
- On May 24, 2018, the Commission held a Status Report on A92-683 Halekua Development Corporation. Representatives from RP2 provided the status of ongoing development activities, particularly with respect to infrastructure. OPSD and DOA provided presentations on status of the agricultural park development, need for infrastructure, and requests for more certain timelines and performance commitments from RP2.
- On September 29, 2021, the Commission issued its Order Granting Ho‘ohana Solar 1, LLC’s Motion for Modification and Time Extension (“2021 Order”). The amended conditions addressed both specific operations on Parcel 52 of the solar farm and general conditions applicable to the entire Petition Area. The Commission reaffirmed that all conditions imposed under the Halekua Orders shall continue in full force and effect as they pertain to the Petition Area and Parcel 52.
- In 2021, RKII purchased the Parcel from HRT’s successor.
- On August 2, 2024, RKII filed a petition for Declaratory Order (DR24-77) requesting the Commission to affirm that language in the Commission’s 2004 Order effectively gave their Parcel a State Urban land use classification in perpetuity.
- On October 31, 2024, the Commission issued a Findings of Fact, Conclusions of Law, and Decision and Order Denying Petition for Declaratory Order filed August 2, 2024.

### *Procedural Background Regarding the Petition*

On November 11, 2024, Petitioner RKII filed a preliminary Petition for Declaratory Order, Verification of Petition, and Certificate of Service requesting the Commission’s opinion on whether there has been substantial use of the Petition Area and any reclassification by the LUC must be done in accordance with HRS § 205-4. The Petition also seeks the Commission’s opinion confirming that the parcel, identified as TMK No. (1) 9-4-002:001, approximately 123.712 acres located in the City and County of Honolulu, State of Hawai‘i, is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agriculture park..

On November 13, 2024, Commission staff, after review, responded to Petitioner’s preliminary filing. Staff identified that the filing was incomplete as it was not ADA compliant and failed to contain the required filing fee.<sup>6</sup>

On December 6, 2024, Petitioner resubmitted its Petition for Declaratory Order, Verification of Petition, and Certificate of Service, which was ADA compliant and included the required filing fee.<sup>7</sup>

On December 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 January 8-9, 2024.

On December 31, 2024, the State Department of Agriculture (“DOA”) filed testimony and two attachments which has been posted to the Commission’s website.

On January 3, 2025, Staff Report was made available for public review at the LUC’s office, posted to the LUC website, and distributed to commissioners. As of the date of this Staff Report, public testimony is ongoing and can be found on the LUC website, here at [Land Use Commission | DR24-78 RK II Partners LLC, Petition for Declaratory Order](#) [Public comments tab].

A hearing is scheduled on January 8, 2025, on this matter.

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<sup>6</sup> Pursuant to Hawai‘i Administrative Rules (“HAR”) § 15-15-45.1.

<sup>7</sup> The subject Petition for Declaratory Order is designated DR24-78.

## 2. PROCEDURE: DECLARATORY ORDER ANALYSIS

### Standing

Pursuant to HRS § 91-8 and HAR § 15-15-98(a), an agency, including the Land Use Commission, may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the LUC to a specific factual situation on petition of an interested person.

Pursuant to HRS § 91-1, “persons” are defined to include “individuals, partnerships, corporations, associations, agencies, or public or private organizations.” Pursuant to this subsection, as an owner of the property identified in the petition for declaratory order, RKII meets the definition of an interested person.

### Form and Content Requirements

Pursuant to HAR § 15-15-99 the petitioner is required to meet several form and content provisions:

- (1) The name, address including zip code, and telephone number of each petitioner; [DR, pgs. 1-2]
- (2) A statement of the petitioner's interest in the subject matter, including the reasons. for submission of the petition; [DR, pgs. 2-3]
- (3) A designation of the specific statutory provision, rule, or order in question, together with a complete statement of the relevant facts and a statement of the issues raised or controversy or uncertainty involved; [DR, pgs. 3-6]
- (4) A statement of the petitioner's interpretation of the statute, rule or order or the petitioner's position or contention with respect thereto; [DR, pgs. 6-9; and pg. 10 Conclusion]
- (5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention. The commission may require the petitioner to file additional data or memoranda; [DR, pgs. 6-9]
- (6) The names of any other potential parties; [DR, pg. 10]
- (7) The signature of each petitioner; and, [DR, pg. 11]
- (8) A statement whether the petition for declaratory ruling relates to any commission docket for district boundary amendment or special permit, and if so, the docket number and identification of all parties to the docket. [DR, pg. 10]

Petitioner’s filing has met each of the required form and content provisions pursuant to HAR § 15-15-99. In addition, Petitioner has met the additional form and content requirements in HAR § 15-15-38 to 40. These later sections refer to format, verification of authorized signatory, and filing of paper original, one paper copy, and an electronic copy.

### Three options for acting in a Petition for Declaratory Ruling:

HAR § 15-15-100(a), provides the alternative actions required of the Commission for processing a petition for declaratory order. Paraphrasing that subsection:

*The Commission, within ninety days after submission of a petition for declaratory order<sup>8</sup>, shall deny the petition in writing, or issue a declaratory order on the matters contained in the petition, or set the matter for contested case hearing, as provided in § 15-15-103, HAR, provided that if the matter is set for hearing, the Commission shall render its findings and decision within one hundred twenty days after the close of the hearing.*

The Commission is required to decide at this time (the January 8 meeting) whether it will: (1) deny the Petition; (2) issue a declaratory order; or (3) set the matter for contested case hearing.

#### Alternative Action 1: Dismiss Declaratory Ruling request

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. Staff has assessed that the DR Petition meets the minimum requirements for standing and form and contents. Thus, the Commission should *not* summarily dismiss the request for DR.

Pursuant to HAR § 15-15-100(a), the Commission, for good cause, may also deny the Petition and refuse to issue a declaratory order under four circumstances. Based on review of the Petition for Declaratory Order, staff has made the following assessment of the relevant criteria:

- 1) The question is not speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future.** [See HAR § 15-15-100(a)(1)(A).]

The Petition requests that the Commission confirm that there has been substantial use of the Petition Area and that any future reclassification of Petitioner's parcel would have to be done in accordance with HRS § 205-4. Further, Petitioner requests the Commission to confirm that Petitioner's parcel is not encumbered by requirements (conditions) to provide off-site infrastructure to the 150-acre agriculture park.

Therefore, the question is not speculative or purely hypothetical, and does involve facts that exist on the record.

- 2) The petitioner's interest is of the type which confers sufficient standing to maintain an action in a court of law.** [See HAR § 15-15-100(a)(1)(B).]

Based on Petitioner's declarations and information contained in the DR Petition, RKII appears to have standing pursuant to HRS §§ 91-1 and 91-8, in the event they elect to seek judicial relief.<sup>9</sup>

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<sup>8</sup> Petitioner submitted its petition for a declaratory ruling, which was reviewed for completeness, on December 6, 2024. The LUC has 90 days, until March 6, 2025, to deny the request, issue a declaratory order, or set the matter for a hearing. [See HAR § 15-15-100(a).]

<sup>9</sup> The LUC reserves the right to challenge standing, however, if a lawsuit is filed and further review demonstrates otherwise.



- 3) **The issuance of the 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 or may reasonably be expected to arise.** [See HAR § 15-15-100(a)(1)(C).]

At this time, the Commission is not involved in any pending docket or litigation involving this particular issue, and the Commission does not anticipate that litigation is reasonably expected in this matter. Accordingly, there are no grounds to dismiss for this reason.

- 4) **The Petitioner does not request a ruling on a statutory provision that is not administered by the Commission, and the matter is otherwise within the jurisdiction of the commission.** [See HAR § 15-15-100(a)(1)(D).]

The subject 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. Thus, the Commission has jurisdiction over the Petition.

**In conclusion, none of the circumstances set forth in HAR § 15-15-100(a) is present. Therefore, the staff recommends the Commission find that it does not have good cause to dismiss the declaratory ruling request pursuant to HAR § 15-15-100(a).**

Alternative Action 2: Issue a Declaratory Ruling

On December 6, 2024, RKII, filed the subject Petition for Declaratory Order (the DR Petition). Section 15-15-100(a)(2), HAR, does not require the Commission to hold a hearing before it may issue a declaratory order on the DR Petition. If the Commission chooses to render a decision on the Petition, then an order must be prepared and adopted by the Commission within the 90-day statutory time period<sup>10</sup>.

**Staff recommends that the Commission defer making a determination on the Petitioner's request for declaratory order and instead consider Alternative Action 3 below.**

Alternative Action 3: Schedule the Matter for a Contested Case Hearing

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. Normally, 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 Petitioner has not indicated that the DR Petition cannot be disposed of in a fair (non-prejudicial) and expedient manner without a contested case hearing. However, in this case the Petitioner has raised the issue of substantial use as

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<sup>10</sup> The 90-day time period for the Commission to take action would therefore end on March 6, 2025.

adjudicated in the Hawaii Supreme Court case *DW Aina Le`a Dev., LLC v. Bridge Aina Le`a<sup>11</sup>, LLC* and the Commission’s duties under HRS § 205-4. The Petitioner should be required to provide the Commission with specific citations to the legal record and support that with details on permitting actions, expenditures, etc. taken by Petitioner, its predecessors, and other parties involved in this matter. [RKII DR, pgs. 6-7]

**Therefore staff recommends that the Commission exercise its discretion to schedule the matter for a contested case hearing pursuant to HAR §§ 15-15-100(a)(3) and 15-15-103.**

3. POSITION OF PETITIONER DR24-77 (RKII Partners)

RKII asks in its Petition for Declaratory Ruling (“DR”) that the Commission confirm that there has been substantial use<sup>12</sup> of the Petition Area, including the Parcel<sup>13</sup>, and that any reclassification by the LUC must be done in accordance with HRS § 205-4. The DR also asks the Commission to confirm that the Parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agricultural park.

RKII arguments set forth in the Petition (DR) are summarized below:

- The 1993 Decision and Order (“1993 Order”) was reclassified subject to a number of conditions, including a requirement that Petitioner convey 150 acres of the Petition Area to the State Department of Agriculture for an agricultural park. Condition 22 of the 1993 D&O (see page 70) stated that “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.” [RKII DR, pgs. 3-4]
- The Commission amended the D&O in 1996 (“1996 Amended Order”) where the previous Condition 22 became Condition 19 (see page 70 of 1996 Amended Order).
- In 2004 the Commission issued an Order (“2004 Order”) that provided that if Halekua filed to comply with Condition 19, with respect to the conveyance of a 150-acre agricultural park, that HRT<sup>14</sup> would acquire the lands and convey them to the State of Hawai`i, in return, 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 in interest, or HRT violates other conditions of approval with all other conditions of the Decision and Order continuing to run with the land and remain in full force and effect. [RKII DR, pgs. 5; and 2004 Order pg. 7]

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<sup>11</sup> *DW Aina Le`a Dev., LLC v. Bridge Aina Le`a, LLC, 134 Haw. 187, 209*

<sup>12</sup> Petitioner uses the term “substantial use” throughout its Petition; however, the language from HRS Chapter 205 and referenced court case is “substantial commencement”

<sup>13</sup> Tax Map Key (TMK) No. (1) 9-4-002:001, approximately 123.712 acres, located in the City and County of Honolulu.

<sup>14</sup> HRT is the predecessor in interest of RKII Partners.

- HRT purchased and conveyed 150 acres to the State of Hawai`i for an agricultural park on February 27, 2004. RKII Partners purchased HRT’s parcel from HRT’s successor in 2021. [RKII DR, pg. 5]
- In 2023, Ho`ohana Solar 1, LLC (“Ho`ohana”), a subsequent interested party in the overall Petition Area, completed its requirements to provide certain infrastructure to the agricultural park. [RKII DR, pg. 5]
- RKII cites *DW Aina Le`a Dev., LLC v. Bridge Aina Le`a*<sup>15</sup>, LLC as the Hawai`i Supreme Court case that supports its argument for substantial commencement of use of the land and that any future reclassification of the Petition Area or Parcel must comply with HRS § 205-4. [RKII DR, pgs. 6-7]
- RKII provides information on expenditures by Ho`ohana to build and develop a solar farm and installation of a new waterline for the agricultural park; planning, engineering work, and studies done by Haseko. [RKII DR, pg. 7] And, RKII indicates that it has prepared and received tentative subdivision approval at considerable cost and expense. [RKII DR, pg. 7] This information is intended to support the argument for substantial commencement.
- An immediate reversion of the Parcel’s classification would violate the Hawai`i Supreme Court ruling in the DW Aina Le`a case. Any reversion by the LUC would have to follow requirements set forth in HRS § 205-4 as there has been substantial commencement of use of the Petition Area. [RKII DR, pgs. 7-8]

As noted below, staff disagrees with these arguments and recommends that the LUC reequire the Petitioner to provide a more detailed analysis of the legal bases for its request and additional financial and permitting information that supports its arguments for substantial use of the Petition Area, including the Parcel.

#### 4. PUBLIC COMMENTS ON THE PETITION

##### State Department of Agriculture (“DOA”) [Testimony](#)

DOA recommends that the Commission deny RKII’s request for a Declaratory Ruling.

DOA believes RKII’s arguments and interpretations are incorrect regarding the application of the Commission’s 2004 Order and whether off-site infrastructure requirements in Condition 19 as set forth in the 1996 Order apply to and encumber lands within the Petition Area, including the RKII Parcel. [DOA Written Testimony, pg. 1; Attachment 2]

DOA argues that the 2004 Stipulated Agreement between HRT and the Office of Planning and Sustainable Development was only binding between the parties involved, not all parties, and not the Commission. [DOA Written Testimony, pg. 1; Attachment 1] OPSD is unable to bind the Commission in decision-making and RKII’s argument that a stipulated agreement between HRT (RKII’s predecessor

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<sup>15</sup> *DW Aina Le`a Dev., LLC v. Bridge Aina Le`a, LLC*, 134 Haw. 187, 209

in interest) and OPSD somehow binds the Commission is incorrect. [DOA Written Testimony, pg. 2; Attachment 2]

Further, DOA reminds that the Commission in adopting its 2004 Order on the matter, did not accept the Stipulation in whole but instead specifically crafted its 2004 Order to exempt HRT, Ltd. from the previously filed Order to Show Cause, but not from a Decision and Order. The Commission made its own findings that state explicitly that “all other conditions to the Decision and Order shall continue to run with the land and remain in full force and effect.” [DOA Written Testimony, pg. 2; Attachment 2]

Haseko Royal Kunia, LLC (“Haseko”)

Haseko support’s RKII’s position that the use of the Petition Area has substantially commenced and takes no position on RKII’s request for clarification regarding any encumbrances to provide off-site infrastructure to the 150-acre agricultural park. [Haseko Written Testimony, pg. 1]

Haseko provides background information on its progress since 2021 with respect to agreements, permitting, master plans, and studies. This includes payment for a non-potable agricultural waterline for the DOA agricultural park that was substantially completed by August 31, 2024. Haseko also revealed the potential sale of its interest in the Royal Kunia II project to the State Department of Hawaiian Homelands; but indicates that until there is an agreement to sell it is committed to fulfilling all development commitments and obligations. [Haseko Written Testimony, pg. 2-5, Attachment 2]

5. STAFF ANALYSIS

As a threshold matter, staff finds that pursuant to HRS § 91-1, 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.

Next, pursuant to HAR §15-15-99, the petitioner is required to meet several form and content provisions. Petitioner’s filing has met each of the required form and content provisions 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.

Pursuant to HAR § 15-15-100(a), none of the circumstances is present to provide good cause to dismiss or deny the declaratory ruling request. First, Petitioner’s request that the Commission clarify the meaning of language contained in the Commission’s 2004 Order, is not speculative or purely hypothetical, and does involve facts that exist on the record. Second, at this time, the Commission is not involved in any pending docket or litigation involving this particular issue. Accordingly, there are no grounds to dismiss for this reason. And third, the Petition requests interpretation of a prior order of the Commission and the applicability of the Commission’s statutory authority under HRS §§ 205-2, -4(g), -16, and -17, and under HAR chapter 15-15, both of which are matters within the Commission’s statutory jurisdiction.

The 2004 Order specifically clarified the language of the Commission’s motion in granting OPSD’s request and added language that was different from that contained in the HRT-OPSD Stipulated Agreement. And that clarifying language was that 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...**"

Pursuant to HAR §15-15-82.1(3),

After the hearing, the commission may adopt the 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 findings of fact, conclusions of law, conditions of boundary amendment, and anything else contained in the stipulation[.]

In this instance, the Commission can and did amend language contained in the Stipulated Agreement in order to clarify their intent. Specifically, the Commission clarified that if HRT followed through in honoring the commitment (conveyance of 150 acres for an agricultural park), then their Parcel would not be considered for reclassification during the Order to Show Cause proceedings that had been granted in the 2003 Order.

There is no immediate or planned action by this Commission to revert the Parcel's classification through either an Order To Show Cause proceeding or reclassification proceeding under HRS § 205-4. The 2003 Order To Show Cause proceeding was withdrawn by the Commission's [Order Granting Halekua Development Corporation's Oral Motion to Dismiss Order To Show Cause Proceeding](#) on March 16, 2007.

The Commission recently heard a Petition for Declaratory Ruling from this same petitioner earlier this year. The Commission denied Petitioner's request. ("[DR24-77 Order](#)"). The following Findings of Fact and Conclusions of Law are relevant to issues raised in Petitioner's current request:

- Finding of Fact 9 states:

"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)."

- Conclusions of Law 13 states:

"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 to Show Cause proceedings that had been granted in the 2003 Order but had not yet been heard."

- Conclusions of Law 14 states:

“Accordingly, the LUC’s 2004 Order was clear and unambiguous.”

The 2004 Order specifically clarified the language of the Commission’s motion in granting OPSD’s request and added language that was different from that contained in the HRT-OPSD Stipulated Agreement. And that clarifying language was that 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...**”

Pursuant to HAR §15-15-82.1(3),

After the hearing, the commission may adopt the 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 findings of fact, conclusions of law, conditions of boundary amendment, and anything else contained in the stipulation[.]

In this instance, the Commission can and did amend language contained in the Stipulated Agreement in order to clarify their intent. Specifically, the Commission clarified that if HRT followed through in honoring the commitment (conveyance of 150 acres for an agricultural park), then their Parcel would not be considered for reclassification during the Order to Show Cause proceedings that had been granted in the 2003 Order.

The Petition Area has never been bifurcated to identify specific landowners, land parcels, and the individual versus collective responsibilities to fulfill conditions of approval. Without that, all conditions are the collective responsibility of all landowners within the Petition Area, except where the Commission has assigned specific conditions to specific parcels and/or landowners. (see [2021 Order Granting Ho`ohana Solar’s Motion For Modification and Time Extension](#))

Staff is unsure how RKII would “rescind” a legally recognized conveyance of property by a predecessor in interest as suggested in its DR request. If this is a threat of potential legal action then it might be grounds to DENY the current Petition for DR under HAR § 15-15-100(a)(1)(C). [RKII DR, pg. 9]

The process under which the Commission would consider reversion of lands, the Order To Show Cause, requires an evidentiary hearing to determine whether there has been substantial commencement and a failure to comply with conditions of approval. Similarly, the Petitioner in this case, should be required to support their contention of substantial commencement through an evidentiary process as provided pursuant to HAR §§ 15-15-100(a)(3) and 15-15-103.

## 6. STAFF RECOMMENDATIONS

The singular issue for determination by the Commission is: Whether to “clarify[y] and affir[] that the land classification for the Parcel shall remain a State Land Use Urban District, *in perpetuity*.” [DR,

pg. 5 (emphasis added)]. After discussion and based on advice from our deputy Attorney General, the staff recommends that the Commission hereby:

- A. Declare that Petitioner RKII has standing to bring the DR Petition to the Commission;
- B. Declare Petitioner RKII has met each of the requirements set forth in HAR chapter 15-15;
- C. Set the matter for hearing pursuant to HAR §§ 15-15-100(a)(3) and 15-15-103, and, in doing so, direct Petitioner and other interested parties, to provide specific legal arguments and supportive financial and permitting records to establish the basis for its desired ruling on whether substantial commencement of the Petition Area and/or Parcel has occurred; and
- D. Authorize the Chairperson to execute the declaratory order necessary to effectuate the Commission's decision, subject to review and approval by the Department of the Attorney General.