

**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

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DTS 202412181406SE

Coastal Zone
Management
Program

January 3, 2025

Environmental Review
Program

TO: Daniel Orodener, Executive Officer
Land Use Commission

Land Use Commission

Land Use Division

FROM: Mary Alice Evans, Director *Mary Alice Evans*
Office of Planning and Sustainable Development

Special Plans Branch

State Transit-Oriented
Development

SUBJECT: DR24-78 RK II Partners LLC Petition For Declaratory Order
TMK: (1) 9-4-002: 001
Kunia, Oahu

Statewide Geographic
Information System

Statewide
Sustainability Branch

RK II Partners LLC (Petitioner) filed a Petition For Declaratory Order, DR24-78 (Petition) with the Land Use Commission (LUC) on December 6, 2024. The background to the Petition is rooted in LUC Docket No. A92-683, which reclassified approximately 504.865 (later amended to 503.886) acres of land (Petition Area) from the State Agricultural District to the Urban District on December 9, 1993. The Petition requests that the LUC confirm that: 1) there has been substantial commencement of the use of the Petition Area pursuant to LUC Docket No. A92-683, including the parcel owned by the Petitioner, and thus any reclassification must meet the requirements of Hawaii Revised Statutes (HRS) § 205-4; and 2) Petitioner's parcel is no longer encumbered by the requirement to provide off-site infrastructure to the 150-acre agricultural park (Ag Park). The Office of Planning and Sustainable Development (OPSD) disagrees with both of the requested determinations and recommends that the LUC deny the Petition.

I. THE PETITION'S FIRST REQUEST IS SPECULATIVE

Pursuant to Hawaii Administrative Rules (HAR) § 15-15-100(a)(1), the LUC, for good cause, may deny the Petition and refuse to issue a declaratory order under four circumstances. Under the first circumstance, the LUC may deny the Petition where:

- (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future;

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HAR § 15-15-100(a)(1)(A). Here, Petitioner's first requested determination is speculative, as there is no indication that an Order to Show Cause (OSC) will occur.

Petitioner seeks a determination that there has been substantial use of the Petition Area such that any reversion by the LUC must comply with the requirements of HRS § 205-4 under the Hawaii Supreme Court's ruling in *DW Aina Le 'a Dev., LLC. v. Bridge Aina Le 'a, LLC*, 134 Haw. 187 (2014). The *DW Aina* case held that HRS § 205-4(g) allows the LUC to revert property without complying with the general requirements of HRS § 205-4 if a petitioner has not substantially commenced use of the property in accordance with its representations. Conversely, if a petitioner has substantially commenced use of the property in accordance with its representations, then the LUC is bound by the requirements of HRS § 205-4. Here, the LUC has made no attempt to revert Petitioner's property from the State Urban District to the Agricultural District. The LUC has not held any status hearings on the status of development of Petitioner's property. There has been no OSC hearing approved by the LUC to require Petitioner to show progress in developing its property, and there have been no motions requesting the LUC issue an OSC to Petitioner. Petitioner has made no claims that would contradict these facts nor has Petitioner provided any evidence that an attempt by the LUC to revert Petitioner's property is imminent.

Consequently, OPSD finds that the question of the imminent reversion of Petitioner's property by the LUC is speculative, and therefore Petitioner's request for a Declaratory Order that substantial commencement of use of Petitioner's property has occurred is unwarranted and should be denied by the LUC.

II. THE REQUESTED DETERMINATIONS ARE SUBSTANTIVELY FLAWED

Even if all of the requests are substantively considered, OPSD recommends that the Petition be denied because: (1) Petitioner has failed to show that substantial commencement of use of Petitioner's property has occurred in accordance with its representations; and (2) the LUC has not released Petitioner from its obligation to fulfill the conditions of the LUC's 2004 Order, including the requirement to provide infrastructure to the Ag Park.

A. Petitioner has Failed to Show Substantial Commencement of Use of Petitioner's Property

LUC Docket No. A92-683 has a long and complicated history that includes many amendments and changes of ownership. For the LUC's reference, a map showing the current ownership of the original Petition Area under A92-683 can be found as Attachment 1 in OPSD's Exhibit 1. Petitioner RK II Partners LLC acquired the property identified as Tax Map Key No. (1) 9-4-002: 001, consisting of approximately 123.712 acres approved for industrial and

commercial use within the original Petition Area, from HRT Realty, LLC (HRT) on November 4, 2021.

Petitioner argues that there has been substantial commencement of use of the Petition Area such that any reversion by the LUC must comply with the general requirements of HRS § 205-4. Petitioner's argument relies heavily on evidence of actions taken and expenditures made on different projects on adjacent parcels by other entities, specifically Hoohana and Haseko. However, neither Hoohana nor Haseko has asked the LUC to determine if substantial commencement has occurred on the individual parcels owned by them. While various parcels that make up the Petition Area are all part of LUC Docket No. A92-683, the parcels now have different owners and projects, and each owner is responsible for developing its own parcel and project. Therefore, evidence of work done by Hoohana and Haseko on their separate projects/parcels is irrelevant to this Petition and Petitioner's contention that substantial commencement has occurred on its own industrial/commercial property.

In support of Petitioner's argument that it has substantially commenced use of its property, Petitioner cites as evidence:

1. Updated Master 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;
2. Tentative subdivision approval from the City and County of Honolulu Department of Planning and Permitting; and
3. Initiation of design studies, including civil engineering, grading, roadways, drainage and various on-site infrastructure.

The term "substantial commencement" is not defined in HRS Chapter 205 or in HAR Chapter 15-15. Nor did the Hawaii Supreme Court in *DW Aina* clearly specify what actions constitute "substantial commencement." The Court did, however, note that "substantial" is defined by Black's Law Dictionary as meaning "considerable in amount or value; large in volume or number." *Id.* at 213-214. Additionally, the Court's evaluation of the facts in that case is instructive:

Here, by the time the LUC reverted the property to the agricultural land use district, Bridge and DW had substantially commenced use of the land in accordance with their representations. Specifically, they had constructed sixteen townhouses on the property, commenced construction of numerous other townhouses, and graded the site for additional townhouses and roads. At that point, more than \$20 million had been spent on the project. Although Bridge and DW have substantially commenced use of the land,

the LUC failed to comply with the requirements of HRS § 205-4. The circuit court therefore correctly concluded that the LUC erred in reverting the property.

Id. at 191. In *DW Aina*, the Court determined that there had been substantial commencement of use of the land based on the developer's expenditures of over \$20 million on the subject property, which included mass grading of the site, construction of foundation slabs, and actual construction of 16 townhouses in addition to obtaining permits.

OPSD finds that the evidence cited by Petitioner to show that it has substantially commenced use of the land in accordance with its representations is insufficient. Conceptual master plans and schedules, tentative county subdivision approval, water, sewer, drainage master plans, and traffic assessments alone do not rise to the level of substantial commencement of use of the land. Notably, Petitioner makes no mention of permits obtained or actions such as physical grading or construction on the property that would constitute use of the land, including lack of any provision of "backbone" infrastructure, i.e., electrical, water, sewer, or roadway facilities. In fact, in its Conceptual Master Plan filed with the LUC on May 31, 2024, Petitioner states that "construction of on-site [Phase 1] infrastructure will commence in January 2026, and be completed by April 2027," and further acknowledges that, "Delivery of the Phase 1 development is completely reliant on Haseko's delivery of Road X Phase 1 (includes a portion of Road Y), Road 3 and Road X Phase 2 with upsized utility lines stubbed to RK II Partners land in a timely manner." *Petition*, pg. 7; *Updated Master Plans and Schedule For Development of the Royal Kunia Industrial/Retail Subdivision*, pg. 3. Additionally, Petitioner vaguely refers to the "considerable cost and expense," but does not provide any specific information on what Petitioner has spent that has resulted in commencement of physical development on- or off-site for the parcel's intended use.

B.e Petitioner is Subject to the Off-Site Agricultural Park Infrastructure Conditione

Petitioner also asks the LUC to confirm that Petitioner is not required to provide off-site infrastructure to the Ag Park. Petitioner argues that a 2003 stipulation (2003 Stipulation) between OPSD and Petitioner's predecessor, HRT, provided that in exchange for HRT's conveyance of the Ag Park to the State of Hawaii, as required by Condition 19 of the LUC's 1996 Order, OPSD would ask the LUC to release HRT from the portion of Condition 19 dealing with the obligation to provide off-site infrastructure to the Ag Park. Petitioner argues that HRT did convey the Ag Park to the State of Hawaii and that the LUC should confirm that Petitioner, as successor to HRT should be free of the obligation to provide off-site infrastructure to the Ag Park.

Petitioner made a related and similar argument in its last Petition to the LUC in Docket No. DR24-77. OPSD provided an in-depth analysis and response to Petitioner's argument

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January 3, 2025

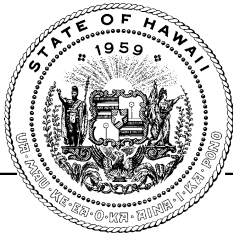
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regarding the relevance of the 2003 Stipulation and the LUC's controlling 2004 Order. *See OPSD Exhibit 1.* To summarize, OPSD and HRT entered the 2003 Stipulation to provide an agreed-upon position to the LUC and OPSD filed a motion in line with the 2003 Stipulation. However, OPSD has no authority to bind the LUC or to modify any order of the LUC, and the LUC was free to accept the stipulation, reject it, or accept it in part. After much discussion and modification of OPSD's motion at the hearing, the 2004 Order eventually provided that in exchange for conveyance of the Ag Park to the State of Hawaii pursuant to a portion of Condition 19, the LUC would exempt HRT from the OSC hearing and the threat of reversion that had been suspended. The LUC did not, however, release HRT from any other condition, including the other portion of Condition 19 that requires provision of off-site infrastructure to the Ag Park. Rather, the 2004 Order confirmed that "all other conditions of the Decision and Order shall continue to run with the land and remain in full force and effect." *2004 Order.* At the hearing, HRT agreed to the revised motion and the LUC's 2004 Order.

III. OPSD'S RECOMMENDATION TO DENY THE PETITION

OPSD finds that the Petition is speculative regarding the threat of reversion and recommends that it be denied pursuant to HAR § 15-15-100(a)(1)(A). Furthermore, Petitioner has failed to demonstrate: (1) that it has substantially commenced use or development of its industrial/commercial parcel; and (2) why the 2004 LUC Order should not take precedence over the 2003 Stipulation between OPSD and HRT and be binding on all parties. Consequently, OPSD recommends that the Petition be denied.

Enclosures



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Coastal Zone
Management
Program

October 2, 2024

Environmental Review
Program

TO: Daniel Orodener, Executive Officer
Land Use Commission

Land Use Commission

Land Use Division

FROM: Mary Alice Evans, Director *Mary Alice Evans*
Office of Planning and Sustainable Development

Special Plans Branch

SUBJECT: DR24-77 RK II Partners LLC Petition For Declaratory Order
TMK: (1) 9-4-002:001
Kunia, Oahu

State Transit-Oriented
Development

Statewide Geographic
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Statewide
Sustainability Branch

RK II Partners LLC (Petitioner) filed a Petition For Declaratory Order, DR24-77 (Petition) with the Land Use Commission (LUC) on August 2, 2024. The Petition requests that the LUC interpret the 2004 Order (as defined below) to clarify that the Petitioner's subject parcel shall remain classified in the State Land Use Urban District in perpetuity. The Office of Planning and Sustainable Development (OPSD) disagrees and recommends that the LUC deny the Petition.

I. BACKGROUND

The basis of the Petition is rooted in LUC Docket No. A92-683, which has a long and complicated history with many amendments and changes of ownership. OPSD provides the following summary for context and background in understanding the statements in the 2004 Order on which the current Petition is based.

A. 1993 D&O and Condition 19

On December 9, 1993, under LUC Docket No. A92-683, the LUC filed Findings of Fact, Conclusions of Law and Decision and Order reclassifying approximately 504.865 (later amended to 503.886) acres of land (Petition Area) from the State Agricultural District to the Urban District (1993 D&O). The petitioner in A92-683, Halekua Development Corporation (Halekua), had an agreement to purchase the Petition Area and an adjacent 150-acre area from a group of landowners collectively referred to as "Robinson Estate." Halekua proposed to develop the Royal Kunia Phase II Project (Phase II Project) in the Petition Area. The Phase II Project included residential use, a public park, a school site, a golf course, and approximately 123 acres planned for light

industrial uses. The 150-acre area adjacent to the Petition Area remained in the Agricultural District and was intended to be an agricultural park (Ag Park) to be conveyed to the Hawaii Department of Agriculture (DOA). As a condition to the 1993 D&O, Halekua was required to convey the Ag Park to the State of Hawaii and to provide off-site infrastructure to the Ag Park under the terms of a Memorandum of Understanding dated March 30, 1993 between Halekua and DOA (Condition 19).¹

Halekua's promise to provide the land and infrastructure to establish the Ag Park through Condition 19 was an important factor that led to OPSD's support of Halekua's petition despite the negative factors that existed. In the 1993 D&O, the LUC found that 95% of the Petition Area was classified as "Prime" on the Agricultural Lands of Importance to the State of Hawaii (ALISH) map; and 94% of the Petition Area was rated "A" under the Land Study Bureau's (LSB) soil productively rating system, with the remaining 10% rated "B." 1993 D&O at 18. The LUC further found that the Petition Area had not been recommended for reclassification as "Urban" in OPSD's *Final State Land Use District Boundary Review* report for Oahu "because of the agricultural resource value of these lands," and that the Petition Area had not been proposed for consideration in Urban District in the *1992 Five-Year Boundary Review*. Nevertheless, OPSD expressed conditional support for Halekua's petition despite the loss of desirable agricultural lands "because of the opportunity provided by [Halekua] to preserve in perpetuity 150 acres of prime agricultural land as an agricultural park." 1993 D&O at 52 and 53.

On September 12, 1995, Halekua purchased 347.036 acres of the Petition Area—but not the proposed Ag Park site—from the Robinson Estate.

B. HRT Purchase of Industrial Site and Other Petition Area Lands

On September 19, 1995, the LUC issued an Order Granting Motion To Change Ownership Interest in the Petition Area to recognize purchase and loan agreements under which Halekua would convey two parcels encompassing a total of approximately 123 acres zoned I-1 (limited industrial) and a parcel of approximately 9 acres, later increased to approximately 13 acres, zoned A-1 (low-density apartment) within the Petition Area. Halekua represented that the change in ownership would allow Halekua to complete the residential portion of the Phase II Project and would allow HRT (defined below) to complete the industrial portion of the Phase II Project.

On April 15, 1996, Halekua conveyed approximately 123.712 acres of the Petition Area to HRT, Ltd., 300 Corporation, and Honolulu Limited (collectively, HRT) and approximately 13.304 acres of A-1 zoned land to HRT, Ltd.

C. Project Changes and Failure to Satisfy Condition 19

¹ 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.

Shortly thereafter, Halekua filed three successive Motions to Amend the 1993 D&O (June 25, 1996, July 2, 1996, and September 4, 1996), collectively referred to as Motion to Amend, to revise the Phase II Project to increase the number of single-family residential units, lower the number of multi-family units, and to eliminate the golf course. The LUC approved the Motion to Amend on October 1, 1996 (1996 D&O), with 25 conditions including Condition 19.

Condition 19 remained unfulfilled over the next several years, as evidenced by Halekua's annual reports:

1. Halekua's April 15, 1998 Annual Report on Condition 19 stated, "[Halekua] has agreed with the letter request dated March 7, 1997 by the State Department of Agriculture seeking an extension of the conveyance date for the 150-acre site until December 31, 1999." The same statement on the status of Condition 19 was repeated in Halekua's August 24, 1999 Annual Report.
2. Halekua's subsequent May 24, 2000 Annual Report reported that "[t]he provision of the off-site infrastructure has not yet started, thus the delay in compliance by December 31, 2000," and failed to confirm conveyance of the 150-acre site by the December 31, 1999 deadline. Instead, Halekua attached "Exhibit A," a May 17, 2000 status update on the "Purchase of Agricultural Park Site" stating, "...Halekua was unable to comply with the June 30, 1998 deadline for purchase of the Ag Park Site (150 acres) due to lack of financing... While Mr. Mau, on behalf of his clients, has acknowledged the willingness of the Robinson Owners to permit purchase of the Ag Park Site provided this financing can be obtained, in a reasonable timeframe, the Robinson Owners have not officially extended a formal extension to the previous Agreement to Sell and Purchase... Inasmuch as acquisition financing now appears imminent, Halekua anticipates being able to consummate the Agreement to Sell and Purchase by the end of the year."
3. Halekua's June 25, 2001 Annual Report on Condition 19 reported, "...[Halekua] is still in the process of securing project loans. As of today, [Halekua] is working with two lenders."

On July 11, 2001, approximately 36.660 acres of A-1 zoned land within the Petition Area was conveyed from Halekua to HRT, Ltd. After this, the HRT owned approximately 173.676 acres of the Petition Area consisting of TMK Nos. (1) 9-4-002: 001, 070, and 078 (Parcel 78 was created from the subdivision of parcel 71) (HRT Lands). A map showing the current ownership is attached as Attachment 1 for the LUC's reference.

D. Motion For An Order To Show Cause and Halekua Bankruptcy Filing

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 503.886-acre Petition Area to its former designation within the State Land Use Agricultural District. OPSD argued that Halekua had "failed to secure financing for the proposed project and to convey the 150-acre agricultural park to the State of Hawaii as required by Condition Number 19 of the Amended Decision and Order," and that "despite Halekua's sale of a portion of the Petition Area, Halekua did not use the funds to obtain and transfer the agricultural park." On February 26, 2003, the

LUC issued an Order To Show Cause (OSC) for a hearing on April 24 and 25, 2003. At the commencement of the OSC hearing, Halekua notified the LUC that it had filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code. The LUC subsequently stayed its hearing indefinitely pending the outcome of the bankruptcy proceedings. The approximately 161 acres of the Petition Area owned by Halekua were placed under the jurisdiction of the federal bankruptcy court.

E. 2003 OPSD-HRT Stipulation

On December 29, 2003, OPSD and HRT filed a stipulation (Stipulation) (attached as Attachment 2) with the LUC. The Stipulation provided that if Halekua failed to convey the Ag Park to the State of Hawaii by January 31, 2004, then HRT, Ltd. would acquire the Ag Park to convey to the State of Hawaii by February 28, 2004. In return, OPSD agreed that conveyance would fully satisfy Halekua's obligation to convey the Ag Park under Condition 19 and that the portion of Condition 19 dealing with providing off-site infrastructure shall continue to apply to and encumber lands other than the HRT Lands. The Stipulation further provided that as a condition to the conveyance, the LUC shall enter an Order providing that HRT Lands would not be reclassified from the presently designated use unless at the request of HRT, Ltd., that Halekua's failure to fulfill any of the terms and conditions of the 1996 D&O would have no adverse effect on the HRT Lands, and that if Halekua failed to comply with any other condition of the 1996 D&O, the LUC must give notice to HRT, Ltd. and allow them a right to cure such default on behalf of Halekua. Additionally, conditions 6, 9, 10, 18, and 24 in the 1996 D&O would no longer apply or encumber lands owned by the HRT, and apply only to Halekua, and conditions 21 through 23 would be modified to include reference to HRT. *See Stipulation, pp. 3-5.*

F. OPSD Motion To Exempt HRT, Ltd. and 2004 LUC Order

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). OPSD requested that the LUC exempt all real property owned by HRT, Ltd. and its sister companies located within the Petition Area from any order that rescinds the 1996 D&O if HRT fulfilled the terms and conditions in the Stipulation. OPSD further requested that the LUC approve the other terms and conditions in the Stipulation that affect HRT's ownership of land within the Petition Area.

On January 15, 2004, the LUC held a hearing on the Motion to Exempt (Motion Hearing) and after deliberating, approved OPSD's Motion to Exempt with revisions on February 20, 2004 (2004 Order). During the Motion Hearing:

HRT asked [the LUC] to i) acknowledge that if [Halekua] fails to convey the 150-acre agricultural site to the State of Hawaii by January 31, 2004, HRT will acquire the site at its own expense and convey it to the State of Hawaii no later than February 28, 2004, as required by part (a) Condition [] 19, and ii) as a condition to the conveyance, agree not to reclassify or downzone lands in the Petition Area presently owned by HRT. HRT further

asked [the LUC] 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 [] 19 pertaining to the conveyance of the site to the State of Hawaii, but that [Halekua's] obligation to provide infrastructure to the site as required by said condition would remain in full force and effect. [OPSD] stated that it agreed with HRT's proposal and amended its Motion consistent with HRT's request in this matter.

2004 Order, pp. 4-5.

During the Motion Hearing, there were many concerns raised by the LUC as to responsibility for the numerous unfulfilled conditions in the 1996 D&O. As a result, the motion was restated twice to narrow the changes. The commissioners specifically raised concerns over whether HRT's lands should remain "forever zoned agricultural" and "should not ever be reclassified or even it's [sic] successors?" LUC January 15, 2004 minutes, p. 7. A change was made between the first restated motion and the second (and final) restated motion to address those concerns, which are presented below in a Ramseyer format to illustrate the revisions made by the LUC; additions are underlined, deletions are struck out:

...i) in the event [Halekua] fails to comply with Condition Number 19 regarding the conveyance of the 150-acre agricultural park site to the State of Hawaii by January 31, 2004, HRT shall proceed to acquire the site for conveyance to the State of Hawaii 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 **for the 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;** iii) ~~upon completion of the conveyance of the 150-acre agricultural park site to the State, only that portion of Condition Number 19 pertaining to the conveyance of the agricultural park site to the State of Hawaii shall be deemed satisfied and released~~ HRT shall report back to this Commission in six months regarding the status of [Halekua's] bankruptcy proceedings; and iv) **all other conditions to the Decision and Order shall continue to run with the land and remain in full force and effect.**

2004 Order, p. 5 (emphasis added).

The LUC then voted to approve the OPSD's restated Motion to Exempt and issued the 2004 Order to this effect. The Ag Park site was conveyed by Halekua to the State of Hawaii by Warranty Deed with Reversion dated February 23, 2004 and recorded in the State of Hawaii Bureau of Conveyances as Document No. 2004-040601.

II. OPSD'S RESPONSE TO PETITIONER'S 2024 PETITION

A. Petitioner's Interpretation of the 2003 Stipulation

Petitioner correctly characterizes the December 29, 2003 Stipulation between OPSD and HRT regarding the obligation to acquire and transfer the Ag Park site to the State of Hawaii in return for OPSD's agreement to request from the LUC that the HRT Lands located within the Petition Area should not be reclassified for any use other than the present designation, i.e., Urban unless requested by HRT. Petitioner also characterizes the Stipulation's intent as ensuring the Urban District classification of HRT's lands in the Petition Area remains for as long as HRT or its successors wished, in exchange for the conveyance of the Ag Park to the State of Hawaii. OPSD finds this to be likely.

The history of Docket A92-683 shows that the Petition Area consisted of agricultural lands overwhelmingly classified as "Prime" and "A-rated" under the ALISH and LSB soil classification systems, respectively. The opportunity to preserve, in perpetuity, 150 acres of such land as an agricultural park was a critical factor in OPSD's support for the reclassification from the Agricultural to the Urban District. The project then languished for years with no progress from Halekua on fulfilling the transfer of the 150-acre agricultural park site to the State of Hawaii; almost nine years passed before OPSD filed its OSC motion, and at the start of the LUC's OSC hearing, Halekua announced it was filing for bankruptcy. Consequently, as the Stipulation shows, in exchange for HRT, Ltd.'s commitment to acquire and convey the Ag Park site to the State of Hawaii, OPSD was willing to ask the LUC to ensure that HRT's lands in the Petition Area not be reclassified for any use other than the Urban District unless otherwise requested by HRT and release HRT from other conditions under the 1996 D&O, including the obligation to provide off-site infrastructure to the Ag Park site under Condition 19.

B. 2004 LUC Order Is Clear and Unambiguous

Petitioner argues that the 2004 Order is ambiguous, and that context shows an intent for the HRT Lands to remain classified in the Urban District in perpetuity. While OPSD acknowledges that what Petitioner argues may have been the intent in the Stipulation and the Motion to Exempt, the LUC was not required to approve OPSD's Motion to Exempt and adopt the Stipulation as is. Instead, the LUC had the discretion to deny the Motion to Exempt, approve it entirely, or approve it with revisions. As shown in the 2004 Order and minutes from the Motion Hearing, the LUC revised the terms of the Motion to Exempt significantly. Contrary to Petitioner's assertions, OPSD finds the 2004 LUC Order clear and unambiguous, and the revisions made to the Motion to Exempt by the LUC consistent with the LUC's intent to limit the exemption of the HRT Lands from potential reversion under the OSC while preserving HRT's reversion rights and the LUC's enforcement authority in the future.

Petitioner raises three specific arguments as to why the 2004 Order is ambiguous. First, Petitioner asserts that the LUC's addition of the phrase in the 2004 Order "...for purposes of this Commission's Order to Show Cause proceedings in this docket..." creates ambiguity because it contradicts the intent of the Stipulation. OPSD disagrees and finds that the phrase was intentionally included and means exactly what it states. As stated above, the 2004 Order was not required to be consistent with the intent of the Stipulation. The OSC proceedings were brought due to the failure to comply with Condition 19 with respect to the conveyance of the Ag Park to

the State of Hawaii. As a successor petitioner, HRT was jointly responsible for all of the conditions and was subject to reversion under the OSC along with Halekua. The second restated motion provided that if Halekua failed to comply with Condition 19 and HRT then purchased the Ag Park to convey to the State of Hawaii, the HRT Lands would “be excused from reversion to agricultural.” LUC January 15, 2004 minutes, p. 8. The LUC intentionally included the phrase “for purposes of this Commission’s Order to Show Cause proceedings in this docket” between its first and second restated motions to clarify that the scope of its approval of OPSD’s Motion to Exempt was limited to the immediate OSC proceedings for the failure to comply with Condition 19 with respect to the conveyance of the Ag Park to the State of Hawaii. Additionally, the 2004 Order required HRT to report to the LUC the status of Halekua’s bankruptcy proceedings and provided that all other conditions of the 1996 D&O “shall continue to run with the land and” remain in full force and effect. 2004 Order, Part iii. By adding the phrase “shall continue to run with the land,” the LUC emphasized that HRT and its successors or assigns remained obligated to fulfill all other conditions of the 1996 D&O besides the conveyance of the Ag Park.

Second, Petitioner argues that the LUC’s insertion of the phrase “its successors or interests” after referring to HRT’s right to request reclassification of its lands to the Agricultural District is illogical if the LUC intended the Urban District classification of the HRT Lands to remain only for the purposes of the OSC proceedings rather than “forever.” OPSD disagrees and finds that the full phrase added to the second restated motion serves a purpose. The 2004 Order states that the HRT Lands shall not be reclassified to the Agricultural District unless requested by HRT “its successors or interests, or HRT violates other conditions of approval.” 2004 Order, Part ii. The addition of this phrase, notwithstanding the exemption of HRT Lands from reversion in the OSC proceedings, preserves both HRT’s and its successors’ or assigns’ right to request reclassification of the land and the LUC’s authority to enforce compliance with the other conditions of the 1996 D&O.

Finally, Petitioner contends that “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.” As stated above, the HRT Lands were subject to all the conditions of approval in the 1996 D&O and were, therefore, subject to the threat of reversion of the entire Petition Area under the OSC, the hearing for which had only been suspended due to Halekua’s bankruptcy application. The Stipulation and Motion Hearing discussion indicate that HRT had other financial motivations for curing the Condition 19 default. Halekua made a mortgage in favor of HRT, Ltd., which secured certain obligations by Halekua to HRT, Ltd. and to the LUC under 1996 D&O. The future of the Phase II Project was uncertain given Halekua’s financial difficulty and the Stipulation notes that HRT was willing to cure the Condition 19 default “as a protective advance under that certain Mortgage made by Halekua in favor of HRT, Ltd.” Stipulation, p. 3. During the Motion Hearing, HRT expressed urgency to close the purchase of the Ag Park as the Robinson Estate had not extended its purchase agreement with Halekua and the continued availability of the Ag Park site was in question. Given these combined circumstances, it is likely that HRT agreed to the 2004 Order to protect the existing status of its lands from the immediate threat of reversion and to protect its own financial interest in the mortgage. In any event, “logical” or not, HRT did agree, as the 2004 Order shows.

Considering the LUC's 2004 Order as a whole, it is a deliberate document that intentionally highlights the changes that occurred during the Motion Hearing. Rather than contradictory and ambiguous, each phrase added to the 2004 Order reflected the LUC's deliberation and decision. The 2004 Order, and the discussion among the commissioners that led to it, clearly show that the LUC revised OPSD's recommendation to limit the HRT Lands' exemption from reclassification to the then-ongoing OSC proceedings, and eliminated all the other stipulations that would have significantly reduced HRT's obligations under the 1996 D&O. The 2004 Order also shows that HRT and OPSD agreed with the revisions discussed by the LUC, including HRT's request to waive "the relief sought for all of the other conditions that were specified in the Stipulation and have them remain in full force and effect." 2004 Order, p. 4.

C. Department of Agriculture's Response

The DOA has provided OPSD with its response to the Petition (attached as Attachment 3). OPSD agrees with DOA's position that Petitioner, as successor owner of the industrial-zoned parcel in the A92-683 Docket Petition Area to HRT, remains obligated to provide infrastructure to the Ag Park. The Petition states that Ho'ohana Solar 1, LLC completed the infrastructure to the Ag Park, but this is an inaccurate statement. *See* Petition, p. 5. Ho'ohana Solar 1, LLC completed only that portion of the infrastructure to the Ag Park for which it was responsible, and the remainder of the infrastructure to the Ag Park remains incomplete. OPSD also agrees with DOA's contention that had the LUC granted the HRT Lands an exemption from reversion in perpetuity, the LUC would have no remedy or recourse to compel compliance with this portion of Condition 19 or if "HRT violates other conditions of approval."

D. Petitioner's Secondary Argument is Irrelevant

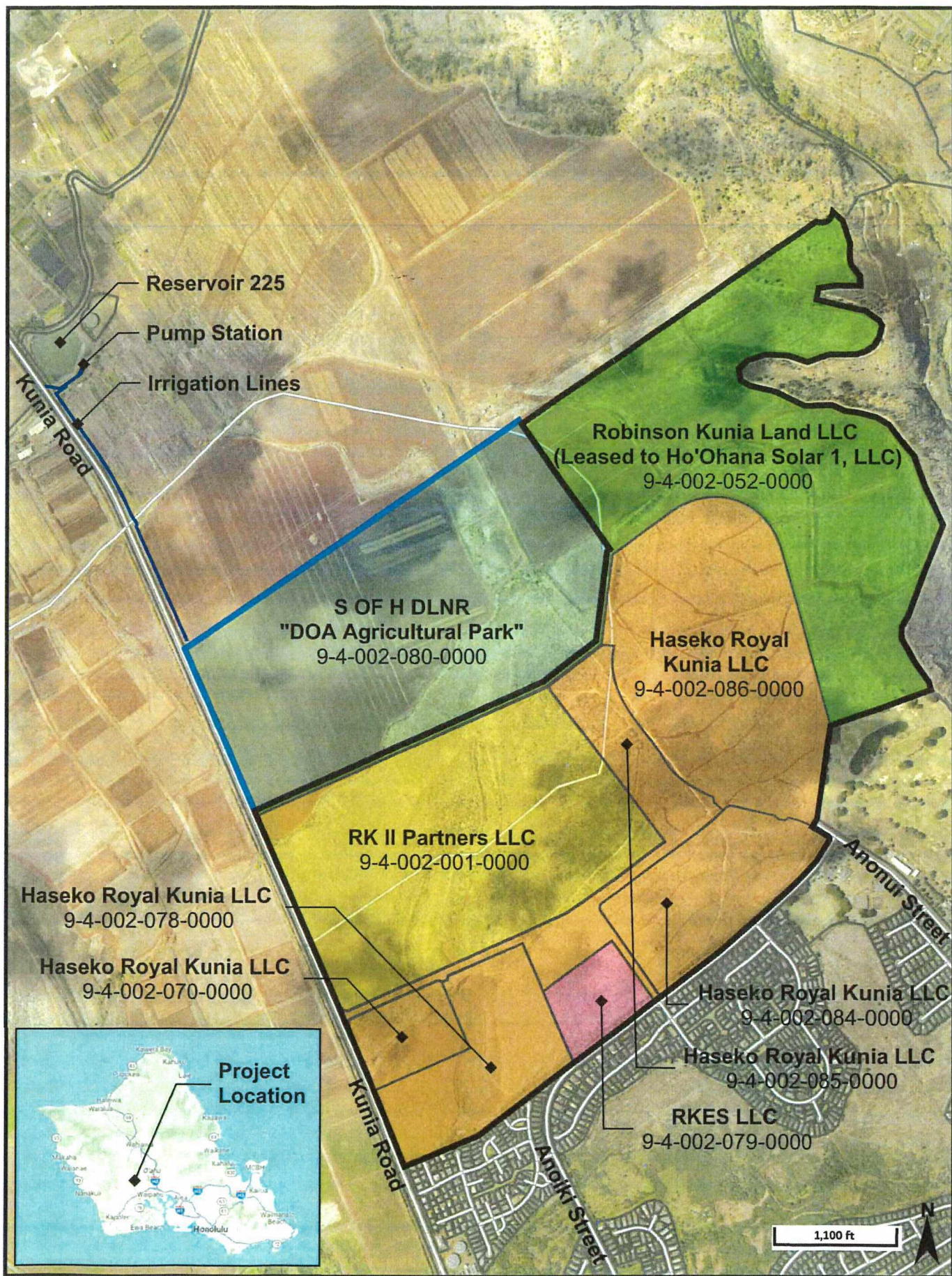
Petitioner makes a secondary argument that the LUC's 2004 Order intended the Urban District classification of HRT Lands to remain in perpetuity is consistent with the Hawaii Supreme Court's holding in the *DW Aina Le'a Dev., LLC v. Bridge Aina Le'a, LLC*, 134 Haw. 187, 339 P.3d 685 (2014). OPSD disagrees. *DW Aina* required the LUC to follow certain procedural requirements before reverting land on which development has been substantially commenced. The case did not state that land on which development has been substantially commenced may *never* be subject to reversion such that the LUC must permanently hold the land in its current land use district in perpetuity.

Regardless, Petitioner in this Petition is requesting that the LUC interpret its 2004 Order to find that under the 2004 Order, TMK No. (1) 9-4-002-001 was intended to remain in the State Land Use Urban District in perpetuity. Whether substantial commencement has occurred such that it would prevent the reversion of the HRT Lands is a different question. Neither the Hawaii Supreme Court's holding in a 2014 case, nor actions taken many years later to satisfy conditions of the 1996 D&O, are relevant to clarification of the LUC's intent in the 2004 Order. As this Petition does not seek a determination on whether substantial commencement has occurred, OPSD takes no position on this argument at this time.

E. OPSD Recommendation

The LUC's 2004 Order is clear and unambiguous, and HRT agreed to it. The Petition Area remains in the Urban District, subject to fulfillment of the conditions of the 1996 D&O, and RK II Partners LLC, as successor landowner to HRT, is jointly responsible for those conditions. For the reasons stated above, OPSD recommends that the LUC deny the Petition requesting an order that the 2004 Order ensures that Petitioner's parcel remains classified as State Urban District in perpetuity.

Enclosures



 Lands Covered by LUC Docket No. A92-683

6408
Of Counsel
LAW OFFICES OF
REUBEN S F WONG

LAND USE COMMISSION
STATE OF HAWAII

200 DEC 30 A 11: 00

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DELWYN H.W WONG 7170-0
Suite 2288, Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone No 531-3526

Attorneys for HRT, LTD , 300 Corporation
and Honolulu Limited

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A92-683
)	
HALEKUA DEVELOPMENT)	
CORPORATION, a Hawaii corporation)	STIPULATION, EXHIBITS A to D
)	
)	
To Amend the Agricultural Land Use)	
District Boundary into the Urban Land)	
Use District for Approximately 503,883)	
Acres of Land at Waikele and Ho'ae'ae,)	
Ewa, Oahu, City and County of Honolulu,)	
Hawai'i, Tax Map Key No 9-4-02 1,)	
portion of 52, 70, and 71)	
)	
)	
)	
)	

STIPULATION

COMES NOW, the Office of Planning of the State of Hawaii, by and through Theodore E. Liu, (hereinafter referred to as the "Office of Planning") and HRT, Ltd , 300 Corporation, and Honolulu Limited, by and through their attorney, the Law Offices of Reuben S F Wong, (hereinafter collectively and simply referred to as the "HRT Entities") and stipulate as follows

EXHIBIT "10"

WHEREAS, Halekua Development Corporation ("Halekua" or the "Petitioner") is the developer of approximately 504 865 acres of land located at Waikele and Hoaeae, Ewa, Oahu, State of Hawaii, identified as Tax map Key No 9-4-02: portion of 1 and 52 (the "Petition Area"), which lands are more particularly described in the Findings of Fact, Conclusions of Law and Decision and Order of the Land Use Commission dated December 9, 1993,

WHEREAS, the HRT Entities acquired certain interests within the Petition Area (collectively, the "HRT Lands") including without limitations the following. (1) 123 712 acres of industrial-zoned land acquired by HRT, Ltd., 300 Corporation, and Honolulu Limited, by Deed dated April 15, 1996, recorded in the Bureau of Conveyances of the State of Hawaii as Document No 96-051982, (2) 13 304 acres of apartment-zoned land acquired by HRT, Ltd by Deed dated April 15, 1996, recorded in the Bureau of Conveyances of the State of Hawaii as Document No 96-051983, and (3) 36 660 acres of apartment-zoned land acquired by HRT, Ltd by Deed dated July 11, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No 2001-168369 Said HRT Lands are shown on the map attached hereto as Exhibit "A", and more particularly described on Exhibits "B", "C", and "D", respectively

WHEREAS, the Office of Planning filed a Motion For An Order To Show Cause To Rescind The Decision And Order Dated October 1, 1996, before the State Land Use Commission on October 15, 2002 to "reclassify" the Petition Area to agricultural use (the "Motion to Reclassify") by reason of Halekua's failure to convey 150 acres of agricultural land to the State of Hawaii, as required by the Land Use Commission's Order dated December 9, 1993, as amended by that certain Order dated October 1, 1996 (collectively referred to hereinafter as the "1996 LUC Order"),

WHEREAS, the Land Use Commission has set a hearing with respect to the said Motion to Reclassify to be heard on April 25, 2003,

WHEREAS, the Robinson Estate and other owners related to the Robinson Estate (collectively referred to as "Robinson Owners"), are the owners of 307 acres of agricultural land located adjacent to the Petition Area, out of which 150 acres will be subdivided for conveyance to the State of Hawaii (the "150 acre Agricultural Park Site");

WHEREAS, as a protective advance under that certain Mortgage made by Halekua in favor of HRT, Ltd, which Mortgage is dated September 1, 1995, recorded as Document No 95-117011, and secures certain obligations by Halekua to HRT, Ltd and to the Land Use Commission under the 1996 LUC Order, HRT, Ltd is willing to buy, with its own funds, the 150 acre Agricultural Park Site from the Robinson Owners and to convey the same to the State of Hawaii in order to cure Halekua's default in failing to convey 150 acres of agricultural land to the State of Hawaii

NOW THEREFORE, it is stipulated by and between the Office of Planning and the HRT Entities as follows

1 That in the event Halekua fails to perform its obligation to convey said 150 acres of agricultural land to the State of Hawaii by January 31, 2004, then HRT, Ltd shall proceed to acquire the 150 acre Agricultural Park Site from the Robinson Owners for conveyance to the State of Hawaii no later than February 28, 2004, provided that the conveyance shall be subject to the approval of the State of Hawaii

2 That the Office of Planning hereby agrees that should HRT, Ltd acquire said 150 acre Agricultural Park Site from the Robinson Owners and convey the same to the State of

Hawaii, then such conveyance by HRT, Ltd shall satisfy the 1996 LUC Order with respect to Halekua's obligation to convey 150 acres of agricultural land to the State of Hawaii

3 That as a condition to the conveyance by HRT, Ltd., the Land Use Commission shall enter an Order providing that (1) the HRT Lands shall not be reclassified for any use other than the presently designated uses of such HRT Lands, unless such reclassification is made at the request of HRT, Ltd , (2) that Halekua's failure to fulfill any of the terms and conditions of the 1996 LUC Order shall have no adverse effect upon the HRT Lands; (3) that should Halekua fail to comply with any other condition of the 1996 LUC Order, then in such event, the Land Use Commission shall give notice thereof to HRT, Ltd , and HRT, Ltd. shall have the right to cure, at its sole discretion, such default on behalf of Halekua.

4 That the following conditions set forth in the 1996 LUC Order shall no longer apply or encumber the HRT Lands, but shall continue to apply and encumber lands owned by the Petitioner, to wit

- a Condition No 6, dealing with Petitioner's obligation to contribute towards the construction of a school,
- b Condition No 9, dealing with Petitioner's obligation to construct a chain link fence,
- c Condition No 10, dealing with Petitioner's obligation to clear away trees,
- d Condition No 18, dealing with Petitioner's obligation to obtain City permits within five (5) years of the 1996 LUC Order,
- e Condition No 24, dealing with Petitioner's obligation to record a statement with the Bureau of Conveyances.

5 That the following conditions set forth in the 1996 LUC Order shall be modified to read as follows.

- a Condition No 21 "Petitioner and/or the HRT Entities shall give notice to the Commission of any intent to sell, lease, assign, place in trust or


otherwise voluntarily alter their respective ownership interests in the reclassified area, prior to development of their respective reclassified areas. This notice shall be satisfied by the giving of notice only, and shall not require approval by the Commission "

- b Condition No 22 "Petitioner and/or the HRT Entities shall provide without any prior notice, annual reports to the Commission, the Office of Planning, the City and County of Honolulu Department of Planning and Permitting with the status of their respective development proposed for the reclassified area and their progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the Commission. The annual report shall be due prior to or on the anniversary date of the Commission's approval of the Petition."
- c Condition No 23 "Petitioner and/or the HRT Entities shall seek from the Commission full or partial release of the conditions provided herein as to all or any portion of the reclassified area upon evidence acceptable to the Commission of satisfaction of these conditions"

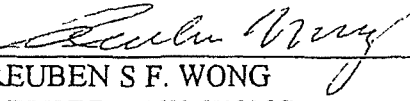
6 That with respect to Condition No 19 set forth in the 1996 LUC Order, upon conveyance of the 150 acre Agriculture Park Site as herein set forth, the portion of said Condition No 19 dealing with the conveyance of the 150 acre Agriculture Park Site to the State of Hawaii shall be deemed to be fully satisfied; 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

7 That the following conditions set forth in the 1996 LUC Order shall continue to be covenants and conditions affecting lands owned by the Petitioner as well as the HRT Lands, to wit 1-5, 7, 8, 11-17, 20, and 25

DATED Honolulu, Hawaii DEC 29 2003, 2003

OFFICE OF PLANNING, STATE OF HAWAII

By _____
THEODORE E LIU

HRT, LTD , 300 CORPORATION and
HONOLULU LIMITED

By 
REUBEN S F. WONG
DELWYN H W WONG
Their Attorney

"HRT Entities"

APPROVED AS TO FORM

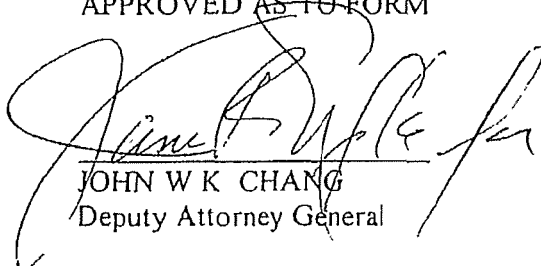
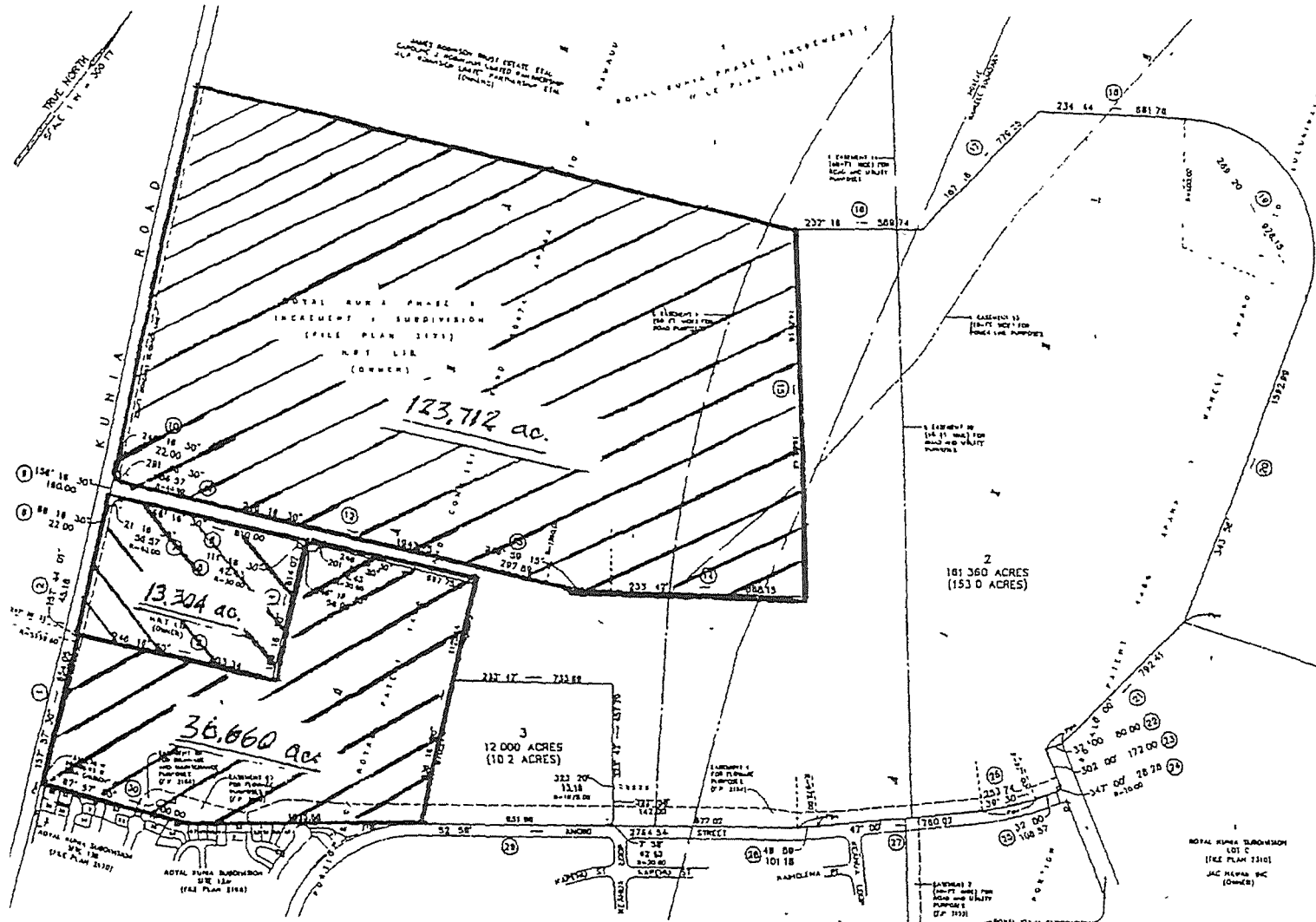

JOHN W K CHANG
Deputy Attorney General

EXHIBIT "A"



**ROYAL KUNIA SUBDIVISION
SITE 13A (FILE PLAN 216B)**

- LOT 48 - DELPHINE MORNANDEZ
- LOT 49 - RICHARD ALLEN SONDICAL
- LOT 50 - KUNIA RESIDENTIAL PARTNERS
- LOT 51 - LYNN H KUDO TIMOTHY KUDO
TED TAKASHI NAITO AND
W/ ANTOINETTE NAITO
- LOT 52 - KUNIA RESIDENTIAL PARTNERS
- LOT 53 - LLOYD COLONIA BAGUO AND
W/ ROMENA RABAGO BAGUO
- LOT 54 - ELLA MAY HOELAN TOLENTINO,
HENRY MADDA WAIJAIER, JR AND
W/ ENOLA BORDADO KANIANKA
AND ROBERT SHUJIO OKAMOTO
- LOT 55 - WILLIAM CHARLES PENNINGTON AND
W/ JANICE MICHAEL PENNINGTON
- LOT 56 - KUNIA RESIDENTIAL PARTNERS
- LOT 57 - SCOTT ISAMU KAWAIA AND
W/ CELESTE MAURE KAWAIA
- LOT 58 - KUNIA RESIDENTIAL PARTNERS
- LOT 59 - KUNIA RESIDENTIAL PARTNERS

**ROYAL KUNIA SUBDIVISION
SITE 13B (FILE PLAN 2170)**

- LOT 40 - DARWIN CAROTAGE CABANAS AND
W/ LETICIA REVILLA CABANAS
- LOT 41 - ANTHONY JAMES ORTIZ AND
W/ ELEANOR MARIE ORTIZ
- LOT 42 - RODRIGUEZ GUTIERREZ RPOLO AND
FLORINDA VENTURA CARLOS
- LOT 53 - MYLES "YOSHIO" HIZAKAWA
- LOT 55 - KUNIA RESIDENTIAL PARTNERS
- LOT 77 - MICHAEL TADASHI FUJITA AND
W/ SHARON MICHUKE FUJITA

NOTES

FIGURES SHOWN THUS (10) INDICATE NUMBER OF COURSE IN DESCRIPTION
OWNERS AS SHOWN ON MAP ARE FROM RECORDS OF THE REAL PROPERTY MAPPING BRANCH
PROPERTY CORNERS NOT STAKED ON GROUND UNLESS OTHERWISE NOTED
COORDINATES REFERRED TO "EWA CHURCH" Δ

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

SHARON HURD
Chairperson, Board of Agriculture

DEXTER KISHIDA
Deputy to the Chairperson



September 5, 2024

Ms. Mary Alice Evans, Director
State Office of Planning and Sustainable Development
P.O. Box 2359
Honolulu, HI 96804-2359

Dear Office of Planning and Sustainable Development,

The State of Hawaii, Department of Agriculture ("HDOA") provides its comments to RK II Partner's Petition for Declaratory Order, filed on August 2, 2024. At the outset, RK II Partners, LLC admits that it is the successor landowner after purchasing the land previously owned by HRT, Ltd. See Petition, filed August 2, 2024, p. 5. Accordingly, RK II Partners, LLC assumed the same responsibilities as its predecessor, HRT, Ltd., and should comply with all applicable conditions of the Findings of Fact, Conclusions of Law, and Decision and Order, filed on December 9, 1993, and the Amended Findings of Fact, Conclusions of Law, and Decision and Order, filed on October 1, 1996; specifically condition 19 respectively ("Condition 19").

Although RK II Partners, LLC's Petition does not explicitly ask to be excused from the condition that requires landowners to provide infrastructure to the HDOA parcel, the Petition appears to claim that RK II Partners, LLC is excused from Condition 19. HDOA submits that RK II Partners, LLC is still bound by the portion of Condition 19 that requires the installation of operable infrastructure to the 150-acre parcel; the future Royal Kunia Agricultural Park. This is evidenced by the Land Use Commission's Orders.

On February 23, 2004, the Land Use Commission issued an 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 ("Order"). Pursuant to the Order, the purpose of the initial Motion was to allow for HRT, Ltd., to convey 150 acres of land to the State of Hawaii, which would then exempt HRT, Ltd., from the previous Order to Show Cause, dated February 26, 2003. With the Motion, the Office of Planning included the Stipulation reached with HRT, Ltd., overall stating that HRT, Ltd., would convey 150 acres of land to the State of Hawaii, among other conditions. Notably, the February 23, 2004 LUC Order

did not excuse HRT, Ltd., or its successors, from providing infrastructure to the agricultural park.

The Order explicitly states that “[a]ll other conditions to the Decision and Order shall continue to run with the land and remain in full force and effect,” pertaining to the remainder of Condition 19, which requires the landowners to provide infrastructure to the HDOA parcel. In fact, the Order provides that Petitioner testified to the Land Use Commission that the “obligation to provide infrastructure to the site as required by said condition” would remain in full force and effect. Order p. 4.

There is no question that RK II Partners, LLC, must comply with Condition 19. This then raises the issue of what happens if RK II Partners, LLC, fails to comply with this condition. Assuming *arguendo* that the LUC determines RK II Partners, LLC can maintain its land classification as urban, and RK II Partners, LLC fails to comply with Condition 19, then the LUC, and HDOA, have no remedy or recourse. In other words, RK II Partners, LLC completely avoids having to comply with Condition 19 because there is no ramification for failing to do so. This not only contradicts with the LUC orders, but also, contradicts what RK II Partners, LLC’s predecessor stated on the record.

Based on the arguments and all the Land Use Commission’s Orders, the Land Use Commission should deny RK II Partners, LLC’s Petition.

Thank you for your consideration.

Sincerely,



BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

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Attorneys for Petitioner
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
737 Bishop Street, Suite 1450
Honolulu, HI 96813
Tel.: (808) 628-7531

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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BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII



IN THE MATTER OF:
RK II PARTNERS LLC

Docket No. DR24-77
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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RK II PARTNERS LLC

BEFORE THE LAND USE COMMISSION
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IN THE MATTER OF:

RK II PARTNERS LLC

Docket No. DR24-77

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:

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DATED: Honolulu, Hawaii, June 26, 2024.

/s/ Terrence M. Lee

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