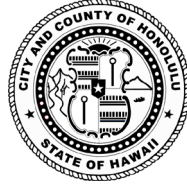


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January 7, 2025

TO: DANIEL E. ORODENKER, EXECUTIVE OFFICER
LAND USE COMMISSION

FROM: PONO I. ARIAS, DEPUTY CORPORATION COUNSEL
On behalf of the Department of Planning and Permitting, City and County
of Honolulu

SUBJECT: DR24-78 RK II PARTNERS LLC PETITION FOR DECLARATORY
ORDER
TMK: (1) 9-4-002: 001
KUNIA, O'AHU

The City and County of Honolulu Department of Planning and Permitting ("DPP"), by and through its undersigned counsel, hereby submits its testimony regarding Petitioner RK II Partners LLC's ("Petitioner") Petition for Declaratory Order, DR24-78, filed on December 6, 2024 ("Petition").

The Petition requests that the Land Use Commission ("LUC") enter an order (1) declaring that there has been substantial use of the RK II parcel Petition Area, such that further reclassification of these lands must occur pursuant to HRS § 205-4; and (2) declaring that the RK II Parcel is not encumbered by the requirement to provide off-site infrastructure to the 150-acre agricultural park pursuant to Condition 19 of the LUC's 1996 Amended Findings of Fact, conclusions of Law, and Decision and Order reclassifying the Petition Area ("1996 Order"). DPP takes the following positions on the Petition.

First, it is not clear that the above-referenced issues may be resolved through a petition for declaratory ruling. Hawai'i Administrative Rules ("HAR") § 15-15-98(a) allows a petitioner to seek 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." In addition, HAR § 15-15-104 states that "[a]n order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts not considered in the order exist." The Petition before the LUC does not establish the necessary factual baseline regarding existing uses in the Petition Area and an order disposing of the Petition would not apply if different or additional facts are found to exist. Therefore,

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DPP questions whether a petition for declaratory order is the appropriate vehicle to resolve these questions.

Second, to the extent that the LUC may see fit to issue a declaratory order regarding the “substantial commencement” of land uses within the RK II Parcel and/or Project Area, DPP suggests that the LUC’s determination of “substantial commencement” should be guided by Hawai’i case law regarding zoning estoppel and vested rights. *See e.g., Cty. of Kauai v. Pac. Standard Life Ins. Co.*, 65 Haw. 318, 332, 653 P.2d 766, 776 (1982) (holding that “any approvals or permits for a proposed development issued after certification of a referendum to repeal a zoning ordinance affecting the project site but before termination of the referendum procedure do not constitute official assurance on which the developer has a right to rely”); *Waianae Model Neighborhood Area Ass’n v. Honolulu*, 55 Haw. 40, 44-46, 514 P.2d 861, 864-65 (1973) (applicant’s reliance on the planning department’s granting of his request for an extension to respond to the planning department’s comments to his financial detriment estopped the challenger from invalidating the permit issuance on failure to comply with that deadline); and *Denning v. Cty of Maui*, 52 Haw. 653, 658-59, 485 P.2d 1048, 1051 (1971) (remanding to the trial court to determine whether the developer may proceed with construction based on (1) whether the county had given assurances to the developer and (2) whether the developer had a right to rely on those assurances so that appellants would be equitably estopped from enforcing the ordinance). The apparent purpose of the “substantial commencement” clause in HRS § 205-4(g) is to ensure compliance with these legal protections for property owners.

Third, regarding Condition 19 of the 1996 Order, DPP concurs with the Office of Planning and Sustainable Development (“OPSD”); transfer of the 150-acre Agricultural Park Site satisfied the portion of Condition 19 that required the land dedication, but it did not satisfy the remaining portions of Condition 19 relating to the provision of “off-site infrastructure” for the Agricultural Park. The February 23, 2004 Order Granting OPSD’s (f.k.a. Office of Planning) Motion to Exempt HRT, Ltd., 300 Corporation and Honolulu Limited (“HRT”) from the Order to Show Cause (the “2004 Order”) states that “[a]ll other conditions to the [1996 Order] shall continue to run with the land and remain in full force and effect.”

DPP respectfully submits that the Petition should be denied on both counts for the above-stated reasons.



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Deputy Corporation Counsel