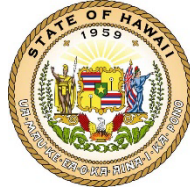


BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition of	)	DOCKET NO. DR24-78
	)	
RK II PARTNERS, LLC.	)	
	)	FINDINGS OF FACT, CONCLUSIONS OF
Petition for a Declaratory Order for the	)	LAW, AND DECISION AND ORDER
Commission's opinion on whether there has	)	GRANTING RK II PARTNERS, LLC
been substantial use of the Petition Area and	)	PETITION FOR DECLARATORY ORDER
any reclassification by the LUC must be done	)	FILED DECEMBER 6, 2024; AND
in accordance with Section 205-4, Hawai'i	)	CERTIFICATE OF SERVICE
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 agricultural park.	)	

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**  
**GRANTING RK II PARTNERS, LLC PETITION FOR DECLARATORY ORDER**  
**FILED DECEMBER 6, 2024;**  
**AND CERTIFICATE OF SERVICE**



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

In the Matter of the Petition of	)	DOCKET NO. DR24-78
	)	
HASEKO (HAWAI‘I), INC.	)	
	)	FINDINGS OF FACT, CONCLUSIONS OF
Petition for a Declaratory Order for the	)	LAW, AND DECISION AND ORDER
Commission’s opinion on whether there has	)	GRANTING RK II PARTNERS, LLC
been substantial use of the Petition Area and	)	PETITION FOR DECLARATORY ORDER
any reclassification by the LUC must be done	)	FILED DECEMBER 6, 2024; AND
in accordance with Section 205-4, Hawai‘i	)	CERTIFICATE OF SERVICE
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 agricultural park.	)	

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**  
**GRANTING RK II PARTNERS, LLC PETITION FOR DECLARATORY ORDER**  
**FILED DECEMBER 6, 2024**

On December 6, 2024, RK II Partners, LLC (“RKII” or “Petitioner”) submitted the subject Petition for Declaratory Order, Verification of Petition, and Certificate of Service (“DR” or “DR Petition”) pursuant to Hawai‘i Revised Statutes (“HRS”) § 91-8, and Hawai‘i Administrative Rules (“HAR”), §15-15-98, *et seq.*

The State of Hawai‘i Land Use Commission (“LUC” or “Commission”), having heard and examined the pleadings and files in the record, the testimony and evidence presented by Petitioner, written public testimony by the State Office of Planning and Sustainable Development (“OPSD”), the State Department of Agriculture (“DOA”), Haseko Royal Kunia, LLC (“Haseko”), the City and County of Honolulu Department of Planning and Permitting (“DPP”), Ho‘ohana Solar (“Ho‘ohana), and other oral public testimony and evidence presented at its meeting on January 8, 2025, hereby issues its Findings of Fact (“FOF”), Conclusions of Law (“COL”), and Decision and Order approving RKII’s Petition, pursuant to HAR §15-15-100(a)(2).

## **PROCEDURAL MATTERS**

### **Procedural History**

1. 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 agricultural park. (the “initial filing”).
2. 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.

3. 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 (“DR” or “DR Petition”).
4. 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, 2025.
5. On December 31, 2024, the State Department of Agriculture (“DOA”) filed testimony and two attachments which was posted to the Commission’s website (“DOA Testimony”).
6. On January 2, 2025, Haseko Royal Kunia, LLC (“Haseko”) filed its comments and recommendation on the Petition for Declaratory Order which was posted to the Commission’s website (“Haseko Testimony”).
7. On January 6, 2025, the Office of Planning and Sustainable Development (“OPSD”) filed testimony and recommendations to the DR Petition which was posted to the Commission’s website (“OPSD Testimony”).
8. On January 6, 2025, a Staff Report was made available for public review at the LUC’s office, posted to the LUC website, and distributed to commissioners, as required by law.
9. On January 7, 2025, the City and County of Honolulu, Department of Planning and Permitting filed testimony regarding the DR Petition which was posted to the Commission’s website (“DPP Testimony”).
10. On January 7, 2025, Ho`ohana Solar 1, LLC filed a statement of no position with comments and clarifications to certain statements made in the DR Petition, including

Exhibits A and Exhibit B, which were posted to the Commission’s website (“Ho’ohana Testimony”).

11. On January 8, 2025, the Commission heard the DR Petition during a hybrid public meeting held at the LUC Conference Room 405, State Office Tower, 235 South Beretania Street, Honolulu, Hawai‘i, streamed on Zoom, and posted to YouTube as a video (“LUC Zoom Meeting”).
12. There were seven commissioners in attendance in person with Commissioner Ken Hayashida excused. Commissioner Kamakea-’Ohelo attended via Zoom and confirmed that he was alone. [Transcript 1/8/2025, pg. 2, 5]
13. Terrence Lee, Esq., Ernest Martin, Esq., and Mike Matsuura, Esq., appeared on behalf of Petitioner. Also attending were principals of RK II Partners, Mike Wright, Garrett Beck, and Ed St. Geme. [Transcript 1/8/2025, pg. 5]
14. The Chair inquired whether there were any disclosures or potential conflicts of interest. There were no Commissioner disclosures. [Transcript 1/8/2025, pg. 6-7]
15. At the start of the meeting, the Commission Chair acknowledged receipt of five written public testimonies and that they had been posted to the Commission’s website. [Transcript 1/8/2025, pg. 8]
16. There was no oral public testimony, in person or via Zoom, during the initial opportunity provided by the Commission. The Chair indicated that DPP and OPSD would be invited to provide their testimony after the Petitioner presented. [Transcript 1/8/2025, pg. 9]

## **Description of the Request**

17. In the DR Petition, the Petitioner asked the Commission to confirm that there had been substantial use of the Petition Area, including the RKII Parcel , and that any reclassification by the LUC must be done in accordance with HRS § 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. [DR Petition, pg. 2]
18. Petitioner argued that its predecessor in interest HRT, acquired 150 acres of land which it conveyed to the State Department of Agriculture as part of a stipulated agreement with the State OPSD to alleviate HRT from a pending Order To Show Cause proceeding that implicated the entire Petition Area. [Tr. 1/08/25, p. 11-12]. Further, Petitioner asserts that expenditures by Ho`ohana to develop its solar farm and Haseko's money spent on soft costs for planning and permitting for development constitutes substantial commencement of use. [Tr. 1/08/25, p. 15-16]
19. Petitioner agreed, under questioning, that Ho`ohana's work on infrastructure for the agricultural park was not pursuant to Condition 19, but rather was done under separate conditions specific to that portion of the Petition Area. [Tr. 1/08/25, p. 17-18]
20. Pono Arias, deputy Corporation Counsel for DPP rested on its written testimony. [Tr. 1/08/25, p. 18]. DPP did not believe the Petition established the necessary factual baseline regarding existing uses in the Petition Area, determination of substantial commencement should be guided by Hawai'i case law, and that the transfer of the 150-acre agricultural park site satisfied a portion of Condition 19 but not the requirement relating to provision of off-site infrastructure. [DPP Testimony, pg. 1-2].

21. Alison Kato, Esq. appeared on behalf of OPSD with OPSD representative Katia Balassiano. OPSD stood on its written testimony. [OPSD Testimony]. OPSD recommended that the Commission deny the Petition due to lack of evidence of substantial commencement of use for Petitioner's property and there is no indication that an order to show cause is likely to occur in the future. [Tr. 1/08/25, p. 20-22, 23].
22. Jennifer Lim, Esq., representing Ho`ohana Solar 1 LLC, submitted written testimony and exhibits providing evidence supporting the build out of their solar farm project. [Ho`ohana Testimony]. Ho`ohana testified that there has been substantial commencement of use as their solar project is built out and represents approximately thirty (30) percent of the Petition Area. [Tr. 1/08/25, p. 25-26]
23. Curtis Tabata, Esq., representing Haseko, testified that the responsibility for providing the off-site infrastructure to the 150-acre agricultural park is Haseko's pursuant to a fifth amended memorandum of understanding executed with the Department of Agriculture that is part of a 2024 Decision and Order by the Commission. [Tr. 1/08/25, p. 45-46]. The risk that RKII is trying to avoid, by this declaratory order, is if Haseko were to cease to exist then all other landowners in the Petition Area are potentially responsible for Haseko's obligations. [Tr. 1/08/25, p. 47]
24. Kelcie Nagata, deputy Attorney General representing DOA, testified that DOA's main concern is if Haseko is unable to perform their obligations to supply infrastructure for the agricultural park. There is a bonding agreement as part of the fifth amended memorandum of understanding to ensure completion of the infrastructure; however, DOA has not been provided a receipt to show any bonding has been provided by Haseko. [Tr. 1/08/25, p. 59, 63-64]



25. The Chair provided an explanation of the options available to the Commission under the declaratory ruling pursuant to HAR § 15-15-100. [Tr. 1/08/25, p. 67]. The Commission deliberated and a motion was made and restated as two motions: to affirm the Petitioner's request that substantial commencement of the project has been achieved; and, that Petitioner's portion of the Petition Area is relieved from Condition 19. [Tr. 1/08/25, p. 68-77]. There was additional discussion as to legal rights. [Tr. 1/08/25, p. 77]
26. The Commission, by motion, went into executive session to consult with the deputy Attorney General concerning the powers, duties, immunities, privileges, and liabilities [Tr. 1/08/25, p. 77-79].
27. Upon exit from executive session, the Chair summarized that discussion was focused on the roles and responsibilities the Commission has with respect to declaratory rulings. The Commission did not deliberate on the merits of the Petition, any of the arguments for or against, or on the motions before them. [Tr. 1/08/25, p. 80]
28. The Commission deliberated and then voted on a motion to approve the declaratory ruling request for affirming that there has been substantial commencement on the parcel and that any reclassifications by the Commission must be done in accordance with HRS § 205-4. The motion was approved unanimously. [Tr. 1/08/25, p. 81-85]
29. The Commission next deliberated and voted on a motion to release the Petitioner of its obligations under Condition 19 with respect to any requirements to provide off-site infrastructure to the 150-acre agricultural park. The initial vote tally was four in favor and four against. [Tr. 1/08/25, p. 85-89]. Commissioner Carr Smith indicated she would be willing to change her vote. [Tr. 1/08/25, p. 89-90]. The Chair asked the deputy Attorney General whether they could call a second roll call vote on the motion rather than

having to make a new motion. The deputy Attorney General indicated that would be allowed. [Tr. 1/08/25, p. 90]. A second vote on the motion was taken and it passed with five in favor and three against. [Tr. 1/08/25, p. 90-91]

30. The Commission by unanimous motion authorized the Chairperson to execute the declaratory order. [Tr. 1/08/25, p. 91-93]

### **FINDINGS OF FACT**

1. To the extent any of these FOFs are deemed to be COLs, they shall be so construed.
2. In its DR Petition, RKII asks the Commission's opinion on whether there has been substantial use of the Petition Area and to affirm that 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 agricultural park.

### **CONCLUSIONS OF LAW**

1. To the extent that any of the following COLs shall be determined to be FOFs, they shall be so construed.
2. Section 91-8, HRS, and HAR § 15-15-98(a) provide that any interested person may petition an agency, including the Land Use Commission, for a declaratory order as to the

applicability of any statutory provision or of any rule or order of the agency. Here, pursuant to HRS § 91-1 and as an owner of the property identified in the Petition for declaratory order (the Parcel), RKII meets the definition of an interested person.

Therefore, RKII has standing.

3. Pursuant to HAR § 15-15-99, the petitioner is required to meet several form and content provisions. Here, the DR Petition has met each of the minimum form and content requirements pursuant to HAR § 15-15-99. In addition, Petitioner has met the additional form and content requirements in HAR § 15-15-38, -39, and -40. Thus, the Commission does not summarily dismiss the request for DR on this basis.
4. The Commission's statutes, the applicability of which are put at issue in this Petition, are those sections of HRS chapter 205 that govern the authority to establish land use districts and reclassify land, and the meaning and interpretation of the Commission's orders.
5. According to HAR § 15-15-100(a), the Commission is entitled to, within ninety days after submission of a petition for declaratory order, deny the petition in writing, issue a declaratory order on the matters contained in the petition, or set the matter for contested case hearing, as provided in HAR § 15-15-103. The Commission has chosen the second alternative and by this FOF, COL, and Order, issues a Decision and Order based on the following analysis:
  - a. Pursuant to HAR § 15-15-101, the Commission may dismiss the DR Petition, without notice or hearing, if it deems that the Petition fails in material respect to comply with the declaratory order requirements of HAR subchapter 15. Here, the DR Petition meets the minimum requirements for standing and form and contents

pursuant to HAR §§ 15-15-38, -39, -40, and -99. Thus, the Commission does not summarily dismiss the request for DR on this basis.

- b. Sections 15-15-100(a)(3) and 15-15-103, HAR, allow the Commission, on its discretion, to conduct a contested case hearing on a petition for declaratory order. In order to do so, a petitioner or party in interest should set forth in detail why the matters alleged in the petition cannot be disposed of in a fair and expeditious manner without a formal contested case hearing. Here, the Commission concludes that based on the facts presented at the meeting, the pleadings filed together with the exhibits by the Petitioner, DPP, DOA, Haseko, Ho`ohana, and OPSD, the opportunity of Petitioner and the public to present their views, that the Petitioner has provided sufficient evidence necessary pursuant to HAR § 15-15-100(a)(2) to issue the instant written declaratory order in this matter.
- c. The Commission also may deny the DR and refuse to issue a declaratory order if one of the four circumstances outlined in HAR § 15-15-100(a) provides good cause for doing so:
  - i. The first circumstance pursuant to HAR § 15-15-100(a)(1)(A) does not apply, because the question raised in the DR Petition—requesting confirmation that there has been substantial use of the Petition Area, including RKII’s parcel and that any reclassification by the LUC must be done in accordance with the process in HRS § 205-4, and that the Commission confirm that RKII’s parcel is not encumbered by the requirements to provide off-site infrastructure to the 150-acre agricultural park - is not speculative or purely hypothetical and it does not involve an

existing situation or one which may reasonably be expected to occur in the near future.

- ii. The Commission does not summarily dismiss pursuant to the second circumstance set forth in HAR § 15-15-100(a)(1)(B) because RKII has standing that would be sufficient in a court of law. That is, because “partnerships” and “private organizations” are “persons” within the meaning of HRS § 91-1, and because RKII owns the property identified in the petition for declaratory order, RKII meets the definition of an interested person for purposes of HRS § 91-8 and HAR § 15-15-98(a).
- iii. The third circumstance does not apply because the issuance of a declaratory order will not adversely affect the interest of the State, the Commission, or any of the officers or employees in any litigation which is pending (there is none on this particular issue) or may reasonably be expected to arise. [HAR § 15-15-100(a)(1)(C)].
- iv. HAR § 15-15-100(a)(1)(D) provides that the Commission can deny the petition where “the petition requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission.” The DR Petition requests interpretation of a prior order of the Commission, as subsequently amended, and the applicability of the Commission’s statutory authority under HRS §§ 205-2, -4(g), -16, and -17, and HAR chapter 15-15. The authority to interpret its decisions and to redistrict State Land Use boundaries pursuant to the referenced statutes and rules is within the Commission’s statutory

jurisdiction. See generally HRS chapter 205. Thus, the fourth circumstance does not apply.

6. The Commission therefore has jurisdiction to issue this declaratory order.
7. Section 91-10(5), HRS, provides “Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.” (Emphasis added.)
8. Petitioner has shown good cause by a preponderance of the evidence for their request for the Commission to confirm substantial commencement of use of the RKII parcel, confirm that any reclassification must be done in accordance with HRS § 205-4, and that the RKII parcel is not encumbered by the requirement to provide off-site infrastructure to the 150-acre agricultural park.

### **DECISION AND ORDER**

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

Having duly considered the Petition, the written and oral arguments presented by Petitioner, the pleadings filed by the State Department of Agriculture, Haseko Royal Kunia, LLC, the State Office of Planning and Sustainable Development, the City and County of Honolulu Department of Planning and Permitting, Ho`ohana Solar I LLC, as well as any public comments received at its duly noticed public meeting conducted at the State Office Tower on January 8, 2025, the Commission voted on a motion to approve the declaratory ruling petition

requested by the Petitioner. Having received the affirmative votes required by HAR § 15-15-13 on the motion, the Commission granted the motion and finds good cause to order that there has been substantial commencement of use of the RKII parcel, that any reclassification by the LUC must be done in accordance with HRS § 205-4, and that the RKII parcel is not encumbered by requirements to provide off-site infrastructure to the 150-acre agricultural park.

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

DATED: Honolulu, O‘ahu, Hawai‘i, this day 06/16/2025.

APPROVED AS TO FORM

*Miranda Steed*

MIRANDA STEED  
Deputy Attorney General

LAND USE COMMISSION  
STATE OF HAWAI‘I

By *D.G.*  
DAN GIOVANNI  
Chairperson and Commissioner

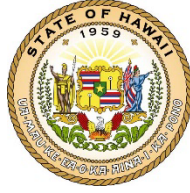
Filed and effective on:

06/16/2025

Certified by:

*[Signature]*

DANIEL E. ORODENKER  
Executive Officer



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

In the Matter of the Petition of	)	Docket No. DR24-78
	)	
RK II PARTNERS, LLC.	)	
	)	
Petition for a Declaratory Order for the	)	FINDINGS OF FACT, CONCLUSIONS OF
Commission's opinion on whether there has	)	LAW, AND DECISION AND ORDER
been substantial use of the Petition Area and	)	APPROVING RK II PARTNERS, LLC
any reclassification by the LUC must be done	)	PETITION FOR DECLARATORY ORDER
in accordance with Section 205-4, Hawai'i	)	FILED DECEMBER 6, 2024; and
Revised Statutes ("HRS"). The Petition also	)	CERTIFICATE OF SERVICE
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 agricultural park	)	
_____	)	

**CERTIFICATE OF SERVICE**

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

CERT.	TERRENCE M. LEE, Esq.
MAIL	ERNEST Y. MARTIN, Esq.
	MIKE M. MATSUURA, Esq.
	Lee & Martin LLLP
	737 Bishop Street, Suite 1450



Honolulu, Hawai'i 96813  
Attorney for RK II Partners, LLC

CERT.  
MAIL  
DEREK R. KOBAYASHI, Esq.  
ERIC A. ELKIND, Esq.  
Schlack Ito LLLP  
745 Fort Street, suite 1500  
Honolulu, Hawai'i 96813  
Attorney for RK II Partners, LLC

REG.  
MAIL  
BENJAMIN M. MATSUBARA, Esq.  
CURTIS T. TABATA, Esq.  
Matsubara, Kotake & Tabata  
888 Mililani Street, Suite 308  
Honolulu, Hawai'i 96813  
Attorneys for Haseko Royal Kunia, LLC

REG  
MAIL  
MARY ALICE EVANS, Director  
Office of Planning and Sustainable Development  
P. O. Box 2359  
Honolulu, Hawai'i 96804-2359

REG  
MAIL  
ALISON KATO  
Deputy Attorney General  
Department of the Attorney General, State of Hawai'i  
425 Queen Street, Third Floor  
Honolulu, Hawai'i 96813  
Attorney for OPSD

REG  
MAIL  
KELCIE NAGATA  
Deputy Attorney General  
Department of the Attorney General, State of Hawai'i  
425 Queen Street  
Honolulu, Hawai'i 96813  
Attorney for the Department of Agriculture

REG  
MAIL  
DAWN TAKEUCHI APUNA, Director  
Department of Planning and Permitting  
650 South King Street, Room 600  
Honolulu, Hawai'i 96813

REG RKES, LLC  
MAIL Attn: Patrick Kobayashi  
1288 Ala Moana Blvd., Suite 201  
Honolulu, Hawai'i 96814

REG HO'OHANA SOLAR 1, LLC  
MAIL Attn: Jennifer A. Lim, Esq.  
Law Office of Jennifer A. Lim, LLC  
2299 B Round Top Drive  
Honolulu, Hawai'i 96822

REG ROBINSON KUNIA LAND LLC  
MAIL c/o Rush Moore LLP  
  
Attn: Stephen K.C. Maui, Esq.  
745 Fort Street, Suite 800  
Honolulu, Hawai'i 96813

Dated 06/16/2025  
Honolulu, Hawai'i.



---

DANIEL E. ORODENER  
Executive Officer