

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of) DOCKET NO. A89-651
)
HASEKO (HAWAII), INC.) HASEKO (EWA), INC.
)
To Amend the Agricultural Land Use)
District Boundary into the Urban)
Land Use District For Approximately)
403.008 acres at Honouliuli, Ewa,)
Oahu, Hawaii, Tax Map Key No.:)
9-1-12: 5 (por.), 6 (por.), and)
23 (por.))
_____)

PETITIONER HASEKO (EWA), INC.'S
MOTION FOR APPROVAL OF JOB CREDITS

DECLARATION OF DANIEL LUM

EXHIBITS "1" THROUGH "7"

AND

CERTIFICATE OF SERVICE

Volume 1 of 2

BENJAMIN M. MATSUBARA, #993-0
CURTIS T. TABATA, #5607-0
Matsubara, Kotake & Tabata
888 Mililani Street, Suite 308
Honolulu, Hawai'i 96813

Attorneys for Petitioner
HASEKO (EWA), INC.

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STATE OF HAWAII

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Comes now, Petitioner HASEKO (EWA), INC., successor in interest to Haseko (Hawaii), Inc. ("Petitioner"), by and through its attorneys, MATSUBARA, KOTAKE & TABATA, respectfully moves the Land Use Commission, State of Hawaii ("LUC"), pursuant to § 15-15-70 of the Hawaii Administrative Rules for an order approving 572.75 Job Credits.

In support of this Motion for Approval of Job Credits, Petitioner alleges as follows:

I. **INTRODUCTION**

On October 17, 1990, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A89-651 ("D&O") for the reclassification of

approximately 403.008 acres, situated at Honouliuli, District of Ewa, Island of Oahu, State of Hawaii, from the Agricultural District to the Urban District ("Petition Area"), for the Phase II of Petitioner's 1,100 acre project that is now known as Ocean Pointe/Hoakalei. The D&O is attached hereto and incorporated herein by reference as Exhibit "1".

Ocean Pointe/Hoakalei is a 1,100-acre master-planned project located at Honouliuli in the 'Ewa District of O'ahu. It lies along the shoreline between Fort Weaver Road and Kalaeloa (the former Naval Air Station Barbers Point), about 20 miles west of Honolulu. The Project includes a manmade recreational lagoon (which was originally planned to be a marina, and could still eventually become one in the future) with light industrial, commercial, and retail facilities, visitor accommodations (e.g., hotels and hotel/condominiums), and up to 4,850 homes. Also included within the Project is a golf course, a 20-acre district park and child care center, and a public elementary school. See Petitioner's annual report dated October 17, 2021, attached hereto and incorporated herein by reference as Exhibit "2".

Construction of Ocean Pointe/Hoakalei began in 1997 with the residential component of the Project. Residential construction continues to this day and is anticipated to continue for about another ten years. Currently, nearly eighty-two percent (82%) of the permitted 4,850 housing units have been built and sold to individual homeowners. See Exhibit "2".

Hoakalei, the Petition Area, includes the golf course, recreational lagoon, light industrial, commercial, and retail facilities, visitor accommodations, and residential components. Gradual grading of the golf course was initiated in the late 1990s to provide drainage basins for the residential components that were being constructed. In 2005, Ernie Els was commissioned to design the golf course, which opened for play in January 2009. The clubhouse was completed on April 4, 2019 and opened on July 27, 2019. See Exhibit "2".

Excavation of the proposed marina also began in the late 1990s. Excavated material provided fill for other portions of the Project, thus, excavation has been coordinated with the residential and golf course development. On November 6, 2011, Petitioner announced its intention to use the basin as a recreational lagoon to facilitate the completion of the rest of the project. Although Petitioner no longer plans to complete a marina, the company is not doing anything that would preclude someone else from developing a marina in the distant future once entitlements/permits have been updated/obtained. See Exhibit "2".

II. JOB CREDITS CONDITION

Condition 1 of the D&O requires Petitioner to obtain one job credit for every hotel or hotel/condominium unit Petitioner is allowed to build. Petitioner has not yet built any hotel or hotel/condominium units. As described below, credits are calculated based upon three classes of criteria: a) construction worker hours, b) development of

new non-tourism related projects or facilities, and c) monies invested in or contributed to job training programs. Credits are earned when approved by the LUC.

On February 8, 1994, the LUC issued its Order Granting Motion for Approval of Job Credits and Motion for Clarification and/or Modification of Condition ("1994 Order"). The 1994 Order amended Condition 1 and approved 2.47 Job Credits for reporting year 1991. The 1994 Order is attached hereto and incorporated herein by reference as Exhibit "3".

Condition 1, as amended, provides the following requirements for earning job credits:

1. *Petitioner¹ shall generate one (1) non-tourism related job, or the equivalent value thereof, for each hotel or hotel/condominium unit Petitioner is allowed to build. As used herein, "non-tourism related" means not related to hotels or residential condominiums intended for use as transient accommodations, or recreational, entertainment or other facilities and services used primarily by tourists. The "equivalent value" of a non-tourism related job is in the range of \$25,000 to \$50,000.*

Satisfaction of this condition shall occur at the time Petitioner obtains a building permit and may be accomplished by the payment of \$25,000 for each hotel or hotel/condominium unit intended for transient accommodation for which a building permit is issued or in the following manner (provided that, with respect to subparagraphs a. and b., below, Petitioner may not apply any credit accrued and earned under both subparagraphs for the same facility to satisfy this condition):

- a. *Jobs Generated Via Construction.*

Development of residential, commercial, industrial, recreational, institutional or other non-tourism related facilities generates construction jobs not related to tourism. Petitioner, therefore, directly or through local affiliates, may receive one job credit for each 25 man-years of labor generated by a qualified project, which

¹ As used herein, the term "Petitioner" means Haseko (Hawaii), Inc. and its successors and assigns.

may be either within or outside of the Petition Area. (Hereafter, Petitioner and/or its affiliates shall collectively be referred to as "Developer".) One man-year shall equal 1920 hours of work; labor generated by the construction of a project shall include all work performed by the Developer's team (architects, engineers, consultants, contractors and subcontractors) in the development and construction of a non-tourism related project.

Not more than 25% of Petitioner's total job-generation requirement may be satisfied in this manner.

b. Jobs Generated Via Development of Non-Tourism Related Projects.

New facilities provide the means and opportunity for the establishment and/or growth of businesses and the generation of new, non-tourism related jobs. Petitioner, therefore, may receive credit for the development of new non-tourism related projects or facilities, either within or outside of the Petition Area. Credit for jobs created by such new facilities will be calculated on the basis of the degree of integration of the intended use of the facility with the tourist industry. Credit for one (1) non-tourism related job shall be given for the specified amount of floor space in the following types of facilities:

<u>Type of facility</u>	<u>Floor Space (square feet)</u>	<u>Credit</u>
Office	200	100 %
Warehousing/Storage	1,000	100 %
Manufacturing	300	100 %
Research facility (e.g. High-Tech)	150	100 %
Recreation and Other Activity Centers	1,000	100 %
Private Schools and Day-Care Centers	300	100 %
Agricultural Facility		

<i>(e.g. Greenhouses and Processing Plants)</i>	1,000	100 %
<i>Retailing</i>	300	60 %

Credit for other types of facilities will be determined on a case-by-case basis.

c. Start-Up Capital, Business Incentives and Job Training.

Petitioner may receive one (1) job credit for (i) each \$50,000 invested by Petitioner in a start-up of a non-tourism related business (by way of equity or investment into a loan fund for such business), (ii) each \$25,000 in incentives provided to a new, non-tourism related business, and/or (iii) each \$25,000 contributed in training programs for non-tourism related jobs. Petitioner shall consult with OSP to identify investments, incentives and training programs which qualify for credits under this category.

A minimum of 10% of Petitioner's job-generation requirement shall be satisfied in this manner.

d. Earning Job Credits.

Credits for jobs generated under subparagraphs a. through c., above, shall not be eligible for satisfaction of this condition unless, within two years after they accrue, they are reported to the LUC in Petitioner's annual report. Job credits shall be considered to have accrued under subparagraph a. when the Developer pays for the labor; under subparagraph b. when the certificate of occupancy is issued or such earlier date as may be approved by the LUC; and under subparagraph c. when the investment is made, the incentive is given, or the job training program is funded.

Petitioner's annual report to the LUC shall discuss in detail its progress in earning job credits. Additionally, Petitioner shall provide OSP with information concerning the manner in which Petitioner's claim for job credits is calculated as well as written certification by the Developer that all information provided is correct.

Job credits shall be considered earned only upon approval by the LUC. Petitioner may file a motion for approval of job credits with the LUC at such time as may be mutually agreeable between Petitioner and OSP, provided that said motion shall

be filed prior to the Petitioner obtaining a building permit for the construction of hotel or hotel/condominium units to which the job credits will be applied.

At the time Petitioner obtains a building permit, Petitioner shall satisfy this condition by depositing cash or posting a bond or a letter of credit, in a form satisfactory to OSP, in an amount equal to the product of \$25,000 multiplied by the number of hotel or hotel/condominium units for which a building permit is issued, less any job credits previously earned. As job credits are earned and applied in satisfaction of this condition, Petitioner may submit a motion to the LUC for the refund of the funds paid to OSP or a reduction of the bond or letter of credit issued in favor of OSP. Five (5) years after the date the building permit is issued, OSP shall have the right to retain cash or make claim on the bond or letter of credit in an amount equal to the product of \$25,000 multiplied by the number of hotel or hotel/condominium units for which the building permit is issued, less any job credits previously earned.

Prior to the expiration of the five-year period, Petitioner may seek an extension of time to satisfy its job-generation requirement. An extension may be granted upon such additional terms as may be appropriate, provided that Petitioner establishes substantial compliance with this condition and specifies the methods, means and time in which it intends to satisfy this condition.

Except for the limitations regarding subparagraphs a. and b. and the 10% minimum required by subparagraph c., Petitioner shall determine the manner in which the remainder of its job-generation requirement may be allocated.

All funds obtained by OSP under this condition shall be applied to any one or more of the programs specified in subparagraph c., above.

III. JOB CREDITS CALCULATION

A summary of Petitioner's request for approval of Job Credits is attached hereto and incorporated herein by reference as Exhibit "4".

SUMMARY OF PETITIONER'S REQUEST FOR APPROVAL OF JOB CREDITS

JOB CREDITS SUMMARY	Condition 1			TOTALS
	1.a.	1.b.	1.c.	
Job Credits Reported in Annual Reports:	378.45	229.06	136.76	744.28
Less: Construction Job Credits Max:	(140.95)			(140.95)
Less: Job Credits Previously Approved:	(1.37)		(1.10)	(2.47)
Less: Training Job Credits Withdrawn:			(28.10)	(28.10)
TOTAL JOB CREDITS SUBMITTED FOR APPROVAL:	236.13	229.06	107.56	572.75

The total job credits of 744.28 was reported to the LUC. Reductions due to maximum limits, credits previously approved, and credits withdrawn has resulted in this motion requesting approval of 572.75 total job credits. The explanation for the reductions, and the calculations for the three sub-categories of job credits are discussed below.

Petitioner is required to obtain one credit for each hotel/condominium unit that Petitioner is allowed. Finding of Fact 35 of the D&O provides that the Project will include 500 Hotel units and 600 Condo/Hotels units, for a total of 1100 units pursuant to the D&O. Petitioner, however, is limited to 950 units according to its Unilateral Agreement with the City and County of Honolulu (the "Unilateral Agreement"). See Declaration of Daniel Lum, attached hereto and incorporated herein by reference.

The D&O provides three methods for Petitioner to obtain job credits under Condition 1 of the D&O:

- a. Jobs Generated Via Construction (“Construction Job Credits”);
- b. Jobs Generated Via Development of Non-Tourism Related Projects (“Facility Job Credits”); and
- c. Start-up Capital, Business Incentives and Job Training (“Training Job Credits”).

Petitioner is requesting approval of 572.75 job credits, which are explained in further detail below.

a. **Construction Job Credits**

Petitioner is requesting approval of 236.13 Construction Job Credits.

Construction Job Credits are calculated based on hours worked on non-tourism related facilities that may be located within or outside of the Petition Area and built by Petitioner or one of its affiliates. One Construction Job Credit is awarded for every 25 man-years of labor, and 1920 hours of work equals one man-year.

Petitioner has reported the number of paid hours worked and credits calculated in Petitioner’s annual reports to the LUC from 1991 to 2020. Petitioner has reported 378.45 Construction Job Credits for years 1991 through 2020. A breakdown of the Construction Job Credits per reporting year is provided in Exhibit “4” and relevant portions of Petitioner’s annual reports are attached hereto and incorporated herein by reference as Exhibit “5”.

Condition 1.a. of the D&O limits the number of Construction Job Credits to 25% of the total Job Credit requirement. Since the maximum number of hotel or hotel/condominium units Petitioner is allowed to construct is 950 units under the Unilateral Agreement, Petitioner may not earn more than 237.50 Construction Job Credits ($950 \times 25\% = 237.50$).

The 1994 Order approved 2.47 Job Credits, which included 1.37 Construction Job Credits for the year 1991. (See, Exhibit "3")

Petitioner is requesting approval of 236.13 Construction Job Credits, which represents the 237.50 maximum allowed, less the 1.37 credits previously approved in the 1994 Order.

b. Facility Job Credits

Petitioner is requesting approval of 229.06 Facility Job Credits.

Facility Job Credits are calculated based on the square footage of non-tourism facilities developed by Petitioner. The number of square feet needed to earn one Facility Job Credit depends on the type of facility developed, as described above in the chart in Condition 1.b. Credit for other types of facilities are to be determined on a case-by-case basis. Facility Job Credits are accrued when the certificate of occupancy is issued or such earlier date as approved by the LUC.

Petitioner has reported 229.06 Facility Job Credits accrued and reported in years 2004, 2006, 2008 and 2019. See Exhibit "4" and the Annual Reports dated December 8,

2005, October 3, 2007, October 15, 2009, and October 17, 2019 in Exhibit "5". The facilities built and occupied include the Ewa Pointe Marketplace, Seagull Schools preschool, the Hoakalei Country Club Golf Course, and the Hoakalei Country Club Clubhouse.

The Ewa Pointe Marketplace, Seagull Schools preschool, and Hoakelei Country Club Clubhouse, all of which are complete and operating, are calculated based on square footage and comprise 199.06 credits. (See, Exhibit "4").

The Hoakalei Country Club Golf Course, which is also operating, has created 30 actual new full time jobs and Petitioner is now seeking 30 Facility Job Credits for those 30 jobs. These 30 jobs were reported for the year 2008 in Petitioner's annual report dated October 15, 2009. See Exhibit "5". Petitioner believes this satisfies the intent of Condition 1.b. The alternative would be to calculate the Facility Job Credits for the golf course based on its classification as a recreational facility, but the 18-hole golf course would amount to thousands of credits based on the 1,000 square feet per credit formula. Petitioner believes that the more conservative approach based on actual full time jobs created is appropriate.

c. Training Job Credits

Petitioner is requesting approval of 107.56 Training Job Credits.

Training Job Credits are calculated based on funds invested in non-tourism start-up businesses, incentives to non-tourism businesses, and/or funds contributed to training programs for non-tourism related jobs.

Condition 1.c. allows Petitioner to receive one (1) job credit for each \$25,000 contributed to training programs for non-tourism related jobs.

Petitioner has contributed over \$3.4 million towards job training to school organizations, community groups, and scholarship programs. These contributions were reported to the LUC in Petitioner's annual reports. At \$25,000 per credit, Petitioner has reported 136.76 Training Job Credits for years 1991 through 2020. See Exhibits "4" and "5". A summary of the contributions made for Training Job Credits is attached hereto and incorporated herein by reference as Exhibit "6".

Petitioner has, however, subsequently reviewed the contributions that were paid and reported in Exhibit "5" and has been unable to verify the job training or educational purposes of certain contributions. As such, Petitioner wishes to withdraw those contributions, which equate to 28.10 Training Job Credits. Attached hereto and incorporated herein as Exhibit "7" is a list of all withdrawn contributions that were previously reported.

The 1994 Order approved 2.47 Job Credits, which included 1.10 Training Job Credits. (See, Exhibit "3")

Petitioner is requesting approval of 107.56 Training Job Credits, which represents the 136.76 Training Job Credits reported in Petitioner's annual reports, less the 28.10 withdrawn credits and the 1.10 credits previously approved in the 1994 Order.

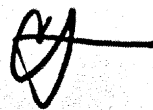
Condition 1.c. requires that at least 10% of the total Job Credit requirement be satisfied through Training Job Credits. Based on the 950 hotel and hotel/condominium limit under the Unilateral Agreement, Petitioner must provide at least 95 Training Job Credits ($950 \times 10\% = 95$). Petitioner's request for approval of 107.56 Training Job Credits satisfies this requirement.

IV. CONCLUSION

Based upon the above, Petitioner is requesting approval of 572.75 Job Credits, which consists of 236.13 Construction Job Credits, 229.06 Facility Job Credits and 107.56 Training Job Credits. This request is for credits reported from 1991 through 2020.

If this request is granted, it will allow Petitioner to start building up to 575.75 hotel or hotel/condominium units.

DATED: Honolulu, Hawai'i, September 20, 2022.



Of Counsel:
MATSUBARA, KOTAKE & TABATA
A Law Corporation

BENJAMIN M. MATSUBARA
CURTIS T. TABATA
Attorneys for Petitioner
HASEKO (EWA), INC.

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9-1-12: 5 (por.), 6 (por.), and)	
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DECLARATION OF DANIEL LUM

DANIEL LUM states as follows:

1. I am competent to testify to the matters contained in this declaration, and I make this declaration based on my personal knowledge unless stated to be based upon information and belief.
2. I am employed by Haseko Development, Inc. as a Project Manager.
3. Attached to Petitioner Haseko (Ewa), Inc.'s Motion for Approval of Job Credits as Exhibit "1" is a true and correct copy of the Findings of Fact, Conclusions of Law and Decision and Order, filed October 17, 1990 in LUC Docket No. A 89-651 ("Job Credits Motion").
4. Attached to the Job Credits Motion as Exhibit "2" is a true and correct copy of Petitioner's annual report dated October 17, 2021.

5. Attached to the Job Credits Motion as Exhibit "3" is a true and correct copy of the Order Granting Motion for Approval of Job Credits and Motion for Clarification and/or Modification of Condition, filed February 8, 1994.

6. Attached to the Job Credits Motion as Exhibit "4" is a true and correct copy of the summary of Petitioner's request for approval of Job Credits.

7. Attached to the Job Credits Motion as Exhibit "5" is a true and correct copy of relevant portions of Petitioner's annual reports for years 1991 through 2020.

8. Attached to the Job Credits Motion as Exhibit "6" is a true and correct copy of the summary of contributions to Training Job Credits.

9. Attached to the Job Credits Motion as Exhibit "7" is a true and correct copy of a list of all withdrawn contributions that were previously reported.

10. Petitioner is limited to 950 hotel/condo units pursuant to its Unilateral Agreement with the City and County of Honolulu.

I declare under penalty of law that the foregoing is true and correct.

Executed this 14th day of September.


DANIEL LUM