

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

In the Matter of the Petition of	)	DOCKET NO. A89-651
	)	
HASEKO (HAWAII), INC.	)	HASEKO (EWA), INC.
	)	ORDER GRANTING PETITIONER
To Amend the Agricultural Land Use	)	HASEKO (EWA), INC.'S MOTION
District Boundary into the Urban	)	FOR APPROVAL OF JOB CREDITS;
Land Use District For Approximately	)	CERTIFICATE OF SERVICE
403.008 acres at Honouliuli, Ewa,	)	
Oahu, Hawaii, Tax Map Key No.:	)	
9-1-12: 5 (por.), 6 (por.), and	)	
23 (por.)	)	
_____	)	

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

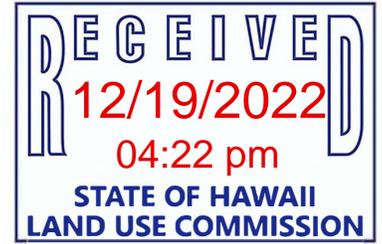
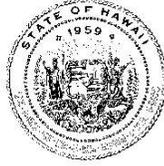
**AND**

**CERTIFICATE OF SERVICE**

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

December 19, 2022 \_\_\_\_\_ by

\_\_\_\_\_  
Executive Officer



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MOTION FOR APPROVAL OF JOB CREDITS**

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**ORDER GRANTING PETITIONER HASEKO (‘EWA), INC.’S  
MOTION FOR APPROVAL OF JOB CREDITS**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND  
ORDER REGARDING JOB CREDITS**

HASEKO (‘EWA), INC. (“Petitioner”) filed its Motion for Approval of Job Credits on September 20, 2022 (the motion as so amended is referred to as the “Motion”), pursuant to § 15-15-70(c), Hawai‘i Administrative Rules (HAR) for an order approving 572.75 Job Credits.

The Land Use Commission (“Commission” or “LUC”), having heard and examined the testimony, exhibits, evidence, and argument of counsel and parties presented during the hearing, along with the pleadings and files herein, hereby makes the following Finding of Facts, Conclusions of Law and Decision and Order.

**FINDINGS OF FACT**

**Procedural Matters**

1. On September 20, 2022, the Commission received Petitioner’s Motion for Approval of Job Credits (“Motion”), Declaration of Daniel Lum, Exhibits “1” through “7”, and Certificate of Service.

2. On October 27, 2022, the Commission received Petitioner’s Amended Certificate of Service.

3. On November 18, 2022, the Commission received the State Office of Planning and Sustainable Development’s (“OPSD”) Response to Petitioner Haseko (‘Ewa), Inc.’s Motion for Approval of Job Credits.

4. On November 21, 2022, the Commission mailed and emailed its notice of agenda of its December 7, 2022, meeting to all parties, and the Statewide, O‘ahu and Kaua‘i mailing lists.

5. The Commission also mailed an LUC notice of agenda to past Intervenor Office of General Counsel, Navy Region Hawai'i. 850 Ticonderoga St., Suite 110 JBPHH, HI 96860-5101 Attn: Randall Young, Esq. Attorney for Intervenor, but received no response. The Office of General Counsel did not appear before or establish contact with the Commission during the December 7, 2022, proceedings.

6. On November 30, 2022, the Commission received the Department of Planning and Permitting, City and County of Honolulu's ("DPP") letter of no objection.

7. On December 7, 2022, the Commission held its meeting in Honolulu, O'ahu on the Motion. At the hearing, the following attended: for the Petitioner Haseko ('Ewa) was Curtis Tabata, Esq., Raymond Kanna, (Petitioner's Representative); for the DPP John Dubiel, Esq, Dina Wong (Chief Planner) and for OPSD, Alison Kato, Esq. Lorene Maki (Planner) and Katia Balassiano (Land Use Division Administrator). Oral public testimony was received from Mark Bowman, Fid Limani, and Mary Freeman. Public testimony prior to the start of the hearing was closed during this meeting and the Commission began the evidentiary portion of the hearing.

8. During the evidentiary portion of the hearing, the Commission heard from Petitioner's witnesses Daniel Lum (Project Manager), and Lisa Enanoria (Project Manager). After the close of the evidentiary portion of the hearing on December 7, 2022, a call was made for public testimony, but no members of the public indicated a desire to testify. Public testimony was closed. A motion was made that for good cause, the LUC approve the Motion for Approval of Job Credits, to authorize the Commission staff to make non-substantive changes to conditions, and to authorize the Chairperson to sign the Findings of Fact, Conclusions of Law and

Decision and Order. The motion received 9 affirmative votes, and therefore, the motion passed.

### **Introduction**

9. On October 17, 1990, the Commission 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 O‘ahu, State of Hawai‘i, 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 “Project”).

10. 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, future 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, a public elementary school, and a fire station.

11. 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.

12. 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.

13. 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.

#### **Job Credits Calculation**

14. 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.

15. 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.

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

1. *Petitioner<sup>1</sup> 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 generated 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 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:*

<i>Type of facility</i>	<i>Floor Space</i>	<i>Credit</i>
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<sup>1</sup> As used herein, the term “Petitioner” means Haseko (Hawai‘i), Inc. and its successors and assigns.

	<u>(square feet)</u>	
<i>Office</i>	200	100 %
<i>Warehousing/Storage</i>	1,000	100 %
<i>Manufacturing</i>	300	100 %
<i>Research facility (e.g. High-Tech)</i>	150	100 %
<i>Recreation and Other Activity Centers</i>	1,000	100 %
<i>Private Schools and Day-Care Centers</i>	300	100 %
<i>Agricultural Facility (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<sup>2</sup> 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*

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<sup>2</sup> “OSP” was the “Office of State Planning” which is now “OPSD”

*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.*

17. A summary of Petitioner’s request for approval of Job Credits is attached to the Motion as Exhibit “4” and provides the following.

**SUMMARY OF PETITIONER'S REQUEST FOR APPROVAL OF JOB CREDITS**

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

18. The total job credits of 744.28 was reported to the LUC. Reductions due to maximum limits, credits previously approved, and credits withdrawn have resulted in the Motion requesting approval of 572.75 total job credits.

19. Petitioner is required to obtain one job 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”).

20. 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”).

21. Construction Job Credits. Petitioner is requesting approval of 236.13 Construction Job Credits. Construction Job Credits are calculated based on hours worked on residential, commercial, industrial, recreational, institutional, or other 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.

22. 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.

23. 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 allowed for the Project is 950 units under the Unilateral Agreement, Petitioner may not earn more than 237.50 Construction Job Credits ( $950 \times 25\% = 237.50$ ).

24. The 1994 Order approved 2.47 Job Credits, which included 1.37 Construction Job Credits for the year 1991. 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.

25. 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. 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 is 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.

26. Petitioner has reported 229.06 Facility Job Credits accrued and reported in years 2004, 2006, 2008 and 2019. 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.

27. 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.

28. 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.

29. 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.

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

32. 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.

33. Petitioner has withdrawn 28.10 Training Job Credits because it has been unable to verify the job training or educational purposes of certain contributions.

34. The 1994 Order approved 2.47 Job Credits, which included 1.10 Training Job Credits. 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.

36. 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.

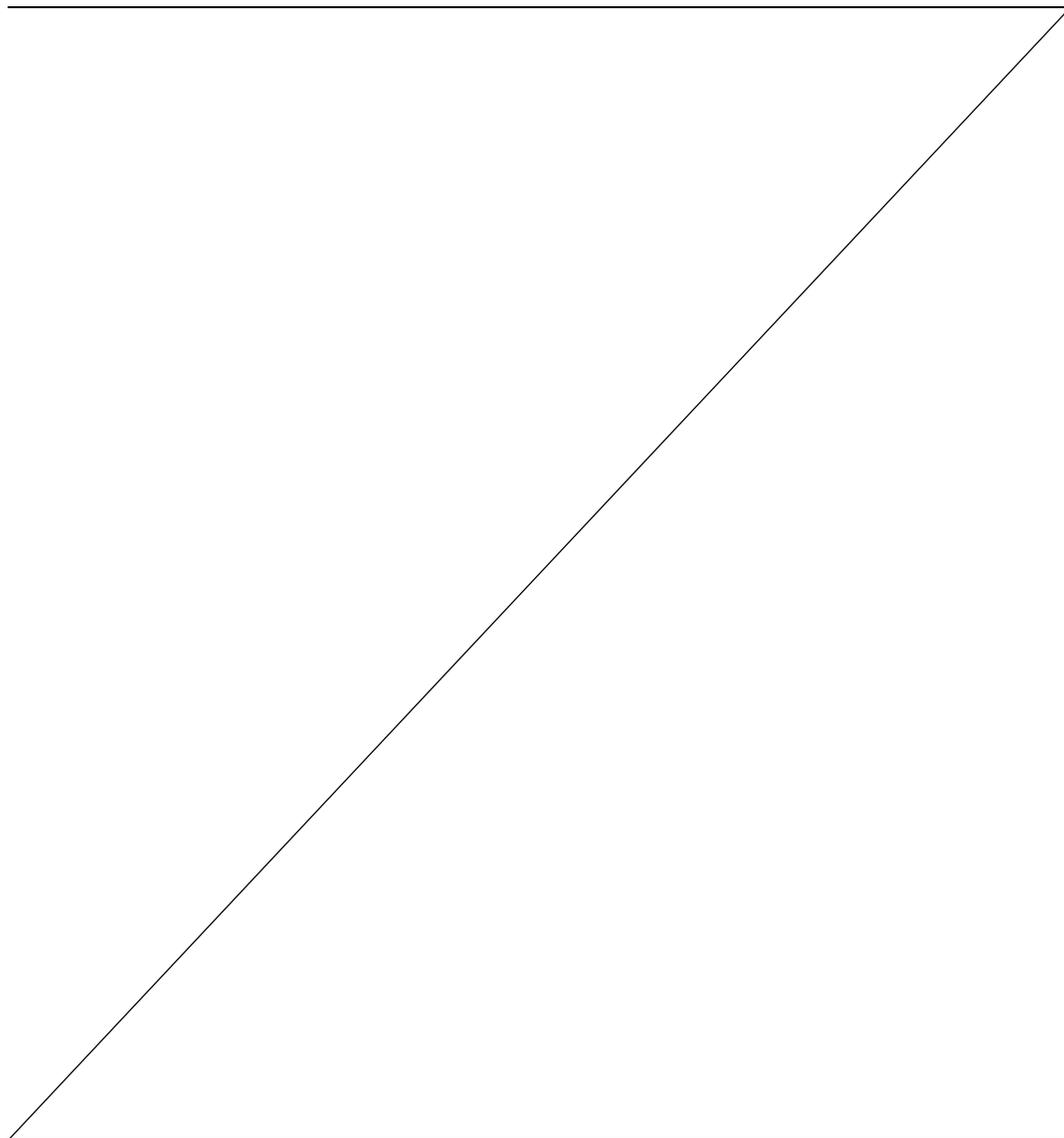
38. Petitioner's Motion requests 572.75 total Job Credits, which consists of 236.13 Construction Job Credits, 229.06 Facility Job Credits and 107.56 Training Job Credits. This request is for credits reported from 1991 through 2020. If this request is approved, Petitioner will be allowed to build up to 575.22 hotel or hotel/condominium units and based on the maximum of 950 hotel or hotel/condominium units, Petitioner may seek approval for 374.78 additional job credits in the future.

## **CONCLUSIONS OF LAW**

Pursuant to HRS Chapter 205 and the Commission Rules under HAR Chapter 15-15, and upon the Commission's decision-making criteria under HAR § 15-15-70(c), the Commission finds under the clear preponderance of the evidence that there exists good cause to grant Petitioner's Motion.

**DECISION AND ORDER**

IT IS HEREBY ORDERED that Petitioner’s Motion for Approval of Job Credits is granted, that Petitioner’s request for 572.75 job credits is approved, and based on the previously approved 2.47 job credits, Petitioner is now allowed to build up to 575.22 hotel or hotel/condominium units and may accrue and request approval from the LUC for up to 374.78 additional job credits under Conditions 1.b. and 1.c. of the D&O in the future.



**ADOPTION OF ORDER**

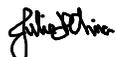
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai‘i, this 19th day of December, 2022,  
per motion on December 7, 2022.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAI‘I



\_\_\_\_\_  
Deputy Attorney General

*Dan V. Giovanni*

By \_\_\_\_\_  
DAN GIOVANNI  
Chairperson and Commissioner

Filed and effective on:

Dec 19, 2022  
\_\_\_\_\_

Certified by:



\_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

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Dated December 19, 2022

Honolulu, Hawai'i.



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DANIEL E. ORODENKER  
Executive Office