

DOCKET NO. A89-651
Haseko (‘Ewa)

Motion for Approval of Job Credits

The subject Application is regarding approximately 403.008 acres at Honouliuli, ‘Ewa, O‘ahu, Hawai‘i, Tax Map Key No.: 9-1-12: 5 (por.), 6 (por.), and 23 (por.)

STAFF REPORT

Hearing
February 5, 2025



Daniel E. Oordenker, Executive Officer

Approved for Submittal: January 30, 2025

TABLE OF CONTENTS

<u>Section No.</u>		<u>Page No.</u>
1.	Explanation of the Proceeding	
	Legal precedent and obligations	3 - 4
2.	Background Information	4 - 11
3.	Summary of Petitioner’s Position	11 - 12
4.	Summary of County Position	12
5.	Office of Planning and Sustainable Development	12 – 13
6.	Staff Analysis and Questions for Resolution	13 - 15

1. EXPLANATION OF THE PROCEEDING

The proceeding before the Land Use Commission (“Commission” or “LUC”) is Haseko (‘Ewa), Inc. Motion to Approve Job Credits, in compliance with Condition No. 1 of the of the LUC’s Findings of Fact, Conclusions of Law, Decision, and Order, certified on October 17, 1990, and further amended/clarified in the LUC’s Findings of Fact, Conclusions of Law, Decision, and Order, certified on February 8, 1994.

Condition No.1¹, requires Petitioner to obtain “Job Credits”, one Job Credit allows Petitioner to build one hotel/condominium unit, where in order to build the maximum 950 hotel/condominium units at the Project, Petitioner must obtain 950 Job Credits.

The 2024 Motion requests that 374.78 Job Credits be approved in this motion.

LEGAL PRECEDENT AND OBLIGATIONS

Hawai‘i Administrative Rules (“HAR”) **§ 15-15-70(a)** provides that “[a]ny party may make motions before, during, or after the close of a hearing.”

Pursuant to **HAR § 15-15-94**, such a party (i.e., a petitioner) who desires to have a modification or deletion of a condition that was imposed by the Commission, or a modification of the Commission’s order shall file a motion in accordance with HAR § 15-15-70, which must be properly served. if the motion requires the consideration of facts not appearing in the record, it must be filed and served together with sworn affidavits or declarations setting forth those facts.

If good cause is shown, the Commission may modify or delete any of the conditions imposed, or it may modify the Commission’s order (**HAR § 15-15-94(b)**). “Good cause” can mean “a substantial reason amounting in law to a legal excuse,” and that it will also depend on the specific circumstances of an individual case. Determining “good cause” is at the discretion of and should be done by the Commission. Pursuant to Hawai‘i Revised Statutes (“HRS”) **§ 91-10(5)**, 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. Petitioner has the burden to show good cause for the request and to demonstrate that its request is

¹ Brief History of Condition No. 1 can be found in the Background Information section of this staff report.

reasonable by a preponderance of evidence.

The Commission has further discretion, based on the facts presented, to consider other factors, including (1) whether the need for the condition still exists; (2) whether an alternative method for ensuring compliance exists that protects the public trust; or (3) whether compliance with the condition would create an undue hardship.

2. **BACKGROUND INFORMATION**

The [1990 original Decision and Order](#) approved the District Boundary Amendment to Amend the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 403.008 acres at Honouliuli, ‘Ewa, O‘ahu, Hawai‘i, Tax Map Key Nos.: 9-1-12: portion of 5, portion of 6, and portion of 23

The 2024 Motion which requests approval of 374.78 Job Credits based upon the Start-Up Job Credits that were reported for years 2022 and 2023.

The Commission received the Petitioner’s Motion on December 23, 2024, and this matter is scheduled to be heard on February 5, 2025.

1990 Original Petition

On December 8, 1989, the LUC Received the original boundary amendment petition for the District Boundary Amendment to Amend the Agricultural Land Use District Boundary into the Urban Land Use District for approximately 403.008 acres at Honouliuli, ‘Ewa, O‘ahu, Hawai‘i, Tax Map Key Nos.: 9-1-12: portion of 5, portion of 6, and portion of 23.

The original approved project is a 1,100-acre master-planned project located at Honouliuli in the ‘Ewa District of O‘ahu that lay along the shoreline between Fort Weaver Road and Kalaeloa (the former Naval Air Station Barbers Point), about 20 miles west of Honolulu. The Project included a manmade recreational lagoon, which was originally planned to be a marina, with a light industrial, commercial, and retail facilities component, as well as visitor accommodations. Additionally, the Project included a golf course, a 20-acre district park and childcare center, a public elementary school, and up to 4,850 homes.

1990 Decision and Order

The Commission approved the Petition for the District Boundary Amendment (“DBA”), and issued the boundary amendment subject

to 21 conditions.

Note: Condition One is the subject condition of the Motion brought forth by Petitioner, however, the original condition was amended in 1994 to provide clarification.

Condition One is atypical. It was proposed by the Office of State Planning (“OSP”), herein referred to as the Office of Planning and Sustainable Development (“OPSD”). In 1990, the office was charged by former Governor Waihe‘e to encourage developers to invest and allocate resources in the areas other than tourism (job creation) [Trn. 04/24/1990, pg. 54-55]. Further, Condition One provides the opportunity to gather qualitative data on job creation for this docket.

Hyperlinks to materials from previous LUC Hearings relevant to resolution of the Motion are provided below, for reference:

April 23-24, 1990: [Minutes 04/24/90](#)

June 28-29, 1990: [Minutes 06/28/90](#) | [Minutes 06/29/90](#)

August 29, 1990: [Minutes 08/29/90](#)

October 21, 1993: [Minutes 10/21/93](#)

January 13, 1994: [Minutes 01/13/94](#)

April 07, 1994: [Minutes 04/07/94](#)

November 19, 1998: [Minutes](#)

December 7, 2022: [Agenda](#) | [Minutes](#) | [YouTube](#)

1994 Motion for Approval of Job Credits and Motion for Clarification and/or Modification of Condition

On September 15, 1993, the LUC received the Petitioner’s Motion for Approval of Job Credits.

The Commission originally deferred the action on the Petitioner’s Motion for Approval of Job Credits, pending the clarification of provisions under Condition No.1.

On January 3, 1994, the LUC received the Motion for Clarification and/or Modification of Conditions; Memo in Support; Appendix A; COS. The Motion sought a determination 1) that the timeframe in which Petitioner must apply to this Commission for approval of job credits should be specified; and, 2) that Petitioner be allowed to accrue and earn job credits resulting from both the labor generated from the construction of a qualifying non-tourism related facility and the amount of floor space created by that same facility, provided Petitioner can only rely upon job credits

earned from only one of the two methods at the time Petitioner seeks approval from this Commission that it has satisfied its job generation requirement under Condition No. 1.

The Commission held hearings on the matter on October 21, 1993, and January 13, 1994. In the [February 8, 1994 Decision and Order](#), the Commission amended Condition No. 1 and approved the Petitioner's 2.47 job credits.

The Commission ordered Condition One to be amended at that time as follows (this is the current Condition One, that is the subject of this Motion):

1. Petitioner 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 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 (e.g. Greenhouses and Processing Plants)	1,000	100 %
Retailing	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 OPSD 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 OPSD 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 OPSD, 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 OPSD, 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 OPSD or a

reduction of the bond or letter of credit issued in favor of OPSD. Five (5) years after the date the building permit is issued, OPSD 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 OPSD under this condition shall be applied to any one or more of the programs specified in subparagraph c., above.

*Note this is the end of amended Condition No. 1

2022 Motion for Approval of Job Credits

On September 20, 2022, the LUC received [2022 Motion](#) for Approval of \$572.75 Job Credits. This request is for credits reported from 1991 through 2020.

The job credits consisted of 236.13 Construction Job Credits, 229.06 Facility Job Credits, and 107.56 Training Job Credits.

The 2022 Motion was scheduled for hearing on December 7, 2022: [Agenda](#) | [Minutes](#) | [YouTube](#)

The Commission issued its [2022 Decision and Order](#) on December 19, 2022.

The 2022 Decision and Order approved Petitioner’s request for 572.75 job credits, 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.

2024 Annual Report Petitioner submitted the [2024 Annual Report](#) on 10/21/2024

The Annual report includes the status of the project development and lays out the compliance with the 21 conditions set forth in the 1990 and 1994 Decision and Orders.

The annual report indicates that nearly 82% of the permitted 4,850 housing units have been built and sold to individual homeowners (2024 Annual Report, pg.3). The approximate number of units: 3,977.

Status Reporting on Condition No. 1 in Annual Report: Haseko’s reporting on potential job credits earned indicates Petitioner has earned 2887.86 job credits for the 2022 and 2023 calendar year, but will be seeking approval for 374.78 job credits.

Exhibit A of the Annual Report (pgs. 23- 31) includes the Job Credits pursuant to Subparagraph c.(iii) of Condition 1 (see Exhibit A table):

Exhibit A

Job Credits - 2022

Monetary Contributions
Haseko (Ewa), Inc

Recipient	Check Date	Description	Check No	Amount
Weed & Seed Hawaii	11/30/2022	Tee Sponser Golf Tournament Fundraiser	10094	\$ 500.00
Weed & Seed Hawaii	11/30/2022	2022 Summer Culinary Art Program	10094	\$ 1,000.00
Weed & Seed Hawaii	11/30/2022	4th Annual Legacy Luncheon & Donation	10094	\$ 2,000.00
The Boys & Girls Club of Hawaii	11/30/2022	7/29 Gold Sponsor Golf Tournament	10085	\$ 8,000.00
Coalition for Drug-Free Hawaii	11/30/2022	Tee Up Fore Prevention Donation	10078	\$ 500.00
Poi Dogs & Popoki	11/30/2022	19th Puka Golf Tournament	10091	\$ 1,000.00
Seaoh Golf Scholarship	11/30/2022	10th Annual Golf Tournament Donation	10092	\$ 500.00
Honolulu Navy League	12/30/2022	Tee Sponser Golf Tournament	10140	\$ 500.00
TOTAL 2022 Haseko (Ewa), Inc.				\$ 14,000.00

Exhibit F of the Annual Report (pgs. 47- 60) includes the Job Credits pursuant to Subparagraph b. Condition 1, which are the floor space calculations for the Wai Kai portion of the Project (see Exhibit F table).

Exhibit F

Job Credits - Wai Kai
 Floor Space Calculations
 Subparagraph b. of Condition 1

Item	Type of Facility	Floor Space per Job Credit	Credit	Gross Floor Space (Square Footage)	Job Credits Calculation
Building 1 (Total)	Various	Various	Various	42980 sf	61.22
Building 1 - The LookOut Food & Drink and The WaveBar	Retail	300	60%	12220 sf	24.44
Building 1 - Retail/Surf Operations	Retail	300	60%	540 sf	1.08
Building 1 - Admin Office	Office	200	100%	1370 sf	6.85
Building 1 - Storage	Storage	1000	100%	190 sf	0.19
Building 1 - Support Rooms	Recreation	1000	100%	2860 sf	2.86
Building 1 - Wai Kai Wave Pool and Walkways	Recreation	1000	100%	25800 sf	25.80
Building 2 (Total)	Various	Various	Various	4760 sf	9.52
Building 2 - Sessions Lifestyle & Apparel, The LineUp Launch, Foam Coffee & Bar, and Nalo Kai Club	Retail	300	60%	4760 sf	9.52
Building 3 (Total)	Various	Various	Various	9010 sf	16.11
Building 3 - Kitchen Door Plaza Grill and Boardwalk Café	Retail	300	60%	7100 sf	14.20
Building 3 - Support Rooms	Recreation	1000	100%	1910 sf	1.91
Building 5 (Total)	Various	Various	Various	2200 sf	6.72
Building 5 - Security Office	Office	200	100%	1130 sf	5.65
Building 5 - Supporting Room	Recreation	1000	100%	1070 sf	1.07
Building 6 - Waste Services	Storage	1000	100%	1370 sf	1.37
Lagoon Promenade and Nalo Kai Club Beach	Recreation	1000	100%	13540 sf	13.54
Wai Kai Lagoon (Total Easement Area)	Recreation	1000	100%	298560 sf	298.56
Floating Activity Platform	Recreation	1000	100%	4180 sf	4.18
Wai Kai Lagoon (Water Surface)	Recreation	1000	100%	294380 sf	294.38
Wai Kai Trail and Sidewalk	Recreation	1000	100%	32850 sf	32.85
Surfside Lawn	Recreation	1000	100%	12210 sf	12.21
Events Lawn at Wai Kai	Recreation	1000	100%	62900 sf	62.90

Total Job Credits: 515.00

2024 Motion for Approval of Job Credits (Current Proceeding)

On December 23, 2024, the LUC received the [2024 Motion](#) for Approval of Job Credits.

The 2024 Motion requests approval of 374.78 Job Credits based upon the Start-Up Job Credits that were reported for years 2022 and 2023, but the Petitioner reserves the right to request the approval of the remaining job 2,887.86 credits reported for years 2022-2023.

The Petitioner currently has 575.22 previously approved Job Credits.

The approval of the 374.78 job credits would bring the Petitioners total job credits to 950, which would allow Petitioner to begin the construction of a maximum of 950 hotel/condominium units.

3. SUMMARY OF PETITIONER’S MOTION

On December 23, 2024, the Petitioner submitted the 2024 Motion which requests approval of 374.78 Job Credits based upon the Start-Up Job Credits that were reported for years 2022 and 2023, but Petitioner reserves the right to request the approval of the remaining job 2,887.86 credits reported for years 2022-2023.

The Motion includes the method of calculation and supporting documents.

Credits are calculated based upon three classes of criteria:

- a) Construction worker hours;
 - a. Not more than 25% of Petitioner’s total job-generation requirement may be satisfied in this manner (237.5 max)
- b) Development of new non-tourism related projects or facilities, and
 - a. No minimum or max indicated
- c) Monies invested in businesses or contributed to job training programs.
 - a. A minimum of 10% of the job credits necessary (95 minimum)

Credits are earned when approved by the LUC. If this request is granted, it will allow Petitioner to build up to 950 hotel or hotel/condominium units as the final component of Ocean Pointe/Hoakalei.

The Petitioner has filed the following documents:

Motion; Memorandum in Support; Declaration of Daniel Sandomire; Exhibit 1;	2024 Motion filing
Exhibit 2:	2022-2023 Annual Report
Exhibit 3-7:	(3)1995 Order Approving Job Credits and Clarification and/or Modification of Condition, (4) 2022 Order, (5) Summary of Petitioner's Request for Approval of Job Credits, (6) Wai Kai Commercial Center Investment Summary, and (7) Photos of Wai Kai
Amended Certificate of Service:	Amended 1/16/2025

4. SUMMARY OF COUNTY PLANNING DEPARTMENT POSITION STATEMENT
The City and County of Honolulu has not filed with the LUC as of 01/30/2025.

5. SUMMARY OF POSITION STATEMENT FILED BY THE OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT (“OPSD”)
The Office of Planning and Sustainable Development filed their [position statement](#) on December 27, 2024.

OPSD’s [position statement](#) states the following:

- The 2,887.86 credits job credits generated under Condition 1.b. Facility Job Credits and Condition 1.c. Investment Job Credits have been reported to the LUC by Petitioner within two years after their accrual in Petitioner's 2024 Annual Report for calendar years 2022 and 2023 ([Exhibit 2](#)).
- OPSD concurs with Petitioner's methodology for calculating the job credits generated and with the descriptions, calculations, and accounting of the Petitioner's requested job credits.
- OPSD finds that the 2,372.30 Investment Job Credits generated by Petitioner's loan fund investment in the Wai Kai Commercial Center meet the Condition 1.c.i. criteria.
- OPSD finds that the Petitioner has certified the accuracy of all information provided to the LUC.

OPSD recognizes that should the LUC approve these job credits

6. STAFF ANALYSIS AND RECCOMENDATION

Calculation of Job Credits

Condition one Job Credit criteria as modified in the [1995 Order](#):

- a) Construction worker hours;
 - a. Not more than 25% of Petitioner’s total job-generation requirement may be satisfied in this manner (237.50 max)
- b) Development of new non-tourism related projects or facilities, and
 - a. No minimum or max indicated
- c) Monies invested in businesses or contributed to job training programs.
 - a. A minimum of 10% of the job credits necessary (95 minimum)

Previously approved Job Credits:

Condition 1.a.: Construction Job Credits (no more than 25% of the job credits or 237.50 credits)

1994 Order: 1.37 job credits

2022 Order: 236.13 job credits

Total: 237.50 job credits (✓max)

Condition 1.b.: Facility Job Credits

2022 Order: 229.06 job credits

Condition 1.c: Investment Job Credits (a minimum of 95 credits)

1994 Order 1.10 job credits

2022 Order 107.56 job credits

Total: 108.66 job credits (✓ minimum met)

Current approved total of Job Credits: 575.22/950
= 374.78 needed

**374.78 Start-Up
Job Credits**

Job Credits reported for 2022-2023:

Facility Job Credits: 515

Training Job Credits: 0.56

Start-Up Job Credits: 2,372.30

Total Job Credits Reported: 2,887.86

Start-Up Job Credits Reported: 2,372.30

Job Credits approval request: 374.78

Remaining Start-Up Job Credits: 1,997.52

Remaining Facility Job Credits: 515

Remaining Training Job Credits: 0.56

Total Remaining Job Credits 2513.08

2024 Motion calculation:

Condition 1.b relates to jobs generated via development. Petitioner, 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 (listed in the [1995 Decision and Order](#)).

Petitioner reports 515 job credits, with supporting Wai Kai Commercial Center Investment [Exhibit 6](#).

Condition 1.c. provides that Petitioner may receive one Job Credit for each \$50,000.00 invested by Petitioner in a start-up of non-tourism related business by way of equity or investment into a loan fund for such business.

Petitioner invested \$118,615,000.00 in a start-up business called Wai Kai = 2,372.30 Start-Up Job Credits. [See Exhibit "2"](#)

$$\$118,615,000.00 \div \$50,000.00 = 2,372.30$$

Staff Recommendation:

The LUC Staff recommends the Commission approve Petitioners request for 374.78 Start-Up Job Credits job credits, and authorize the Chairperson to execute the order necessary to effectuate the Commission’s decision, subject to review and approval by the Department of the Attorney General.:

- 1) Petitioner reported and provided supporting evidence of the Job Credits within two years of the accrual; as provided in the 2022-2023 Annual Report ([Exhibit 2 of the Motion](#))
- 2) The Commission’s decision on the Motion is also not an “act” or “action” that will affect Native Hawaiian customary and traditional rights under the *Ka Pa‘akai* case, and the action being requested for the purposes of HRS Chapter 343 is simply approval of job credits that will not result in any changed environmental impacts, and therefore analysis under the *Ka Pa‘akai* case and a supplemental environmental impact statement are not required at this time.