

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

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

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

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

Comes now, Petitioner HASEKO (EWA), INC. ("Petitioner" or "Haseko"), by  
and through its attorneys, MATSUBARA, KOTAKE & TABATA, and hereby  
respectfully submits its Proposed Order Granting Petitioner Haseko (Ewa), Inc.'s  
Motion for Approval of Job Credits as follows:

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

HASEKO (EWA), INC. ("Petitioner") filed its Motion for Approval of Job Credits on December 23, 2024 ("Motion"), pursuant to § 15-15-70, Hawai'i Administrative Rules (HAR) for an order approving 374.78 Job Credits.

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

**I. PROCEDURAL MATTERS**

1. On December 23, 2024, the Commission received Petitioner's Motion, Memorandum In Support of Motion, Declaration of Daniel Sandomire, Exhibits "1" through "7", and Certificate of Service.
2. On December 27, 2024, 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.
3. On January 7, 2025, the Commission received the Department of Planning and Permitting, City and County of Honolulu's ("DPP") letter of no objection.
4. On January 16, 2025, the Commission received Petitioner's Amended Certificate of Service.
5. On January 27, 2025, the Commission mailed and emailed its notice of agenda of its February 5, 2025 meeting to all parties, and the Statewide, O'ahu and Kaua'i mailing lists.

6. On February 5, 2025, the Commission held its meeting in Honolulu, O‘ahu on the Motion. At the hearing the following attended: for Petitioner Haseko (Ewa), Inc. was Curtis Tabata, Esq., Benjamin Matsubara, Esq., Daniel Sandomire, Kelly Uwaine, Peter Kwan and Daniel Lum; for the DPP was Pono Arias, Esq.; for the OPSD was Alison Kato, Esq., Mary Alice Evans, Ruby Edwards and Aaron Setogawa. The Commission received no oral public testimony prior to the start of the hearing. Public testimony prior to the start of the hearing was closed during this meeting and the Commission began the evidentiary portion of the hearing, and the evidentiary portion of the hearing was closed on February 5, 2025. During the evidentiary portion of the hearing, presentations were made by the Petitioner, the DPP and the OPSD. After the close of the evidentiary portion of the hearing, the Commission received the public testimony from Healani Sonoda-Pale, Bianca Isaki, and Lisa Enanoria.

7. A motion was made to approve the Motion for Approval of Job Credits, and to authorize the Chairperson to sign the Findings of Fact, Conclusions of Law and Decision and Order. The motion received 7 affirmative votes, and therefore, the motion passed.

## II. FINDINGS OF FACT

8. The Haseko family of companies (“Haseko”) has been a real estate developer in Hawaii since 1973, and has built approximately 7,022 homes, approximately 563,380 square feet of commercial space, and approximately 248 acres of golf course in Hawaii. [Decl. D. Sandomire]

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"). [Pet. Ex. 1]

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. [Pet. Ex. 2]

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. [Pet. Ex. 2]

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. [Pet. Ex. 2]

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. [Pet. Ex. 2]

### **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 non-tourism related businesses or contributed to job training programs. Credits are earned when approved by the LUC. [Pet. Ex. 2]

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. [Pet. Ex. 3]

16. On December 19, 2022, the LUC issued its Order Granting Petitioner Haseko (Ewa), Inc.'s Motion for Approval of Job Credits ("2022 Order"). The 2022 Order approved 572.75 Job Credits. [Pet. Ex. 4]

17. 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*

---

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

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 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.*

18. The total of 2,887.86 Job Credits were reported to the LUC in 2023 for years 2022 and 2023. The 2,887.86 Job Credits is comprised on 515 Facility Job Credits, 0.56 Training Job Credits, and 2,372.30 Start-Up Job Credits. Petitioner is requesting that of the 2,372.30 Start-Up Job Credits, that 374.78 Job Credits be approved. If this Motion is approved, 2,513.08 reported Job Credits will be remaining for possible future use. [Pet. Ex. 2]

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"). [Pet. Ex. 1 and 2; Decl. D. Sandomire]

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 ("Start-up Capital Job Credits" and "Training Job Credits"). [Pet. Ex. 2]

21. 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. [Pet. Ex. 2]

22. Petitioner invested \$118,615,000.00 through a loan-fund in a start-up business called Wai Kai Commercial Development, LLC in years 2022 and 2023 for the development of the Wai Kai commercial center. Pursuant to Condition 1.c., Petitioner may receive one Job Credit for each \$50,000.00 invested by the Petitioner in a start-up of a non-tourism related business by way of equity or investment in a loan fund for such business. Consequently, with its \$118,615,000.00 investment, Petitioner is eligible to receive 2,372.30 Job Credits ( $\$118,615,000.00 \div \$50,000.00 = 2,372.30$  Job Credits). [Pet. Ex. 2 and 6; OPSD 12/27/24 Resp.]

23. The monies invested in Wai Kai Commercial Development, LLC was used to develop the Wai Kai commercial center. [Pet. Ex. 2 and 6]

24. Wai Kai is a new concept commercial center that is anchored by the Wai Kai Wave, the first stationary deep-water surf wave in Hawaii that caters to all skill levels, with adjustable wave settings. Wai Kai Wave offers expert surfers a unique training ground that provides consistent, high-quality waves year-round in a controlled environment. The adaptability of the waves also accommodates all other skill levels including beginners. [Pet. Ex. 6]

25. The Wai Kai commercial center satisfies the non-tourism related business requirement of condition 1.c. as Wai Kai has been operating for approximately two years since 2023 without any hotels on the Project and has enjoyed good patronage from local residents. [2/5/25 Tr. 33:7-13]

26. The Wai Kai commercial center consists of several non-tourism related businesses, including commercial food and drink establishments, a 52-acre lagoon with active recreational facilities, a club lounge, a retail shop and three event spaces. [OPSD 12/27/24 Resp.]

27. The Wai Kai commercial center also features "Ono Grindz and Makeke at the Wai Kai", a Thursday night farmers' market designed for residents of Oahu's west side. Every Thursday evening, nearly 800 attendees enjoy the wide array of locally-made products and food in a community-driven atmosphere. [Pet. Ex. 6]

28. The 2,887.86 Job Credits generated under Condition 1.b. Facility Job Credits and Condition 1.c. Investment Job Credits were reported to the LUC by Petitioner within two years after their accrual in Petitioner's 2024 Annual Report for calendar years 2022 and 2023. [OPSD 12/27/24 Resp.]

29. 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. Therefore, Petitioner is entitled to request the LUC's approval of 374.78 Job Credits on this basis. [OPSD 12/27/24 Resp.]

30. Petitioner has certified the accuracy of all information provided to the LUC. [OPSD 12/27/24 Resp.]

31. Petitioner's Motion requests 374.78 total Job Credits, which consists of 374.78 Start-up Job Credits that were reported for years 2022 and 2023. This request for approval of 374.78 Job Credits, together with the 575.22 previously approved Job Credits, would allow Petitioner to build up to 950 hotel and hotel/condominium units. [Pet. Ex. 2]

32. If this Motion is approved, and if Petitioner is allowed to build up to 950 hotel and hotel/condominium units, then condition 1 of the 1990 D&O, as amended by the 1994 Order, will be fully satisfied. [OPSD 12/27/24 Resp.]

33. 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 Motion's request 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. [Staff Report 1/30/25]

### **III. RULING ON PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Any of the findings of fact submitted by the Petitioner or any other party not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

**IV. CONCLUSIONS OF LAW**

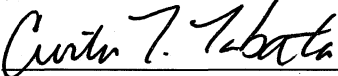
Pursuant to HRS Chapter 205 and the Commission Rules under HAR Chapter 15-15, and upon the Commission's decision-making criteria under HAR § 15-15-70(c), the Commission finds under the clear preponderance of the evidence that there exists good cause to grant Petitioner's Motion.

**V. DECISION AND ORDER**

IT IS HEREBY ORDERED that Petitioner's Motion for Approval of Job Credits is granted, that Petitioner's request for 374.78 job credits is approved, and based on the previously approved 575.22 job credits, Petitioner is now allowed to build up to 950 hotel and hotel/condominium units, and Condition 1 of the D&O is now fully satisfied.

DATED: Honolulu, Hawai'i, March 17, 2025.

Of Counsel:  
MATSUBARA, KOTAKE & TABATA  
A Law Corporation

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

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	)	CERTIFICATE OF SERVICE
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.)	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that an e-timestamp copy of the foregoing document was duly served upon the following **AS INDICATED BELOW** on March 17, 2025.

ALISON S. KATO, ESQ.  
Deputy Attorney General  
Department of the Attorney General  
425 Queen Street  
Honolulu, Hawai'i 96813

HAND-DELIVERY

MARY ALICE EVANS, DIRECTOR  
RUBY M. EDWARDS  
AARON H. SETOGAWA  
Office of Planning and Sustainable Development, State of Hawai'i  
235 South Beretania Street  
Room 600, Leiopapa A Kamehameha Bldg.  
Honolulu, Hawai'i 96813

HAND-DELIVERY

DAWN TAKEUCHI-APUNA, DIRECTOR  
DINA WONG  
City and County of Honolulu  
Department of Planning and Permitting  
650 South King Street, 7th Floor  
Honolulu, Hawai'i 96813

HAND-DELIVERY

BRAD TAMIO SAITO, ESQ.  
PONO ARIAS, ESQ.  
Deputies Corporation Counsel  
City and County of Honolulu  
Department of Corporation Counsel  
530 South King Street, Basement  
Honolulu, Hawai'i 96813

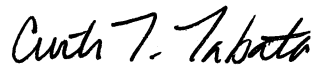
HAND-DELIVERY

ATTN: RANDALL YOUNG, ESQ.  
Office of General Counsel  
Navy Region Hawaii  
850 Ticonderoga St., Suite 110  
JBPHH, Hawai'i 96860-5101

CERTIFIED MAIL,  
RETURN RECEIPT  
REQUESTED

DATED: Honolulu, Hawai'i, March 17, 2025.

Of Counsel:  
MATSUBARA, KOTAKE & TABATA  
A Law Corporation



---

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