SCU 729

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

'98 SEP 15 PM 1 45

PLANNING DEPT. COUNTY OF HAWAII

In the Matter of the Petition of HASEKO (HAWAII), INC. To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 125.041 Acres at Kalaoa 5th, North Kona, Hawai'i, State of Hawai'i, Tax Map Key No.: 7-3-10: Portion 27	DOCKET NO. A89-645 ORDER GRANTING MOTION TO MODIFY CONDITION "1" OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED FEBRUARY 6, 1998

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, Hawaii.

SEP 14 1998 by _____
Date Executive Officer

ORDER GRANTING MOTION TO MODIFY CONDITION "1" OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED FEBRUARY 6, 1990

LAND USE COMMISSION STATE OF HAWAII 1998 SEP 14 A 8:26

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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of HASEKO (HAWAII), INC. To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 125.041 Acres at Kalaoa 5th, North Kona, Hawai'i, State of Hawai'i, Tax Map Key No.: 7-3-10: Portion 27	DOCKET NO. A89-645 ORDER GRANTING MOTION TO MODIFY CONDITION "1" OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED FEBRUARY 6, 1998

ORDER GRANTING MOTION TO MODIFY CONDITION "1" OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER DATED FEBRUARY 6, 1990

On August 4, 1998, Haseko (Hawaii), Inc., a Hawai'i corporation ("Petitioner"), filed a Motion to Modify Condition "2" of Findings of Fact, Conclusions of Law, and Decision and Order Dated February 6, 1990, pursuant to sections 15-15-70 and 15-15-94, Hawai'i Administrative Rules. On August 17, 1998, Petitioner filed an amendment to the motion (collectively "Motion").[1] The Motion requested the Land Use Commission ("Commission") to modify Condition Number 1 of the Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") filed on February 6, 1990, in its entirety and to replace it with the following:

1) Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate income residents in the State of Hawaii to the satisfaction of the County of Hawaii. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such

[1] The amendment, among other things, corrected Petitioner's numerical reference to the condition it proposed to modify, from "2" to "1."

terms as may be mutually agreeable between the Petitioner and the County of Hawaii.

Attached in support of the Motion was a Memorandum in Support ("Memorandum"), which stated that there were a number of factors that influenced the filing of the Motion, including i) the melting of the Asian economies, which has affected the overall market for the project and Petitioner's ability to satisfy its existing affordable housing requirement; ii) the improvement of the affordable housing conditions in the State and the County of Hawai'i since 1990; iii) the adoption of an affordable housing ordinance (Ordinance No. 98-1), effective January 7, 1998, by the County of Hawai'i; and iv) present Commission practice on requests from other Petitioners to modify their affordable housing conditions and conditions imposed by the Commission on recent boundary amendments.

The Motion came on for hearing before this Commission on August 27, 1998, in Honolulu, Hawai'i. Petitioner was represented by Sidney Fuke, Planning Consultant, and Alan Suwa, Project Manager for Petitioner. The Office of Planning ("OP") was represented by Ann Ogata-Deal, Esq., and Abe Mitsuda, OP Land Use Division Administrator. The County of Hawai'i Planning Department was served with a copy of the Motion and did not submit any written response to the Motion nor did it appear at the hearing on this matter.

At the hearing, Petitioner orally moved to amend the proposed language of Condition Number 1 as stated in its Motion to read as follows:

1) Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate income residents in the State of Hawaii to the satisfaction of the County of Hawaii. The County of Hawaii shall consult with the State Housing and Community Development Corporation of Hawaii prior to its approval of the Petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Hawaii.

This Commission, having duly considered Petitioner's Motion, Memorandum, and the arguments provided by the parties present in this proceeding, and good cause existing therefrom,

IT IS HEREBY ORDERED that Condition Number 1 be amended as follows:

1) Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate income residents in the State of Hawaii to the satisfaction of the County of Hawaii. The County of Hawaii shall consult with the State Housing and Community Development Corporation of Hawaii prior to its approval of the Petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the Petitioner and the County of Hawaii.

All other conditions to the Decision and Order filed on February 6, 1990, are hereby reaffirmed and shall continue in effect.

Done at Honolulu, Hawai'i, this 14th day of September 1998, per motions on August 27, 1998 and September 10, 1998.

LAND USE COMMISSION
STATE OF HAWAI'I

By _____
MERLE A. K. KELAI
Chairperson and Commissioner

By _____
LAWRENCE N.C. ING
Vice Chairperson and Commissioner

By (absent)
P. ROY CATALANI
Commissioner

By _____
RUPERT K. CHUN
Commissioner

By (absent)
PRAVIN DESAI
Commissioner

By (absent)
ISAAC FIESTA, JR.
Commissioner

By _____
M. CASEY JARMAN
Commissioner

By (absent)
HERBERT S.K. KAOPUA, SR.
Commissioner

By _____
PETER YUKIMURA
Commissioner

Filed and effective on
September 14, 1998

Certified by:

_____
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of HASEKO (HAWAII), INC. To Amend the Agricultural Land Use District Boundary into the Urban Land Use District for Approximately 125.041 Acres at Kalaoa 5th, North Kona, Hawai'i, State of Hawai'i, Tax Map Key No.: 7-3-10: Portion 27	)	DOCKET NO. A89-645 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Granting Motion to Modify Condition "1" of Findings of Fact, Conclusions of Law, and Decision and Order Dated February 6, 1998 was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

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CERT. SIDNEY FUKE, Representing Petitioner
Planning Consultant
100 Pauahi Street, Suite 211
Hilo, Hawaii 96720

DATED: Honolulu, Hawaii, this 14th day of September 1998.

ESTHER UEDA
Executive Officer