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BOARD OF DIRECTORS

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

DEFENDANT AGRIBUSINESS
DEVELOPMENT CORPORATION BOARD
OF DIRECTORS' MOTION FOR PARTIAL
SUMMARY JUDGMENT REGARDING
COUNTS X-XIV; MEMORANDUM IN
SUPPORT OF MOTION; DECLARATION
OF LYLE T. ROE; DECLARATION OF
DELANIE DEE PRESCOTT-TATE;
DECLARATION OF DAVID N.
MATSUMIYA; EXHIBIT A-H; NOTICE OF
HEARING; CERTIFICATE OF SERVICE

HEARING:

Date: May 27, 2025

Time: 9:00 a.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: June 23, 2025

**DEFENDANT AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS' MOTION FOR
PARTIAL SUMMARY JUDGMENT REGARDING COUNTS X-XIV**

Defendant AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS (“**Defendant ADC**”), by and through Anne E. Lopez, Attorney General for the State of Hawai‘i, and its attorneys Amanda J. Weston and David N. Matsumiya, Deputy Attorneys General, hereby respectfully moves this Honorable Court for an order granting summary judgment as to the claims made against Defendant ADC by Plaintiff PUBLIC FIRST LAW CENTER (“**Plaintiff**”) in Counts X-XIV of the *Complaint* filed on January 10, 2024 as Docket 1 (the “**Complaint**”).

Defendant ADC’s motion for partial summary judgment (“**Defendant ADC MPSJ**”) regarding Counts X-XIV should be granted because Plaintiff filed its case against Defendant ADC after the 90-day deadline applicable to Plaintiff’s claims against Defendant ADC in violation of the versions of Hawaii Revised Statutes (“**HRS**”) §§ 92-12 and 92-11 that are applicable to this case.

Defendant ADC’s MPSJ regarding Counts X-XII should be granted because Defendant ADC’s use of Executive Sessions for the Annual Performance Review of the Executive Director and the interviewing and consideration of candidates for the Executive Director position were/are allowed under HRS § 92-5.

Defendant ADC’s MPSJ regarding Count XIII should be granted because Defendant ADC’s use of Permitted Interaction Groups are not appropriate grounds for voiding Defendant ADC’s action under the version of HRS § 92-11 that is applicable to this case.

Defendant ADC’s MPSJ regarding Count XIV should be granted because Plaintiff is not allowed to challenge OIP Opinion Letter No. F24-03 under the versions of HRS §§ 92-12 and 92-11 that are applicable to this case.

Defendant ADC should be awarded its reasonable attorneys’ fees and costs for defending itself against Plaintiff’s claims in Counts X-XIV because the version of HRS § 92-12(c) that is applicable to this case states: “[t]he court may order payment of reasonable attorney’s fees and costs to the prevailing party in a suit brought under this section.”

Defendant ADC MPSJ is being brought pursuant to Rules 7 and 56 of the Hawai‘i Rules of Civil Procedure, in accordance with Rules 7, 7.1, 7.2 and 8 of the Rules of the Circuit Courts of the State of Hawai‘i, and is supported by the attached Memorandum in Support of Motion, the

Declaration of Lyle T. Roe, the Declaration of Delanie Dee Prescott-Tate, the Declaration of David N. Matsumiya, Exhibits A-H, and the records and files contained herein.

DATED: Honolulu, Hawai‘i, May 5, 2025.

ANNE E. LOPEZ

Attorney General for the State of Hawai‘i

/s/ David N. Matsumiya

AMANDA J. WESTON

DAVID N. MATSUMIYA

Deputy Attorneys General

Attorneys for Defendants

DEFENDER COUNCIL, JON N. IKENAGA, AND

AGRIBUSINESS DEVELOPMENT CORPORATION

BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

Defendant AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS (“**Defendant ADC**”), by and through Anne E. Lopez, Attorney General for the State of Hawai‘i, and its attorneys Amanda J. Weston and David N. Matsumiya, Deputy Attorneys General, hereby submits its memorandum in support of *Defendant Agribusiness Development Corporation Board of Directors’ Motion for Partial Summary Judgment Regarding Counts X-XIV* (“**Defendant ADC’s MPSJ**”).

I. STATEMENT OF RELEVANT FACTS

On August 17, 2022, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director. Attached hereto and made a part hereof as Exhibit A are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for August 17, 2022. *See* Declaration of Kyle T. Roe (“**Roe Declaration**”). *See* Declaration of David N. Matsumiya (“**Matsumiya Declaration**”). The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting. *See* Exhibit A. Defendant ADC chose to conduct its consideration and discussion of the Executive Director’s Annual Performance Evaluation in Executive Session because the Executive Director had a medical condition, which was known by Delanie Dee Prescott-Tate (“**Ms. Prescott-Tate**”) and a few members of Defendant ADC. *See* Declaration of Delanie Dee Prescott-Tate (“**Prescott-Tate Declaration**”).

On September 21, 2022, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director. Attached hereto and made a part hereof as Exhibit B are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for September 21, 2022. *See* Roe Declaration. *See* Matsumiya Declaration. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting. *See* Exhibit B. Defendant ADC chose to conduct its consideration and discussion of the Executive Director’s Annual Performance Evaluation in Executive Session because the Executive Director had a medical condition, which was known by Ms. Prescott-Tate and a few members of Defendant ADC. *See* Prescott-Tate Declaration.

On November 2, 2022, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director. Attached hereto and made a part hereof as Exhibit C are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for November 2, 2022. *See* Roe Declaration. *See* Matsumiya Declaration. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting. *See* Exhibit C. Defendant ADC chose to conduct its consideration and discussion of the Executive Director's Annual Performance Evaluation in Executive Session because the Executive Director had a medical condition, which was known by Ms. Prescott-Tate and a few members of Defendant ADC. *See* Prescott-Tate Declaration.

On March 16, 2023, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director. Attached hereto and made a part hereof as Exhibit D are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for March 16, 2023. *See* Roe Declaration. *See* Matsumiya Declaration. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting. *See* Exhibit D. Defendant ADC chose to conduct its consideration and discussion of the Executive Director's Annual Performance Evaluation in Executive Session because the Executive Director had a medical condition, which was known by Ms. Prescott-Tate and a few members of Defendant ADC. *See* Prescott-Tate Declaration.

On April 20, 2023, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director. Attached hereto and made a part hereof as Exhibit E are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for April 20, 2023. *See* Roe Declaration. *See* Matsumiya Declaration. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting. *See* Exhibit E. Defendant ADC chose to conduct its consideration and discussion of the Executive Director's Annual Performance Evaluation in Executive Session because the Executive Director had a medical condition, which was known by Ms. Prescott-Tate and a few members of Defendant ADC. *See* Prescott-Tate Declaration.

On July 20, 2023, Defendant ADC held a board meeting to discuss, among other things, the selection of the new Executive Director. Attached hereto and made a part hereof as Exhibit F are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for July 20, 2023. *See* Roe Declaration. *See* Matsumiya Declaration. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting. *See* Exhibit F. Defendant ADC chose to conduct its selection of the new Executive Director in Executive Session because : 1) Only one of the candidates for the Executive Director position was a public employee, who would have a limited expectation of privacy regarding his/her prior work history and salaries, and the rest were non-public employees who have a reasonable expectation of privacy regarding their prior work history and their salaries; 2) One of the candidates for the Executive Director position specifically requested that his/her candidacy be kept confidential because his/her current employer did not know that he/she was looking for a new job and he/she did not want his/her application for the Executive Director position to adversely affect his/her current employment; 3) In order to avoid any claims of unfairness by any of the candidates for the Executive Director position, Defendant ADC decided to conduct all interviews in private so that the candidate who requested his/her candidacy remain confidential would not appear to be singled out or treated differently than others; and 4) As Defendant ADC was conducting job interviews, and ultimately ranking the candidates, it was necessary for the candidates' prior non-government work histories, and financial requirements to be discussed and considered as part of the Executive Director search. *See* Prescott-Tate Declaration.

On August 8, 2023, Defendant ADC held a board meeting to discuss, among other things, the selection of the new Executive Director. Attached hereto and made a part hereof as Exhibit G are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for August 8, 2023. *See* Roe Declaration. *See* Matsumiya Declaration. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting. *See* Exhibit G. Defendant ADC chose to conduct its selection of the new Executive Director in Executive Session because: 1) Only one of the candidates for the Executive Director position was a public employee, who would have a limited expectation of privacy regarding his/her prior work history and salaries, and the rest were non-public employees who have a

reasonable expectation of privacy regarding their prior work history and their salaries; 2) One of the candidates for the Executive Director position specifically requested that his/her candidacy be kept confidential because his/her current employer did not know that he/she was looking for a new job and he/she did not want his/her application for the Executive Director position to adversely affect his/her current employment; 3) In order to avoid any claims of unfairness by any of the candidates for the Executive Director position, Defendant ADC decided to conduct all interviews in private so that the candidate who requested his/her candidacy remain confidential would not appear to be singled out or treated differently than others; and 4) As Defendant ADC was conducting job interviews, and ultimately ranking the candidates, it was necessary for the candidates' prior non-government work histories, and financial requirements to be discussed and considered as part of the Executive Director search. *See* Prescott-Tate Declaration.

On November 3, 2023, at the request of an anonymous requester, OIP reviewed the actions taken by Defendant ADC and issued an opinion on the actions taken by Defendant ADC. Attached hereto and made a part hereof as Exhibit H, is a true and correct copy of OIP Opinion Letter No. F24-03 that was provided to Defendant ADC. *See* Roe Declaration. *See* Matsumiya Declaration.

II. APPLICABLE STANDARDS

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is **no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law.” Hawai‘i Rules of Civil Procedure (“**HRC**P”) 56(c) (bold emphasis added).

A fact is material if proof of that fact would have the effect of establishing elements of a cause of action or defense asserted by the parties. The evidence must be viewed in the light most favorable to the non-moving party. In other words, we must view all of the evidence and the inferences drawn from them in the light most favorable to the non-moving party opposing the motion.

Lansdell v. Cnty. of Kauai, 110 Hawai‘i 189, 194, 130 P.3d 1054, 1059 (2006) (quoting *Hawaii Cmty. Fed. Credit Union v. Keka*, 94 Hawai‘i 213, 221, 11 P.3d 1, 9 (2000)) (bold emphasis added). *See also Field, Tr. of Est. of Aloha Sports Inc. v. Nat’l Collegiate Athletic Ass’n*, 143 Hawai‘i 362, 372, 431 P.3d 735, 745 (2018).

“A summary judgment motion ‘challenges the very existence or legal sufficiency of the claim or defense to which it is addressed.’” *First Hawaiian Bank v. Weeks*, 70 Haw. 392, 396, 772 P.2d 1187, 1190 (1989) (quoting 10 Wright, Miller & Kane, *Federal Practice and*

Procedure: Civil 2d § 2711, at 555–56 (1983). In other words, “the moving party takes the position that [he or she] is entitled to prevail because his opponent has no valid claim for relief or defense to the action, as the case may be.” *Id.* (original ellipse omitted). As a result, the moving party “has the burden of demonstrating that there is no genuine issue as to any material fact relative to the claim or defense and [that he or she] is entitled to judgment as a matter of law. *Id.*

“The moving party ‘may discharge his or her burden by demonstrating that if the case went to trial there would be no competent evidence to support a judgment for his or her opponent.’” *Young v. Planning Comm’n of Cty. of Kauai*, 89 Hawai‘i 400, 407, 974 P.2d 40, 47 (1999) (quoting *First Hawaiian Bank*, 70 Haw. at 396, 772 P.2d at 1190) (original brackets omitted).

If the moving party satisfies his or her burden, “then the burden shifts to the [non-moving party] to demonstrate ‘specific facts, as opposed to general allegations, that present a genuine issue worthy of trial.’” *Garcia v. Robinson*, 137 Hawai‘i 388, 397, 375 P.3d 167, 176 (2016) (quoting *French v. Haw. Pizza Hut, Inc.*, 105 Hawai‘i 462, 470, 99 P.3d 1046, 1054 (2004)). The non-moving party “may not rest upon the mere allegations or denials of the [non-moving] party’s pleading, but the [non-moving] party’s response, by affidavits or as otherwise provided in [HRCP 56], must set forth specific facts showing that there is a genuine issue for trial.” HRCP 56(e). A non-moving party “cannot discharge his or her burden by alleging conclusions, ‘nor is he [or she] entitled to a trial on the basis of a hope that he [or she] can produce some evidence at that time.” *Henderson v. Professional Coatings Corp.*, 72 Haw. 387, 400-401, 819 P.2d 84, 92 (1991) (quoting 10A Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2727 (1983)).

In deciding a motion for summary judgment, a circuit court must keep in mind an important distinction:

A judge ruling on a motion for summary judgment cannot summarily try the facts; his [or her] role is limited to applying the law to the facts that have been established by the litigants’ papers. Therefore, a party moving for summary judgment is not entitled to a judgment merely because the facts he offers appear more plausible than those tendered in opposition or because it appears that the adversary is unlikely to prevail at trial. This is true even though both parties move for summary judgment. Therefore, if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men [and women] might differ as to its significance, summary judgment is improper. [Citations omitted.]

Chuck Jones & MacLaren v. Williams, 101 Hawai‘i 486, 497, 71 P.3d 437, 448 (Ct. App. 2003) (quoting *Kajiya v. Department of Water Supply*, 2 Haw. App. 221, 224, 629 P.2d 635, 638-39 (1981) (quoting 10A Wright, Miller and Kane, *Federal Practice and Procedure: Civil* § 2725 (1973)) (brackets original) (bold emphasis added).

“[S]ummary judgment must be used with due regard for its purpose and should be cautiously invoked **so that no person will be improperly deprived of a trial of disputed factual issues.**” *Bhakta v. Cnty. of Maui*, 109 Hawai‘i 198, 207-208, 124 P.3d 943, 952-953 (2005), as amended (Dec. 30, 2005) (quoting *Miller v. Manuel*, 9 Haw. App. 56, 65-66, 828 P.2d 286, 292 (1991)) (bold emphasis added).

III. ARGUMENT

Defendant ADC’s MPSJ should be granted because: 1) Plaintiff filed its action against Defendant ADC after the 90-day deadline applicable to Plaintiff’s claims against Defendant ADC; 2) Defendant ADC’s use of Executive Sessions for the Annual Performance Review of the Executive Director and the interviewing and consideration of candidates for the Executive Director position were/are allowed under Hawaii Revised Statutes (“**HRS**”) § 92-5 (2024 Cumulative Supplement); 3) Defendant ADC’s use of Permitted Interaction Groups (“**PIG**” or “**PIGs**”) are not appropriate grounds for voiding Defendant ADC’s action under the version of HRS § 92-11 that is applicable to this case; and 4) Plaintiff is not allowed to challenge OIP Opinion Letter No. F24-03 under the laws applicable to this case.

A. PLAINTIFF DID NOT TIMELY FILE THIS ACTION

Defendant ADC’s MPSJ regarding Counts X-XIV should be granted because Plaintiff filed its action against Defendant ADC after the 90-day deadline applicable to Plaintiff’s claims against Defendant ADC in violation of the versions of HRS §§ 92-12 and 92-11 that are applicable to this case.

1. Governing Law for this Action

The laws governing Plaintiff’s ability to challenge the actions of Defendant ADC are HRS § 92-12 and HRS § 92-11.

a. HRS § 92-12

HRS § 92-12 was amended during the 2024 Legislative Session and the amended version became effective on July 2, 2024. *See* 2024 Haw. Sess. Laws Act 160, §§ 1-4 at pp. 380-381. There is nothing in Act 160 to indicate that Act 160 may be applied retroactively. *See* 2024

Haw. Sess. Laws Act 160, §§ 1-4 at pp. 380-381. As a result, the law applicable to this case is the version of HRS § 92-12 that existed prior to July 2, 2024.

Prior to July 2, 2024, HRS § 92-12 (2012 Replacement) stated:

- (a) The attorney general and the prosecuting attorney shall enforce this part.
- (b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.
- (c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.
- (d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.
- (e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:
 - (1) There is likelihood that the party bringing the action will prevail on the merits;
 - (2) Irreparable damage will result if a stay is not ordered;
 - (3) No irreparable damage to the public will result from the stay order;and
 - (4) Public interest will be served by the stay order.

HRS § 92-12 (2012 Replacement). Of particular importance for this Honorable Court is HRS § 92-12(c) (2012 Replacement).

The relevant portion of HRS § 92-12(c) (2012 Replacement) is: “Any person may commence a suit . . . for the purpose of requiring compliance with or preventing violations of this part . . .” HRS § 92-12(c) (2012 Replacement). In order for the circuit court to require compliance with and/or prevent violations of the Sunshine Law, the circuit court must necessarily void the actions of the public body if the public body's action are found to be in violation of the Sunshine Law. This voiding of the public body's action requires the circuit court to also consider the requirements of HRS § 92-11 (2012 Replacement).

b. HRS § 92-11

HRS § 92-11, which was not amended during the 2024 Legislative Session, states: “Any final action taken in violation of [HRS] sections 92-3 and 92-7 may be voidable upon proof of

violation. A suit to void any final action **shall be commenced within ninety days of the action.**” HRS § 92-11 (2012 Replacement) (bold emphasis added).

The Supreme Court of the State of Hawai‘i (the “**Hawai‘i Supreme Court**”) has defined “‘final action’ in the context of HRS § 92-11 to mean ‘the final vote required to carry out the board’s authority on a matter.’” *Kanahele v. Maui Cnty. Council*, 130 Hawai‘i 228, 259, 307 P.3d 1174, 1205 (2013), as corrected (Aug. 30, 2013).

2. Plaintiff Filed this Action After the 90-Day Deadline Expired

In this case, Defendant ADC’s final action was taken on August 8, 2023, when Defendant ADC voted to accept the recommendations of the Executive Director Search Committee. *See* Exhibit G at p. 6. Based on this date, Plaintiff’s 90-day deadline expired on November 11, 2023.

Plaintiff filed the Complaint on January 10, 2024. *See* Docket 1. January 10, 2024 is 155 days after Defendant ADC’s final action and 65 days after the expiration of the 90-day deadline. Because Plaintiff filed its complaint late, this Honorable Court does not have jurisdiction to decide this matter.

Based on the foregoing, this Honorable Court should grant summary judgment on Counts X-XIV in Defendant ADC’s favor. In addition, based on the terms of HRS § 92-12(c) (2012 Replacement), this Honorable Court should declare Defendant ADC as the prevailing party regarding Counts X-XIV and award Defendant ADC payment of its reasonable attorneys’ fees and costs.

B. DEFENDANT ADC’S USE OF EXECUTIVE SESSIONS WERE/ARE ALLOWED UNDER HRS § 92-5

Defendant ADC’s MPSJ regarding Counts X-XII should be granted because Defendant ADC’s use of Executive Sessions for the Annual Performance Review of the Executive Director and the interviewing and consideration of candidates for the Executive Director position were/are allowed under HRS § 92-5.

(a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

...

(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be **involved**; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

See HRS § 92-5 (bold emphasis added).

With regard to this exception, the Hawai‘i Supreme Court has stated “[f]or ‘matters affecting privacy’ to be **involved** in a personnel discussion . . . the person at issue must have a ‘legitimate expectation of privacy’ in the information . . .” *Civ. Beat L. Ctr. for the Pub. Int., Inc. v. City & Cnty. of Honolulu*, 144 Hawai‘i 466, 480, 445 P.3d 47, 61 (2019) (bold emphasis added) (internal citations omitted). “People have a legitimate expectation of privacy in ‘highly personal and intimate’ information.” *Civ. Beat L. Ctr. for the Pub. Int., Inc.*, 144 Hawai‘i at 480, 445 P.3d at 61 (internal citations omitted). “Generally, ‘highly personal and intimate’ information may include “**medical, financial, educational, or employment records.**” *Civ. Beat L. Ctr. for the Pub. Int., Inc.*, 144 Hawai‘i at 480, 445 P.3d at 61 (bold emphasis added) (internal citations omitted). The Hawai‘i Supreme Court also stated:

When the personnel-privacy exception applies, **a government board may decide to close a meeting to engage in deliberations without risking the invasion of fundamental privacy rights.** Understanding that “the proverbial bell cannot be ‘unrung’ with regard to protecting individual privacy interests,” . . . **boards may properly make this decision before such deliberations take place.**

Civ. Beat L. Ctr. for the Pub. Int., Inc., 144 Hawai‘i at 480, 445 P.3d at 61 (bold emphases added) (internal citation omitted) (footnote omitted).

Based on the terminology used in HRS § 92-5(a)(2) and the Hawai‘i Supreme Court’s opinion in *Civ. Beat L. Ctr. for the Pub. Int., Inc. v. City & Cnty. of Honolulu* (the “**Civil Beat Opinion**”), Defendant ADC may decide, prior to the Executive Meeting, to conduct the Annual Performance Review of the Executive Director, the interviews of the candidates for the Executive Director position, and the consideration of the candidates for the Executive Director position in Executive Session because all three of these events “include or contain as a part”¹ information that the Executive Director and the candidates for the Executive Director position have a legitimate expectation of privacy over.

In this case, with regard to the Executive Director’s Annual Performance Evaluation, Defendant ADC chose to conduct its consideration and discussion of the Executive Director’s Annual Performance Evaluation in Executive Session because the Executive Director had a medical condition, which was known by Ms. Prescott-Tate and a few members of Defendant ADC. *See* Prescott-Tate Declaration. Defendant ADC believed the Executive Director may

¹ The term “involved” is defined by *Webster’s New College Dictionary (Third Edition)* (“**Webster’s**”) as “to include or contain as a part.” *See* Webster’s at p. 598.

raise the issue of his medical condition as playing a role in the Executive Director's performance of his duties and/or his ability to perform his duties in the future. *See* Prescott-Tate Declaration. In other words, Defendant ADC chose to conduct the Annual Performance Evaluation of the Executive Director in Executive Session in order to not risk an invasion of the Executive Director's fundamental privacy rights.

With regard to the interviews and consideration of the candidates for the Executive Director position, Defendant ADC chose to conduct its interviews and consideration of the candidates for the Executive Director position in Executive Session for the following because:

- 1) Only one of the candidates for the Executive Director position was a public employee, who would have a limited expectation of privacy regarding his/her prior work history and salaries, and the rest were non-public employees who have a reasonable expectation of privacy regarding their prior work history and their salaries;
- 2) One of the candidates for the Executive Director position specifically requested that his/her candidacy be kept confidential because his/her current employer did not know that he/she was looking for a new job and he/she did not want his/her application for the Executive Director position to adversely affect his/her current employment;
- 3) In order to avoid any claims of unfairness by any of the candidates for the Executive Director position, Defendant ADC decided to conduct all interviews in private so that the candidate who requested his/her candidacy remain confidential would not appear to be singled out or treated differently than others; and
- 4) As Defendant ADC was conducting job interviews, and ultimately ranking the candidates, it was necessary for the candidates' prior non-government work histories, and financial requirements to be discussed and considered as part of the Executive Director search. *See* Prescott-Tate Declaration. As the majority of the candidates for the Executive Director position were not public employees, their expectation of privacy regarding their financial requirements are not offset by the disclosure requirements that a public employee has.

In its *Motion for Partial Summary Judgment on Counts X-XIV*, which was filed herein on March 25, 2025 as Docket 124 (“**Plaintiff’s Partial MSJ – Counts 10-14**”), Plaintiff argued that “even if a board has an initial basis for going into executive session, it must scrupulously adhere to the strictly construed limitations of the exemptions and return to open session for any discussion not ‘directly related’ to an exemption.” *See* Plaintiff’s Partial MSJ – Counts 10-14. Based on the argument presented by Plaintiff, Plaintiff appears to believe that HRS § 92-5(a)(2)

and the Civil Beat Opinion require that every piece of information disclosed during the Executive Session must have a legitimate expectation of privacy. This is not correct.

The Civil Beat Opinion states:

If the circuit court finds that the Commission had a proper basis for invoking the **personnel-privacy exception** at the executive sessions under review, the court must conduct a two-step analysis. First, the court will determine to what extent the Commission's discussions and deliberations therein fell within the scope of the **personnel-privacy exception**. That is, the court must determine to what extent the Commission's discussions and deliberations were "directly related to" the purpose of closing the meeting pursuant to the **personnel-privacy exception**.

Civ. Beat L. Ctr. for the Pub. Int., Inc., 144 Hawai'i at 480, 445 P.3d at 61 (bold emphases added) (internal citation omitted). This statement clearly indicates that it is the personnel-privacy exception that must be maintained throughout the Executive Session. As noted by the use of the term "involved" by the Hawai'i State Legislature in HRS § 92-5(a)(2) and the Hawai'i Supreme Court in the Civil Beat Opinion, the personnel-privacy exception only requires that the hire, evaluation, dismissal, or discipline of an officer be "involved" or, as defined by Webster's, "include or contain as a part" (Webster's at p. 598) the consideration of matters affecting privacy. Had the Hawai'i State Legislature and the Hawai'i Supreme Court intended that the entire Executive Session required the disclosure of information affecting privacy, and nothing else, then they would have bypassed the phrase "personnel-privacy exception" and simply stated "matters affecting privacy." Because the Hawai'i State Legislature and the Hawai'i Supreme Court use the phrase "personnel-privacy exception," it is clear that the requirement that they are invoking is that the Executive Session should not go beyond the issue of the hire, evaluation, dismissal, or discipline of an officer.

In this case, based on the evidence before this Honorable Court, it is clear that the Executive Session did not exceed the hire, evaluation, dismissal, or discipline of an officer. As evidenced by the Executive Session meeting minutes, the Executive sessions did not go beyond the issue of the hire, evaluation, dismissal, or discipline of an officer. *See* Exhibits A-G.

Based on the foregoing, this Honorable Court should find that Defendant ADC use of Executive Sessions for the Annual Performance Review of the Executive Director and the interviewing and consideration of candidates for the Executive Director position were/are allowed under HRS § 92-5.

C. PURSUANT TO THE VERSION OF HRS § 92-11 THAT IS APPLICABLE TO THIS CASE, DEFENDANT ADC'S USE OF PIGS IS NOT GROUNDS TO VOID THE ACTIONS DEFENDANT ADC

Defendant ADC's MPSJ regarding Count XIII should be granted because Defendant ADC's use of PIGs are not appropriate grounds for voiding Defendant ADC's action under HRS § 92-11. Although Defendant ADC believes its use of PIGs were not in violation of HRS § 92-2.5 (2023 Cumulative Supplement), in the spirit of judicial economy, Defendant ADC will reserve its arguments that its use of PIGs were in compliance with HRS § 92-2.5 (2023 Cumulative Supplement) and focus on the fact that a violation of HRS § 92-2.5 (2023 Cumulative Supplement) is not grounds for the voiding of Defendant ADC's actions.

HRS § 92-11 states: "Any final action taken in violation of [HRS] **sections 92-3 and 92.7** may be voidable upon proof of violation." HRS § 92-11 (bold emphasis added).

PIGs are governed by HRS § 92-2.5 (2023 Cumulative Supplement). *See* HRS § 92-2.5 (2023 Cumulative Supplement). The 2023 version of HRS § 92-2.5 makes no reference to HRS § 92-3 (2023 Cumulative Supplement) or HRS § 92-7 (2023 Cumulative Supplement). *See* HRS § 92-2.5 (2023 Cumulative Supplement). Similarly, HRS § 92-3 (2023 Cumulative Supplement) or HRS § 92-7 (2023 Cumulative Supplement) make no reference to HRS § 92-2.5 (2023 Cumulative Supplement). *See* HRS § 92-3 (2023 Cumulative Supplement) and HRS § 92-7 (2023 Cumulative Supplement). Because none of the statutes reference each other, it is clear that HRS § 92-2.5 (2023 Cumulative Supplement) is separate and distinct from HRS § 92-3 (2023 Cumulative Supplement) or HRS § 92-7 (2023 Cumulative Supplement). Because HRS § 92-2.5 (2023 Cumulative Supplement) is separate and distinct from HRS § 92-3 (2023 Cumulative Supplement) or HRS § 92-7 (2023 Cumulative Supplement), it is clear that a violation of HRS § 92-2.5 (2023 Cumulative Supplement) cannot be found to be a violation of HRS § 92-3 (2023 Cumulative Supplement) or HRS § 92-7 (2023 Cumulative Supplement). Because a violation of HRS § 92-2.5 (2023 Cumulative Supplement) cannot be found to be a violation of HRS § 92-3 (2023 Cumulative Supplement) or HRS § 92-7 (2023 Cumulative Supplement), this Honorable Court cannot void the actions of Defendant ADC based on Defendant ADC's alleged violation of HRS § 92-2.5 (2023 Cumulative Supplement).

Based on the foregoing, this Honorable Court should find that Defendant ADC's use of PIGs are not grounds to void Defendant ADC's action. Because Defendant ADC's use of PIGs

are not grounds to void Defendant ADC's action, this Honorable Court should grant summary judgment on Count XIII in Defendant ADC's favor.

D. PLAINTIFF MAY NOT CHALLENGE OIP OPINION LETTER NO. F24-03 UNDER THE APPLICABLE VERSIONS OF §§ 92-12 AND 92-11

Defendant ADC's motion for partial summary judgment regarding Count XIV should be granted because Plaintiff is not allowed to challenge OIP Opinion Letter No. F24-03 under the versions of HRS §§ 92-12 and 92-11 that are applicable to this case.

The only reference to OIP opinions in HRS § 92-12 (2012 Replacement) and HRS § 92-11 is HRS § 92-12(d) which states: "Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous." HRS § 92-12(d) (2012 Replacement). This rule does not allow Plaintiff to contest the opinions of OIP in the circuit court. As a result, this Honorable Court should not allow Plaintiff to challenge OIP Opinion Letter No. F24-03 in this case.

Even if Plaintiff were allowed to challenge OIP Opinion Letter No. F24-03 in this case, this Honorable Court should decline to find that OIP Opinion Letter No. F24-03 is palpably erroneous.

In Plaintiff's Partial MSJ – Counts 10-14, Plaintiff argues that OIP Opinion Letter No. F24-03 is "palpably erroneous" because: 1) "it reads the privacy condition out of the exemption;" 2) "it relies on UIPA privacy interests and specifically its prior decision in Opinion 06-07;" 3) "OIP's analysis ignores the analysis outline by the Hawai'i Supreme Court" in the Civil Beat opinion, specifically that it did not perform an analysis of the facts of this case; and 4) OIP made no effort to address the issue of the ADC Executive Director's authority within government or any other factors that may affect the general conception of privacy around personnel matter. *See* Plaintiff's Partial MSJ – Counts 10-14 at pp. 21-23 of the PDF. Plaintiff's arguments are incorrect.

Plaintiff's argument that OIP Opinion Letter No. F24-03 reads out the privacy condition of the exemption is incorrect because it is based on Plaintiff's incorrect interpretation that the in order to be conducted any discussion in Executive Session the entirety of the discussion must affect privacy. As argued above, the Civil Beat Opinion only requires that the "personnel-privacy exception" must be maintained though out the Executive Session. As evidenced by OIP Opinion Letter No. F24-03, OIP correctly stated that "Section 92-5(a)(2), HRS, allows boards to hold an executive session "[t]o consider the hire, evaluation, dismissal, or discipline of an officer

or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved.” *See* Exhibit H, at ADC 000021.

Plaintiff’s argument that OIP Opinion Letter No. F24-03 relies on UIPA privacy interests and specifically its prior decision in Opinion 06-07, is correct. However, this does not invalidate OIP’s opinion because OIP’s finding that an individual has a privacy interest in finances and income (*see* Exhibit H, at ADC 000022-ADC 000023) comports with the Civil Beats Opinion that states “[g]enerally, ‘highly personal and intimate’ information may include **“medical, financial, educational, or employment records.”** *Civ. Beat L. Ctr. for the Pub. Int., Inc.*, 144 Hawai‘i at 480, 445 P.3d at 61 (bold emphasis added) (internal citations omitted). The reason OIP’s ultimate finding comports with the Civil Beats Opinion is because the candidates were not public employees, so their expectation of privacy regarding their financial requirements are not offset by the disclosure requirements that a public employee has.

Plaintiff’s argument that OIP’s analysis ignores the analysis outline by the Hawai‘i Supreme Court in the Civil Beat opinion, specifically that it did not perform an analysis of the facts of this case, is also incorrect. OIP Opinion Letter No. F24-03 specifically reviewed the candidates for the Executive Director position status as candidates, and found that their status as candidates allowed Defendant ADC to interview and to discuss the candidates and their salary discussion in Executive Session. *See* Exhibit H, at ADC 000023.

Finally, Plaintiff’s argument that OIP made no effort to address the issue of the ADC Executive Director’s authority within government or any other factors that may affect the general conception of privacy around personnel matter is inapplicable. As noted in the Civil Beat opinion centers on the “the “person at issue” having an expectation of privacy, not the Executive Director’s expectation of privacy. As noted by OIP, the candidates were candidates not the Executive Director. *See* Exhibit H, at ADC 000023.

Based on the foregoing, this Honorable Court should decline to allow Plaintiff to challenge OIP Opinion Letter No. F24-03 in this case because the Sunshine Law, as written prior to January 10, 2024, do not allow such a challenge. In addition, even if Plaintiff were allowed to challenge OIP Opinion Letter No. F24-03, Plaintiff’s misunderstanding to the law and their misreading of OIP Opinion Letter No. F24-03 clearly indicate that OIP Opinion Letter No. F24-03 is not “palpably erroneous.”

IV. CONCLUSION

Based on the foregoing, Defendant ADC believe that there is a good faith basis for this Honorable Court to grant Defendant ADC's MPSJ for the following reasons.

Defendant ADC's MPSJ should be granted because Plaintiff filed its action against Defendant ADC after the 90-day deadline applicable to Plaintiff's claims against Defendant ADC in violation of the versions of HRS §§ 92-12 and 92-11 that are applicable to this case.

Defendant ADC's motion for partial summary judgment regarding Counts X-XII should be granted because Defendant ADC's use of Executive Sessions for the Annual Performance Review of the Executive Director and the interviewing and consideration of candidates for the Executive Director position were/are allowed under HRS § 92-5 (2024 Cumulative Supplement).

Defendant ADC's motion for partial summary judgment regarding Count XIII should be granted because Defendant ADC's use of PIGs are not appropriate grounds for voiding Defendant ADC's action under the version of HRS § 92-11 that is applicable to this case.

Defendant ADC's motion for partial summary judgment regarding Count XIV should be granted because Plaintiff is not allowed to challenge OIP Opinion Letter No. F24-03 under the versions of HRS §§ 92-12 and 92-11 that are applicable to this case.

Finally, Defendant ADC should be awarded its reasonable attorneys' fees and costs for defending itself against Plaintiff's claims in Counts X-XIV because the version of HRS § 92-12(c) that is applicable to this case states that "[t]he court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section."

DATED: Honolulu, Hawai'i, May 5, 2025.

ANNE E. LOPEZ

Attorney General for the State of Hawai'i

/s/ David N. Matsumiya

AMANDA J. WESTON

DAVID N. MATSUMIYA

Deputy Attorneys General

Attorneys for Defendants

DEFENDER COUNCIL, JON N. IKENAGA, AND
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: ICCV-24-0000050
(Other Civil Action)

DECLARATION OF LYLE T. ROE

DECLARATION OF LYLE T. ROE

I, LYLE T. ROE, declare under penalty of law that the following is true and correct to the best of my knowledge, information, and belief:

1. I am an employee of the Department of Business, Economic Development & Tourism for the State of Hawai'i.
2. I am the Asset Manager for Defendant AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS ("**Defendant ADC**").
3. I have personal knowledge of the matters discussed herein, am competent to testify as to the matters stated herein, and I make this Declaration upon personal knowledge except and unless stated to be upon information and belief.
4. Due to a change in personnel at Defendant ADC, I was the individual tasked with reviewing all of Defendant ADC's documents and producing the documents relevant to the above-referenced action to the Department of the Attorney General ("**ATG**").
5. I was tasked with reviewing and producing the documents because of my prior knowledge of and experience with the documents kept by Defendant ADC.

6. I have reviewed the documents, which have been bates-numbered ADC 000001 – ADC 000211.

7. The documents, which have been bates-number ADC 000001 – ADC 000211, are true and correct copies of the documents that I produced to ATG.

8. The documents, which have been bates-number ADC 000001 – ADC 000211, are copies of records made by Defendant ADC in the regular course of its business.

9. The documents, which have been bates-number ADC 000001 – ADC 000211, are copies of records that were made at or near the time of the events that are noted in the documents.

10. To the best of my knowledge, the documents, which have been bates-numbered ADC 000001 – ADC 000211, have always been in the care, custody, and control of Defendant ADC and have never left the care, custody, and control of Defendant ADC.

11. With the exception of the redactions added to the documents, the documents , which have been bates-numbered ADC 000001 – ADC 000211, have not been altered.

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

This declaration is made in lieu of an affidavit pursuant to Rule 7(g) of the Rules of the Circuit Courts of the State of Hawai'i.

DATED: Honolulu, Hawai'i, May 1, 2025.



LYLE T. ROE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

DECLARATION OF DELANIE DEE
PRESCOTT-TATE

DECLARATION OF DELANIE DEE PRESCOTT-TATE

I, DELANIE DEE PRESCOTT-TATE, declare under penalty of law that the following is true and correct to the best of my knowledge, information, and belief:

1. I am an attorney licensed to practice law before all of the courts in the State of Hawai'i.

2. I am a Deputy Attorney General for the State of Hawai'i.

3. I am the Deputy Attorney General assigned to provide advice and counsel to Defendant AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS ("**Defendant ADC**").

4. I have personal knowledge of the matters discussed herein, am competent to testify as to the matters stated herein, and I make this Declaration upon personal knowledge except and unless stated to be upon information and belief.

5. As noted in the various meeting minutes, I attended the following meetings for Defendant ADC as their legal counsel:

- a. Regular Session on August 17, 2022;
- b. Executive Session on August 17, 2022;

- c. Regular Session on September 21, 2022;
- d. Executive Session on September 21, 2022;
- e. Regular Session on November 2, 2022;
- f. Executive Session on November 2, 2022;
- g. Regular Session on March 16, 2023;
- h. Executive Session on March 16, 2023;
- i. Regular Session on April 20, 2023;
- j. Executive Session on April 20, 2023;
- k. Regular Session on July 20, 2023;
- l. Executive Session on July 20, 2023;
- m. Regular Session on August 8, 2023; and
- n. Executive Session on August 8, 2023.

6. With regard to the Executive Sessions where Defendant ADC considered and discussed the Annual Performance Evaluation of the Executive Director, which were held on August 17, 2022, September 21, 2022, November 2, 2022, March 16, 2023, and April 20, 2023, Defendant ADC chose to conduct their consideration and discussion of the Executive Director's Annual Performance Evaluation in Executive Session because the Executive Director had a medical condition, which was known by myself and a few members of Defendant ADC, and it was anticipated the Executive Director may raise the issue of his medical condition as playing a role in the Executive Director's performance of his duties and/or his ability to perform his duties in the future.

7. With regard to the Executive Sessions where Defendant ADC interviewed and considered the candidates for the Executive Director position, which were held on July 20, 2023

and August 8, 2023, Defendant ADC chose to conduct their interviews and consideration of the candidates for the Executive Director position in Executive Session for the following reasons:

a. Only one of the candidates for the Executive Director position was a public employee, who would have a limited expectation of privacy regarding his/her prior work history and salaries, and the rest were non-public employees who have a reasonable expectation of privacy regarding their prior work history and their salaries;

b. One of the candidates for the Executive Director position specifically requested that his/her candidacy be kept confidential because his/her current employer did not know that he/she was looking for a new job and he/she did not want his/her application for the Executive Director position to adversely affect his/her current employment;

c. In order to avoid any claims of unfairness by any of the candidates for the Executive Director position, Defendant ADC decided to conduct all interviews in private so that the candidate who requested his/her candidacy remain confidential would not appear to be singled out or treated differently than others; and

d. As Defendant ADC was conducting job interviews, and ultimately ranking the candidates, it was necessary for the candidates' prior non-government work histories, and financial requirements to be discussed and considered as part of the Executive Director search.

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

This declaration is made in lieu of an affidavit pursuant to Rule 7(g) of the Rules of the Circuit Courts of the State of Hawai'i.

DATED: Honolulu, Hawai'i, May 1, 2025.


DELANIE DEE PRESCOTT-TATE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

DECLARATION OF DAVID N.
MATSUMIYA

DECLARATION OF DAVID N. MATSUMIYA

I, DAVID N. MATSUMIYA, declare under penalty of law that the following is true and correct to the best of my knowledge, information, and belief:

1. I am an attorney licensed to practice law before all of the courts in the State of Hawai‘i.

2. I am a Deputy Attorney General for the State of Hawai‘i.

3. I am the attorney for Defendant AGRIBUSINESS DEVELOPMENT CORPORATION BOARD OF DIRECTORS (“**Defendant ADC**”), in the above-captioned action.

4. I have personal knowledge of the matters discussed herein, am competent to testify as to the matters stated herein, and I make this Declaration upon personal knowledge except and unless stated to be upon information and belief.

5. On August 17, 2022, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director.

6. Attached hereto and made a part hereof as Exhibit A are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for August 17, 2022, which have been bates numbered as ADC 000037 – ADC 000060.

7. Kyle T. Roe, the Asset Manager for Defendant ADC (“**Mr. Roe**”) has authenticated ADC 000037 – ADC 000060 as: 1) true and correct copies of the records made by Defendant ADC in the regular course of its business at or near the time of the events noted in the

document; 2) being in the care, custody, and control of Defendant ADC; and 3) being unaltered, with the exception of the redactions that were added to it.

8. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting.

9. On September 21, 2022, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director.

10. Attached hereto and made a part hereof as Exhibit B are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for September 21, 2022, which have been bates numbered as ADC 000061 – ADC 000078.

11. Mr. Roe has authenticated ADC 000061 – ADC 000078 as: 1) true and correct copies of the records made by Defendant ADC in the regular course of its business at or near the time of the events noted in the document; 2) being in the care, custody, and control of Defendant ADC; and 3) being unaltered, with the exception of the redactions that were added to it.

12. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting.

13. On November 2, 2022, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director.

14. Attached hereto and made a part hereof as Exhibit C are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for September 21, 2022, which have been bates numbered as ADC 000079 – ADC 000100.

15. Mr. Roe has authenticated ADC 000079 – ADC 000100 as: 1) true and correct copies of the records made by Defendant ADC in the regular course of its business at or near the time of the events noted in the document; 2) being in the care, custody, and control of Defendant ADC; and 3) being unaltered, with the exception of the redactions that were added to it.

16. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting.

17. On March 16, 2023, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director.

18. Attached hereto and made a part hereof as Exhibit D are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for March 16, 2023, which have been bates numbered as ADC 000101 – ADC 000120.

19. Mr. Roe has authenticated ADC 000101 – ADC 000120 as: 1) true and correct copies of the records made by Defendant ADC in the regular course of its business at or near the time of the events noted in the document; 2) being in the care, custody, and control of Defendant ADC; and 3) being unaltered, with the exception of the redactions that were added to it.

20. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting.

21. On April 20, 2023, Defendant ADC held a board meeting to discuss, among other things, the annual performance evaluation of the Executive Director.

22. Attached hereto and made a part hereof as Exhibit E are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for April 20, 2023, which have been bates numbered as ADC 000121 – ADC 000142.

23. Mr. Roe has authenticated ADC 000121 – ADC 000142 as: 1) true and correct copies of the records made by Defendant ADC in the regular course of its business at or near the time of the events noted in the document; 2) being in the care, custody, and control of Defendant ADC; and 3) being unaltered, with the exception of the redactions that were added to it.

24. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting.

25. On July 20, 2023, Defendant ADC held a board meeting to discuss, among other things, the selection of the new Executive Director.

26. Attached hereto and made a part hereof as Exhibit F are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for July 20, 2023, which have been bates numbered as ADC 000143 – ADC 000160.

27. Mr. Roe has authenticated ADC 000143 – ADC 000160 as: 1) true and correct copies of the records made by Defendant ADC in the regular course of its business at or near the time of the events noted in the document; 2) being in the care, custody, and control of Defendant ADC; and 3) being unaltered, with the exception of the redactions that were added to it.

28. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting.

29. On August 8, 2023, Defendant ADC held a board meeting to discuss, among other things, the selection of the new Executive Director.

30. Attached hereto and made a part hereof as Exhibit G are true and correct copies of the Agenda, the Regular Session Meeting Minutes, and the Executive Session Meeting Minutes for August 8, 2023, which have been bates numbered as ADC 000161 – ADC 000211.

31. Mr. Roe has authenticated ADC 000161 – ADC 000211 as: 1) true and correct copies of the records made by Defendant ADC in the regular course of its business at or near the time of the events noted in the document; 2) being in the care, custody, and control of Defendant ADC; and 3) being unaltered, with the exception of the redactions that were added to it.

32. The agenda provided the public with proper notice of the meeting and the topics to be discussed and the minutes provide a true reflection of the matters discussed at the meeting.

33. On November 3, 2023, at the request of an anonymous requester, OIP reviewed the actions taken by Defendant ADC and issued an opinion on the actions taken by Defendant ADC.

34. Attached hereto and made a part hereof as Exhibit H is a true and correct copy of OIP Opinion Letter No. F24-03 that was provided to Defendant ADC, which have been bates numbered as ADC 000001 – ADC 000036.

31. Mr. Roe has authenticated ADC 000001 – ADC 000036 as: 1) a true and correct copies of the records kept by Defendant ADC in the regular course of its business at or near the time of the events noted in the document; 2) being in the care, custody, and control of Defendant ADC; and 3) being unaltered, with the exception of the redactions that were added to it.

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

This declaration is made in lieu of an affidavit pursuant to Rule 7(g) of the Rules of the Circuit Courts of the State of Hawai‘i.

DATED: Honolulu, Hawai‘i, May 5, 2025.

/s/ David N. Matsumiya
DAVID N. MATSUMIYA

ANNE E. LOPEZ 7609
Attorney General for the State of Hawai‘i

AMANDA J. WESTON 7496
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Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, and
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

EXHIBIT A

[RE: Defendant Agribusiness Development
Corporation Board of Directors’ Motion for
Partial Summary Judgment Regarding Counts
X-XIV

HEARING:

Date: May 27, 2025

Time: 9:00 a.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: June 23, 2025

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813

Phone: (808) 586-0186 Fax: (808) 586-0189

Meeting of the ADC Board of Directors

Held via Teleconference

August 17, 2022
9:00 a.m.

Pursuant to section 92-3.5, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than 72 hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street Rm 205, Honolulu HI 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two (2) minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://zoom.us/j/95400937014>

Telephone: (669) 444-9171, Web ID: 954 0093 7014

In-Person: *at the meeting location indicated below*

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For both ICT, phone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

Upon dialing the number, you will be prompted to enter the Meeting ID which is also listed at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your phone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been

ADC 000037

notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your phone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For both ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Leiopapa A Kamehameha
State Office Tower Building
235 S. Beretania St, Room 204
Honolulu, Hawaii 96813

For both ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty (30) minutes to restore connectivity with all board members and the public in-person access noted above. In the event that audio connectivity is re-established within 30 minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within 30 minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://hdoa.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will also be posted on the website no less than twenty-four (24) hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

SPECIAL ASSISTANCE

If you require special assistance, accommodations, modifications, auxiliary aids, or services to participate in the public hearing process please contact staff at (808) 586-0186 at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: hdoa.adc@hawaii.gov. Please allow sufficient time for the Agribusiness Development Corporation to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 S. BERETANIA STREET, ROOM 205, HONOLULU, HAWAII, ON AND AFTER August 11, 2022

Agribusiness Development Corporation Non-Discrimination Statement

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected by, or oppose action prohibited by, 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation's non-discrimination programs, policies, or procedures, you may contact:

Delanie Prescott-Tate
Acting Title VI Non-Discrimination Coordinator
c/o 235 S. Beretania Street, Room 205
Honolulu, HI 96813
(808) 586-0186
dbedt.titlevi@hawaii.gov

[agenda begins on the following page]

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board of Directors Meeting, June 15, 2022

D. New Business

1. Request for Approval to Extend the Term of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mana Reservoir) Issued to Kauai Island Utility Cooperative in Kekaha, Kauai, Tax Map Keys (4) 1-2-002:001 (por.)
2. Presentation by the Board's Investigative Committee on Land Management Policy and Procedures of the Land Management Policy & Procedure Manual
3. Request for Approval to Issue a Grant of Easement to Hawaiian Electric Company, Inc. for the Installation of Electrical Service at Galbraith Small Farm Lots at Wahiawa, Oahu, Tax Map Key (1) 7-1-012:001 (por.)
4. Request for Approval to Accept the Settlement Offer from Waste Management of Hawaii Inc. for the Over-Excavation of Soil in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.) Between August 2008 and November 2019

"The Board may go into Executive Session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS."

5. Request for Approval to Amend License Agreement No. LI-KA1405 Issued to Elesther Calipjo, an Individual, for 305.43 Acres, More or Less, in Kalepa, Kauai, Tax Map Keys (4) 3-9-002:020 (por.) and (4) 3-9-002:009 (por.)
6. Request for Approval to Issue a Revocable Permit to Kekaha Agriculture Association for 1 Acre, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.)

E. Old Business

1. Annual Performance Evaluation of the Executive Director

"The Board may go into executive session, pursuant to §92-5(a)(2) HRS, to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved, and §92-5(a)(4), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities."

F. Executive Director's Update

G. Adjourn

The Board may go into Executive Session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held on August 17, 2022

Via Zoom Teleconference and In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

Approved: September 21, 2022 ADC BOD meeting

Pursuant to section 92-3.5, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha State Office Tower Building, 235 S. Beretania St., Rm. 204, Honolulu, HI 96813.

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)
Glenn Hong, Member-At-Large (Mr. Hong)
Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Karen Seddon, Member-At-Large (Ms. Seddon) exited the meeting at 10:00 a.m.
Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser) joined the meeting at 9:58 a.m.
Mr. Earl Yamamoto (designated attendee for Ms. Shimabukuro-Geiser) exited the meeting at 10:00 a.m.
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)

Member Excused:

Lloyd Haraguchi, Member-At-Large

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)
Mark Takemoto, Senior Executive Assistant (Mr. Takemoto)
Lance Tashima, Administrative Services Officer
Lynette Marushige, Executive Secretary
Mr. Stephen Dalton, IT Specialist (Mr. Dalton)

Guests Present, virtually:

Beth Tokioka, KIUC
Brad Rockwell
David Bissell, KIUC (Mr. Bissell)
Dawn Huff
Mike Faye, KAA (Mr. Faye)
“Public Testifier”
Scott E
“T”

Guests Present, physical location:

None.

A. Call to Order

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Approved: September 21, 2022
ADC BOD meeting

Chair called the meeting to order at 9:03 a.m.

B. Roll Call

Chair conducted a roll call of the board. Chair called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Ms. Evans, Mr. Hong, Mr. Manuel, Ms. Seddon, Mr. Yamamoto on behalf of Ms. Shimabukuro-Geiser, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present. Ms. Shimabukuro-Geiser joined the meeting at 9:58 a.m. Ms. Seddon and Mr. Yamamoto exited the meeting at 10:00 a.m.

C. Approval of Minutes – Board of Directors Meeting on June 15, 2022

Chair called for a motion to approve. Motion to Approve: Mr. Watanabe; Second: Mr. Tabata

Chair asked if there was anything from the staff. There was none.

Chair asked if there was any comment from the public. There was none.

Chair asked for any board discussion.

Mr. Manuel asked to be excused from voting since he was not present at the June 15th meeting.

Chair asked if there was any objections to accepting the minutes. Hearing none, the motion was approved.

Vote: Approved 7-0 (Mr. Manuel excused)

D. New Business

1. Request for Approval to Extend the Term of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mānā Reservoir) Issued to Kauai Island Utility Cooperative in Kekaha, Kauai, Tax Map Keys (4) 1-2-002:001 (por.)

Chair called for a motion to approve. Motion to Approve: Ms. Evans; Seconded: Mr. Hong

Chair asked for presentation by Staff. Mr. Roe stood on his submittal and was available for questions.

Chair asked if there was any public testimony. Mr. Nakamoto said that Mr. Bissell had his hand raised.

Mr. Bissell stated his name and that he was from the Kauai Island Utility Cooperative (KIUC). He said KIUC had requested an extension of two of their license agreements. Originally KIUC asked for a six-month extension, and they appreciate staff’s recommendation to approve the extension although the staff recommended four months. KIUC put in for a six-month extension to work on the new lease agreement with ADC staff as there were some issues that need to be resolved. More importantly, was to give the environmental assessment (EA) process time to work its way through, where they could have an EA or FONSI (finding of no significant impact) in place and be able to execute lease agreements within six-months. They’re trying to be respectful of the board’s time and hopefully not have to come

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ADC BOD meeting

back for another extension. They appreciate the four-months but wanted to explain the six-month request. He's available for any questions.

Chair asked if there was any discussion from the board members.

Mr. Tabata asked staff why they limited the extension to four months versus the requested six.

Mr. Roe responded that ADC has been holding the reservoir in abeyance for KIUC. ADC has been paying the dam safety fees and being responsible for the area. Staff would like KIUC to begin to take over maintenance and cover some of those fees, sooner rather than later.

Mr. Bissell said KIUC was certainly willing to handle their responsibilities and pay some of the fees. It's the environmental side that's running slower than they had hoped. The revised EA will be submitted for public comment in September and hopefully they will go before the Land Board before the end of the year. It's going to be tight on a four-month extension.

Mr. Manuel asked Mr. Roe what was the amount of the dam fee ADC was paying?

Mr. Roe thought it was approximately \$2300-\$2700 annually.

Chair asked what was the maintenance cost for the reservoir?

Mr. Roe said there was mowing, access roads to be kept up, and he believed there was some maintenance to the slope and other areas. Mānā is not operational but it's still registered and so there's maintenance things that dam safety would like them to accomplish. ADC would like to see these existing maintenance things taken over now.

Mr. Manuel said he's trying to understand KIUC's request for an extra two months. It's an extra \$450 to give them that two-month extension, at our cost. It seems reasonable considering how long the environmental review process takes. He understands what staff's saying but is there a way to give KIUC the extra two-months, so they don't have to come back to the board for an extension. Is there some way to recoup those costs or build in a back stop so ADC's not paying beyond that six-month period and transfer those fees to KIUC after that period, something like that?

Chair asked Mr. Bissell if KIUC was willing to take over the maintenance and other fees during this period.

Mr. Bissell said he thinks they would certainly be willing to incur the fees, either now or on a retroactive basis. It's taking over legal responsibility that they're concerned with. Those are things they have to work through, the actual liability side. The financial side they would be willing to make whole after the fact or take them on now on some type of stand-alone basis for those amounts.

Mr. Tabata asked if this conversation was ever had with KIUC before we sent the letter back saying only four months. If this was an issue and Mr. Bissell was amicable to pay retroactively, he sees no reason not to extend to the six months they are requesting.

Ms. Evans said she would accept a friendly amendment to amend the floor action from four to six months if the second was willing to do that.

Mr. Nakatani said this has been dragging on a long time. Yes, the conversation has been ongoing. They have spoken to the consultants, and it still lingers. It's almost to a point where fish or cut bait. It might not be a big thing for bigger agencies but for ADC, maintenance around the dam and everything else like that. If they want to take it over, take it over but the thing is you can't have your cake and eat it too.

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This was just a signal to light the fire under them. He doesn't have a problem with the six-month extension, but they have not been very proactive.

Chair asked if he would be opposed to an amendment to the motion.

Mr. Nakatani said he would not be opposed to the six months. This has been dragging on a long time. It is money from ADC and Kekaha Agriculture Association (KAA). Six months is fine, so they don't have to come back but make it clear that they have to move on this project.

Mr. Tabata said he seconds the amendment.

Chair asked Ms. Evans if she would rephrase her amendment.

Ms. Evans said as the maker of the motion she amends the motion from four months to six months with a suggestion to KIUC to try to complete all the due diligence, which she understands does take time, within that six-month period. She asked if Mr. Hong was the person who seconded the motion.

Mr. Hong responded yes he was. With what KIUC indicated about the willingness to discuss fee reimbursement, he would add that to the amendment. So, if Ms. Evans is willing to do that, he would second it.

Ms. Evans agreed.

Chair said that was the amended motion. Chair asked if there was any further discussion.

Mr. Manuel said he noticed that on the cover page it says that this item was subject to the ceded land 30% revenue. Has ADC contacted the Office of Hawaiian Affairs (OHA) or Department of Hawaiian Home Lands (DHHL) prior to bringing this to the board; if they were notified that there was action to be taken on this or if there is a process?

Mr. Roe said, we have not and there was none.

Mr. Manuel said maybe between now and the shift from a Revocable Permit (RP) to a license that the consultation happens to ensure that those entitlements are protected. He recommends that staff engage those two entities before bringing a formal license for a longer term. He just wants it noted on the record.

Chair thanked Mr. Manuel and asked Mr. Bissell if he had any comments.

Mr. Bissell said he appreciates the consideration and the help that staff has given on this amendment.

Chair asked if there was any other discussion. Hearing none, he called for the vote.

Ms. Prescott-Tate interjected that the board must have two votes; one to approve the amendment and then one to approve the amended motion.

Chair asked if there were any objections to amending the original motion as restated by Ms. Evans? Hearing none, the motion was approved. Vote: 8-0

Chair then called for a vote on the motion as amended. Hearing none, the motion was approved. Vote: 8-0.

2. Presentation by the Board's Investigative Committee on Land Management Policy and Procedures of the Land Management Policy & Procedure Manual

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ADC BOD meeting

Chair called on Ms. Evans who chaired the committee for the report.

Ms. Evans said in November 2021, the board created a permitted interaction group (PIG) to investigate the development of a policies and procedures manual pursuant to a recommendation of the state auditor and an endorsement of that recommendation by the House Investigative Committee. The committee has met frequently with the wonderful support of the staff and has created a draft policies and procedures manual for your consideration. This is the second meeting of the three-meeting rule for the PIG process. The draft manual is not up for deliberation and vote at this meeting. This is just a presentation. The committee comprised of herself, Mr. Hong, Chair, Ms. Seddon and the staff, especially Mr. Roe, welcomes any questions you may have. The draft manual was part of the meeting packet and available to the public as well, so she turned the meeting back over to the Chair.

Chair asked if there was anyone from the public that wished to give testimony. There was none.

Chair asked if there was any discussion by the board.

Mr. Manuel stated that if they were not deliberating on this at all, if they have comments should he send them to the committee and/or staff.

Ms. Evans said he can address them to the committee, but should they be substantive and result in changes then the committee will work with staff on it.

Mr. Manuel also wanted to make sure that the correspondence to the committee was not in violation of the Sunshine Law because now it's four members and not three. That was why he asked whether he should just send it to staff versus the committee.

Ms. Evans asked Mr. Manuel what's his math on that. Based on eleven members.

Mr. Manuel laughed and said he was basing it on his own commission with seven members. The question was then, can that communication happen beyond the PIG members?

Ms. Evans said they are turning over the draft to the full board at this meeting so he can address his comments to the full board.

Ms. Evans clarified this discussion was for questions and comments but not for deliberation.

Ms. Prescott-Tate acknowledged that was correct.

Mr. Manuel said he has a lot of comments. In reviewing the document, thank you, great work. It's nice to see the logic and the multiple conversations they've had throughout at least his tenure on the board, represented in a comprehensive kind of document so kudos to the committee. He's wondering how many of these policies/procedures should be promulgated as rules and not procedure and policy. Some of them actually read like administrative rules, which most state agencies are required to promulgate. He throws that out there as a general comment to the committee and the board and maybe the attorney general (AG) for guidance. That's really to protect them as board members in decision making, policy versus rule, that dilemma. All boards and commissions deal with this, but he just wondered if that was part of the discussion.

Chair said that was part of the discussion but will leave the explanation to Ms. Evans.

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Ms. Evans said her personal view was that the Legislature created ADC as a quasi-public corporation for a distinct purpose and that was to give the corporation the ability to operate in a business environment. That requires flexibility, nimbleness and the clear attention of the board to changes in that business environment, changes in everything about agriculture. We're watching changes to the climate, changes to market demand, changes to cost for farmers. She believed that policies and procedures for a quasi-public corporation are the right way to go, because it will allow the board to make changes as conditions change much more quickly. Mr. Manuel and I are familiar with rules. They are a good tool for stable programs where conditions don't change quickly because they're based on a statute; mandated programs that are very stable. The legislature made the right call when they created ADC as a quasi-public corporation rather than a division or department.

Mr. Manuel said he appreciates that sentiment, and the flexibility as a quasi-public corporation. Rules are generally a process to provide due process and notification to public not necessarily ease of access as an agency or corporation. That's his question to the AG, is this policies and procedures and the ability for those to be changed at any board meeting, sufficient notice for due process purposes. He just wanted to have this discussion publicly with the board if they're making this decision and then similarly as a quasi-public corporation he reflects on HCDA, which has similar powers and authorities, but they still have rules. He just wanted to strike the balance between if there's some of this that should be rule and then some can stay nimble and flexible as an agency. He just throws that out there for the body to think through. That was his first comment of twelve.

Chair asked Mr. Manuel that as we goes through this process, please notice that a lot of the line items have justification and require approval by the ADC board. The committee was trying to ensure that matters will always come back to the board for a final decision.

Mr. Manuel continued with his list, so hopefully deliberations can go quickly next month. He asked if the definitions were new or consistent with the existing statutes, or were created specifically for this policy and procedure manual, like tenant, lease, license, etc. are those consistent?

Mr. Roe responded that the definitions were created for this document.

Mr. Manuel said something to consider just for consistency with other State agencies, to use the terms that other agencies use versus creating our own. Maybe that is something the AG can help advise on. He said other agencies have similar definitions that have been vetted at the State level versus ADC creating its own definitions. This will protect the board from any discrepancy. Another question he has is the decision to have different procedures for the different lands, Galbraith lands, Kekaha lands and Kalepa lands. What was the logic behind having a place-based procedure? Galbraith has procedures A through M, and Kekaha and Kalepa have A through H. Why are procedures in Galbraith not included in Kalepa and Kekaha? Why aren't they consistent across the board?

Ms. Evans stated there was considerable discussion on that. It goes back to how the lands were acquired by ADC. Some came over with different legacy procedures and they all have different characteristics. The committee did talk about it and decided it made sense to have a different set of procedures.

Mr. Manuel asked if they could add a footnote explaining the logic because it looks awkward that one has more conditions. For example, he would wonder why Galbraith had all these extra steps that Kalepa and Kekaha don't. Next on my list is there seems to be duplicative language related to the phase one EA. Was that intentional to cover it in different places. For example, section 5.1, 6.3 and 7.2 are duplicative. Why are they in each of those sections instead of referencing a prior section?

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Chair said that would be a question for Ms. Prescott-Tate.

Ms. Prescott-Tate said they were addressing different situations, but sure the later sections could be changed to reference the first section.

Mr. Manuel said when he's reading through it logically he thinks, didn't I read this in a prior section?

Ms. Prescott-Tate said yes, the format was already established when the document was given to her, so she just plugged it in that format.

Mr. Manuel remarked that the document could be shortened by five-pages if they just referenced the prior section.

Ms. Evans said the committee discussed that and thought duplication actually led to clarity. Somebody reading the document wouldn't have to flip back to an earlier section to get a complete picture. They didn't want staff or a licensee to have to flip back and forth to understand what had to be complied with.

Mr. Manuel said ok, he gets that. The next question is on rent credit. It recommends up to twenty-year discount. Giving people opportunities to get rent credits for up to twenty years on a thirty-five-year license is super generous. We're here to support agriculture and ag corporations, but ADC also has to operate, maintain and manage the corpus of the corporation. Is there a desire to limit the credit amount by a percentage of the base fees or is this actually best practice in the industry? Was this part of the discussion?

Ms. Evans stated they did debate this, quite a while. As a public corporation ADC doesn't always get CIP improvements for improvements to lands they have purchased. Sometimes ADC must depend on their licensees to do improvements on ADC lands, and these needed improvements can be substantial. Improvements may need to be more than say, what the Department of Agriculture does for their agriculture parks. The Hawaii Department of Agriculture (HDOA) puts in all the improvements, including the common areas. Since each new license will come before the board, the board will have an opportunity to know the condition of the land and what is a reasonable incentive for improving our lands to the point where the licensee can be profitable. There are guardrails on the board's ability to say it's up to twenty years, but it's not an entitlement.

Mr. Manuel said he appreciates that. In reflecting on some of the conversations they've had about somebody asking for a credit to put in a fence when that's actually part of their business and should be provided by the tenant. Should there be more explicit criteria within the manual and not just make it a case-by-case decision. That's just a comment. The next question has to do with the option to extend for an additional thirty-five years. If the base term is thirty-five years, that takes us up to a seventy-year total license term. Is it just doubling the number as the justification or logic? For example, other state agency general leases have terms of sixty-five year maximum. What's the logic behind the thirty-five-year license extension?

Ms. Evans said she can share what she recalls, and other members can share their recollections. ADC is focused on commercial farming. We expect the licensees to put in substantial infrastructure in order to be profitable. Licensees don't have the same viewpoint that HDOA has on its Ag-park leases. HDOA subsidize the improvements up front and then turn over those leases to allow new farmers to come in and get started with lower start-up costs. We want to see that successful, profitable licensees can benefit

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from their investment in the space and continue to be profitable and add food and export to our agriculture cluster.

Chair asked Ms. Seddon to comment on Mr. Manuel's question about the policy of issuing base period licenses for thirty-five years, and a thirty-five-year extension. Is that standard practice in industry? As Ms. Evans was saying, if we're trying to support profit of our farmers why not have a larger base term, if we're just going to allow a thirty-five-year extension. He's just trying to understand the logic behind the term periods. What was the discussion of this committee in coming up with those numbers?

Ms. Seddon responded that a lot of it came down to control. The committee had lots of discussion and she sort of started out where Mr. Manuel is on some of this stuff. But, when you start looking at having to put the large infrastructure and the other things that they're talking about, it sort of turned into how do we support them to be able to do this? The timing turned out to be rather than start with a big base, let's make sure they're doing a good job. If we find something wrong it's easier to stop it at thirty-five years than at seventy-five years.

Mr. Hong said their objective was to find those farmers that can be successful at scale because of the size of the acreage ADC is doing. If someone has a continuous track record of success over the initial thirty-five years we really, really want to keep that going. So, we wanted to say, if you have in fact been successful we want to offer you the incentive of continuing your business for an extended period of time. Obviously as you approach the second half of the initial lease term, and we have a farmer that has not been delivering on what we think the potential is, then we evaluate that and determine that maybe we don't give them the extension, or maybe if they're in violation of any of the terms, we need to look at termination. But the ones that are successful, you want them to continue to be successful. So that's kind of their thinking.

Mr. Manuel said he knows they put a lot of time in those meetings; he just wanted to dabble in their logic and conversations. He continued, in supporting licensees that do good, paragraph 4.6 in the document, reads, in his opinion, reads like they're rewarding bad behavior by allowing an extension renewal after expiration. Why was that clause put in because there is a clear renewal process? You are notified, you have ample time within that time period if you want to extend, let us know in writing. The procedure is clear. Then we have a caveat at the end, which kind of gives people a way out. They can say oh sorry I didn't get to it, my license expired but can I renew it. What was the logic behind that after laying out a clear procedure for license renewals?

Ms. Evans said she thinks it was based on the staff's experience in working with the licensees that occasionally, and this would be the exception rather than the rule, that a good farmer may not have office staff that keeps track of all of the paperwork. So, they wanted to allow for the very rare and occasional exception, where you have a good farmer, who occasionally will let the expiration date get past them. But it all comes back to the board.

Mr. Manuel said yes, he can see that. He's almost done. Annual reporting requirements. He's been asking for every license, have a way to track percentage or poundage of crops produced for local consumption because that's been a big state metric that no one is measuring. Could we add that to paragraph 9.1? That would be his recommendation and we can deliberate it next month. It just talks about the crops, types of crops and what's produced. But the local consumption or for local production is a key metric the state is looking at. What does ADC contribute? He'd love to see that added to the policy document as an annual reporting metric.

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Chair said licensees are to submit crops and production and quantity of crops produced data in aggregate. What are you asking?

Mr. Manuel said, of the total quantity produced, what is the percentage of that quantity that stays in local market versus exported. He doesn't know if that's an important metric for ADC but it's an important metric for the State. How do we support growing our own food here in Hawaii versus importing that food? The State doesn't have a handle on what that number is and how are we as a corporation contributing to that metric.

Chair said he thinks as the Wahiawa food hub begins to grow that would be an important consideration.

Mr. Nakatani said we just want to be careful on collecting stats on crops and value, there's confidential business information considerations if only one person is growing or limited people are growing stuff like that, we could run into problems. Maybe leave it to HDOA who knows what they're doing. We can always say, turn over the farm information to them. He doesn't feel it's very useful when it comes from an agency. It's more holistic for the state rather than just for ADC. You have to be very careful when you collect stats on crops, especially if there's a limited amount. That's just his comment.

Chair said he's been a proponent of collecting this data because it's really hard to work in agriculture without this sort of information. Maybe Mr. Yamamoto has a comment on this data collection.

Mr. Yamamoto clarified that he was attending for Ms. Shimabukuro-Geiser, but in his personal opinion, data is always good, he's always looking for it. As for what Mr. Nakatani was speaking on regarding non-disclosure in order to protect an individual or a small group of individual producers, that is a requirement in federal publications. If there's a way to get around that or to minimize the threat of disclosure, he can't think like that, he's not a statistician.

Mr. Manuel said he hears what Mr. Yamamoto and Mr. Nakatani are saying but ADC has built in the caveat for proprietary information by aggregating crops produced. So, in the aggregate even if he said 10% of his 100 million pounds of whatever he grew stays in the local economy, what proprietary information is being revealed by sharing that percentage of total aggregate.

Mr. Yamamoto said, that's a way to get around it.

Mr. Manuel said to him, that is not proprietary in any way, shape or form. In his opinion he doesn't know what would be proprietary in that context. His specific recommendation would be asking for annual reporting of crops produced and then the percentage of those crops produced for local consumption. Then you can do math by saying if it's not locally consumed it's exported right? We just need to ask for that dataset. It would help HDOA. Like Mr. Yamamoto said, he's been looking for that data; no one is tracking that data or asking for it. Even a small corporation like ADC, we can say based on our tenants, our producers are contributing this amount, this percentage to the local economy and local consumption. That's a dataset that we can use, to uplift ADC and the things that we're doing here as a corporation.

Chair said he agrees, but to Mr. Nakatani's point should this remain with HDOA? We're monitoring our tenants but we're a very small portion of all of agriculture in Hawaii. Should HDOA be taking care of this, even for our guys?

Mr. Manuel said the Department of Business, Economic Development, and Tourism (DBEDT) is a statistician house for the State. It collects economic development and tourist data and aggregates that,

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protects confidentiality, protects proprietary information but does do statistical analysis of the economic drivers in the state. So, maybe when we shift over to DBEDT as a board or as an agency that's something that DBEDT can help ADC collect information on. He's been pretty consistent on it throughout his tenure on the ADC board. He didn't see it in the manual so he just wanted to elevate that as something they should think about.

Chair asked if Mr. Yamamoto had any final comments.

Mr. Yamamoto said he agrees with Mr. Manuel's thoughts, that's just him. But again, HDOA always get questions about what the farmers are doing or what HDOA's lessees in the agriculture park/non-agriculture park programs are producing, and he can't promise this, but he'll try to look into what HDOA's requirements are in terms of their annual or whatever period of time, the reporting by their land management programs to see if they even gather that information and, he'll pass it on to Ms. Shimabukuro-Geiser to apprise the board.

Chair thanked Mr. Yamamoto and asked that he please share it with ADC if there's something, they're very curious.

Mr. Manuel said he has four more things. He didn't see in the core license conditions if it needs to be clear there is no living or residing on premise. He knows ADC doesn't allow it and he wanted to know if it needs to be explicitly set out in this document or was that part of the discussion.

Chair asked if Ms. Evans had any response.

Ms. Evans said she'll refer it to Mr. Roe or Mr. Nakatani.

Mr. Nakatani said for all of the new farm developments, they don't plan for any kind of housing because that costs a lot of money to bring in fire suppression, potable water, sewer, etc. If there's any kind of housing on ADC property it's usually inherited like the purchase in Whitmore that has two houses on. But aside from that, we don't normally plan for any kind of housing or things like that. Housing presents a different type of problem. The priority for ADC is agriculture. For housing, in the Whitmore project, for agricultural farmers or workers, that's a separate issue but ADC wouldn't put the housing necessarily on the farmlands. He's not really keen on that and that's ADC's position so far.

Chair said he thinks what Mr. Manuel is saying is that it should be somewhere in the manual.

Mr. Manuel said yes, added as a general policy of this body that they want to preserve ag lands for agricultural production. He didn't see that in the policy.

Chair said he doesn't think that was discussed.

Mr. Manuel said, towards the end of the document it talks about entitlements. When he asked Mr. Roe earlier about if it could be added when entitlements are obligated to DHHL under OHA that there is some kind of consultation, notification to those entities prior to board decision making. At least when the board is making a decision they know the DHHL/OHA beneficiaries were talked to and notified and their entitlements are protected. He shared this as a practice for the DLNR board, that a similar outreach, so a draft submittal sent to the agency for review to work things out before it's brought to the body for decision making. It just helps with coordination amongst agencies, but he just throws that out for a potential added process/procedure that they build in.

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Ms. Evans said because the legislature passes laws from time to time that set a cap on the 20% revenue entitlements for non-sovereign revenue by state agencies using ceded lands she thought the appropriate language was as directed by Budget & Finance that carries out the legislature's mandate. They didn't put that in for the DHHL 30% former sugar lands entitlement so a consultation might be a good step to have.

Mr. Manuel said he hears what you're saying about OHA and the legislature's approval of that, but ADC pays directly to DHHL so maybe that would be good to consult with DHHL because the legislature doesn't have oversight on that process. If that could be added under the entitlement section that would be a good amendment. Similarly, is there a way in this policies and procedures manual to get an annual financial report to the board like how much revenue did ADC make this year. Revenues versus expenditures. How much was paid to DHHL, OHA etc. or maybe just DHHL because that comes out of our expenses. Is that part of or was that part of the discussion in this group?

Ms. Evans thought the statute had an annual report requirement.

Mr. Manuel said that's to the legislature correct, not to the board. He's just wondering if the board as a decision-making body could get a financial update on where we're standing; are we in the red are we in the black, did we do better this year? Since he's been here he hasn't seen that. It's a corporation, understanding their financial situation would be beneficial and an annual report would be minimal.

Ms. Evans said her personal view, which was not discussed with the committee, but these policies and procedures are pursuant to a recommendation to have written policies on land acquisition, land disposition, land management, and document management. They didn't try to throw in everything but the kitchen sink. They took direction from the house investigative committee. It doesn't cover everything. It covers those areas where there weren't sufficient written policies.

Mr. Hong said Ms. Evans is correct. But as a board matter he agrees with Mr. Manuel entirely.

Mr. Manuel said he appreciates the feedback. If that was the function of the manual, then maybe the financial report doesn't need to be captured here. Maybe this is something the board can consider in future, just best practices, like every December or end of fiscal year just report back to the board on where we're at. That's helpful. And finally, when they have licenses that come for amendments and renewals but a policy that says, bring the license up to current license standards. For example, if you built a house back in the 60's but you try to build a house today, you are required to bring everything up to compliance in order to meet all of the best environmental, public health and safety requirements as possible. So he's just thinking as licenses are renewed and are amended either staff or the board, they adopt the latest standards of their license document versus using a document that is outdated, that is missing components that this policy committee has agreed should be the minimum requirements in the license. He wants to make it explicit that every touch of this body should be an opportunity to bring the license into current standing. Just out of good practice so there's parity amongst licensees that we're not treating someone differently in our review. That's it, he's officially done with his comments, and he thanked the policy committee.

Chair said he thinks it's good and they'll address that prior to the next board meeting. This submittal was just for informational purposes.

Ms. Shimabukuro-Geiser advised the Chair that she joined the meeting at 9:58 a.m.

Ms. Seddon and Mr. Yamamoto were excused at 10:00 a.m.

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Chair called for a ten-minute recess at 10:03 a.m.

Chair called the meeting back to order at 10:11 a.m.

3. Request for Approval to Issue a Grant of Easement to Hawaiian Electric Company, Inc. for the Installation of Electrical Service at Galbraith Small Farm Lots at Wahiawa, Oahu, Tax Map Key (1) 7-1-012:001 (por.)

Chair called for a motion to approve. Motion to Approve: Mr. Watanabe; Second: Mr. Tabata

Chair asked for presentation by Staff. Mr. Roe stood on his submittal and was available for questions.

Chair asked if there was anyone from the public who wished to present testimony. There was none.

Chair asked for board discussion.

Mr. Manuel noted this submittal was missing compliance with HRS chapter 343, which was on the KIUC submittal. He's assuming this isn't exempt from an EA, but he wants to make sure that it's on the record in some way, shape or form, formally.

Chair asked if Ms. Prescott-Tate could respond.

Ms. Prescott-Tate said it's a good idea for it to be added on to the submittals. This is for a very small piece of property, it's .115 acres, so it's like the corner of the property so she didn't believe there needs to be an EA for that.

Mr. Manuel said he appreciates that but that's not the trigger. He just wanted to be very clear, as a board member that the prior submittal had an HRS chapter 343 compliance reference, and the remaining ones don't. He just wanted to make sure that it's in their authority to grant this and no EA was required.

Ms. Prescott-Tate said in the future they can add a check box to the submittal.

Mr. Manuel asked if there could also be a notation for whether the exemption was under part 1 or part 2. That would be great. He had no objection. He just wanted to make sure that for our records we're making an explicit decision on that.

Chair had a question for Mr. Roe. Ho farms is not using the greenhouse as far as he knows, do we know what's going on, is it because they don't have electricity?

Mr. Roe said that he thought there were some plantings, but he can double-check. He hasn't been there to look into the greenhouse recently.

Chair said when he goes by he always looks and sees about six feet of California grass there. It's a huge greenhouse to be sitting there. He was wondering if it's because they can't open and close the curtains because they don't have electricity.

Mr. Roe said he doesn't know the answer to that.

Chair asked if there was any other discussion? Hearing none, he called for the vote.

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Motion approved. Vote: 7-0

4. Request for Approval to Accept the Settlement Offer from Waste Management of Hawaii Inc. for the Over-Excavation of Soil in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.) Between August 2008 and November 2019

Chair Lau asked Ms. Prescott-Tate if we should move to Executive Session.

Ms. Prescott-Tate suggested this matter be moved to the end of the agenda so they can consolidate the two matters that need to be discussed in Executive Session. We'll take Item number 4 out of order and move on to item number 5.

5. Request for Approval to Amend License Agreement No. LI-KA1405 Issued to Elesther Calipjo, an individual, for 305.43 Acres, More or Less, in Kalepa, Kauai, Tax Map Keys (4) 3-9-002:020 (por.) and (4) 3-9-002:009 (por.)

Chair called for a motion to approve. Motion to approve: Mr. Tabata; Second by Ms. Shimabukuro-Geiser

Chair asked for staff presentation. Mr. Roe stood on his submittal and was available for questions.

Chair asked if there was anyone from the public who wished to provide testimony. There was none.

Chair asked for board discussion.

Ms. Shimabukuro-Geiser said she just had a question for Mr. Roc. On the first page it says rental rate, annual rent is \$9,781.58 and in Exhibit C on the last page, page 2, at the very top it says lease rent and insurance \$2,500.00. That's in the Preliminary Plan of Utilization and Development. Is the rent in the utilization plan outdated or was there an adjustment made to the rent?

Mr. Roe said the utilization plan was developed by the farmer at the start of the license, and there may have been subsequent rent increases following submission of his utilization plan. The rent listed on page 1 of the submittal is what is currently charged.

Ms. Shimabukuro-Geiser asked shouldn't the utilization plan be updated to reflect the correct rent and insurance cost? Is it just something they submit when they apply?

Mr. Roe said yes. There are escalators built into the license and the rents change.

Mr. Manuel asked if this tenant was in good standing, are they farming, are they paying all their dues to Kalepa-Koalition? What's the status of this tenant on our property?

Mr. Roc responded that the tenant is current with ADC. They are current with their dues to Kalepa-Koalition. There is an on-going dispute that he believes is being resolved with Kalepa Coalition about whether or not Mr. Calipjo owes or should be responsible for special assessments for the road since the common element road does not run through his property. That's an ongoing question with Kalepa Coalition. They have not resolved it yet, but Mr. Calipjo has indicated that regardless of which way Kalepa Coalition membership votes on that, or how the issue shakes out, he's willing to resolve it. He just wants them to address his concern.

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Mr. Manuel asked if staff did a site visit to make sure the lands are being used as stated in the license, and it's in production.

Mr. Nakatani said that Mr. Calipjo is very outstanding and has a very nice pasture and he's one of the few tenants that has helped ADC with the water crisis and everything. He's been very cooperative and we're lucky to have a tenant like that.

Mr. Manuel said that's good to hear. He just wanted to double-check, even though this is kind of an administrative matter, it's great to hear success stories of our tenants, so thank you. One comment again, because of the 30%, hopefully our policies and procedures can get updated to do some kind of consultation with DHHL. He's assuming we didn't notify DHHL based on the staff's prior comments.

Chair asked if there was any other discussion or objections. Hearing none, he called for the vote.

Motion Approved. Vote: 7-0

6. Request for Approval to Issue a Revocable Permit to Kekaha Agriculture Association for 1 acre, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.)

Chair called for a motion to approve. Motion to approve: Mr. Tabata, Second: Mr. Manuel

Chair asked for staff presentation. Mr. Roe stood on his submittal and was available for questions.

Chair asked if there was anyone from the public who wished to provide testimony. There was none.

Chair asked for board discussion.

Ms. Shimabukuro-Geiser asked if this is a request to approve a RP for one-acre plus or minus; so, is the rental rate on the submittal correct? It says the annual rent of \$1,800. If it's only one acre shouldn't it be \$150.00?

Chair asked Mr. Roe if it's \$150 per acre, per year.

Mr. Manuel asked or was it per month?

Mr. Roe said he needs to consult with Mr. Nakatani on that. Typically, ADC's rental rates in Kalepa are \$150 per acre per year. So, he needs to consult on that, he thinks it's a typo.

Mr. Nakatani said it's \$150 per acre per year.

Mr. Roe said that's a typo on his part and apologized.

Chair asked if the motion should be amended.

Ms. Shimabukuro-Geiser said she thinks it should be amended because the motion was made including an annual rent of \$1800.

Chair asked Mr. Manuel if he had something to say.

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Mr. Manuel said similar to that, the map on the back shows 1.5 acres. Is it one acre more or less or is it 1.5 acres? If you do the 1.5, obviously it would change the fee amount. He can see that being an issue if it's \$150 per acre, per month that's a difference of \$900, that ½ acre. That clarity in the amendment would be helpful.

Mr. Roe clarified that the acreage is 1 acre. It's adjacent to the carpenter shop area that is currently licensed to Andros. The map on page 257 comes from the Andros license. Maybe that should be struck. But the location identified on page 258 is the acreage. It mapped out to one acre exactly.

Mr. Manuel said so the box on page 257 that says 1.5 is not accurate.

Mr. Roe said that is correct; that refers to the Andros property. He apologized and said he should have caught that.

Mr. Manuel thanked Mr. Roe for the clarification.

Chair asked if Mr. Tabata would amend his motion.

Mr. Manuel said he can make the amendment as the second to Mr. Tabata's motion. Mr. Manuel asked Mr. Tabata if he was open to amending the motion to approve the annual rent to \$150 per year.

Mr. Tabata said yes.

Chair asked if there was any further discussion. Hearing none, he asked if there were any objections to amending the motion. Hearing none, the motion to amend was approved. Vote: 7-0

Chair then asked if there were any objections to approving the motion as amended. Hearing no objections, the amended motion was approved. Vote: 7-0

Chair asked for a motion to go into executive session. Motion: Ms. Shimabukuro-Geiser, Second Mr. Manuel

Motion approved. Vote: 7-0

Board entered executive session at 10:27 a.m.

Chair called the regular board meeting back to order at 11:20 a.m.

Chair recalled Item D. 4.

D. 4. Request for Approval to Accept the Settlement Offer from Waste Management of Hawaii Inc. for the Over-Excavation of Soil in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.) Between August 2008 and November 2019

Chair called for a motion to approve. Motion to approve: Ms. Evans, Seconded: Mr. Watanabe

There was no staff presentation.

Chair asked if there was anyone from the public who wished to provide testimony. There was none.

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Chair asked the board if there were any further discussion. Hearing none, he called for the vote.

Motion approved. Vote: 7-0

E. Old Business

1. Annual Performance Evaluation of the Executive Director

Chair stated that the board has been presented with an oral report on the Annual Performance Evaluation of the Executive Director and the vote will be taken up at the next meeting.

F. Executive Director's Update

Mr. Nakatani stated that the board was provided with his written update. Briefly, KAA received a \$1.9 million grant for the REPI program KAA had previously spoken to the board about. Hopefully that will help with flooding and cleaning up some of the water.

ADC started a REPI program for Wahiawa and they were starting the talk with the military, it's a Navy facility in Wahiawa.

ADC's transition to DBEDT continues. There were a couple of bumps with the transactions but overall, the move was happening. DBEDT has a different system. We're adapting to it. It's a good system, it's a tracking system they use because they have so many attached agencies. Mr. Nakatani thanked Ms. Shimabukuro-Geiser, Mr. Dalton and Mr. Jason Azus-Richardson for assisting ADC with the I.T. One last thing he wanted to introduce Mr. Takemoto; the new Myra.

Mr. Takemoto said it's nice being here. He has primarily an ag background. He came from Dole, prior to that he was with Pioneer HiBred, and also with Dole and Castle and Cook before. He started in ag in 1981 or so - worked in extension so he's done all kinds of different agriculture. He's looking forward to being a part of this organization and moving agriculture forward.

Chair asked the board if there was anything else.

Ms. Evans asked Mr. Nakatani if the term "open floodable space" was a detention basin or a retention basin; she's not familiar with that term.

Mr. Nakatani responded, he's not sure what it is but he thinks it's to help with the flooding and keep sediment out of the ocean. He doesn't think it's a substitute for the discharge right now, but he thinks when they have inclement weather and flooding it's supposed to help. It's a good thing.

Ms. Evans asked if the scope of work for the \$1.9 million grant was a typical plan, design, construction project?

Mr. Nakatani said he doesn't know that. He can have KAA send us more information when they start the project. They made several presentations on this before and he understands the concept, but he doesn't know about the construction and everything else. But kudos to them for getting the funds. We're not sacrificing much of our agricultural lands because those are the lands that get flooded anyway.

Ms. Evans said if Mr. Faye was able to make an informational presentation at some future meeting.

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Mr. Nakatani said he'll make that request to Mr. Faye, and he can provide an update on the plans.

Chair stated that if any of the members had questions, he has a meeting with KAA at the end of the month so just forward the questions and he'll make sure he gets an understanding. We should have them here for a presentation.

Chair asked if there were any other questions or comments. Hearing none the Chair moved to the next item.

L. Adjourn

Chair called for a motion to adjourn. Motion to approve: Mr. Manuel, Second: Ms. Evans

Chair asked if there was any further discussion. Hearing none, Chair called for the vote.

Motion approved. Vote: 7-0

Meeting adjourned at 11:39 a.m.

Respectfully Submitted,

Lynette Marushige

Lynette H. Marushige
Secretary

EXECUTIVE SESSION

August 17, 2022, ADC Board of Directors Meeting

Members Present, virtually for the Executive Session:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)

Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)

Glenn Hong, Member-At-Large (Mr. Hong)

Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)

Lyle Tabata, Kauai County Member (Mr. Tabata)

Warren Watanabe, Member-At-Large (Mr. Watanabe)

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)

Not Present:

Lloyd Haraguchi, Member-At-Large

Karen Seddon, Member-At-Large, (Ms. Seddon) exited the Board meeting at 10 A.M. (Before leaving the meeting Ms. Seddon informed the Board members that she did not participate in the Executive Director's interview, but did participate in the employee interviews.)

Counsel Present, virtually for the Executive Session:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually for the Executive Session:

Lynette Marushige

Lyle Roe (Mr. Roe) exited the executive session at 10:55 a.m.

Lance Tashima (Mr. Tashima) entered the executive session at 10:45 a.m.; exited at 10:50 a.m.

James Nakatani, Executive Director (Mr. Nakatani) entered the executive session at 10:55 a.m.

Executive Session called to order at 10:27 a.m.

D. New Business, Item D-4: Request for Approval to Accept the Settlement Offer from Waste Management of Hawaii Inc. for the Over-Excavation of Soil in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.) Between August 2008 and November 2019

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[REDACTED]

[REDACTED]
[REDACTED]

ADC 000058

August 17, 2022, ADC Board of Directors Meeting

interviewed, and comments were generally supportive, but the main concern seemed to be the need for improved communications between the executive director and staff.

The committee recommended that the executive director:

1. Continue work on the concerns expressed by the auditor;
2. Continue to provide information to the board of directors for decision making;
3. Continue to secure funding for ADC projects;
4. Continue to secure funding for additional positions;
5. Establish biweekly or at a minimum, monthly staff meetings.
6. Develop a succession plan for the executive director position.

Ms. Shimabukuro-Geiser suggested that the committee use the term “goals” instead of “recommendations” and that the additional goal of transparency in communications with the board be added.

Mr. Manuel suggested that the goals be tightened up because they appeared to be too open-ended, like the concerns expressed by the auditor that the executive director was to work on should all be identified.

Chair noted that the executive director’s communication with the Board had improved. Chair asked if Mr. Nakatani had any comments on the committee’s report.

Mr. Nakatani remarked that now Mark has been hired to replace Myra there are only two members of the staff who need to meet so we don’t need staff meetings. This legislative session was interesting. The legislature is always unpredictable. Myra’s leaving in the middle of session was hard. Transportation has been removed from ADC’s statutory goals. We got the money for an additional accounting position and the Yardi contract was executed. ADC has a hard time getting employees. I expect a lot of employees. They need to pick-up the job requirements and learn quickly. I push hard. Another comment was that we can have staff meetings, but staff should be communicating with the Board. Staff needs to be able to make decisions. I would like the Board to communicate with staff.

Ms. Shimabukuro-Geiser also suggested that when working to fill the vacant position, the executive director work closely with DBEDT human resources and that recruitment be a priority.

Mr. Watanabe closed by saying the committee recommended that the ADC board of directors retain the executive director, and noted the committee will update the report to include the board’s discussions.

Chair clarified that the vote on accepting the committee’s recommendation will be at the next meeting.

Chair asked for a motion to adjourn from Executive Session.

Motion: Ms. Evans, Second Mr. Watanabe.

Chair called for the vote. Hearing no objection the motion was approved.

Executive Session was adjourned at 11:17 a.m.

ANNE E. LOPEZ 7609
Attorney General for the State of Hawai‘i

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Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, and
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

EXHIBIT B

[RE: Defendant Agribusiness Development
Corporation Board of Directors’ Motion for
Partial Summary Judgment Regarding Counts
X-XIV

HEARING:

Date: May 27, 2025

Time: 9:00 a.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: June 23, 2025

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Suite 205
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Phone: (808) 586-0186 Fax: (808) 586-0189

Meeting of the ADC Board of Directors

Held via Teleconference

September 21, 2022

9:00 a.m.

Pursuant to section 92-3.5, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than seventy-two hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street, Suite 205, Honolulu, Hawaii 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://us06web.zoom.us/j/87257668283>

Telephone: (669) 900-6833, Web ID: 872 5766 8283

In-Person: at the meeting location indicated below

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

Upon dialing the number, you will be prompted to enter the Meeting ID listed next to the Telephone Number at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

ADC 000061

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your telephone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your telephone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Leiopapa A Kamehameha
State Office Tower Building
235 S. Beretania St, Ste 204
Honolulu, HI 96813

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty minutes to restore connectivity with all board members and the public in-person access location noted above. In the event that audio connectivity is re-established within thirty minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within thirty minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://dbedt.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will be posted on the website no less than twenty-four hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

SPECIAL ASSISTANCE

If you require special assistance, accommodations, modifications, auxiliary aids, or services to participate in the public hearing process please contact staff at (808) 586-0186 preferably at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: dbedt.adc@hawaii.gov. Please allow sufficient time for the ADC to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 S. BERETANIA STREET, SUITE 205, HONOLULU, HAWAII, ON AND AFTER SEPTEMBER 15, 2022

Agribusiness Development Corporation Non-Discrimination Statement

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected by, or oppose action prohibited by, 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation's non-discrimination programs, policies, or procedures, you may contact:

Mark Takemoto
Acting Title VI Non-Discrimination Coordinator
235 S. Beretania St., Ste 205
Honolulu, HI 96813
(808) 586-0186
dbedt.adc.titlevi@hawaii.gov

[agenda begins on the following page]

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board of Directors Meeting, August 17, 2022
2. Executive Session, Board of Directors Meeting, August 17, 2022

This agenda item will be taken out of order and considered by the Board during executive session regarding agenda Item E-3, pursuant to Section 92-5(a)(2) Hawaii Revised Statutes, to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved.

D. New Business

1. Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-3-004:020
2. Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-4-012:005

E. Old Business

1. Request for Approval to Adopt the "Land Management Policy & Procedure Manual" as Recommended by the Investigative Committee on Land Management Policy & Procedures (continued from August 17, 2022, Item D-2)

This agenda item will be taken out of order and considered by the Board as the first item of business after consideration of the minutes.

2. Presentation and Update by Kekaha Agriculture Association Regarding the 2022 Readiness and Environmental Protection Integration (REPI) Program Challenge Grant for an Open Floodable Space Proposal in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.)
3. Annual Performance Review of the Executive Director (continued from August 17, 2022, Item E-1)

The Board may go into executive session, pursuant to §92-5(a)(2) Hawaii Revised Statutes, to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved.

F. Executive Director's Report

G. Adjourn

The Board may go into executive session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

Via Zoom Teleconference and In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

Approved: ADC Board Mtg.
November 2, 2022

Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 South Beretania St., Suite 204, Honolulu, HI 96813.

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans) exited the meeting at 9:38 a.m.
Glenn Hong, Member-At-Large (Mr. Hong)
Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser) joined the meeting at 9:50 a.m.
Morris Atta (Mr. Atta) (designated attendee for Ms. Shimabukuro-Geiser until her arrival) exited the meeting at 9:50 a.m.
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)

Members Excused:

Lloyd Haraguchi, Member-At-Large
Karen Seddon, Member-At-Large

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)
Lance Tashima, Administrative Services Officer
Lynette Marushige, Executive Secretary

Guests Present, virtually:

Senate Ways and Means Committee
Basil Gomez
F. Fuchigami
“Guest Guest”
Joshua Uyehara
Kristy Ringor
Mike Faye

Guests Present, physical location:

None.

A. Call to Order

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Chair called the virtual meeting to order at 9:02 a.m..

B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each Board member and asked them to identify their presence with a “here” or “present” and to state who, if anyone, was present in the room with them. Chair stated that the roll call served as the roll call vote. For each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Ms. Evans, Mr. Hong, Mr. Manuel, Mr. Atta for Ms. Shimabukuro-Geiser, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present. Ms. Evans exited the meeting at 9:38 a.m. Ms. Shimabukuro-Geiser joined the meeting at 9:50 a.m. Mr. Atta exited the meeting at 9:50 a.m.

C. Approval of Minutes – Board of Directors Meeting on August 17, 2022

Motion to Approve: Mr. Manuel; Seconded: Mr. Watanabe

Chair asked if there was anything from the staff. There was none.

Chair asked if there was any comment from the public. There was none.

Chair asked for any Board discussion. Mr. Atta said he would abstain from voting because he was not present. Mr. Manuel stated that if Mr. Atta abstained, we do not have quorum.

Ms. Prescott-Tate reminded the Board that six members present makes quorum.

Chair called for the vote.

Motion approved: 6-0 (Mr. Atta abstained)

Chair asked if the Board should approve the August 17, 2022 minutes from the Executive Session at this time.

Ms. Prescott-Tate responded no, that will be taken up during executive session and to move on to the next agenda item.

D. New Business

Chair informed the Board that before addressing New Business, they will be taking Old Business Agenda Item E-1 out of order.

E. Old Business

- 1. Request for Approval to Adopt the “Land Management Policy and Procedure Manual” as Recommended by the Investigative Committee on Land Management Policy & Procedures (continued from August 17, 2022, Item D-2)**

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

Via Zoom Teleconference and In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

103 Chair called for a motion to approve and accept the Land Management Policy and Procedure Manual as
104 presented at the previous meeting. Motion to Approve: Ms. Evans, Second: Mr. Tabata

105 Chair asked Ms. Evans, Chair of the Investigative Committee on Agricultural Policy, to present the findings
106 and recommendation of the committee regarding the Land Management Policy and Procedures Manual.

107 Ms. Evans said that the committee presented the Land Management Policy and Procedures Manual at the
108 previous meeting in August. She does not have a presentation at this time but speaks in favor of the motion
109 based on the nine months of careful due diligence that the committee and staff put into creating the policy
110 manual and ensuring that it is consistent with the auditor's findings and the House Investigative Committee's
111 recommendations.

112 Chair asked if there was anyone from the public who wished to give testimony. There was none.

113 Chair asked if there was any discussion.

114 Mr. Manuel asked Ms. Evans, just for the record, that he provided robust feedback and comments last month
115 so were there any edits made to the policy based on that conversation as detailed in the minutes that they just
116 approved or is the recommended approval an approval as is without incorporating or editing based on his
117 comments?

118 Ms. Evans responded that his comments were very helpful and robust and allowed them to approve, once
119 again, the recommendations that the committee made to the full Board last session. They did not make
120 changes based on the discussion, but she very much appreciated the questions he raised and the opportunity
121 to consider those issues.

122 Mr. Manuel asked Chair to indulge him, as one of the only people providing comments to try to help improve
123 the policy document, he's just going to vote no on this because if the intent is to include the entire Board, he
124 feels that he's been pretty consistent and every time he's asked for guidance on policy he was told it would
125 be taken up in the policy document. To get to this point and realize that it's not being considered and there's
126 no amendments being made, he just can't agree to the policy as drafted. He supports the work that has been
127 done but speaking for himself and having participated and engaged and read through the policy, provided
128 comments and to see those comments not being addressed or incorporated, it doesn't sit well with him, so
129 he'll respectfully be voting no.

130 Chair stated that Ms. Evans did write a relatively lengthy list of comments to Mr. Manuel's responses and the
131 committee did review them. Chair asked if Ms. Evans could chime in.

132 Ms. Evans said that Mr. Manuel's questions were helpful but as the committee went through those comments
133 they were able to see that they were either addressed in the Policy and Procedures Manual that was presented
134 to the full Board or they should be addressed in ways other than through the manual. There was discussion
135 on his questions but that didn't result in changes.

136 Mr. Manuel said that none of that was reflected in the report that was presented today. It's just being told to
137 him now so it would be helpful if the justifications not to include his recommended edits would be on the
138 record. It's helpful to understand why those weren't included. Why those suggestions weren't included were
139 not present in the submittal so it's hard to vote yes on this matter.

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140 Ms. Evans asked that the responses to Mr. Manuel's questions from the last meeting be added to the record of
141 this floor action.

142 Mr. Manuel said if that's the case, could this be deferred till next month and then add the committee's
143 responses. That way he could potentially change his vote if his comments were addressed. It feels awkward
144 to add it to the record when he doesn't get to see it. He will still be voting no. Provide him with a response
145 so he can understand how they came to the conclusion that there was no need to amend the draft policy. He
146 leaves it up to the Board. He's just trying to understand the logic and right now he doesn't have anything
147 except for what Ms. Evan's is telling him. He doesn't see any justification in the submittal as drafted.

148 Chair thought the response was pretty detailed and he doesn't have a problem with sharing it with the Board
149 and he doesn't see a problem with delaying it until next month.

150 Mr. Watanabe asked to make a comment. He agrees with Mr. Manuel. He thinks it's important the full
151 Board understands. This is a very important document for ADC to move forward. He would also like to see
152 the responses to Mr. Manuel's questions. It makes for a better decision.

153 Chair asked Ms. Prescott-Tate if it's ok to defer until the next meeting.

154 Ms. Prescott-Tate said it can be deferred till the next meeting and the comments can be provided.

155 Chair deferred the matter until the next meeting.

156 Mr. Manuel said he appreciates the deferral. He looks forward to reading the responses and making this a
157 stronger document and hopefully voting yes at next month's meeting.

158 Chair asked if they should go back to the regular agenda.

159 Ms. Prescott-Tate responded yes.

160 **D. New Business**

161

162 **1. Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the**
163 **Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map**
164 **Key (1) 7-3-004:020**
165

166 Chair called for a motion for approval to issue a letter of intent, conduct due diligence, and negotiate the
167 purchase of fee simple interest in real property located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-3-
168 004:020.

169

170 Motion to Approve: Mr. Watanabe, Seconded: Mr. Tabata

171

172 Chair asked for staff presentation.

173

174 Mr. Nakatani stated he will do the presentation. This is to start the due diligence process with a Letter of
175 Intent (LOI). He visited the building and it's not quite an apartment complex, more like worker housing.
176 This will be part of the Whitmore Project. They looked at building housing in Whitmore and if this could be
177 a substitute instead of building it in Whitmore, this is already built and it's a pretty impressive building. It
178 has all the amenities. It's practically in the middle of downtown Wahiawa. It has transportation modes a

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179 block or two away, and drugstores, hospital and everything like that. This would be a perfect worker housing
180 setting. This is subject to appropriation and approval by the Governor and of course approval by the Board
181 so hopefully we can move on this, thank you.

182
183 Chair asked how many units are in the building, it's not mentioned in the submittal.

184
185 Mr. Nakatani responded there are twenty-four units, eighteen parking stalls. Usually worker housing you
186 don't depend on people parking cars, the farmers usually pick up the workers and take them to the worksite.
187 It's a very nice complex, very new so it's pretty solid. It's worth taking a look at.

188
189 Chair asked so it's twenty-four one-bedroom units.

190
191 Mr. Nakatani responded yes.

192
193 Chair asked if there was any other Board discussion.

194
195 Mr. Manuel noted that the map on Exhibit A included in Item D-1 shows a vacant lot. The lot that is
196 highlighted on California Avenue is a vacant lot, so what apartment are you referencing?

197
198 Mr. Nakatani said he's sorry but it's not a vacant lot. It's 360 California Avenue and it's already built. He's
199 not sure what he's looking at but it's not a vacant lot.

200
201 Mr. Manuel said that Exhibit A in Item D-1 has a blue square around the vacant lot on California Avenue.

202
203 Mr. Roe interjected that he generated that map from DPP's (Department of Permitting and Planning) website.
204 The map was just to show the location.

205
206 Chair said he missed asking if there was anyone from the public who wanted to testify. There were none.

207
208 Chair asked if there was any other Board discussion.

209
210 Ms. Evans said she speaks in favor of the motion. During the last year the Office of Planning and
211 Sustainable Development has conducted a comprehensive economic development strategy process that
212 included focus groups on all four counties and on Oahu. The need for farm worker housing was the top
213 priority. It's critical for agriculture to have farm worker housing available in order to allow workers to work
214 in commercial agriculture entities.

215
216 Chair said he did a drive-by to look at the building. It's within walking distance of the new Wahiawa Value-
217 added product center that is being developed on California Avenue. It is near transportation which could get
218 people over to the food hub or even farms in that area. It's a convenient building and this is the approval to
219 begin due diligence.

220
221 Mr. Manuel said he totally supports workforce housing. Just a question he has in anticipation of acquisition.
222 What's the strategy of our property management ability? Coming from an agency that struggles with housing
223 in general, it's a whole other field of expertise and capacity that will need to be built. He just wants to throw
224 that out to the Board knowing that ADC's focus is on Agribusiness, but now we're moving into housing.
225 There is a whole different set of additional kuleana that comes with managing that type of investment.
226 What's the thought on that? Would it be a partnership or leasing it out through a property management
227 company.

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Mr. Nakatani said this is the strategy also with Whitmore if we were to build housing. It's not the desire of ADC to run housing because that's not our expertise. We'd probably go to some type of non-profit agency or a private entity or some partnership. Right now it's not in our portfolio to run a housing unit. That's something that's been discussed, and we're not in the housing business.

Chair said in previous discussions about worker housing, for example that was being talked about in conjunction with the food hub, they were looking at a property management group to come in and take care of that. Good question though because he's thought about that too.

Mr. Atta said he had the same thought as Mr. Manuel and he's glad that it's on the table for discussion. Property management for residential purposes is really different from ag land management. He was wondering how that would work with the staffing that ADC has. He knows ADC is stretched really thin, so he was concerned about that. And the valuation estimate, he knows this is all due-diligence but the six odd million dollars value, is that a number that the seller is putting out? He's assuming as this moves forward that this will go through an appraiser and get appropriate appraisal values and the question that he would have is what kind of parameters would be given to the appraiser if the intent is workforce housing as opposed to market housing. He's assuming, whoever developed this property developed it with that intent so there may be valuation issues that will need to be dealt with. He's just throwing it out there. He supports the intent, but he's concerned about those issues.

Mr. Nakatani said they visited the site. It's on the market, that's what the seller is putting it on the market for. The seller is aware that everything is subject to appropriation, and everything is subject to appraisal. Yes, there's a valuation question but that's part of our due diligence. It's not a typical apartment, it's more like a barracks type building, three stories. It has a common kitchen and common recreation area; individual rooms, individual toilets. Again, this is part of due diligence. We're aware of what is available, and we're doing a comparison with building new units in Whitmore. And it has to go to the legislature for appropriation. It will be scrutinized again.

Mr. Atta said based on the description that Mr. Nakatani gave, it sounds like they could be looking at some community concerns about those monster homes. That's what it sounds like in terms of the structure. He just wants to throw it out there from a public perception standpoint. Do we run the risk of having to deal with that issue given the controversial nature of that lately in the papers?

Mr. Nakatani said that's part of due diligence. But it's already built. He's not sure what it was previously used for but there were people living in the building. Our concern is the condition of the building. That will all come out in due diligence. And again, ADC is not in the business of housing. We would get help from another agency or management company. It's the same issue we would have if we built in Whitmore as part of the Food Hub. But as Ms. Evans pointed out this is an important thing for agriculture and ADC is willing to walk through it.

Chair said it looks more like an apartment building than a big house. Chair called on Mr. Hong.

Mr. Hong said it sounds like it's fairly recent construction. Do we know when it was built?

Mr. Nakatani said he has some information but that's part of due diligence. It's been occupied, it has coin operated washing machines, dryers and everything. He doesn't know exactly what was there before but it's a very nice complex, it doesn't look like it has any repair issues. That's the attractiveness and as Chair pointed out it's close to bus lines and all of the amenities. One of the biggest things, when you look at Whitmore, we would have issues with entitlements to water and building permits. We will do a cost analysis and everything else and come back to the Board. But just looking at it now, it seems like a great buy.

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Mr. Hong said as they get into due diligence, obviously you'll look at permitting and does it have all the permits in place for a multi-unit dwelling as well as looking at demand side. He's assuming that generally we know the space demand for that particular type of housing, single individual. Is that sufficient to meet the demand or is it more than the demand out there and how do we manage that if it was a bigger unit then there's demand. It's all a part of due diligence.

Mr. Nakatani said yes it's all a part of due diligence. But just looking at the property, and the way it's set up, it looks very, very good. You never know when you start the due diligence and if there's any kind of deficiencies and stuff like that, it will come out.

Ms. Evans noted that now ADC is attached to Department of Business, Economic Development (DBEDT), DBEDT has the Hawaii Housing Finance and Development Corporation, which from time to time she sits on that board and she's aware that they have very detailed knowledge of the non-profit that operate affordable rental housing and that might be helpful further down the line to ADC.

Mr. Tabata said along those lines he had a question. Now that ADC is under DBEDT, what is the structure, where does ADC sit? He knows this is off topic but if DBEDT has any synergies within the department that can assist and take over, like Mr. Nakatani said up front ADC's not in the housing business. There may be other sections in DBEDT that can assist and oversee a project like this because they have the general knowledge that Mr. Nakatani is confessing not to have. He finds it a bit hard not understanding now the charge that Mr. Nakatani has, what his role is supposed to be, maneuvering from the Department of Agriculture (HDOA) to DBEDT. He just would like to know.

Mr. Nakatani said that was a great question. Scott Murakami at DBEDT made arrangements for some of his staff, members of DBEDT, ADC staff, and the ADC Chair to look at the Food Innovation Center. He couldn't make it that day. That had spurred some interest. He received an email from Mr. Murakami, and he said they want to talk with ADC to help with this housing issue, and other issues that will come up. He's not sure what group in DBEDT but it's pretty wide and they're pretty knowledgeable. What's amazing is that everybody's there to help and willing to put it together and they have an interest to see how ADC can fit within DBEDT, not only for our organization but the State. It's very refreshing. We're going to have a meeting in a couple of weeks. It's always been his position that he's not getting into the housing business. He would warn ARM that they shouldn't get into the housing business cause it's like Mr. Manuel said, it brings a different set of problems. A lot of it is social, family and stuff that you never anticipate. So, if you can avoid it, avoid it at all costs.

Chair asked if there was any further discussion. Hearing none, Chair called for the vote.

Motion approved: 7-0

2. Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-4-012:005

Chair called for a motion for approval to issue a letter of intent, conduct due diligence, and negotiate the purchase of fee simple interest in real property located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-4-012:005.

Motion to Approve: Mr. Watanabe, Second: Mr. Tabata

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Chair asked for presentation by staff.

Mr. Nakatani said this is a parcel on the corner of California Avenue and Plum Street, 1001 California Avenue. It's adjacent to the property that the Food Innovation Center is on. The property owner came to them and asked if they wanted to purchase it. This has always been on the radar, but the owner wasn't interested in selling that property. Now they're interested in selling. Again they want to start with the LOI and conduct due diligence on this property to be part of the Food Innovation Center. This would be an addition to the Food Innovation Center. The Chair visited the center and said it's already too small and they need more space. This would be a very good addition to that space.

Chair asked if there was anyone from the public who wished to present testimony. There was none.

Chair asked for Board discussion.

Mr. Atta said he had a comment. He knows that they are approving a due diligence inquiry to the property. Just something to think about. He's been involved in a bunch of contaminated property litigation, specifically with regards to service stations, gas stations, and he does know the due diligence that will go into that inquiry. It's something that he wants them to be acutely aware of. Very often the liabilities and risks associated with these sites tend to be pretty high and he just wanted to point that out. He appreciates the fact that they are doing due diligence and not actually moving forward.

Chair agreed with Mr. Atta. There is always a concern every time he looks at a service station. He has seen some major problems that can take years to take care of. But again, this is just allowing the due diligence. It does have to come back to the Board for approval. Chair asked if there was any other discussion? Hearing none, Chair called for the vote.

Motion approved: 7-0

E. Old Business

1. Item 1 was taken out of order before Item D-1 regarding the Adoption of the Policy & Procedure Manual.

Ms. Evans exited the meeting at 9:38 a.m.

2. **Presentation and Update by Kekaha Agriculture Association (KAA) Regarding the 2022 Readiness and Environmental Protection Integration (REPI), Program Challenge Grant for an Open Floodable Space Proposal in Kekaha, Kauai, Tax Map Key (4) 1-2-002.001(por.)**

Chair asked for the representative from KAA to make the presentation.

Mr. Gomez joined the meeting and said that Mr. Faye was having communication issues this morning, so he was available to speak on behalf of KAA. This presentation follows up on the presentation made to the Board in March 2022 about a request to approve an in-concept lease or license of up to four hundred acres of open space in Kekaha. KAA applied for a grant through the Department of Defense Readiness and Environmental Protection Integration (REPI) Program. The grant will cover design and permitting over the next three years. Total of ten million dollars is needed to complete the project and it will take eight to ten years to complete. KAA will apply for other grants to complete the project.

Mr. Nakamoto said that Mr. Faye was now available to do the presentation. Mr. Faye entered the meeting.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

Via Zoom Teleconference and In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

Mr. Faye shared a power point presentation giving an update on the open floodable space project. The initial grant was for 1.9 million. The purpose of the project was to address flood water, sea level rise, climate change, and improve the water quality. The project will use approximately four hundred acres of land near Nahili Pond. Only two hundred acres will be flooded for purposes of trapping sediment. This will improve the quality of water entering the ocean. The land is currently fallow and unlicensed.

Chair thanked Mr. Faye for the presentation and said he assumes that at some time in the future, they will be back to give the Board another update.

Mr. Faye said that is correct.

Ms. Shimabukuro-Geiser joined the meeting at 9:50 a.m.

Mr. Atta exited the meeting at 9:50 a.m.

Chair called for a ten-minute recess.

Recess taken from 9:52 a.m. to 10:12 a.m.

2. Annual Performance Review of the Executive Director (continued from August 17, 2022, Item E-1)

Chair called the meeting back to order at 10:12 a.m.

Chair stated the Board may go into executive session, pursuant to HRS section 92-5(a)(2), to consider the evaluation of employees where consideration of matters affecting privacy will be involved; pursuant to HRS section 92-5(a)(4), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities; and, pursuant to HRS section 92-5(a)(8), to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law.

Before going into executive session, Chair asked if there was any public testimony? Please be advised that testimony is limited to the decision to go into executive session. There was none.

Chair asked for a motion to go into executive session.

Motion: Mr. Tabata, Seconded: Mr. Watanabe

Chair asked if the staff had any presentation. There was none.

Chair asked if there was any Board discussion. There was none.

Chair called for the vote.

Motion approved: 6-0

Chair called the meeting back to order at 10:46 a.m.

Chair stated that the Board deferred the acceptance of the annual performance evaluation of the ADC Executive Director James Nakatani until the next meeting.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

Via Zoom Teleconference and In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

F. Executive Director's Update

Mr. Nakatani said that ADC received notification from Andros Engineering Corporation at Whitmore, and he believes also on Kauai, that they were moving out of Hawaii. They have been accommodating the Board of Education to look at that site for their commercial kitchen and a temporary site for one of their buildings in Wahiawa, due to displacement while the Wahiawa Civic Center Project is under construction.

Aside from that ADC is still waiting for their budget to be transferred from HDOA to DBEDT; it is somewhat tied up between the two agencies. We're in a lull period and he's hopeful that in the next couple of weeks the issue will be resolved, and they can start paying their bills again. In the meantime, they are keeping track of ADC's projects, and everything is moving ahead.

G. Adjourn

Chair called for a motion to adjourn.

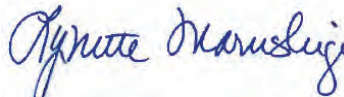
Motion to Approve: Mr. Tabata, Second: Mr. Manuel

Chair asked if there was any discussion. Hearing none, Chair called for the vote.

Motion approved: 6-0

Meeting adjourned at 10:48 a.m.

Respectfully Submitted,



Lynette H. Marushige
Secretary

EXECUTIVE SESSION

September 21, 2022, ADC Board of Directors Meeting

Members Present, virtually for the Executive Session:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)

Glenn Hong, Member-At-Large (Mr. Hong)

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)

Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)

Lyle Tabata, Kauai County Member (Mr. Tabata)

Warren Watanabe, Member-At-Large (Mr. Watanabe)

Not Present:

Lloyd Haraguchi, Member-At-Large

Karen Seddon, Member-At-Large, (Ms. Seddon)

Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member

Counsel Present, virtually for the Executive Session:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually for the Executive Session:

Lynette Marushige, Secretary

James Nakatani, Executive Director (Mr. Nakatani) entered the executive session at 10:20 a.m.

Executive Session called to order at 10:12 a.m.

Chair recalled Item C-2 and asked for a motion to approve the minutes from the executive session of the August 17, 2022 Board of Director's Meeting.

Motion to approve: Mr. Tabata, Second: Mr. Watanabe

Chair asked if there were any comments from Staff. There were none.

Chair asked if there was any Board discussion. There were none.

Chair called for the vote.

Vote: Approved 6-0.

Chair recalled item E-3 regarding the annual performance review of the executive director. Chair asked that Mr. Nakatani be allowed to join the meeting.

Mr. Nakatani joined the meeting at 10:20 a.m.

Chair asked for Mr. Watanabe to present the updated Executive Director Evaluation Report.

Mr. Watanabe stated there were two additions to the initial report. First, Ms. Seddon did not participate in the interview of the executive director but did participate in the employee interviews. Second, that the following be added to number 4 of the committee's summary of discussions with the executive director:

ADC 000074

There is a strong concern regarding a successor to the current executive director. The executive director has a clear vision and understanding of the needs to establish successful commercial operations as ADC is tasked to do. The successor needs the same vision and be goal oriented to continue the path forward.

Also, the term “leases” was replace with “licenses” in item number 3 under “Goals for the Executive Director”.

Ms. Shimabukuro-Geiser suggested that the last sentence be strengthened by adding that the successor needs the same vision to achieve the goal set forth by the ADC Board of Directors and be goal oriented to continue the path forward.

Chair asked if he could chime in, and to correct him if he was wrong, but he thinks the executive director was not given a raise last year, and he doesn't think state workers were given a raise last year during COVID, but this year he believes state workers were given an increase of, he believes it's █%, so he would like to suggest that the executive director be given an increase along the lines of the current state salary worker increase. Chair asked if state employees such as Ms. Shimabukuro-Geiser or Mr. Manuel could speak to that.

Ms. Shimabukuro-Geiser said she thinks Chair understood what had happened in the past during fiscal year 2020 to 2021. There was a lot of reductions and restrictions on the budget to avoid a RIF [reduction in force] of employees. Another thing before the Board considers a raise is to make sure they can afford it, because ADC has vacancies. It's a matter of knowing what your personnel budget is and understanding the challenges during the past two fiscal years, if the Executive Director were to receive a raise, what impact there would be on ADC's ability to fill the vacancies. That's all she's sharing.

Chair asked what positions are we talking about trying to fill? Is it the asset management person, and accounting person?

Ms. Shimabukuro-Geiser responded yes, so ADC needs to work with their ASO or consult with DBEDT to determine where they are with their personnel budget to make sure that whatever is considered as a raise doesn't impact the ability to fill the vacancies because the vacancies were an issue in the audit too.

Chair thanked Ms. Shimabukuro-Geiser and called on Ms. Prescott-Tate for help.

Ms. Prescott-Tate [REDACTED]
[REDACTED]
[REDACTED]

Chair asked for any further discussion.

Mr. Manuel added to Ms. Shimabukuro-Geiser's point, depending on your budget, we should really look at restrictions placed on the budget. We have B&F that has ripples on discretionary funding and their personnel expenses. It might be worthwhile to do an evaluation so we're not shooting ourselves in the foot from filling vacancies or managing or balancing our budget. And also, with an unknown next administration if those restrictions get increased or not, that may hinder us in the future, but related to performance, I'm open to going whatever way the board wants to go.

Chair asked if this was something staff can research?

Mr. Manuel answered usually your fiscal and human resource office or your ASO would be able to provide you a breakdown of salaries because it's not only salary, you have fringe that you have to pay. If

you're an attached agency, a lot of times you pay a portion of that ASO and HR cost of positions and salaries to cover that function. I don't know what's going to happen with the shift over to DBEDT, so there's a bunch of expenses that need to be clearly laid out, especially increases and raises for exempt employees. You have the ability to negotiate for exempt, but not for civil servants, and I don't know if the new positions are exempt or if they're civil servant. Those are things that we have to think about being budgeted and then with the I think there's like █% restrictions. What remaining budget we'd have to fund vacancies and or potentially fund a salary increase.

Chair called on Mr. Nakatani.

Mr. Nakatani stated that those comments are great, but unless you put in something for B&F to consider, if you just leave it as is then that's nothing. You should put something forward for B&F to consider. They can say yes, no, they can put the restriction on us or whatever. Now you're talking about having somebody coming in and having these goals and being aggressive, and the second breath you say well you know what, we don't want to give you any kind of raise. We don't want to reward you. That's my feeling. How am I going to get the next person over here? How am I going to justify all of this if you just stay status quo? And that's what you're doing, staying status quo. I mean, it might sound greedy, but I mean just factual. Everybody has gotten a raise despite all of the restrictions. And I'm not talking about the cabinet members, but everybody else has been going up for years. And even when we're tight, they've been going up, so it's a matter of if budget and finance and the director of DBEDT sees it's not justified then let them make the decision and the board should set forward and said, OK, this is your salary increase and let the other parties say yes or no to reject it or whatever. I mean, that's the same process we go through trying to give employees raises. That's the situation. That's my comment.

Ms. Shimabukuro-Geiser responded that the restrictions are already set by B&F. My comments are not for or against a raise, it's just to aid ADC. If you're going to consider any kind of raise for exempt positions, cause it's negotiable, just make sure you have the money and then you have the money also to fill the new positions or the vacant positions. That's all. Just do an analysis of your budget or if you already or if staff has already done that it should be shared with the board. I'm just trying to support ADC and the executive director by making sure that we don't get ourselves in a fiscal bind. That's all.

Mr. Manuel proposed that if Chair is recommending a █% raise, maybe the request is a █% raise subject to that raise not impacting the ability to fill the two vacancies and sufficient budget, something like that. That way if it does impact the budget, then the board could revisit that proposal, or we could wait for that analysis and then act on it once we get that from staff.

Chair thanked Mr. Manuel and stated that he liked that idea. Chair asked Mr. Watanabe, as chair of this committee, what do you think?

Mr. Watanabe stated that he agreed that Mr. Manuel's suggestion was a good process to follow. It'll give us the opportunity to do the due diligence and see where we stand before asking for a formal pay increase.

Chair asked it's kind of like doing the due diligence, correct Mr. Manuel? Correct me if I'm wrong.

Mr. Manuel explained it's just a budget analysis. As managers of our budget, we just need to be fiscally responsible and just pencil it out. I think that's all Ms. Shimabukuro-Geiser and I are recommending is we have to balance that and come up with sound recommendations. So, if we can afford the █% raise while also not pigeonholing us and preventing us from bringing on team members, I think that's the intent of this body. That's what I'm hearing. We want to fill vacancies to support the agency. But if the raise is going to jeopardize the filling of a vacancy, then we should know about that and then make that explicit

decision. Right now we don't know. It's not been presented holistically in terms of personnel expenses, like can we afford it or not.

Chair agreed. I just want to make sure when we go back on public record what we're saying. How do we say this? Chair called on Mr. Hong.

Mr. Hong stated I think it kinda goes back to the discussion we had in the last meeting about we as a board understanding the financial picture of the agency. I'm at a total loss, I don't know what █% of what is? What is █%? █ percent of what? That's my point right now. I don't know what that looks like. I understand inflation and all that, and █% is probably inadequate. You're probably talking about █ to █% really being a standstill type of a number, but I don't know what the what is.

Chair explained that he pulled the █% because that's what I believe the average raise was for this upcoming year. That's only from Googling the state increases.

Mr. Hong stated I'm not questioning the █%. I just don't know what the what is. I don't know what the █% is applied to.

Ms. Prescott-Tate █
█

Chair █
█

Ms. Prescott-Tate █

Chair █
█

Ms. Prescott-Tate █

Chair asked if everybody was good with that suggestion.

Ms. Shimabukuro-Geiser asked for clarification. █
█
█
█

Chair █
█

Ms. Prescott-Tate █
█
█

Chair stated that's why this came up.

Ms. Shimabukuro-Geiser asked to make a comment. At the very end of the evaluation report it says the committee recommends that the ADC Board of Directors retain the executive director. █

[REDACTED]
[REDACTED].

Ms. Prescott-Tate [REDACTED]

Chair [REDACTED]

Ms. Prescott-Tate [REDACTED]
[REDACTED]

Ms. Shimabukuro-Geiser [REDACTED]

Ms. Prescott-Tate [REDACTED]

Mr. Watanabe [REDACTED]

Ms. Prescott-Tate [REDACTED]
[REDACTED]
[REDACTED]

Chair asked for a motion to approve.

Motion to approve: Ms. Shimabukuro-Geiser, Second: Mr. Manuel

Chair asked if there was any other discussion on that motion? Hearing none, Chair called for the vote.

Vote: Approved 6-0.

Chair asked that staff work on that and when we go back on the record I'll defer the matter.

Chair asked for a motion to exit executive session.

Motion to approve: Mr. Manuel, Second: Mr. Watanabe

Chair asked if there was any further discussion? Hearing none, Chair called for the vote.

Vote: Approved 6-0

Executive Session was adjourned at 11:17 a.m.

ANNE E. LOPEZ 7609
Attorney General for the State of Hawai‘i

AMANDA J. WESTON 7496
DAVID N. MATSUMIYA 9640

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Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, and
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

EXHIBIT C

[RE: Defendant Agribusiness Development
Corporation Board of Directors’ Motion for
Partial Summary Judgment Regarding Counts
X-XIV

HEARING:

Date: May 27, 2025

Time: 9:00 a.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: June 23, 2025

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Suite 205
Honolulu, HI 96813

Phone: (808) 586-0186 Fax: (808) 586-0189

MEETING OF THE ADC BOARD OF DIRECTORS

Held via Teleconference

November 2, 2022
9:00 a.m.

Pursuant to section 92-3.7, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than seventy-two hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street, Suite 205, Honolulu, Hawaii 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://us06web.zoom.us/j/87349094827>

Telephone: (669) 900-6833, Web ID: 873 4909 4827

In-Person: at the meeting location indicated below

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

Upon dialing the number, you will be prompted to enter the Meeting ID listed next to the Telephone Number at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

ADC 000079

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your telephone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your telephone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Leiopapa A Kamehameha
State Office Tower Building
235 S. Beretania St, Ste 204
Honolulu, HI 96813

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty minutes to restore connectivity with all board members and the public in-person access location noted above. In the event that audio connectivity is re-established within thirty minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within thirty minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://dbedt.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will be posted on the website no less than twenty-four hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

SPECIAL ASSISTANCE

If you require special assistance, accommodations, modifications, auxiliary aids, or services to participate in the public hearing process please contact staff at (808) 586-0186 preferably at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: dbedt.adc@hawaii.gov. Please allow sufficient time for the ADC to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 S. BERETANIA STREET, SUITE 205, HONOLULU, HAWAII, ON AND AFTER OCTOBER 27, 2022

Agribusiness Development Corporation Non-Discrimination Statement

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected by, or oppose action prohibited by, 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation's non-discrimination programs, policies, or procedures, you may contact:

Mark Takemoto
Acting Title VI Non-Discrimination Coordinator
235 S. Beretania St., Ste 205
Honolulu, HI 96813
(808) 586-0186
dbedt.adc.titlevi@hawaii.gov

[agenda begins on the following page]

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board of Directors Meeting, September 21, 2022
2. Executive Session, September 21, 2022

D. New Business

1. Request for Approval to Amend License Agreement No. LI-K1901 Issued to Hawaii Labor Solutions Inc. to Remove Field 207 (por.) from the License Agreement; Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.)
2. Request for Approval to Issue License Agreement to Lovan Taro Farm LLC for 60 Acres, More or Less, in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-001:056 (por.)
3. Request for Approval to Amend License Agreement No. LI-KA-21-03 Issued to Hawaii Golden Farm, Inc. to Add 231 Acres, More or Less, of Land to Unit A-1 in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)
4. Request for Approval to Grant a Right-of-Entry to County of Kauai to Investigate Potential New Sites for a County Municipal Solid-Waste Landfill in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)
5. Request for Approval to Amend License Agreement No. LI-PU1807 Issued to George Rapoza dba JRs Ranch LLC and Margaret M. Bush to Remove George Rapoza dba JRs Ranch LLC as Licensee for Property in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-005:009 (por.)

E. Old Business

1. Request for Approval to Adopt the "Land Management Policy & Procedure Manual" as Recommended by the Investigative Committee on Land Management Policy & Procedures (continued from September 21, 2022, Item E-1)
2. Annual Performance Review of the Executive Director (continued from September 21, 2022, Item E-3)

The Board may go into executive session pursuant to §92-5(a)(2), Hawaii Revised Statutes, to consider the evaluation of an employee where consideration of matters affecting privacy will be involved.

F. Executive Director's Report

G. Adjourn

The Board may go into executive session on any agenda item pursuant to the exceptions under §92-5, Hawaii Revised Statutes.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 2, 2022

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

Approved: ADC Board Mtg.

January 25, 2023

Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Room 204, Honolulu, HI 96813.

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)
Morris Atta (designated attendee for HBOA, Ex-Officio Member Ms. Shimabukuro-Geiser until her attendance) (Mr. Atta)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Glenn Hong, Member-At-Large (Mr. Hong)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Karen Seddon, Member-At-Large (Ms. Seddon)
Katie Roth, Designated Representative, DLNR for Ex-Officio Member Kaleo Manuel (Ms. Roth)

Members Excused:

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lance Tashima, Administrative Services Officer
Lynette Marushige, Executive Secretary

Guests Present, virtually:

Mike Dahilig
Ford Fuchigami
Mark Ishmael
David Cho
Colin Peros
Loan Lovan, Scott & Rudy Ing
Sandi Kato-Klutke (Sandi)
Allison Fraley
KITV 4 News
Margaret Bush
Scott Ishikawa
18082

Guests Present, physical location: None.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 2, 2022

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

A. Call to Order

Chair called the virtual meeting to order at 9:02 a.m.

B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Ms. Evans, Mr. Hong, Ms. Roth, Ms. Seddon, Mr. Atta, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present.

Chair stated that he wanted to apologize for the abrupt cancellation of the October 19, 2022 meeting. Moments before the meeting was scheduled to begin a couple of the members that had previously confirmed their attendance notified him that they were not able to attend. This caused a loss of quorum. It was unfortunate but they will try to do better in the future.

C. Approval of Minutes

1. Board of Directors Meeting, September 21, 2022

Chair asked for a motion to approve the September 21, 2022 Minutes: Mr. Tabata; Second: Mr. Watanabe

Chair asked if there was anything from the staff. There was none.

Chair asked if there was anyone from the public wishing to give testimony. There was none.

Chair asked if there was any Board discussion. There was none.

Chair called for the vote. Ms. Roth and Ms. Seddon abstained from voting because they were not present at the September 21, 2022 meeting. Hearing no objections, the motion was approved.

Motion approved: 6-0 (Ms. Roth and Ms. Seddon abstained.)

2. Executive Session, September 21, 2022

Chair stated that this agenda item will be taken out of order and considered by the Board during executive session prior to agenda Item E-2, pursuant to HRS section 92-5(a)(2), to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 2, 2022

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

D. New Business

1. Request for Approval to Amend License Agreement No. LI-K1901 Issued to Hawaii Labor Solutions Inc. to Remove Field 207 (por.) from the License Agreement; Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.)

Chair asked for a motion to approve: Ms. Evans; Second: Mr. Hong.

Chair asked for Staff presentation.

Mr. Nakatani said it was pretty straight forward. Mr. Johnson wanted to return approximately forty acres and he asks the Board for approval. ADC will be coming back to the Board when they find a replacement tenant for that parcel. If there are any questions he would be happy to answer them.

Chair asked if there was anyone from the public that wanted to give testimony. There was none.

Chair asked if there was any Board discussion.

Mr. Atta stated that when you withdraw land from a disposition it would normally be done for a fairly good economic reason. He doesn't see any reason here for returning the acreage. When running property operations, normally you don't want disruptive withdrawals and additions, without knowing the reasons behind it. If there are reasons, there's no problem. He just didn't see any reason why the return was requested.

Mr. Nakatani responded that the submittal shows that Mr. Johnson had previously requested different parcels of land. He was more satisfied with one parcel and now wants to return land that is less feasible for him. It's a matter of economics for Mr. Johnson. In Kekaha there's a lot of land and this was just his preference and so he just wanted to return this portion. He has enough land for his purposes. Mr. Johnson's operation has changed quite a bit. There was forty acres for tobacco; it was an experiment he was contracted to do. That deal went away so now he's returning the land because it is no longer feasible for him. ADC will be offering to help Mr. Johnson find another assignee for that parcel of land.

Mr. Atta said that he did see the safeguard of finding a suitable assignee. He was just wondering what the rationale was.

Mr. Nakatani said that's the practice in Kekaha. They have people coming in and taking large pieces of land. The last transaction was the BASF land and ADC held them. Well actually it was the Beck's property that they took the lease and they're on the hook for that amount of rental unless they find somebody to take over the lease or license rather, and Hartung stepped up and took that piece of property. That's the rationale and they're trying to be consistent. If at a later date there's hardships they'll come back to the board and the board can make a policy decision if need be.

Mr. Tabata said he spoke to the folks on the West side and they had some questions. He understands the situation and just for the forty-acres it might be hard to find an assignee for this property because, as he understands, it floods when there is a big storm. He wanted to make sure that in the process of finding a new licensee, it's somebody who is suitable and can meet all the qualifications. Forty-acres is a bit small. The other question he had was would reducing the term help some of these situations of something like this happening. Those are some questions that were posed to him by the community.

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Mr. Nakatani said he's not sure who's asking these questions but if they put it in writing and come to the board; it's really a board policy. The parcel is small. What they're finding out, and Chair will agree with him, is the tendency to have smaller lots for smaller farmers. They don't like the big lots. We have an example of a tenant that took almost two hundred acres and they reduced it to ninety and they're still having a hard time. But you know that remains to be seen. He talked to Josh, that's good farming land for diversified agriculture. It's a bit overgrown, that might be the issue. If people have questions they should send him the questions and he can answer them.

Mr. Tabata said he'll get it in writing.

Mr. Nakatani said overall, it's the smaller parcels that are attractive to the smaller farmers. While forty acres might seem small, depending on what you farm, forty acres is pretty good size.

Ms. Evans asked Mr. Nakatani if the withdrawal was approved would it be contingent on inspection for hazardous materials or clean up of abandoned equipment or any of the other things we would want to have the current licensee do before the withdrawal becomes firm.

Mr. Nakatani said he thinks they did the inspection and he doesn't think there's any equipment or hazardous material. All of the so-called legacy chemicals have been gone for a long time. He doesn't believe that Mr. Johnson used anything toxic or anything like that. The biggest problem is the area is overgrown. They can check again. He's pretty sure there's no equipment or anything like that. In the past they have been pretty strict about people leaving stuff, but not now. He thinks Mr. Johnson is ok.

Chair said he met with Mr. Johnson a while back. He's a good farmer but he's not using large parcels. He's doing some greenhouse growing of mangos and melons, and the nine acres that he took over was much more conducive to this type of farming. The forty acres is really, really overgrown and just clearing it was a burden for him. He's a smaller farmer, he's a good farmer, and he's productive.

Mr. Hong said in reading the recommendation that ADC is still holding Mr. Johnson responsible for payment under the license until we can get some final resolution, either some kind of additional tenant or renegotiation or something like that. Is Sandi representing him? Why didn't he just make his request directly to the Board?

Mr. Nakatani responded that including Sandi's email in the submittal was an oversight. She's not involved in the decision making. She might be a consultant to him but he's not sure about that.

Mr. Hong said his only point was that the licensee should be making the communications.

Mr. Nakatani said he did.

Chair asked if there was any further discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

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2. Request for Approval to Issue License Agreement to Lovan Taro Farm LLC for 60 Acres, More or Less, in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-001:056 (por.)

Chair asked for motion to approve: Ms. Evans; Second: Mr. Watanabe.

Chair asked for staff presentation.

Mr. Nakatani said this was a carryover from the land that ADC purchased. Lovan's Taro Farm has a Revocable Permit and now they want to have a ten year license. One thing he wanted to point out is the soil conservation plan. He's assuming the Board is going to approve the Land Management Policy and Procedures Manual, and it states that the applicant shall have paperwork submitted within one year of the execution of the license amendment (Policies and Procedures Manual, 5.3 Soil Conservation Plan). He thinks they're in the process of getting a conservation plan and from all indications applicant has cleaned up his act. The farm looks pretty good and he recommends approval.

Chair asked if there was anyone from the public who wanted to provide testimony. There was none.

Chair asked for Board discussion.

Ms. Roth said she was looking at the submittal under the section on source of water and it says that the permittee currently accesses irrigation water via an agreement with Dole. Since she is new to this group, she's curious if more information can be provided about the Dole permit. She assumes Dole has a water use permit with the Commission on Water Resource Management (CWRM). She's just trying to get a better understanding about their end uses.

Mr. Nakatani said he doesn't believe it's a water permit from Dole; that's overstated. Lovan's Taro Farm has permission, he's taking water from Dole irrigation system. So, it's not a permit that each individual has; he's taking it from the ditch.

Ms. Roth said but Dole has a permit correct?

Mr. Nakatani said yes.

Ms. Roth said she was just wondering if the Dole permit is something that could be provided in these submittals. At CWRM they are trying to understand about the end uses associated with all the different permits.

Mr. Nakatani said he can provide that to her but they are taking water from the ditch, which ADC has no control over. Dole's providing the water; it's a separate agreement. ADC is not asking Dole, it's the farmer themselves asking Dole. Hopefully, in the future we'll resolve that issue with Dole.

Ms. Roth said she understood.

Ms. Evans asked Ms. Roth if CWRM could ask Dole directly for information in regard to its water end usage.

Ms. Roth said they could but she was just wondering if as part of the submittals that is something that could be provided or more detail could be provided because it's pretty vague when the

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submittal lists a source of water. She was just curious if that was something that is normally provided or not or if its something they have to investigate themselves.

Chair thanked Ms. Roth and Ms. Evans and remarked that it's a good point and he thinks it is something they should look into.

Chair asked if there was any other discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

3. Request for Approval to Amend License Agreement No. LI-KA-21-03 Issued to Hawaii Golden Farm, Inc. to Add 231 Acres, More or Less, of Land to Unit A-1 in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)

Chair asked for motion to approve: Ms. Seddon; Second, Mr. Tabata.

Chair asked for Staff presentation.

Mr. Nakatani said it was more of a housekeeping issue. The request was to put two parcels together on one lease to make it cleaner on paper. Hopefully the map is cleaner, showing where the farm really is. Basically, it's really just to clarify her license with ADC.

Chair asked if there was any public testimony. There was none.

Chair asked for Board discussion.

Mr. Atta said the request seems to be a housekeeping consolidation of two dispositions. He was curious about the note before the recommendation stating, "Approval of this Land Request represents an annual increase of \$26,300 to ADC in rental income." If it's only a consolidation of two pre-existing licenses, somehow this comment doesn't jive. With an increase in revenue he's not sure how that's occurring unless they're now being charged a higher rate. He just wanted to hear what the source of that comment was from.

Mr. Nakatani said that since we do licenses, not leases and if you look at the map some of it is not farmable. So, he thinks Lyle Roe (Mr. Roe) had discussion with the tenant and came to some agreement that this is what it is so it's being brought to the board.

Mr. Atta said his question was that he wasn't clear on where the additional revenue was coming from.

Mr. Nakatani said he would suspect that the amount of land or the demarcation of the property that's where it is. The write up is a little bit confusing because he thinks that they added some parcels that were not supposed to be a part of this map but part of the agreement that's not there. He can get the answer for him from Mr. Roe. He just wanted to make sure that it was consolidated and move ahead.

Mr. Atta said having additional revenue is good news, he was just puzzled about how it got there.

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Mr. Nakatani said, maybe it wasn't additional revenue, maybe it's revenue we're supposed to be collecting and it was stated incorrectly.

Chair asked if there was any further discussion. There was none.

Chair called for the vote. Hearing no objections to the motion was approved.

Vote approved: 8-0

4. Request for Approval to Grant a Right-of-Entry to County of Kauai to Investigate Potential New Sites for a County Municipal Solid-Waste Landfill in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Chair asked for motion to approve: Ms. Evans; Second, Mr. Hong.

Chair asked for Staff presentation.

Mr. Nakatani said this was a right of entry for the County of Kauai to do due diligence on the landfill that they're looking for, a new one. He just wanted to point out that in the recommendation it says that "staff recommends that the Board approve the land request." It's not a land request, it's a right of entry. There may be people from Kauai calling in if the Board has any questions about the land fill, but it's just exploratory at this point.

Chair asked if there was anyone from the public wishing to give testimony.

Mr. Nakamoto said there is one hand raised. Mr. Dahilig entered the virtual meeting.

Mr. Dahilig introduced himself. He is planning director for the County of Kauai. He thanked staff for assisting with this and said he was available if the Board had any questions.

Chair asked if there were any questions from the board for Mr. Dahilig. There was none.

Chair asked if DHHL had to be informed or can they just go ahead and do this?

Ms. Prescott-Tate asked why DHHL would have to be informed?

Chair said because of the 30% entitlement.

Ms. Prescott-Tate said that would be addressed in the future. Right now, this is just a right of entry for the County of Kauai to do their due diligence, investigate the site. No money is changing hands.

Mr. Nakatani said if they proceed, they will do the Environmental Assessment, which requires everyone to be informed about the project. So, just an FYI everyone will be informed.

Chair said that we should support the project and asked if there was any further discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Motion approved: 8-0

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5. Request for Approval to Amend License Agreement No. LI-PU1807 Issued to George Rapoza dba JRs Ranch LLC and Margaret M. Bush to Remove George Rapoza dba JRs Ranch LLC as Licensee for Property in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-005:009 (por.)

Chair asked for a motion to approve: Ms. Evans; Second: Ms. Seddon.

Chair asked for Staff presentation.

Mr. Nakamoto explained that Mr. Rapoza is retiring from this area, slowly phasing out. So, the request is to remove him from the license and the applicant is available for any questions.

Chair asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked for board discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Motion approved: 8-0

E. Old Business

1. Request for Approval to Adopt the “Land Management Policy & Procedure Manual” as Recommended by the Investigative Committee on Land Management Policy & Procedures (continued from September 21, 2022, Item E-1)

Chair asked for a motion to approve: Ms. Evans; Second: Mr. Hong.

Chair asked Ms. Evans who headed the committee to conduct the discussion.

Ms. Evans said on behalf of the committee that spent about a year looking at the State auditor’s recommendation and the House Investigative Committee’s further recommendation that ADC adopt written policies and procedures regarding land management. The committee worked with staff, Mr. Nakatani, Mr. Roe, Mr. Nakamoto, and Mr. Takemoto to develop these draft policies and procedures into a manual that will provide guidance going forward. It can be amended by the Board at any time should conditions change. The committee had a full discussion in August and September in response to Mr. Manuel’s very helpful questions. The committee developed a written response to those questions that was included in the Board packet. Should there be any follow-up questions, she and the committee would be happy to address them.

Chair thanked Ms. Evans and asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked for Board discussion.

Mr. Atta said he knows that the policy manual was designed to be changed or amended subject to Board discretion and need. Was there any discussion on targeted, periodic reviews to assess whether or not those changes would be appropriate or not. A lot of these frameworks have a tendency to be reviewed periodically, whether it’s 5, 10, 15 years. He was just wondering whether or not that entered the thought process.

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Ms. Evans said she doesn't recall there being a discussion on a periodic review. There was a very thorough discussion on the use of policies and procedures because it allows the Board at anytime in the future to undertake revisions based on staff recommendations or changed conditions; especially changes in business conditions or land or climate conditions that might warrant some flexibility. But they didn't talk about setting any kind of periodic deadline for making revisions.

Mr. Atta said that's fine. He was just curious because the main point being that the manual could be changed at anytime based on need and that's the key to keeping it flexible. He's happy to see that.

Chair asked if there were any other comments. There was none.

Chair called for the vote. Hearing no objection, the motion was approved.

Motion approved: 8-0

2. Annual Performance Review of the Executive Director (continued from September 21, 2022, Item E-3)

Chair stated this matter will be heard in Executive Session pursuant to HRS section 92-4, which allows the board to hold an executive meeting closed to the public.

The Board may go into executive session for three purposes: 1) pursuant to HRS section 92-5(a)(2), to consider the evaluation of employees where consideration of matters affecting privacy will be involved; 2) pursuant to HRS section 92-5(a)(4), to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities; and, 3) pursuant to HRS section 92-5(a)(8), to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law.

Chair asked, before we go into executive session, is there any public testimony? There was none.

Chair asked for a motion to go into executive session: Ms. Evans; Second: Ms. Seddon.

Chair asked if there was any discussion.

Ms. Roth said that CWRM needs to recuse themselves from this. She doesn't know the details but was told she will not be voting on this item.

Ms. Prescott-Tate said she can vote on the motion to go into executive session and then recuse herself from voting on the issue later.

Chair called for the vote. Hearing no objection, the motion was approved.

Motion approved: 8-0

The Board entered executive session 9:40 a.m.

Board returned from Executive Session at 10:02 a.m.

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Chair asked for a motion to accept and approve the updated October 12, 2022 annual performance evaluation of the ADC Executive Director James Nakatani: Mr. Watanabe; Second: Ms. Seddon.

Chair asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked for board discussion. Ms. Roth said she will be recusing herself from voting.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 7-0 (Ms. Roth abstained)

F. Executive Director's Report

Mr. Nakatani stated that Chair requested an update on the outstanding Galbraith parcels of lands that we're trying to license. By the next board meeting there should be two submittals, one for Ohana Hui Ventures and one for the Laws. The rest of the approved tenants have been doing their due diligence and hopefully they will be coming to the board for licensing shortly.

There is also a CIP request to the legislature. It's quite ambitious and he wanted to point out the two critical ones. The Aahoaka Reservoir on Kauai for \$1.1 million. The other critical one is the clean up of the soil at Galbraith and they're hoping it's around \$500,000 and hopefully they will get the appropriation to clean up the soil. The big one is the Wastewater Reclamation Irrigation Plan, it's a \$124 million. It seems like a lot but actually for that kind of project that's pretty small. The rest is self-explanatory. Number 7, Agricultural lands, Oahu, \$3 million, they had the appropriation a while back but they didn't have clear title so the funding lapsed. He was informed earlier that the lands have cleared title and they will see if they can purchase that property.

Chair asked if Hawaii Sustainable Agricultural Products had submitted their approved conservation plan. He thought they were one of the five tenants that had submitted their conservation plan. Are they moving ahead?

Mr. Nakamoto responded they have submitted their approved conservation plan and the next step is to look at their water situation and come back to the board to issue a license.

Chair asked if the tenants the board will be looking at approving their licenses at the next meeting are the Laws and Ohana Hui?

Mr. Nakamoto responded yes.

Chair said ok, he just wanted to clarify, so three out of five have submitted their conservation plans so he thinks they are moving ahead very well on this.

Ms. Roth said she had a question on the land acquisition request on the CIP form. Does ADC ever seek out, outside funding through grant? That's something that DLNR does regularly when trying to acquire lands and so she was just curious if that's something that ADC also looks into so that they can source money from other non-State partners.

Mr. Nakatani said they looked at it before but there's a caveat that if you charge lease rent that you have to pay that amount and it goes on forever. So, they elected not to enter that program. He said he thinks the first program they looked at was up in Whitmore, which would be a good plan if it stayed in

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conservation but in this case it would be for commercial use and it didn't fit that requirement so they elected not to do it. He thanked her for the question.

G. Adjourn

Chair asked if there were any other questions. There was none.

Chair asked for a motion to adjourn: Mr. Tabata; Second: Mr. Watanabe.

Chair called for the vote. Hearing no objection, the motion was approved.

Vote approved: 8-0

Meeting was adjourned at 10:20 a.m.

Respectfully submitted,



Lynette Marushige
Secretary

EXECUTIVE SESSION

November 2, 2022, ADC Board of Directors Meeting

Members Present, virtually for the Executive Session:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)

Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)

Morris Atta, Designated Representative, HDOA for Ex-Officio Member, Phyllis Shimabukuro-Geiser, (Mr. Atta)

Warren Watanabe, Member-At-Large (Mr. Watanabe)

Glenn Hong, Member-At-Large (Mr. Hong)

Lyle Tabata, Kauai County Member (Mr. Tabata)

Karen Seddon, Member-At-Large (Ms. Seddon)

Katie Roth, Designated Representative, DLNR for Ex-Officio Member Kaleo Manuel (Ms. Roth)

Members Excused:

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)

Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser)

Counsel Present, virtually for the Executive Session:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

Lynette Marushige, Secretary (Ms. Marushige)

Lance Tashima, Administrative Services Officer (Mr. Tashima) (entered the meeting at 9:52 a.m. - exited the meeting at 9:54 a.m.)

Executive Session called to order at 9:41 a.m.

Chair took a roll call.

Board Members Present: Ms. Evans, Mr. Hong, Ms. Seddon, Mr. Tabata, Mr. Watanabe, Mr. Atta, Ms. Roth

Others present: Ms. Prescott-Tate, Ms. Marushige

Chair: The first item to be discussed is item C2. The approval of the Minutes from the September 21, 2022 executive session. Do I have a motion to approve the minutes?

Motion to approve: Mr. Tabata, Second: Mr. Watanabe

Chair noted the only staff present was Ms. Marushige.

Chair: Is there any discussion.

EXECUTIVE SESSION

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Mr. Atta: Ahead of all of this, because I wasn't in that prior executive session I'll probably have to abstain from voting.

Chair: [REDACTED]

Ms. Prescott-Tate: [REDACTED]

Ms. Evans: Chair, I also wasn't present, but I have reviewed the Minutes and I'm willing to vote on accepting the Minutes.

Chair: [REDACTED]

Ms. Prescott-Tate: [REDACTED]

Chair: Then I'll call for a vote. Are there any objections? Hearing none, the Minutes are approved. (6-approved; 1-abstain (Mr. Atta))

Chair: The second item to be discussed is old business item E2. The annual performance evaluation of the executive director. Can we ask executive director James Nakatani to join the executive session?

Ms. Evans: Chair, were you planning to have a discussion between the board members only before or after executive director Nakatani joins us?

Chair: I think the last time he was present when we had the discussion.

Ms. Evans: [REDACTED]
[REDACTED]
[REDACTED]

Ms. Prescott-Tate: [REDACTED]
[REDACTED]

Ms. Evans: Chair, I think if we were to ask executive director Nakatani his thoughts on that, I think we could guess what they might be.

Chair: Yes, I agree.

Ms. Evans: Perhaps we should just have this discussion between board members. And only should there be any additional information that we might require to make a decision on that point, would we then perhaps want to request executive director Nakatani's presence at the meeting. Just trying to simplify this.

Chair: I can agree to that. Ms. Prescott-Tate [REDACTED]

EXECUTIVE SESSION

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Ms. Prescott-Tate: [REDACTED]

Chair: Ok, thank you. Then we'll proceed without executive director Nakatani present. Can we call upon board member Mr. Watanabe to speak on behalf of the evaluation committee on adopting the committee's report?

Mr. Watanabe: As previously mentioned, you all got the updated October 12, 2022 version of the report. Again, as mentioned the only change was the addition of the proposed raise for the executive director. The committee again consisted of myself, Mr. Haraguchi, and Ms. Seddon. Since I've pretty much presented the information in this report, I would like to give Ms. Seddon the opportunity if she wanted to address the board on the work of the committee.

Ms. Seddon: Ok. Thanks Mr. Watanabe.

Mr. Watanabe: Well, I think it's important for the rest of the board to understand where the committee was coming from.

Ms. Seddon: So, the part you want to discuss is the increase of the salary basically.

Mr. Watanabe: Right, correct, because I think we've pretty much agreed on the other content of the report.

Ms. Seddon: Correct. I had missed a meeting in there. So I think Mr. Haraguchi and Mr. Watanabe had an initial discussion about the increase, on increasing the salary. I did some math on it and realized it's been five years and I felt that the recommendation was fair. It could have gone either direction just depending on how you wanted to look at it, but I think considering our recommendations in the report, and showing some improvement, etcetera, I felt that the number that Mr. Haraguchi and Mr. Watanabe had settled on was very fair. I've gone through this a lot in and out of government and it's a tough thing to do, it's just really tough but I think this was fair and if anybody else has some thoughts on higher or lower we can discuss it.

Chair: During the last meeting Mr. Manuel had some question about budgeting. Is this the right place to address budgeting? I'm not sure how government works. With me. I just give them the raise or don't give them the raise. But go ahead, Mr. Atta.

Mr. Atta: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Ms. Prescott-Tate: [REDACTED]
[REDACTED]

Mr. Atta: [REDACTED]

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Ms. Prescott-Tate: [REDACTED]
[REDACTED]

Mr. Atta: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Ms. Prescott-Tate: [REDACTED]
[REDACTED]

Ms. Seddon: So, staff did give us a budget. I mean we saw that there was enough, they gave us the budget and how much is left over and the \$[REDACTED] was absolutely covered in the remaining budget; if that's what you are asking Mr. Atta.

Mr. Atta: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Ms. Prescott-Tate: [REDACTED]
[REDACTED]

Ms. Seddon: So, Mr. Watanabe, the number we were given was \$[REDACTED] was available?

Mr. Watanabe: That's correct and I would like to point out the discussion started as a percentage basis, but we got feedback that fiscal would prefer a flat amount as opposed to a percentage.

Mr. Atta: I think one of the things that Ms. Shimabukuro-Geiser did mentioned to me was the automatic nature of the increases. She was also concerned about that aspect of it because that's not a feature that you necessarily see in public service salary.

Ms. Evans: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Ms. Prescott-Tate: [REDACTED]

Mr. Watanabe: It's my understanding too.

Ms. Seddon: It's a one year increase to be reevaluated each year.

Mr. Atta: OK. If that's the case that was a comment related to me by Ms. Shimabukuro-Geiser that she was unclear about that and she had a concern.

EXECUTIVE SESSION

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Mr. Tashima joined the meeting at 9:52 a.m.

Ms. Prescott-Tate: [REDACTED]
[REDACTED]

Ms. Evans: [REDACTED]

Ms. Prescott-Tate: [REDACTED]
[REDACTED]

Ms. Evans: Chair, I don't have any questions.

Chair: [REDACTED]

Ms. Prescott-Tate: [REDACTED]

Mr. Tashima exited the meeting at 9:54 a.m.

Chair: Ok, Ms. Roth.

Ms. Roth: No worries. I was not briefed on this item and that's probably why I was asked to recuse myself. But is it possible to share that report with me? So, I have some context to the conversation.

Ms. Evans: I believe Mr. Manuel did receive a copy of the report, so he does have it as the designated member.

Ms. Roth: He didn't share it with me. Is it possible to get a copy?

Chair: [REDACTED]

Ms. Prescott-Tate: [REDACTED]

Ms. Marushige: I don't have it right now because I'm in a different room doing this meeting, but I can send it to her after I go back to my office. Not now.

Chair: Sorry.

Ms. Roth: OK, so I can't have it for the conversation. I'll ask Mr. Manuel.

Chair: Thank you.

Ms. Seddon: I think Mr. Hong's next Chair.

Chair: Yes, go ahead, Mr. Hong.

EXECUTIVE SESSION

November 2, 2022, ADC Board of Directors Meeting

Mr. Hong: I'm here. Can you hear me?

Chair: I can hear you.

Mr. Hong: I feel like I probably missed a heck of a lot of stuff that I otherwise should have accessibility to, but I don't know what his salary is, and I don't know what the percentage increase is.

Chair: You don't have the report?

Mr. Hong: Which report?

Chair: You weren't forwarded the report?

Mr. Hong: Which report?

Chair: The Committee's report. The salary is on that.

Mr. Hong: Oh, it is there?

Chair: [REDACTED]

Ms. Prescott-Tate: [REDACTED]

Mr. Hong: Has he had any adjustment in the last five years?

Chair: No.

Ms. Seddon: No.

Mr. Hong: Ok, alright. That's all I needed to know. I'm OK with the recommendation of 3% or somewhere around there, it rounds to something that payroll can handle.

Chair: The committee's recommendation was a \$[REDACTED] increase.

Mr. Hong: OK. So that that's like [REDACTED]%?

Chair: Yeah.

Mr. Hong: Just over [REDACTED]%.

Chair: Correct.

Mr. Hong: OK. Thank you. Sorry for not following that.

EXECUTIVE SESSION

November 2, 2022, ADC Board of Directors Meeting

Chair: No problem and the discussion from the last executive session focused really on, you know, making sure the budget was available. Any other discussion? Umm, so can I call for the vote? Are there any objections?

Ms. Evans: [REDACTED]

Ms. Prescott-Tate: [REDACTED]
[REDACTED]

Ms. Evans: Chair?

Ms. Seddon: No.

Ms. Evans: Since we've concluded our discussion, if the Board members are OK with the recommendation, we should take that vote in public. I don't think there would be any reason to necessarily call Mr. Nakatani in. We just need to go out of the executive session and one of the committee members make the motion and the other seconded and then we're done.

Chair: [REDACTED]

Ms. Prescott-Tate: [REDACTED]

Ms. Evans: Yes.

Ms. Seddon: [REDACTED]
[REDACTED]

Ms. Prescott-Tate: [REDACTED]

Ms. Seddon: We're not going to discuss \$[REDACTED] or what's in the report. It's just here's the report. We're there to approve it. That's it, end of story. And then Mr. Nakatani can find out afterwards what his raise was.

Ms. Evans: [REDACTED]

Ms. Prescott-Tate: [REDACTED]

Ms. Seddon: Well, Chair can tell him offline in a nice way, right?

Chair: OK, I think I got it.

Ms. Seddon: Thank you.

Chair: [REDACTED]

Ms. Prescott-Tate: [REDACTED]

EXECUTIVE SESSION

November 2, 2022, ADC Board of Directors Meeting

Chair: OK. Yeah.

Ms. Evans: So, moved.

Ms. Seddon: I'll make that motion.

Chair: Thank you. Can we have it seconded?

Mr. Tabata: Second, Lyle second.

Chair: And can we call for a vote? Are there any objections? Hearing none, let's try and get ourselves back to the other meeting.

Executive Session ended at 10:00 a.m.

ANNE E. LOPEZ 7609
Attorney General for the State of Hawai‘i

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Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, and
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

EXHIBIT D

[RE: Defendant Agribusiness Development
Corporation Board of Directors’ Motion for
Partial Summary Judgment Regarding Counts
X-XIV

HEARING:

Date: May 27, 2025

Time: 9:00 a.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: June 23, 2025

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

Meeting of the ADC Board of Directors

Held via Teleconference

March 16, 2023
9:00 a.m.

Pursuant to section 92-3.7, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than seventy-two hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street, Suite 205, Honolulu, Hawaii 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://us06web.zoom.us/j/86867791000>

Telephone: (669) 900-6833, Webinar ID: 868 6779 1000

In-Person: at the meeting location indicated below

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

ADC 000101

Upon dialing the number, you will be prompted to enter the Meeting ID listed next to the Telephone Number at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your telephone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your telephone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Leiopapa A Kamehameha
State Office Tower Building
235 S. Beretania St, Room 204
Honolulu, HI 96813

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty minutes to restore connectivity with all board members and the public in-person access location noted above. In the event that audio connectivity is re-established within thirty minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within thirty minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://dbedt.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will be posted on the website no less than twenty-four hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

SPECIAL ASSISTANCE

If you require special assistance, accommodations, modifications, auxiliary aids, or services to participate in the public hearing process please contact staff at (808) 586-0186 preferably at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: dbedt.adc@hawaii.gov. Please allow sufficient time for the ADC to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 SOUTH BERETANIA STREET, SUITE 205, HONOLULU, HAWAII 96813 ON AND AFTER MARCH 10, 2023.

Agribusiness Development Corporation Non-Discrimination Statement

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected by, or oppose action prohibited by, 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation's non-discrimination programs, policies, or procedures, you may contact:

Mark Takemoto
Acting Title VI Non-Discrimination Coordinator
235 S. Beretania St., Ste 205
Honolulu, HI 96813
(808) 586-0186
dbedt.adc.titlevi@hawaii.gov

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board Meeting Minutes, February 16, 2023

D. New Business

1. Request for Approval to Issue a Lease to Hartung Brothers Hawaii, LLC for 42.019 Acres of Existing Office and Processing Operations in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:035
2. Discussion of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mana Reservoir) Issued to Kauai Island Utility Cooperative for the West Kauai Energy Project in Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.), Various

The Board may go into executive session pursuant to §92-5(a)(4), Hawaii Revised Statutes, to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

3. Request for Approval to Issue a New and Amended Revocable Permit to The Davey Tree Expert Company and Davey Tree Surgery Company for 21,510.5 Square Feet of Space, More or Less, in Whitmore Village, Oahu, Hawaii, Tax Map Key Nos. (1) 7-1-002:004 (por.), :009 (por.)
4. Request for Approval to Issue a Right-of-Entry to the State of Hawaii, Department of Education, Helemano Elementary School for 1.0 Acre, More or Less, for Parking Access for May Day Activities on May 12, 2023 in Whitmore Village, Oahu, Hawaii, Tax Map Key Nos. (1) 7-1-002:004 (por.), :009 (por.)

E. Old Business

1. Presentation of the Draft Annual Performance Review of the Executive Director (continued from January 25, 2023, Item D-8)

The Board may go into executive session pursuant to §92-5(a)(2), Hawaii Revised Statutes, to consider the evaluation of an employee where consideration of matters affecting privacy will be involved.

F. Executive Director's Report

G. Adjourn

The Board may go into executive session on any agenda item pursuant to the exceptions provided under §92-5, Hawaii Revised Statutes.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on March 16, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

APPROVED: ADC BOARD MTG

April 20, 2023

Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Room 204, Honolulu, HI 96813.

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Sharon Hurd, Chair HBOA, Ex-Officio Member (Ms. Hurd)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member (Mr. Wicker) joined at 9:10 a.m.
Vacant – Member-At-Large
Vacant – Hawaii County Member

Members Excused:

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Jayson Watts, Maui County Member (Mr. Watts)

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Mark Takemoto, Executive Assistant (Mr. Takemoto)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)
Lynette Marushige, Executive Secretary

Guests Present, virtually:

ADC Guest
Beth Amaro, KIUC
David Bissell, KIUC (Mr. Bissell)
Dawn Huff, KIUC
Ford Fuchigami
Jason Okuhama (Mr. Okuhama)
Joshua Uyehara
Thomas Heaton
Linda Rosehill
Kathy Sokugawa

Guests Present, physical location: None.

A. Call to Order

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on March 16, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

Chair called the virtual meeting to order at 9:02 a.m.

Chair apologized for his camera not working, so he would not be visible.

B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each Board member and asked them to identify their presence with a “here” or “present” and to state who if anyone over the age of eighteen was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Mr. Hong, Ms. Hurd, Ms. Seddon, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present. Mr. Watts and Mr. Manuel were excused. Mr. Wicker joined the meeting at 9:10 a.m.

C. Approval of Minutes

1. Board of Director’s Meeting, February 16, 2023

Chair called for a Motion to Approve: Ms. Hong; Seconded: Mr. Tabata.

Chair asked if there was anything from the staff. There was none.

Chair asked if there was any comment from the public. There was none.

Chair asked for Board discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 6-0.

D. New Business

1. Request for Approval to Issue a Lease to Hartung Brothers Hawaii, LLC for 42.019 Acres of Existing Office and Processing Operations in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:035

Chair called for a Motion to Approve: Mr. Tabata; Seconded: Mr. Watanabe.

Chair asked if there was any background from staff.

Mr. Roe noted that DLNR Lease No. S4654 was issued to Pride Company, Inc., in 1980 for 42.019 acres. Over the years the lease has been intermittently assigned, extended, transferred, set-aside and re-set aside. The property is now managed by ADC and held by Hartung Brothers Hawaii for office space and agricultural processing purposes. The lease is set to expire May 15th of this year and Hartung requested the lease be extended for a term of 35 years. Consistent with past practices, staff recommends that a new ADC lease agreement be issued.

Chair asked if there was anyone from the public who wished to give testimony. There was none.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on March 16, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

Chair asked if there were any questions from the Board. There were none.

Chair asked if an updated assessment of the property was necessary.

Mr. Roe said that regular BMP [Best Management Practices] inspections were conducted. He is going to Kauai on the 22nd and this is one of the properties he'll be inspecting.

Chair asked what the 42 acres were being used for.

Mr. Roe responded office space, processing, employee parking, and storage.

Chair asked if it was for fuel storage.

Mr. Roe responded no.

Chair asked if there was any other discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 6-0.

2. Discussion of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mānā Reservoir) Issued to Kauai Island Utility Cooperative for the West Kauai Energy Project in Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.), Various

Chair called for a motion to approve: Mr. Watanabe; Seconded: Mr. Tabata.

Chair asked for staff presentation.

Mr. Roe stated that in 2017 ADC issued two license agreements to Kauai Island Utility Cooperative (KIUC) for the Kokee Ditch, and the Mānā Reservoir, for the West Kauai Energy Project (WKEP). The Board has been briefed on the WKEP several times. The terms of those license agreements allowed the licenses to be converted to long-term lease agreements with very generous terms. ADC negotiated those terms with KIUC on the basis of KIUC's status as a not-for-profit utility cooperative. ADC remains supportive of the WKEP. However, in January 2021, KIUC announced that they were partnering with AES Corporation, a global for-profit energy company who would provide development and operational expertise for the project. Participation of a for-profit project partner is reason for pause and concern as it represents a for-profit entity potentially benefitting from generous lease terms that were negotiated for a not-for-profit entity and project at the expense of ADC, the State, and taxpayers. Staff recommends that the Board authorize the executive director to open discussions with KIUC on updated lease terms that reflect the change and the development in operational realities of the project.

Chair asked if there was anyone from the public who wished to give testimony.

Mr. Nakamoto said that Mr. Bissell wished to testify.

Chair thanked Mr. Bissell for attending.

Mr. Bissell said he appreciated the opportunity to testify and wanted to emphasize that even though AES was brought into the project the terms of the agreement have not changed, the core agreement has not changed, and the benefits to the Kauai rate payers and the people of Kauai has not changed

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on March 16, 2023

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with AES coming on board on this project. It's not like there's a windfall certainly for KIUC and the AES terms are the standard development side so it's a risk management strategy from KIUC to minimize the risk of their membership. AES bears all the development risks and in return for that, they have fixed costs that have not changed, ever since they first brought AES into this, the people of Kauai benefit significantly from the project.

Chair asked if the Board had any questions.

Mr. Tabata said he doesn't have any questions, but from his standpoint this project has many benefits for the people on the island of Kauai, but particularly the West-side. Teaming with AES on this project was the only way to pull it off so they need to keep moving forward.

Chair asked if there was anyone else.

Mr. Hong said in reading the submittal, he wondered if the term "partnership" was the right term. Is this more of a management consulting agreement? The only thing he's concerned with is the term "development". Are they developing a project for a fee or are they developing lands for a development, typical construction development purpose. If it's really a contract for services to utilize the AES management expertise and they're paid for their consulting services that's different than a partnership where they actually have equity ownership in the entire development. He needs clarification on that.

Chair asked if Mr. Bissell was still available.

Mr. Bissell said the term partnership comes when a joint development between KIUC and AES. AES actually owns the project; they would build the project; they would operate the project, at least in the initial years. The terms of the agreement they have with AES, KIUC has opportunities to buy the project back at certain points as it goes forward. But, the partnership comes in we're jointly developing it, we're working together. KIUC leads how the project would be operated, how the water would be handled. AES builds it, they operate it, they have to meet certain performance standards of it and in return they get paid for the availability of the equipment, but KIUC directs the operation of it, they just have a payment stream that goes to them. AES from the KIUC side it's nice, they bear all the risks with constructing the project, negative things that happen in construction and all that goes to AES rather than KIUC.

Chair asked if Mr. Bissell answered Mr. Hong's question.

Mr. Hong said yes. He guesses it's a situation where AES really takes an equity position in the project. We have to balance that against the purpose of what ADC is trying to do. He understands Mr. Tabata's position that it's probably the only way they're going to get this project done. They will have to see what the net benefit is in fact going to the community and Kauai, as well as the goals of ADC.

Mr. Nakatani said he thinks that Mr. Hong hits it right on the spot. It came from a non-profit to a for-profit and he thinks that we have to justify our position for ADC. He understands where Mr. Tabata is coming from that KIUC needs to be successful on this but at the same time, ADC needs to do its due diligence as far as the responsibility for ADC.

Chair asked if Mr. Bissell had any further comment.

AGRIBUSINESS DEVELOPMENT CORPORATION

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Mr. Bissell said he just wanted to clarify one thing to try and put the Board into a negotiation frame of when they brought AES in. Back in 2017 the project was failing. The price setting the capitol costs were going higher and higher and KIUC was in a position where they were likely going to have to recommend cancelling the project. When they brought AES into this, they had a rate that they needed to get for their membership to be able to ensure the members that the benefits were there. The whole negotiation with AES was centered around trying to deliver this project at a cost that was beneficial to their membership and would work for KIUC. So, there's really in effect a ceiling brought in of what they could pay, of what made sense for KIUC to go forward with this and that was the whole negotiation with AES was working with them, trying to drive the rate down to what we needed to make it beneficial for the people of Kauai. And they succeeded in that so that's where it's at, they do have an equity interest in this, they are a for-profit business, they have to make an acceptable return, but that return was all factored in those initial negotiations, based on their assumptions. AES at some point is going to say if the costs escalate past that, they will walk away from the project, or have to renegotiate, and all that will pass back onto the people of Kauai.

Mr. Hong asked if this agreement had to go through the PUC [Public Utilities Commission] approval process or has it gone through the approval process.

Mr. Bissell responded that it has been approved by the PUC.

Mr. Hong asked, at the stipulated rate?

Mr. Bissell responded yes.

Mr. Hong asked, what if AES comes back and says they want to renegotiate. That kind of botches the whole deal, correct?

Mr. Bissell responded they likely would have to go back for PUC approval for any material changes in the terms.

Mr. Hong said this was for the Board. They have been through a PUC review process and those processes are fairly expensive. The Board should give some heavy weight toward that other regulatory process in terms of the benefit to the community. The question then is can ADC approve this, is it within their power to say yes, this is the type of agreement that they can move forward with. So, the question is what would happen if AES miscalculated the amount of capital that they would have to put in for the amount of revenue they would receive from it. Would they walk away from it? We're left with a partially developed project and does KIUC or ADC have any residual liability in this situation if they walk away from it?

Mr. Bissell said he doesn't know the answer to that. It would all depend on what stage the project was at. If they had land agreements in place, KIUC would have certain obligations regarding the condition of the land but in terms of what happens with AES, it would all depend on the stage they walk away and the facts and circumstances.

Mr. Hong asked if ADC staff sees any liability or recourse that AES would have against ADC if they were to decide to walk away.

Mr. Roe said that's a question better directed to Ms. Prescott-Tate. He wanted to remind the Board that all this request does is authorize ADC to engage in discussions on negotiated terms. What the actual terms would be is dependent on some of these conditions.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on March 16, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

Mr. Hong said that part of this Board's question is that hopefully they'll be providing some guidance to that next process, the next step, in terms of things to consider. Clearly they don't want to get into a situation where ADC is left holding the bag. Mr. Bissell has to look after the interests of their shareholders, their owners. In the larger scheme of things, having this project move forward makes sense, Hawaii needs to diversify its energy reliability somehow. He just wanted to raise these questions.

Ms. Prescott-Tate said another question to be considered is has the HRS Chapter 343 requirement been met given that EarthJustice filed a lawsuit challenging the result of a finding of no significant impact (FONSI).

Mr. Bissell said that's purely a legal question. They do have a FONSI in place that has not been revoked; it's currently in place so that's something that would need to have legal advice from legal counsel.

Chair asked if there was any further discussion. So, should the Board permit the Executive Director to negotiate with KIUC on the license versus lease terms and conditions and bring the matter back to the Board for further discussion? If the answer to those questions are no, then do things remain status quo? The current license expires in September 2023 and the matter would be set for issuance and approval of KIUC's 65-year lease upon terms and conditions previously approved by the Board in 2016. Ms. Prescott-Tate could you give us some guidance?

Ms. Prescott-Tate said there should be some kind of consensus on what the Board would like to see going forward. Do you want to let the Executive Director take the lead? Or do we not even need to go there and just go with the 2016 decision of the Board, or we could refer the matter to the newly formed administration committee.

Chair said they have an administration committee now that could work with KIUC. Chair asked so how do they do this? A motion? An amendment to the motion?

Ms. Prescott-Tate said it's a discussion right now. Where would the Board like it to go? If they come up with one solution then the Board can vote on that.

Chair said so the three options are, allowing the Executive Director to negotiate with KIUC; remain status quo with the agreement that was approved in 2016; or refer it to the administration committee to work with KIUC.

Mr. Nakatani asked why doesn't staff do more fact gathering and put some options on the table for the Board to consider at a subsequent meeting. As Ms. Prescott-Tate mentioned there's a [HRS Chapter] 343 contested case at this point so there's time. He thinks it can be done fairly quickly to look at what was agreed to prior and what they want today. What they're missing is, as Mr. Hong pointed out, they don't know what really, what the numbers are, the facts are, as far as AES they're doing their thing. They want to give a fair deal to all parties but that is what they are not sure of, what is the deal. So, they just have to find some facts to justify each position. We know what KIUC's position is but it's a matter of ADC and AES and for our obligation for our organization to get a fair deal for this whole project.

Chair said in that case we will defer the matter to get more information.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on March 16, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

3. Request for Approval to Issue a New and Amended Revocable Permit to The Davey Tree Expert Company and Davey Tree Surgery Company for 21,510.5 Square Feet of Space, More or Less, in Whitmore Village, Oahu, Hawaii, Tax Map Key Nos. (1) 7-1-002:004 (por.), :009 (por.)

Chair called for a motion to approve: Mr. Tabata; Seconded: Mr. Watanabe

Chair asked for staff presentation.

Mr. Roe said Davey Tree Expert Company has been a tenant with ADC since 2016. Except for a brief period of contraction during the pandemic they've enjoyed pretty consistent growth. In mid-2021, an allied company, Davey Tree Surgery Company, joined their workspace at Whitmore and due to their expansions, the Davey Tree Company collectively requests an additional 117.5 square feet of office space at Whitmore. Staff recommends a new and amended revocable permit that includes that new office space.

Chair asked if there was anyone from the public who wished to testify. There was none.

Chair asked if there were any questions or discussion by the Board. There were none.

Chair called for the vote. Hearing no objection, the motion was approved: 7-0.

4. Request for Approval to Issue a Right-of-Entry to the State of Hawaii, Department of Education, Helemano Elementary School for 1.0 Acre, More or Less, for Parking Access for May Day Activities on May 12, 2023 in Whitmore Village, Oahu, Hawaii, Tax Map Key Nos. (1) 7-1-002:004 (por.), :009 (por.)

Chair called for a motion to approve: Ms. Hurd; Seconded: Mr. Hong.

Chair asked for staff presentation.

Mr. Roe said Helemano Elementary School located in Whitmore Village is requesting to use a portion of the open space in Whitmore for overflow parking for their May Day celebration on May 12th this year. Staff recommends that the Board authorize the issuance of a Right of Entry for that purpose. It's the same location that we approved last month for the 46th Annual Wahiawa Pineapple Run and it's the day before.

Chair asked if there was anyone from the public who wished to testify. There was none.

Chair asked if there were any questions from the Board. There were none.

Chair asked if this has to come before the Board or is this something that staff can approve.

Ms. Prescott-Tate responded there was some liability involved if something should happen on ADC property so it's something the Board should know about and approve.

Chair asked if ADC is requiring insurance from the school.

Mr. Roe responded yes.

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Chair asked if there were any other questions. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 7-0.

E. Old Business

1. Presentation of the Draft Annual Performance Review of the Executive Director (continued from January 25, 2023, Item D-8)

Chair stated that HRS section 92-4, allows the Board to hold an executive meeting closed to the public. The Board will be discussing Old Business Item 1, which is the presentation by the committee established to conduct an evaluation of the Executive Director's performance for fiscal year July 2021 to June 2022. This presentation may be closed to the public pursuant to HRS section 92-5(a)(2) to allow discussion of an employee evaluation where consideration of matters affecting privacy will be involved.

Before entering executive session, Chair asked if there was anyone from the public who wished to testify on the decision to go into executive session. There was none.

Chair called for a Motion to go into Executive Session: Ms. Seddon; Seconded: Mr. Hong.

Chair asked if there was any presentation by Staff. There was none.

Chair asked if there was any Board discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 7-0.

The Board went into Executive Session at 9:35 a.m.

Chair called the meeting back to order at 10:10 a.m.

Chair stated that this was just a presentation by the Executive Director's Evaluation Committee and the motion to adopt the evaluation committee's report and recommendation will be heard at the next Board meeting.

F. Executive Director's Report

Chair called upon Mr. Nakatani to provide his monthly update.

Mr. Nakatani told the Board they had the legislative update in front of them. The most significant bill was SB 833, SD 2, which was just passed out and it has a couple of more committees to go through but it's still alive. All the bills that they see before them are alive. SB 836, which was ADC's condemnation powers, was never heard. However, SB 837, SD 1, is a similar bill but gives the Department of Business, Economic Development and Tourism (DBEDT) the authority to condemn. The rest are related to value-added products. Those have already passed and so that's good.

Mr. Nakatani pointed out that Mr. Takemoto has been in charge of having staff meetings, weekly or every two weeks.

The budget has crossed-over so we'll see how everybody's budget goes.

AGRIBUSINESS DEVELOPMENT CORPORATION

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Ms. Seddon and Mr. Watts' senate confirmation hearing is coming up soon. Mr. Nakatani thinks the committee on agriculture, Senator Gabbard will send a questionnaire to them prior to the hearing. There is a new applicant, Mr. Okuhama, for the at-large Oahu seat. He comes from USDA services. Mr. Okuhama's recommendation came from the Governor's office. We may also have one other applicant from the Big Island, Jacob Tavares from Parker Ranch, although we have not seen the GM [Governor's Message] yet.

Mr. Nakatani noted that the Dole well purchase is in escrow, and regarding Ohana Hui Ventures, the proceedings will probably be in the next two weeks, they're waiting for paperwork from Ohana Hui Ventures.

Chair asked if anyone had any questions. There were none.

G. Adjourn

Chair called for a Motion to Adjourn: Mr. Hong; Seconded: Mr. Tabata.

Chair asked if there was any discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 7-0.

The meeting was adjourned at 10:14 a.m.

Respectfully submitted:

Lynette Marushige

Lynette Marushige
Secretary

Agribusiness Development Corporation
Meeting of the Board of Directors
EXECUTIVE SESSION
Thursday, March 16, 2023

The Motion to Enter Executive Session was approved by the Board at 9:35 a.m.

Members present virtually for the Executive Session:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member (Mr. Wicker)

Members Excused from the March 16, 2023 Board Meeting:

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member
Jayson Watts, Maui County Member

Counsel Present, virtually for the Executive Session:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually for the Executive Session:

Lynette Marushige, Secretary

Executive Session called to order at 9:41 a.m.

Chair called on Ms. Seddon to present the draft evaluation report.

Ms. Seddon stated the draft evaluation report was previously distributed to the Board members. In the Committee's interview with [REDACTED], they discussed the concerns to continue to work on and why. There were a couple of things they wanted [REDACTED] to do by June. One was the position description that needs to be cleaned up. The Committee asked [REDACTED] to work on that with Human Resources (HR) between now and June 30th this year.

Mr. Watanabe agreed with Ms. Seddon's statement.

[REDACTED]
Ms. Seddon said [REDACTED]
[REDACTED]

Chair stated the committee did a really good job. They're getting really good at this. One of the things he found interesting was the [REDACTED] Chair said he was worried about [REDACTED] Chair asked the committee if they had talked to [REDACTED] about this.

Ms. Seddon said they spoke to [REDACTED] about it.

EXECUTIVE SESSION
March 16, 2023

Chair asked if the committee could elaborate.

Mr. Watanabe said that [REDACTED]

Chair said the [REDACTED]

Ms. Seddon said, yes, and she thinks [REDACTED]

Chair said there needs to be [REDACTED]

Ms. Seddon said apparently [REDACTED]

Chair said he has spoken to [REDACTED]

And, he thinks that's really important.

Ms. Seddon said yes it is but they also need to [REDACTED]

Mr. Wicker said that he agrees with what Chair and Ms. Seddon are saying. [REDACTED]

The Board has raised some good ideas. [REDACTED]

Chair said that his concern is that [REDACTED]

Mr. Wicker asked when does [REDACTED]

EXECUTIVE SESSION
March 16, 2023

[REDACTED]
Mr. Wicker asked, [REDACTED]
[REDACTED]

Mr. Hong said he wanted to make sure that the Board has gone through an open search process. [REDACTED]
[REDACTED]

[REDACTED] His understanding is that they have full capacity as a board to act in personnel matters. And, everyone's employment [REDACTED] is subject to the pleasure of the board.
[REDACTED]
[REDACTED]

Chair said this was difficult because [REDACTED]
[REDACTED]

Mr. Hong said that's where he thinks Chair would have to have a discussion with [REDACTED]
[REDACTED]

Chair said he agrees.

Mr. Hong said that's the downfall of too many organizations.

Chair said ok, what do we do here now? [REDACTED]
[REDACTED]
[REDACTED]

Mr. Hong said he would amend that, [REDACTED]

Ms. Seddon said yeah, exactly.

Mr. Hong continued, it's the board's decision to support that.
[REDACTED]

EXECUTIVE SESSION
March 16, 2023

Ms. Seddon asked why wouldn't they do what's normally done? She doesn't disagree with Mr. Hong, but she thinks they should look at all the possibilities that everybody who would like the position to be able to apply.

[REDACTED]
Ms. Seddon said, but we can't put anybody in place until [REDACTED] That's the State.

Mr. Hong said but you could for example, if you wanted to establish a new position, associate executive director or whatever you want to call it. And in the hierarchy of the organization it's clear that has been established to understudy if you will, the position.

Chair said the problem is the wheels of State Government, we'd have to get a position for one thing, salary, it would take years.

Mr. Hong said, we've got open positions. You could re-designate something.

Ms. Seddon said, [REDACTED]
[REDACTED] The only thing you could do is redo one of the other open positions. You're right. I haven't seen that done in the State.

Mr. Tabata added, you can reallocate the position, but you have to have funding to go with it. If there's no funding, just grabbing a position won't work. It needs the funding to go with it.

[REDACTED]
Ms. Seddon asked if this can be done without connecting it to [REDACTED]
[REDACTED]
[REDACTED]

Chair said he just wanted to bring that up because they have talked about this multiple times already. We keep saying there should be a [REDACTED] So, that's why he brought it up.

Mr. Hong added that the [REDACTED]
[REDACTED] ADC should give their people as much experience and exposure as possible.

Ms. Hurd asked the Chair, [REDACTED]
[REDACTED]

Chair said the Board can ask [REDACTED]
[REDACTED] But the other thing is that he

EXECUTIVE SESSION
March 16, 2023

feels [REDACTED] If you guys look at what ADC is trying to do.

Ms. Hurd remarked, including [REDACTED]
[REDACTED]

Ms. Hurd responded I see.

Mr. Hong says he absolutely agrees with that. The staff, and [REDACTED] serve at the pleasure of the Board. ADC acts like a regular corporation. This is not a civil service situation. The good thing about ADC is that we the board have the power to retain people. The [REDACTED] can be retained over a longer period of time and doesn't have to change with every administration. So, we can have better continuity.

Ms. Hurd said that she now has a better idea how things operate. What we can do is like what they would do with the land at the department, you post a letter of interest and ask people to submit a form that they're interested [REDACTED]

[REDACTED] You can have them intern, you know all these people with letters of interest to serve. And you do kind of like we do with that. Ask do you have the means, do you have the time, do you have the skills and we push forward with that. [REDACTED] is certainly a good idea.

Chair thanked Ms. Hurd for the suggestions. If we go into 2023-2024 at least there's time to [REDACTED] you know, if we have someone [REDACTED]. The answer to the earlier question is [REDACTED]

Mr. Hong said for him, just for consideration going forward, if [REDACTED]
[REDACTED]
[REDACTED]

Chair said he really likes that idea and has actually suggested that, but he really doesn't know how they do that in the public sector; in private sector you just pay the guy.

Ms. Seddon said there are two pieces to that, specific projects and a specific length of time.

Ms. Hurd said, isn't there a rule that says if you [REDACTED]
[REDACTED]

Mr. Hong asked if there was an 89-day rule and does that even apply to ADC? It applies to a lot of normal government agencies. [REDACTED]
[REDACTED]

EXECUTIVE SESSION
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[REDACTED]

Chair said ok, they have several options, and he agrees with Ms. Seddon that they should move this. This is a separate issue, but he wanted to broach the discussion and it should be paid more attention. The next review comes up in June and that will be upon them shortly.

Ms. Hurd asked Chair, if this discussion was done, she did have another thing she wanted to bring up.

Chair told her to go ahead.

Ms. Hurd said [REDACTED]

[REDACTED]

Chair said he thought it was [REDACTED] who made the comment.

[REDACTED]

Ms. Hurd said, [REDACTED]

[REDACTED]

Mr. Wicker said [REDACTED] should have [REDACTED]

[REDACTED]

Mr. Hong said maybe staff [REDACTED]

EXECUTIVE SESSION
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Ms. Hurd said, it is [REDACTED]
[REDACTED]
[REDACTED]

Ms. Hurd said it was [REDACTED]

Chair said he's going to go back to the minutes because he doesn't remember [REDACTED]
[REDACTED]

Ms. Hurd said it was the [REDACTED]
[REDACTED]
[REDACTED]

Chair said but again, it's like Mr. Wicker said, [REDACTED]

Mr. Wicker asked if [REDACTED]
[REDACTED]
[REDACTED]

Mr. Wicker said, [REDACTED]
[REDACTED] Was that the area?

Chair thanked Ms. Hurd and said that was a good point. He will look at the minutes. [REDACTED]
[REDACTED] Is there any further discussion?
[REDACTED]

Chair said no. Do we want to have a discussion on the KIUC license vs. lease matter or wait for staff to come back with recommendations?

[REDACTED]
Chair asked [REDACTED]
[REDACTED]

Chair asked that [REDACTED]

EXECUTIVE SESSION
March 16, 2023

[REDACTED]

Chair asked if there was any further discussion.

Ms. Hurd said just one more thing, [REDACTED]
[REDACTED]

Chair responded, not a problem, they got it, and he agrees. They need to pay attention to [REDACTED]
there and he intends to go read the minutes.

[REDACTED]

Chair called for a motion to exit the executive session: Mr. Hong; Seconded, Ms. Seddon.

Chair called for the vote. Hearing no objection the motion was approved: 7-0.

Executive Session adjourned at 10:09 a.m.

Respectfully submitted:

Lynette Marushige, Secretary

ANNE E. LOPEZ 7609
Attorney General for the State of Hawai‘i

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Attorneys for Defendants
DEFENDER COUNCIL, JON N. IKENAGA, and
AGRIBUSINESS DEVELOPMENT CORPORATION
BOARD OF DIRECTORS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI‘I

PUBLIC FIRST LAW CENTER,

Plaintiff,

vs.

DEFENDER COUNCIL; JON N. IKENAGA;
and AGRIBUSINESS DEVELOPMENT
CORPORATION BOARD OF DIRECTORS,

Defendants.

CIVIL NO.: 1CCV-24-0000050
(Other Civil Action)

EXHIBIT E

[RE: Defendant Agribusiness Development
Corporation Board of Directors’ Motion for
Partial Summary Judgment Regarding Counts
X-XIV

HEARING:

Date: May 27, 2025

Time: 9:00 a.m.

Judge: Honorable Jordon J. Kimura

Judge: Honorable Jordon J. Kimura

Trial: June 23, 2025

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

Meeting of the ADC Board of Directors

Held via Teleconference

April 20, 2023
9:00 a.m.

Pursuant to section 92-3.7, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than seventy-two hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street, Suite 205, Honolulu, Hawaii 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT:

<https://us06web.zoom.us/j/81958182119>

Telephone:

(669) 900-6833, Webinar ID: 819 5818 2119

In-Person:

at the meeting location indicated below

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

ADC 000121

Board Meeting Agenda
April 20, 2023
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Upon dialing the number, you will be prompted to enter the Meeting ID listed next to the Telephone Number at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your telephone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your telephone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Leiopapa A Kamehameha
State Office Tower Building
235 S. Beretania St, Room 204
Honolulu, HI 96813

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty minutes to restore connectivity with all board members and the public in-person access location noted above. In the event that audio connectivity is re-established within thirty minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within thirty minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://dbedt.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will be posted on the website no less than twenty-four hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

SPECIAL ASSISTANCE

If you require special assistance, accommodations, modifications, auxiliary aids, or services to participate in the public hearing process please contact staff at (808) 586-0186 preferably at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: dbedt.adc@hawaii.gov. Please allow sufficient time for the ADC to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 SOUTH BERETANIA STREET, SUITE 205, HONOLULU, HAWAII 96813 ON AND AFTER APRIL 14, 2023.

Agribusiness Development Corporation Non-Discrimination Statement

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected by, or oppose action prohibited by, 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation’s non-discrimination programs, policies, or procedures, you may contact:

Mark Takemoto
Acting Title VI Non-Discrimination Coordinator
235 S. Beretania St., Ste 205
Honolulu, HI 96813
(808) 586-0186
dbedt.adc.titlevi@hawaii.gov

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board Meeting Minutes, March 16, 2023
2. Executive Session Meeting Minutes, March 16, 2023

D. New Business

1. Request for Approval to Amend Site Location for License Agreement LI-KA-22-03 issued to Mahipapa, LLC, and Approval to Amend Exhibit "B" for License Agreement LI-KA-22-01 issued to Hanahanapuni Farm, to Reflect Changed Site Location of Unit GE(L), in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)
2. Presentation by Josh Uyehara and Mike Faye Regarding Kekaha Agriculture Association's Activities and Projects in Kekaha, Kauai, Hawaii
3. Request for Approval of Re-Opened Lease Rents for General Lease No. S-3940 Assigned to Kauai Island Utility Cooperative, Kalepa, Kauai, Hawaii, Tax Map Key No. (various)
4. Request for Approval to Issue a 35-year non-Exclusive License to the County of Kauai for Two Monitoring Wells in Field 311 in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)
5. Discussion of Pilot Grazing Project on ADC Mauka Lands in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

E. Old Business

1. Update Regarding Discussion of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mana Reservoir) Issued to Kauai Island Utility Cooperative for the West Kauai Energy Project in Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.), Various (continued from March 16, 2023, Item D-2)

The Board may go into executive session pursuant to §92-5(a)(4), Hawaii Revised Statutes, to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

2. Request for Approval of the Draft Annual Performance Review of the Executive Director (continued from March 16, 2023, Item E-1)

The Board may go into executive session pursuant to §92-5(a)(2), Hawaii Revised Statutes, to consider the evaluation of an employee where consideration of matters affecting privacy will be involved.

F. Executive Director's Report

G. Adjourn

The Board may go into executive session on any agenda item pursuant to the exceptions provided under §92-5, Hawaii Revised Statutes.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on April 20, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

APPROVED AS AMENDED:
ADC BOARD MTG May 18, 2023

Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Suite 204, Honolulu, HI 96813.

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Jayson Watts, Maui County Member (Mr. Watts)
Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member (Mr. Wicker) exited the meeting at 10:25 a.m. Rejoined the meeting at 10:31 a.m.
Vacant – Hawaii County Member

Earl Yamamoto, Designated Representative for HBOA Chair, Ex-Officio Member (Mr. Yamamoto) joined the meeting at 9:14 a.m. Exited the meeting at 10:37 a.m.
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd) joined the meeting at 10:37 a.m.

Members Excused:

None.

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Mark Takemoto, Executive Assistant
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)
Lynette Marushige, Executive Secretary

Guests Present, virtually:

ADC Guest
Alison Fraley
Basil Gomez
Bill DeCosta, Kauai County Council (Mr. DeCosta)
Brad Rockwell
Chauncie
Chris Y.
D. Arruda
David Bissell, KIUC

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on April 20, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

APPROVED AS AMENDED:
ADC BOARD MTG May 18, 2023

Dawn Huff, KIUC
Ford Fuchigami
Fredrick Berg, AES
Jhanavi Pomerantz
Josh Uyehara, KAA (Mr. Uyehara)
Keola Aki
Lei Leong (Ms. Leong)
Mike Faye, KAA (Mr. Faye)
RG
Scott
Scott Enright
Mark L
Senator Tim Richards

Guests Present, physical location: None.

A. Call to Order

Chair called the virtual meeting to order at 9:06 a.m.

Chair apologized for his camera not working, so he would not be visible.

B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each Board member and asked them to indicate their presence with a “here” or “present” and to state who if anyone over the age of eighteen was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion would be approved on the same basis as the roll call.

Roll call: Mr. Hong, Mr. Manuel, Mr. Okuhama, Ms. Seddon, Mr. Tabata, Mr. Watanabe, Mr. Watts, Mr. Wicker acknowledged attendance with no guests present. Mr. Yamamoto joined the meeting at 9:14 a.m. and exited the meeting at 10:37 a.m. Ms. Hurd joined the meeting at 10:37 a.m.

C. Approval of Minutes

1. Board of Director’s Meeting, March 16, 2023

Chair called for a motion to approve: Mr. Watanabe; Second: Mr. Tabata.

Chair asked if there was anything from the staff. There was none.

Chair asked if there was any comment from the public. There was none.

Chair asked for Board discussion.

Mr. Manuel asked to abstain from voting because he was not present at that meeting. Mr. Okuhama also asked to abstain from voting because he was not present at the meeting.

Chair called for the vote. The motion was approved: 7-0; Mr. Manuel and Mr. Okuhama abstained.

2. Executive Session Meeting Minutes, March 16, 2023

Chair stated that during the executive session held on March 16, 2023 the Board considered matters pertaining to the evaluation of the executive director's performance for fiscal year July 2021 to June 2022. HRS sections 92-4 and 92-5(a)(2) allow the meeting to be closed to the public when necessary to discuss an employee evaluation where consideration of matters affecting the privacy will be involved. In order to maintain the confidentiality of matters discussed in the executive session the draft minutes were provided directly to the board members for review. Chair asked that the Board respect the confidentiality of the executive session held on March 16, 2023 when discussing approval of these minutes.

Chair called for a motion to approve: Mr. Wicker; Second: Mr. Watts.

Chair asked if there was anything from the staff. There was none.

Chair asked if there was any comment from the public. There was none.

Chair asked for Board discussion.

Mr. Manuel stated he will abstain from voting because he was not present. Mr. Okuhama also abstained.

Chair called for the vote. The motion was approved: 7-0; Mr. Manuel and Mr. Okuhama abstained.

D. New Business

1. Request for Approval to Amend Site Location for License Agreement LI-KA-22-03 issued to Mahipapa, LLC, and Approval to Amend Exhibit "B" for License Agreement LI-KA-22-01 issued to Hanahanapuni Farm, to Reflect Changed Site Location of Unit GE(L), in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)

Chair called for a motion to approve: Mr. Tabata; Second: Mr. Wicker.

Chair asked if there was anything from the staff.

Mr. Roe stated that as noted in the submittal, license number K1102 originally issued to Green Energy Team (GET) in 2011, was assigned to Mahipapa in 2022. Before the assignment, GET negotiated with other revocable permit (RP) holders in Kalepa for about 1,000 acres divided amongst each of the RP holders for a portion of each of their units. In 2018, GET and Hanahanapuni Farms apparently came to an agreement to relocate a portion of GET's property within Unit L. Hanahanapuni Farm believes ADC was made aware of the change, but no formal action was ever taken by ADC to approve the change. This item is to request after-the-fact approval of the relocation of Unit GE(L) within Unit L and amend Exhibit B of Mahipapa's license to reflect the relocation.

Chair asked if there was anyone from the public who wished to provide testimony.

Mr. Nakamoto said there was one hand raised and called Ms. Leong to join the meeting.

Ms. Leong was representing Mahipapa in this matter. She just wanted to reiterate that Mahipapa supported this motion and if there were any questions or follow-up she would be glad to communicate that to them.

Chair thanked Ms. Leong and asked if there was any Board discussion or questions.

Chair asked if there was any impact from the relocation?

Mr. Roe responded no, it's the same acreage, 28-acres, they just moved from one spot to the other with agreement from the parties. There appears to be no negative impact between either of the parties. The move was at their impetus.

Ms. Prescott-Tate interrupted to note that Mr. Yamamoto had joined the meeting on behalf of Ms. Hurd.

Chair asked if there were any other questions or any discussion on this. There were none.

Chair called for the vote. Hearing no objections, the motion was approved: 9-0 (Mr. Yamamoto's vote excluded due to his arrival just before the vote.)

2. Presentation by Josh Uyehara and Mike Faye Regarding Kekaha Agriculture Association's Activities and Projects in Kekaha, Kauai, Hawaii

Mr. Uyehara thanked the Board for the opportunity and started the presentation with the Kekaha Agriculture Association's Goals and Objectives. (*See PowerPoint presentation attached for reference.*)

Chair mentioned that ADC was installing a Yardi system for inventory of land and infrastructure. Would KAA be integrating their areas into that system?

Mr. Uyehara responded that was something that could certainly work with. One thing they are working on is building a GIS database of infrastructure, tenants, assets on the property under management, operational status, things like that. They have quite a bit of those systems with bits and pieces here and there and they're hoping to have that online in something like the ESRI, Arc GIS cloud or something like that. For example, right now a lot of the large tenants have separate GIS systems with data about the irrigation infrastructure on their parcel. KAA would like to consolidate that and give all the tenants access to that kind of information. It really doesn't make sense for tenant operations to duplicate that resource and it just makes all of their lives easier if they can share on a platform like that. Integration across systems like that would be ideal. If they don't have to build out a whole system to track tenants at the level of detail they need, that information can be provided to ADC system. He doesn't see why they would want to duplicate effort.

Chair said that would be great and KAA can work with Mr. Roe on that.

Mr. Uyehara finished the presentation with Kekaha Lands: the future. (*See page 13 of PowerPoint.*)

Chair stated that Mr. Uyehara touched on the energy project with KIUC and about the benefits from KIUC repairs to the ditch system and the Mana reservoir. How would KAA utilize the water from the pump station?

Mr. Uyehara responded that the benefits would be that the Kokee system is expensive to maintain; it's at a higher elevation, a little more remote. The three major reservoirs on the system, Pu'u Lua, Pu'u 'Ōpae and Mānā are all sort of in that registered dam scale. So, the cost to remediate them to meet the dam safety requirements and then continue to operate them as registered dams would be prohibitive. Certainly KIUC could justify to ADC to make that type of investment. The energy project, first and foremost, will provide for the rehabilitation and maintenance of all of that infrastructure. That's a great benefit because

that provides for the security of that water system. As far as the water itself, they are looking at that flooded field agriculture on page 13 (of the PowerPoint Presentation). The really cold water that will come out of the Kokee System is ideal for that type of agriculture and working with KIUC, similar to how they have the pump storage, when it's dry they can figure out how to pump water to provide when necessary in between periods of rain. And when it's raining, they'll take that water, instead of pumping it and be able to use it for, whether it's taro, rice, watercress; there are some high value crops that they have been looking at that would really make sense, if you had that kind of flow available and that would be an opportunity provided by the energy project. The other thing Chair mentioned was the infrastructure. So, all the infrastructure they use, they are going to improve roads, they're going to improve the drainage canal system that's downstream of the project that will all be essential to the common benefit.

Chair asked if they would be supplying power to the farmers.

Mr. Uyehara responded that is part of the secondary agreement set around the project where they already have a power purchasing agreement in place between ADC, KAA and KIUC for the hydro(power) plants that they already have online. So, they are going to fold into that project with that agreement that will provide additional capacity and price stability for the farmers on the ADC property. They already provide through the KAA and ADC microgrid system below market price power to the farmers and they would anticipate that the capacity to do that would be increased with the energy project.

Mr. Nakatani remarked that going back and looking at the Becks facility, he thinks that rather than looking at the mill site, the VEX facility is the perfect spot for value added since it's pretty clean.

Mr. Uyehara agreed.

Mr. Nakatani said it has all the entitlements there and that rather than trying to rebuild something, he's pretty sure that the Department of Education is not going to use ten acres, or half of that but just for consideration.

Mr. Uyehara responded that he definitely agrees. Whatever they can put there, they would maximize the use of that. The things they are thinking about are, if things transition more from ag processing into the value-added manufacturing side, that will require a whole lot of work to put that on ADC land. That's an ag use, versus an industrial zoned area. That's kind of where they're thinking the difference would be.

Chair asked if there were any other questions for Mr. Uyehara or Mr. Faye.

Mr. Nakamoto said there was one hand raised and called Mr. DeCosta to join the meeting.

Mr. DeCosta introduced himself as a Kauai Councilmember. He has some ideas as a councilmember with some of the west-side community members on the mauka lands. A big group, including Mr. Tabata and Mr. Faye, wanted to do some kind of prescribed grazing whether it be sheep or cattle. He knows there are some mauka lands that's not in the forecasted future project of KAA and ADC. Mr. DeCosta believes he saw a slide that said Mauka Timber of 450-acres and Mauka Diversified ag of 600-acres, but he didn't know what the Mauka Diversified ag was for. He was wondering if that project that they had discussed with Mr. Tabata and Mr. Faye, and he believes Mr. Uyehara knows about the community project, they want to install out there to become food security and the fire mitigation that the County was really concerned about the grasslands in the mauka area are not managed. He was just wondering when they, Mr. Uyehara, when they did the community outlay of the ahupua'a, they did not mention the County fire department and the fire mitigation of keeping that tall grasslands under control. So, he wanted to know if he could submit a community proposal to this Board with some type of explanations and some slides to

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on April 20, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

APPROVED AS AMENDED:

ADC BOARD MTG May 18, 2023

show what they were thinking about, and it will help with the silt runoff. He wants everyone to know that the silt runoff comes from lands that are not managed and when the guinea grass, that's the type of grass that is on that 1200+, 12,000+ acres up in the mauka land. Guinea grass gets so tall that under the guinea grass there is trenches of dirt because sunlight cannot reach it, so the seedlings of the guinea grass isn't able to propagate. Guinea grass helps as a silt modification if it's held at 18 inches above the ground level which means if you have grazing going on, the guinea grass will help keep back some of the silt runoff from the mauka lands. They had a professional from UH, a grazing specialist present for them. So, he was wondering if they could hear out this project or incorporate this project or at least help out the community. They wanted to do this back in 2015 and they had Representative Morikawa lead the charge on this out there and now it has been forgotten. He's just bringing it back, hoping to get some positive ears out there listening. He's willing to take any questions right now if they don't understand what is being proposed.

Chair thanked Mr. DeCosta for coming and said he would really like the board to look at what he was talking about. He briefly sat in on that meeting but had to jump off the call after a bit, so he'd like to hear about everything Mr. DeCosta had put together. Chair believes that Mr. Faye and Mr. Uyehara have some concerns. The Board does not have all the information they need to have a discussion. Could he get them that information?

Mr. DeCosta asked who would he send that information to?

Chair responded to Mr. Roe.

Mr. DeCosta said ok. He said that before he closed he just wanted everybody to know that this is not something like a rabbit out of a hat at a circus show. This was a community outcry to do some kind of livestock grazing and he knows ADC is underneath an environmental watch and there's some lawsuits going on with Earthjustice but some of the lawsuits is because, according to the professional from UH, of prescribed grazing, the guinea grasses are too tall up in the mountain area and underneath the guinea grass has a lot of open red dirt that allows the rain water bring its silt down to the makai ditches. We could work hand in hand with each other and do a pilot program possibly across the Kokee state road on the Waimea side. They want to do a 500-acre parcel to keep the grass down to a minimum, help with the fire mitigation. He believes across the State, Governor Green is moving towards keeping low grasses in fire hazard areas and their County fire department is really concerned when they fought the two fires out there. A lot of those valleys have no entrance or exit for fire trucks, so they have to go on foot and if the wind changes and these firefighters get caught in the six-foot tall grasses there is nowhere for them to run or get out. Whereas if it's more of a pasture, grazing lower end. They can do the numbers where they can keep the prescribed grazing to a minimal under the environmental impact so they could do like one cow per ten acres or maybe ten sheep per two acres. They could do something really, really low-impact and rotate them vigorously, so the grasses have a chance to stay at the 18-inches or 24-inches. They would hate to have to put some kind of stipulation where it says those grasses would have to be mowed in order to help with fire mitigation; he thinks there is much more intellectual ways to control grass heights and they do it all over the world actually. We are way behind the times. He's been to a place in California where they use goats on the side of the road to keep the guinea grass or their grasses down. There's ways to do it and there's smart techniques to use to be environmentally friendly and he would like to present that to the board.

Ms. Prescott-Tate reminded Mr. DeCosta that his presentation was scheduled today as agenda item 5. Did he want to send additional information? The Board could move the presentation to the next meeting.

Mr. DeCosta said he is a schoolteacher and took a break to join the meeting on Zoom. So, he doesn't have access to get the documents to the board.

Ms. Prescott-Tate said that's ok. We will reschedule the presentation to the next meeting.

Mr. DeCosta asked if he was scheduled to do his presentation today?

Ms. Prescott-Tate responded yes, he was scheduled as item 5, but we're still on item 2.

Chair told Mr. DeCosta they'd like to defer item 5 to the next meeting so the board can get his information.

Mr. DeCosta responded ok.

Chair said so if he can submit that over the next month, they'll get him on the agenda.

Mr. DeCosta thanked everyone.

Chair asked if anyone had anything to say. There was none.

Chair thanked Mr. Uyehara and Mr. Faye for the excellent presentation.

Ms. Prescott-Tate asked if they could take a break.

Chair called for a five-minute break at 10:16 a.m.

Chair called the meeting back to order at 10:25 a.m.

Mr. Wicker exited the meeting at 10:25 a.m.

3. Request for Approval of Re-Opened Lease Rents for General Lease No. S-3940 Assigned to Kauai Island Utility Cooperative, Kalepa, Kauai, Hawaii, Tax Map Key No. (various)

Chair called for a motion to approve: Mr. Tabata; Second: Mr. Hong.

Chair asked if there was anything from the staff.

Mr. Roe stated that Lease No. S-3940 was issued by DLNR in 1965 for 65-years and it was issued to Citizens, McBride Sugar Company. Through a series of transfers and assignments it is now held by Kauai Island Utility Cooperative for 74.38 acres of land under easement for electro-utility transmission lines. The lease was reopened in 2020 and ADC conducted a fair-market rent appraisal. KIUC commissioned a review of ADC's appraisal and reached their own conclusion. At KIUC's suggestion, to avoid the added time and expense of appointing a third appraiser to mediate the fair-market value, ADC and KIUC agreed to split the difference between ADC's appraised value and the value associated with KIUC's review with a final figure shaded slightly in favor of ADC. You can see the details in the submittal, but we have reached the amount of \$64,000 a year for the new reopened rent.

Chair asked just to be clear that this has been agreed on by both parties, so this is not up for negotiation, this has been agreed to.

Mr. Roe responded yes and stressed that this amount was at KIUC's suggestion. ADC felt that it was fair and appropriate.

Chair asked if there was anyone from the public who wished to give testimony. There was none.

Chair asked if there were any questions or discussion by the Board.

Mr. Manuel stated in reviewing the submittal, there are eight-years left on this lease; is there an option to extend or what is the strategy considering these are utility easements.

Mr. Roe stated he doesn't recall if there was an option to extend. He is pretty sure he looked for that and didn't see it. So, KIUC would have to request a renewal. He would imagine these lines head over Princeville, Hanalei area so he would imagine unless they have alternate routes, KIUC would be interested in renewing this. The property came over to ADC as part of an EO (executive order), so we have control and management over it.

Mr. Manuel said he was wondering in terms of procurement if they would have to go out to bid and open it up, which doesn't seem logical if the infrastructure is there. He guessed that was something the future boards will have to deal with, but he just wanted to note that in the discussion.

Chair thanked Mr. Manuel and asked if there were any other questions or discussion.

Mr. Okuhama said he had a question just for his reference. So, Hastings, Conboy did the appraisal for us and then KIUC had Medusky do the review and the differences were quite big. What was the basis for the differences in the valuations and did our appraiser review Medusky's review to come up with rationale as to why there's such a big difference in the rent value versus our higher amount?

Mr. Roe responded that the Medusky review identified a couple of properties that they thought should have been identified as commercial that Conboy identified as residential. They did take the appraisal back to Conboy who looked at it and said that they could go either way but stood by their appraisal amount; he didn't defer to the review. So, then it became a discussion between ADC and KIUC as to whether they could find agreement or whether or not they needed to find a third appraiser to find a mediated amount.

Mr. Okuhama said he's used to normally; the lessor and the lessee agrees to a third appraiser and then you get a valuation from an independent agreed upon appraiser and then you come out with a lease rent amount going forward. That's normally what he's seen, not a split the difference type of valuation on the lease rent. He was just kind of curious on how that works and for future reference when they come to situations like this.

Mr. Roe responded okay.

Chair asked if there were any other questions or discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 9-0

Mr. Wicker rejoined the meeting at 10:31 a.m.

4. Request for Approval to Issue a 35-year non-Exclusive License to the County of Kauai for Two Monitoring Wells in Field 311 in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Chair noted that Mr. Wicker had rejoined meeting.

Chair asked for a motion to approve. Mr. Tabata; Second: Mr. Watanabe.

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Chair asked if there was anything from the staff.

Mr. Roe said the County of Kauai owns and operates the Kekaha landfill and the Hawaii Department of Health is requiring the landfill to establish background water quality monitoring, upgradient of the landfill. The County has requested permission to install two monitoring wells in field 311 across the highway from the landfill. That land is currently licensed to Hartung. Hartung has agreed in principle, if the county will agree to coordinate with them for access to the wells to avoid disrupting field activities and, if the structures can be located makai of the interior field road. You'll see the location on the map, and that location is satisfactory. That's basically what the board is being asked to approve.

Chair asked if there was anyone from the public who wishes to give testimony. There was none.

Chair asked if there were any questions or discussion.

Mr. Manuel said, these are ground water monitoring wells regulated by the Department of Health, so the water commission doesn't regulate this development. He totally supports groundwater monitoring for the purposes of managing landfills.

Chair thanked him and asked if there were any other discussion or questions.

Mr. Okuhama asked if the monitoring wells are along the roadside. Is that correct?

Mr. Roe responded yes they will be.

Mr. Okuhama asked if the bollards and protection around it is going to be satisfactory so that in case a vehicle hits it or anything like that there won't be any risk of contamination or anything like that going into the well system.

Mr. Roe said that it should be high enough. It will be covered. There will be bollards protecting it, there may even be fencing but that is not certain yet. In spite of how it looks on the map, there is a fair amount of distance from the actual highway.

Chair asked if there were any other questions, discussion? There was none.

Chair called for the vote. Hearing no objections the motion was approved: 10-0

5. Discussion of Pilot Grazing Project on ADC Mauka Lands in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Chair stated that this item will be deferred until next month's agenda.

E. Old Business

1. Update Regarding Discussion of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mana Reservoir) Issued to Kauai Island Utility Cooperative for the West Kauai Energy Project in Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.), Various (continued from March 16, 2023, Item D-2)

The Board may go into executive session pursuant to HRS section 92-5(a)(4) to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

**2. Request for Approval of the Draft Annual Performance Review of the Executive Director
(continued from March 16, 2023, Item E-1)**

The Board may go into executive session pursuant to HRS section 92-5(a)(2) to allow discussion of an employee evaluation where consideration of matters affecting privacy will be involved.

Chair stated that the Board would be going into executive session to discuss Old Business Agenda Items 1 and 2.

Chair asked if there was any public testimony before they enter Executive Session. There was none.

Chair called for a motion to approve: Mr. Manuel; Second: Mr. Watts.

The Chair called for a vote. Hearing no objections the motion was approved: 10-0.

The Board entered Executive Session at 10:35 a.m.

Mr. Yamamoto exited the meeting at 10:37 A.M. and Ms. Hurd joined the meeting at 10:37 a.m.

The open meeting resumed at 11:10 a.m.

Regarding agenda item E-2, Chair called for a motion to adopt the Evaluation Committees' report and recommendation to retain the Executive Director at his present salary.

Motion by Mr. Tabata; Second by Mr. Wicker.

Chair asked if there was any discussion. There was none.

Mr. Okuhama noted that he would abstain from voting since he was not present at the previous meeting.

Chair called for the vote. Hearing no objection the motion was approved: 9-0; Mr. Okuhama abstained.

Chair said the tenure of the ad-hoc committee to evaluate the fiscal year 2021-2022 annual performance of the Executive Director that was established on January 25, 2023 has now expired. Chair thanked Ms. Seddon, Mr. Watanabe and Mr. Manuel for their hard work on this committee.

F. Executive Director's Report

Chair called on the Executive Director to give his report.

Mr. Nakatani said that they have the report before them. The big bill is Senate Bill 833, SD2 that is related to the Wahiawa Irrigation System. That bill is going to conference and hopefully they'll get something out. They have conferees on the Senate side, but he hasn't seen the conferees on the House side. The other thing was, with legislature advise and consent on April 5, 2023, the Senate committee on Agriculture and Environment recommended to advise and consent the following gubernatorial nominees to serve on the ADC Board, and that's Jayson Watts, Karen Seddon and Jason Okuhama.

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Some other updates, if you turn to the next page, you'll see that we're progressing slowly except for one, item number 5. Some other bills that are still with the legislature is SB 818 to transfer aquaculture to ADC. That's going to conference. Other bills, HB 852 which amends the definition to allow eligible businesses to include value-added products grown within their enterprise area zone, that's also going to conference. And lastly, HB 1426 that establishes a food network statewide will also go to conference.

Chair asked if there were any questions. There were none.

Before ending the meeting Chair asked Mr. Okuhama to give a little introduction and background on himself.

Mr. Okuhama said he's a former banker and for a number of years he's been in the lending industry and banking for about forty years give or take. He's been self-employed for the past 22 - 23 years and primarily specializes in doing government loan programs. So, the farm service agency, USDA, USDA rural development, small business administration, he primarily does all these types of government lending and lately over the last several years he's been doing quite a bit of agricultural loans. And over the years too with the rural development programs, off and on over the years he's done food related type industries in financing. So, he thought that ADC would be an agency where, with his background and knowledge, he could contribute to the agency going forward. Especially, with the agriculture industry and food industry going forward and the responsibility ADC has with agricultural lands on Oahu and Kauai and some of the facilities they were talking about being funded, he hopes he can contribute going forward.

Chair thanked Mr. Okuhama and asked if the Board had any questions. There was none.

Mr. Watanabe said before closing he wanted to congratulate Chair for being the outstanding CTAHR alumnus.

Chair responded that was kind of fun.

G. Adjourn

Chair called for a Motion to Adjourn: Mr. Manuel; Second: Mr. Watts.

Chair asked for board discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 10-0

The meeting was adjourned at 11:19 a.m.

Respectfully submitted:

Lynette Marushige
Secretary

Agribusiness Development Corporation
Meeting of the Board of Directors
EXECUTIVE SESSION
Thursday, April 20, 2023

The Motion to Enter Executive Session was approved by the Board at 10:35 A.M.

Members present virtually for the Executive Session:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Glenn Hong, Member-At-Large
Sharon Hurd, HBOA, Ex-Officio Member
Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Jason Okuhama, Member-At-Large
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Jayson Watts, Maui County Member (Mr. Watts)
Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member (Mr. Wicker)

Members Excused from the April 20, 2023 Board Meeting

None.

Counsel Present, virtually for the Executive Session:

Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)

Staff Present, virtually for the Executive Session:

Lynette Marushige, Secretary

Executive Session called to order at 10:40 a.m.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


 Ministerstvo školství, mládeže a tělovýchovy
 MŠMT


 Ministerstvo školství, mládeže a tělovýchovy
 MŠMT

[REDACTED]

[illegible]

Country	Share of GDP
United States	10.5%
Germany	10.0%
France	9.5%
Japan	9.0%

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Chair responded alright, so the next item to be discussed is old business item 2 regarding the presentation of the evaluation committee's report and recommendations regarding the fiscal year 2021/2022 evaluation of the executive director's job performance pursuant to HRS section 163D-3(f). I'll turn this matter over to the evaluation committee Chair, Mr. Watanabe or Ms. Seddon to present the committee's final report.

Mr. Watanabe said I believe you all received the final report. We did discuss it at our last Board meeting. He thinks it pretty much covers it, unless there are any other questions from the Board members regarding the evaluation final report. It's pretty clear cut, and asked if Ms. Seddon wanted to add anything.

Ms. Seddon said no, she pretty much thought they discussed everything last time. She asked Mr. Manuel if he saw anything.

Mr. Manuel said he read the minutes of the conversation, so he thinks they discussed what they needed to.

Chair responded, OK. The vote on the motion to accept the evaluation and recommendation of the evaluation committee will take place on the public record after exiting this executive session. If our discussion is done, can we have a motion to exit executive session?

Mr. Tabata [REDACTED]
[REDACTED]

Ms. Prescott-Tate [REDACTED]

Mr. Manuel [REDACTED]
[REDACTED]

Ms. Prescott-Tate [REDACTED]
[REDACTED]

Mr. Tabata responded, ok thank you.

Chair thanked the committee. They are getting really, really good at this so thank you very much. He asked if there were any other questions, comments.

Hearing none, Chair called for a motion to exit the executive session.

Motion by Mr. Watts; Second: Mr. Manuel.

Chair called for the vote. Hearing no objections the motion was approved. Vote: 10-0

Executive session adjourned at 11:09 a.m.

DRAFT