

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 23, 2020
Via Zoom Teleconference

Considering the evolving COVID-19 situation, protecting the health and welfare of the community is of utmost concern. As such, the meeting was held remotely, with Board members, Staff and Applicants participating via Zoom meeting venue.

Members Present, virtually:

Sandra Kato-Klutke, Kauai County Member (Chairperson)
Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member
Lloyd Haraguchi, Member-At-Large
Kevin Hopkins, Hawaii County Member
Frederick Lau, City & County of Honolulu Member
Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member
Douglas Schenk, Maui County Member
Karen Seddon, Member-At-Large
Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member
Warren Watanabe, Member-At-Large

Counsel Present, virtually:

Valerie Kato, Deputy Attorney General

Guests Present, virtually:

Mr. Mike Faye, Kekaha Agricultural Association
Ms. Stephanie Whalen, Hawaii Agriculture Research Center

Staff Present, virtually:

James Nakatani, Executive Director
Myra Kaichi, Sr. Executive Assistant
Ken Nakamoto, Project Manager
Lynn Owan, Administrative Services Officer
Lyle Roe, Property Manager

A. Call to Order

Chairperson Kato-Klutke called the virtual meeting to order at 9:10 a.m.

B. Roll Call

Ms. Kaichi conducted a roll call of the Board. All members present. This also serves as a roll call vote. For each subsequent vote, the Chair will ask if there are any objections. If there are none, motion will be carried on the same basis as this initial roll call.

C. Approval of minutes from the August 26, 2020 virtual meeting

Motion to approve: K. Hopkins / Second: K. Seddon

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Hearing no comments, motion carried.

Vote: Approved, 10-0

- D. Request for Approval to Amend License No. LI-KA1413 Issued to Laurie Ho to Withdraw up to 7 Acres of Field HSPA 3, More or Less, in Kalepa, Kauai, Tax Map Key (4) 3-9-002-020 (por)

Motion to approve: L. Haraguchi / Second: D. Schenk

No response to call for public testimony.

Mr. Hopkins asked why only 7 acres are being withdrawn if tenant has been non-compliant. Mr. Roe explained that this is a last, good-faith attempt to allow the tenant to come into compliance with lease terms. Mr. Kaichi clarified that staff made the determination to not pursue full revocation because we are not able to administer the land should we take it back. If we withdraw the full acreage, we will need to manage the land and due to the pandemic, we need a County exemption from quarantine just to visit Kauai. This action does send a clear message to all the Kalepa tenants that if you don't start to comply with land utilization plans, you will start losing the land. If the Board wishes to take back the full 19 acres, we can do that but then we will need to find a way to take care of the land. Mr. Nakatani stated that he understood the concern but explained that the cleanest and quickest way to handle this particular situation was to implement the already negotiated agreement the tenant has with Mr. Lin. It is a start to move things along. Mr. Roe mentioned that there are other tenants who are also non-compliant, and we are working with them as well.

Mr. Manuel asked if there is a timeframe for a tenant to come into compliance, i.e. 6 months, a year, what is the recommendation? Mr. Nakatani explained that these are being reviewed on a case by case basis given the area, but we are looking at a plan. We will go back and do subsequent inspections to check on progress, etc. He stated that revoking someone's license is a serious matter and we don't take it lightly.

Mr. Manuel recommended this issue be considered by the Policy Committee to look at how we enforce compliance and create some kind of consistency. Mr. Nakatani shared some of what staff is up against in these situations. When a warning is given, the tenant will do the bare minimum and say they are working on it; and they are paying their rent, so it is not a simple resolution. He acknowledged the Board's concerns and reiterated that this is a start to addressing the non-compliance issues.

Ms. Seddon recommended setting incremental milestones, i.e. at 3 months there is an indication, at 6 months more indications, at 9 months, etc. If tenant hasn't met the milestones at 12 months, their license is revoked. Staff sets the expectations and monitors the progress. It is a fair and reasonable way to manage compliance.

Mr. Schenk asked about the ADC employee on Kauai and if we still have that person? Ms. Kaichi explained that Mr. Sam Lee was a consultant. With funding issues (due to COVID), his contract was not renewed so his services ended as of March. Mr. Roe is our property manager and is managing Kauai. As an employee, his scope is broader than what the consultant could do so property management is more detailed.

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Mr. Haraguchi asked if there is a lot of interest in ag lands in Kalepa? Mr. Nakatani answered, yes there is more interest than we have land.

Mr. Manuel asked if we are pursuing this course of action given the current situation or is it because this is regular practice? Mr. Nakatani reminded the board that we recently had an action rescinded when withdrawing land from a tenant, so the small incremental acreage withdrawal was recommended in this case. Ms. Kaichi stated that while there is a lot of interest in Kalepa land, we don't know how serious the farmers are about farming. We do have long standing relationships (35 years in some cases) with the farmers/ranchers and have encouraged them to work with CTAHR to explore other methods of farming to increase crop production, reduce production costs, and other ways to balance livestock against crops. We hope to bring more innovative ideas to the Board for approval in the coming year.

Mr. Roe explained that shifting small acreage over to Lin's Farm was intentional in that we want to start with a small amount to see how it goes before shifting more acreage.

Hearing no further questions nor objections, motion carried.

Vote: Approved 10-0

- E. Request for Approval to Amend License No. LI-KA1811 Issued to Tainsheng Lin dba Lin's Farm to Include up to 7 Acres of Field HSPA 3, More or Less, in Kalepa, Kauai, Tax Map Key (4) 3-9-002-020 (por)

Motion to approve: L. Haraguchi / Second: D. Schenk

No response to call for public testimony.

Ms. Shimabukuro-Geiser stated that she appreciated the photos provided in the submittals. They are very helpful since we are not able to travel to see the farms. Mr. Haraguchi echoed her comment and also appreciated the good work Mr. Lin is doing on his farm.

Hearing no further questions nor objections, motion carried.

Vote: Approved 10-0

- F. Request for Approval to Amend License No. LI-K1901 Issued to Hawaii Labor Solutions Inc. to Include 40.82 Acres of Field 207, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002-001 (por)

Motion to approve: M.A. Evans / Second: L. Haraguchi

No response to call for public testimony.

Mr. Manuel asked about item 3 of staff's recommendations: Do those fees include water and where does the water come from – Kekaha or Kokee ditch? In future submittals he asked that staff indicate where the water is coming from and how much water is needed to support the crops. Ms. Kaichi asked Mr. Mike Faye of the Kekaha Agricultural Association (KAA) to come forward to help answer the questions. Mr. Faye explained that the water that supplies Field 207 is from the Kekaha ditch system.

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The only water they use from Kokee system is for the mauka fields. The water at fields 207 and 206 can also be obtained from Huluhulunui shaft. He stated there is adequate water and KAA is also looking to use some of the overflow water from keeping the Waiawa reservoir full to provide a second use of the water in these fields. The KAA finds this especially attractive because Field 207 is immediately makai of Field 107 (Pioneer/Corteva incubator program) and makes up a cluster of diversified agriculture fields.

Mr. Manuel asked if KAA meters tenants' water use. Mr. Faye answered, no. Mr. Manuel asked Mr. Roe to find out how much water they are planning to use on the 40 acres. Mr. Roe stated he will find out.

Mr. Hopkins asked about provisions for dealing with run-off given the amount of rain on Kauai. What is the plan to deal with storm run-offs? Ms. Kaichi stated the soil conservation plan is required but the storm run-off is a much bigger issue than the land license due to the Clean Water Act lawsuit. Ms. Kaichi acknowledged the points raised. She responded that ADC will need to look at both building permits and dredging/grading in addition to soil conservation plans. Ms. Shimabukuro-Geiser asked if this applicant has had previous experience with controlled agriculture production? Mr. Roe stated he believes he does – applicant has formerly worked with large companies in Kekaha as a consultant and is a grower himself, with experience in controlled environment agriculture.

Mr. Haraguchi asked about requester's financial capability to manage the build-out? Mr. Roe stated that requester said he is able to self-finance for 1-2 years and has submitted financial info to that effect.

Mr. Haraguchi asked where the photos are from? Mr. Roe stated they are from the applicant as representative of what he is going to be doing.

A member of the public was brought forward after indicating a wish to be speak by a virtual raised hand (phone number ending in 7799). The Board waited for approximately a minute but there was no response from the party.

Hearing no further questions nor objections, motion carried.

Vote: Approved 10-0

- G. Request for Approval to Refer License No. LI-GA1810 Issued to Youming Luo & Dehua Liu to the Department of the Attorney General for Possible Legal Action

Motion to approve: M.A. Evans / Second: P. Shimabukuro-Geiser

No response to call for public testimony.

Mr. Hopkins asked what is the time period for when this negotiation has to be completed? Mr. Roe's recommendation is 2-3 months to negotiate the plan. Chair asked for confirmation that there are no plantings. Mr. Roe stated that he observed the tenant dozing and there was a tractor on premises but he did not see any plantings as of yesterday and warned the tenant that they may not want to be investing

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any more into farming until the board takes action. Chair asked what is 'reasonable time to resolve'? Mr. Roe stated 2-3 months to work out terms and 12-18 months' time allowed to resolve.

Hearing no further questions nor objections, motion carried.

Vote: Approved 10-0

- H. Request for Approval to Amend Lease No. LE-W1502 Issued to Dole Food Company, Inc. to Withdraw 5,460 Square Feet of Building J (por), More or Less, in Whitmore, Oahu, Tax Map Key (1) 7-1-002-004 (por)

Motion to approve: D. Schenk / Second: P. Shimabukuro-Geiser

No response to call for public testimony.

Mr. Manuel asked what is the estimated monthly receivables that we expect from our leases? What are the implications to the overall budget given the credits, offsets, etc. being granted? Mr. Nakatani said we would get back to the board with that information.

Hearing no further questions nor objections, motion carried.

Vote: Approved 10-0

- I. Request for Approval to Amend Revocable Permit No. RP16-01 Issued to Davey Tree Expert Company to Include 5,460 Square Feet of Building J (por), More or Less, in Whitmore, Oahu, Tax Map Key (1) 7-1-002-004 (por)

Motion to approve: M.A. Evans / Second: L. Haraguchi

No response to call for public testimony.

Mr. Hopkins asked staff to describe the subject space. Mr. Roe stated it is an open-air warehouse, 2-sides, beams and a roof, and is not in good repair. Rent is \$0.10/sq.ft. per year.

Mr. Manuel asked if the Policy Committee can look at this type of rent-offset situation. In this case, what services are we getting in addition to their normal business activities – does staff feel that the additional groundskeeping and maintenance equates to \$546.00? Mr. Roe explained that the applicant will take care of a much larger area, far in excess of what their actual premises are. Mr. Roe will be meeting with them monthly to review manhours, etc. to be sure the situation remains equitable.

Ms. Shimabukuro-Geiser asked for clarification on the rent amount: page 1 shows \$1,634.40/month; page 2 shows \$546.00/month. Mr. Roe clarified that \$1,634.40 is the current rent amount and the \$546.00 is separate.

Hearing no further questions nor objections, motion carried.

Vote: Approved 10-0

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- J. Request for Approval of an Education Facility to be Constructed and Administered by the Hawaii Agricultural Research Center and the Hawaii Agricultural Foundation in Kunia, Oahu, Tax Map Key (1) 9-2-001-011

Motion to approve: M.A. Evans / Second: L. Haraguchi

Chair noted that seven letters of support were received from the public.

Chair asked for public testimony. Ms. Stephanie Whalen, Executive Director of Hawaii Agriculture Research Center (HARC), was brought forward.

Mr. Haraguchi asked about Malama Learning Center's (MLC) role in the project, and also what is the relationship, if any, between them and Hawaii Agricultural Foundation (HAF). He stated that he was on the initial Board of MLC and doesn't think there is a conflict. Ms. Whalen explained that a couple of years ago HAF secured funding for this facility on a different site but that didn't work out, so they went back and got funding for this site. Separately, MLC asked HARC for help with a plot to plant plumeria trees for MLC to do lei making as the original site was in jeopardy due to a change in land ownership. Ms. Whalen stated that HARC is a permanent organization and has been around for many years and will continue to be for many years; she suggested that they all come together and have their programs on HARC's site. With the State funding that HAF obtained, there is specific wording that needs to be used in any agreement, which specifies that HAF is in charge. HAF understands and is in agreement that the three organizations will work together to share the facility for the purposes of both conservation and agriculture.

Ms. Shimabukuro-Geiser asked if a formal Memorandum of Understanding (MOU) will be put in place? Ms. Whalen said yes, one is required by the State between HAF and HARC. And there will also be one for the three organizations (HAF, HARC and MLC) on how to schedule and coordinate activities.

Mr. Hopkins wants to ensure that the insurance requirements have been addressed and covered. Ms. Whalen confirmed that HARC is covered and has had students on their property for many years.

Ms. Kaichi clarified that HARC owns the property and ADC along with the NRCS, holds a conservation easement on the property. Liability issues are not concerns of the State. Mr. Manuel asked that in the future, the easement provisions be shared with the Board as he would like to be sure that all conditions are being met. So acknowledged by Ms. Kaichi.

Mr. Schenk asked what is the scale of the project and if all of the funding has been secured? Ms. Whalen stated that the grant in aid amount is \$150,000 and confirmed that there are sufficient funds to do what they are planning.

Ms. Whalen addressed the previous conservation easement discussion by explaining that the easement has been in place for several years and that there is an annual, third-party inspection that is conducted by an inspector approved by ADC and HARC, at which time HARC has to demonstrate compliance with all of the conditions. Mr. Manuel commended HARC's good work and said that seeing the inspection's compliance rating would have been a good addition to the submittal.

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Hearing no further questions nor objections, motion carried.

Vote: Approved 10-0

K. Update on Ohana Best, LLC vs. State of Hawaii, et al., Civ. No. 19-1-1640-10.

“The Board may go into executive session, pursuant to H.R.S. §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.”

Motion to enter Executive Session: K. Hopkins / Second: D. Schenk

No response to call for questions.

Hearing no objections, motion carried.

Vote: Approved 10-0

The Board emerged from Executive Session with no action taken.

Ms. Kaichi conducted a second roll call. All members present.

Chair asked for any public comments or questions regarding Board's exit into Executive Session.

There were none.

L. Request for Approval for Establishment of Two Investigative Committees Pursuant to Article 4, Section 3 of the ADC Bylaws and HRS Section 92-2.5(b)(1): 1) Tenant Review and Recommendation Committee; and 2) Agricultural Policy Committee

Chair re-stated her presentation initially made at the August 26, 2020 ADC Board of Directors meeting, in which she established two investigative committees:

1) Tenant Review and Recommendation Committee

Members: Lloyd Haraguchi, Fred Lau, Warren Watanabe, Jari Sugano (UH CTAHR Extension, Oahu County Administrator), PO Yung Lai (City & County of Honolulu Agriculture Liaison).
Assisted by staff: Ken Nakamoto and Lyle Roe.

The scope of the committee's duties are as follows:

1. Develop criteria for the qualification and selection of potential tenants of vacant ADC agricultural lands on Oahu.
2. Develop a fair and effective solicitation processes for the submission of applications.
3. Upon completion of the solicitation process, review and evaluate the applications received in accordance with the qualification and selection criteria and select the best applicants.

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2) Agricultural Activity Policy Committee

Members: Doug Schenk, Kevin Hopkins, Karen Seddon. Assisted by staff: Myra Kaichi and Lyle Roe.

The scope of the committee's duties are as follows:

1. Present data or anecdotal information about
 - a. Constantly evolving market demands for different types of agricultural commodities, both in the State, and for possible export.
 - b. Burdens and hardships on ADC tenants who strive to grow and increase diversified agricultural crops and livestock.
2. Provide information about the current conditions of different crops or livestock
 - a. Identify the tension between competing agricultural activities.
 - b. Develop a system for determining when a particular use should be favored over another.
 - c. May consider whether a list of criteria may be the most effective, or whether a level of projected success is more favorable. It may find other ways to balance these competing requests.
3. Investigate the various situations in which existing ADC tenants provide infrastructure improvements and services which ultimately benefit the State of Hawaii, for which benefit the tenant may request rent credit or other forms of compensation. It shall develop standards and criteria that the ADC board may consider in deciding these requests.
4. *(added as a result of discussion earlier in the meeting)* Policy on when or how much time to allow a licensee to come into compliance, or to default or to terminate.

Each member of these two committees is authorized to take all actions necessary and to work with ADC staff to ensure that all actions of their respective committees are conducted in accordance with Chapter 92, HRS, and are within their defined scope, as stated. They shall each elect a committee chairperson. The committee chairperson will present all resulting findings and recommendations to the entire ADC board at a future duly noticed board meeting no later than January 20, 2021.

Ms. Kaichi asked that Chair consider adding an item to the scope: Policy on when or how much time to allow a licensee to come into compliance, or to default or to terminate.

Motion to approve: K. Manuel / Second: K. Hopkins

No response to call for public testimony.

Mr. Manuel thanked Chair for forming the Committees and the members for participating. The work will be valuable to the Board.

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Mr. Hopkins asked about HRS 92 – would like guidance on that. Ms. Kato responded that the mention of HRS 92 refers to the creation of the committees. She can provide guidance as to how to conduct the committee's interactions.

Mr. Schenk asked about a State long range plan for agriculture that goes back decades that he recalls seeing recently. He thinks it will be helpful for the Committees. Ms. Evans asked if this is the Strategic Plan that the Department of Agriculture (DOA) is currently working on? Ms. Shimabukuro-Geiser thinks it is probably something different and asked for more information.

Mr. Schenk stated it will be helpful to align ADC's objectives with the State's focus when forming ADC's policies. Ms. Shimabukuro-Geiser explained that ADC is an attached agency to the DOA and has four priority actions which are included in the department's strategic plan to double local food production. The Strategic Plan is currently under review as there are two more public zoom webinars. They will then collect public comments until October 2. The department will also take into consideration recent impacts of COVID19. DOA will then report to the Legislature by the end of December. The last plan was done in 2008 in a SWOT plan whereas this plan will be a more formal report. Ms. Shimabukuro-Geiser thinks the plan Mr. Schenk is referring to is a different source; could it be the Governor's 2014 Agriculture Action Plan? If Ms. Shimabukuro-Geiser can locate a full copy of that plan, she will forward it onto the Board.

Ms. Shimabukuro-Geiser shared that DOA has contracted with UH Hilo to perform GIS mapping of agriculture production. They have completed City & County of Honolulu and Hawaii County and DOA wants to try to add Kauai County if funding allows. The counties were selected based on the 2017 value of agriculture production sales and to map just the two counties costed more than the \$100,000 provided by the Legislature; the additional funds came from DOA's barrel tax monies.

Mr. Schenk asked if this Board can see the DOA Strategic Plan before it goes to the Legislature? Ms. Shimabukuro-Geiser explained that they are required to work with the Governor's Office on this so she can share a copy once it has been filed with the Legislature.

Hearing no further questions nor objections, motion carried.

Vote: Approved 10-0

M. Executive Director's Update

Mr. Nakatani provided an update on the following items:

- 1) HDOA Strategic Plan: There are two more sessions next week and he encourages the Board to join in if possible. If you are interested in participating, contact Ms. Shimabukuro-Geiser's assistant as she is coordinating participation of Board members to ensure compliance with the Sunshine Law. Send an email to Ms. Gayle Nakamura at gayle.m.nakamura@hawaii.gov.
- 2) Galbraith Update: KITV featured one of our tenants, Ms. Shin Ho, (of Ho Farms) and how she is dealing with the pandemic situation. The story is inspiring and worth a read.

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Link: <https://www.kitv.com/story/42578447/diversity-and-flexibility-is-how-an-oahu-farm-is-surviving-during-the-pandemic>

- 3) Legislative Update: Fortunately, we are working on the Christian Crossing in Kalepa which is part of a vital route of getting to the other side of the island; should this bridge go down there is no other way to get there. We are still awaiting funding (\$600,000) for the Kekaha plantation bridges.

N. Adjourn

Motion to adjourn meeting: K. Manuel / D. Schenk

Hearing no objections, motion carried.

Vote: Approved 10-0

Meeting was adjourned at 11:15 a.m.

Respectfully submitted,

Lori Nakamura

Lori Nakamura
ADC Executive Secretary