

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 Board of Directors

Held via Teleconference

March 16, 2022
9:00 a.m.

Considering the evolving COVID-19 situation, protecting the health and welfare of the community is of utmost concern. As such, the meeting will be held remotely, with Board members, Staff and Applicants participating via online meeting venue as permitted by the Governor's "Emergency Proclamation Related to Sunshine Law In-Person Meetings" dated December 29, 2021.

Interested persons can submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be submitted not later than 72 hours prior to the meeting to ensure time for Board members to review it. Written testimony may be submitted electronically to hdoa.adc@hawaii.gov, or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania St Rm 205, Honolulu HI 96813

When testifying in-person, or via internet or telephone access, 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 can participate in the meeting using one of the following options:

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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., *****@***mail.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 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 finish speaking.

For both internet, 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.

PHONE ACCESS:

If you cannot get internet access, you may get audio-only access by calling the Zoom Phone 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. You will not have a panelist number. 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 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.

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For both internet, 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.

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>.

LOSS OF CONNECTIVITY

In the event of a loss of internet 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 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 first 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/adf/> no later than close of business the next business day. New video/audio livestream, telephone, and web identification 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.

[agenda begins on the following page]

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board of Directors Meeting, January 26, 2022

D. New Business

1. Request for Approval for Sunrise Capital, Inc. Under License Agreement No. LI-K1001 and Lease Agreement No. S-5367 to Construct Greenhouses and Settling Ponds in Kekaha, Kauai, Tax Map Keys (4) 1-2-002:001 (por) and (4) 1-2-002:022
2. Request for Approval to Renew License Agreement No. LI-PU1809 Issued to K&L Produce, LLC for 136.6 Acres, More or Less, for Six Months in Waialua, Oahu, Tax Map Key (1) 6-5-005:002 (por)
3. Request for Approval-in-Concept to Issue a License to Kekaha Agriculture Association for up to 400 Acres, More or Less, for an Open Floodable Space in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)
4. Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

E. Old Business

None

F. Executive Director's Update

G. Adjourn

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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."

If you require special assistance or auxiliary aids or services to participate in the public hearing process, please contact staff at (808) 586-0186 at least three (3) business days prior to the meeting so arrangements can be made.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW ON OUR WEBSITE ON AND AFTER THURSDAY, 03/10/22.

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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:

Myra Kaichi, Acting Non-Discrimination Coordinator
Agribusiness Development Corporation
235 S. Beretania Street, Room 205
Honolulu, HI 96813
(808) 586-0186
hdoa.adc.titlevi@hawaii.gov

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AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on January 26, 2022

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, and the Public, participating via Zoom meeting venue.

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)
Karen Seddon, Member-At-Large (Ms. Seddon)
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)
Lloyd Haraguchi, Member-At-Large (Mr. Haraguchi)
James Gomes, Maui County Member (Mr. Gomes)

Counsel Present, virtually:

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

Staff Present, virtually:

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

Guests Present, virtually:

Mike Faye, Kekaha Agriculture Association (Mr. Faye)
Basil Gomez, DSc PhD, KBAY Environmental Services (Mr. Gomez)
David Bissel, Kauai Island Utility Cooperative (KIUC), (Mr. Bissel)

A. Call to Order

Chair called the virtual meeting to order at 9:06 a.m.

B. Roll Call

Chair conducted a roll call of the Board. In accordance with the Governor's emergency proclamation dated November 29, 2021, related to COVID-19 as extended by the emergency proclamation related to the sunshine law in-person meeting dated December 29, 2021, 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

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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 initial roll call.

Roll call: Chair, Ms. Evans, Mr. Gomes, Mr. Haraguchi, Mr. Hong, Mr. Manuel, Ms. Seddon, Ms. Shimabukuro-Geiser, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present.

C. Approval of Minutes

November 10, 2021, minutes

Motion to approve: Ms. Evans, Second: Mr. Tabata

No staff comment.

No public comment.

Ms. Shimabukuro-Geiser said on page 9, paragraph 9, NRCA should be NRCS.

Minutes approved with amendment: 10/0

D. NEW BUSINESS

1. Presentation by Mike Faye of Kekaha Agriculture Association (KAA) Regarding a Managed Wetlands Proposal

Mr. Faye, manager of KAA, stated that KAA would like the Agribusiness Development Corporation (ADC) to consider their proposal. He shared a power point presentation.

After the presentation, Mr. Faye asked Mr. Gomez if he had anything to add, and if the board members had any questions.

Chair asked where on the map was the in-kind easement that Mr. Faye mentioned?

Mr. Faye responded that the easement was a ground hazard area that basically encompasses all the land from Polihale to Mana. It's a large arch that goes from the Kauai test facility on PMRF and extends to the base of the Pali. It's all on ADC land; maybe a few fringe pieces that are DHHL but virtually all ADC.

Chair asked if he knew how many acres it was?

Mr. Faye said his guess was about 5,000 acres. Mr. Gomez was available to answer questions.

Mr. Gomez asked if Mr. Faye had any pictures of the ditch and the 200-acre area of the flood plain? By putting the water into the flood plain, how much reduction of silt did they think would not be going into the ocean?

Mr. Gomez responded it should filter out all the coarse silt, so everything coarser than 63 microns or 63 thousandths of a millimeter. That would make a significant difference.

Mr. Gomez said listening to the presentation, even if you get an inch of rain, you see there were some detrimental effects. By doing this, do they anticipate how many inches of rain they can handle?

Mr. Gomez stated it depends on the amount of water that drains under the influence of gravity. The proposal was aimed at creating a space where water can pond and not escape to the ocean under the influence of gravity. The flood in 2020 delivered about 13 inches of rain over a two-day period. They could reasonably expect to handle that runoff.

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Mr. Faye added it's important to note that while this was primarily intended for storm runoff on the large storms, it would also serve to trap sediment throughout their regular amount of pumping and water entering the plain. It would make the water a lot cleaner even on a day-to-day basis.

Mr. Gomes said sure, as it percolates through the ground and so forth.

Mr. Faye agreed. It traps the sediment where they can then use it. KAA had been using the sediment, as a result of the sugar operation prior to the current operations, as landfill cover and they do make a little money on it. He's hoping they're able to design this in such a way that they can actually harvest the sediment and increase the elevation of some of the lower fields and keep ahead of sea level rise. It would be better to put it on their property rather than have it flow by way of storms or regularly into the ocean. They can use the soil on their property.

Mr. Gomes asked about the silt that is going in the ocean now, was it damaging any of the reefs? If the silt kills the reefs, we have the reef fish, you know, they can't populate.

Mr. Gomez responded they were unaware of any studies that indicated storm runoff has impacted the reef.

Mr. Gomes said the water gets all brown right?

Mr. Gomez responded correct.

Mr. Manuel thanked Mr. Faye and Mr. Gomez for the presentation. He said thank you for talking about the potential use of the sediment basin and how that sediment was going to be used. He had a couple of questions. It was mentioned that the community was supportive of this, and he has had many conversations with Mr. Faye before. This area used to be like a big pond. He's curious how the community response has been to the presentation and if there's a way to basically utilize this "pond" as a way to reconnect the community to that historic use of what was a wetland before. How have those conversations occurred?

Mr. Faye said right now they're at the very early stages and they haven't gone into a formal engagement with the community on this. There is a family group that maintains some of the gravesites and cultural areas and they are part of the group they talk to. They have expressed interest in the program. If they can get ADC approval, they would definitely engage them further. They have talked to bird people, although it was not intended to be a bird sanctuary because it's near the PMRF runways. One of KAA's conditions going forward was it had to be beneficial to the agricultural uses on the plain. This was how they approached it. But they do need to engage the community groups in a formal setting.

Mr. Manuel said Mr. Faye talked about reuse of the sediment. Since they're basically holding/retaining stormwater, was there a desire to use the stormwater for irrigation or were they going to rely solely on surface water to meet irrigation demands?

Mr. Faye responded in the past sugar did recycle that water, they did pump it back up. That is a possible use of it. To be honest, they had not considered that but yes, definitely it could be used for additional irrigation.

Mr. Manuel said mahalo, in climate consideration and this crisis, stormwater retention and reuse is something that they're thinking through, throughout the state so if that can be built in that would be really awesome. Could you clarify what KAA needs from ADC, is it matching funds or is it approval of the easement? He didn't really understand what the relationship or the action was.

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Mr. Faye stated that KAA just manages the infrastructure, and ADC manages the property. They could set it up as a program but at some point, KAA needs ADC's approval to extend the easement or make a long-term commitment on that particular property. Discussions so far indicate that an easement was sufficient.

Mr. Manuel said one last thing. Talking about sea level rise, we'll see the water table rise and then there's possible saltwater intrusion in the soil. To manage flood water from mauka to makai, as the water table rises, they're going to see saltwater intrusion into the soil. Mr. Gomez, how does KAA plan to mitigate that from an agricultural standpoint, so the soils are actually protected?

Mr. Gomez responded that their calculations estimate the amount of intrusion will be minimal and the effect sea level rise will have on the ambient water table can be handled by pumping, which was one of the reasons why they need to increase the capacity of the pumps.

Chair called on Ms. Evans.

Ms. Evans said her question was for Ms. Kaichi or Mr. Faye. Who issued the easement, for what purpose, and what was the start date? Does it expire in 2029? She may have gotten that date wrong.

Mr. Faye said he believes the easement started in 2010 but he's not 100% sure who mentioned it, might have been DLNR that executed the easement.

Ms. Kaichi confirmed that ADC heard about it serendipitously. It was put on the land after ADC received the set aside and they found out about it later.

Ms. Evans asked if the land board approved the easement over lands that had already been transferred to ADC by Executive Order (EO). Was the easement to KAA or ADC?

Ms. Kaichi asked if they were talking about the easement to the USA?

Mr. Faye said it was either to PMRF or to the AEGIS program. If they use that easement that would be the easiest, but another kind of easement document could potentially be used.

Ms. Evans said she was guessing this was a non-exclusive easement since it's 5,000 acres and ADC tenants were using the land for agriculture and KAA was also within the easement boundaries maintaining the irrigation system, would that be a good guess?

Mr. Faye said it's basically an easement that allows PMRF, if they have a missile launch, to evacuate all personnel from that exclusion area.

Ms. Evans asked so it's a protective easement for particular circumstances for national security?

Mr. Faye responded that's correct.

Ms. Evans asked if it's been granted to PMRF, by DLNR's land board, was ADC named in the easement or does ADC have authority to use it or extend it?

Mr. Faye asked Ms. Kaichi if she could respond.

Ms. Kaichi said she would research it and get back to her.

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Chair asked if any other member had questions or further discussion. He thanked Mr. Faye and Mr. Gomez.

2. Presentation by David Bissel of Kauai Island Utility Cooperative Regarding the West Kauai Energy Project

Mr. Bissel introduced himself as President and CEO of Kauai Island Utility Cooperative (KIUC) and proceeded with the slide presentation on the overview of the West Kauai Energy Project. There was no action needed today and he could answer any questions.

Ms. Evans stated it was an exciting presentation and she looked forward to this project. At the previous Land Use Commission (LUC) meeting KIUC requested that the LUC defer action on an Important Agricultural Land (IAL) petition by KAA because KIUC did not have enough information about the impact of the IAL designation on KAA tenants. Has that been worked out? Are they comfortable that an IAL designation overlay for the agricultural tenants won't impact their plan?

Mr. Bissel said no, they have not been able to get together yet, but they fully expect it will get resolved.

Ms. Evans asked what kind of risks made them decide to request a deferral from the LUC on the KAA IAL petition?

Mr. Bissel responded, that's an interesting question. They only became aware of the petition the night before the hearing, so it was more just a concern of the unknown. As they've talked more on it internally and with some advisors, they hope that there isn't a significant risk, it might just be an issue on where the powerhouse would be carved out. The project footprint was about 5-acres. We're pretty optimistic we can get it done. We have to get together and chat.

Ms. Evans asked if Mike Faye was still present, she'd like to ask a follow-up question of him.

Mr. Faye rejoined the meeting.

Ms. Evans asked Mr. Faye if he heard Mr. Bissel's concern about carving out the power plant and other key infrastructure for the West Kauai Energy project from the IAL petition. Was he comfortable with pursuing that discussion?

Mr. Faye responded yes; they are. They actually had an informal discussion with one of KIUC's consultants when Mr. Roe was out visiting. As Mr. Bissel mentioned, KAA doesn't see this as a major obstacle. KAA thought there might be some benefits to them having it on IAL lands but if it's going to be an issue, they had a KAA board meeting the day before and it was informally discussed that it was no big deal, KAA can withdraw it. As mentioned, it's only about 5-acres and it's not a big deal for KAA.

Ms. Evans thanked him then addressed Mr. Bissel, stating he mentioned complying with the requirement to have agricultural activities take place in the area where the solar panel array would be. Does he see potential there for IAL tax credits for ADC farmers doing agricultural activities under, around and beneath their solar arrays?

Mr. Bissell stated he was not familiar enough with that to comment, but perhaps Mr. Faye could respond.

Mr. Faye said it was an interesting question they could discuss further with KIUC. KAA discussed with some of the people interested in farming out there about different types of agriculture that may be compatible with the solar panels. Would KIUC benefit from IAL designation of the solar panels? It gets

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into some complicated issues beyond his pay grade. KAA had actually excluded the solar panels from their IAL because they had sufficient other land in the petition.

Mr. Hong said he had a couple of questions. He thinks it's a first major pump storage project in the islands so that's going to be very exciting. Did he hear right that the output of the solar system is 24-megawatts or is the capacity of the stored water?

Mr. Bissell responded the PV system will be 35 megawatts AC the pump uphill. It will be 24-megawatts when it comes down because of the loss of energy in the conversion. So, it will be a 20-megawatt generator on the Mana Plains and a 4-megawatt generator up higher on the Puu Opae reservoir area.

Mr. Hong said that Mr. Bissell answered his other question but asked if they're looking at 250+ acres for the solar farm?

Mr. Bissell responded that was correct.

Mr. Hong said that is pretty substantial. Do you have a general timeframe for when the main phases for the project will be done? When will they be first online, when will they be at full capacity?

Mr. Bissell responded to receive the federal tax credits they need to be online by the end of 2025. That's really the drop dead point now. AES has to be comfortable that the project's moving fast enough to get those tax credits. We've got to get through the environmental and the land documents in the next year, year and a half to keep it on track and get it done. Regarding efficiency, it's a very complex project but all the pieces come together to make it work. And the incremental hydro, that 4-megawatt hydro project he talked about where they will have the actual ditch water coming through for irrigation that will repeat 4 megawatts at Puu Opae and then 4 megawatts when it comes down. And that generation from the incremental hydro used for agriculture basically covers a lot of the losses on the conversion of the solar through the pumping so that's what makes the project competitive with other technologies.

Mr. Hong stated it's great that they're able to look at the ancillary benefits, it makes the whole project really work together. So, we're talking about federal tax credits, is that the one that is still at 26 or 22%.

Mr. Bissell said that's 26 and for AES one of the things they did, they got grandfathered in at that so as long as they meet the deadline it will stay at 26. There are clients that are 10% over the coming years.

Mr. Hong asked is there any State tax credit.

Mr. Bissell said yes there are. This project is still eligible for the 30% state tax credits.

Mr. Hong thanked Mr. Bissell and wished him luck.

Chair asked if this project was going to make electricity cheaper, more expensive or status quo for the residents of Kauai?

Mr. Bissell said it's always difficult to forecast energy because you look at what oil's going to over an extended period. But they forecast it will save about \$175 million dollars in present value terms for the people of Kauai. Definitely forecast it will save money.

Chair said thank you, it's an exciting project. Chair asked if there were any other questions. Hearing none, he thanked Mr. Bissell.

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Chair called for a 10-minute recess at 10:06 a.m.

Chair called the meeting back to order at 10:18 a.m.

3. Request for Approval to Issue a License to Hanahanapuni Farm for 259 Acres, More or Less, of Unit L in Kalepa, Kauai, Tax Map Key (4) 3-9-002:001 (por)

Motion to Approve: Ms. Evans, Second: Mr. Haraguchi

Mr. Roe said he had no real presentation but wanted to note that on the pro-forma portion of the submittal, under character of use, should include orchard. Otherwise, he was available for questions.

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

Chair asked Mr. Roe if they had been paying the rent.

Mr. Roe responded yes, last he checked they were current.

Mr. Manuel said he had a couple of questions. The submittal says that water flows through the north Waialua fork but how does the property currently access water for its agricultural production?

Mr. Roe responded he thinks they collect rainwater; he doesn't think they're collecting water from anywhere else. That speaks to the lack of agricultural production on the property right now. It's probably more suited for livestock, but they seem to think they can have some agricultural production.

Mr. Manuel said in their submittal it says they've been there for 22 years, but you didn't confirm if it's rainwater or through some other way...you don't know.

Mr. Roe responded he didn't see any other irrigation or other access from the property to their fields.

Mr. Manuel asked was the unimproved, unpermitted structure a residence and does the license allow residences or to reside on property?

Mr. Roe said the license does not allow for residences. He spoke to Ginger, who mentioned a few years back there was a fugitive on the loose and they had constructed that for overnight security, but they don't do that currently. He told her at the time it was not an allowed use.

Mr. Manuel said the compensation was somewhat confusing. The breakdown was 99 acres of tillable and 160 untillable. How much of the tillable was diversified ag versus pastoral? What's the expected annual income from this? The submittal has a breakdown of what they plan to do, and that adds up to 87.41 acres.

Mr. Roe responded on the second page, the utilization plan under section E, notes 33.33 acres and 28 of the 33 acres was designated to Green Energy team. That's part of Green Energy's license. The 80 was more like 79.65 acres they have accounted for. There's about 19.35 acres unaccounted for. That might be the structure or the roads. For our purposes, we include the balance of that 19.35 acres as diversified agriculture since that unit was unstructured. Based on the utilization plan, between orchard, pasture, and diversified Ag, he's looking at 29.53 acres of orchard, 31.75 acres of pasture, 18.37 of diversified Ag, 19.35 unaccounted for but which he would classify as diversified ag, and then 60 acres of untillable at roughly \$1/acre per year. We're looking at roughly, \$5,770.40 annually or \$480.86 per month.

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Mr. Manuel said thank you, that's very helpful. It would be helpful to have that total at the end.

Mr. Roe said he received the utilization plan at the last minute and he didn't have time to go through and make the calculations. In the future that's his intent.

Mr. Manuel said he had one or two more questions. The untillable lands, couldn't that be used for pasture? He's just trying to make sure that ADC is not just giving it away and if it's eventually going to become pastoral use or pasture use maybe it's worth the \$30/acre not just the \$1.

Mr. Roe responded that the untillable portions of the property were really gulch, ravine, cliffs, ravine walls, and he doesn't see it as useable.

Mr. Manuel said that's very helpful. Lastly, he thinks maybe it can be made a standard, but can ADC request annual reporting of the total pounds produced on property and how much was for local consumption versus export. This metric and tracking over time will benefit ADC. So, if that can be amended so we can track data for our licensees, that would be awesome. It's just a friendly amendment for this license.

Chair stated that's a really good suggestion.

Ms. Evans stated she'd like to suggest a different approach. Rather than amending the motion for this particular license approval, she would like to take this up as a part of the Permitted Interaction Group (PIG) on Policies and Procedures and make it a policy for all of the licenses rather than doing it on an individual basis. She asked Mr. Manuel if that would be acceptable.

Mr. Manuel responded that he's just thinking if it can be done for this request now. Unless they're going to circle back and amend all licenses at once to include this provision, he thinks they should just do it now since it's before them. It's a simple annual reporting requirement, but it's up to Ms. Evans

Ms. Evans stated that she'd like to defer it. This is a short-term license and she'd prefer to make a general policy for the Board's consideration when the PIG reports its recommendations to the full board. That's just her preference on the motion before them. And she had a question on the 5.35 acres to be cleared of albizia and hau trees, are those going to Green Energy? This question has come up before with Kalepa. Do a significant number of the DLNR holdover licensees have agreements with Green Energy to provide alien species trees like albizia for the production of biomass energy on Kauai?

As Mr. Roe hinted to earlier, when the EO came over as a transfer to ADC, part of the agreement amongst the tenants was for Green Energy to take a portion, he thinks a thousand acres over the entire property, so each tenant gave up a little bit. This tenant gave up 28 acres. We're not aware of any grower agreement that this tenant has with Green Energy team.

Ms. Evans asked if they would have the right to sell those trees to Green Energy should Green Energy be interested?

Mr. Roe responded he would think so. He said we would want to make sure that Green Energy was accessing the property under an appropriate document like a right of entry. He said he'd have to look at the terms, but he thinks it's potentially agreeable.

Ms. Evans said it's a form of agriculture and certainly it would help farmers who have those alien species trees to generate revenue for their operations.

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Chair asked if there was any further discussion. Hearing none, the Chair called for the vote. Hearing no objection, the motion was approved.

Vote: Approved, 10-0

4. Request for Approval to Issue a Land License to the University of Hawaii, College of Tropical Agriculture and Human Resources (CTAHR) for Weather Recording Purposes in Central Oahu, Tax Map Key (1) 6-4-003-016 (por)

Motion to Approve: Mr. Haraguchi, Second: Mr. Gomes

Chair asked for presentation by staff.

Mr. Roe stated he has no presentation other than what was submitted but he is available for questions.

Chair asked for public testimony. There was none.

Chair asked if there was any discussion.

Mr. Manuel had a question for staff and maybe an amendment. When we provide these licenses for data collection, is that data and information shared with ADC?

Mr. Roe responded yes; it is.

Chair said he spoke with the Assistant Dean of CTAHR and he's willing to share all of the data. The property is on the parcel we just licensed to Cedar Grove. The data has been collected and retained by the University and they will share it with all of our tenants. Good question.

Mr. Manuel was just wondering again, maybe something for the policy group to take up that when we issue licenses for data collection that ADC be given unrestricted access to that data for its use. Data management is really important and something we should consider as an agency across the board.

Chair said he thinks this one began with Costco, so he doesn't think we had an agreement with Costco.

Mr. Roe said he doesn't think we would issue a license if the information wasn't shared; it's essentially our payment.

Chair asked if there were any further questions. Hearing none, the Chair called for the vote. Hearing no objection, the motion was approved.

Vote: Approved 10-0

5. Update Related to a "Notice of Violation" by City and County of Honolulu, Department of Planning and Permitting (DPP) for "two dwelling structures constructed on property without the required building permit" Located on Premises Licensed to William H. Wise III dba Waihi Farms and Kalama Hardwood LLC

Mr. Roe stated he received an update this morning from Mr. Nakatani that the City and County of Honolulu was rescinding the violation and the accumulation of fines were voided. Mr. Wise was going to obtain a

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permit for the structures. He had a conversation with DPP who noted that it was not uncommon for legacy structures to be unpermitted. He believes Mr. Wise has already obtained an architect to draw up the plans and he's working with DPP to obtain the structure permits.

Chair asked if they are living in the structure.

Mr. Roe responded yes, that was known when he obtained the license.

Mr. Gomes asked when ADC took over the land, why wouldn't these structures be classified as historical because of the timeframe it was built in the 40's and 50's?

Mr. Roe responded he can't answer that, and he doesn't want to say what he doesn't know.

Mr. Gomes said he's just curious because back then the codes, the building codes then and what they are today is totally different and now this guy has a violation for a home that he didn't construct, it was there.

Chair asked Mr. Roe, "so we are not paying the \$600 fine for the sewer either right?"

Mr. Roe responded that is a different citation issued by a different entity, that is actually the next item on the agenda. The rescission and avoiding of the fines apply to the DPP violation for structures.

Chair asked if we need a vote on this since it's been rescinded.

Mr. Roe responded this was just intended as an update.

Ms. Shimabukuro-Geiser stated she has a question. When ADC purchased this property, were we aware that there were unpermitted dwellings?

Mr. Roe said he wasn't here at the time so he can't say what people were aware of although he believes the appraisal indicated that it was unpermitted.

Ms. Shimabukuro-Geiser said that ADC needs to put some teeth in the policies to strengthen disclosure by the tenants about unpermitted structures. You know farmers, it's common practice that they construct things sometimes without permits and hold their breath there is no complaint from someone. She's concerned that moving forward, since we're going through these policy developments that we have something really clear.

Mr. Roe said ok.

Mr. Gomes stated that Ms. Shimabukuro-Geiser is absolutely correct. He also thinks that if there are structures, we should know what they are, when they're built and so forth and that should be part of the policy.

Mr. Manuel said just to rift off of that, this maybe again for the policy group, an acquisition policy, this should be part of normal due diligence and that prior to acquisition all unpermitted or unallowed usage should be cured by the current landowners and their tenants before we acquire because we're taking on these liabilities. He apologized stating he's wearing his prior hat working for DHHL.

Mr. Gomes commented "absolutely".

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Mr. Manuel continued that these are important acquisition policies to protect ADC from liability and future damages. That should definitely be taken more seriously in acquisition.

Ms. Evans said she has been taking notes for the Policy and Procedures Permitted Interaction Group. Based on Mr. Gomes's thoughts, things that were built prior to zoning and in the territorial period, they may be "unpermitted", but they may also be non-conforming structures that are allowed to continue until they burn down, or they have to be repaired by more than 50% or some other ordinance guided thing. It doesn't mean all unpermitted structures are a violation, it just may mean that they're covered under a different ordinance that Mr. Gomes noted.

Chair asked if there was any further discussion. We don't need to vote on this.

6. Request for Approval to Pay Fines Related to a "Field Citation" Issued by State of Hawaii, Department of Health, Wastewater Branch for "unauthorized wastewater system" Located on Premises Licensed to William H. Wise III dba Waihii Farms and Kalama Hardwood LLC

Motion to Approve: Ms. Evans, Second: Mr. Gomes

Mr. Roe stood on his submittal and was available for questions.

Chair asked if there was anyone from the public who wished to testify? There was none.

Chair asked for further discussion.

Mr. Watanabe asked Mr. Roe if the current cesspools were in existence, but they chose to install the unpermitted septic tank?

Mr. Roe responded, yes.

Mr. Watanabe said he doesn't think ADC was responsible for the septic tank portion.

Mr. Roe said that maybe Ms. Prescott-Tate could speak to this, but he thought that if it's on ADC property the citation was issued by DOH to ADC.

Mr. Nakatani said he would speak on this. The property had a cesspool and Mr. Wise was trying to comply with a septic tank so actually he was trying to do good. Because the septic tank wasn't approved by the health department, it didn't pass muster. The original facility had a cesspool and that's the worse thing that could happen right? So, this person was trying to put a septic tank to resolve that but apparently, he didn't do it correctly so he's taking the proper action at this time going through the proper channels. He's working with the health department to make everything whole. The fine was just a violation, and it wasn't his fault that this cesspool was there. He was actually trying to help us and just did it wrong. Thank you.

Mr. Hong questioned, under the citation, you're assessed penalties, \$600 for the first violation, a penalty fee of \$200 was applied for each cesspool and the septic tank. He agrees with Mr. Watanabe that we have the responsibility for the cesspool but the fact that the tenant did it wrong and there's a fine for not getting permits for the septic tank, that's the tenant's responsibility.

Chair asked Mr. Roe, what was ADC paying, the \$600, or what is ADC paying for?

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Mr. Roe stated the request was to pay the \$600 since this was assessed to ADC. If Chair would refer to the recommendation, one of the conditions was, pending further investigation, staff may determine that it's appropriate to bill the licensee for the cost of the fine. Because it was assessed to ADC, it's appropriate to get this fine paid. If you refer to the letter from DOH Wastewater Branch, if ADC doesn't pay, it goes to an administrative hearing which may assess a steeper fine. In the interest of ADC's own liability, we should take care of this first and deal with any assessment of blame afterwards.

Mr. Tabata said, so, if he read this correctly, there were cesspools there that were operable, and the lessee took it upon himself to install the septic. If it was by others prior to him taking over the property, then yes, ADC should pay the fine, but the tenant did it to himself. Mr. Tabata disagreed with paying the fine.

Mr. Nakatani strongly disagreed with this assertion.

Mr. Haraguchi agreed with staff that we should pay it to alleviate future fines because staff has also given the opportunity to go back to the tenant to collect the fines. We should just move on, go with the staff's recommendation, and deal with the matter with the tenant at a later date. Thank you.

Mr. Hong agreed with that.

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

Vote: Approved 10-0, Mr. Manuel with reservations

7. Request for Approval to Issue Licenses to the Tenant Review and Recommendation Committee's Recommendations for ADC Land License

Motion to Approve: Mr. Haraguchi, Second: Mr. Gomes

Mr. Nakamoto said last year ADC set out to find tenants for vacant lands and they issued 4 of the 5 licenses. The fifth parcel, located in Mililani mauka, was a 91-acre parcel. The tenant they were looking at was Malama Aina Collective. At the last board meeting he explained they're currently growing banana, casaba, and wet and dry land taro in a farm in Mililani. They also plan to do starter trees, fruit trees, avocado, citrus, and other niche crops. Staff recommendations-adopting the tenant review committee recommendation that was presented at the last board meeting. He's open for questions or discussion.

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

There was none.

Chair asked if there was any discussion?

Mr. Manuel asked if the license conditions were the same as what was in exhibit A or was there going to be explicit license conditions brought back to the board for approval?

Mr. Nakamoto responded yes; they would come back to the board. First, they issue a right of entry to the farmers so that they can do their due diligence as far as conservation plans. Then they will come back to the board for specific license terms and conditions.

Mr. Manuel said he wanted to make a similar request for annual reporting of what was produced as a condition of the license when it comes back.

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Ms. Shimabukuro-Geiser had a question for Mr. Roe. Do the ADC licenses include standard language that the licensee will follow all rules, State, Federal, County rules and laws? Is that standard in our license?

Mr. Roe responded yes, that's not even a negotiable point.

Ms. Shimabukuro-Geiser said to avoid any kind of misunderstanding regarding people doing unpermitted activity moving forward, when we issue the licenses, staff should meet with the new licensee to make sure they go over the requirements. She really wants to make sure they understand that boilerplate language.

Mr. Roe responded ok.

Chair asked if there was any other discussion? Hearing none, the Chair called for the vote. Hearing no objection, the motion was approved.

Vote: Approved 10-0.

8. Appointment of Members to the Standing "Administrative Committee" for the Purpose of Conducting the Annual Performance Evaluation of the Executive Director.

Chair read Article IV, Section I of the By-laws of the Agribusiness Development Corporation that established three standing committees, one of which was the Administration committee pursuant to Article IV, Section 1b. The Administration Committee shall review and make recommendations regarding all personnel matters requiring approval of the Board of Directors. Pursuant to Article IV, Section II, the Chairperson of the Board of Directors shall appoint the members of the standing committee. A standing committee shall have three members. The Chairperson of the Board of directors may serve as an ex-officio voting member of any standing committee.

Chair assigned three members to the standing committee: Mr. Hong, Mr. Haraguchi and Mr. Watanabe. Chair thanked them for volunteering. He knows it's a lot of work and he appreciates their time.

9. Request to Delegate Authority to ADC Executive Director to Negotiate and Purchase Three Deep Wells in Paalaa Uka, District of Waialua, Oahu from Dole Food Company, Inc.

Motion to Approved: Mr. Manuel, Second: Mr. Gomes

Chair asked for presentation by staff.

Ms. Kaichi rested on her submission and was available for questions. She does ask for guidance from the board. Previously when ADC did acquisitions over the last ten years, they did not verify, or they did not require sellers to cure all possible violations. It's sort of the way, DLNR purchases property. The property ADC buys were older, one hundred years old with one entity. In our case it will be Dole and Castle and Cook, whose entities have evolved over time, have changed ownership, sent out for public offering, have been repurchased in by the owner but they are virtually the same company. Dole and Castle and Cook over the last one hundred years have merged and separated, but it was really primarily these two companies. ADC does have some other parcels from other sellers, but the bulk of our lands were from these sellers. We have not required the sellers to cure these types of violations but after listening to this morning's discussion on the Waihee farm problem, she does want some guidance to help understand how much due diligence the board wants to do; how much they want cured. She personally doesn't know what the permitting requirements were for accessories to a well, like pumps, lines. From the discussion this morning, she thinks

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the board was saying that it's not willing to approve acquisition of real-estate where there were possible or existing violations of permitting requirements.

Chair asked if it was put together during the due diligence period when they find out more about these properties that ADC was looking at purchasing.

Ms. Kaichi said the question that she has and the problem that she foresees is during negotiations, this is the time that they would demand cure of known defects or known violations. She said, for a hundred-year-old property, where the seller is giving us a limited warranty and promising that everything for the most part is ok, otherwise they buy as is, they have been ok with that. But from what she heard in this morning's discussion she's beginning to think that the board is no longer ok with this, and she needs to know that if it goes into negotiations. She said if they want cure, she needs to know that. She said because it's a little different from the way they have conducted negotiations in the past. She said if the violation was so big, that it was something that was current, was present, was big that it was something they were not willing to pay for themselves to cure then of course that was part of the negotiations. But something like a fifty-year old structure, that they didn't make the demand, her fear was that the seller would probably say, that's alright, they're not going to spend their time fixing a fifty-year old permitting problem under laws that were enacted twenty-nine-years ago. She was not willing to go that route to figure out what laws apply fifty-years ago and what applies today. She said, and certainly, this is self-evident, the landowner doesn't have to keep current every year the building code changes. So, it's really whatever was in effect at the time the improvement was done and when you try to do further improvements then you get caught up in all the changes in the building permit requirements that occurred from the time you did the last improvements till today. But she thinks ADC's approach or their concerns, what are being deemed to be the priorities, the ability to handle risks are changing and what she sees is more of a requirement or a desire by this board to minimize the risk as much as possible. The ability to handle risk has gotten smaller. ADC needs to know if the board wants them to look at the permitting for each of the accessories to the wells or what they were planning to do is look at the structure of each of the wells itself and the aging of the wells and try to determine how much is needed to put into these wells to get them back up and running and then start to negotiate a fair price with them. But what she is hearing the board say today is that ADC needs to do more. ADC needs to look at how much they are willing to cure or that ADC is not willing to purchase at all unless it cures itself, any violation.

Ms. Prescott-Tate stated since that's not an item on this agenda maybe the board should be defer action on this until the next meeting.

Ms. Kaichi said, the request was to delegate authority.

Ms. Evans said she thinks that the action is to enter into negotiations which could include due diligence she's in favor of taking action today authorizing the staff to start that process. And she thinks there are unknowns that may develop but she doesn't anticipate what that might be until they have further information. She thinks the acquisition of water is critical to ADC tenants and the farmers in that area and she thinks that is such a valuable part of making agriculture in central Oahu economical that we should enter into that negotiation with all due speed. This is just her personal view.

Chair agreed.

Mr. Hong said he agreed with that. The recommendation to appropriate up to \$7 million was not based on any fact at this point until you go through the due diligence. You have to go through an appraisal of what the remaining estimated economic life of these wells are. Being fifty years old they are probably at the last 20% of their life. Another question, these were wells that were pre-existing before statehood or around

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statehood problem and so do they even have a Commission on Water Resource Management (CWRM) permit. These are the things staff must look at in terms of due diligence, what is the pumping capacity, what is the degradation of the water source over the years and what's the process of getting a CWRM permit to rehabilitate the well. He doesn't know the answer to any of that is. There's a lot of work that needs to be done and he doesn't think you can put a price on it at this point.

Mr. Haraguchi said he knows the request was for 4.7, let's say \$5 million. The total is not 8 right, this request is for 4.7 and the 3 million will be requested through the legislature for Capital Improvement Projects (CIP) during the upcoming session if he reads it correctly.

Ms. Kaichi said they're negotiating the price right now. \$4.7 is the amount the legislature has appropriated. That's the total amount we have for acquisition. That's the most ADC has. If the demand for the purchase price was higher then they can't buy all three wells. That's all the money they have, that doesn't mean that's going to be the purchase price.

Mr. Haraguchi said Mr. Hong mentioned \$8 million. He's trying to clarify this saying that \$4.7 is the max and the \$3M will be requested to the '22 legislature for CIP funds.

Ms. Kaichi said that's right. Another point of clarification, these wells are permitted, the allocations are listed on page 2 of the submittal. She not willing to spend millions of dollars for wells that were permitted if the permits don't come with the well. That too was something she would like to negotiate.

Mr. Manuel appreciated the conversation. From a water perspective and a well development perspective there's a lot more due diligence that needs to be done before a full delegation of authority, in his opinion, to the director should be made. He wouldn't recommend full delegation because there's a lot of cost factors that go into bringing in a well that's built in the 70's up to standards. There are costs related to that, permits that are required. Although the water use permits exist for the current wells, under the State water code, a change of TMK even, which he's assuming they will be used for properties beyond the current end uses will require permit approvals and modifications from the commission. Nothing is guaranteed. These permits and processes should probably happen before acquisition occurs. You would hate to purchase something and not be able to use it. That's just out of caution. These are the processes that exist within the commission of water use management that these wells would have to go through before becoming useable. In the current climate the commission is squeezed even more with well water use for agriculture irrigation because the policy for potable water is to use it for highest and best use which is usually potable consumption. With the current crisis on this island, the commission has to really scrutinize wells throughout the state. He's not sure how the commission would act on any modifications of water use permits moving forward, it's just a caveat to put out there for this group to consider.

Ms. Kaichi responded that ADC would never have the executive director approve a sale without board approval. She suggested changing the recommendation to delegate authority to negotiate, but the sale was subject to further board approval. That might address the board's concern. Give ADC the authority to negotiate and come back to the board with the terms for approval.

Mr. Hong said due diligence was going to take a while. We can do all of the background checks, due diligence, all that, and then come to the board with a recommendation on the purchase in the next couple of meetings. If the board wants to give the ability to negotiate a price subject to board approval, he'd be ok with that too.

Chair asked if there was any other discussion.

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Ms. Shimabukuro-Geiser asked Ms. Kaichi if before the negotiations, was it staff's plan to have a consultant to do due diligence? Do they know the water quality of these sources? Mr. Manuel partially answered her question on how much water was going to be available from CWRM for the implementation of the wells. If ADC was pretty confident on what the demand was going to be for use of the three wells, was there a plan to hire a consultant to do the due diligence or was it just going to be all in house due diligence?

Ms. Kaichi responded she had not considered hiring a consultant to help analyze a need for the wells. After listening to the conversation, they may need someone to help assess the accessories, the age of the accessories, and permitting of the accessories. As for the water quality, she had not thought of hiring someone for that but again that's the type of guidance she's looking for. She wasn't planning to hire a consultant, but now that Ms. Shimabukuro-Geiser has asked the question, she's going to think about it. On the amount of water that's available, this issue has been around since she can remember doing agriculture and knowing of people wanting to drill wells. There's an issue at CWRM the agriculture community needs help with, which is if they were using fresh water as back up, does that allocation count towards the full total load of an aquifer regardless of whether it's a primary use or a backup use? Are you double counting with the backup numbers even if the backup will only occur in the event of a shutdown of the primary source? That's an issue she doesn't know the answer to. These three wells will provide water to the areas identified as Z and the two areas to the north east of the map, will be primary water. The Z's and the Y's to the left of the wells, will be primarily backup. Her understanding was that the allocation will count as though it's going to be daily use even if it's only going to be used in the event of a shutdown. That's an unrealistic count that errs on the side of caution, so that we preserve, and conserve water use on the one hand. On the other hand, it does count against uses like ours in which it's going to count against us on the allocation of the total amount of that aquifer. Heads up we have been asked even before we owned the wells to reduce, to voluntarily return allocation.

Mr. Manuel replied, the basic thing to consider for ADC is redundancy is really important for agriculture, which the commission recognizes. However, the commission has an obligation to understand if there were alternatives to meet needs, the highest and best use always drives a lot of those conversations. To the extent that surface water, R1 water was available, that's great and then these wells could be used as potential backups when those irrigation sources go down. The commission has not to date, allocated water for redundancy. It is an issue that needs to be addressed before the Commission on Water Use Management. Like Ms. Kaichi highlighted, if that's proposed it's part of due diligence that should be clearly laid out of about how these wells will help to support ag and what's needed as a redundancy source for agriculture to be successful. It's important to get the numbers tight, understand the productivity of these wells. Some of these wells haven't been used for over twenty years so a pump test would probably be warranted prior to applying. There are other steps for water development that should happen prior to ADC purchasing. He would hate to have ADC purchase a well that's not productive and you're stuck with a well that's now a liability. That's the context of his comments to staff on this process.

Ms. Evans stated she would like to make a friendly amendment to the motion on the table as outlined by Mr. Hong, that the board delegate ADC executive director and staff to conduct all appropriate and reasonable due diligence into the current condition of the three wells, assess the value of pumps and accessories, quality of the water and access and distribution easements but delete the portion of that sentence about purchase the same in an amount not to exceed \$4.7 million. That would be her friendly amendment to the motion.

Mr. Tabata seconded the motion

Chair called for a vote. All in favor of approving the amended proposal to delegate authority. Hearing no objection, the motion was approved.

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Vote: Approved 10-0.

Ms. Kaichi told Chair she thinks the board approved amendment of the initial proposal, but he did not get approval of the amended proposal.

Chair called for a vote on the motion as amended. Hearing no objection, the motion was approved.

Vote: Approved 10-0.

E. Old Business

1. None

F. Executive Director's Update

1. Mr. Nakatani reported on the KAA Important Agricultural Lands (IAL) petition. The Land Use Commission (LUC) hearing was on 12/23/21 and KIUC had questions on the designation. The LUC asked who owns the land, DLNR or ADC, and that's something KAA will follow-up on.
2. Kalepa – Mr. Roe can answer any questions they might have on these pictures of the derelict cars, van, and excavator on Mr. Gerald Sanchez's lot.
3. Whitmore Project update – ADC was proceeding with UH. It's still in the planning stages. There was an appropriation to the DOA for \$28 million CIP. Funds were dedicated to UH, then it came back to DOA, and it's now with DAGS. DAGS was trying to get the funds released so the project can proceed.
4. ADC put in five CIP requests to Governor. ADC was approved for three: 1) related to the wells, it's \$3 million to connect the wells to the properties ADC owns; 2) the Kekaha ditch modification, and that's Waimea River lawsuit. \$3.5 million to help resolve issue with the gates and permits; 3) \$6 million for Waihole improvements Kunia – the reservoir and repairing the whole system. The other two that unfortunately didn't make the cut was the Wahiawa Reclaimed Water Irrigation System and that was for planning money for connecting the R1 water planning stages to the ADC lands. The last item we asked for appropriation for Waiaka, Kauai Ag park and that was \$500,000.

With regards to the audit report, as soon as we receive it, we will route it to the members.

Chair asked about item 4 of the CIP, the Wahiawa Reclaimed Water Irrigation System.

Mr. Nakatani said it's planning money to get the route for taking out R1 water to the property.

Chair asked if it still might come back to life, and we still might be able to get the funds?

Mr. Nakatani said just be aware this was not cast in concrete. The legislature may decide they want to fund all of it, or they may decide to fund none of it. This is just an FYI to the board.

Mr. Hong asked, the Wahiawa Reclaimed Water Irrigation, was that the one that takes the water from the water treatment plant in Wahiawa and tunnels under the reservoir to the irrigation water reservoir?

Mr. Nakatani said it's just the planning funds.

Mr. Hong asked if it's related to the project he mentioned?

Mr. Nakatani responded yes.

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Mr. Gomes said he has a question regarding Kalepa, and Mr. Sanchez. If ADC removes the derelict items on the property and bills Mr. Sanchez what's the recourse if Sanchez doesn't pay?

Mr. Roe responded that Mr. Sanchez has a little bit of a rent credit right now. This particular issue should be covered by the performance bond and security deposit.

Chair asked if there was anything else.

Mr. Manuel said he had a comment. He wanted to say as volunteers on this board and himself as ex-officio, he didn't appreciate how Mr. Nakatani addressed the board as decision makers. He said they are here to support him, and they should all be able to ask questions.

Mr. Nakatani asked if he could interrupt.

Mr. Manuel asked if he could finish. They're all asking questions as decision makers who are ultimately held liable for decisions this board makes. He would appreciate respect from Mr. Nakatani when they're asking questions, just to answer the questions and not to critique on the questions that are being asked. It's fair for Mr. Nakatani to disagree with them and it's fair for the board to disagree with Mr. Nakatani, but he doesn't appreciate the disrespect and it's unfortunate that Mr. Nakatani's mike was live, and this was being recorded. He thinks Mr. Nakatani owes the board an apology for the unprofessional, disrespect that you displayed in this board meeting. And that's coming from somebody that manages another board and commission, he would never do that to any of his decision makers and volunteers. Thank you.

Mr. Gomes said he agrees with Mr. Manuel.

Mr. Nakatani said that before Mr. Manuel spoke, he was planning to apologize to all the board members for expressing his strong disagreement. He apologized, he got emotional and let the pressure get to him. It's just a frustrating time having to go through the audit, and he apologized.

Mr. Manuel said mahalo, he appreciates the apology. They're all under pressure and he himself was subpoenaed. They want to see Ag succeed and it's challenging, he understands. They just need to respect each other and the roles they play. He thanked Mr. Nakatani for the apology.

G. Adjourn

Chair asked for a motion to adjourn.

Motion made by Mr. Gomes, Second: Ms. Evans

Hearing no objection, the motion was approved. Meeting adjourned at 11:26 a.m.

Respectfully Submitted,

Lynette H. Marushige
Secretary



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

March 16, 2022

Subject: Request for Approval for Sunrise Capital, Inc. Under Lease Agreement No. S-5367 to Construct Greenhouses and Settling Ponds in Kekaha, Kauai, Tax Map Keys (4) 1-2-002:022

Licensee/Lessee: Sunrise Capital, Inc.

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 5.195 gross acres

Field No(s).: Parcel 22

Tax Map Key: (4) 1-2-002:022

Land Status: Set aside by the Governor's Executive Order No. 4660 to the Agribusiness Development Corporation for Agricultural and Related Purposes

Trust Land Status: Ceded land under Section 5(b) lands of the Hawaii Admission Act
Yes ☒ No ☐

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ☒ No ☐

Character of Use: Aquaculture

Land Doc. Type: Lease

Term: 35 years (currently in year 27)

Rental Rate: \$3,180 per year

BACKGROUND:

Lease Agreement No. S-5367 was issued by the Department of Land and Natural Resources (“DLNR”) to Sunkiss Shrimp Co., Ltd in February 1995 for the subject parcel, and was subsequently assigned to Sunrise Capital, Inc. by that certain Assignment and Assumption of Lease which was recorded in 2005 with DLNR’s consent. In 2006, DLNR consented to the merger of Kona Bay Marine Resources Inc. and Sunrise Capital, Inc. (“Lessee”), with Sunrise being the surviving entity. Although it faced many early challenges, the Lessee, through its research and breeding operations, became one of the leading sources of “specific pathogen free” Pacific white shrimp brood stock¹ for export to shrimp farms in Asia.

On September 23, 2021, Governor’s Executive Order No. 4660 transferred, among other lands, the control and management of the subject parcel TMK (4) 1-2-002:022 (“Parcel 22”) (see “Exhibit A”) to the Agribusiness Development Corporation (“ADC”).

In December 2021, Sunrise submitted a request to expand their brood stock ponds.

LAND REQUEST:

Licensee requests permission to construct six additional greenhouses on Parcel 22 which will house 24 growout tanks and 8 nursery tanks and expand their current settling ponds (see “Exhibit B”).

WATER NEEDS AND SOURCE OF WATER:

Water will be sourced from salt-water wells already in place on Parcel 22, as well as a new salt-water well which was previously approved by the Board in March 2019 to be constructed on the adjacent Field 408.

OPERATIONAL PLAN:

The proposed construction will allow the Licensee to expand upon their current production of brood stock and allow for greater production efficiency.

DISCUSSION:

The proposed construction represents an expansion of current operations with no change in use.

¹ brood stock: a small population of any animal maintained as a source of population replacement or for the establishment of new populations (as of game birds) in suitable habitats (*Merriam-Webster.com Dictionary*, s.v. “brood stock,” accessed March 8, 2022, <https://www.merriam-webster.com/dictionary/brood%20stock>.)

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the request to construct six additional greenhouses on Parcel 22, and expand their current settling ponds, subject to the following conditions:

1. Licensee shall obtain all appropriate federal, state, and local permits prior to the start of construction.

Respectfully submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A



EXHIBIT B

Sunrise Capital, Inc. Proposal
[see following pages]



SUNRISE CAPITAL INC.

Sunrise Capital Inc. Multiplication Center for production – Commercial Broodstock Production

Date : 6th December 2021
Author : Grant Kunishima

Kona Bay Hawaii - Hatchery

Background

Broodstock production has been grown in open pond systems at the hatchery and farm facilities. This environment is good for growing large amounts of shrimp but not ideal for broodstock multiplication for sale. Broodstock quality and efficiency of labor and workload is not being able to keep to a high standard.

Current issues:

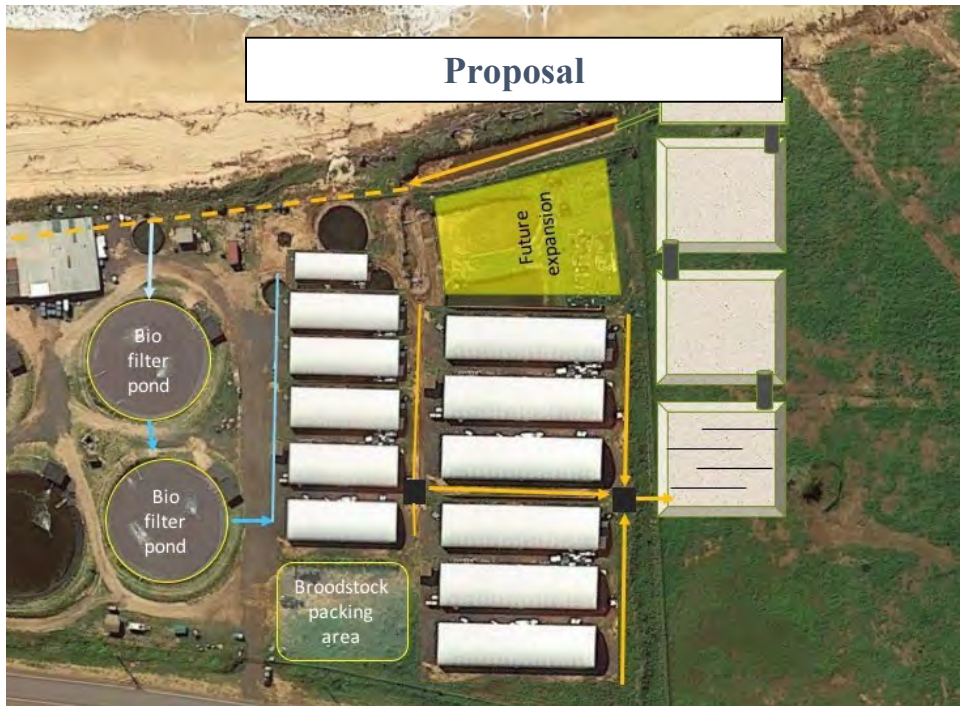
- Broodstock ponds are grown at 28pcs/m² which is very low density and shrimp can grow very fast and become too large for shipping at what we are considering maturity age of 26 weeks old. Our target shipping size of broodstock is 35 to 45g which happens to our broodstock at 18 to 20 weeks old.
- Broodstock ponds are open to the environment which makes it difficult to manage environmental influences like vibrio, bird predation, temperature, and freshwater/salinity fluctuations.
- Broodstock ponds are large at 4,000m² each and stocking 115,000 shrimp per production cycle. We cannot use high protein broodstock conditioning diet due to cost of feeding 115,000 shrimp per pond. Our broodstock in turn are not given the best quality feeds we would like to give.
- Catching and sorting shrimp pond side is very stress full for the shrimp using a sein and throw nets to catch shrimp and sort them in holding tanks. We also need a lot of manpower to move these catch systems from pond to pond as we go through ponds for harvesting every two weeks.
- Manpower to maintain, feed, catch/sort broodstock from ponds is on a large scale. With having to have 2 staff flush 1 or 2 ponds a day after catching broodstock in the morning or planning around a packing schedule limits our manpower. It also takes 5 staff to harvest and sort shrimp for ½ of a shipment per day. We have between 14 to 18 brood ponds stocked and having to maintain daily and weekly at any given time.

Proposal

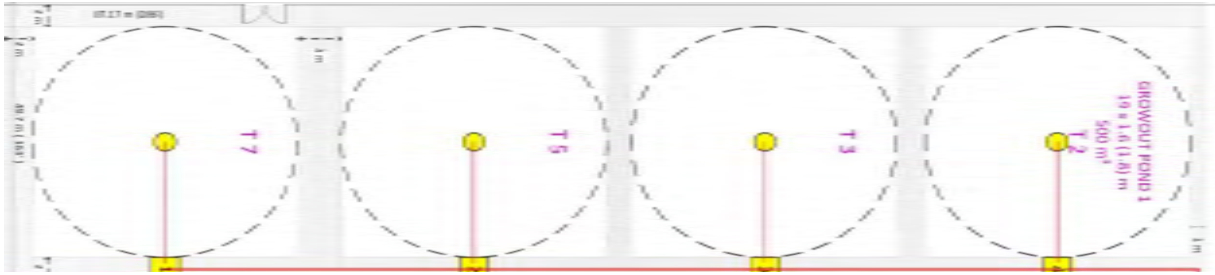
We will construct 1 nursery greenhouse that will be 30' x 60' and install 8 nursery tanks 12' in diameter. This will be in the position of existing outdoor tanks that are not being utilized. We will also be constructing 6 greenhouses that are 35' x 140'. Each greenhouse will have 4 individual tanks that are 30' in diameter.



BEFORE CONSTRUCTION



Proposal



These added tanks will consist of

8 nursery tanks – 10m² each

24 growout tanks – 60m² each

We will be able to grow 10,000 broodstock a month that will be isolated from any sources of contamination from being grown outdoors and in large ponds. We will be able to manage growth, water quality and also feed the right diet to our broodstock in a controlled and efficient manner. We will also be selecting the top 25% for brood sales moving through 3 different phases. This in turn will allow us to produce 120,000 broodstock a year in a controlled and managed area.

We will also be expanding our settling pond system to the north east of our property which can settling our solids and percolate back into the ground water system. At the event of overflowing, we the ability to utilize existing ponds for more settle mentation and an opportunity to filter and recirculate the water use.

Item	Cost (USD)
Greenhouse quote (Ajar)	\$140,000
Construction and groundwork	\$60,000
Tank quote 30' tanks	\$437,263.40
Nursery tank quote 12' tanks x 8	\$32,000
Electrical est. (Lord's)	\$10,000
Hardware	\$20,000
Plumbing and construction	\$30,000
Broodstock packing facility	\$20,000
TOTAL	\$750,000

Timing

Greenhouse purchases we estimate 2 to 3 months until delivery. We will be able to start on groundwork and plumbing prior to building each greenhouse. We will also be able to start the settling pond construction and ensure we are able to cover all bodies of water to stop birds and fish from finding their way to settling ponds. Its will be a big biosecurity upgrade for the facility. We will also push the existing settling pond out to the new system to ensure all our water use will be manage in a bio secure safe way.

Tank construction - Two 30' tanks can be built in a week which would make the entire tank build timeline at 13 to 14 weeks which can be started while construction of the

greenhouses is being put up. The liner material for tanks is on a 8 week manufacturing time line not including shipping.

Hardware and plumbing can be installed as the buildings and tanks are being completed. Total construction timeline estimated to be 7 to 8 weeks from time of first purchasing greenhouses and tank liner materials.



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

March 16, 2022

Subject: Request for Approval to Renew License Agreement No. LI-PU1809
Issued to K & L Produce LLC for 136.6 Acres, More or Less, for Six
Months in Waialua, Oahu, Tax Map Key (1) 6-5-005:002 (por)

Licensee: K & L Produce LLC

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: 136.6 Acres, More or Less

Field No(s): Undesignated

Tax Map Key: (1) 6-5-005:002

Land Status: Acquired in Fee by the Agribusiness Development Corporation in
2017.

Trust Land Status: Ceded land under Section 5(b) lands of the Hawaii Admission Act
Yes ____ No X

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution? Yes X No ____

Character of Use: Agricultural

Land Doc. Type: License

Term: 3 years (currently in year 3)
Scheduled Expiration: March 14, 2022

Rental Rate: \$200 per acre per year
Annual Rent: \$27,320

BACKGROUND:

The Agribusiness Development Corporation ("ADC") acquired 434.188 acres of real property located at Waialua, Oahu in 2017, which included a 136.6-acre portion of land

which K & L Produce LLC had been farming under a license from Dole Food Company ("Dole") since 2010. Mr. Kevi Lovan and his family own and operate K & L Produce LLC, a Hawaii domestic limited liability company, which currently grows and harvests banana, eggplant, okra, cucumber, bitter melon, pumpkin, cherry tomatoes, long beans, squash, wing beans, and sundry other crops.

Following the purchase of the property from Dole, ADC offered the K & L Produce LLC ("Licensee") the right of first refusal, after which ADC issued License Agreement No. LI-PU1809 ("License") for 136.6 acres, more or less, ("Premises") effective March 15, 2019 ("Exhibit A") for a three-year term in order to give the Licensee the opportunity to develop a conservation plan and clean up the property. Prior to issuance of the License, ADC staff noticed numerous loose dogs, abandoned vehicles, and unpermitted structures throughout the property. However, the overall condition of the premises was fair, and a majority of the subject area was in production.

On September 2, 2021, Licensee was given notice that ADC did not have a current copy of a certificate of insurance for their policy of commercial general liability insurance. On October 20, 2021, staff conducted an inspection of the premises and noted significant deficiencies including open pesticide containers, no conservation plan, unapproved structures, animals and un-permitted livestock, general unkempt and unsanitary conditions, and abandoned vehicles on the premises. A "Notice of Violation & Demand for Remediation" was sent on October 25, 2021 giving the Licensee 30 days to remediate the violations, which deadline was November 24, 2021.

On November 29, 2021, staff conducted a follow up inspection of the Premises and found that while some progress had been made, such as procuring the required insurance and the removal of some vehicles, pesticide containers remained, a soil conservation plan had not been finalized, at least one unapproved toilet facility remained, some abandoned vehicles remained, and excessive rubbish was still strewn about the Premises.

Additionally, on November 29, 2021, an inspector from the Hawaii Department of Agriculture's Pesticide Branch conducted an inspection and subsequently issued a "Warning Notice" ("Exhibit B") for violations of the Hawaii Pesticide Law as set forth in Chapter 149A, HRS, and the Federal Worker Protection Standards. Subsequently, on February 3, 2022, the Department of the Attorney General sent a "Notice of Default and Demand for Remediation" to the Licensee's address on file and by email ("Exhibit C")¹

On February 25, 2022, ADC received a request from Licensee to renew the License for one additional year to provide them with sufficient time to vacate the Premises ("Exhibit D").

REQUEST:

Licensee requests that the License be renewed for one additional year in order to provide the Licensee with time to vacate, as well as to harvest current crops.

¹ The certified mailing dated February 3, 2022 was not successfully delivered. Staff hand-delivered the letter to the address on file for the Licensee on March 10, 2022.

CONSERVATION PLAN:

Licensee has not developed an approved conservation plan within the term of the License.

DISCUSSION:


While the Licensee has demonstrated some progress in addressing the concerns of the Notice of Violation, it was not sufficient to forestall default action. Both staff and Licensee believe it is appropriate for the Licensee to vacate. However, in light of what appear to be sublicensed tenants on the Premises, staff believes it is appropriate to renew the License for a term not to exceed six months from the date of the earlier expiration of the License.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the renewal of the License for a term not to exceed six months from the date of the prior expiration, subject to the following conditions to be memorialized in the renewal license:

1. Renewal license shall terminate effective September 14, 2022 (the "Termination Date"); and
2. Licensee shall fully vacate from the Premises by the Termination Date; and
3. Licensee shall remediate all remaining concerns as documented in the "Notice of Default and Demand for Remediation" by the Termination Date; and
4. Licensee shall remove and properly dispose of all un-permitted structures on the Premises by the Termination Date.

Respectfully submitted,

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James J. Nakatani
Executive Director

EXHIBIT A

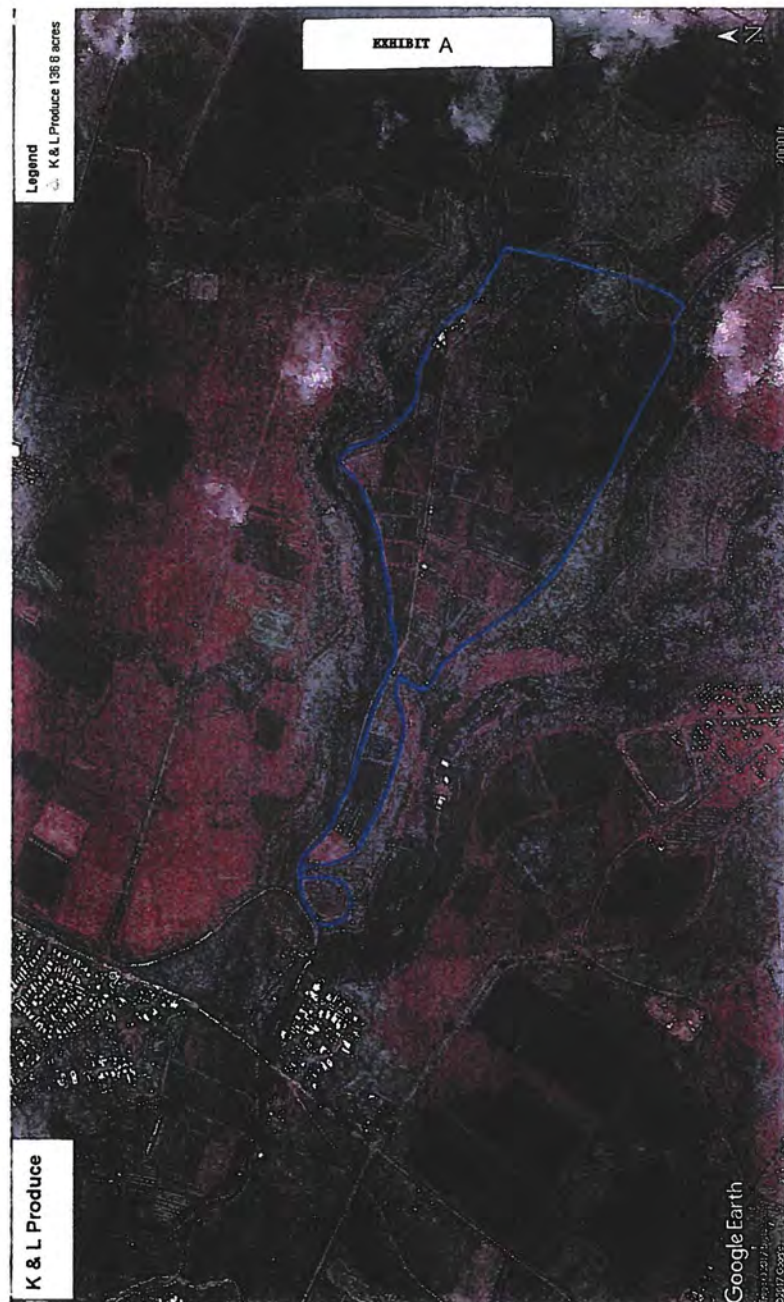


EXHIBIT B

“Warning Notice” from Hawaii Department of Agriculture
[see following pages]

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

WARNING NOTICE

Certified Mail No. 7020 1810 0002 0863 3566
Return Receipt Requested

Mr. Kevi Lovan
Agent for K&L Produce LLC



RE: Violation of Chapter 149A of the *Hawai'i Revised Statutes*

Dear Mr. Lovan:

Please be advised that an inspection conducted by the State of Hawai'i Department of Agriculture November 29, 2021 revealed evidence of violations of the Hawai'i Pesticides Law as set forth in Chapter 149A of the *Hawai'i Revised Statutes* ("HRS"). This WARNING NOTICE is issued to you pursuant to HRS section 149A-41(a).

The inspection took place as part of an after-the fact agricultural use inspection.

The following statute was violated:

HRS 149A-31 Prohibited acts: "No person shall: (1) Use any pesticide in a manner inconsistent with its label. . ."

The following are the factual circumstances of the violations:

1. On November 29, 2021, Hawai'i Department of Agriculture ("HDOA") Pesticides Branch Inspector Adam Williams ("Inspector Williams") conducted an after-the-fact agricultural use inspection at K&L Produce LLC ("K&L Produce"), located at the Waialua Ag Park, Gate 5, Waialua, Hawai'i.
2. Kevi Lovan ("Lovan"), Owner of K&L Produce, gave his voluntary consent for Inspector Williams to enter the property for inspection.
3. Through investigation, Inspector Williams documented that on or about November 28, 2021, Lovan mixed approximately one gallon of ULTRA-PURE OIL HORTICULTURAL INSECTICIDE, MITICIDE AND FUNGICIDE (EPA Reg. No. 69526-5-499), approximately eight (8) ounces of RALLY 40WSP (EPA



Reg. No. 62719-410), and approximately 16 fluid ounces of BIOADVANCED VEGETABLE & GARDEN INSECT SPRAY (EPA Reg. No. 92564-17) in approximately 100 gallons of water, and applied the dilution to approximately 2.5 acres of eggplant to treat for whitefly and powdery mildew.

4. The BIOADVANCED VEGETABLE & GARDEN INSECT SPRAY label did not have any directions for applications at farms, and did not have an Agricultural Use Requirements statement.
5. On or about November 28, 2021, Lovan applied BIOADVANCED VEGETABLE & GARDEN INSECT SPRAY at a site not listed on the label; therefore, Lovan violated **HRS 149A-31(1)**, as described above.
6. Lovan stated that five (5) paid workers who were unaffiliated with Lovan's immediate family were employed at K&L Produce.
7. The ULTRA-PURE OIL HORTICULTURAL INSECTICIDE, MITICIDE AND FUNGICIDE label states: "**DIRECTIONS FOR USE . . . AGRICULTURAL USE REQUIREMENTS** Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard. . ."
8. The RALLY 40WSP label states: "**Directions for Use . . . Agricultural Use Requirements.** Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE) and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard. . ."
9. The Worker Protection Standard ("WPS") is a federal regulation "intended to reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments." Section 170.301 of Title 40, *Code of Federal Regulations* ("40 CFR") (2018).
10. Inspector Williams documented that K&L Produce did not have a central notification site ("CNS").

11. Inspector Williams documented that the pesticide safety poster at K&L Produce was weather damaged and lacked the following information:
 - The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment;
 - Pesticide safety information;
 - The name, address, and telephone number of the state or tribal pesticide regulatory agency.
12. 40 CFR section 170.122 states: “**Providing specific information about applications.** When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide. (a) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in §170.135(d) and shall be accessible and legible, as specified in §170.135(e) and (f). (b) *Timing.* (1) If warning signs are posted for the treated area before an application, the specific information for that application shall be posted at the same time or earlier. (2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker’s first work period. (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier. (c) *Required information.* The information shall include: (1) The location and description of the treated area. (2) The product name, EPA registration number, and active ingredient(s) of the pesticide. (3) The time and date the pesticide is to be applied. (4) The restricted-entry interval for the pesticide . . .”
13. 40 CFR section 170.135 states: “**Posted pesticide safety information.** (a) *Requirement.* When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with section, pesticide safety information. (b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the pesticide safety concepts listed in paragraphs (b)(1)(i) through (vii) and (b)(2) of this section. Displays conforming to §170.311(a)(3) meet the requirements of this paragraph. (c) *Emergency medical care information.* (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster. Displays conforming to §170.311(a)(3)(ix) meet the requirements of this paragraph. . . (d) *Location.* (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers. . . (e) *Accessibility.* Workers shall be informed of the location of the information and shall be allowed access to it. . .”

14. 40 CFR section 170.222 states: “**Providing specific information about applications.** When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide. (a) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in §170.235(d) and shall be accessible and legible, as specified in §170.235(e) and (f) of this part. (b) *Timing.* (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier. (2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler’s first work period. (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until handlers are no longer on the establishment, whichever is earlier. (c) *Required information.* The information shall include: (1) The location and description of the treated area. (2) The product name, EPA registration number, and active ingredient(s) of the pesticide. (3) The time and date the pesticide is to be applied. (4) The restricted-entry interval for the pesticide. . .”
15. 40 CFR section 170.309 states: “**Agricultural employer duties.** Agricultural employers must: . . . (h) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with §170.311 if workers or handlers are on the establishment and within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment . . .”
16. 40 CFR section 170.311 states: “**Display requirements for pesticide safety information and pesticide application and hazard information.** (a) *Display of Pesticide Safety Information.* Whenever pesticide safety information and pesticide application and hazard information are required to be provided under §170.309(h), pesticide safety information must be displayed in accordance with this paragraph . . . (3) *Content after January 1, 2018.* After January 1, 2018, the pesticide safety information must include all of the points in §170.311(a)(3)(i)-(x) instead of the points listed in §170.311(a)(2)(i)-(ix). (i) Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications. (ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet. (iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf). (iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work. (v) Wash work clothes separately from other clothes

before wearing them again. (vi) If pesticides are spilled or sprayed on the body use decontamination supplies to wash immediately, or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes. (vii) Follow directions about keeping out of treated areas and application exclusion zones. (viii) Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured or made ill by pesticides. (ix) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display. (x) The name, address and telephone number of the State or Tribal pesticide regulatory agency . . . (b) *Keeping and displaying pesticide application and hazard information.* Whenever pesticide safety information and pesticide application and hazard information is required to be provided under §170.309(h), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this paragraph. (1) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide applied: (i) A copy of the safety data sheet. (ii) The name, EPA registration number, and active ingredient(s) of the pesticide product. (iii) The crop or site treated and the location and description of the treated area. (iv) The date(s) and times the application started and ended. (v) The duration of the applicable labeling-specified restricted-entry interval for that application. (2) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read. (3) *Accessibility.* When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours. . . (5) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than 24 hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least 30 days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier. (d) *Record retention.* Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with this paragraph (b), the agricultural employer must retain the pesticide application and hazard information described in §170.311(b)(1) on the agricultural establishment for two years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted. . .”

17. K & L Produce did not comply with the Worker Protection Standard, 40 CFR part 170, and therefore violated **HRS 149A-31(1)**, as described above.

18. Inspector Williams documented that there were no single-use towels located at K&L Produce's decontamination area.
19. 40 CFR section 170.150 states: "**Decontamination.** (a)(1) *Requirement.* The agricultural employer must provide decontamination supplies for workers in accordance with this section whenever: (i) Any worker on the agricultural establishment is performing an activity in the area where a pesticide was applied or a restricted-entry interval (REI) was in effect within the last 30 days, and; (ii) The worker contacts anything that has been treated with the pesticide, including, but not limited to soil, water, plants, plant surfaces, and plant parts. . . (b) *General conditions.* . . (3) The agricultural employer shall provide soap and single-use towels in quantities sufficient to meet worker's needs. . ."
20. K & L Produce did not comply with the Worker Protection Standard, 40 CFR part 170, and therefore violated **HRS 149A-31(1)**, as described above.

YOU ARE HEREBY NOTIFIED that you have violated the Hawai'i Pesticide Law as set forth in HRS Chapter 149A. You are further notified that this violation and failure to immediately take actions to prevent further violations may result in the imposition of an administrative penalty of up to five thousand dollars (\$5,000.00) for each offense.

Further use of any pesticide product covered by the Hawai'i Pesticide Law must be in full compliance with the provisions of HRS Chapter 149A.

The issuance of this WARNING NOTICE is provided as a courtesy and does not waive or prohibit the Hawai'i Department of Agriculture from pursuing one or more of the enforcement remedies provided by HRS Chapter 149A to address the violations identified herein, and does not prejudice the right to seek additional penalties for failure to comply with HRS Chapter 149A.


Any subsequent violation of the provisions of HRS Chapter 149A may result in the assessment of an increased administrative penalty (monetary sanction) pursuant to HRS section 149A-41(b) and Section 4-66-66.1 of the *Hawai'i Administrative Rules*.

Any person who knowingly violates any provision of HRS Chapter 149A may be charged with a criminal offense pursuant to HRS section 149A-41(c), and upon conviction, may be fined up to twenty-five thousand dollars (\$25,000.00), or imprisoned for not more than one (1) year, or both.

YOU ARE SO NOTIFIED

Should you have any questions or concerns, please call Scott Nishimoto at the Pesticides Branch of the Hawai'i Department of Agriculture at (808) 973-9415.

ISSUED THIS 11th DAY OF JANUARY, 2022.



GREG TAKESHIMA
Acting Pesticides Program Manager

cc: United States Environmental Protection Agency, Region IX

EXHIBIT C

“Notice of Default and Demand for Remediation”
[see following pages]

STATE OF HAWAI'I
AGRIBUSINESS DEVELOPMENT CORPORATION

IN THE MATTER OF

K & L PRODUCE LLC,

Licensee.

)
) **LICENSE AGREEMENT**
) **NO. LI-PU1809**

) **NOTICE OF DEFAULT AND**
) **DEMAND FOR REMEDIATION;**
) **FACTUAL BACKGROUND;**
) **FINDINGS OF VIOLATIONS;**
) **NOTICE TO CURE VIOLATIONS OF**
) **LICENSE AGREEMENT BY MARCH**
) **9, 2022; EXHIBITS "A" TO "F"**
)
)
)
)
)
)

NOTICE OF DEFAULT AND DEMAND FOR REMEDIATION

NOTICE IS HEREBY GIVEN by the State of Hawai'i, Agribusiness Development Corporation that K & L PRODUCE LLC, by and through its Agent KEVI LOVAN (LICENSEE), is in default of License Agreement No. LI-PU1809 issued on March 15, 2019. LICENSEE was issued a Notice of Violation & Demand for Remediation by way of letter dated October 25, 2021 in which violations of License Agreement No. LI-PU1809 were noted and LICENSEE was given thirty-days to cure the violations. Due to continued violation of License Agreement No. LI-PU1809, LICENSEE is advised that all violations must be remediated by March 9, 2022. Failure to remedy the violations set forth below will result in cancellation of License Agreement No. LI-PU1809. This action is taken pursuant to the authority granted in section 163D-4(a)(5) & (18) of the *Hawai'i Revised Statutes* ("HRS") and Article 2, Section 3 of the *Bylaws of the Agribusiness Development Corporation*, as amended.

FACTUAL BACKGROUND

The Board of Directors of the Agribusiness Development Corporation makes the following findings of fact regarding License Agreement No. LI-PU1809:

1. On or about March 15, 2019, LICENSEE and the State of Hawai‘i, AGRIBUSINESS DEVELOPMENT CORPORATION (LICENSOR), entered into License Agreement No. LI-PU1809 (License Agreement). The term of the License Agreement was for three years. (*See* page 2 of License Agreement No. LI-PU1809 attached as Exhibit “A”.)
2. The License Agreement granted LICENSEE an exclusive license to use a portion of land, situated at Waialua, Oahu, Hawai‘i, further identified as Tax Map Key (1) 6-5-005:002 (Premises), which contained a land area of approximately 136.6 acres. (*See* page 1 of Exhibit “A”.)
3. According to the Preliminary Plan of Utilization and Development attached to the License Agreement, LICENSEE planned to use the Premises to grow fruits and vegetables.
4. LICENSOR reserved the right to enter and inspect the Premises. (*See* page 10, paragraphs 25 & 26 of Exhibit “A”.)
5. An inspection of the Premises conducted on October 20, 2021 revealed six violations:
 - Licensee failed to furnish Licensor with a certificate showing procurement and maintenance of a policy of commercial general liability insurance pursuant to paragraph 23 of the License Agreement; and
 - Licensee failed to submit an approved soil conservation plan to Licensor pursuant to paragraphs 12 and 68 of the License Agreement; and
 - Licensor’s staff documented multiple junk and abandoned vehicles on the premises which are prohibited pursuant to paragraph 56 of the License Agreement; and
 - Licensor’s staff documented multiple instances of pesticide containers strewn about the property, including one large depository full, partially full and empty containers in violation of paragraphs 43, 44 and 45 of the License Agreement; and
 - Licensor’s staff documented instances of dirt, trash, and debris that had been pushed into drainage ditches in violation of paragraphs 13 and 47 of the License Agreement; and
 - Licensor’s staff documented livestock on the property in violation of paragraph 8 of the License Agreement and Licensee’s Utilization Plan.

(*See* Exhibit “B”.)

6. By way of letter dated October 25, 2021, LICENSEE was advised of the multiple violations and given thirty days to cure the violations. (See Exhibit "B".)
7. LICENSEE's violation of the terms and conditions of the License Agreement was brought to the attention of the Agribusiness Development Corporation Board of Directors (Board) on November 10, 2021.
8. At the November 10, 2021 meeting, the Board was asked to approve referral of the License Agreement to the Department of the Attorney General for Possible Legal Action. (See Exhibit "C".)
9. Linda Lovan (Ms. Lovan), Kevi Lovan's daughter, appeared at the Board meeting on behalf of K & L Produce LLC. Ms. Lovan acknowledged violation of the License Agreement and agreed to attempt to cure the violations. The Board approved referral of the License Agreement to the Department of the Attorney General for enforcement. Ms. Lovan was advised that a follow-up inspection was scheduled for November 29, 2021. (See Exhibit "D".)
10. According to the terms and conditions of the License Agreement, LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.
 - (a) LICENSEE shall use the Premises solely for diversified agriculture purposes.
...
 - (b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.
 - (c) All livestock production operations shall be operated and maintained so as not to create any public health problems or nuisance as determined by the State Department of Health or defined by any relevant law.
 - (d) No cesspools shall be constructed on the Premises. However, upon written approval from the State Department of Health and LICENSOR, LICENSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.
 - (e) No solid or liquid animal waste shall be disposed of at or on the Premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the State Department of Health.
 - (f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises by LICENSEE or otherwise, and to address any material increase in weeds or litter on the Premises.

(See pages 4-5, paragraph 8 of Exhibit "A".)

11. According to the terms and conditions of the License Agreement, LICENSEE shall not sublicense or rent the whole or any portion of the Premises without prior consent of LICENSOR. (See page 5, paragraph 10 of Exhibit "A".)
12. According to the terms and conditions of the License Agreement, LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. (See page 6, paragraph 12 of Exhibit "A".)
13. According to the terms and conditions of the License Agreement, LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License. (See page 6, paragraph 13 of Exhibit "A".)
14. According to the terms and conditions of the License Agreement, LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force. (See page 15, paragraph 43 of Exhibit "A".)
15. According to the special conditions of the License Agreement, LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the Premises, and that any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense. (See pages 18-19, paragraph 56 of Exhibit "A".)
16. According to the special conditions of the License Agreement, LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE's cost and expense. (See page 19, paragraph 57 of Exhibit "A".)
17. According to the special conditions of the License Agreement, LICENSEE shall submit to LICENSOR a copy of its approved soil and water conservation plan within one year of the date of the execution of this License. (See pages 21-22, paragraph 68 of Exhibit "A".)
18. A follow-up inspection was conducted on November 29, 2021. LICENSOR's staff was accompanied by a State Department of Agriculture Pesticide Inspector. Staff made the following observations:
 - LICENSEE did obtain liability insurance;
 - LICENSEE did remove the livestock;
 - Pesticide containers strewn around the Premises;
 - Multiple base yards with segregated and individually secured fields indicate subletting;
 - Multiple unapproved structures on the Premises;
 - No approved soil conservation plan;

- Base yard structures, clothes drying on clothes lines, electric generators, and full kitchens suggest habitation is occurring on the Premises;
- Some toilet facilities were decommissioned, but there were still toilet facilities with no approved waste disposal system;
- Excessive rubbish strewn across the Premises;
- Some abandoned vehicles were removed, but there were still abandoned/derelict vehicles on the Premises;
- No compliance with the Worker Protection Standard, 40 CFR part 170.

(See photographs of November 29, 2021 Staff visit attached as Exhibit “E”.)

19. The non-compliance with the terms and conditions of the License Agreement will again be brought to the Board’s attention based upon LICENSEE’s failure to correct all issues raised in the October 25, 2021 Notice of Violation and Demand for Remediation by the thirty-day deadline, and the observations made by LICENSOR’s staff during the November 29, 2021 inspection of the Premises.
20. The License Agreement is currently set to **terminate on March 15, 2022**. Licensor has not received a request from LICENSEE to renew the License Agreement.
21. On January 11, 2022, the State Department of Agriculture, Pesticide Branch, issued Kevi Lovan, as the Agent for K & L Produce LLC, a Warning Notice for violations of the Hawai’i Pesticide Law, set forth in chapter 149A, HRS, and the Federal Worker Protection Standards. (See Exhibit “F”.)
22. According to the terms and conditions of the License Agreement, notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow addition time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License. Any additional time allowed shall not be deemed a waiver of the terms, conditions, and covenants contained in this License. (See pages 12-13, paragraph 30 of Exhibit “A”.)

FINDINGS OF VIOLATIONS

1. **Failure to Maintain the Premises in a Strictly Clean, Sanitary, and Orderly Condition, and Failure to Remove Trash** in violation of paragraphs 13 and 57 of the License Agreement. Weeds, grass, and leaves have been cut, but not removed from the Premises, excessive trash is strewn throughout the Premises, and toilet facilities have not been dismantled.
2. **Failure to Remove Abandoned Vehicles** in violation of paragraph 56 of the License Agreement. While the November 29, 2021 inspection showed improvement from the October 20, 2021 inspection, there were still derelict vehicles on the Premises.

3. Structures have been erected without LICENSOR's Prior Written Approval in violation of paragraph 14 of the License Agreement. There are numerous structures placed throughout the Premises that have not been approved by LICENSOR.
4. Failure to Comply with State and Federal Laws in violation of paragraph 43 of the License Agreement. Empty pesticide containers have not been properly disposed of, and filled pesticide containers are not properly stored, all in violation of Hawai'i Pesticide Laws. Additionally, LICENSEE has failed to institute Worker Protection Standards as required by Federal Regulation, 40 CFR part 170.
5. Failure to Submit Conservation Plan Developed by LICENSEE in Cooperation with the Appropriate Soil and Water Conservation District in violation of paragraph 12 of the License Agreement. LICENSEE was given one year to provide LICENSOR with an appropriate Conservation Plan. LICENSOR has not received a completed Conservation Plan from LICENSEE.

NOTICE TO CURE VIOLATIONS OF LICENSE AGREEMENT BY MARCH 9, 2022

Pursuant to paragraph 19 of the License Agreement, where LICENSEE fails to substantially perform any provision of the License Agreement, LICENSEE must commence to cure, and diligently continue to attempt to cure, the default within sixty-days. In recognition of the effort LICENSEE has made to correct the violations noted in the Notice of Violation dated October 25, 2021 and discussed at the November 10, 2021 meeting of the Board, the LICENSEE shall be given additional time to remedy the defaults.

Pursuant to paragraph 30 of the License Agreement, LICENSEE **shall be given until March 9, 2022**, to comply with the terms, conditions and covenants contained in the License Agreement. Specifically, LICENSEE shall:

- Advise LICENSOR of the progress made toward submission of the required Conservation Plan and anticipated completion date.
- Properly secure and dispose of pesticide containers.
- Submit a written request to LICENSOR for approval of structures.
- Remove all abandoned/derelict vehicles from the Premises.
- Remove all trash and dead weeds, grass, and leaves from the Premises.
- Contact the Department of Agriculture Pesticide Education Section at hdoa.pested@hawaii.gov or call (808) 973-9402, to aid in the implementation of Worker Protection Standards.
- Dismantle and remove all unpermitted toilet facilities and institute approved wastewater disposal methods.
- LICENSEE shall submit a written request to LICENSOR for any sublicense agreements.

PLEASE BE ADVISED that the renewal or termination of the License Agreement will be discussed at the Board meeting presently scheduled for 9:00 a.m. on March 16, 2022.

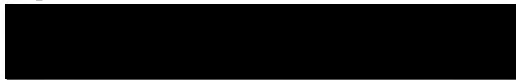
ISSUED THIS 3rd DAY OF February, 2022.

Delanie D. Prescott-Tate

Delanie D. Prescott-Tate
Deputy Attorney General

cc: file

To: Mr. Kevi Lovan
Agent for K & L Produce LLC



VIA CERTIFIED MAIL No. 7019 2280 0000 2201 8613

RETURN RECEIPT REQUESTED

EXHIBIT “A”

LICENSE AGREEMENT NO. LI-PU1809

between

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
as LICENSOR

and

K & L Produce LLC
an Hawaii corporation
as LICENSEE

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

LICENSE AGREEMENT NO. LI-PU1809

THIS LICENSE made and issued this 15th day of March, 2019, by and between the State of Hawaii by its AGRIBUSINESS DEVELOPMENT CORPORATION, the place of business and mailing address of which is 235 S. Beretania Street, Room 205, Honolulu, Hawaii 96813, hereinafter called "LICENSOR," and K & L PRODUCE LLC, an Hawaii limited liability corporation, of which the business and post office address in the State of Hawaii for purposes of this License Agreement is [REDACTED], hereinafter called "LICENSEE."

W I T N E S S E T H:

WHEREAS, LICENSOR owns and is obligated to manage and operate that certain parcel of land situated at Waialua, Oahu, identified as identified by Tax Map Key number (1) 6-5-005:002 containing a gross area of 434.188 acres, more or less, hereinafter referred to as the "Property"; and LICENSOR is authorized to grant licenses for the use of this land for agricultural and related purposes; and

WHEREAS, LICENSEE has requested a license to use a portion of said Property at Waialua, Oahu for cultivation and production purposes; and

NOW, THEREFORE, in consideration of the terms and conditions herein contained to be observed and performed by LICENSEE, LICENSOR, pursuant to and as set forth in this License, hereby grants to LICENSEE an exclusive license to use a portion of the land identified as Tax Map Key (1)6-5-005:002, outlined on the map attached hereto and incorporated herein as Exhibit "A", containing a land area of 136.6 acres, more or less, hereinafter referred to as the "Premises." The "Premises" shall not include any areas containing or consisting of any common infrastructure improvements serving the Premises that are under the control, operation, or management of any entity, including LICENSOR.

The license of the Premises hereby granted by LICENSOR to LICENSEE shall be together with the right to use, in common with other licensees or revocable permittees of other lands included

with the Property, the roadways providing ingress into and egress from the Premises and the right to use utility easements serving the Premises (excluding such easements for common infrastructure improvements that are under the exclusive control, operation, and management of the LICENSOR).

THE TERMS AND CONDITIONS upon which LICENSOR grants the aforesaid license, right, and privilege are as follows:

1. Term. The term of this License is for the lesser of three (3) years or such time as LICENSEE ceases to operate the agribusiness or other permitted use, unless this License is sooner terminated as hereinafter provided.
2. License Fee. The base license fee for the tillable acres of this License shall be as outlined in the following table, payable in monthly installments, on or before the first of each month.

WHEN	RENT
Upon execution until last day of 3 rd year	\$200/acre/year

LICENSOR and LICENSEE agree that the Premises consist of 136.6 tillable acres and 0 non-tillable acres. For purposes of this License, "tillable acres" shall include all portions of the Premises measured in acres that are suited for cultivation and production purposes in accordance with normal agronomic practices, and "non-tillable acres" shall include all portions of the Premises measured in acres that are not suited for cultivation and production purposes in accordance with normal agronomic practices.

3. Common Infrastructure Improvement Costs. In addition to the base annual license fee provided in Paragraph 2 above, LICENSEE shall also pay its appropriate share of the costs of operating and maintaining the common infrastructure improvements including but not limited to the roadway system that serve the Property, as well as the Premises (the "Common Infrastructure Improvement Costs").

The LICENSOR may waive or suspend the common infrastructure improvement cost requirement at its discretion; provided that the LICENSEE complies with the terms, conditions, and covenants in Paragraph 6 of this License; and provided further

that the LICENSOR reserves the right to reinstate the common infrastructure improvement cost requirement at any time throughout the term of the License.

4. [Reserved.]
5. Interest on Delinquent License Fees. The interest rate on the principal amount of any and all unpaid or delinquent license fee payments shall be one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each delinquent payment.
6. Common Area. The phrase "Common Area" as used in this Paragraph and throughout this License is defined in the DEFINITIONS section of this License.

LICENSEE and LICENSEE's employees and customers shall have the right, in common with other licensee of the Property and their respective employees and customers, to use the Common Area which may from time to time exist in connection with this LICENSEE's business to be conducted upon the Premises, subject to all terms and conditions set forth in this License. The rights of LICENSEE hereunder in and to the Common Area, including the driveways, entrances and exits thereto, shall be subject to the rights of LICENSOR and of all other licensee of LICENSOR using the same in common LICENSEE, and it shall be the duty of LICENSEE to keep all of said areas free and clear of any obstructions created or permitted by LICENSEE or resulting from LICENSEE's operations and to permit the use by LICENSEE's employees, customers, patrons and service suppliers of any said driveway, entrance and exit areas only for normal ingress and egress to and from the premises occupied by LICENSEE and such other LICENSEE of LICENSOR.

The Common Area shall be subject to the exclusive management and control of LICENSOR. LICENSOR shall have the right, from time to time, to designate as, withdraw from, re-designate as, relocate and limit as Common Area such areas as LICENSOR shall from time to time determine in its sole discretion. LICENSOR shall have the right to establish, promulgate and enforce such reasonable rules and regulations concerning Common Area applicable to all licensee on the Property as it may deem necessary or advisable for the proper and efficient management, security, operation, maintenance, and use thereof, and LICENSEE shall comply with the same. Except as otherwise provided in this License, LICENSOR shall make reasonable

efforts to maintain the Property including the Common Area in good order, condition and repair.

LICENSOR may at any time and from time to time during the term hereof exclude and restrain any persons from the use or occupancy of the Common Area, excepting, however, bona fide customers, patrons and service suppliers of LICENSEE and other licensee of LICENSOR who make use of said areas in accordance with the rules and regulations equitably applicable to all other LICENSEE of the Property established by LICENSOR from time to time with respect thereto. LICENSEE shall have the right to remove from the Common Area or to restrain the use of any of the Common Area by any persons not specifically authorized by LICENSOR or by LICENSEE or by other licensee not making use of the Common Area in accordance with the rules and regulations of LICENSOR. If in the opinion of LICENSOR unauthorized persons are using any of the Common Area by reason of the presence of LICENSEE in the Premises, LICENSEE, upon demand of LICENSOR, shall enforce such rights against all such unauthorized persons by appropriate proceedings. Nothing contained herein shall affect the rights of LICENSOR at any time to remove any unauthorized person from the Common Area or to restrain the use of any of the Common Area by unauthorized persons.

7. Taxes, Assessments, and Utilities. LICENSEE shall pay, if and when due, LICENSEE's proportionate share of all taxes and similar rates, assessments, charges, and outgoings, if any, of every nature and kind whatsoever, which shall during the term of this License be lawfully charged, assessed, imposed, or become due and payable upon or in respect of the Premises and the improvements now on or hereafter erected thereon.
8. Character of Use. LICENSEE shall not do or commit, or permit or suffer to be done, any willful or voluntary waste or destruction in and upon the Premises, any nuisance in and upon the Premises, or any unlawful or improper use of the Premises.

- (a) LICENSEE shall use the Premises solely for diversified agriculture purposes, as set forth in LICENSEE's land utilization plan attached hereto as Exhibit "B". LICENSEE's use of the Premises shall be subject to any recorded covenants, conditions, and restrictions of any and all recorded encumbrances on the Premises existing as of the date of this License.

- (b) No livestock production operations shall be conducted on the Premises without the prior approval of the State Department of Health.
 - (c) All livestock production operations shall be operated and maintained so as not to create any public health problems or nuisance as determined by the State Department of Health or defined by any relevant law.
 - (d) No cesspools shall be constructed on the Premises. However, upon written approval from the State Department of Health and LICENSOR, LICENSEE may use alternative wastewater treatment and disposal systems which do not pose a threat to the groundwater.
 - (e) No solid or liquid animal waste shall be disposed of at or on the Premises. Disposal of all solid and liquid animal waste must be by a means acceptable to the State Department of Health.
 - (f) LICENSEE shall take appropriate steps to reduce the risk of any excessive soil erosion by reason of LICENSEE's use of the Premises by LICENSEE or otherwise, and to address any material increase in weeds or litter on the Premises.
9. Utilization and Development of the Land. LICENSEE shall utilize and develop the Premises in accordance with LICENSEE's plan for utilization and development which has been approved by LICENSOR before execution of this License and which is incorporated in LICENSEE's land utilization plan attached as Exhibit "B" hereto. Any material modification or deviation from LICENSEE's utilization and development plan without the prior written approval of LICENSOR may constitute a breach of this License and a cause for the termination thereof.
10. Sublicensing. LICENSEE shall not sublicense or rent the whole or any portion of the Premises without the prior consent of LICENSOR, which consent may be withheld in LICENSOR's sole discretion. Any sublicensing request shall be submitted in writing to LICENSOR, together with a copy of the sub-licensee's land utilization plan and rental payment schedule for LICENSOR's consideration. Profit on any sublicense charges is neither allowed, nor shall be sought by LICENSEE.

11. Good Husbandry. Insofar as LICENSEE's use of the Premises (as set forth in LICENSEE's land utilization plan) includes the breeding, feeding, and keeping of livestock or other animals, LICENSEE shall at all times practice good husbandry with regard to the use of the Premises for the use permitted.
12. Conservation Practices. LICENSEE shall carry out a program of conservation based upon a conservation plan developed by LICENSEE in cooperation with the appropriate Soil and Water Conservation District. The conservation program shall be in accordance with a conservation plan which shall be submitted to LICENSOR for acceptance within one (1) year following the date of this License. The conservation plan shall include, but not be limited to, those practices such as land clearing, cropping system, irrigation system, drainage, noxious weed control, and other measures needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for licenses, premises, or uses with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of LICENSEE in this regard shall be found to be contradictory to the aforesaid conservation plan or unsatisfactory to LICENSOR, LICENSOR shall notify LICENSEE in writing and LICENSEE shall be required, within sixty (60) days of the delivery of said notice, to cure or correct the contradictory or unsatisfactory condition and submit proof of such cure or correction that is satisfactory to LICENSOR.
13. Sanitation. LICENSEE shall keep the Premises and improvements in a strictly clean, sanitary, and orderly condition and shall use reasonable and prudent measures to cut, remove, or otherwise control weeds and grass, in complete conformance with applicable laws, rules, and statutes and consistent with the terms and conditions of this License.
14. Improvements. During the term of this License, LICENSEE shall not construct, place, maintain, or install on the Premises any building, structure, signs, or improvement, except with the prior written approval of LICENSOR and upon such conditions as LICENSOR may impose. All buildings, structures, signs, or improvements constructed, placed, maintained, or installed pursuant to this paragraph shall be in accordance with all applicable federal, state, and county laws, ordinances, and rules. The ownership thereof shall be in LICENSEE until the expiration or sooner termination of this License, at which time the ownership thereof shall, at the option of LICENSOR,

vest in LICENSOR at no cost to the LICENSOR or shall be removed by LICENSEE at LICENSEE's sole cost and expense.

15. Repairs to Improvements. LICENSEE shall, at its expense, keep, repair, and maintain all buildings, structures, and improvements now existing or hereafter constructed or installed on the Premises in good order, condition, and repair, reasonable wear and tear excepted.
16. Involuntary Liens. LICENSEE shall not commit or suffer any act or neglect which results in the Premises or any improvement thereon becoming subject to any involuntary attachment, lien, charge, or encumbrance, and shall indemnify, defend, and hold harmless LICENSOR from and against all attachments, liens, charges, encumbrances, and all resulting expenses affecting the Premises and caused by LICENSEE.
17. Dwelling Restrictions. The construction or placement of any structure on the Premises for residential purposes is strictly prohibited. LICENSEE, including its agents, employees, and invitees, shall not use the Premises as a temporary or permanent residence.
18. Non-Discrimination. LICENSEE shall not use the Premises, nor permit the Premises to be used in support of, any policy that unlawfully discriminates against anyone based upon creed, color, national origin, sex, or a physical handicap. LICENSEE shall not practice any unlawful discrimination based upon creed, color, national origin, sex, or a physical handicap or any other lawfully protected class.
19. Breach or Default. It is expressly agreed that this License is contingent upon the continuing condition that, if LICENSEE fails to observe or perform substantially the provisions contained herein, and if LICENSEE does not commence to cure, and diligently continue to attempt to cure, such default within sixty (60) days, or thirty (30) days where the default involves a failure to make timely license fee payments, after delivery by LICENSOR of a written notice of such failure by personal service or by registered or certified mail to LICENSEE; or, if LICENSEE becomes bankrupt or insolvent or files any debtor proceedings or takes or has taken against it for good cause any proceedings of any kind or character whatsoever under any provision of the Federal Bankruptcy Code seeking readjustment, rearrangement, postponement, composition, or reduction of LICENSEE's debts, liabilities or obligations; then, in any such event, LICENSOR may, at its

option, cancel this License and thereupon take immediate possession of the Premises without previous demand, notice, or legal process, and pursue any other remedies provided under this License or available at law or equity.

20. Acceptance of Rent Not a Waiver. The acceptance of rent by LICENSOR shall not be deemed a waiver of any breach by LICENSEE of any term, covenant, or condition of this License, of LICENSOR's right to re-entry for breach of covenant, or of LICENSOR's right to declare and enforce a forfeiture for any breach; and the failure of LICENSOR to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred herein, shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or option.
21. Security Deposit. Upon execution of this License, LICENSEE shall deposit with LICENSOR an amount equal to the monthly license fee as security for the faithful performance of all of these terms and conditions. The deposit will be returned to LICENSEE upon termination of this License, but only after all of the terms and conditions of this License Agreement have been observed and performed.
22. Assignment. Except as expressly provided in this License, this License is not transferable. At no time during the term of the License shall LICENSEE assign, mortgage, or pledge its interest in this License, or its interest in the improvements now or hereafter erected on the Premises, without the prior written consent of LICENSOR, which consent may be withheld in LICENSOR'S sole discretion.
23. Liability Insurance. LICENSEE shall procure and maintain during the entire period of this License a policy or policies of commercial general liability insurance sufficient to protect it from and against any liability for all claims for personal injury, death, and property damage which may arise out of the exercise of rights granted herein. The policy or policies shall cover the entire Premises, including all buildings, structures, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the control or use of LICENSEE. The minimum limit of said policy or policies shall not be less than \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii.

LICENSEE, prior to entry and use of the Premises or within fifteen (15) days from the effective date of its License, whichever is sooner, shall furnish LICENSOR with a certificate(s) showing the policy(ies) to be initially in force, keep the certificate(s) on deposit during the entire term of the License, and furnish like certificate(s) upon each renewal of the policy(ies). The certificate(s) for such insurance shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy shall name LICENSOR as an additional insured.

LICENSOR shall retain the right at any time to review the coverage, form, and amount of the insurance required by this License. If, in the opinion of LICENSOR, the insurance provisions in this License do not provide adequate protection for LICENSOR, LICENSOR may require LICENSEE and any permitted sub-licensee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. LICENSOR's requirements shall be reasonable and shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. LICENSOR shall notify LICENSEE in writing of changes in the insurance requirements and LICENSEE shall deposit copies of acceptable insurance policy(ies) or certificate(s) thereof with LICENSOR incorporating the required changes within thirty (30) days of LICENSEE's receipt of the notice from LICENSOR requiring the same.

The procuring of the required policy(ies) of insurance shall not be construed to limit LICENSEE's liability under this License. Notwithstanding the policy(ies) of insurance, LICENSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by LICENSEE's negligence or neglect connected with this License.

24. Property Insurance. At all times during the term of this License, LICENSEE shall at its own cost and expense keep any state-owned improvements, which are located on the Premises and which are identified by LICENSOR prior to the commencement date of this License Agreement, insured against loss or damage by fire and other hazards, casualties, and contingencies for

the full insurable value of those improvements. The policy shall name LICENSOR as an additional insured.

LICENSEE shall furnish to LICENSOR on or before the commencement date of its License a certificate showing such policy(ies) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(ies). Each certificate shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(ies) until after thirty (30) days written notice has been given to LICENSEE, except that, in the event this License is terminated, said insurance may be terminated on the same date as the License. The policy(ies) shall also provide that all rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

25. Right to Enter. LICENSOR reserves the right for its agents or representatives, at all reasonable times during the term, to enter and cross any portion of the Premises at any time for the purpose of performing any public or official duties.
26. Inspection of Premises. LICENSEE shall permit LICENSOR and its agents or representatives, at all reasonable times during the term, to enter the Premises and examine the state of repair and condition thereof and the improvements, equipment, chattels, books, and records of LICENSEE in connection with the administration of this License.
27. Surrender. At the end of the term or other sooner termination of this License, LICENSEE shall peaceably deliver unto LICENSOR possession of the Premises, together with all improvements existing or constructed thereon, unless provided otherwise in this License. Furthermore, upon the expiration, termination, or revocation of this License, should LICENSEE fail to remove any and all of LICENSEE's personal property from the Premises, LICENSOR may remove or dispose of any and all personal property from the Premises and either deem the personal property abandoned and dispose of the personal property or place such personal property in storage at the cost and expense of LICENSEE. LICENSEE shall pay all costs and expenses for removal, disposal, transporting, and storage of LICENSEE's personal property. The provisions of this paragraph shall survive the expiration or earlier termination of this License.
28. Withdrawal for Public Purpose; Condemnation.

A. Withdrawal for a Public Purpose. LICENSOR shall have the right to withdraw the Premises, or any portion thereof, at any time during the term of this License with reasonable notice and without compensation, except as provided herein, for public uses or purposes, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and the Premises shall be subject to the right of LICENSOR to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the Premises; provided that, upon any withdrawal or taking which causes any portion of the Premises to become unusable for the specific use or uses for which it was licensed, the base annual rent shall be reduced in proportion to the value of the Premises withdrawn or made unusable. If any permanent improvement constructed upon the land by LICENSEE is destroyed or made unusable in the process of any withdrawal or taking, the proportionate value thereof shall be paid by LICENSOR to LICENSEE based upon the unexpired term of this License; provided that LICENSEE may, in the alternative, with LICENSOR'S written consent, remove and relocate its improvements to the remainder of the Premises occupied by LICENSEE; provided further that no withdrawal or taking shall be had as to those portions of the Premises which are then under cultivation with any trees or crops until such trees or crops are harvested, unless LICENSOR pays to LICENSEE the value of the trees and crops.

If any withdrawal or taking in LICENSEE's reasonable determination makes the Premises unusable by LICENSEE for the purposes and uses for which LICENSEE is then using the Premises, LICENSEE shall have the right to terminate this License Agreement, without waiving any other rights of LICENSEE by reason of such withdrawal or taking.

B. Condemnation. If at any time, during the term of this License Agreement, any portion of the Premises shall be condemned or required for public purposes by the Federal government or any county or city and county, or any governmental agency of either, the base annual license fee and any other charges under this License Agreement, including LICENSEE's proportionate share of Common Infrastructure Improvement Costs, shall be reduced in proportion to the value of the portion of the Premises condemned. LICENSEE shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which LICENSEE is not permitted to harvest, and (b) the proportionate value of

LICENSEE's permanent improvements so taken in the proportion that it bears to the unexpired term of the License Agreement; provided, that LICENSEE may, in the alternative, with LICENSOR'S written consent, remove and relocate its improvements to the remainder of the Premises occupied by LICENSEE. LICENSEE shall not by reason of the condemnation be entitled to any claim against the LICENSOR for compensation or indemnity for the license interest and all compensation payable or to be paid for or on account of the land comprising the Premises by reason of the condemnation shall be payable to and be the sole property of the LICENSOR. The foregoing rights of LICENSEE shall not be exclusive of any other rights to which LICENSEE may be entitled by law, and LICENSEE shall have the right to claim and recover from the condemning authority, but not from LICENSOR, such compensation as may be separately awarded or recoverable in LICENSEE's own right on account of such condemnation of LICENSEE's interest under this License Agreement and any improvements constructed by LICENSEE on the Premises. Where the portion of the Premises taken renders the remainder of the Premises unsuitable for the use or uses for which the Premises were licensed, LICENSEE shall have the option to surrender this license; provided, that LICENSEE may remove the permanent improvements constructed, erected, and placed by it within any reasonable period allowed by the LICENSOR.

29. Inspection by Prospective Bidders. For purposes of informing and apprising that person or persons of the condition of the Premises preparatory to the proposed disposition thereof at the expiration of the term or earlier termination of this License Agreement, LICENSOR shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following an announcement at any of LICENSOR's public meetings of any proposed disposition of the Premises; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to LICENSEE, and shall, if LICENSEE so requires, be made in the company of LICENSEE or designated agents of LICENSEE.
30. Extension of Time. Notwithstanding any provision to the contrary, wherever applicable, LICENSOR, for good cause shown, may allow additional time beyond the time or times specified herein in which LICENSEE may comply, observe, and perform any of the terms, conditions, and covenants contained in this License. Any additional time allowed shall not be deemed a

waiver of the terms, conditions, and covenants contained in this License.

31. Quiet Enjoyment. LICENSOR covenants and agrees with LICENSEE that, upon payment of rent at the times and in the manner specified and upon the observance and performance of the covenants, terms, and conditions hereof on the part of LICENSEE to be observed and performed, LICENSEE shall have, hold, possess, and enjoy the Premises for the term that the same are licensed to LICENSEE hereunder, without hindrance or interruption by LICENSOR or any other person or persons lawfully claiming by, through, or under LICENSOR.
32. Abandonment and Termination. If, after putting the Premises into service, LICENSEE abandons or ceases to use the Premises for a period of four (4) or more consecutive months, LICENSOR shall have the right to terminate this License Agreement. Any abandonment, termination, or cessation shall not affect or release any liability of LICENSEE at such time existing by reason of a breach of any of the terms hereof.
33. Non-warranty. LICENSOR does not warrant the condition of the Premises, as the same is being licensed "as is." LICENSEE assumes all risks incident to its use.
34. LICENSEE's Risk. Any and all goods, wares, farm supplies, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this License Agreement, regardless of ownership of such property, shall be at the sole risk and hazard of LICENSEE, and LICENSOR shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, defective electric wiring, fire, or by any other cause whatsoever.
35. Applicable Law; Severability. This License shall be governed by and interpreted in accordance with the laws of the State of Hawaii. If any provision of this License is held to be invalid or unenforceable, the validity or enforceability of the other provisions shall remain unaffected.
36. Costs of Litigation. If LICENSOR shall be made a party to any litigation commenced by or against LICENSEE (other than condemnation proceedings), without any fault on LICENSOR's part, LICENSEE shall pay all costs and expenses incurred by or imposed on LICENSOR, including, but not limited to, attorney's fees; furthermore, LICENSEE shall pay all costs and expenses which may be incurred by or paid by LICENSOR in enforcing the

covenants and agreements of this License, in recovering possession of the Premises, or in the collection of delinquent license fees, taxes, and any and all other charges.

37. Indemnity. LICENSEE shall indemnify, defend, and hold harmless the State of Hawaii, LICENSOR, and their officers, employees, and agents from and against any claim or demand for loss, liability, damage, cost, expense, and attorneys' fees, including claims for property damage, personal injury, or wrongful death (collectively, the "Claims") arising out of any occurrence on the Premises and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the Premises, or by any accident or fire thereon, or growing out of or caused by any failure on the part of LICENSEE to maintain the Premises in a safe condition, or by any act or omission of LICENSEE, and from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants, and conditions herein or the laws, ordinances, rules, requirements, or regulations of the federal, state, or county governments. The provisions of this paragraph shall survive the expiration or earlier termination of this License.
38. Hunting. No hunting shall be allowed on the Premises during the term of this License.
39. Boundary Stakeout. LICENSOR shall not be responsible or liable for the surveying or boundary stakeout of the Premises. LICENSEE shall be solely responsible for any survey and boundary stakeout of the Premises.
40. Fences. LICENSEE shall, wholly at its own cost and expense, fence the whole or portion of the outside perimeter of the Premises if such fencing shall be required by LICENSOR or shall be so required by any law now in force or that may hereafter be enacted and LICENSEE shall and will maintain in good order and condition throughout the period of this License the fences so constructed and those now existing on the Premises.
41. Drainage Easements. The Premises shall be subject to drainage and flowage easements now of record or otherwise existing under law as and to the extent that the same are applicable to the Premises as of the commencement date of this License Agreement. The easement area(s) shall not be altered or used for any purposes which may obstruct flow or reduce the effectiveness of the drainage way, except with LICENSOR's

prior written consent which may be conditioned upon appropriate measures undertaken by LICENSEE to divert, re-direct, retain, or detain any storm waters in a manner approved by LICENSOR. LICENSEE shall accept the storm runoff draining into and through the easement area(s), respectively, and shall be responsible for the maintenance and protection of the drainage easements against deterioration or loss of functional effectiveness.

42. Roadway and Utility Easements. The Premises shall be subject to all existing roadway and utility easements, which easements shall be in favor of property owners served by such easements, and to any and all access and other easements over and across the Premises that are necessary and appropriate for the operation and maintenance of the common infrastructure serving the Property, including the Premises; provided that LICENSEE may cross and may have access over and upon all such easements located on the Premises in accordance with such easements.
43. Compliance with Laws. LICENSEE shall comply with the requirements of all federal, state, and county authorities and observe all federal, state, and county laws, ordinances, and rules pertaining to the Premises which are now in force or later may be in force.
44. Environmental Regulations. LICENSEE shall comply with all applicable federal, state, and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and rules governing historic preservation. LICENSEE shall be responsible for obtaining all necessary federal, state, or county clearances.
45. Hazardous Materials. LICENSEE acknowledges that it is aware of the Phase 1 Environmental Assessment report, prepared by Bureau Veritas and dated September 30, 2011 ("BV Report"), that may identify environmental issues which occurred prior to or during Del Monte Corporation's occupancy of the Premises. Any environmental issue occurring on Premises after the date of this License Agreement shall be the responsibility of LICENSEE.
 - (a) During the term of this License, LICENSEE shall not cause or permit the escape, disposal, or release of any hazardous materials, except as permitted by law. LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for

the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of LICENSEE's business, and then only after written notice is given to LICENSOR of the identity of such materials and upon LICENSOR's written consent, which consent may be withheld at LICENSOR's sole and absolute discretion. LICENSOR may, upon reasonable request and for reasonable cause, require testing of the Premises to ascertain whether or not there has been any release of hazardous materials by LICENSEE. In the event that the results of such testing establish that there has been a release of hazardous materials on the Premises by LICENSEE, LICENSEE shall, in addition to LICENSEE's other obligations hereunder, be responsible for the cost of such testing.

LICENSEE shall execute affidavits, representations, and the like from time to time at LICENSOR's request concerning LICENSEE's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by LICENSEE. If LICENSEE at any time becomes aware of any past, present, or contemplated hazardous discharge or of any hazardous materials claims with respect to the Premises (other than those already disclosed in the BV Report) which could subject LICENSOR, LICENSEE, or the Premises to any liability or restrictions on ownership, occupancy, transferability, or use of the Premises under any hazardous materials laws, LICENSEE shall immediately advise LICENSOR thereof in writing and provide to LICENSOR such detailed reports thereof as may be reasonably requested by LICENSOR. LICENSOR shall have the right, in its sole discretion, to join and participate in, any settlements, remedial actions, or legal proceedings or actions initiated with respect to any hazardous materials claims.

- (b) LICENSEE shall be responsible for and shall indemnify, defend, and hold harmless LICENSOR and its employees, agents, successors, and assigns from and against any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence

of hazardous materials occurring on, under, or about the Premises during the term of this License, including, without limitation: (1) all foreseeable and unforeseeable consequential damages; (2) the costs of any required or necessary repair, clean-up, or detoxification of the Premises and of the preparation and implementation of any closure, remedial, or other required plans; (3) the costs of LICENSOR's investigation and handling of any hazardous materials claims, whether or not any lawsuit or other formal legal proceeding shall have been commenced with respect thereto; (4) the costs of LICENSOR's enforcement of this covenant, whether or not a lawsuit is brought therefore; and (5) all reasonable costs and expenses incurred by LICENSOR in connection with clauses (1), (2), (3), and (4) including, without limitation, reasonable attorney's fees.

(c) The provisions of this paragraph shall survive the expiration or earlier termination of this License.

46. Level One (1) Hazardous Waste Evaluation. At any time during the term or upon termination of this License, LICENSOR, for good cause, may require LICENSEE to conduct at LICENSEE's own expense, a Level One (1) Hazardous Waste Evaluation and a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, the State Department of Agriculture, and the State Department of Land and Natural Resources, of any hazardous materials and hazardous materials claims attributable to the discharge of any hazardous materials on the Premise during the term of this License. The termination of this License will not be approved by LICENSOR unless this evaluation and abatement provision have been executed where required. This provision shall survive and continue in effect after termination of this License.
47. Soil Erosion. LICENSEE shall not engage in any activity that may result in soil erosion from water or wind. LICENSEE shall control soil erosion as completely as practicable by strip cropping and contouring, by filling in or otherwise controlling small washes or ditches that may form, and by adopting practices recommended by the Natural Resource Conservation Service (NRCS).
48. Encumbrances. This License is subject to all existing recorded and unrecorded encumbrances. At any time during the

term of this License, LICENSOR may create easements and encumbrances upon the Premises in addition to any easements and encumbrances which currently affect the Premises, provided that any such new easements or encumbrances do not unreasonably restrict or interfere with LICENSEE's use of the Premises.

49. Interpretation. The use of any gender shall include all genders. If there is more than one LICENSEE, all words used in the singular shall extend to all LICENSEES.
50. Paragraph Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this License.
51. [Reserved.]
52. [Reserved.]
53. Exhibits - Incorporation in License. All Exhibits referred to in this License are attached to this License and are hereby deemed incorporated by reference.

SPECIAL CONDITIONS:

54. Exclusion of Animals from Forest Lands. LICENSEE shall at all times during the License term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the Premises and shall take all reasonable precautions to prevent forest fires, and, in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.
55. Commercial Operations. LICENSEE, its employees, customers, guests, agents, and/or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the Premises without the prior written approval of LICENSOR and upon such terms and conditions established by LICENSOR. No commercial activities whatsoever, including activities such as feedlots (excepting a private feedlot designed to feed LICENSEE's own cattle), dairy milking parlors, or boarding of horses, are permitted without the prior written approval of LICENSOR.
56. Abandoned Vehicles. LICENSEE shall take all steps necessary to prevent the placing or storing of abandoned vehicles within

the Premises. Any and all abandoned vehicles within the Premises shall be removed by LICENSEE at LICENSEE's cost and expense.

57. Removal of Trash. LICENSEE shall be responsible for the removal of all illegally dumped trash within the Premises at LICENSEE's cost and expense.

58. Prehistoric and Historic Remains. In the event any unanticipated historic, prehistoric, or archaeological sites or remains, such as shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, LICENSEE and LICENSEE's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes, and shall notify LICENSOR of these events.

59. Land Clearing. The Premises have not had a completed archaeological inventory survey. If land clearing or land alteration should need to occur in gulches or wastelands (gullies, valleys, ridges, and mountains), the State Historic Preservation Division (SHPD) shall be contacted prior to any work. A field check will be required and shall be performed by the SHPD staff archaeologist prior to any work. Clearing by hand is the preferred method of work. If the alteration activity is on a large or significant scale or historic sites are found, then LICENSEE shall have an archaeologist inventory survey performed by a qualified archaeologist prior to any work. A report documenting the archaeological work shall be submitted to the HPD for review and approval. The report shall include:

1. detailed drawings of burials and deposits to scale,
2. sketches and photographs of all artifacts,
3. analyses of all perishable and datable remains,
4. stratigraphic profiles that are drawn and made to scale,
5. an overall map of the project area, which includes the location of all historic sites,
6. initial significance evaluations for each historic site found, and

7. documentation on the nature and age of historic sites.

If significant historic sites are found, then proposed mitigation or preservation plans must be submitted for review and approval.

If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during work, all in accordance with Hawaii Revised Statutes Section 6E-43.

60. Performance bond. The LICENSEE shall, within ninety (90) days of the effective date of this License, procure and deposit with the LICENSOR and thereafter keep in full force and effect during the term of this license, a good and sufficient surety bond in an amount equal to two times the annual base rental, conditioned upon the full and faithful observance and performance by the LICENSEE of the license terms, conditions, and covenants of the license. The bond shall provide that in case of a breach or default of any of the terms, conditions, and covenants contained herein, the full amount of the bond shall be paid to the LICENSOR as liquidated and ascertained damages and not as a penalty.

The LICENSOR may waive or suspend the performance bond requirement at its discretion; provided that the LICENSEE has substantially complied with the terms, conditions, and covenants of this License; and provided further that the LICENSOR reserves the right to reinstate the performance bond requirement at any time throughout the term of the License.

61. Justification of sureties. The bonds that are required herein shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business as a surety in the State of Hawaii, or by no less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, HRS; provided that the LICENSEE may furnish a written bond in the same amount and with the same conditions, executed by it alone as obligor, or, in lieu of any surety or sureties, the LICENSEE shall furnish and at all times thereafter keep and maintain any of the forms of financial guarantee of performance that are approved in writing by the LICENSOR.

62. Conservation Easement for Agricultural Preservation. LICENSEE shall be aware that the Property is encumbered by a Grant of Conservation Easement For Agricultural Preservation, between The Trust for Public Land, a California nonprofit public

benefit corporation, and the City and County of Honolulu, a Hawai'i municipal corporation ("C&C Honolulu"). To the extent applicable to the Premises, LICENSEE shall be in full compliance with the conditions and restrictions specified in the easement.

63. Audits. LICENSOR reserves the right, for purposes of conducting an audit, to examine, and to make copies of all books, accounts, records, and receipts of LICENSEE concerning its operations under this License.
64. Land Swapping. LICENSEE is allowed, but shall not be obligated, to swap land for uses consistent with its land utilization plan with any other licensees or revocable permit holder of any portions of the Property at no cost to LICENSEE. Such land swapping shall first be approved by LICENSOR in writing.
65. Passage and Access. LICENSEE shall not impede or restrict passage or access by other licensees to other areas of the Property or to any common infrastructure serving the Property or any part thereof (including the Premises) that may be located on the Premises.
66. Holding Over. Any holding over by LICENSEE after the expiration of the term of this License with the consent of LICENSOR shall be construed to be a tenancy from month-to-month at the rent herein provided for the last year of the term of this License and shall otherwise be on the terms and conditions herein specified, so far as applicable.
67. Cropping Changes. LICENSEE shall consult with and obtain prior written approval from LICENSOR before adding or making changes to the type of crops to be grown as specified in its original business plan submitted with the license application.
68. Recordation. LICENSOR and LICENSEE agree that this License Agreement or a short form or memorandum hereof may be recorded in the Bureau of Conveyances of the State of Hawaii or with the Assistant Registrar of the Land Court of the State of Hawaii, as applicable, to give notice of this License Agreement to third parties and of the license of the Premises granted hereunder by LICENSOR to LICENSEE for the term specified herein.
68. Soil and Water Conservation Plan. LICENSEE shall submit to LICENSOR a copy of its approved soil and water conservation plan within one year of the date of the execution of this

License. LICENSEE shall submit a revised soil and water conservation plan to LICENSOR if LICENSEE makes changes to its initial planting or harvesting practices which require terrain alteration.

69. [Reserved.]

70. [Reserved.]

DEFINITIONS

As used in this License Agreement, unless the context otherwise requires:

"Common Area" means those portions of the Property that are not encumbered by any exclusive license or other conveyance to any licensee, permittee, or other grantee and any other area of the Property which may be designated by LICENSOR from time to time for the shared use of all licensee, permittees, or other grantees, in common with such other authorized users, and shall include, but is not limited to, vehicle parking areas, roadways, service areas, driveways, and areas of ingress and egress used in connection with and for the convenience users of the Property, sidewalks and other pedestrian ways, areas containing buildings or structures thereon, public restrooms and other common facilities from time to time provided for the convenience and common use of all licensee of the Property, landscaped areas, planted areas together with plants and planting thereon, and areas containing gates, signs, directories, pylons or

structures defining the locations of or the direction to various areas or advertising the common name for the Property.

"Diversified agriculture" means the conduct of activities concerned with the production and marketing of nursery products and horticultural crops such as vegetables, melons, orchards, flowers, foliage, and others, including activities related thereto, and shall include aquaculture, but shall not include any livestock or poultry operations.

"Property" means the approximately 434.188 acres of land situated in Waialua, Oahu, Hawai`i, bearing Tax Map Keys: (1)6-5-005:002.

"Premises" includes the land hereby licensed by LICENSOR to LICENSEE and all buildings and improvements now or hereinafter constructed and installed thereon except for any buildings or improvements specifically excluded from the description of the Premises in the License Agreement.

"Sub-licensing," includes any long-term or short-term rental of the property to a third party.

"Drainage easements" and "flowage easements" mean natural or improved drainage courses that serve to convey stream flows from one point to another.

"Hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, including any and all flammable explosives, radioactive materials, asbestos, petroleum and oil and their products, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

"Hazardous discharge" means any event involving the use, deposit, disposal, spill, release, or discharge of any hazardous materials on, within, or under the Premises.

"Hazardous materials claims" means and includes: (i) any and all enforcement, clean-up, removal, mitigation, or other governmental or regulatory actions instituted or, to the best of LICENSEE's knowledge, contemplated or threatened, with respect to the Premises pursuant to any hazardous materials laws, and (ii) any and all claims made or, to the best of LICENSEE's knowledge, contemplated or threatened by any third party against LICENSEE or the Premises seeking damages, contribution, cost

recovery, compensation, injunctive relief, or other relief resulting from any hazardous discharge or from the existence of any hazardous materials on, within, or under the Premises.

"Hazardous materials laws" means and includes all federal, state, and local laws, ordinances, and regulations now or hereafter in effect relating to environmental conditions, industrial hygiene and/or hazardous materials on, within, under, or about the Premises, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §§2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar state or local laws, ordinances, and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

"LICENSEE" includes LICENSEE, its heirs, personal representatives, executors, administrators, successors, and permitted assigns.

"Waste" includes (1) permitting the Premises or any portion thereof to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds or alien plant species in or on the Premises or any portions thereof; (3) failure to employ all of the usable portions of the Premises; and (4) abandonment of the Premises.

"Days" shall mean calendar days, unless otherwise specified.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this 20th day of May, 2019.

LICENSOR

STATE OF HAWAII,
AGRIBUSINESS DEVELOPMENT
CORPORATION

APPROVED AS TO FORM:

By 
Its Executive Director


Deputy Attorney General

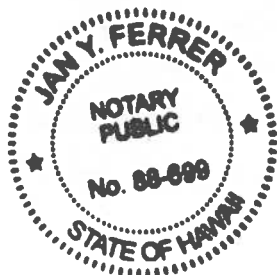
LICENSEE

K & L PRODUCE LLC
an Hawaii corporation

By 
Its

STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 20th day of May, 2019, before me df/rp
appeared **JAMES J. NAKATANI**, to me personally known, who, being
by me duly sworn, did say that he is the Executive Director of
the STATE OF HAWAII, AGRIBUSINESS DEVELOPMENT CORPORATION, a
State Agency of the State of Hawaii; and that said instrument
was signed on behalf of said agency by authority of its
Statutes; and said **JAMES J. NAKATANI** acknowledged said
instrument to be the free act and deed of said Agency of the
STATE OF HAWAII.



Jan Y. Ferrer

Jan Y. Ferrer

Notary Public, State of Hawaii

My commission expires: 11/29/20

NOTARY CERTIFICATION STATEMENT

Document Identification or License Agreement No. LI-PU1809
Description: between State of Hawaii Agribusiness
Development Corporation and K & L Produce LLC

Document Date: March 15, 2019

No. of Pages: 31

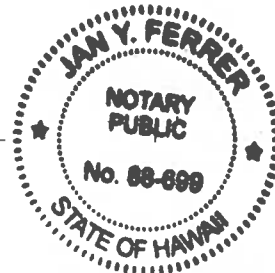
Jurisdiction (in which notarial act is performed):

Jan Y. Ferrer
Signature of Notary

Date of Notarization and Certification Statement

Jan Y. Ferrer

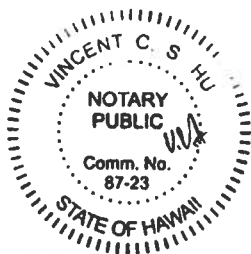
Printed Name of Notary



(Notary Stamp or Seal)

STATE OF HAWAII)
) ss.
CITY & COUNTY OF HONOLULU)

On this 15th day of MARCH, 2019, before me personally appeared KEVIN LOVAN, personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

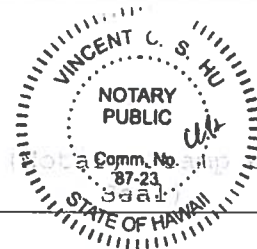


Name: VINCENT C. S. HU

Notary Public, State of Hawaii

My commission expires: JANUARY 29th 2023

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description:	License Agreement No. <u>LI-PU1809</u>
<u>License AGREEMENT</u>	
Document Date:	<u>MARCH 15th 2019</u>
No. of Pages:	<u>(27)</u>
Jurisdiction (in which notarial act is performed):	
Signature of Notary	<u>VINCENT C. S. HU</u> <u>03-15-2019</u>
Printed Name of Notary	<u>VINCENT C. S. HU</u>
Date of Notarization and Certification Statement	



Legend
K & L Produce 138.6 acres

EXHIBIT A

K & L Produce

Google Earth

Preliminary Plan of Utilization and Development

At our farm we plant vegetables year round. We plant vegetables continuously as each crop starts to perish. Here is a list of some vegetables and fruits that we have at the farm.

Big Eggplant ≈ 1 acres	Thai Apple Banana ≈ 5 acres
Sequa ≈ 3-4 acres	Cooking Banana ≈ 5 acres
Small Bittermelon ≈ 3-4 acres	Cherry Tomatoes ≈ 2 acres
Skinny Eggplant ≈ 2 acres	Papaya ≈ 6 acres
Wing Beans ≈ 5 acres	Mango ≈ 50 trees
Long Beans ≈ 3-4 acres	Bamboo ≈ 70 trees
Lima Beans ≈ 3 acres	Calamansi ≈ 20 trees
Long Squash ≈ 4 acres	Sour Sop ≈ 10 trees
Okra ≈ 4 acres	Jack Fruit ≈ 10 trees
Pumpkin ≈ 4-5 acres	Lemon ≈ 15 trees
Pumpkin Flowers ≈ 4-5 acres	Lemongrass ≈ .05 acres
	Paradise Flowers ≈ 1 acres

EXHIBIT “B”

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

October 25, 2021

Mr. Kevi Lovan
K & L Produce LLC



RE: Inspection of Premises Under License No. LI-PU1809 Effective March 15, 2019 (the "License") By and Between the State of Hawaii, Agribusiness Development Corporation ("Licensor") and K & L Produce LLC ("Licensee") for 136.6 Acres, More or Less, Located within TMK (1) 6-5-005:002 ("Premises")

NOTICE OF VIOLATION & DEMAND FOR REMEDIATION

Dear Mr. Lovan:

Pursuant to the recent inspection of your above-referenced Premises on October 20, 2021, this letter is written notice of the inspection findings as follows:

1. Licensee has, to date, failed to furnish Licensor with a certificate showing procurement and maintenance of a policy of commercial general liability insurance pursuant to paragraph 23 of the License; and
2. Licensee has, to date, failed to submit an approved soil conservation plan to Licensor pursuant to paragraph 12 and 68 of the License; and
3. Licensor's staff documented multiple junk and abandoned vehicles on the premises which are prohibited pursuant to paragraph 56 of the License; and
4. Licensor's staff documented multiple instances of pesticide containers strewn about the property, including one large depository full, partially full, and empty containers in violation of paragraph 43, 44 and 45 of the License; and

5. Licensors staff documented instances of dirt, trash, and debris that had been pushed into drainage ditches in violation of paragraph 13 and 47 of the License; and
6. Licensors staff documented livestock on the property in violation of paragraph 8 of the License and Licensee's Utilization Plan.

This letter serves as notice of documented violations of the terms and conditions of the License to the Licensee, and notice that the above breaches and concerns must be addressed and cured within 30 days of the date of this letter.

If Licensee does not fully cure the above breaches within the specified time, then the Licensors may, at its option, refer the License to the Department of the Attorney General for possible legal action and take any subsequent action under the License without further notice to you.

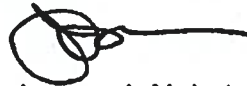
Licensee may be obligated to pay for any costs and attorney's fees incurred by Licensors. Nothing herein is intended or shall be deemed to be a waiver, modification, or release of any rights or remedies of Licensors under the License or otherwise, all of which remedies are hereby expressly reserved.

Please note that the License terminates effective March 14, 2022. Based on the forgoing and the serious nature thereof, Licensors Board of Directors may not be inclined to renew the License.

Lastly, a follow-up inspection of the Premises is scheduled for **November 29, 2021 at 10:00 a.m.** Please have the farm open and accessible, and you or a designee available to join me who can make any areas accessible which may be locked.

Please contact Lyle Roe at (808) 622-6696 if you have any questions or wish to discuss your specific plans and options to remedy the above. I urge your immediate attention to this matter.

Sincerely,



James J. Nakatani
Executive Director

c: Delanie Prescott-Tate, Deputy Attorney General
Tenant File

EXHIBIT “C”



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

November 10, 2021

Subject: Request for Approval to Refer License No. LI-PU1809 Issued to K & L Produce LLC to the Department of the Attorney General for Possible Legal Action

Licensee: K & L Produce LLC

Authority: Section 163D-(a)(5), Hawaii Revised Statutes

Area: 136.6 Acres, More or Less

Field No(s): N/A

Tax Map Key: (1) 6-5-005:009 (por)

Land Status: Acquired in Fee by the Agribusiness Development Corporation in 2017

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? No

Character of Use: Agricultural

Land Doc. Type: License

Term: 3 years (currently in year 3)
Scheduled Expiration: March 14, 2022

Rental Rate: \$200 per Acre per Year
Annual Rent: \$27,320

BACKGROUND:

The Agribusiness Development Corporation (ADC) acquired 434.188 acres of real property located at Waialua, Oahu in 2017, which included a 136.6-acre portion of land which K & L Produce LLC ("Licensee") had been farming under a license from Dole Food Company ("Dole") since 2010. Mr. Kevi Lohan and his family own and operate K & L

Produce LLC, a Hawaii domestic limited liability company, which currently farms on a total of 193 acres in Waialua, part of which includes the subject premises. The farm grows and harvests banana, eggplant, okra, cucumber, bitter melon, pumpkin, cherry tomatoes, long beans, squash, wing beans, and sundry other crops.

Following the purchase of the property from Dole, ADC offered the Licensee the right of first refusal, after which ADC issued License Agreement No. LI-PU1809 effective March 15, 2019 ("License") for a three year term. Prior to issuance of the License, ADC staff noticed numerous loose dogs, abandoned vehicles, and unpermitted structures throughout the property. However, the overall condition of the premises was fair and a majority of the subject area was in production.

On September 2, 2021, Licensee was given notice that ADC did not have a current copy of a certificate of insurance for their policy of commercial general liability insurance. Following a series of more than 10 emails and phone calls requesting a certificate that meets the terms of the License, Licensee has, as of this writing, failed to produce such a certificate. On October 20, 2021, staff conducted an inspection of the premises and noted significant deficiencies including open pesticide containers, no conservation plan, unapproved structures, animals and un-permitted livestock, the general unkept and unsanitary condition and abandoned vehicles on the premises (see "Exhibit C"). A "Notice of Violation & Demand for Remediation" ("Notice") was sent on October 25, 2021 (see "Exhibit B") giving the Licensee 30 days to remediate the violations, which deadline is November 24, 2021.

STAFF REQUEST:

Staff requests the conditional referral of the License to the Department of the Attorney General ("Attorney General") for possible legal action, subsequent to a scheduled follow-up inspection of the premises on November 29, 2021 at 10:00 a.m. to verify remediation of the concerns enumerated in the Notice. If staff's request is approved by the Board and the noticed concerns are not substantially addressed and remediated by the follow-up inspection, the License will be referred to the Attorney General and a "Notice of Default & Demand" will be issued.

WATER NEEDS AND SOURCE OF WATER:

Tenant has secured access to water via the Wahiawa Ditch system through an agreement with Dole.

CONCLUSION:

Given the violations noted above and the lack of progress, indeed even lack of communication, regarding the failure to provide a certificate of insurance, staff believes that approval of the request is warranted. At this time, there is no impact to rental income. However, should the Board's action on this matter lead to eventual termination or non-renewal of the License, this action could represent an annual loss of \$27,320 in rental income.

RECOMMENDATION:

Staff recommends that License No. LI-PU1809 Issued to K & L Produce LLC be conditionally referred to the Department of the Attorney General for possible legal action, subject to the findings of the follow-up inspection on November 29, 2021.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

James J. Nakatani
Executive Director

EXHIBIT A

Map

[see following page]

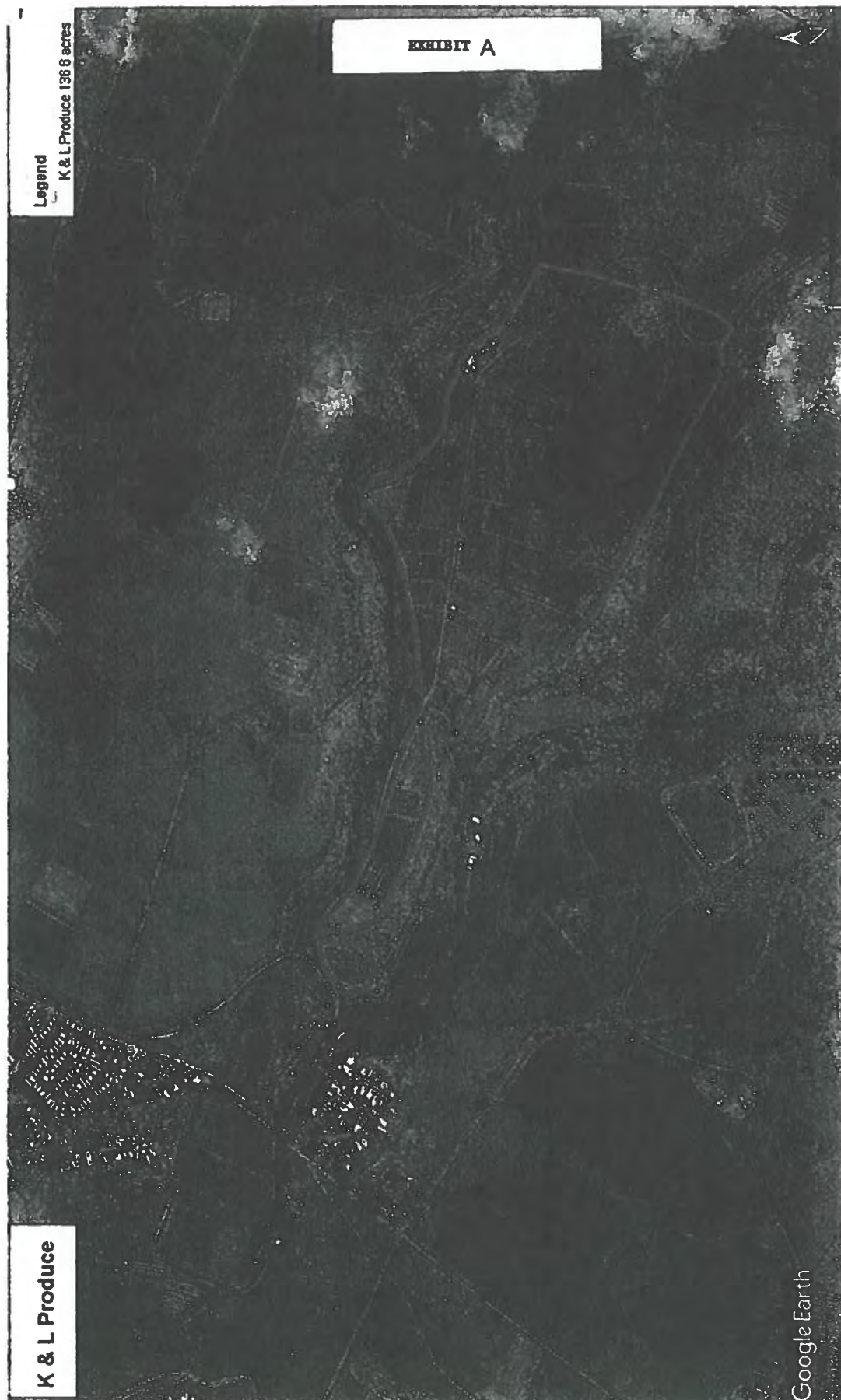


EXHIBIT B

**"Notice of Violation & Demand for
Remediation" [see following pages 1-2]**

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

October 25, 2021

Mr. Kevi Lovan
K & L Produce LLC



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If Licensee does not fully cure the above breaches within the specified time, then the Licensors may, at its option, refer the License to the Department of the Attorney General for possible legal action and take any subsequent action under the License without further notice to you.

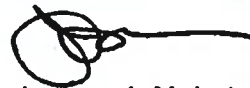
Licensee may be obligated to pay for any costs and attorney's fees incurred by Licensors. Nothing herein is intended or shall be deemed to be a waiver, modification, or release of any rights or remedies of Licensors under the License or otherwise, all of which remedies are hereby expressly reserved.

Please note that the License terminates effective March 14, 2022. Based on the forgoing and the serious nature thereof, Licensors Board of Directors may not be inclined to renew the License.

Lastly, a follow-up inspection of the Premises is scheduled for **November 29, 2021 at 10:00 a.m.** Please have the farm open and accessible, and you or a designee available to join me who can make any areas accessible which may be locked.

Please contact Lyle Roe at (808) 622-6696 if you have any questions or wish to discuss your specific plans and options to remedy the above. I urge your immediate attention to this matter.

Sincerely,



James J. Nakatani
Executive Director

c: Delanie Prescott-Tate, Deputy Attorney General
Tenant File

EXHIBIT C

Photos of the Premises

[see following pages 1 – x]

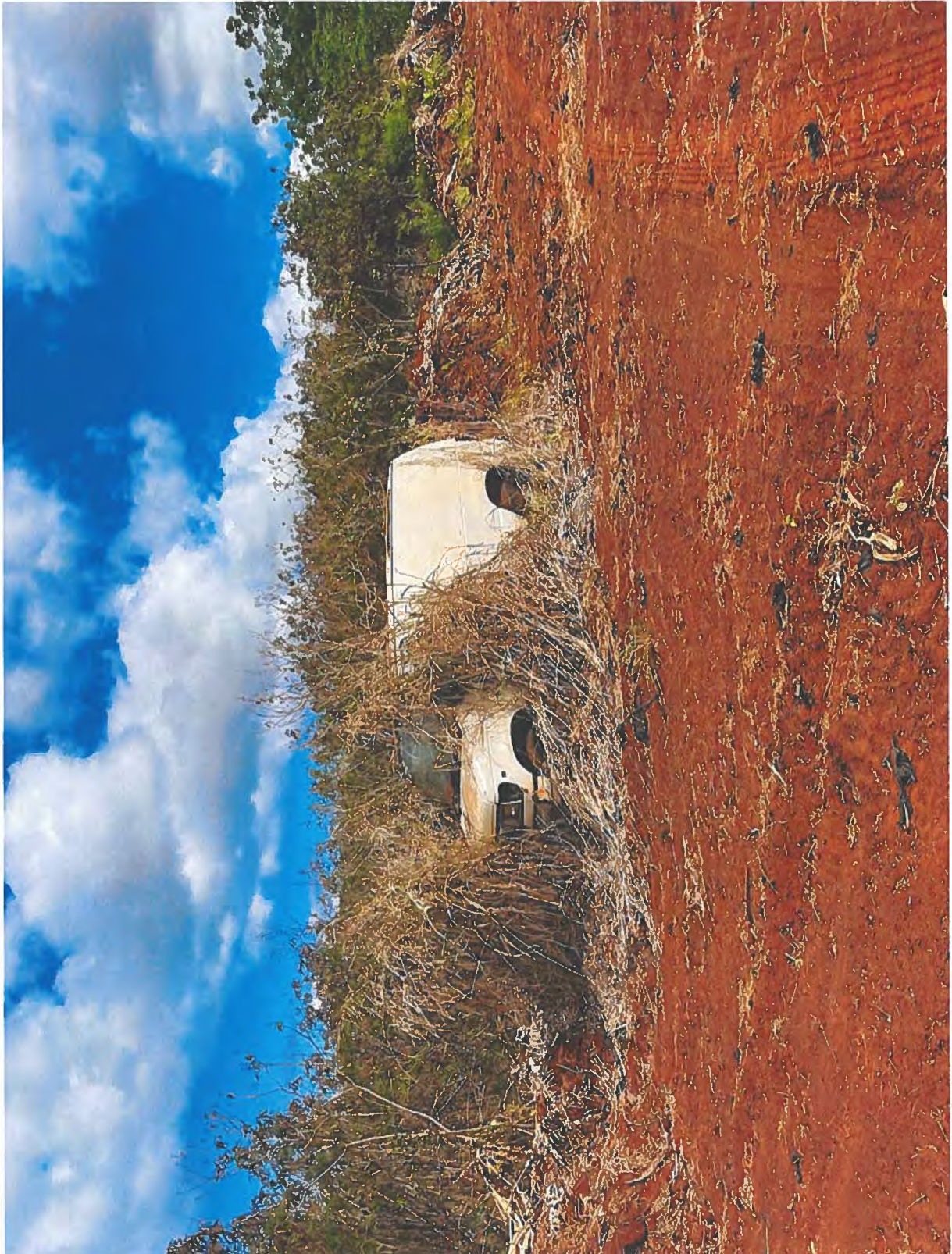








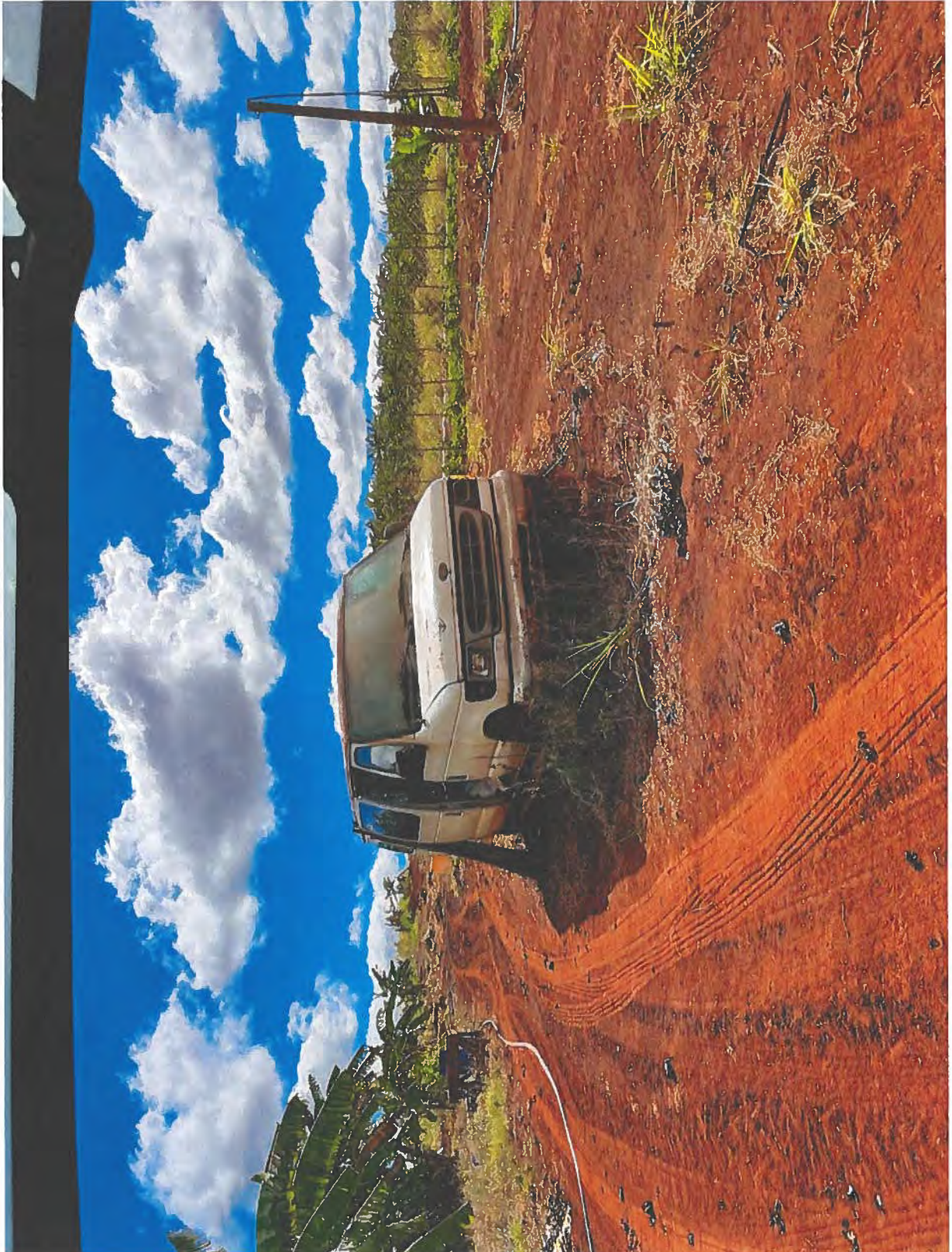






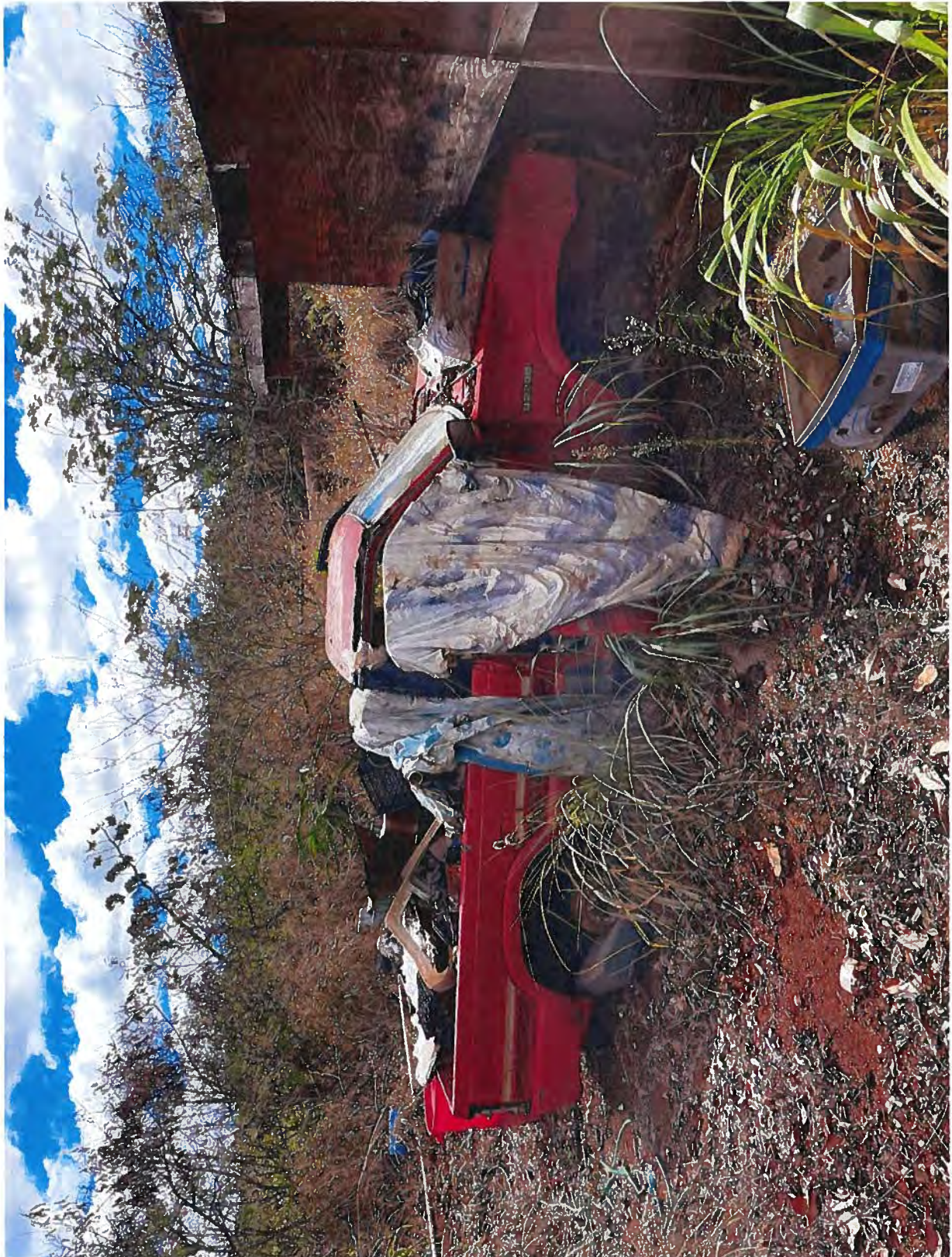














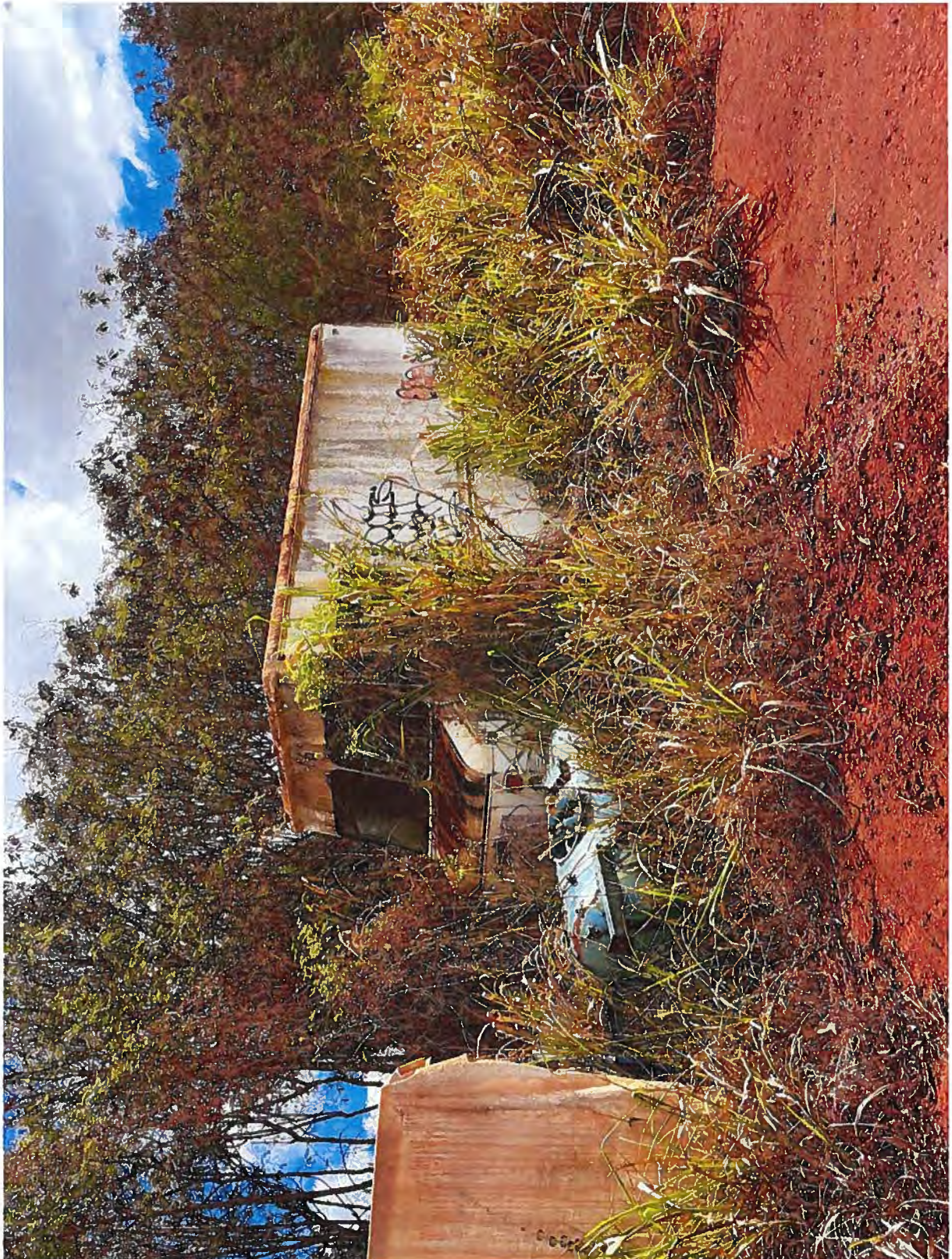


EXHIBIT “D”

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 10, 2021
Via Zoom Teleconference

Approved as amended
January 26, 2022, ADC
Board Meeting

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, and the Public participating via Zoom meeting venue.

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

Members Not Present

Lloyd Haraguchi, Member-At-Large (Mr. Haraguchi)
James Gomes, Maui County Member (Mr. Gomes)
Kevin Hopkins, Hawaii County Member (resigned effective 11/1/2021)

Counsel Present, virtually:

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

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Myra Kaichi, Sr. Executive Assistant (Ms. Kaichi)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)
Lance Tashima, Administrative Services Officer
Lynette Marushige, Executive Secretary
Mr. Jason Azus-Richardson, IT Specialist
Mr. Stephen Dalton, IT Specialist (Mr. Dalton)

Guests Present, virtually:

Cathi Ho Schar (Ms. Schar)
Kimi Makaiau (Ms. Makaiau)
Jonathan "Malu" Stanich (Mr. Stanich)
Chris Kuramoto (Mr. Kuramoto)
Steve Tomei (Mr. Tomei)
Jamiel Ishaque (Mr. Ishaque)
Kyle Oura (Mr. Oura)
Thora-Jean Cuaresma (Ms. Cuaresma)
Linda Lovan (Ms. Lovan)

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 10, 2021

Via Zoom Teleconference

A. Call to Order

Chair called the virtual meeting to order at 1:02 p.m.

B. Roll Call

Chair conducted a roll call of the Board. In accordance with the Governor's emergency proclamation dated October 1, 2021 related to COVID-19, and emergency rules related to the sunshine law, Chair called the name of each member and asked them to identify anyone present in the room with them, and if so, state his or her name for the record. 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 carried on the same basis as the roll call vote.

Roll call: Ms. Evans, Mr. Hong, Mr. Manuel, Ms. Seddon, Ms. Shimabukuro-Geiser, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present. Mr. Gomes and Mr. Haraguchi were excused.

Chair noted that Mr. Hopkins resigned effective November 1, 2021. Chair thanked Mr. Hopkins and his wife Margarita Hopkins who also served on the board. Chair stated that he was informed that Margarita passed away on Sunday and on behalf of the board expressed condolences to the family.

C. Approval of Minutes

August 25, 2021 minutes

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

Mr. Hong stated, again, he was a Member-At-Large not with City and County of Honolulu.

No staff comment.

No public comment.

Minutes approved with amendment: 8/0

September 29, 2021 minutes

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

No staff comment.

No public comment.

Mr. Manuel stated he was not present at this meeting and abstained from voting.

Minutes approved: 7/1 Mr. Manuel abstained because he was not present at this meeting.

D. NEW BUSINESS

1. Presentation by Cathi Ho Schar of the University of Hawaii Community Design Center Regarding the Whitmore Food Hub

Chair invited Ms. Schar from the University of Hawaii Community Design Center (UHCDC) to start the presentation regarding the Whitmore Food Hub. Mr. Dalton introduced the members with her: Ms. Makaiau, Mr. Stanich, Mr. Kuramoto, Mr. Tomei, Mr. Ishaque, and Mr. Oura.

Ms. Schar shared a power point presentation on the Whitmore Community Food Hub Complex Update. She introduced the UHCDC team members to the board and provided the project overview.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 10, 2021

Via Zoom Teleconference

Chair thanked UHDCDC and stated this project has been going on for a lot of years and it's finally coming to fruition. Chair asked if there were any comments from the public?

Mr. Dalton called Ms. Cuaresma forward and asked her to state her name and organization.

Ms. Cuaresma stated she's not from an organization, she's a resident of the area for over 30 years. Her first question was for Ms. Makaiau. She asked if the presentation given today by UHDCDC was going to be given at the November 19th walkthrough or if it will be on a poster board so those in attendance can read everything that UHDCDC put up through the slides today.

Ms. Makaiau thanked Ms. Cuaresma and responded saying they do not have the exact slides, but she doesn't see a problem with making them available. They will have poster boards that give a little more information on the work that was done these past two months. Ms. Makaiau noted they were working with translating services so they will have their materials, their flyers, and things produced in multiple languages, and will be out in the community this Friday to start putting up posters and banners at the different business locations. They will continue to send electronic files out to all of their distribution lists and they really appreciate, and hope that the community members like Ms. Cuaresma will continue to assist as far as getting the word out. It was genuinely their hope to be able to go out to the community, hear their feedback, concerns, questions, and they will do their best to get out there as much as possible. She especially wanted to say mahalo to Ms. Cuaresma for providing all the feedback and suggestions and they have definitely taken it to heart. Their team was working very hard to get out there so mahalo.

Ms. Cuaresma said thank you for that, she just had a couple of questions. She noticed one of the slides listed 808 Stone, Agtech, Davey Tree, Dole Foods, Friends of Waimanalo and one more. She wanted to know how 808 Stone, Agtech, Davey Tree and Dole got on the list. As far as she knows, these groups don't produce any kind of food or any kind of product that can feed their community.

Ms. Makaiau stated they initially asked for a list of all existing tenants on the 34-acre site. One of the first steps they did was let the tenants know who they were, and what the next steps were for their process. They met with them in two different virtual meetings very early on just to introduce themselves and let them know they contracted with ADC. They explained what their scope of work was going to be and if they wanted to continue to engage with them. Of course, they could not make any promises as far as if they would be relocated into the facility once it was renovated. It was just an opportunity to reach out to them and let them know what was happening. We continue to include them in any communication that goes out, which was inclusive of the November 4th meeting as well as the next meeting. They haven't asked for any kind of presentation or anything like that.

Ms. Cuaresma's next question had to do with the slide that talked about the 57-acre inter-agency transfer. She asked that they please tell her what agencies they were in conversation with or considering as far as this inter-agency transfer. She asked if this meant transfer of management of those 57-acres?

Ms. Makaiau explained she doesn't really know much about that and asked that the question go to the ADC board. She said they've been kind of informed there may be a transfer taking place, but she didn't know who would be better suited to answer that.

Chair asked if it would be Ms. Kaichi.

Mr. Roe said he can jump in.

Ms. Cuaresma asked if he could identify himself because she could not see him on her screen.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 10, 2021

Via Zoom Teleconference

Mr. Roe identified himself and stated that the two TMK wings he thinks were still under the management of DHHL and in the process of being turned over to ADC through a process that began years ago. He believed its already been paid for, the money had changed hands, and they're just waiting for finalization of the deeds.

Ms. Cuaresma said ok...she has just a couple of more questions.

Chair reminded Ms. Cuaresma that the Board had other items on the agenda that needed to be taken care of.

Ms. Cuaresma responded that she appreciates the time and continued with respect to the workforce housing, was it going to be studios or was it going to be dorm style? What's the plans?

Ms. Makaiau stated they do not have plans for that; it was in a future phase. It was mentioned in the original master plan but at this point it's not anything they have started to discuss. They have not had any outside discussion with any developers or anything like that.

Ms. Cuaresma said her last question has to do with the cost estimate. What safeguards will be put into place so the community as taxpayers can be assured that they won't run into cost-estimate issues like the State and City have run into with the HART project.

Ms. Makaiau said she was not sure who can respond to that question.

Ms. Cuaresma gave her telephone number and stated she would appreciate an answer offline from anybody regarding what kind of assurances the community or the taxpayers had because this was a taxpayer funded project. What assurances do they have that cost-estimates will be real and there will be some safeguards placed so they're not running into the same problems being seen with the rail right now. She gave her telephone number again and said she appreciated the time and looked forward to someone responding to her question.

Ms. Makaiau said she will make sure they continue communicating with Ms. Cuaresma.

Chair asked if there was anyone else from the public.

Mr. Dalton said there were none.

Chair asked if there were any questions from the board.

Mr. Tabata stated he had a question about how much waste was generated from the food processing operation and what kind of volumes were they talking about? He also asked instead of HECO having to supply the power if some co-generation opportunity would be available for power production?

Ms. Schar asked if Mr. Tomei, Mr. Kuramoto or Mr. Ishaque could respond. She doesn't think Mr. Tabata was asking for actual numbers at this point because they're not there yet but if they could respond to what Mr. Tabata was suggesting, that would be great.

Mr. Kuramoto stated he was one of the electrical consultants. He knows it's been mentioned that photovoltaic panels be used to offset some of the HECO demand. It would increase the up-front cost to provide the PV panels, but it would save on electricity over time. They are looking into ways to incorporate PV into the project. He hoped that answers Mr. Tabata's question.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 10, 2021

Via Zoom Teleconference

Mr. Tabata stated he had a history with solid waste disposal, and the island was currently seeking a new landfill site. Primarily the landfill was for waste that comes from the H-power generation plant. Were there any plans to divert some of this material so that it can be used for power? That's the kind of thing that will make it a green technology operation. People are looking at ways to reduce waste and generate power at the same time.

Mr. Kuramoto said thank you, they can look into that.

Chair stated one of the other things he had asked was disposal of wash water on site. He didn't see that in the presentation. Was that still a consideration?

Ms. Schar said she will have Mr. Tomei and Mr. Ishaque respond to that question.

Mr. Ishaque responded they received approval from the wastewater branch to connect the wastewater to their system.

Chair said that wash water in agriculture was not contaminated water and for example if you were growing bean sprouts, a large part of the cost was in disposal of that water after the product had been grown. Had any consideration been given to storage of that water instead of it going into the wastewater system and being charged for the disposal?

Mr. Ishaque stated he understood what Chair was saying but he thinks that where they're at right now, they have not taken that into consideration.

Chair said he was not sure how significant that will be, but it's something to consider.

Mr. Hong thanked Ms. Schar and her team for the nice presentation especially since they only got on it two months ago. He just had a comment. In the past, producers sometimes have a hard time getting together in a cooperative endeavor. It's important that they get the producers, the farmers, really engaged in the whole process to show them how the benefits were there for them and it's not designed to take all the profit out of their pockets. It would in fact help improve the profit in their pockets. Efficiency was going to be everything in making this work.

Chair asked if there was anyone else who wished to comment. There were none. Chair thanked Ms. Schar and her team.

Ms. Schar thanked the board, her team members who were there, and all the students who were not present who supported this work.

2. Request to Reconsider the Termination of License No. LI-KA1412, Issued to Gerald M. Sanchez

Motion to Approve: Ms. Evans / Second: Mr. Watanabe

Chair asked Mr. Roe for the presentation.

Mr. Roe stated that staff stood on the submittal as presented. This agenda item was to provide Mr. Sanchez with an opportunity to speak on his own behalf. The notice that the board was going to deal with the license termination at the last meeting was sent regular U.S. mail and there was no confirmation that Mr. Sanchez had received it. In notifying him of the board's decision from the last meeting, our deputy attorney

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 10, 2021

Via Zoom Teleconference

general gave him the opportunity to ask for reconsideration. Mr. Sanchez contacted him shortly thereafter. Mr. Roe believed Mr. Sanchez was in the audience waiting to be recognized.

Chair asked if there were any comments from the public?

Mr. Roe said Mr. Sanchez may be calling in.

Mr. Dalton asked if Mr. Sanchez was in the audience to please press # and then 9. (No response).

Mr. Manuel suggested that Mr. Roe call Mr. Sanchez.

Chair called for a 10-minute recess while Mr. Roe attempted to contact Mr. Sanchez.

Board recessed at 2:08 p.m.

Board reconvened at 2:18 p.m.

Mr. Sanchez joined the meeting via telephone. He introduced himself and said that Green Energy came in and walked away with a million dollars' worth of material and they left \$500 worth of disaster in his unit that he had to take care of. He said he looked for ADC help, and nobody helped him, and nobody has even spoken to him for the past 5-years from ADC. He continued saying that Green Energy came into his unit without even notifying him, they wiped the whole place out. He said they made all the profit and left all the damage in the back for the tenant to take care of. This isn't the only thing that happened. Green Energy has been doing that to a lot of tenants. The quantity of work that Green Energy left behind was unbearable. He said he's been in construction for the last 50-years and raising cattle and it's unbearable the way they leave the site and you people allowed them to do it. He repeated, this was unbelievable, the work they leave behind, and you people allowed them to do it. He said this was his problem, he has to spend all the money now to put his unit in shape. That's all he had to say.

Mr. Roe thanked Mr. Sanchez.

Chair asked when did the incident occur and what was he talking about.

Mr. Roe said that it's in the submittal but explained that Mr. Sanchez executed an agreement with Green Energy. Mr. Sanchez executed that agreement without ADC's consent. Mr. Sanchez entered into that agreement of his own volition and in violation of the terms of his license that required ADC consent for such things. ADC was not part of that, that's something that he entered into alone.

Chair asked if Mr. Sanchez had a response to that?

Mr. Roe stated that Mr. Sanchez was still on the phone but had not said anything. He said that ADC's part still stands, nothing has substantially changed. If Chair would allow him to share his screen for a moment. Mr. Roe showed a map with a common element road that runs through Mr. Sanchez's property. The length of the road is 3,163.5 feet. He said that's the distance of the two sides of the road that Mr. Sanchez has cleared. He cleared roughly 30 to 40 feet depth on each side multiplied by 2 for each side of the road that comes out to about 190-thousand square feet. If we assume there's roughly 7 million square feet in 160-acres we can say that Mr. Sanchez has cleared about 2.72% of his premises in 2 months. Given these calculations we can reasonably conclude that it would take a little over 6 years to clear the premises. In addition, as of this morning, Mr. Sanchez has not reached out to Kalepa Coalition to pay his dues or execute an agreement. Mr. Sanchez hasn't removed any of the abandoned vehicles on his property.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on November 10, 2021

Via Zoom Teleconference

Nothing has really changed except for clearing 2.72% of the premises. That's the basis for staff's continued recommendation that the board either let the termination stand or reaffirm the prior termination. This doesn't represent a loss to Mr. Sanchez. He doesn't have any infrastructure built on the property; he has no cattle. To allow this termination to stand doesn't really cost him anything except to remove the abandoned vehicles from the property. That concluded the presentation, and he was available for questions. Mr. Roe noted that it looked like Mr. Sanchez had disconnected.

Chair asked if there was any further discussion.

Mr. Manuel thanked Mr. Roe for making the effort to be inclusive and to provide the opportunity for Mr. Sanchez to make his statement and for the analysis of the situation. His question was if the Board upholds its decision, what was the timeframe to get this property back out for licensing so we can get a tenant on it? It's been one of the criticisms against the board so he would like to know from staff what the plans were to put this out.

Mr. Roe responded that our attorney general can interrupt him if he says something wrong. He said if the board upholds the termination, ADC will send a final termination letter to Mr. Sanchez giving him probably 30 to 90 days to clear out the property. At the conclusion of that time frame, he would go out and check the property to see if Mr. Sanchez had indeed cleared out. If he hadn't, then ADC would probably approach the court. He doesn't know the terminology, word of eviction, order of eviction, something like that would be served. Following that, if he still hadn't done it then ADC would sue for damages, that part was speculative, he doesn't know if ADC would do that, but it was allowable under the terms of the license.

Mr. Manuel asked so we're looking at 6 months to a year before this becomes potentially accessible by a new tenant or was that completely speculative as well?

Mr. Roe thinks it's speculative. He said Ms. Prescott-Tate may have more experience in prosecuting, but there was interest in the property.

Mr. Manuel thanked Mr. Roe.

Ms. Prescott-Tate stated that once the current license was terminated, the property can be re-licensed, probably within 3 – 6 months.

Chair asked Mr. Roe if he was aware of the statement by Mr. Sanchez that Green Energy had done this with other tenants?

Mr. Roe said he knew of one other tenant, Mr. Esaki, who had executed an agreement with Green Energy. The Green Energy Team does not tear down the stumps because it's cost prohibitive. That was evidently an agreement that they reached with Kalepa Coalition and the members.

Chair asked if he knew of any other tenant being unhappy with the Green Energy Team.

Mr. Roe responded that there doesn't seem to be. He said he was out there in July and Mr. Esaki did not express any dissatisfaction with it.

Ms. Shimabukuro-Geiser asked Mr. Roe about the expression of interest for the property and asked if that party was aware of the condition of the property and will they still take it with the vehicles and the over-growth?

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Mr. Roe responded presumably. They're aware it's overgrown. As far as the vehicles were concerned, a mini excavator and an old bus were sitting in the weeds and he doesn't know if there were any other vehicles buried further in the property. The perspective tenants were aware, but emphasized it was tentative interest.

Ms. Shimabukuro-Geiser said she hoped that the perspective parties of interest do not make the assumption that ADC was going to remove the abandoned equipment/vehicles. She was concerned about that expectation.

Mr. Roe said with any luck Mr. Sanchez will take care of that once he knows he will be responsible for any damage ADC incurs if ADC has to remove those vehicles.

Chair asked if there were any other comments?

Mr. Hong said it goes back to his question last month about if the notice was sent to Mr. Sanchez via certified mail. He said he's not sure why we sent it regular mail because we could have dealt with this last month.

Mr. Roe acknowledged that it was his mistake.

Mr. Hong said he's not trying to put blame on anyone, and we didn't lose that much time, it's just the process.

Mr. Roe said Ms. Prescott-Tate will make sure he doesn't make that mistake again.

Ms. Shimabukuro-Geiser called for the question.

Chair asked if there were any objections to the motion.

Chair asked if we were terminating the lease or reconsidering terminating the lease.

Mr. Roe said he thinks the recommendation in the submittal was to uphold the termination.

Ms. Evans said the licensee's request for reconsideration, that's his action. The recommendation was to confirm our previous vote to terminate the license.

Ms. Prescott-Tate verified that the motion was to reconsider the termination. His license had already been terminated. The board was being asked to reconsider the termination of the license. If the board does not accept his excuses for not complying with the license, then the board will not reconsider the termination and uphold the boards earlier decision.

Ms. Evans restated the motion: Based on the licensee's limited progress in clearing the land, and as of this writing, failure to address any of the remaining concerns including executing an agreement and paying past dues and fees to Kalepa Coalition, the board confirms and upholds the earlier termination of the license.

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

Vote: Approved, 8-0

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3. Request for Approval to Refer License No. LI-PU1809 Issued to K & L Produce LLC to the Department of the Attorney General for Possible Legal Action

Motion to Approve: Ms. Evans / Second: Mr. Watanabe

Mr. Roe rested on the submittal. He thought the pictures told a compelling story and he was available for questions. He noted that in addition to the most recent inspection, he was out there last October and there was not much change from that time. He stated that the licensee's daughter was supposed to be present to speak on the licensee's behalf.

Mr. Dalton stated that there was no one raising their hand.

Following some technical difficulties, Mr. Dalton called Ms. Lovan forward via telephone and asked her to state her name and organization.

Ms. Lovan said she is Kevi's daughter with K&L Produce. Her dad doesn't speak English well so she's attending for him. Regarding some of the things she saw in the email that was sent to her about the violations, were the abandoned cars that were mentioned, cars that don't work at all? They have cars that were not registered but they use them for farming.

Mr. Roe said there were vehicles that were built into structures, that were built up around, that were used for human habitation. They were not being used as vehicles to drive around. There were others sitting in the weeds and if she goes to the ADC website and looks at the submittals, she'll see the pictures he took to document everything.

Ms. Lovan accessed the meeting materials from the hdoa.hawaii.gov/adc website.

Chair asked Ms. Lovan if, aside from the cars and what look like abandoned vehicles, had her father procured commercial liability insurance on the parcel and a soil conservation plan?

Ms. Lovan responded that her father did not know what a soil conservation plan was, and neither did she. They just started talking to Jason with USDA, and she believes he was helping them get that with NRCS. So, they're in the process of getting that. With regards to the liability insurance, they actually have insurance but it's still under Dole. She had to send the lease to HEMIC to add ADC.

Chair asked so Dole was the listed insured?

Mr. Roe stated that Ms. Lovan called him over a year ago and asked how much time was on the license because they were concerned about getting their conservation plan in time. Because of this call, he believed they were aware of the conservation plan requirement. In regard to the commercial general liability insurance, he has an email chain of approximately 6 emails to Ms. Lovan requesting updates with absolutely no response. Those actions, in addition to the violations were the reasons why this matter should be referred to the department of the attorney general.

Ms. Lovan apologized and said the contract was misplaced which was why she emailed Mr. Roe for a copy. She added, she needed the contract to do the insurance name change.

Chair asked if Ms. Lovan was able to open up the photos from the website?

Ms. Lovan said she's looking at them now.

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Mr. Watanabe expressed concern about the pesticide containers on the property. He said they need to be properly disposed of; he finds the photo showing the piled-up containers disturbing.

Ms. Lovan said she will let her dad know. She apologized saying she was not aware of this. She did tell her dad that he needs to get rid of the vehicles and she thinks he has contacted someone to do that. She ordered a dumpster earlier in the year and stated she will likely order one every month to make sure it stays clean. They were also trying to find someone to give the chickens and ducks to.

Chair asked Mr. Roe when his follow-up inspection was scheduled?

Mr. Roe said he had scheduled a follow-up inspection for November 29th.

Chair asked if we were looking for progress at that time?

Mr. Roe said yes but believed this matter should be referred to the attorney general to keep pressure on the tenant. The other thing to notice were the toilets that were plumbed directly into the ground.

Mr. Nakatani said he agreed with Mr. Roe that we have been chasing this tenant for 3 years now and it had not gone anywhere. At the same time ADC has been criticized about what's being done and why they haven't clamped down on these tenants. He thinks ADC was following what the Board would like to see. ADC has been lenient on the tenants and given them chances, but all good things come to an end. He thinks they should proceed with sending this to the attorney general. If they improve then fine, this was not a termination, it's a warning. The board should go with the staff's recommendation.

Mr. Manuel stated he had a question for the attorney general. The notice gave the tenant until November 24 to cure. If the notice gives them 30 days and they still have 14 days to cure, was this something that the AG recommends we approve now or should action be taken after the 14 days have lapsed, it's a due process question.

Ms. Prescott-Tate responded that would be up to the board.

Mr. Roe explained ADC's thought process was that the license was set to terminate in February 2022, so this was to document the violations. The board can do what it wished to do; this was just to approve the referral to the attorney general. If the inspection shows significant improvement then he would confer with Ms. Prescott-Tate, Mr. Nakatani and Ms. Kaichi to see if the progress was sufficient.

Mr. Nakatani stated that the biggest concern we had was if you don't have liability insurance and when staff does an inspection and there were pesticide containers around the property, a toilet that was plugged straight into the ground, it's a liability on ADC's part. So rather than wait till the license expires and just not renew it, better to take action right now and have them clean up the property. We need to follow the board's recommendation and just put down our foot and not be taken advantage of. Again, it's up to the board but the tenant presents some liability. We should not just wait around.

Chair asked Mr. Roe if the land was productively being farmed in spite of these violations.

Mr. Roe responded that the majority of the property was being actively farmed although he cannot answer to the food safety aspect of the situation. He didn't document it in photographs because he couldn't drive down, but adjacent tenants said that trash was being pushed over the cliff. He saw some evidence of this from the top side but couldn't see how widespread it was.

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Chair asked if there was any further discussion?

Mr. Hong asked Mr. Roe if the pesticides and herbicide applications were following the certification requirements and documentation requirements?

Mr. Roe stated that pesticide enforcement was not part of his inspection, it was HDOA's responsibility. He will contact HDOA to make sure they're aware of it.

Ms. Seddon stated the point to be made was there was too much liability. The way staff had laid this out was a good way to look at it. If they cure in time then fine, actions won't be taken. But it's been too long. Give them till the dates that staff had allowed and if nothing was done then we need to move on.

Chair asked if there was anyone else? If not, was there any objections to the motion? Hearing none, the motion was approved.

Vote: Approved 8-0

4. Request for Approval to Amend License No. LI-PU1807 Issued to George Rapoza to Include Margaret Bush as a Joint Licensee

Motion to Approve: Mr. Hong / Second: Mr. Watanabe

Mr. Nakamoto stated that ADC received a request from Mr. Rapoza to add Ms. Bush onto the license. She's the farm manager and she assisted Mr. Rapoza with the operations.

Chair asked if there were any comments from the public?

Mr. Dalton responded there were none.

Chair asked if there was any discussion.

Hearing none, Chair asked if there were any objections?

Hearing none, the motion was approved.

Vote: Approved 8-0.

5. Request for Approval to Adopt the Tenant Review and Recommendation Committee's Recommendations for Selecting an Applicant for ADC Land License

Motion to Approve: Mr. Hong / Second: Mr. Tabata

Mr. Nakamoto stated the recommendation was to award Malama Aina Collective, 91 gross acres of the Mililani Mauka property. They interviewed several top applicants, most of which have either rejected the land or selected other parcels. The next highest scorer was Malama Aina Collective. They interviewed them. They were willing to accept all 91 acres as well as accept that the property was overgrown, and they would be responsible for all of the infrastructure improvements. That's the recommendation and he was open for questions.

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Chair asked if there was anyone from the public?

Mr. Dalton responded there were none.

Mr. Watanabe stated he supports the recommendation. It was one of the more difficult parcels to get qualified applicants for and they do want to get the lands into production. He asked that the board support the recommendation.

Chair concurred. This was one of the more difficult properties to license and that's why the committee took so long getting it to the board. These people were already farming in Mililani. They have some equipment to do the clearing and they have a plan. He would like the board to support the recommendation.

Chair asked if there was any other discussion?

Mr. Nakamoto stated they were just presenting the Tenant Review Committee's recommendation for adoption. Staff will be coming back at the subsequent meeting for the actual approval and selection.

Chair asked if there was any other discussion or objections. Hearing none, the motion was approved.

Vote: Approved, 8-0.

6. Dissolution of Investigative Agricultural Activity Policy Committee

Motion to Approve: Ms. Evans / Second: Ms. Seddon

No presentation by the staff or comments from the public as this was an administrative matter.

Ms. Shimabukuro-Geiser asked if staff could explain the Investigative Agricultural Activity Policy Committee for the two new members on the board so they understand what was being dissolved.

Mr. Roe stated that during the Fall of last year, Chair Klutke at that time started the committee with the intent of dealing with questions on rent credit, dispositions of land, exactly classifying lands. They quickly found that some of those things were just huge. They eventually narrowed it down to rent credit policy and developing a policy on breaching default and how to handle that. Those policies exist currently in draft form and they have not been submitted to the committee because he just finished it. There's been a lot of back and forth in the office. The audit specifically raised questions about rent credits and ADC's use of them. There were a lot of questions surrounding that. He had something currently, pursuant to the next agenda item, it will be going to that committee for discussion and subsequent presentation to the board.

Chair stated to be clear, the Investigative Agricultural Activity Policy committee lost two of its three members.

Mr. Roe responded that Doug Schenk and Kevin Hopkins left the board. Ms. Seddon was the Chair of that committee and not thrilled with the progress.

Ms. Seddon told Mr. Roe he did everything he could with what they were trying to deal with and what was going on, she appreciated all of Mr. Roe's help, but the situation was too much.

Chair asked if there were any objections. Hearing none the motion was approved.

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Vote: Approved, 8-0

7. Establishment of the Investigative Committee on Agricultural Policy and Strategic Planning; Appointment of Members thereto

Motion to Approve: Mr. Watanabe / Second: Ms. Seddon

Mr. Roe requested that the committee deal with questions that the previous committee was charged with and incorporate questions of strategic planning into the scope as well.

Chair stated that much of the policies were in answer to the auditor's report which were extremely important. He asked if there was anyone from the public that wished to give testimony?

Mr. Dalton said there were none.

Chair asked if there were any questions or discussion?

Ms. Evans said that the scope of having one investigative committee take on both agricultural policy and strategic planning was too large, and she recommended that the Chair appoint two separate investigative committees, one to take on agricultural policy and the other one to take on strategic planning.

Chair agreed and was looking toward doing that. He asked, how do they move forward with the motion?

Ms. Evans suggested that the maker of the motion accept a friendly amendment to request the chair to appoint two permitted action investigative committees; one for agricultural policy and the other for strategic planning.

Mr. Watanabe said he accepted the friendly amendment that the Chair establish an investigative committee on agricultural policy and another committee on strategic planning.

Chair confirmed.

Mr. Nakatani commented that the board was taking on too much by forming two committees. He thinks they should concentrate on the policy issue because that's internal and would help the staff. He's saying this because of conversations with the legislature and going through the legislative hearings with the audit they were hinting at looking at changing the provisions of 163D. All he's saying was that it should be put on hold. If the board decides to do a strategic plan should it be one for agriculture or for ADC or was that the same thing? He thinks the board should concentrate on the policy first and then they can look at agricultural strategies for ADC. Also, as brought out in the audit, ADC may consider hiring a professional to do planning and he's given the board some of the planning documents before and maybe they should follow-up on that. That would be his comment on this.

Chair said the 2021 Strategic plan for Agribusiness Development was not all that bad and he and Ms. Evans spoke and decided maybe to detail it out a little bit more would be satisfactory.

Ms. Evans commented that she agreed with Chair and Mr. Nakatani. The board voted on goals and objectives in a previous meeting and that provided a framework for creating a strategic plan. If the Executive Director felt that the priority should be on agricultural policy to address concerns expressed by the audit, then she would certainly agree to that.

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Chair agreed and stated that Mr. Watanabe needed to change his motion.

Mr. Watanabe amended his previous motion and now makes a motion that the Chair establish an investigative committee on agricultural policy. Ms. Seddon seconded the motion on the amendment.

Chair asked if he appoints the committee members now.

Ms. Prescott-Tate stated that if Chair had names of those who volunteered to go ahead.

Chair named Ms. Seddon, Mr. Hong, himself, and Ms. Evans.

Ms. Evans declined because she was not qualified on agricultural policy, she'll volunteer in advance for the strategic plan committee.

Mr. Hong reminded the Chair that they needed to vote on the motion.

Chair apologized and asked if there were any objections. Hearing none, the motion was approved.

Vote: Approved 8-0

E. Old Business

Staff Response to Information Requested by the Board of Directors at their Meeting on September 29, 2021

Mr. Roe stated there was no presentation. The written information provided in Item E-1 was meant to be purely informational in response to Mr. Gomes requests from the last meeting. On the advice of Ms. Prescott-Tate, when Board members ask staff for information at a public meeting that can't be immediately furnished at that meeting, staff will prepare a written response to the request for information, which will be presented at the next public meeting. All future requests for information that staff can't answer in the meeting will be handled this way.

F. Executive Director's Update

1. Legislature – House Investigative Committee

The House Investigative committee hearings continue. Ms. Prescott-Tate informed him that over 11,000 pages of information had been provided to the committee. Some of the board members have been subpoenaed to testify, Ms. Evans and Mr. Manuel. The committee asked for more information on the Kauai operation, so they have subpoenaed Mr. Scott Enright, Mr. Mike Faye, and Mr. Josh Uyehara to give them an update of the Kekaha Agriculture Association on the 18th and 19th. If anybody wanted to see the previous ADC testimony the links were provided to the board.

2. Galbraith – Fire

Unfortunately, on September 27th there was a brushfire in Wahiawa on the Galbraith property. Schnitzer Steel came out and as you can see by the pictures, they cleaned up the area so there's practically no cars over there.

3. Kekaha - Governor's Executive Orders transferring DOA property to ADC: Sunrise, Pioneer/Corteva, Hartung and Dickinson.

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The land transfer to ADC consisted of mainly the Ag Park and some land makai of the road that runs through Kekaha.

4. Administrative – Land management software procurement update.

The procurement was almost done. This software will help ADC keep track of their lands. It's an expensive contract. Mr. Nakatani asked Chair Shimabukuro-Geiser to assist with expediting the paperwork, which was currently waiting for Governor's approval.

Ms. Shimabukuro-Geiser said she will follow-up with the Governor. She asked Mr. Nakatani if he wanted to let the board know that he was giving an update to the Board of Agriculture (BOA) at their next meeting.

Mr. Nakatani responded that part of the audit request was that ADC provide an update to the BOA. He will show the BOA the presentation that was presented to the House investigative committee. He said links to the video on Galbraith and Kekaha were also provided to the BOA board members to view ahead of time. He also sent copies of the newsletters. The presentation will show BOA what ADC had accomplished so far this year. The meeting was on November 30th.

Ms. Shimabukuro-Geiser confirmed the meeting was on November 30th at 9:00 a.m. She said that ADC board members were welcome to join.

Mr. Nakatani stated that he forgot to mention that he volunteered to be part of the landfill committee to find a site on Oahu for a landfill. He wanted to learn more about landfills and how it related to agriculture since the landfill on Kauai will probably be on ADC lands.

Chair asked about the land transfer in Kekaha. He asked who was on the land and why it was being transferred to ADC?

Mr. Nakatani responded that the conversation regarding the transfer happened under Scott Enright when he was BOA Chairperson. He thinks it has something to do with electrical power but he's not really sure. He said basically the Ag park and Hartung lots under HDOA were coming over to ADC.

Chair stated, then basically it's the larger tenants not the small farmers.

Mr. Nakatani responded, the large farmers, the shrimp farm. The Ag park was 100+ acres and he believed one of the research centers was coming over to ADC too. He's not sure exactly which properties but he can provide the map.

Chair asked if there were any other questions or comments?

Ms. Shimabukuro-Geiser said, just a friendly reminder/offer for Mr. Nakatani and his staff to work with HDOA to help guide the licensees to the resources that were available. HDOA can provide a library of links to all their programs so the licensees will know who the proper manager/administrator/specialist were for certain things. HDOA will work with ADC's property management to provide a "go to" list for ADC's licensees. Sharing of information would be most helpful for ADC tenants. It's just so the licensees know who to contact for marketing, loans, invasive species, pesticides; not taking it for granted that the licensee knows who to contact and try to figure it out themselves. She's just made an offer of support to Mr. Nakatani and the staff.

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Mr. Nakatani thanked her.

Chair also thanked her and said it would be really helpful especially with new tenants coming on, it's a good beginning.

Ms. Shimabukuro-Geiser agreed that the sharing of information and communication can always be improved.

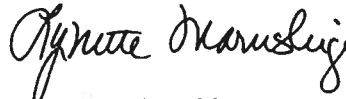
Mr. Roe stated that he does share items that he gets through HDOA, but that information can probably be deepened.

G. Adjourn

Chair called for a motion to adjourn: Mr. Watanabe / Second: Ms. Seddon

Hearing no objection, the motion was approved. Meeting adjourned at 3:20 p.m.

Respectfully Submitted,



Lynette H. Marushige
Secretary

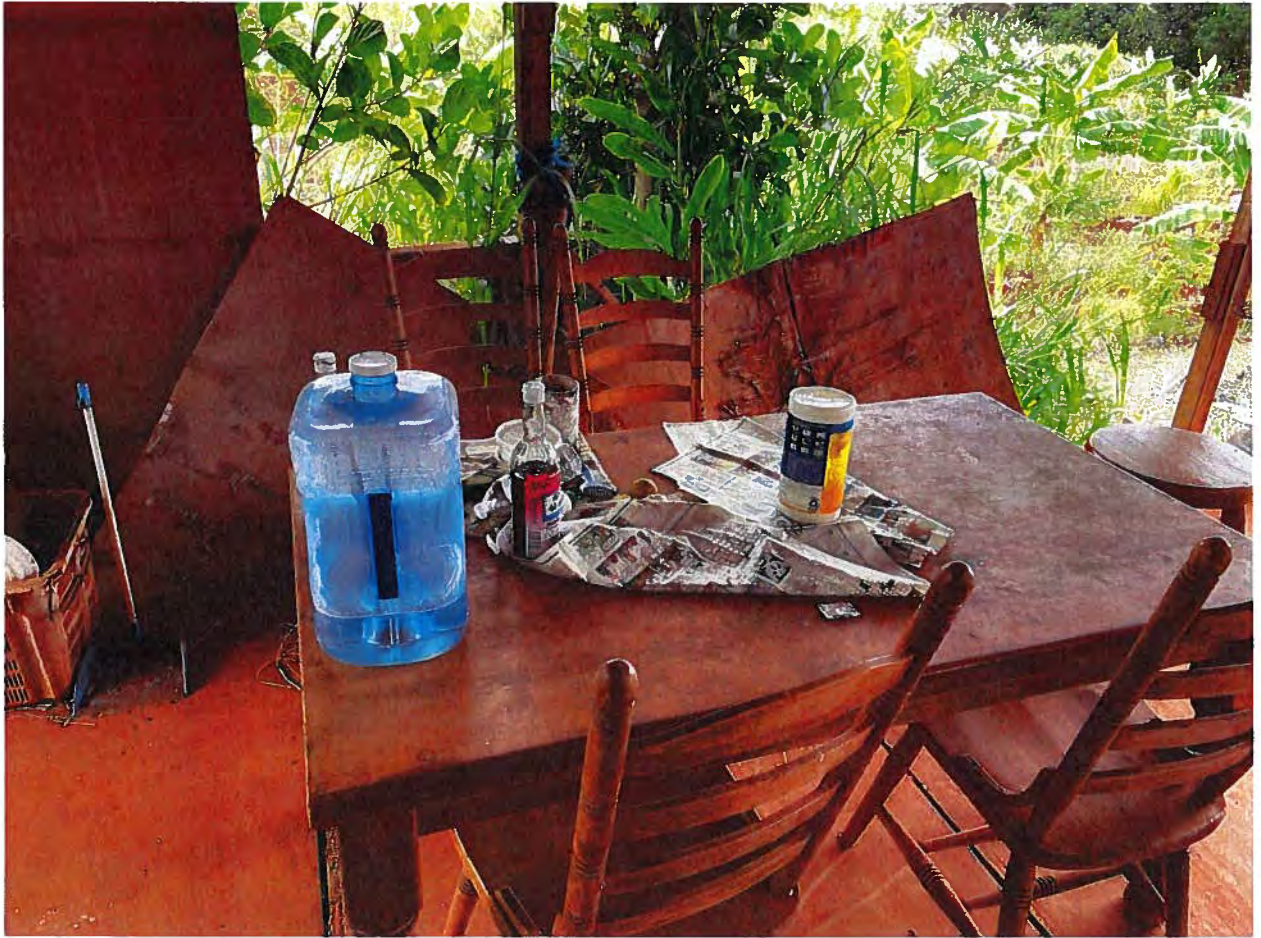
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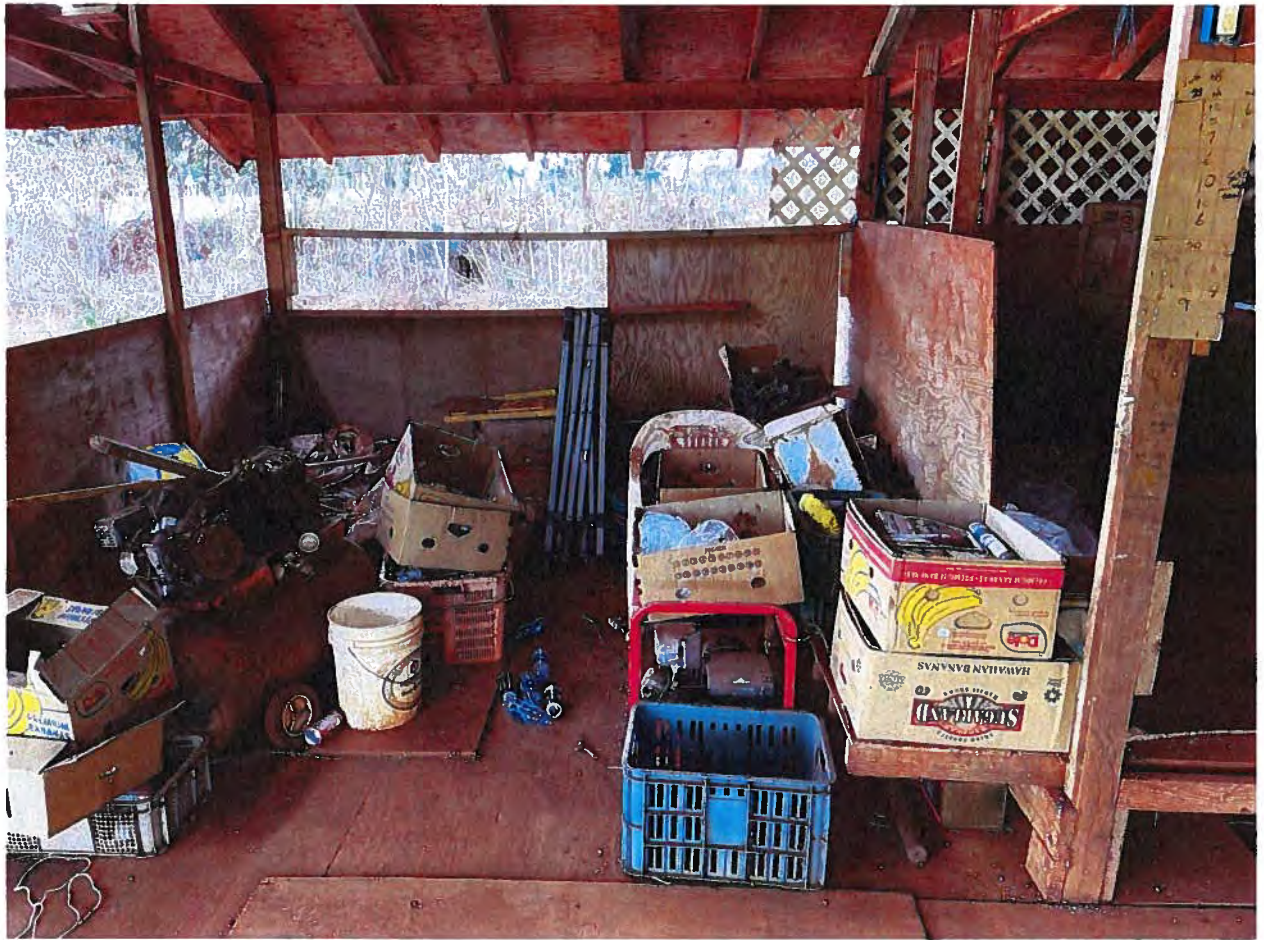
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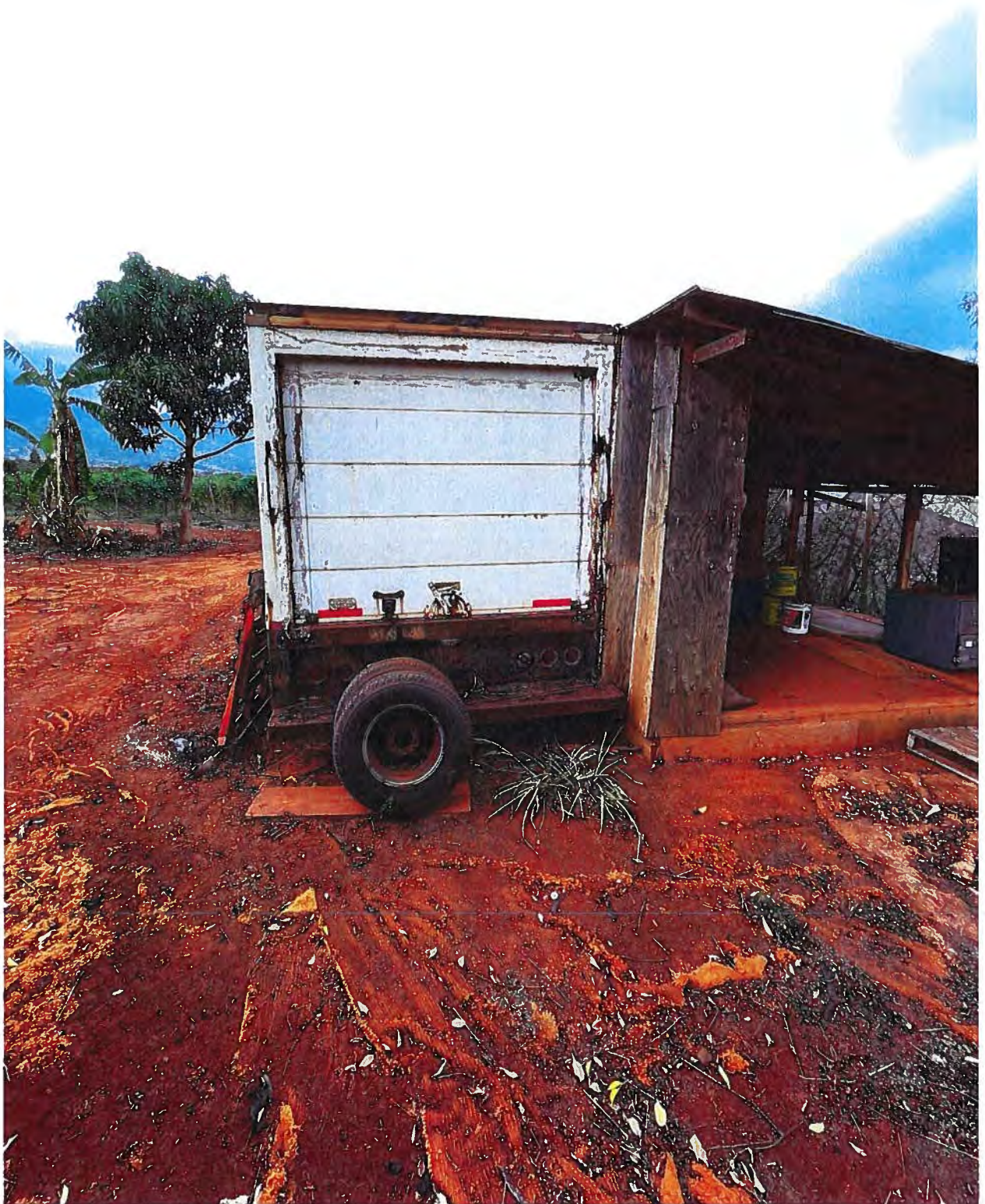










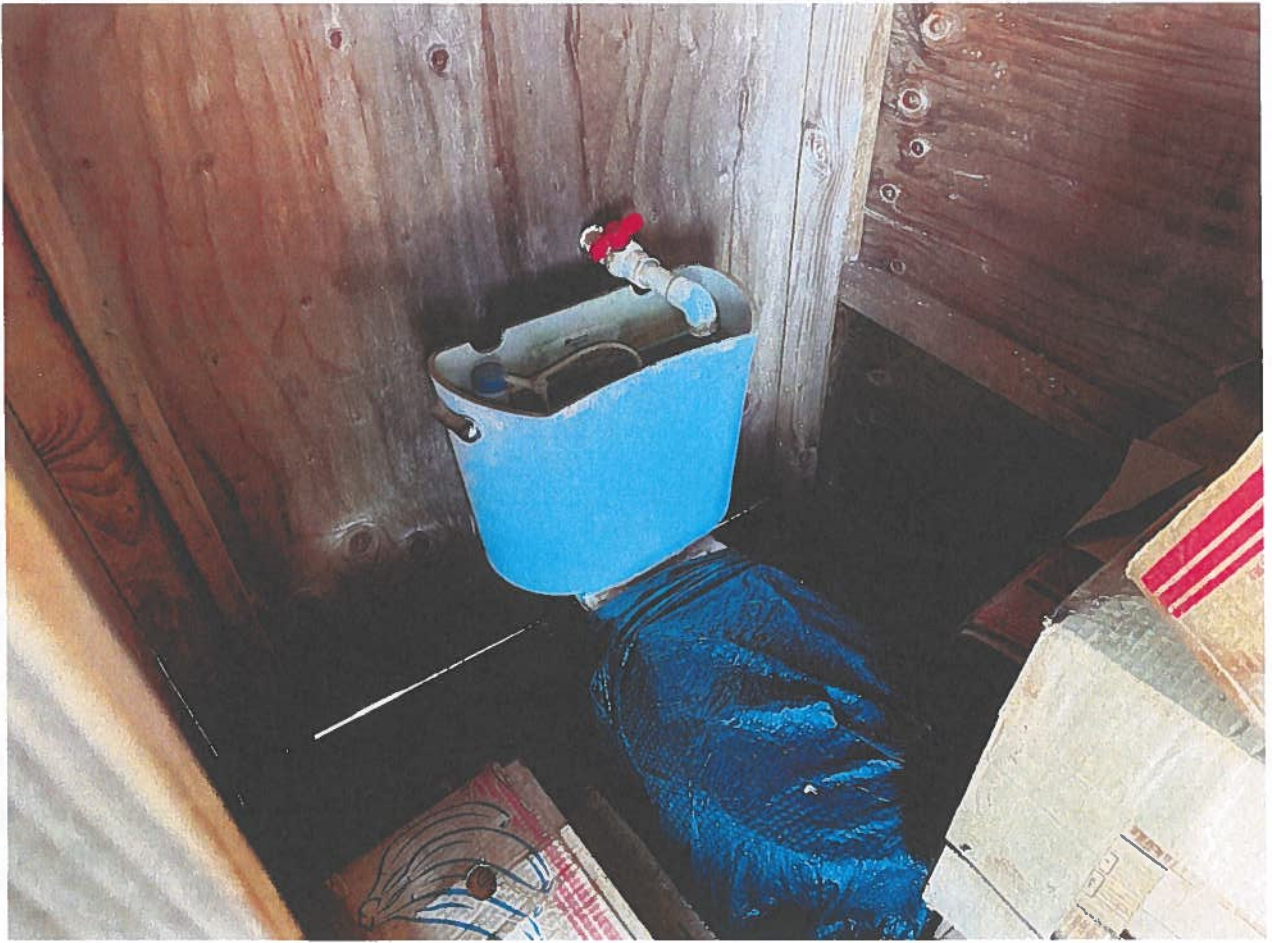






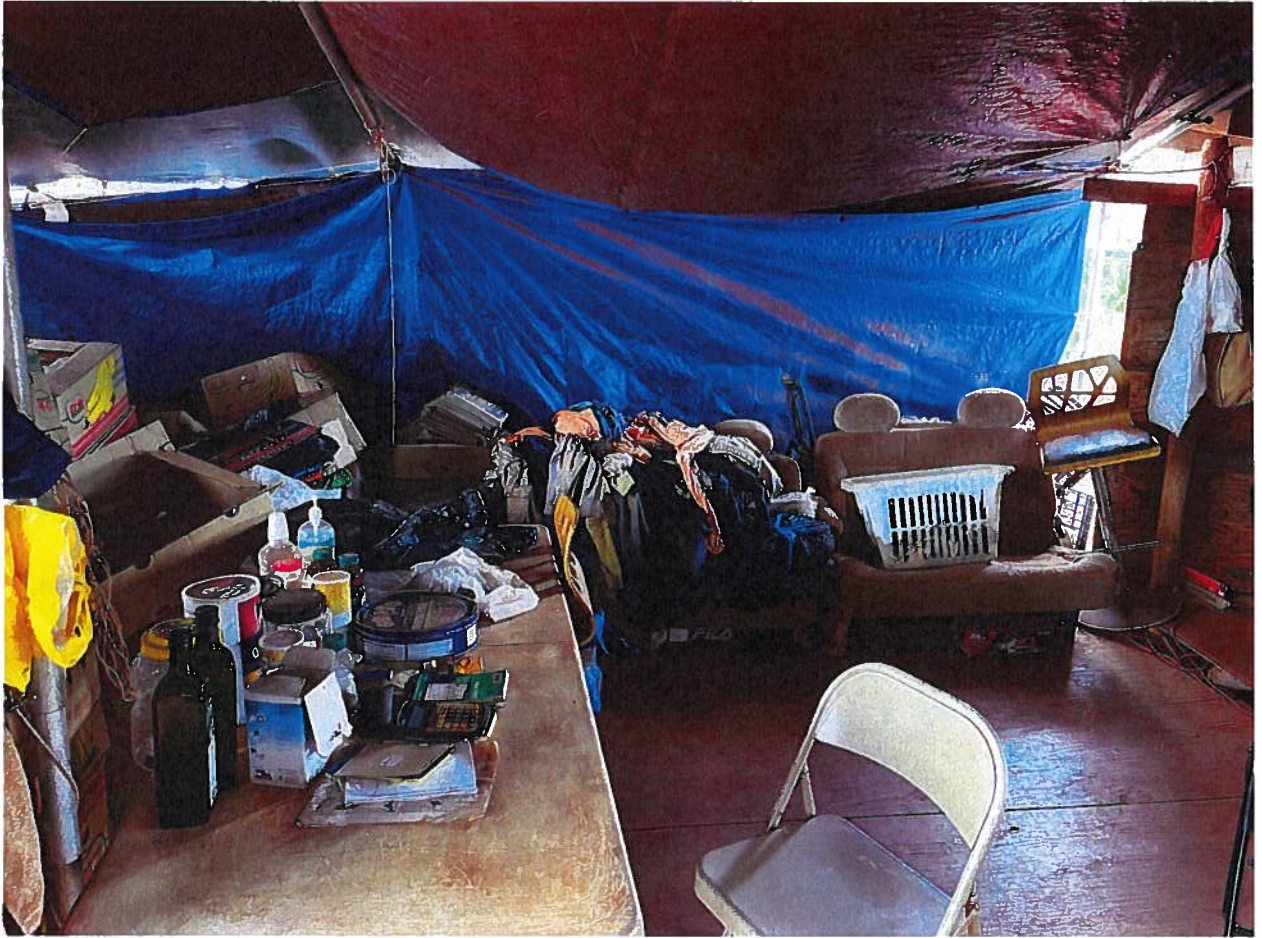














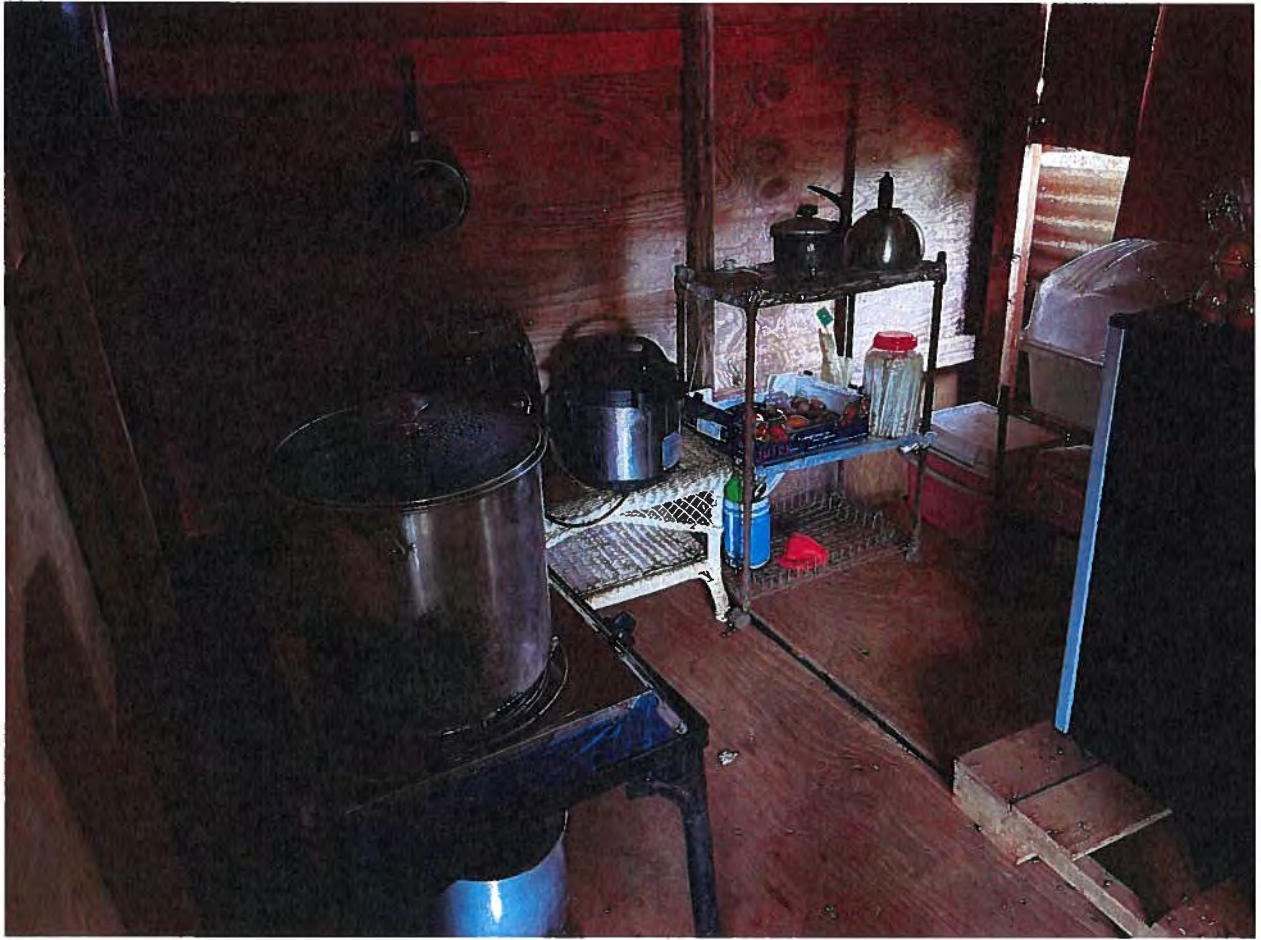






EXHIBIT “F”

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

WARNING NOTICE

Certified Mail No. 7020 1810 0002 0863 3566

Return Receipt Requested

Mr. Kevi Lovan
Agent for K&L Produce LLC

RE: Violation of Chapter 149A of the *Hawai'i Revised Statutes*

Dear Mr. Lovan:

Please be advised that an inspection conducted by the State of Hawai'i Department of Agriculture November 29, 2021 revealed evidence of violations of the Hawai'i Pesticides Law as set forth in Chapter 149A of the *Hawai'i Revised Statutes* ("HRS"). This WARNING NOTICE is issued to you pursuant to HRS section 149A-41(a).

The inspection took place as part of an after-the fact agricultural use inspection.

The following statute was violated:

HRS 149A-31 Prohibited acts: "No person shall: (1) Use any pesticide in a manner inconsistent with its label. . ."

The following are the factual circumstances of the violations:

1. On November 29, 2021, Hawai'i Department of Agriculture ("HDOA") Pesticides Branch Inspector Adam Williams ("Inspector Williams") conducted an after-the-fact agricultural use inspection at K&L Produce LLC ("K&L Produce"), located at the Waialua Ag Park, Gate 5, Waialua, Hawai'i.
2. Kevi Lovan ("Lovan"), Owner of K&L Produce, gave his voluntary consent for Inspector Williams to enter the property for inspection.
3. Through investigation, Inspector Williams documented that on or about November 28, 2021, Lovan mixed approximately one gallon of ULTRA-PURE OIL HORTICULTURAL INSECTICIDE, MITICIDE AND FUNGICIDE (EPA Reg. No. 69526-5-499), approximately eight (8) ounces of RALLY 40WSP (EPA



Reg. No. 62719-410), and approximately 16 fluid ounces of BIOADVANCED VEGETABLE & GARDEN INSECT SPRAY (EPA Reg. No. 92564-17) in approximately 100 gallons of water, and applied the dilution to approximately 2.5 acres of eggplant to treat for whitefly and powdery mildew.

4. The BIOADVANCED VEGETABLE & GARDEN INSECT SPRAY label did not have any directions for applications at farms, and did not have an Agricultural Use Requirements statement.
5. On or about November 28, 2021, Lovan applied BIOADVANCED VEGETABLE & GARDEN INSECT SPRAY at a site not listed on the label; therefore, Lovan violated **HRS 149A-31(1)**, as described above.
6. Lovan stated that five (5) paid workers who were unaffiliated with Lovan's immediate family were employed at K&L Produce.
7. The ULTRA-PURE OIL HORTICULTURAL INSECTICIDE, MITICIDE AND FUNGICIDE label states: "**DIRECTIONS FOR USE . . . AGRICULTURAL USE REQUIREMENTS** Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard. . ."
8. The RALLY 40WSP label states: "**Directions for Use . . . Agricultural Use Requirements.** Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE) and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard. . ."
9. The Worker Protection Standard ("WPS") is a federal regulation "intended to reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments." Section 170.301 of Title 40, *Code of Federal Regulations* ("40 CFR") (2018).
10. Inspector Williams documented that K&L Produce did not have a central notification site ("CNS").

11. Inspector Williams documented that the pesticide safety poster at K&L Produce was weather damaged and lacked the following information:
 - The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment;
 - Pesticide safety information;
 - The name, address, and telephone number of the state or tribal pesticide regulatory agency.
12. 40 CFR section 170.122 states: **“Providing specific information about applications.** When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide. (a) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in §170.135(d) and shall be accessible and legible, as specified in §170.135(e) and (f). (b) *Timing.* (1) If warning signs are posted for the treated area before an application, the specific information for that application shall be posted at the same time or earlier. (2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker’s first work period. (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier. (c) *Required information.* The information shall include: (1) The location and description of the treated area. (2) The product name, EPA registration number, and active ingredient(s) of the pesticide. (3) The time and date the pesticide is to be applied. (4) The restricted-entry interval for the pesticide . . .”
13. 40 CFR section 170.135 states: **“Posted pesticide safety information.** (a) *Requirement.* When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with section, pesticide safety information. (b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the pesticide safety concepts listed in paragraphs (b)(1)(i) through (vii) and (b)(2) of this section. Displays conforming to §170.311(a)(3) meet the requirements of this paragraph. (c) *Emergency medical care information.* (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster. Displays conforming to §170.311(a)(3)(ix) meet the requirements of this paragraph. . . (d) *Location.* (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers. . . (e) *Accessibility.* Workers shall be informed of the location of the information and shall be allowed access to it. . .”

14. 40 CFR section 170.222 states: “**Providing specific information about applications.** When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide. (a) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in §170.235(d) and shall be accessible and legible, as specified in §170.235(e) and (f) of this part. (b) *Timing.* (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier. (2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler’s first work period. (3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until handlers are no longer on the establishment, whichever is earlier. (c) *Required information.* The information shall include: (1) The location and description of the treated area. (2) The product name, EPA registration number, and active ingredient(s) of the pesticide. (3) The time and date the pesticide is to be applied. (4) The restricted-entry interval for the pesticide. . .”
15. 40 CFR section 170.309 states: “**Agricultural employer duties.** Agricultural employers must: . . . (h) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with §170.311 if workers or handlers are on the establishment and within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment . . .”
16. 40 CFR section 170.311 states: “**Display requirements for pesticide safety information and pesticide application and hazard information.** (a) *Display of Pesticide Safety Information.* Whenever pesticide safety information and pesticide application and hazard information are required to be provided under §170.309(h), pesticide safety information must be displayed in accordance with this paragraph . . . (3) *Content after January 1, 2018.* After January 1, 2018, the pesticide safety information must include all of the points in §170.311(a)(3)(i)-(x) instead of the points listed in §170.311(a)(2)(i)-(ix). (i) Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications. (ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet. (iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf). (iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work. (v) Wash work clothes separately from other clothes

before wearing them again. (vi) If pesticides are spilled or sprayed on the body use decontamination supplies to wash immediately, or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes. (vii) Follow directions about keeping out of treated areas and application exclusion zones. (viii) Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured or made ill by pesticides. (ix) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display. (x) The name, address and telephone number of the State or Tribal pesticide regulatory agency . . . (b) *Keeping and displaying pesticide application and hazard information.* Whenever pesticide safety information and pesticide application and hazard information is required to be provided under §170.309(h), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this paragraph. (1) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide applied: (i) A copy of the safety data sheet. (ii) The name, EPA registration number, and active ingredient(s) of the pesticide product. (iii) The crop or site treated and the location and description of the treated area. (iv) The date(s) and times the application started and ended. (v) The duration of the applicable labeling-specified restricted-entry interval for that application. (2) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read. (3) *Accessibility.* When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours. . . (5) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than 24 hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least 30 days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier. (d) *Record retention.* Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with this paragraph (b), the agricultural employer must retain the pesticide application and hazard information described in §170.311(b)(1) on the agricultural establishment for two years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted. . .”

17. K & L Produce did not comply with the Worker Protection Standard, 40 CFR part 170, and therefore violated **HRS 149A-31(1)**, as described above.

18. Inspector Williams documented that there were no single-use towels located at K&L Produce's decontamination area.
19. 40 CFR section 170.150 states: "**Decontamination.** (a)(1) *Requirement.* The agricultural employer must provide decontamination supplies for workers in accordance with this section whenever: (i) Any worker on the agricultural establishment is performing an activity in the area where a pesticide was applied or a restricted-entry interval (REI) was in effect within the last 30 days, and; (ii) The worker contacts anything that has been treated with the pesticide, including, but not limited to soil, water, plants, plant surfaces, and plant parts. . . (b) *General conditions.* . . (3) The agricultural employer shall provide soap and single-use towels in quantities sufficient to meet worker's needs. . ."
20. K & L Produce did not comply with the Worker Protection Standard, 40 CFR part 170, and therefore violated **HRS 149A-31(1)**, as described above.

YOU ARE HEREBY NOTIFIED that you have violated the Hawai'i Pesticide Law as set forth in HRS Chapter 149A. You are further notified that this violation and failure to immediately take actions to prevent further violations may result in the imposition of an administrative penalty of up to five thousand dollars (\$5,000.00) for each offense.

Further use of any pesticide product covered by the Hawai'i Pesticide Law must be in full compliance with the provisions of HRS Chapter 149A.

The issuance of this WARNING NOTICE is provided as a courtesy and does not waive or prohibit the Hawai'i Department of Agriculture from pursuing one or more of the enforcement remedies provided by HRS Chapter 149A to address the violations identified herein, and does not prejudice the right to seek additional penalties for failure to comply with HRS Chapter 149A.


Any subsequent violation of the provisions of HRS Chapter 149A may result in the assessment of an increased administrative penalty (monetary sanction) pursuant to HRS section 149A-41(b) and Section 4-66-66.1 of the *Hawai'i Administrative Rules*.

Any person who knowingly violates any provision of HRS Chapter 149A may be charged with a criminal offense pursuant to HRS section 149A-41(c), and upon conviction, may be fined up to twenty-five thousand dollars (\$25,000.00), or imprisoned for not more than one (1) year, or both.

YOU ARE SO NOTIFIED

Should you have any questions or concerns, please call Scott Nishimoto at the Pesticides Branch of the Hawai'i Department of Agriculture at (808) 973-9415.

ISSUED THIS 11th DAY OF JANUARY, 2022.



GREG TAKESHIMA
Acting Pesticides Program Manager

cc: United States Environmental Protection Agency, Region IX

EXHIBIT D

AGRICULTURE, BUSINESS DEV, GRP

2022 FEB 25 I P 2:38

February 22, 2022

To: James Nakatani
Agribusiness Development Corporation
235 South Beretania St, Room 205
Honolulu, HI 96813

Hello,
I'm Kevi Lovan, the owner of K & L Produce currently leasing the property at Waialua, Oahu Tax Map Key Number (1) 6-5-005:002. My lease is scheduled to end on March 9, 2022 and I was wanting to request an extension.
We are in the process of preparing the land for a move and want to make sure we have the time necessary to harvest the current crop. I am asking for a year lease extension, that our current lease be renewed with the end date of March 9, 2023.
If you could please let me know your decision to approve or reject my request by Thursday, March 3rd, 2022. Should you have any questions or concerns regarding this matter please contact my Managing Director Linda Lovan at (808) 397-1991

Regards,

Kevi Lovan
Owner
K & L Produce



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

March 16, 2022

Subject: Request for Approval-in-Concept to Issue a Lease or License to Kekaha Agriculture Association for up to 400 Acres, More or Less, for an Open Floodable Space in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)

Applicant: Kekaha Agriculture Association

Authority: Section 163D-4(a)(5), Hawaii Revised Statutes

Area: Up to 405 acres, more or less

Field No(s): 424, 325, 425, 326, 327

Tax Map Key: (4) 1-2-002:001

Land Status: Set aside by the Governor's Executive Order No. 4007 to the Agribusiness Development Corporation for Agricultural and Related Purposes

Trust Land Status: Ceded land under Section 5(b) lands of the Hawaii Admission Act
Yes ☒ No ☐

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes ☒ No ☐

Character of Use: Open Floodable Space, Water Management

Land Doc. Type: Lease or License

Term: Up to 35 Years, option to extend for additional 30 years

Rental Rate: \$0

BACKGROUND:

On January 26, 2022, Kekaha Agriculture Association ("KAA") made a presentation to the Board of the Agribusiness Development Corporation regarding a proposal for open

floodable space on the Mana Plain which would reconfigure portions of the ditch system, help manage storm runoff and mitigate flooding, and collect and settle sediment before it reaches the ocean.

KAA was one of twenty organizations that was selected to submit a full proposal to the United States Department of Defense ("DoD") as part of their 2022 Readiness and Environmental Protection Integration (REPI) Program Challenge. KAA is seeking \$6.5 million to fund the creation of approximately 400 acres of open floodable space to better handle storm runoff, reconfigure the portions of the ditch system, and to upgrade the pumps (see "Exhibit A").

LAND REQUEST:

For the purpose of providing a letter of intent as part of their application for the REPI grant, KAA requests approval-in-concept for a lease or license for a term not to exceed 65 years for up to 400 acres of land in and around the Kawaiele and Nohili pumps stations for the development of open floodable space (see "Exhibit B").

WATER NEEDS AND SOURCE OF WATER:

For the purpose of this project, there are no specific water needs. The project is intended to allow for better management of storm runoff and to provide open floodable space for the same.

OPERATIONAL PLAN:

Should the project application be awarded, the project would be conducted in two phases. Phase I would be the design and permitting phase, during which an environmental assessment process would be conducted. Phase II would be the construction phase.

CHAPTER 343, HRS

This request would trigger a Chapter 343, HRS requirement to conduct an environmental assessment as part of the design/permitting phase of the project.

DISCUSSION:

Staff is supportive of this project due in large part to opportunity it provides for runoff sediment to settle before reaching the ocean. ADC has certain obligations under the Clean Water Act Settlement Agreement and believes that this project will aid in meeting some of those obligations. This project also provides an opportunity to develop capacity to begin to address the threat of sea level rise to the Mana Plain.

RECOMMENDATION:

Based on the foregoing, staff recommends that the for the purpose of providing a letter of intent, the Board approve-in-concept the land request so noted above, subject to the following conditions:

1. If KAA's application to the REPI Program Challenge is denied, the approval-in-concept will be automatically voided; and
2. Any lease or license issued pursuant to this project shall be subject to the approval of the Board.

Respectfully submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A

Map
[see following page]

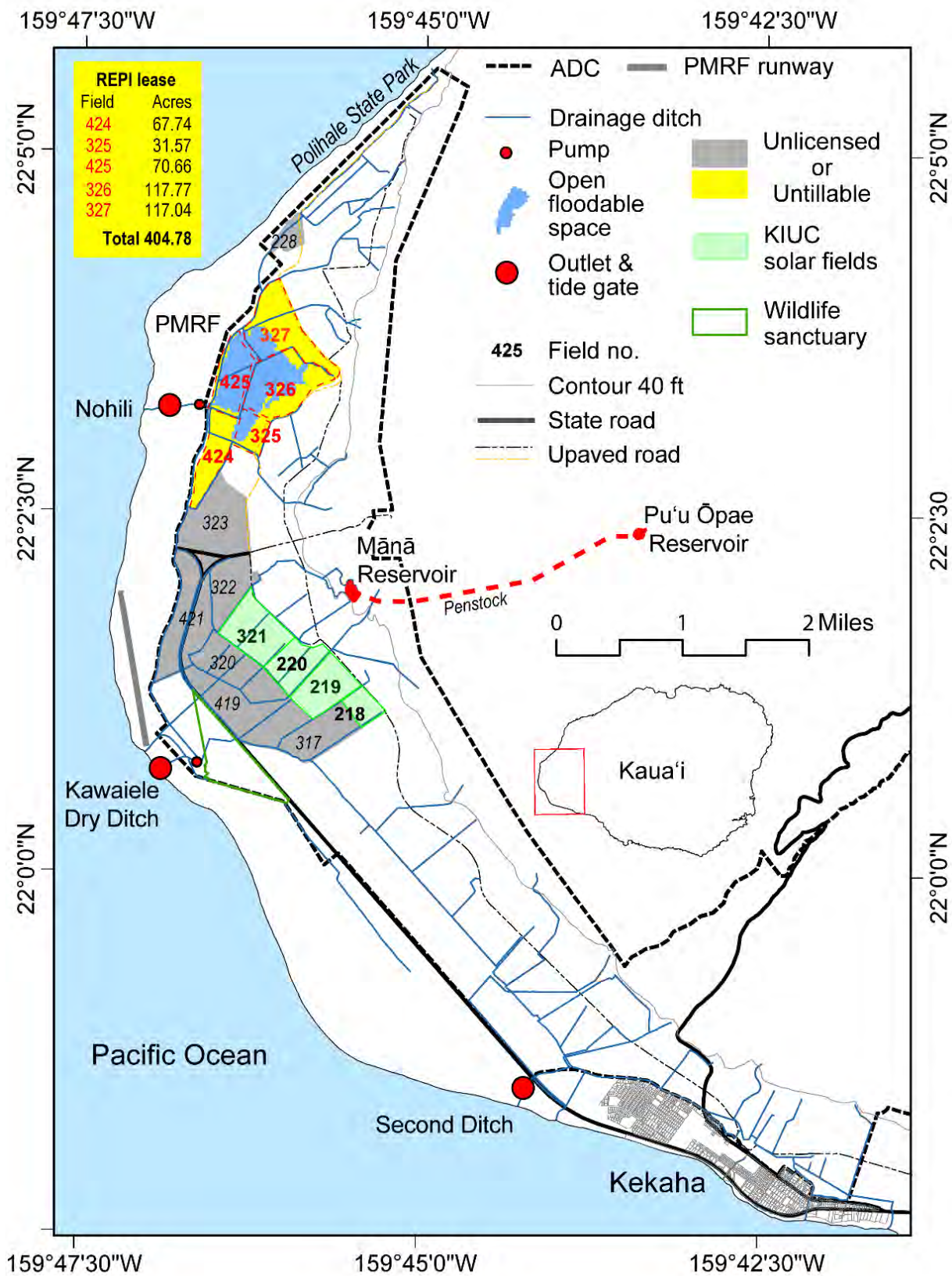


EXHIBIT B

Kekaha Agriculture Association Presentation to the Board on January 26, 2022
[see following pages]

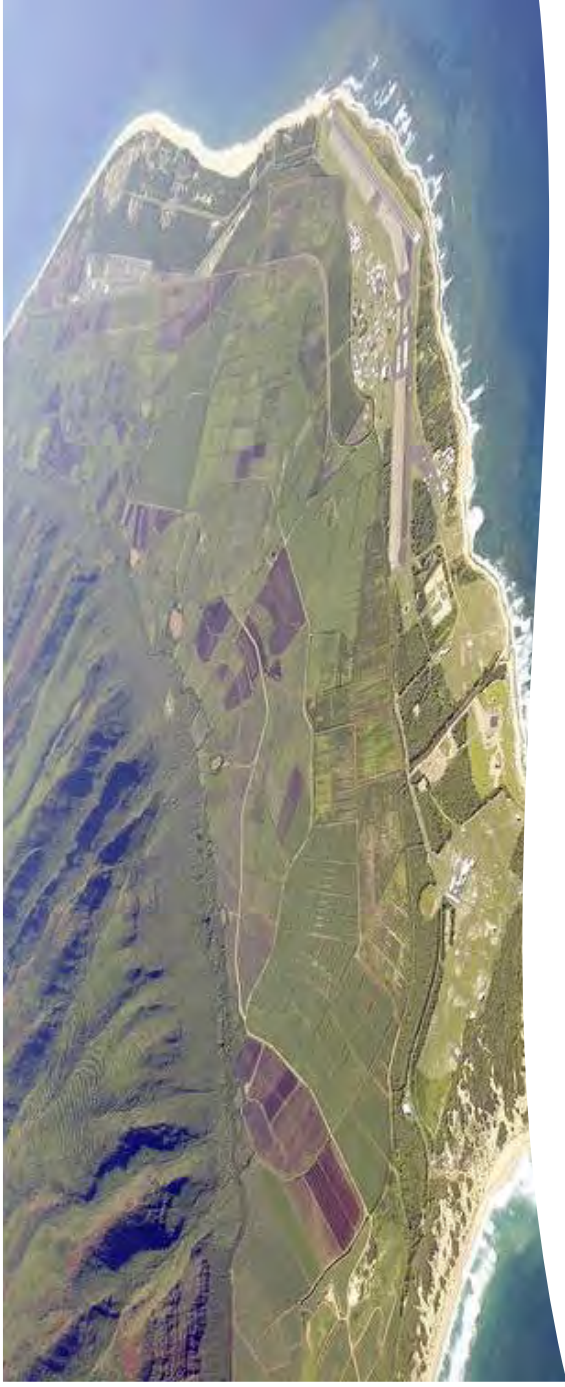
Adaption Strategies to Sea Level Rise: Mānā Plain, Kauaʻi



Kekaha Agriculture Association

- ❑ **Manages** ~7,000 acres of publicly owned agricultural land on the Mānā Plain
- ❑ **Expects** transient flooding caused by rainfall to increase as sea level rises
 - **By 2040** (or sooner) this will diminish the ability the agricultural drainage ditch system has to discharge storm runoff directly into the Ocean under the influence of gravity

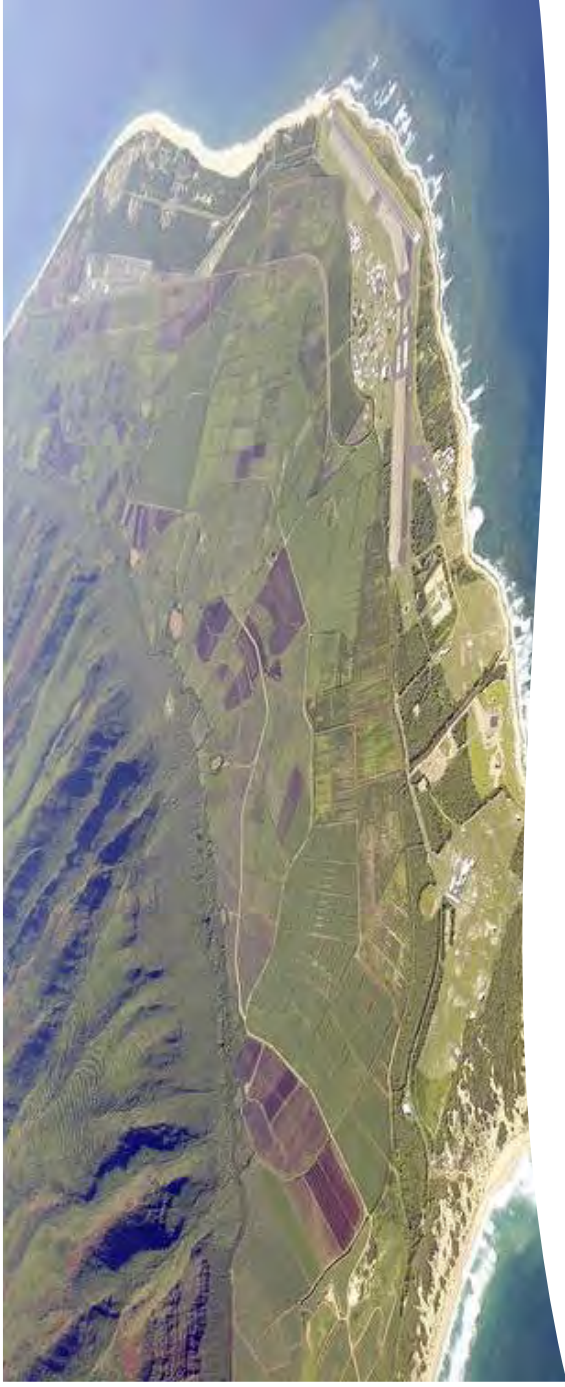
2022 Readiness and Environmental Protection Integration (REPI) Program Challenge



A DoD national competitive funding opportunity

- ❑ **KAA** is one of 20 organizations that has been selected to submit a full proposal
- ❑ **Seeking \$6.5M** of funding to create ~200 acres of open floodable space to better handle storm runoff, by reconfiguring ditch system and upgrading pumps
- ❑ **Requires** extending existing agreement with DoD to maintain present condition of subject parcel (~200 acres) – Field 425 and vicinity

2022 Readiness and Environmental Protection Integration (REPI) Program Challenge

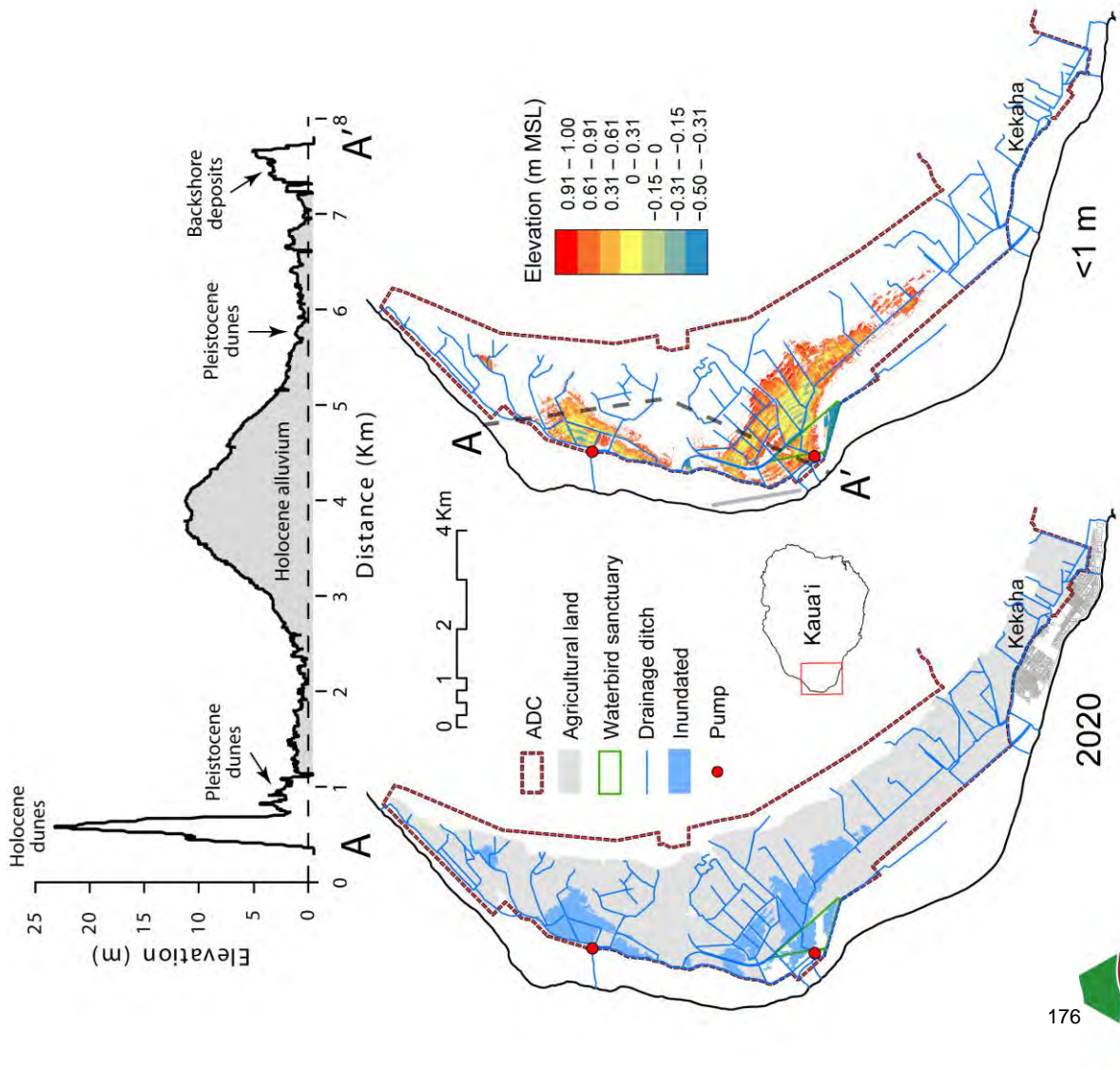


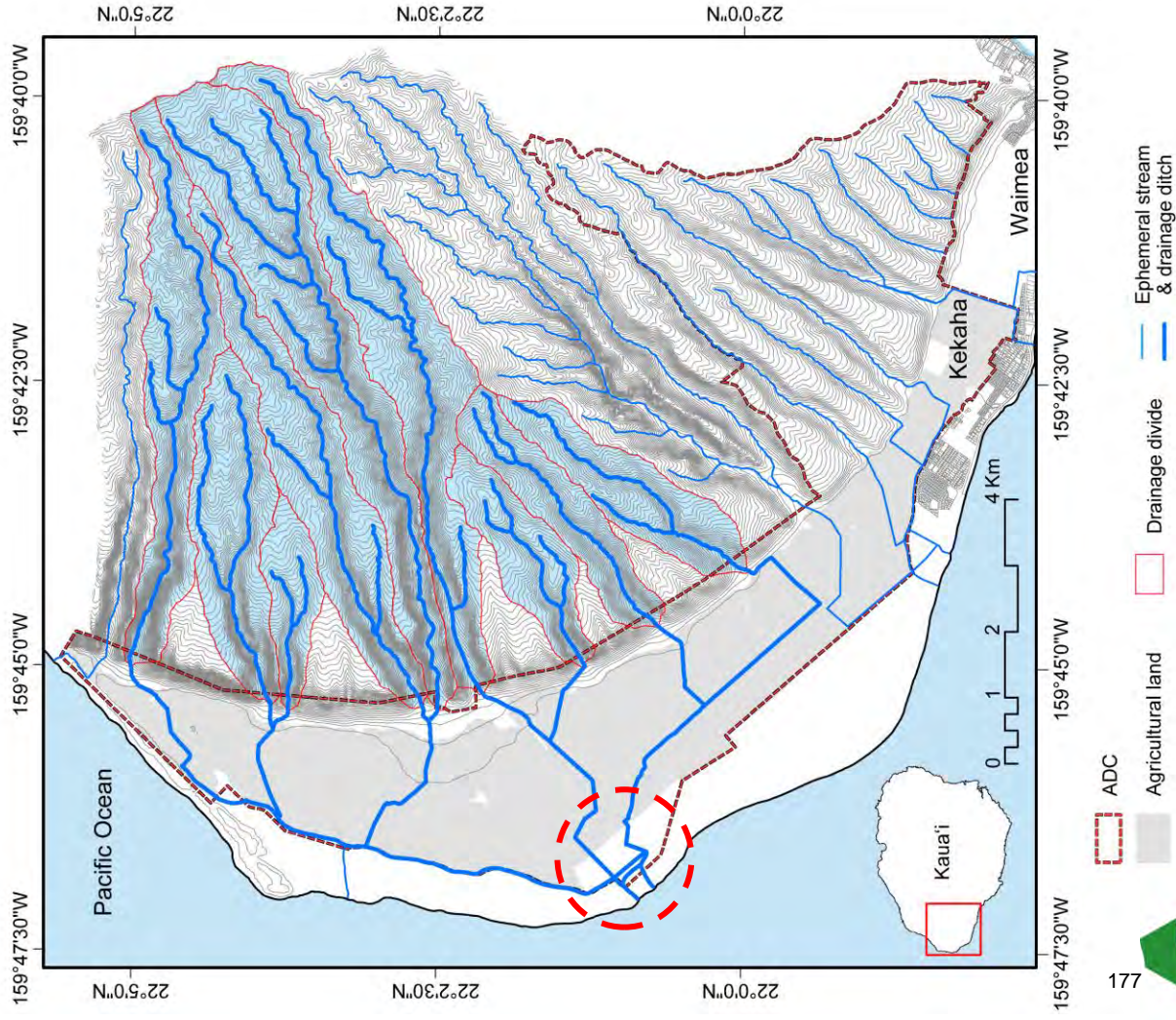
Objectives of proposed project

- ❑ **Increase** resilience of agricultural land on the Mānā Plain to sea level rise
- ❑ **Realign** drainage ditch system to limit and better control the volume and quality of floodwater that is discharged directly into the ocean
- ❑ **Maintain and improve** (but not increase) existing area of flood prone land that provides habitat for endangered Hawaiian waterbirds – not a managed wetland, stored floodwater will be pumped out over a period of time
- ❑ **Maintain and improve** installation resilience around the Navy's Pacific Missile Range Facility

The Mānā Plain

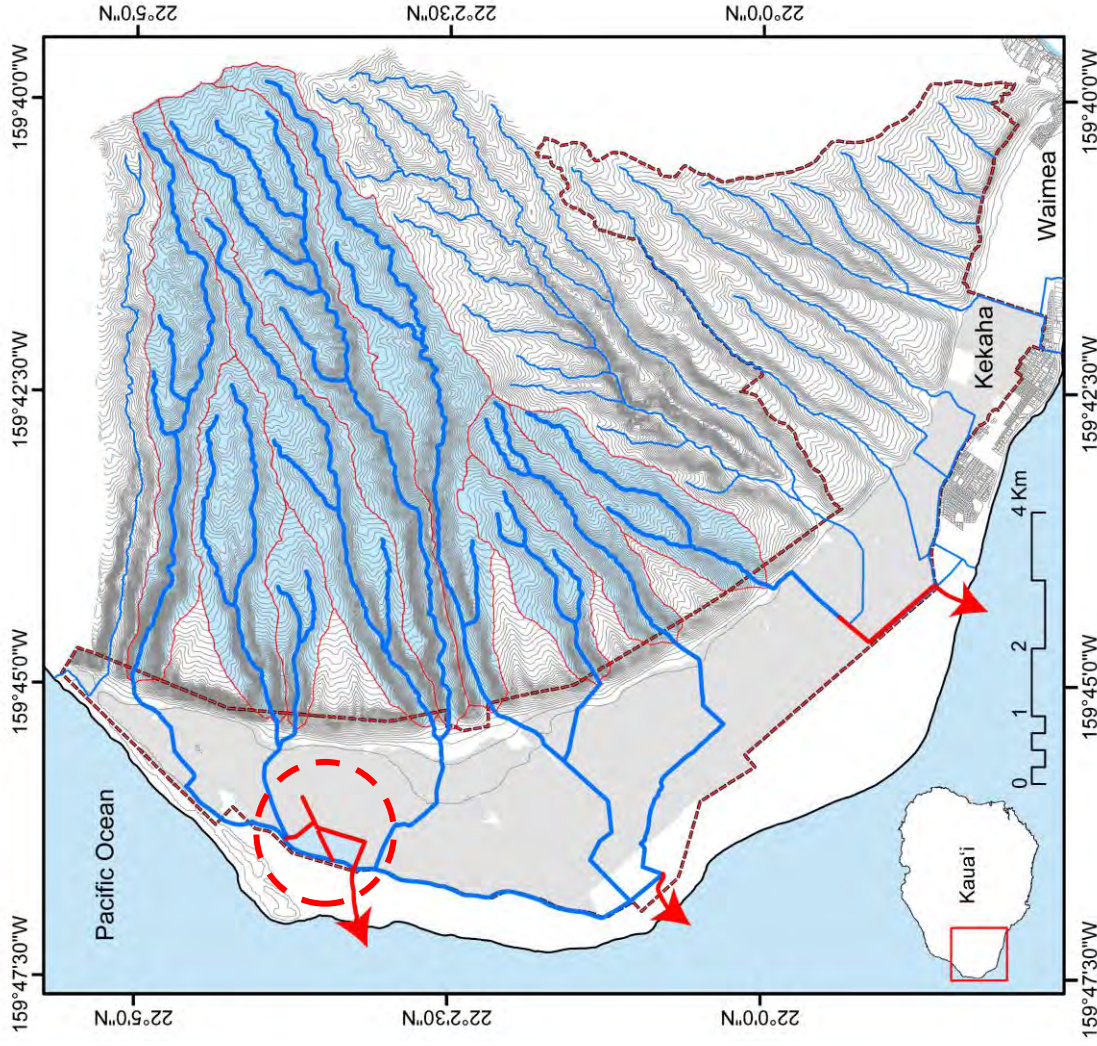
- Is not flat
- Location of largest reclamation project in State history (40 miles of drainage canals)
- Storm runoff ponds in shallow depressions (formerly occupied by perennial wetlands)





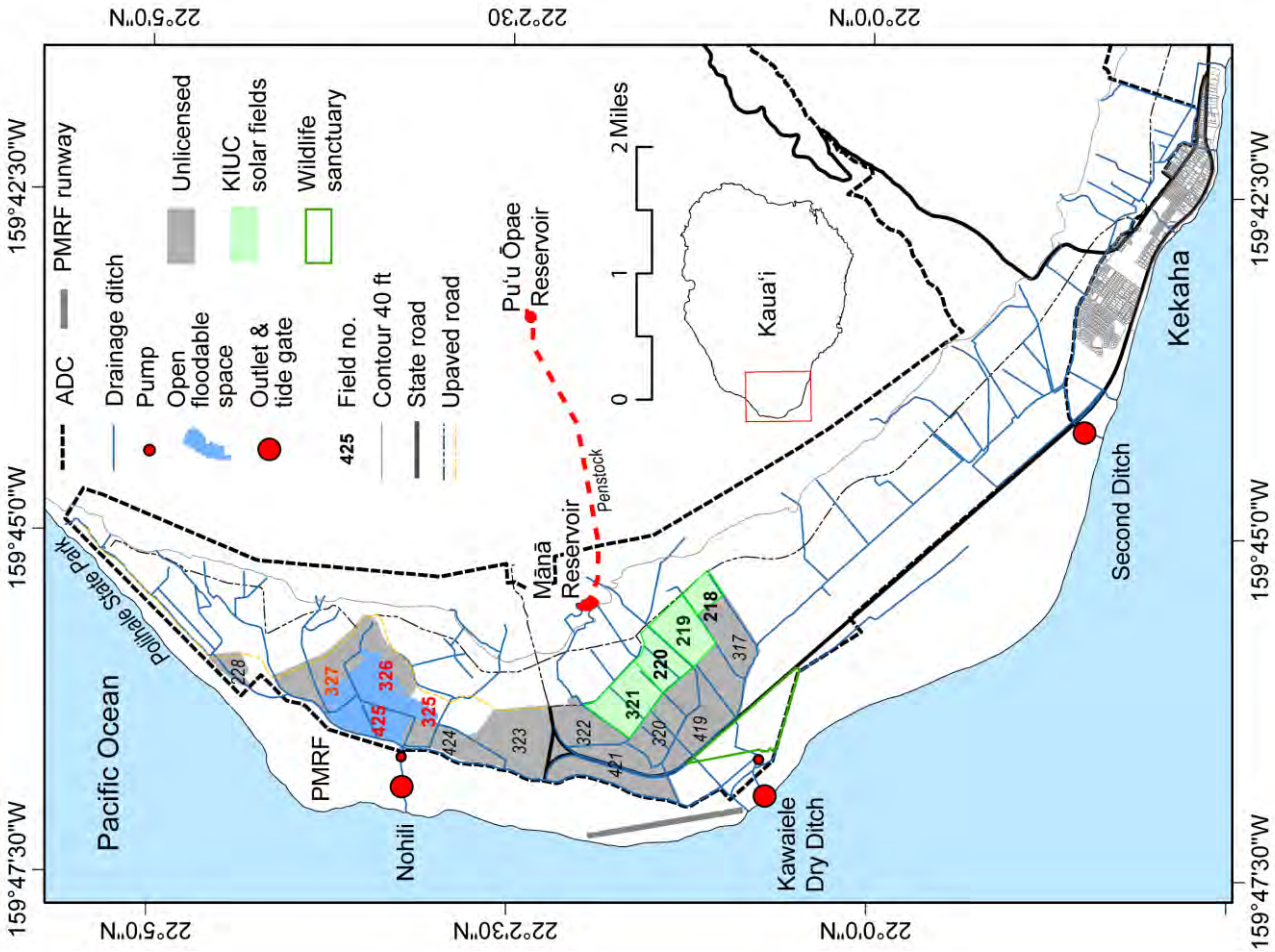
Storm runoff

- ❑ Discharged by gravity drainage (once ditch plugs have been removed) and pumping
- ❑ Main outlet Kinikini (and Dry) Ditch
- ❑ Nohili currently inoperative (NPDES)



Reconfigure ditch system

- ❑ Three main outlets (Dry Ditch, Nohili, and Second Ditch)
- ❑ Gravity drainage via tide gates
- ❑ Upgrade pumps
 - Increase capacity to deal with storm runoff and maintain present water level in ditch system
- ❑ Create **Open Floodable Space** at Nohili
 - ~200 flood prone acres (~70 acres at or below current MSL and waterlogged – Field 425)
 - Storm water retention
 - Sediment trap



Project overview

- ❑ Open floodable space (land largely unlicensed, partially waterlogged, and flood prone)
- ❑ Reduce number of outlets to ocean
 - Help to eliminate fish kills
 - Protect PMRF runway
- ❑ Compatible with other proposed large infrastructure projects and existing wetland reserve
- ❑ Supported by local groups
 - Cultural reclamation



Mahalo



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

March 16, 2022

Subject: Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

Authority: Sections 163D-4(a)(18), 171-2(11), and 171-11, HRS

Location: Kekaha, Island of Kauai, Hawaii

Land Area: Portions of the Mānā plain lands, approximately 12,123 acres

Tax Map Key: (4) 1-2-02-01

Land Status: Encumbered by Governor's Executive Order No. 4007 to ADC for the public purpose of Agriculture and related purposes.

Trust Land Status: Ceded land under Section 5(b) lands of the Hawaii Admission Act
Yes X No ____

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution? Yes X No ____

Character of Use: Agricultural

Land Doc. Type: N/A

Term: N/A

BACKGROUND:

In 2003, ADC acquired approximately 12,860.642 gross acres of land in Kekaha, Waimea, Kauai by way of Executive Order No. 4007, which set aside public land for the following public purposes:

FOR AGRICULTURAL AND RELATED PURPOSES, to be under the

Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

March 16, 2022
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control and management of the Agribusiness Development Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii, being that parcel of land situate at Kekaha, Waimea, Kauai, Hawaii, identified as "Portion of the Government (Crown) Land of Waimea," containing a gross area of 12,860.642 acres and a net area of 12,592.133 acres

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the Agribusiness Development Corporation shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

See Exhibit "A".

In 2005, the Hawai'i State Legislature enacted Part III of the Land Use Commission act, codified as sections 205-41 to 205-52, HRS, entitled "Important Agricultural Lands" for the stated purposes of conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands. Section 205-41, HRS.

There are two ways to achieve important agricultural land designation: 1) by identification of public lands, and designation of such public lands, by the department of agriculture (HDOA) and the department of land and natural resources (DLNR) as important agricultural lands, before December 31, 2009 pursuant to section 205-44.5, HRS; or 2) by a farmer or landowner petition to the Land Use Commission pursuant to section 205-45, HRS. HDOA and DLNR, to date, have not identified any lands in Kekaha as important agricultural lands pursuant to section 205-44.5, HRS.

The benefits to be obtained from important agricultural land designation include protecting land from being used for non-agricultural purposes; allows the landowner to develop farm dwellings and employee housing; and provides income tax incentives to promote economic sustainability of agricultural enterprises.

KAA is an agricultural cooperative formed under chapter 421, HRS. The members of KAA are agricultural producers. "Agricultural products" include floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee, farm or plantation products, and fish and aquacultural commodities. Section 421-1, HRS. KAA members have long-term agricultural land licenses/leases with ADC, and have historically expended millions of dollars for Kekaha agricultural infrastructure operation and maintenance.

Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

March 16, 2022
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In 2018, KAA proposed to voluntarily petition the Land Use Commission (LUC) for a declaratory order pursuant to section 205-45, HRS, designating portions of the Mānā plain lands as important agricultural lands. Prior to submitting the petition, KAA asked the ADC Board to authorize KAA, as farmers, to seek important agricultural land designation for ADC lands within the Mānā plain. KAA sought ADC's approval, as the landowner, to comply with section 15-15-121(b)(1), *Hawaii Administrative Rules* (HAR), which requires authorization from the applicable landowner.

The term "landowner" is not defined in chapter 205, HRS, but is defined in the Land Use Commission Rules as "a person or party with a fee simple interest in the land." Section 15-15-03, HAR. In an abundance of caution, ADC approached DLNR by way of letter dated January 22, 2018, and broached the subject of fee simple ownership of lands set aside to ADC by executive order. The letter asked for DLNR's assistance in working towards designating the ADC lands as important agricultural lands through KAA's petition. See Exhibit "B".

The request to authorize KAA's petition was presented to the ADC Board on January 31, 2018. DLNR had not responded to ADC's letter by the January 31, 2018 ADC Board meeting. Following KAA's presentation, the Board authorized KAA to submit a petition to the LUC, conditioned upon DLNR's approval. See Exhibit "C".

KAA filed a petition with the Land Use Commission on December 2, 2021. A hearing was held on December 23, 2021. At the hearing, the LUC raised several issues that needed clarification before the petition could proceed. The LUC continued the hearing to a date after April 2022 to address the issues. By way of letter dated February 2, 2022, the LUC asked the parties to brief specifically identified issues by March 30, 2022. See Exhibit "D". One of the questions raised by the LUC was who should represent the landowner, ADC or DLNR?

After extensive research, it would appear that ADC, by virtue of the executive order, stands in the shoes of the State for purposes of fee simple ownership.

REQUEST:

That the ADC Board, as the de facto landowner of lands set aside for the public purpose of agricultural and related purposes, reauthorize and support KAA's petition for declaratory order to designate approximately 12,123 acres of ADC lands as important agricultural lands.

DISCUSSION:

Based on the plain language of Executive Order No. 4007, "the Governor of the State of Hawaii," by virtue of the authority granted in Section 171-11, HRS, "and every other

Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

March 16, 2022
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authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes: FOR AGRICULTURAL AND RELATED PURPOSES[.]” Executive Order No. 4007 goes on to allow for disapproval of the executive order “by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.”

Section 171-11, HRS, provides the “governor may, with the prior approval of the board of land and natural resources, set aside public lands to any department or agency of the State[.]” (Emphasis added.) Accordingly, based on HRS section 171-11, land set aside for a public purpose by way of executive order to ADC, has already received the approval of the Board of Land and Natural Resources (BLNR), and the Legislature.

Section 171-11, HRS, further provides that lands so set aside for a public purpose, “shall be managed by the department, agency, city and county, county, or other political subdivisions of the State having jurisdiction thereof, unless otherwise provided by law.” (Emphasis added.) Pursuant to section 171-11, HRS, and Executive Order No. 4007, ADC is the agency given jurisdiction over the Kekaha lands.

However, lands given the status of “public lands” under chapter 171, HRS, do not include, “Lands that are set aside by the governor to the agribusiness development corporation, lands leased to the agribusiness development corporation by any department or agency of the State, or lands to which the agribusiness development corporation in its corporate capacity holds title[.]” Section 171-2(11), HRS.

While DLNR “shall manage, administer, and exercise control over public lands” pursuant to section 171-3(a), HRS, ADC was given these same powers through Executive Order No. 4007 and through the exemption of public land status to those lands set aside to ADC pursuant to section 171-2(11), HRS. DLNR and ADC are on equal footing in regards to matters involving lands subject to an executive order.

Executive Order No. 4007 returns the Kekaha lands to public land status, subject to certain prior conditions. Those conditions are cancellation of the executive order; or in the event of non-use or abandonment of the premises or any portion thereof for a continuous one year period; or for any reason whatsoever; and upon restoration of the premises to a condition satisfactory and acceptable to DLNR. Once any of these conditions are met, the lands again become subject to section 171-11, HRS, which states:

Whenever lands set aside for a public purpose to the various departments and agencies of the State, or to any city and county, county, or other political subdivisions of the State, or to the United States, are not being utilized or required for the public purpose stated, the order setting aside

Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

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the lands shall be withdrawn and the lands shall be returned to the department [of land and natural resources].


Until such time as the conditions establishing the right to reversion are met, the lands subject to executive order are under ADC jurisdiction. Such jurisdiction was given to ADC by the Governor with the approval of BLNR and the Hawaii legislature.

RECOMMENDATION:

Accordingly, it is recommended that this Board:

- 1) Reauthorize the Kekaha Agriculture Association to pursue a declaratory order to designate 12,123 acres of Agribusiness Development Corporation's Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, HRS;
- 2) Consent or certify, on behalf of the State of Hawai'i as the fee simple landowner authorized by Executive Order No. 4007, ADC's approval and support of KAA's Petition for Declaratory Order to Designate Important Agricultural Lands under Docket No. DR 21-76; and
- 3) Authorize the ADC staff to assist and cooperate with KAA as necessary to secure the designation of the Mānā plain lands as important agricultural lands.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

March 16, 2022
Page 6 of 9

EXHIBIT A

Governor's Executive Order No. 4007

[see following pages]

Tax Map Key No. (4)1-2-02:Por. 1

TO: AGRIBUSINESS DEVELOPMENT CORPORATION,
a public body corporate and politic and
and instrumentality and agency of the
State of Hawaii
235 S. Beretania Street, Room 205
Honolulu, Hawaii 96813

4007

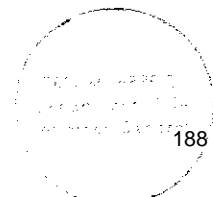
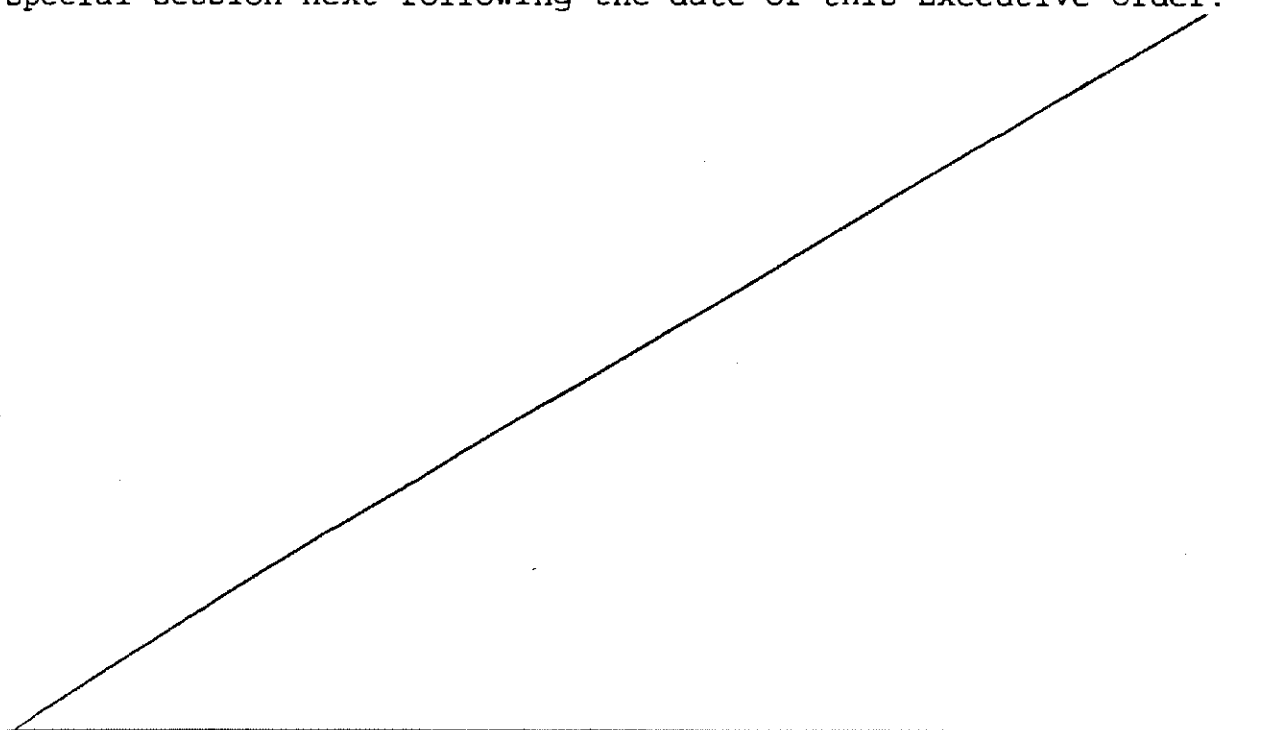
SETTING ASIDE LAND FOR PUBLIC PURPOSES

BY THIS EXECUTIVE ORDER, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 171-11, Hawaii Revised Statutes, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

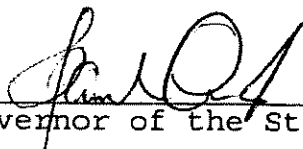
FOR AGRICULTURAL AND RELATED PURPOSES, to be under the control and management of the Agribusiness Development Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii, being that parcel of land situate at Kekaha, Waimea, Kauai, Hawaii, identified as "Portion of the Government (Crown) Land of Waimea," containing a gross area of 12,860.642 acres and a net area of 12,592.133 acres, more particularly described in Exhibit "A" which is attached hereto and made a part hereof, said exhibit being a survey description prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, being designated C.S.F. No. 23,315 dated June 21, 2002, and as delineated on H.S.S. Plat 3087-F.

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the Agribusiness Development Corporation shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.



IN WITNESS WHEREOF, I have hereunto set my hand and
caused the Great Seal of the State of Hawaii to be affixed.
Done at the Capitol at Honolulu this 16th day of
September, 2003.


JAMES R. AIONA JR.
Governor of the State of Hawaii **ACTING GOVERNOR**

APPROVED AS TO FORM:


Deputy Attorney General

Dated: July 24, 2003

STATE OF HAWAII

Office of the Lieutenant Governor

THIS IS TO CERTIFY That the within is a true copy of
Executive Order No. 4007 setting aside land for public
purposes, the original of which is on file in this office.

IN TESTIMONY WHEREOF, the Lieutenant
Governor of the State of Hawaii, has
hereunto subscribed his name and caused
the Great Seal of the State to be affixed.



DONE in Honolulu, this 23RD day of
SEPTEMBER, A.D. 2003





STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.P. No. 23,315

June 21, 2002

H.S.S. Plat 3087-F

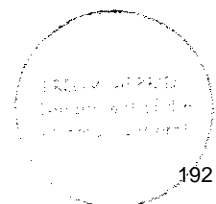
**PORTION OF
THE GOVERNMENT (CROWN) LAND OF WAIMEA**

Kekaha, Waimea, Kauai, Hawaii

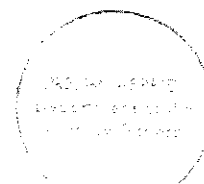
Beginning at the south corner of this parcel of land, on the west boundary of Lot A-1-A as shown on Map 26 of Land Court Application 1076 and on the north side of Kekaha Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "TRANSIT OF VENUS" being 1993.35 feet North and 10,247.36 feet West, thence running by azimuths measured clockwise from True South:-

- | | | |
|----|----------|--|
| 1. | 95° 53' | 520.00 feet along the north side of Kekaha Road; |
| 2. | 92° 56' | 52.79 feet along the north side of Kekaha Road; |
| 3. | 182° 45' | 79.21 feet along Lot 285 of Kekaha House Lots; |
| 4. | 91° 55' | 400.00 feet along Lots 285 and 284 of Kekaha House Lots; |
| 5. | 104° 30' | 186.75 feet along Lots 7, as shown on Map 12, T-1 and T-2, as shown on Map 9 of Land Court Application 1233; |
| 6. | 190° 31' | 9.85 feet along Lot 231 of Kekaha House Lots; |

- | | |
|--------------|---|
| 7. 93° 19' | 418.90 feet along Grant 9525 to Charles Aldolph Puck, Lot 230 of Kekaha House Lots and along Government Land; |
| 8. 200° 50' | 407.70 feet along Grant 9142 to Maria Kaialau, Grant 9691 to Hatsuichi Hashiba, Grant 13382 to Joseph Ku Malama and Lucille Ahana Malama; |
| 9. 143° 35' | 210.00 feet along Grant 13382 to Joseph Ku Malama and Lucille Ahana Malama; |
| 10. 114° 49' | 124.00 feet along Grant 13382 to Joseph Ku Malama and Lucille Ahana Malama, the north end of Kolea Road and Grant 11572 to Louis Parraga; |
| 11. 128° 30' | 363.10 feet along Grant 11572 to Louis Parraga, Grant 13765 to Choshi Nakaya and Mitsuyo Yokoyama Nakaya and along the north end of Aukuu Road; |
| 12. 133° 10' | 250.00 feet along the northerly end of Aukuu Road and Grant 11880 to (Mrs.) Shizue K. Nitta; |
| 13. 35° 24' | 112.38 feet along Grant 11880 to (Mrs.) Shizue K. Nitta; |
| 14. 125° 24' | 547.10 feet along Grant 10266 to Ernest F. Shackleton and Grant 10267 to Lindsay A. Faye; |
| 15. 35° 24' | 477.72 feet along Grant 10267 to Lindsay A. Faye; |
| 16. 125° 24' | 50.00 feet along the northerly side of Kekaha Road; |
| 17. 125° 08' | 244.23 feet along the northerly side of Kekaha Road; |
| 18. 128° 14' | 1241.13 feet along Grant S-15444 to County of Kauai; |



- | | |
|------------------|--|
| 19. 123° 36' 30" | 468.19 feet along Grant S-15444 to County of Kauai; |
| 20. 216° 38' | 100.64 feet along Grant 10329 to Kekaha Sugar Company, Limited; |
| 21. 161° 50' | 160.22 feet along Grant 10329 to Kekaha Sugar Company, Limited; |
| 22. 130° 36' | 347.74 feet along Grant 10329 to Kekaha Sugar Company, Limited; |
| 23. 100° 29' | 242.29 feet along Grants 10329 and 10333 to Kekaha Sugar Company, Limited; |
| 24. 136° 28' | 87.52 feet along Grant 10333 to Kekaha Sugar Company, Limited; |
| 25. 140° 23' | 121.13 feet along Grant 10333 to Kekaha Sugar Company, Limited; |
| 26. 155° 34' | 79.77 feet along Grant 10333 to Kekaha Sugar Company, Limited; |
| 27. 143° 52' | 76.39 feet along Grant 10333 to Kekaha Sugar Company, Limited; |
| 28. 169° 05' | 53.00 feet along Grant 10333 to Kekaha Sugar Company, Limited; |
| 29. 157° 47' | 53.95 feet along Lot 3 of Kekaha Beach Homes, Block 5, File Plan 1759; |
| 30. 126° 50' | 528.10 feet along Lots 3, 6, 9 and 12 of Kekaha Beach Homes, Block 5, File Plan 1759; |
| 31. 137° 22' | 395.66 feet along Lots 14 and 15 of Kekaha Beach Homes, Block 5, File Plan 1759 to the easterly side of Mana Road; |



32. 76° 56' 30" 50.55 feet across Mana Road;
33. 126° 18' 274.58 feet along Hawaii National Guard Site,
Governor's Executive Order 1668;
34. 124° 09' 368.90 feet along Grant 8191 to Helen Hookano and
Grant 8201 to Hikiauola Hilo;
35. 114° 12' 282.90 feet along Grant 8150 to Neely Hilo and Grant
8169 to Kuleana Hemolele;
36. 111° 42' 1105.90 feet along Grant 8170 to Paleka Ono, Grant 8220
to Joe K. Kanihalau and along Government
Remnant;
37. 117° 07' 21.21 feet along the northerly side of Kekaha Road;
38. 35° 08' 30.81 feet along the westerly side of Kekaha Road;
39. 133° 00' 114.32 feet along the remainder of the Government
(Crown) Land of Waimea;
40. Thence along the remainder of the Government (Crown) Land of Waimea on a curve
to the left with a radius of 426.00 feet, the
chord azimuth and distance being:
125° 25' 112.44 feet;
41. 117° 50' 244.83 feet along the remainder of the Government
(Crown) Land of Waimea;
42. Thence along the remainder of the Government (Crown) Land of Waimea on a curve
to the left with a radius of 535.00 feet, the
chord azimuth and distance being:
107° 42' 30" 188.10 feet;
43. 97° 35' 341.37 feet along the remainder of the Government
(Crown) Land of Waimea;

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44. Thence along the remainder of the Government (Crown) Land of Waimea on a curve to the left with a radius of 5472.00 feet, the chord azimuth and distance being:
95° 05' 477.37 feet;
45. 92° 35' 194.00 feet along the remainder of the Government (Crown) Land of Waimea;
46. Thence along the remainder of the Government (Crown) Land of Waimea on a curve to the left with a radius of 5286.00 feet, the chord azimuth and distance being:
90° 45' 338.22 feet;
47. 88° 55' 300.47 feet along the remainder of the Government (Crown) Land of Waimea;
48. Thence along the remainder of the Government (Crown) Land of Waimea on a curve to the right with a radius of 985.00 feet, the chord azimuth and distance being:
101° 15' 30" 421.07 feet;
49. 113° 36' 646.66 feet along the remainder of the Government (Crown) Land of Waimea;
50. Thence along the remainder of the Government (Crown) Land of Waimea on a curve to the left with a radius of 950.00 feet, the chord azimuth and distance being:
92° 34' 681.93 feet;
51. 71° 32' 410.23 feet along the remainder of the Government (Crown) Land of Waimea;
52. Thence along the remainder of the Government (Crown) Land of Waimea on a curve to the right with a radius of 860.00 feet, the chord azimuth and distance being:
77° 41' 184.27 feet;
53. 83° 50' 267.27 feet along the remainder of the Government (Crown) Land of Waimea;



54. Thence along the remainder of the Government (Crown) Land of Waimea on a curve to the left with a radius of 770.00 feet, the chord azimuth and distance being:
69° 02' 30" 393.17 feet;
55. 54° 15' 25.71 feet along the remainder of the Government (Crown) Land of Waimea;
56. Thence along the remainder of the Government (Crown) Land of Waimea on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
6° 29' 30" 44.42 feet;
57. 318° 44' 133.75 feet along the northerly side of Kaumualii Highway (Hawaii Project No. DA-WR-1);
58. Thence along the northerly side of Kaumualii Highway (Hawaii Project No. DA-WR-1) on a curve to the left with a radius of 5962.17 feet, the chord azimuth and distance being:
310° 48' 1645.81 feet;
59. 32° 52' 100.00 feet across Kaumualii Highway (Hawaii Project No. DA-WR-1);
60. Thence along Kekaha Beach Park, Governor's Executive Order 1425, a line parallel to the east side of the canal to highwater mark at seashore, the direct azimuth and distance being:
15° 54' 474.66 feet;
61. Thence along highwater mark at seashore, the direct azimuth and distance being:
105° 33' 20" 2029.65 feet;
62. 203° 19' 730.00 feet along the remainder of the Government (Crown) Land of Waimea;
63. 110° 05' 20" 1000.00 feet along the remainder of the Government (Crown) Land of Waimea;

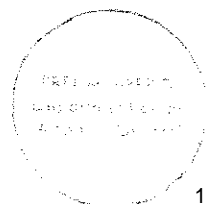


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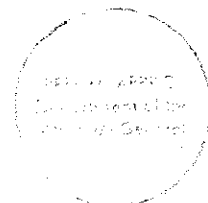
- | | |
|------------------|--|
| 64. 140° 07' 35" | 1238.92 feet along the remainder of the Government (Crown) Land of Waimea; |
| 65. 228° 44' | 420.89 feet along the remainder of the Government (Crown) Land of Waimea; |
| 66. 118° 04' 40" | 657.25 feet along the remainder of the Government (Crown) Land of Waimea; |
| 67. 228° 44' | 881.84 feet along the remainder of the Government (Crown) Land of Waimea; |
| 68. 138° 44' | 1699.00 feet along the remainder of the Government (Crown) Land of Waimea and Access Road, Governor's Executive Order 1558; |
| 69. 138° 44' | 1686.39 feet along New Kekaha Dumping Ground, Governor's Executive Order 3695; |
| 70. 138° 44' | 6398.13 feet along Road to Lae-O-Kokole Lighthouse (Presidential Proclamation 827 dated December 4, 1908), Substation Site B (revised November 1976) and Kekaha Agricultural Park Subdivision, File Plan 2136; |
| 71. 48° 44' | 647.44 feet along Lot 11 of Kekaha Agricultural Park Subdivision, File Plan 2136; |
| 72. 146° 56' 40" | 3140.13 feet along Bonham Air Base (formerly Mana Airport Military Reservation), Part 1, Governor's Executive Order 945; |
| 73. 216° 00' | 203.98 feet along the remainder of the Government (Crown) Land of Waimea and along Wild Bird Sanctuary, Governor's Executive Order 3437; |

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74. 138° 44' 6109.08 feet along Wild Bird Sanctuary, Governor's Executive Orders 3437 and 3685 and along Lot A of Government (Crown) Land of Waimea;
75. Thence along Lot A of Government (Crown) Land of Waimea on a curve to the right with a radius of 2050.51 feet, the chord azimuth and distance being:
167° 22' 30" 1965.74 feet;
76. 196° 01' 1313.23 feet along Lot A of Government (Crown) Land of Waimea;
77. Thence along Lot A of Government (Crown) Land of Waimea on a curve to the left with a radius of 100.00 feet, the chord azimuth and distance being:
151° 01' 141.42 feet;
78. 106° 01' 561.88 feet along Lot A of Government (Crown) Land of Waimea;
79. 195° 50' 30" 100.00 feet along Bonham Air Base, Tract E-2;
80. 286° 01' 562.18 feet along Lot B of Government (Crown) Land of Waimea;
81. Thence along Lot B of Government (Crown) Land of Waimea on a curve to the left with a radius of 100.00 feet, the chord azimuth and distance being:
241° 01' 141.42 feet;
82. 196° 01' 1091.04 feet along Lot B of Government (Crown) Land of Waimea;
83. Thence along Lot B of Government (Crown) Land of Waimea on a curve to the left with a radius of 1049.89 feet, the chord azimuth and distance being:
174° 02' 54" 785.52 feet;

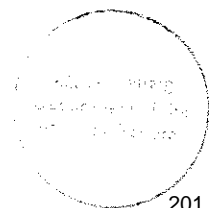


84.	79°	10'	50"	953.89 feet along Lot B of Government (Crown) Land of Waimea;
85.	140°	35'		136.86 feet along Bonham Air Base, Tract E-2;
86.	174°	14'	30"	153.27 feet along Bonham Air Base, Tract E-2;
87.	196°	07'	30"	411.61 feet along Bonham Air Base, Tract E-2;
88.	185°	24'		302.35 feet along Bonham Air Base, Tract E-2;
89.	180°	23'		351.61 feet along Bonham Air Base, Tract E-2;
90.	193°	32'		173.20 feet along Bonham Air Base, Tract E-2;
91.	203°	01'		540.31 feet along Bonham Air Base, Tract E-2;
92.	208°	23'		252.04 feet along Bonham Air Base, Tract E-2;
93.	194°	10'	30"	140.75 feet along Bonham Air Base, Tract E-2;
94.	183°	02'		299.35 feet along Bonham Air Base, Tract E-2;
95.	191°	26'		156.12 feet along Bonham Air Base, Tract E-2;
96.	198°	03'		244.98 feet along Bonham Air Base, Tract E-2;
97.	186°	44'	30"	661.62 feet along Bonham Air Base, Tract E-2;
98.	183°	02'		270.92 feet along Bonham Air Base, Tract E-2;
99.	191°	28'		460.00 feet along Bonham Air Base, Tract E-2;
100.	201°	43'		276.90 feet along Bonham Air Base, Tract E-2;
101.	209°	05'		326.22 feet along Bonham Air Base, Tract E-2;



102.	205°	48'	180.60 feet along Bonham Air Base, Tract E-2;
103.	191°	49'	267.80 feet along Bonham Air Base, Tract E-2;
104.	195°	19'	274.30 feet along Bonham Air Base, Tract E-2;
105.	189°	05'	255.65 feet along Bonham Air Base, Tract E-2;
106.	177°	49'	317.01 feet along Bonham Air Base, Tract E-2;
107.	182°	46'	304.55 feet along Bonham Air Base, Tract E-2;
108.	191°	06'	176.75 feet along Bonham Air Base, Tract E-2;
109.	92°	40'	138.14 feet along Bonham Air Base, Tract E-2;
110.	182°	40'	67.38 feet along Bonham Air Base (Formerly Mana Airport Military Reservation), Remainder of Part 2, Governor's Executive Order 945;
111.	196°	40'	3050.00 feet along Bonham Air Base (Formerly Mana Airport Military Reservation), Remainder of Part 2, Governor's Executive Order 945;
112.	191°	05'	181.49 feet along Bonham Air Base (Formerly Mana Airport Military Reservation), Remainder of Part 2, Governor's Executive Order 945;
113.	224°	03'	1458.00 feet along Bonham Air Base, Tract E-1;
114.	191°	05'	742.14 feet along Bonham Air Base, Tract E-1;
115.	224°	03'	1506.89 feet along Bonham Air Base, Tract E-1;
116.	134°	03'	1194.24 feet along Bonham Air Base, Tract E-1;
117.	224°	03'	4385.90 feet along Polihale State Park, Governor's Executive Order 2901;

118. 224° 31' 40" 3106.10 feet along Polihale State Park, Governor's Executive Order 2901;
119. 223° 37' 2915.30 feet along Polihale State Park, Governor's Executive Order 2901;
120. 300° 50' 1509.59 feet along Puu Ka Pele Forest Reserve, Governor's Proclamation dated May 2, 1938;
121. 19° 00' 863.83 feet along Puu Ka Pele Forest Reserve, Governor's Proclamation dated May 2, 1938;
122. 22° 00' 7000.00 feet along Hawaiian Home Land;
123. 4° 30' 7700.00 feet along Hawaiian Home Land;
124. 349° 00' 9100.00 feet along Hawaiian Home Land;
125. 329° 00' 8500.00 feet along Hawaiian Home Land;
126. 323° 56' 15" 5793.80 feet along Hawaiian Home Land;
127. 321° 11' 348.70 feet along Hawaiian Home Land;
128. 325° 13' 804.60 feet along Hawaiian Home Land;
129. 212° 33' 400.50 feet along Hawaiian Home Land;
130. Thence along the west edge of Puehu Ridge being also the Hawaiian Home Land, the direct azimuth and distance being:
239° 02' 3896.60 feet;
131. Thence along the west edge of Puehu Ridge being also the Hawaiian Home Land, the direct azimuth and distance being:
218° 16' 3319.60 feet;

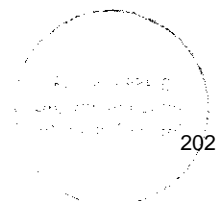


June 21, 2002

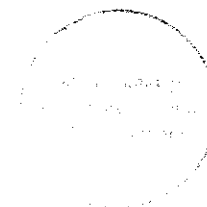
132. 323° 25' 1222.70 feet along Hawaiian Home Land;
133. 270° 04' 520.00 feet along Hawaiian Home Land;
134. Thence along the middle of Waipao Gulch being also the Hawaiian Home Land, the direct azimuth and distance being:
227° 00' 8500.00 feet;
135. Thence crossing the middle of the west branch of Waipao Gulch and Kokee Road being also the Hawaiian Home Land, the direct azimuth and distance being:
190° 38' 45" 2285.20 feet;
136. Thence along the northwesterly side of Kokee Road running parallel to and twenty-five (25) feet from the centerline of said Kokee Road, being also the Hawaiian Home Land, the direct azimuth and distance being:
233° 12' 30' 4618.50 feet;
137. 239° 21' 31.70 feet along Waimea Canyon Park, Governor's Executive Order 1510;
138. 306° 11' 30" 602.10 feet along Waimea Canyon Park, Governor's Executive Order 1510;
139. 283° 43' 30" 784.80 feet along Waimea Canyon Park, Governor's Executive Order 1510 to the top edge of Waimea Canyon;

Thence along the top edge of Waimea Canyon for the next six (6) courses, the direct azimuths and distances between points near the top edge of Waimea Canyon being:

140. 41° 04' 2846.90 feet to a POOKII 7
(2-inch pipe);
141. 00° 34' 4075.90 feet to CANYON C
(2-inch pipe);



142.	335°	35'	6817.50 feet to Government Survey Triangulation Station CANYON B (Type A monument);
143.	335°	25'	4690.80 feet to CANYON A (2-inch pipe);
144.	305°	18' 30"	1620.90 feet to CANYON (2-inch pipe);
145.	354°	21'	2632.10 feet;
146.	347°	34' 30"	1492.84 feet along the Ili of Kikiaola and crossing Kekaha Ditch;
147.	21°	30'	96.53 feet along Area reserved for Waimea Heights House Lots;
148.	358°	00'	174.00 feet along Area reserved for Waimea Heights House Lots;
149.	78°	20'	296.00 feet along Area Government (Crown) Land reserved for Waimea Heights House Lots;
150.	125°	00'	218.00 feet along Area reserved for Waimea Heights House Lots;
151.	110°	30'	240.00 feet along Area reserved for Waimea Heights House Lots;
152.	153°	40'	278.00 feet along Area reserved for Waimea Heights House Lots;
153.	189°	00'	120.00 feet along Area reserved for Waimea Heights House Lots;



154. Thence along Area reserved for Waimea Heights House Lots on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being:
127° 35' 87.81 feet;
155. 66° 10' 75.00 feet along Area reserved for Waimea Heights House Lots;
156. Thence along Area reserved for Waimea Heights House Lots on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being:
117° 10' 233.14 feet;
157. 168° 10' 325.00 feet along Area reserved for Waimea Heights House Lots;
158. Thence along Area reserved for Waimea Heights House Lots on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being:
94° 50' 95.80 feet;
159. 21° 30' 113.00 feet along Area reserved for Waimea Heights House Lots;
160. 40° 30' 716.00 feet along Area reserved for Waimea Heights House Lots;
161. Thence along Area reserved for Waimea Heights House Lots on a curve to the left with a radius of 300.00 feet, the chord azimuth and distance being:
30° 40' 102.47 feet;
162. Thence along Area reserved for Waimea Heights House Lots on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being:
73° 04' 30" 237.18 feet;
163. 35° 19' 383.00 feet along Area reserved for Waimea Heights House Lots to the foot of a rocky precipice or cliff on the side of pali;

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Thence along Lot A-1-A of Land Court Application 1076 (Map 26), the boundary following the foot of a rocky precipice or cliff, on the side of pali, for the next four (4) courses, the direct azimuths and distances being:

164.	125° 19'	222.00 feet;
165.	123° 00'	450.00 feet;
166.	126° 00'	450.00 feet;
167.	141° 30'	300.00 feet;
168.	115° 20'	600.00 feet along Lot A-1-A of Land Court Application 1076 (Map 26), crossing gulch to a foot of a rocky precipice or cliff;

Thence along Lot A-1-A of Land Court Application 1076 (Map 26), the boundary following the foot of a rocky precipice or cliff, on the side of pali, for the next four (4) courses, the direct azimuths and distances being:

169.	90° 30'	300.00 feet;
170.	102° 30'	420.00 feet;
171.	108° 30'	510.00 feet;
172.	123° 00'	360.00 feet to a pipe;
173.	102° 20'	1080.00 feet along Lot A-1-A of Land Court Application 1076 (Map 26), crossing gulch at the foot of a rocky precipice or cliff, on the side of pali;



Thence along Lot A-1-A of Land Court Application 1076 (Map 26), the boundary following the foot of a rocky precipice or cliff, on the side of pali, for the next five (5) courses, the direct azimuths and distances being:

174. 100° 30' 540.00 feet;

175. 80° 30' 360.00 feet;

176. 76° 30' 360.00 feet;

177. 105° 30' 330.00 feet;

178. 133° 42' 30" 364.60 feet;

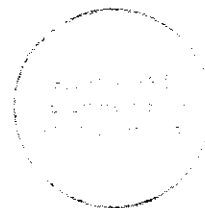
179. 107°50' 1590.00feet along Lot A-1-A of Land Court Application 1076 (Map 26), crossing two gulches;

Thence still along Lot A-1-A of Land Court Application 1076 (Map 26), the boundary following the foot of a rock precipice or cliff, on the side of pali, for the next two (2) courses, the direct azimuths and distances being:

180. 46° 00' 270.00 feet;

181. 85° 00' 270.00 feet;

182. 17° 14' 30" 3932.80 feet along Lot A-1-A of Land Court Application 1076 (Map 26), to the point of beginning and containing a GROSS AREA OF 12,860.642 ACRES and a NET AREA OF 12,592.133 ACRES after deducting therefrom Exclusions 1 to 24, inclusive (268.509 Acres).



June 21, 2002

Subject, however, to the following:

(1) Easements A for roadway and utility purposes for water pipeline purposes, C for water pipeline purposes and D for power line purposes covered by General Lease S-3852 issued to the United States of America dated August 20, 1964 and recorded in Liber 4821, Page 245 and amendment dated May 31, 1973 and recorded in Liber 9221, Page 407 (C.S.F. 14,517).

(2) Perpetual Non-Exclusive Easements 1, 2 and 3 for Electric Transmission Line Purposes covered by Grant of Easement: State of Hawaii to Kauai Electric, Division of Citizens Utilities Company dated December 6, 1979 and recorded in Liber 14420, Page 354 (Land Office Deed S-27071) (C.S.F. 18,582).

Easements for roadway and utility purposes for all exclusions entitled thereto.

(3) Easements 1 and 2 (30.00 feet wide) for Electric Transmission Line and Access Purposes (C.S.F. 20,658).

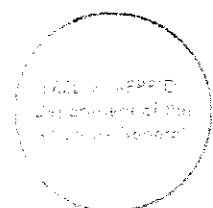
(4) Perpetual Non-Exclusive Easement C for Access and Waterline Purposes, Perpetual Non-Exclusive Easement E for Pump Station and Reservoir Purposes, Perpetual Non-Exclusive Easement J for Drainage Purposes and Perpetual Non-Exclusive Easement F for Pipeline Purposes covered by Governor's Executive Order 3633 to Department of Agriculture dated October 17, 1994 (C.S.F. 22,171).

(5) Easement for Waterline Booster Pump covered by Grant of Easement: State of Hawaii to United States of America (Department of Navy) dated April 14, 1978 and recorded in Liber 12844, Page 450 (Land Office Deed S-26908) (C.S.F. 17,978).



June 21, 2002

- (6) Perpetual Non-Exclusive Easement for Transmission Line Purposes covered by Grant of Easement: State of Hawaii to Kauai Electric, Division of Citizens Utilities Company and Hawaiian Telephone Company dated December 18, 1979 and recorded in Liber 14,651, Page 597 (Land Office Deed S-27,101) (C.S.F. 18,666).
- (7) Non-Exclusive Easement for Electric Transmission Line Purposes (C.S.F. 16,191).
- (8) Perpetual Non-Exclusive Easements 1 to 8, inclusive for Transmission Line Purposes covered by Grant of Easement: State of Hawaii to Kauai Electric, Division of Citizens Utilities Company and Hawaiian Telephone Company dated December 18, 1979 and recorded in Liber 14661, Page 651 (Land Office Deed S-27,102) (C.S.F. 18,667).
- (9) Non-Exclusive Easement for Pipeline and Roadway Purposes in favor of County of Kauai.
- (10) Non-Exclusive Easements E-1 and E-2 for Electrical Purposes covered by Grant of Easement: State of Hawaii to Citizens Utilities Company dated September 4, 1987 and recorded in Liber 21251, Page 335 (Land Office Deed S-27,645) (C.S.F. 20,203).
- (11) Non-Exclusive Easement for Waterline Purposes covered by Governor's Executive Order 3377 to County of Kauai dated January 21, 1988 (C.S.F. 20,596).
- (12) Perpetual Non-Exclusive Easement D-1 for Drainage Purposes covered by Grant of Easement: State of Hawaii to County of Kauai dated December 3, 1987 and recorded in Liber 21722, Page 687 (Land Office Deed S-27663) (C.S.F. 20,501).



June 21, 2002

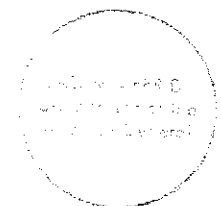
- (13) Perpetual Non-Exclusive Easements D, G and H for Electrical and Telecommunication Purposes covered by Grant of Easement: State of Hawaii to Citizens Utilities Company and GTE Hawaiian Telephone Company, Incorporated dated April 6, 1995 and recorded in Document No. 96-084595 (Land Office Deed S-28157) (C.S.F. 22,184).
- (14) Non-Exclusive Easement 1 for Restrictive Ground Hazard Area Purposes (C.S.F. 22,196).
- (15) Non-Exclusive Restriction Use Easement (C.S.F. 22,998).

EXCLUSIONS

- | | |
|---|--------------|
| 1. Kaumualii Highway
(Hawaii Project No. DA-WR-1) | 80.225 Acres |
| 2. Kokee Road | 25.30 Acres |
| 3. Kokee Road Widening Project No. SRS-0700(6)
(C.S.F. 17,824) | 0.521 Acre |
| 4. Lower Saki Mana Road | 10.97 Acres |
| 5. Polihale Road | 19.28 Acres |
| 6. Waimea Canyon Drive | 30.000 Acres |
| 7. Presidential Proclamation No. 827 | 7.871 Acres |
| 8. Lot A, Land Court Application 1233 | 3.405 Acres |
| 9. Lot B, Land Court Application 1233 | 0.712 Acre |

June 21, 2002

10. Lot C, Land Court Application 1233	1.153 Acres
11. Grant 8143 to Jack P. Kaapuwai	0.266 Acre
12. Grant 8202 to Augustus F. Knuden	12.340 Acres
13. Grant 8144 to Peter Pah On Leong	3.850 Acres
14. Grant 8153 to Baba Kaiwa	1.330 Acres
15. Mana Substation Site A (C.S.F. 20,658)	0.148 Acre
16. Bonham Air Base Storage Area Tract E-3 (Parcel 2)	48.777 Acres
17. Bonham Air Base Water Storage Area, Tract E-4 (C.S.F. 14,517)	0.264 Acre
18. Tract E-2-A for Roadway (C.S.F. 15,942)	0.771 Acre
19. Addition to Kamokala Ridge Storage Area (C.S.F. 22,997)	14.372 Acres
20. Aquaculture Site (C.S.F. 22,208)	5.195 Acres
21. Water Tank Site (Gov. Ex. Ord. 2884)	0.431 Acre
22. Tank and Pump Site and Right-of-Way (Gov. Ex. Ord. 1380)	0.31 Acre
23. Kekaha (Waipao) Well Site "B" and Access Road (Gov. Ex. Ord. 3377) (C.S.F. 20,040)	0.354 Acre



C.S.F. No. 23,315

June 21, 2002

24. Well and Water Tank Site and Non-Exclusive
Pipeline and Roadway Easement
(Gov. Ex. Ord. 3004) (C.S.F. 18,553)

0.664 Acre

TOTAL AREA OF EXCLUSIONS - 268.509 Acres

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: 

Thomas H. Oi
Land Surveyor

gm

Compiled from H.S.S. Plat 3087-A
and other Govt. Survey Records.



Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

March 16, 2022
Page 7 of 9

EXHIBIT B

ADC Letter to DLNR Chairperson Suzanne Case Regarding Designation of Kekaha
Lands as Important Agricultural Lands by Petition

[see following page]

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
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

January 22, 2018

Ms. Suzanne Case, Chairperson
Board of Land and Natural Resources
P.O. Box 2359
Honolulu, Hawaii 96804

Re: Designation of Kekaha lands as Important Agricultural Lands by petition

Dear Chairperson Case:

The Agribusiness Development Corporation ("ADC") manages and controls approximately 5,000 acres of agricultural lands on the Mana plain in Kekaha on Island of Kauai under Executive Order 4007. The Kekaha Agriculture Association is an agricultural cooperative association organized under Chapter 421, Hawaii Revised Statutes, and is ADC's agricultural infrastructure licensee and operator ("KAA"). The KAA has requested that it be allowed to petition the Land Use Commission ("LUC") for a declaratory order to designate some of the Kekaha lands as important agricultural lands ("IAL"). Although certification of incentives expired last month, bills are already before the legislature to extend the incentives.

We intend to present this request to the ADC board of directors; however, we have informed the KAA that the Board of Land and Natural Resources has jurisdiction over matters that affect the fee simple interest in these lands. Accordingly, we ask that you consider allowing the KAA to petition the LUC for IAL designation. Attached is an overview of the benefits to be derived from IAL designation, prepared on behalf of the KAA.

We look forward to working with the DLNR in this novel approach to designating state lands as IALs. Please contact Myra Kaichi, 586-0186, of our office with any questions or concerns you may have.

Sincerely,

James J. Nakatani
Executive Director

c: Ian Hirokawa, DLNR
Joshua Uyehara, KAA

Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

March 16, 2022
Page 8 of 9

EXHIBIT C

Minutes of ADC Board of Directors Meeting on January 31, 2018

[see highlighted on following pages]



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

January 31, 2018

Subject: Request to authorize the Kekaha Agriculture Association to pursue a declaratory order to designate a portion of Agribusiness Development Corporation's Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes, and to certify ADC's authorization as landowner

Authority: Section 163D – 4 (a) (18), Hawaii Revised Statutes

Location: Kekaha, Island of Kauai, Hawaii

Land Area: Portions of the Mana plain lands, acreage to be determined in the Land Use Commission process

Tax Map Key: (4)1-2-02-01 (por) under ADC control

Land Status: Encumbered by Governor's Executive Order Nos. 4007 to the Agribusiness Development Corporation ("ADC") for agricultural purposes.

Trust Land Status: DHHL 30% entitlement lands pursuant to the Hawaii State Constitution.

BACKGROUND: In 2005, the Hawaii State Legislature enacted Part III of the Land Use Commission act, entitled, "Important Agricultural Lands" for the stated purposes of conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands. There are essentially 2 state routes to achieving important agricultural land ("IAL") status – via identification of public lands by the State and via declaration by the Land Use Commission ("LUC"). Because the ADC lands are, by definition, excepted from the inventory of State public lands, a petition for declaratory order is the only state route available to achieve IAL status for the ADC lands. Once designated as IAL, landowners can develop farm dwellings and employee housing on up to 5% or 50 acres of agricultural

housing, whichever is less, and farmers or owners of IAL lands can qualify for income tax credits for agricultural expenditures on infrastructure-type expenses such as roads or utilities, processing facilities, irrigation facilities as well as the farm dwellings. In fact, the tax credit appears to be broad enough to include expenditures that confer a majority of benefit upon IALs, even if incurred by farmers or agricultural businesses that are not direct owners, lessees or licensees of the IALs. We don't know, however, whether this interpretation has been challenged. There are several other incentives as well. Although the current tax incentives expired on December 31, 2107, there is currently an effort before the legislature to revive and extend those tax credits for another ten years.

The ADC manages approximately 5,000 acres of land on the Mana plain pursuant to Executive order 4007. The Kekaha Agriculture Association ("KAA") currently holds a 20-year license for most of the infrastructure improvements available for the use and benefit of all ADC Kekaha land tenants. Included in the KAA-licensed infrastructure are the Kekaha Ditch and the intakes, screens, tunnels, siphons, culverts, overpasses, flumes, recorders, control gates, ladders, gratings, access roadways, measuring weirs, motors, and controls, attached reservoirs, settling basins, wells, shafts, motors, and pumps, drainage canals and ravines, roads, bridges, culverts, railway tracks, security gates, the Waimea and Waiawa hydroelectric power plants, transmission and distribution components, transformers, switches, meters, etc. The KAA has historically expended millions of dollars for infrastructure operational, maintenance and repair costs, subsidized by third-party vendor income from the Kekaha agricultural operations, capital improvement project funds from the ADC, and KAA membership fees. These are precisely the types of activities and expenditures that the IAL tax credits are intended to incentivize.

The KAA has proposed to voluntarily petition the LUC for a declaratory order designating portions of the ADC Mana plain lands as IAL. If successful, and assuming the tax credits are extended, such designation could result in tremendous benefits to the KAA, and to qualified agricultural costs incurred by individual tenants. The petition will only seek IAL designation; there will be no request to reclassify any ADC lands. Attached is a brief description of the benefits to be derived by the KAA.

Although the ADC manages these lands, the fee simple interest in and to the lands remain with the State of Hawaii, through its Board of Land and Natural Resources. Therefore, simultaneous with this request, the ADC has requested that the Land Board also approve the KAA's proposed action.

CONCLUSION: The ADC is tasked with assisting, promoting and developing agriculture within the State. Ownership of these lands by the ADC ensures the use of these lands in agriculture, in perpetuity. However, the ADC can do more to help agriculture, starting with taking advantage of tax incentive programs such as the IAL designation incentives. ADC is also fortunate to have the KAA willing to voluntarily seek IAL designation on its own.

RECOMMENDATION: Accordingly, it is recommended that this Board:

- 1) Authorize the Kekaha Agriculture Association to pursue a declaratory order to designate a portion of Agribusiness Development Corporation's Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes,
- 2) If appropriate, certify or otherwise consent, as the landowner or land manager, to KAA's forthcoming petition as the landowner, and
- 3) Authorize the ADC staff to assist and cooperate with the KAA as necessary to secure the designation of the Mana plain lands as important agricultural lands.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'J' and 'N' followed by a horizontal line.

James J. Nakatani
Executive Director

Designation of the ADC lands in Kekaha as Important Agricultural Lands, and extension of the IAL refundable tax credit, may offer several benefits to ADC and the Kekaha Agriculture Association. Pursuant to Executive Orders, ADC controls certain lands in Kekaha, Kauai that ADC has licensed to the KAA and KAA members.

It may be possible for ADC and/or KAA to secure designation of the ADC lands by the Land Use Commission as Important Agricultural Lands pursuant to Part III of Chapter 205, “Important Agricultural Lands.” Under this statute, IAL include lands that are capable of producing “sustained high agricultural yields” and that “[c]ontribute to the State’s economic base[.]” IAL also produce agricultural commodities for “export or local consumption” and promote “expansion of agricultural activities and income for the future[.]” In addition, IAL designation is intended to promote the maintenance of “essential agricultural infrastructure systems, including irrigation systems” such as the Kekaha ditch irrigation system. Current farming of the ADC lands appears to be aligned with these basic objectives and suggests IAL designation may be possible.

Upon designation as IAL, ADC and KAA may be eligible for the IAL refundable tax credit, under section 235-110.93, Hawaii Revised Statutes, “Important agricultural land qualified agricultural cost tax credit,” if the credit is extended by the Legislature during the 2018 legislative session (the credit has expired). Under the incentives section of the IAL statute, State tax policies shall promote the “economic sustainability” of agriculture and, accordingly, IAL shall be eligible for incentives. Thus, through designation of the ADC lands as IAL, and extension of the refundable tax credit, ADC and KAA may realize certain direct and indirect benefits, including but not limited to the following.

First, the refundable tax credit may reduce the overall cost of farming on the ADC lands. Upon designation of the ADC lands as IAL, under the IAL tax credit statute “each taxpayer” (i.e., presumably KAA and/or KAA members, depending on petitioner for IAL designation) may be eligible to receive a refundable income tax credit amounting to fifty percent of “qualified agricultural costs” up to a total of \$1 million. The Department of Agriculture is charged with verifying and certifying that costs claimed under the credit are “qualified agricultural costs” within the meaning of the statute.

Second, a wide range of agricultural expenditures costs can qualify for the IAL tax credit, thereby aiding and benefiting ADC and KAA. Importantly, the IAL statute authorizes tax credits to “offset operational costs” of farming. The IAL tax credit statute broadly defines “qualified agricultural costs” to include expenditures for a wide range of agriculture-related costs, including planning, construction, repair and maintenance of roads and utilities; agricultural processing facilities; water wells, dams, reservoirs, pipelines, ditches and irrigation systems; agricultural housing; farming equipment; and consulting services.

Third, IAL designation of the ADC lands and extension of the IAL tax credit may aid and support ADC and KAA with regard to irrigation infrastructure, including efforts to upgrade the Kekaha ditch system with pressurized pipelines. The IAL statute authorizes tax incentives to support “agricultural irrigation systems,” and under the IAL tax credit statute, “qualified agricultural costs” include water pipelines, ditches and irrigation systems.

Fourth, IAL designation of the ADC lands and extension of the IAL tax credit may aid and support ADC and KAA with regard to electric power needs, including efforts to replace the Waiawa hydropower facility. Utilities for agricultural purposes are among the qualified costs under the IAL tax credit statute.

Fifth, IAL designation and the tax credit may aid ADC and KAA in ongoing efforts to implement the mediated resolution of the recent Water Commission proceeding involving the irrigation system serving the ADC lands, as reflected in the Waimea Watershed Agreement. Under the IAL tax statute, qualifying costs include expenditures for “regulatory processing, studies, and legal and other consulting services related to obtaining or retaining sufficient water for agricultural activities[.]”

Finally, agricultural housing may be similarly advanced insofar as the IAL statute authorizes the construction of farm dwellings and employee housing on IAL, and agricultural housing is specifically identified as a qualifying cost under the tax credit statute.

The foregoing suggests support for IAL designation of the ADC lands, and extension of the IAL tax credit, may result in several potential benefits to ADC, KAA and/or KAA members. Such important benefits appear to be entirely consistent with broader State goals concerning the continued growth, protection and development of agriculture in Hawaii.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Director meeting for January 31, 2018
Department of Agriculture Plant Quarantine Conference Room
1849 Auiki Street, Honolulu, Hawaii 96819

Members:

Letitia Uyehara	Yukio Kitagawa
Lloyd Haraguchi	Douglas Schenk
Leilyn Koev	Denise Albano
Sandra Klutke	Margarita Hopkins
Jeffrey Pearson, DLNR	

Absent:

Scott Enright, DOA	Robbie Melton, DBEDT
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Guests:

Cindy Matsuki, HTDC	Joshua Uyehara, KAA
Tina Deitschman, Senator Dela Cruz's office	
Teresa Dawson, Environment Hawaii	

Staff:

Counsel:

James Nakatani	Andrew Goff
Myra Kaichi	
Lynn Owan	
Ken Nakamoto	
Todd Low	
Cindy Doi	

A. Call to order.

Chairperson Uyehara called the meeting to order at 9:05 am.

B. Approval of Minutes from the December 20, 2017.

Mr. Schenk moved to approve the minutes; Ms. Hopkins seconded the motion; motion carried unanimously.

C. Request to Re-Issue a Revocable Permit to Andros Engineering Corporation for a Covered Parking Area in Whitmore, Oahu, Tax Map Key (1) 7-1-02-04 (por).

Mr. Nakamoto made the presentation to re-issue a RP to Andros Engineering Corporation for a covered parking which is in the 257 parcel and in the master plan area in Whitmore.

Andros has been renting a parking shed since 2016. Permittee is a world supplier of specialized agricultural equipment based in California and has been operating in Hawaii since 2014. Permittee has been a good tenant and rent payment has been made in a timely manner. ADC plans to redevelop the area which may include the removal of the parking shed. ADC proposes to allow the Permittee to continue using the land for its operation on a month-to-month basis until such redevelopment ensures. The recommendation is to approve the reissuance of a RP to Andros Engineering Corporation for the parking area in Whitmore subject to the following terms and conditions: term of this RP shall be on a month-to-month basis; base rent shall be \$880 per month; shall pay its share of utilities; may apply for rent credit; and no subletting to be permitted without ADC's prior approval in writing.

Ms. Hopkins moved to approve the recommendation; Mr. Pearson seconded the motion. Motion carried unanimously.

D. Request to Re-Issue a Revocable Permit to Davey Tree Expert Company for Parking Area in Whitmore, Oahu, Tax Map Key (1) 7-1-02-04 (por) and (1) 7-1-02-09 (por).

Mr. Nakamoto made the presentation to re-issue a RP to Davey Tree for parking area in Whitmore. Permittee has been renting office space, a covered parking shed, and 10,000 square feet parking area since 2016. Permittee is a tree trimming and landscaping company based in Ohio. The company is currently using the space in Whitmore to store equipment and vehicles. ADC plans to redevelop the area, which include the use of the 10,000 square feet parking area and removal of the office space and parking shed. ADC proposes to allow the Permittee to continue using of land for its operation on a month-to-month basis until such redevelopment ensures. The recommendation is to approve the reissuance of a revocable permit to Davey Tree Expert Company for parking area in Whitmore subject to the following terms and conditions: term of this RP shall be on a month-to-month basis; base rent shall be \$1,634.40 per month; shall pay its share of utilities; and no subletting to be permitted without ADC's prior approval in writing.

Mr. Haraguchi moved to approve the recommendations; Mr. Schenk seconded the motion.

Mr. Kitagawa asked about the office area. Mr. Nakamoto replied WCBDO is leasing on a month to month basis.

Ms. Hopkins asked when storing the equipment do they have restrictions. Mr. Nakamoto replied yes, but no heavy equipments.

Motion carried unanimously.

E. Request to Re-Issue a Revocable Permit to Royal Palm Group/Construction and Landscaping, Inc. for Nursery Purposes, Whitmore, Oahu, Tax Map Key (1) 7-1-*02-09 (por).

Mr. Nakamoto made the presentation to re-issue a RP to Royal Palm Group/Construction and Landscaping for nursery purposes in Whitmore. Royal Palm has been renting four acres since 2010 and was a carry over tenant when ADC acquired the 24 acre parcel. Currently the land is used as a plant nursery and store heavy equipment. ADC plans to redevelop the area and proposes to allow the Permittee to continue to use the land for nursery purposes on a month to month basis until the redevelopment ensures. The recommendation is to approve the reissuance of a RP to the Royal Palm Group for 4 acres in Whitmore, subject to the following terms and conditions: term shall be on a month-to-month basis; base rent shall be \$1,600 per year; and no subletting to be permitted without ADC's prior approval in writing.

Ms. Hopkins moved to approve the recommendations; Mr. Kitagawa seconded the motion.

Ms. Klutke asked on the rent, how long has this been in existence? Mr. Nakamoto replied it is the same terms and conditions as what Dole charged. It is flat and would like to take it back if needed once the plan is completed.

Motion carried unanimously.

F. Request for approval to issue a Land License to Tiansheng Lin dba Lin's Farm for 2 acres of Land in Kalepa, Kauai, identified as, Tax Map Key (4) 3-9-002:020, Unit HSPA #2, for Diversified Agriculture.

Mr. Nakamoto made the presentation to issue a land license to Tiansheng Lin dba Lin's Farm for 2 acres of land in Kalepa, Unit HSPA #2, for diversified agriculture. The Licensee request for farm land in Kalepa to cultivate fruit trees and vegetables. They operate a farm and currently cultivates a variety of fruits and vegetables. They market at the weekly farmers' market held on Kauai and is seeking more land to expand their business to enter larger markets. The irrigated lands which includes Units A,B,C, and HSPA #1-3 has been designated for diversified agricultural use by the ADC Board in 2014. HSPA#2 is approximately 2 acres and is entirely useable. The parcel abuts HSPA #1, Maalo Road, and an earthen irrigation ditch which can provide ample irrigation water to the land for diversified agriculture. The Licensee's plans include clearing the overgrown vegetation and planting fruit trees and vegetables throughout the 2 acres. The Licensee is required to develop a conservation plan in cooperation with the Kauai Soil and Water Conservation District and submit for acceptance to the ADC. Licensee must agree to practicing good agricultural practices both in the fields and in the packing area, and best management practices on the land. Licensee is responsible for learning and implementing Good Agricultural Practices (GAP) and develop a Food Safety Plan to meet expectations for the Food Safety Modernization Act (FSMA) rules and audit requirements. Licensee shall receive GAP certification within 12 months from issuance of License. Regular inspections will be conducted to ensure this rule is enforced. Licensee has agreed to work with ADC staff to ensure they comply with Food Safety laws and regulations. The additional 2 acres will allow the Licensee to demonstrate his

operation can meet basic regulatory compliance which is a prerequisite for expanding his operation to larger markets. The recommendation is to issue a land license to Tiansheng Lin dba Lin's Farm for 2 acres in Kalepa for diversified agriculture with the following conditions: License fee of \$100 per acre per year or \$200 per year for 2 acres; Licensee would be required to join the Kalepa Coalition (KK) or to pay a monthly maintenance fee to the KK that would support efforts in maintaining the infrastructure; shall not sublicense the whole or any portion of their premises without the prior written approval of the ADC Board; Licensee shall receive GAP certification within 12 months from issuance of License.

Mr. Haraguchi moved to approve the recommendation; Ms. Klutke seconded the motion.

Ms. Albano asked on GAP, will it be for all ADC's licenses? Mr. Nakamoto replied yes, we will be amending our terms and conditions for all licenses to include GAP because right now there is nothing in our license that they need to be GAP certified.

Mr. Kitagawa asked if they have another farming area. Mr. Nakamoto replied yes in the Kealia area on the Kapaa side which is not ADC's. Mr. Kitagawa asked if he only wants to plant 2 acres. Mr. Nakamoto replied they would like more acres but when looking at his current area, it was decided that they were not ready for more acres at this time. Ms. Klutke said she and Mr. Nakamoto visited his farm and he is very ambitious but he needs to follow food safety rules. She thinks he will be moving from the Kealia area and will be leasing land from Grove Farms to grow his vegetables. So probably sticking to his plan of only growing fruit trees in Kalepa.

Ms. Hopkins asked how does the farmer get certified under GAP? Mr. Nakamoto replied currently the DOA and we are working on that internally/administrative on how to get basic guidelines. DOA has a checklist and do a pre audit GAP list that we are currently looking at. There are a lot of information at DOA and UH.

Chair commented that with FSMA all states need to make a determination who would carry out the program at the state level because the enforcement will not be done by the federal. In Hawaii the role would normally have gone to the Department of Health but they have no interest in doing it therefore the program will be taken over by DOA and are currently creating a component that will help the education process and help the farmers get GAP certified.

Motion carried unanimously.

Item H was moved ahead of Item G

H. Update by the Hawaii Technology Development Corporation Agricultural Hackathon (Agathon).

Ms. Matsuki made an update of the Hackathon that occurred a few weeks ago. The event was held for two weekends with 83 attendees. There was a work project and challenges

of the agricultural industries were presented to the participants. The following Saturday they had an ag tech panel and work day. Sunday was a demo day where they had 10 teams pitch their solutions. The judges choose Harvest Vision as first place which was an AI solution for coffee harvesting. They will follow up with the teams to see if anyone are interested in the development of solutions or help with a proposal to complete their solutions. If anyone is interested in looking at the results you can check Agathon.devpost.com which has all the team submissions. They will be sending out surveys to get feedbacks.

Short recess was called at 9:45.

Item I was moved ahead of Item G

I. Presentation by Todd Low on the Spread Techno Farm: An Example of In Door Agriculture.

Mr. Low made a power point presentation on the Spread Techno Farm which he, Mr. Nakatani and Mr. Fred Lau visited recently in Japan that represents a new prospective on agriculture innovation. The sustainability philosophy is: soil, economic, environmental, business and technology. He also provided a short video on the spread lettuce farm located in Kyoto, Japan which is a completely closed hydroponics system.

G. Request to authorize the Kekaha Agriculture Association to pursue a declaratory order to designate a portion of Agribusiness Development Corporation's Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes, and to certify ADC's authorization as landowner.

Mr. Joshua Uyehara was present to request permission for the Kekaha Ag Association to petition the land commission to designate some of the ADC's lands on the Mana plains as important ag lands. Ms. Kaichi made the presentation to request to authorize the KAA to pursue a declaratory order to designate a portion of ADC's Kekaha lands as Important Agricultural Lands (IAL) in accordance with Chapter 205, HRS, and to certify ADC's authorization as landowner. The KAA has proposed to voluntarily petition the LUC for a declaratory order designating portions of the ADC Mana Plains lands as IAL. If successful, and assuming the tax credits are extended, such designation could result in tremendous benefits to the KAA, and to qualified agricultural costs incurred by individual tenants. The petition will only seek IAL designation; there will be no request to reclassify any ADC lands. Although the ADC manages these lands, the fee simple interest in and to the lands remain with the State of Hawaii, through its Board of Land and Natural Resources. Therefore simultaneous with this request, the ADC has requested that the Land Board also approve the KAA's proposed action. The ADC is tasked with assisting, promoting and developing agriculture within the State. Ownership of these lands by the ADC ensures the use of these lands in agriculture, in perpetuity. However, the ADC can do more to help agriculture, starting with taking advantage of tax incentive programs such as the IAL designation incentive. ADC is also fortunate to have the KAA willing to voluntarily see IAL designation on its own. The recommendation: that the

Board authorize the KAA to pursue a declaratory order to designate a portion of ADC's Kekaha lands as IAL in accordance with Chapter 205, HRS; if appropriate, certify or otherwise consent, as the landowner or land manager, to KAA's forthcoming petition as the landowner; and authorize the ADC staff to assist and cooperate with the KAA as necessary to secure the designation of the Mana plain lands as important agricultural lands.

Mr. Schenk moved to approve the recommendations; Mr. Haraguchi seconded the motion.

Mr. Kitagawa asked if the County agreed to participate on County designation. Mr. Uyehara replied that the County said that because there is enough private lands that were set aside they were not looking at any kind of mandatory designation. KAA will fund the petition. The background: Hartung owns about 150 acres on Oahu and have looked at the process for IAL designation and is having a meeting with Office of Planning this afternoon because they are moving forward for their own petition and in learning about the process and the process involved it became feasible and beneficial that KAA do the same. It seems that it would be very cost effective and the refundable tax credit that is renewed this year which has broad base support from the legislature so that credit is up to a million dollars per legal entity which qualifying agricultural cost so that would not only include KAA but all individual members of the KAA and also non-member tenants on the ag lands. When you look at the overall economic benefit of the potential IAL designation, it outweighs the cost of petition. The cost will be in the range of \$100,000 which the breakdown is for \$40,000-\$60,000 for legal fees to assemble the petition and present it before the LUC and \$40--\$60,000 in fees to surveying and describing the lands. They are trying to designate as much as they can reasonable to justify to the LUC.

Ms. Klutke stated that the KAA agreement is to accept IAL. Would it be everyone in KAA including the small farmers who are on a RP. Mr. Uyehara replied because the designation pertains to lands itself, it doesn't matter who requests the petition at the end, all of the farmers who are farming IAL on ADC lands can request the tax credit. The tenants who reside on DLNR or DOA property would not benefit unless a portion of their operations are on ADC lands. Ms. Kaichi mentioned that DOA was asked if they would like to participate at this time but DOA said that this was not a good time for them.

Mr. Haraguchi asked if they foresee any public objections. Mr. Uyehara replied that he cannot foresee any but he does not know. A typical push back for IAL is are you strategically trying to set aside land for development by doing this.

Ms. Klutke asked how long will this process take. Mr. Uyehara replied for example Hartung started in December and the month of May will be on LUC's agenda. But they still need to wait for DLNR's approval. Also need to verify that the tax credit is renewed this session which they would know in a couple of months and once they know that they will move forward.

Motion carried unanimously.

J. Findings of the investigative committee

This item deferred until the next meeting.

K. Executive Director's Reports and Updates.

1. Legislature
2. Galbraith

Mr. Nakatani reported on the ADC legislative bills and CIP requests for 2018.

He reported on the Galbraith lands for small farmers and also a list of the farmers with their acres and their status of where they were as far as all their pending items needed before acquiring their parcels.

On the agenda for the next meeting will be more discussion on issues regarding the legislature.

Mr. Haraguchi asked if there was anything that the Board can help ADC's staff with legislative matters or Galbraith land issues. He felt that if working with these small farmers to comply is not working then we should move to get the farms which are probably the big farms onto the parcels. Mr. Schenk felt that ADC's mission is to get the small farmers on the land and in compliant and to build this industry again.

Mr. Kitagawa suggested that we spend some time at the next meeting discussing issues pertaining to the small farmers. Mr. Nakatani stated that one of issues whereby the farmers are not able to get on the lands is getting a conservation plan. The conservation program is not adopted to the movement of agriculture. We are trying to build a system that addresses good agricultural practices, food safety which we did not anticipate being so difficult. The conservation program needs to be looked at because the planner is the one who will work on their plan. This could be a discussion the board can have.

L. Adjourn

Ms. Albano moved to adjourn; Ms. Klutke seconded the motion; motion carried unanimously.

Meeting adjourned at 11:05 am.

Respectfully submitted,

Cindy Doi
secretary

Request for reconsideration of the January 31, 2018 Board authorization for the Kekaha Agriculture Association (KAA) to pursue a declaratory order to designate a portion of the Agribusiness Development Corporation's (ADC) Kekaha lands as Important Agricultural Lands in accordance with Chapter 205, Hawaii Revised Statutes (HRS), and to certify ADC's authorization as the landowner of lands set aside for control and management of ADC via Executive Order No. 4007, rather than the Department of Land and Natural Resources

March 16, 2022
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EXHIBIT D

Land Use Commission Briefs Requested at the December 23, 2021 Hearings on Docket
No. DR21-75

[see following pages]

DAVID Y. IGE
GOVERNOR



LAND USE COMMISSION

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT

DANIEL ORODENKER
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2022 FEB -7 P 1:00
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February 2, 2022

TO: Parties of DR21-76
Kekaha Agriculture Association

SUBJECT: Land Use Commission Briefs Requested at the Dec. 23, 2021 Hearings
on Docket No. DR21-75

Pursuant to its decision on December 23, 2021, the LUC requests that the parties present position statements regarding the following matters for deliberation by the commissioners. All Briefs with regard to this matter should be provided to the Commission by close of business, Wednesday, March 30, 2022.

All Parties brief:

1. Who is the appropriate applicant in this matter-ADC or KAA or another organization?
2. In the ADC's Supplemental Testimony and references: ADC 1.31.2018 board meeting minutes filed with the LUC on 12.17. 2021 – it was stated:

“...although the ADC manages these lands, the fee simple interest in and to the lands remain the State of Hawai'i through its Board of Land and Natural Resources, therefore simultaneous with this request that the ADC has requested that the Land Board also approve the KAA'S proposal action”

- (a) Since BLNR holds the fee interest of the land, is it required that BLNR provide written approval of the IAL petition?
 - (b) Is the characterization of the fee interest contained in this paragraph still accurate?
3. The Executive Order number 4007 signed by acting governor James Aiona, filed with the LUC on 12/17/21 which delegates various public land used for Agriculture to be under the control and management of Agribusiness Development Cooperation. What powers or authority over the land are thereby granted to ADC

4. What is the distinction between management authority granted on state lands vs. fee simple ownership?
5. Does the State have an obligation to designate its lands that qualify as Important Agriculture Land (IAL) all at once, or if it can be done in a piecemeal manner?
6. Is there a right to intervention in IAL proceedings for individual parcels and/or for State designation of its lands IAL?

If you have any questions, please call me Daniel Orodener at 808-587-3822.

Sincerely,



Daniel E. Orodener
Executive Officer

cc: Mary Alice Evans, State Office of Planning and Sustainable Development
Alison Kato, Esq., State Deputy Attorney General
Ka'Aina Hull, Director of Planning
Laura Barzilai, Esq., Corporation Counsel
Douglas A. Codiga Esq., Kekaha Agriculture Association
William J. Ailā, Jr., Department of Hawaiian Home Lands
Myra Kaichi, Agribusiness Development Corporation



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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ADC Executive Director's Update

March 16, 2022

1. Legislative Update

2022 Legislative Session Bill Tracking

The ADC is tracking several bills related to agriculture, composting reimbursement, pesticide waste disposal, food hubs, and Food Safety Modernization Act (FSMA). The following Legislative bills related to ADC:

- **SB 2480 – Relating to the Wahiawa Irrigation System**
This measure authorizes the issuance of bonds to the Department of Land and Natural Resources and ADC to purchase the Wahiwa Irrigation System, which includes Lake Wilson.
- **SB 3096 – Making an emergency appropriation to the Department of Education for an agriculture innovation center**
This measure Provides an emergency appropriation for the Department of Education to build an agriculture innovation center in Kekaha.
- **SB2473 – Relating to Economic Development**
This measure transfers the ADC from the Hawaii Department of Agriculture to the Department of Business, Economic Development, and Tourism.
- **HB 2418 – Relating to Agriculture**
This measure amends the focus, scope, and management of the ADC. Appropriates funds to ADC for a consultant for planning, and accountant, and for security on ADC property.

2. Galbraith Agricultural Lands

Gas prices are now the most expensive in United States history and it continues to rise due to high demand and inflation. The ADC will need to adjust its water rates accordingly and will be making a request to the ADC Board of Director to increase the water user fee. The following are the diesel fuel rates pursuant to the State's bulk diesel fuel contract since August 2020:

August 18, 2020	\$1.70 per gallon
May 29, 2021	\$2.44 per gallon
March 5, 2022	\$3.75 per gallon