

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, 202, 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 Mañā. 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 decided 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 Waihii 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 riff 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, cassava, 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 Waiahole 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 microphone was live, and this was being recorded. He thinks Mr. Nakatani owes the board an apology for the unprofessional disrespect that he 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 Marushige
Secretary