

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on February 16, 2022
Via Zoom Teleconference

Approved as amended:
ADC Board Meeting
April 20, 2022

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:

Isaac Miller, Corteva Agri Sciences dba Pioneer Hi-Bred (Mr. Miller)
Tierra Bartolotti
Mike Faye, Kekaha Agriculture Association (Mr. Faye)
Erwin Quinanola
Representative Amy Perruso (Rep. Perruso)

A. Call to Order

Chair called the virtual meeting to order at 9:04 a.m.

B. Roll Call

Chair conducted a roll call of the Board. In accordance with the Governor's emergency proclamation dated January 26, 2022, related to COVID-19 (Omicron Variant), 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: 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

None

D. NEW BUSINESS

1. Request for Approval to Conditionally Rescind Tenant Approval to Rey Pin for 6.023 Acres of Lot 3 at Galbraith Small Farmer Lots in Wahiawa, Oahu, Tax Map Key (1) 7-1-001-002 (por)

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

Mr. Roe stated he stands on the written submittal except to note that since the publication of the submittals he received documentation that the certified letter sent to Ms. Pin advising her of the deadline, the conditional rescission, and the potential board action was not delivered. He arranged to meet with her on Friday, February 11, and delivered the letter personally and verbally explained to her the contents of the letter. She signed a copy of the letter acknowledging her receipt. He also spoke with Mr. Jason Shitanishi of USDA Farm Services Agency who was acquainted with Ms. Pin and he'll be assisting her with her interactions with NRCS as she works through her conservation plan. Mr. Roe would note, with the board's indulgence that the board amend the motion to change the rescission date to be effective June 1, 2022 based on the later than anticipated notice to Ms. Pin.

Chair asked if anyone from the public wished to provide testimony.

Mr. Dalton stated there was no raised hands.

Chair asked if there was any board discussion.

Mr. Gomes said he was opposed to this applicant. Staff had tried many times to get a hold of her to make it happen and without any reply. Now it feels like she's trying to get back into the game. So, he's opposed to this; we should find another tenant. He would also like to ask staff, if in the future they could provide pictures of the lay of the land on all of the applicants that come before the board.

Chair asked if there was any other discussion.

Mr. Manuel wanted to confirm that because there was no formal license in place, was any payment received? So basically, we had a parcel we weren't collecting any money from? He wanted to confirm that there were no actual payments made to ADC for six years since the initial action.

Mr. Roe confirmed that there was none.

Mr. Manuel made a recommendation for the policy committee to have timely review, like a one-year period to execute all agreements and not wait so long. He knows there were intermittent conversations and staff had reached out to this potential tenant, but six years of no payment was a lot of lost revenue for this agency.

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Chair agreed. He said the policy committee was working on timelines to receive all required items and the repercussions of not receiving. He agreed with Mr. Gomes, and he was not sure we should give this person another four months. Chair asked if there was any further discussion.

Ms. Seddon said she agreed as well but thinks they should go with the four-months at this point but make it so that 100% of the documents have to be in, approved, complete, no questions asked and if its rescinded then they don't even have to come back to the board. She said at that point, we're done. Either it's 100% turned in, finalized by that date or it's done, and this doesn't have to come back to the board. That's her suggestion.

Chair asked if there was anyone else?

Mr. Hong said he had a question. Since the lease was issued, there has been no payment on the terms for six years?

Mr. Roe said no lease was issued she was only approved as a tenant. Prior to executing a license, ADC generally required a conservation plan, certificate of insurance for general liability, and then the license is executed. It hadn't gotten to that point yet.

Mr. Hong asked, so she's under no legal obligation to make any payment?

Mr. Roe answered that's correct.

Mr. Hong remarked that more concerning than the unpaid amount was the fact that this property remained fallow for all this time.

Chair asked if there was any other discussion. Hearing none, he asked for an amended motion to extend the deadline to June 30, 2022.

Ms. Seddon said that since she made the motion, she agreed to amend the motion to change the rescission date to June 30, 2022.

Ms. Evans said she made the initial second and she agreed with the amended motion.

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

Ms. Prescott-Tate said that first there must be a motion to amend. Then they take a vote on whether to approve the motion to amend. The motion to amend has been approved. Now they need to vote on the motion as amended.

Chair asked if anyone was opposed to the amended motion.

Mr. Gomes and Mr. Tabata opposed. Chair with reservations.

Motion approved. Vote: 8/2, Chair with Reservation; No votes, Mr. Gomes and Mr. Tabata

2. Request for Approval for Pioneer Hi-Bred International, Inc. Under General Lease No. S-4741 to Install Photovoltaic Panels on Certain Structures in Kekaha, Kauai, Tax Map Key (4) 1-2-002:042

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

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Mr. Roe said he had no presentation but was available to answer questions.

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

Mr. Dalton said there were none.

Chair asked if there was any discussion.

Mr. Hong asked if it's a ten-year lease with the right to purchase after ten-years by Pioneer, the lease actually ends in 2030. If the lease were not to be renewed who has liability on the remaining lease of the PV panels?

Chair said that from what he read they would have the right to remove the panels.

Mr. Roe said that Pioneer would have the liability, but it was highly likely they would request an extension. How the board chose to respond was up to them but at some point, the board may receive a request to extend the lease.

Mr. Hong said he just wanted to make sure ADC doesn't have any liability in the event it's not extended; any liability for the remaining lease of the PV panel with RC Energy.

Mr. Roe said the agreement was with Pioneer. The actual request was to obtain consent of ADC as the landowner for permission to install the PV system and remove it if necessary. That would be ADC's only obligation under this.

Ms. Evans asked if the purpose of the panels was to power the equipment like pumps Pioneer uses for their agricultural purposes?

Mr. Roe said yes, on site. There won't be any exportation of power.

Chair asked if there was any other discussion.

Mr. Manuel said he had a few questions. Is this kind of like a sub-license? Has ADC issued these prior or was this the first time that the board has taken an action like this?

Mr. Roe said, to his knowledge, it's the first time.

Mr. Manuel said maybe another thing for the policy group to consider was sub-licensing criteria and some of the liability issues that Mr. Hong mentioned. One of the concerns he had was if there was language that protects ADC as the "landlord" if the lessee defaults on their lease. Then the lessor, which was the utility, cannot come after ADC for the remaining lease payments. That's important to build in before anything is approved, at least that's his concern. Lastly, there were citations to the actual lease document. It would be nice to have the whole lease attached as an exhibit. He has made this request prior. It's so they can understand the context of the entire structure of the lease. At least for him it would help him understand the agreements in place and if other conditions exist that could cover some of these liabilities.

Mr. Gomes said Mr. Manuel asked the questions he was going to ask.

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Mr. Manuel stated to the Chair he doesn't know if he needs to make an amendment to the motion, but the request was to approve the document as drafted. He's wondering if the AG could work with RC Energy to add a condition that we're not responsible for defaulting on that license agreement or that sub-license agreement as the landowner. He's not saying Pioneer will, but it's more of a liability issue so ADC's not stuck with the bill.

Mr. Gomes added it's a safety net.

Chair asked if Mr. Manuel's motion would be to put this on hold?

Mr. Manuel said he would say it's a recommendation to Mr. Haraguchi or Mr. Tabata to consider as an amendment to work with the AG to discuss and negotiate with the Executive Director and RC Energy to protect ADC as the landowner from potential liability if lease payments were not made during the license term.

Mr. Roe said Mr. Miller of Corteva was present, and he could speak to the issue if the Board would care to hear from him.

Chair responded, absolutely.

Mr. Dalton asked Mr. Miller to please state his name and organization.

Mr. Miller stated he's from Corteva Agri Sciences dba Pioneer Hi-Bred, and the landlord waiver outlined that ADC would not be liable for any payments in the event Pioneer was not able to make payments to RC Energy or if they default on their lease. He thinks that protection was built into the landlord waiver Pioneer was requesting ADC to sign upon board approval.

Mr. Manuel asked Mr. Miller if he was talking about the waiver that was attached to the submittal because he doesn't see what provision talks about a waiver and asked Mr. Miller to explain that to him. It doesn't talk about payments in items 1, 2 or 3, unless he's not understanding the waiver document.

Mr. Roe said he has to take a look at it.

Mr. Manuel said the first bullet point says we consent to the operation/installation. The second one says if for any reason it's...

Mr. Miller interrupted, if we're unable to pay our lessee, ADC guys wouldn't consider it a fixture ...

Mr. Manuel apologized and said he had to finish reading till the end of the sentence. This was still something for the policy committee to consider, how we handle sub-licensing situations in the future.

Chair asked if there was any other discussion. Hearing none, he called for the vote. There were no objections. Motion approved. Vote: 10-0

3. Request for Approval for Pioneer Hi-Bred International, Inc. Under License Agreement No. LI-K0803 to Construct a Critical Equipment Storage Building in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)

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

Mr. Roe said he had no presentation but was available for questions.

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

Mr. Dalton said there was no one.

Chair asked if there was any discussion.

Mr. Gomes said this was another submittal he would have liked to see pictures, but it does say 272.72 untillable acres. What were the untillable acres; what does it look like; what was the footprint.? Does the requestor have a conservation plan to say that they're going to keep the fuel load down, in other words the vegetation was not going to overrun the property, just in case there's a brushfire, it will cause issues to the neighboring farms or residents in the surrounding area. He's just curious, what's untillable; what does it look like; what was their conservation plan; can animals be put on it?

Mr. Roe said all the major tenants have conservation plans. He couldn't tell you what the plan says for untillable acres, but that conversation plan was approved by the board although he could not say when. There were a number of board actions and amendments to this license. He would have to go back through them to get an accurate answer. As far as animals, this again was something the policy committee will be looking at. The Kekaha area was under a clean water act settlement agreement and one of the things they test for was enterococcus. Having animals out there would potentially affect ADC's compliance with that settlement agreement.

Mr. Gomes said that would be good for board members to know; to look at the conservation plan he would have a little more background.

Mr. Roe said understood.

Chair asked if the building was going to be used to help the incubator farmers for their operation?

Mr. Roe responded, no it would be used for storage of planters, tractors, items critical for their operation and to do maintenance of equipment.

Chair asked if ADC already has approved buildings for areas in Kekaha.

Mr. Roe responded, yes.

Mr. Hong stated he saw on the plan concrete pads on the outside of the building, and he assumes the building also sat on a concrete pad.

Mr. Roe responded he believed so.

Mr. Hong said he asked because if they were using it for maintenance, do they have a hazmat plan in case there's spillage of oil, fluid, degreasers and things like that? Would they be required to do a site survey, a tier 1 environmental assessment of the site?

Mr. Roe said he doesn't believe so, there's a section in the submittal directly on Chapter 343 and this act falls under ADC's exemption class 3. ADC could require it.

Mr. Hong said if they're going to do maintenance, maintenance facilities tend to be big polluters if they are not well kept. That would be his recommendation.

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Mr. Manuel said that was also his concern. We should build-in some environmental protection and mitigation considering the activities that are being proposed within the maintenance shed as a condition of this approval. The submittal specifically says there's no plumbing and bathroom, but for maintenance purposes it seems awkward that you don't have access to water, like for flushing of eyes, like a flush station for emergency. It doesn't make sense that this was going to be a workshop and there's no actual facilities for the people doing the repair and maintenance. Can it be confirmed by the tenants that this may be something they'll build in afterwards? How was this facility going to be operated?

Ms. Evans said one page of Corteva's presentation includes utilities, scope and location, septic, city water, exterior hose bits, men's and women's restroom, utility sink, electrical panel, interior lights, etc. So, it sounds like they are providing for these.

Mr. Manuel said the submittal says that none of that was being built now. That was in the presentation but the submittal itself says because of cost, there's no plumbing, basically minimal utilities and no water. That's why it's awkward that it was built into the presentation and now it's being cut out. It went from a \$450,000 project to an \$800,00 project. He's wondering how those shifts happened and is it seriously something they should be agreeing to, knowing there are potential safety issues with this kind of structure without the amenities.

Mr. Roe said that Mr. Miller was still present and could speak to this.

Mr. Miller said he understands the concerns. The original scope of the project was to include a maintenance shop having a bathroom, eye wash stations, all that stuff. After they went out for initial bids, they realized the cost structure in Hawaii is much higher. They reduced the scope of the building being strictly for equipment storage. No maintenance activities will occur in the facility and there will be no chemical storage in the facility; it is strictly for equipment storage. The 5000 sq. ft. concrete bed on the interior of the building will allow them to contain any oil leaks that may occur from equipment, but no maintenance activities will take place there.

Mr. Manuel thanked Mr. Miller and said that's very helpful.

Ms. Shimabukuro-Geiser said she had a question for Mr. Roe. Was the attachment with the high-level plan from Corteva given to the board as an idea of the footprint and the layout of the equipment storage facility?

Mr. Roe said that was the first document received from Corteva and he thought it was important for the board to see the change. The second schematic reflects what the redesign would look like.

Ms. Shimabukuro-Geiser suggested that if there was deviation from the board submittal a presentation should be done and brought up to the board before discussion. A lot of the questions could have been avoided if it was stated that the attachment now excluded this information.

Mr. Manuel said the rent shown was for tillable and untillable so he's curious when adding commercial improvements or structural improvements was that considered within the aggregated tillable or untillable fee or was rent readjusted. He's trying to understand how the base fee of a license was factored in when adding value to the license. He asked if there was standard language in our licenses that post-license period the State basically owns the property or the improvements that were built on it. He just wanted to confirm that it's a standard condition in our license documents.

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Mr. Roe said to look at page 20, the second page of the submittal under “Improvements”, where it’s noted, “The ownership thereof shall be in the 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 or shall be removed by LICENSEE at LICENSEE’s sole cost and expense.”

Mr. Manuel asked then the appraised value of our licenses, were we factoring that in or was that just considered a part of diversified agriculture?

Mr. Roe said that it would still be considered diversified ag, he does not think that we would change that just because they want to build a building on this. He doesn’t think this was on land that’s currently characterized as untillable.

Chair asked if Ms. Prescott-Tate could look into our lease agreements referring to hazardous waste and if ADC is protected.

Ms. Prescott-Tate said that our license agreements do contain a provision about the introduction of hazardous waste onto the property, making the tenant liable. We run into the problem of not knowing how long the hazardous materials have been on the property, but if they can, to a reasonable degree of certainty determine that it was the licensee that placed the hazardous waste onto the property, they would be responsible for the cleanup.

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

4. Request for Approval to Renew Revocable Permit No. S-7299 Issued to Senter Petroleum for 0.5 Acres, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)

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

Mr. Roe had no presentation.

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

Mr. Dalton said there were none.

Chair asked if there was any discussion.

Mr. Manuel said he thinks he mentioned it last time this revocable permit was requested last year. He asked if this petroleum facility supports agricultural uses and was in alignment with our mission to license and support agriculture in this region?

Mr. Roe responded he believes it does. The Executive Order specifies for agriculture and related purposes. This is the only gas station nearby. The other gas station is four miles away. All of the tenants utilize this station if they’re not bringing in their own.

Mr. Manuel said he just wanted to put this on the record, that this was consistent with ADC authority. He knows it mentions we’ve considered long-term disposition of this tenant, but can we move to do that or was there a reason why we’re still doing revocable permits for this facility?

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Mr. Roe said he's waiting on the request from Senter Petroleum. But the other issue, if you notice in the submittal there were a couple things that the Best Management Practices (BMP) inspection turned up. He would like these issues cleared up before a long-term license was issued.

Mr. Manuel stated he totally understands that, but could we make those conditions of a long-term license? He has a year to year incentivizing him to clean it up versus saying they need to clean it up, or we're going to cancel this and we need you to move to a long-term lease. Either way, but he's just concerned about the long-term disposition potential.

Chair asked if they have regular inspections of the fuel storage tanks and the facility because he noticed some of their BMPs were deficient.

Mr. Roe responded that they do. BMP inspections were conducted by Cardno one of our contractors, and they are the ones that turned up the deficiencies. Cardno will be going out to conduct this year's inspections starting next week, for all of our tenants for BMPs and conservation planning.

Chair asked if this was done yearly for our tenants?

Mr. Roe said as of last year, yes.

Ms. Seddon asked if there was any conversation with the tenant on renegotiation on the rent?

Mr. Roe responded none yet but that will be part of the conversation when discussing a new RP.

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

5. Request for Approval to Renew Revocable Permit No. S-7004 Issued to Gary Smith for 2,780 Square Feet, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por)

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

Mr. Roe had no presentation but was available to answer questions.

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

Mr. Dalton said there were none.

Chair asked if there was any discussion.

Mr. Gomes asked for the 2,780 square feet, it seems he's had this property since 1996, about 26 years. Why doesn't this qualify for a long-term lease? He's had it for 26-years and it's only 2,700 square feet.

Chair said he remembered this last year.

Mr. Roe responded that he believed Mr. Nakatani said this parcel was not eligible for a long-term lease, but he does not recall why.

Mr. Haraguchi said wasn't this part of the easement?

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Mr. Roe said no, this was part of the property that's along the ditch that abuts their back yard right up against the ditch.

Mr. Haraguchi said he thought Mr. Nakatani said it was because of an easement that we shouldn't go into a long-term lease.

Mr. Roe said he doesn't recall that.

Mr. Gomes asked if Mr. Roe could find out the answer for him.

Mr. Manuel said he thinks he asked about this last year and asked as "remnant" parcels of the state if this could be fee-simple for the \$156 we collect and staff's time to bring this every year to us for approval. Is it worth the effort or is it better for the state to look at these remnant parcels and give them to the lease holder? Was it worth the amount of collective effort for this square footage to continue to work through this issue? He knows these are ceded lands, but there was a process to dispose of remnant parcels and this may be something to consider so we don't have to manage these small pieces of land.

Mr. Roe said he recalls Mr. Manuel making a recommendation on a different point to find an easier way to dispose of these RP renewals. What they originally wanted to do was to put them in a matrix and deal with them on January 1st, but that was discussed with our then Deputy Attorney General who spoke with the DLNR's AG and DHHL's AG and they strongly advised against doing that. All of them tend to be different types of disposition and the thinking was that it needs to be dealt with on an individual basis. He can chat with Mr. Nakatani on how we can more efficiently deal with these renewals.

Chair stated we have to be careful. There's a similar situation around Whitmore Village. People were encroaching and they were using the land and some of them were big encroachments.

Mr. Roe said to his knowledge Whitmore Village was not ceded lands and they don't have permission to use it. In this case, the requester had permission and he took good care of the parcel.

Mr. Manuel said he appreciated the follow-up. This may be something for Deputy AG and Ms. Kaichi. DLNR does annual renewals in batches, so he doesn't understand the pushback for ADC. Perhaps Mr. Nakatani can assist, so the revocable permits were looked at island by island for efficiency purposes.

Mr. Gomes said exactly, island by island. There were too many for DLNR to go on a case-by-case basis.

Mr. Manuel asked if DLNR did renewals case-by-case?

Mr. Gomes said sometimes. If they brought the whole island, then they'd look at the whole island and they would question accordingly. When they throw four or five hundred RP's in front of you, it's too much.

Ms. Evans asked if the DHHL 30% for former sugar lands was sketchy. Do we pay \$52 a year to DHHL or was that only upon sale of the property does 30% of the sale proceeds go to DHHL? Mr. Manuel might know the answer.

Mr. Manuel responded that he hopes they were paying the 30% annually to DHHL because it's required per statute.

Ms. Shimabukuro-Geiser concurred that it should be annual.

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Mr. Manuel said there was one JV from ADC and DOA and any other state tenant on former sugar lands.

Ms. Evans asked if it was batched?

Mr. Manuel said it usually was batched annually based on all the dispositions. He asked staff what the process for that was?

Mr. Roe stated he doesn't deal with that and would have to check with management.

Mr. Hong asked why they can't, as a board, delegate the authority for the RP like in this case, give the Executive Director (ED) the authority to renew it for five years and then bring it back to the board in five years, instead of every year. It can be on a case-by-case basis. So, like in this case, the board can approve the recommendation and then give the ED the authority to continue for five years.

Mr. Gomes stated he agreed with Mr. Hong.

Chair asked Mr. Roe to make note of this.

Mr. Manuel said that Ms. Evans was the mover of the motion. He asked if she would entertain the amendments.

Ms. Prescott-Tate interjected that it should be an agenda item and also to delegate authority to the Executive Director.

Ms. Evans said good point since that was one of the audit concerns to document delegations from the board to the director.

Ms. Shimabukuro-Geiser said she had a question for Mr. Roe. Mr. Roe mentioned that Mr. Nakatani had stated this lot was being used as an easement and that's why no long-term lease could be issued. If we need access was that why it stays an annual RP? Does ADC use our right to access behind that property?

Ms. Kaichi asked the board to look at the picture in the submittal. You can see that with any irrigation ditch you need so many feet on either side so that the operator can take care of the ditch. A drainage canal, same issue. KAA is ADC's ditch and infrastructure operator, they need to have access. This is not a remnant. We need to have the right to enter, and we have that right now. In addition, ADC does not actually own that, DLNR has that as a set-aside. This was something that would have to be brought before DLNR and we could make that recommendation to DLNR. At this point we don't have the fee. This will be brought up by LUC. As for why we have kept it as RP's, we could do a license, but in this case, Mr. Smith doesn't farm, he gardens and so if we give him a long-term license that recognizes that he does gardening and that his gardening not only benefits him but it benefits ADC. As opposed to a commercial producer who has a license that really benefits their operations. If we can make that distinction, then it's a possibility. Mr. Smith keeps the growth away from the ditch; he made it easier for KAA to maintain the property. Maybe for the next request by Mr. Smith these questions can be answered and presented to the board so that every year these same questions don't have to come up.

Mr. Manuel asked if Ms. Kaichi could address Ms. Evans inquiry on the DHHL 30%. He does not want to speak on how ADC handles the payments.

Ms. Kaichi said Mr. Tashima our fiscal officer was available, and they have been working on this. She said ADC withheld payments for a while because they didn't know what funds go where. What they have been

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trying to do is work with the DOA and could use Ms. Shimabukuro-Geiser's help. ADC hoped to get separate appropriation accounts so that when ADC receives revenues, they can split it right then and there and not run into the problem of spending custodial money. Staff has told her, and the auditors have confirmed that custodial money has not been spent. But it makes her nervous to comingle custodial money with all the money. What they want to do, is to account for the custodial money and not touch it by having separate accounts for that. Mr. Tashima has been here for half-a-year and has not been able to get the accounts. If Ms. Shimabukuro-Geiser could meet separately on this issue.

Ms. Shimabukuro-Geiser said not to belabor the question but the reason why she brought the question up was the department of Ag has irrigation systems; ditches they maintain. But if you have intermittent private landowners along the ditch, they don't have any authority once it's private land. Mr. Hong might recall this. DOA was criticized by the public about the flow of the ditch they maintain. If you have intermittent private landowners along the ditch, they don't have authority once it's private land. They can only maintain, have access, and do work on the lands under their jurisdiction. That's just to add to what Ms. Kaichi said, we need access. Whether it's KAA, DOA, or Waiahole Ditch, they need to have access. If you have a mix of private with state lands, a private landowner that doesn't maintain it properly, it does impact the flow.

Ms. Kaichi said she distinctly recalls the Hamakua ditch where they did condemnation action for each of the little segments to make sure that no ditch owner could cut off water when it hit their property. It was important they made sure the government, or the ditch owner owned every piece of that ditch so that no one owner could cut off any user below them. On the Kekaha ditches and drainage canals, it's not an issue because it's all Kekaha sugar, all from DLNR and the fee was never in the hands of private owners.

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

6. Request for Approval to Renew Revocable Permit No. RP16-02 Issued to Andros Engineering for 8,800 Square Feet (Building F) of Covered Warehouse Space in Whitmore, Oahu, Tax Map Key (1) 7-1-002:004 (por)

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

Mr. Roe had no presentation but was available to answer questions.

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

Mr. Dalton said there were none.

Chair asked if there was any discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

7. Request for Approval to Renew Revocable Permit No. RP-PU-2101 Issued to Loan Lovan for 60 Acres, More or Less, in Waialua, Oahu, Tax Map Key (1) 6-5-001:056 (por)

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

Mr. Roe had no presentation but was available to answer questions.

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

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Mr. Dalton said there were none.

Chair asked if there was any discussion.

Mr. Manuel asked if the structures referenced in the submittal were housing?

Mr. Roe stated they were not housing.

Mr. Manuel asked if ADC had a copy of the private water agreement with Dole.

Mr. Roe said ADC had a generic agreement but doesn't have a signed copy of their agreement with Dole.

Mr. Manuel said in these private agreements, if we're supporting our tenants, we should make sure they actually have access to water, just to advocate for our tenants, ADC should make sure that no private contractual agreement limits their ability to access water. He requested that the agreement be attached the next time a request comes to the board.

Mr. Gomes stated this tenant seems to be a good steward of the land, why isn't he considered for a long-term agreement?

Mr. Roe responded Mr. Lovan would need to make the request. Mr. Roe had suggested that he should do so especially since our rates are cheaper than Dole's rates. However, Mr. Lovan does have to take care of some of the structures on the property.

Chair asked if the tenant had addressed the other concerns?

Mr. Roe said the fire pit was gone and the farm vehicles had been removed; there was progress.

Chair asked about the conservation plan and insurance.

Mr. Roe said there was no conservation plan yet because our RP's do not require it. It was required as part of a license. We do have his insurance on file.

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

E. Old Business

1. Request for Approval to Terminate Revocable Permit No. RP 1802 Issued to William J. Sanchez for 419 Acres, More or Less, of Unit A, and Issue a New Revocable Permit for up to 208 Acres, More or Less, in Kalepa Kauai, Tax Map Key (4) 3-9-002-020 (por)

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

Mr. Roe rested on his submission but noted that the last sentence of paragraph 1, under discussion on page 50 should read, *the difference on rent revenue will be a maximum of \$20,145*. This reflects some of the land has a 30-degree slope, that would probably be untillable or maybe orchard, depending on how the conservation plan comes out. The second thing was that we sent the notice to Mr. Sanchez via certified mail last Wednesday. While we have not received the return receipt, the online tracking shows that the letter was

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undeliverable. Mr. Sanchez did receive an e-mail notification of this meeting with a link to the agenda, but Mr. Sanchez has not received the letter we sent.

Chair stated that when Mr. Sanchez testified before the board, he stated he did not want to give up the property.

Mr. Roe confirmed that Mr. Sanchez does not want to give up the property, but he does not want to pay the diversified Ag rate. There wasn't much diversified Ag property in Kalepa but this property was part of what was available.

Mr. Gomes asked if there was a difference in the rate, valuable land to grow crops rather than pastoral? What is the pastoral rate that we would charge him?

Mr. Roe said that under a license he believes it was \$30 per year, under an RP it's \$15.

Mr. Gomes said an RP would be better for a pastoral operation. \$30 was pretty stiff but understands where Mr. Roe was coming from.

Mr. Manuel asked if we could add some kind of annual reporting from all of the tenants on what they're producing on local food to meet the statewide goals. If we can start to build the metrics, it's really important. We should capture local food production and even exports, so we have a baseline. We should start now because the longer we wait the longer the data gap. He's continuing to advocate that it be a standard condition in all of our items and put the burden on the tenant to help us collect that information.

Chair stated that the Policy Committee was working on that too.

Ms. Evans said she's writing as fast she can!

Chair asked if there was any other discussion. Hearing none, the Chair called for the vote. There were no objections. Motion approved. Vote: 10/0

F. Executive Director's Update

- Whitmore Food Hub – working with DAGS to release the \$28,000,000 that was allotted for this project by the legislature.
- REPI/Encroachment Partnering – Whitmore Annex Update: ADC in discussion with Navy to sell restrictive use easements on ADC lands surrounding Pearl Harbor-Hickam.
- Legislative Update - 2022 Bill Tracking:
 - SB 2480 – Relating to Wahiawa Irrigation System.
 - SB 3096 – Making an emergency appropriation to DOE for an agriculture innovation center.
 - SB 2473 – Relating to Economic Development, transfers ADC from DOA to DBEDT.
 - SB 2418 – Relating to Agriculture – amends the focus, scope and management of ADC and appropriates funds for a consultant for planning, an accountant, and security for ADC property.
- Financial Audit Report. The State Auditor completed the draft audit on February 2, 2022.

Mr. Hong asked when the final audit report will be out and if the draft was available to the staff and can be made available to the board?

Mr. Nakatani said Ms. Kaichi can answer that.

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Ms. Kaichi said they met with their accountants, KMH, to arrange a meeting with Accuity the legislative auditor's accountant, to discuss any issues, or any errors or questions they may have on the draft. The meeting was scheduled for today. They will ask if the draft can be shared with the board. It may come with a caveat that the board does not make it public. But she'll talk to them.

Chair asked if SB 2473 will come before the board to discuss or is it something that just happens.

Mr. Nakatani said the bill has a long way to go. It passed the first committee, economic development and agriculture in the Senate and goes to Ways and Means, then it crosses to the other house. It has a ways to go. We're waiting to see which bills cross over and will give an update on those.

Chair said he was concerned, he understands both sides, but he feels ADC was intermingled with DOA, so he has concerns.

Mr. Nakatani said the board members can email him if they have concerns.

Ms. Evans stated that Rep. Perruso was in the audience, and she asked for an update on the fire, whether it was on ADC lands.

Mr. Roe responded he was unaware of a fire on ADC lands.

Mr. Manuel said that Tiera Bartolotti asked if motions can be stated in the chat just to make sure the public has a chance to address the board.

Mr. Dalton said that the chat function was normally disabled so that was an error on his part.

Ms. Prescott-Tate said that if a member of the community wishes to have an item discussed at a board meeting, they should request that the item be placed on the agenda.

Mr. Manuel read from the chat that the audio was cutting out that's why she was asking the "motions" to be put in the chat. He thinks, moving forward it should be stated in the opening of their meetings that the chat function has been disabled.

Ms. Prescott-Tate suggested she call in rather than join virtually if the connection was intermittent.

Mr. Manuel requested that ADC provide an annual update, a comprehensive review or status update of ADC lands, the tenants, the stewardship, and who was in default. He's a visual person and would like to see a list from each island that shows all ADC lands, which ones are leased, which ones are vacant, an overview for the Board to update them annually. It will help them to track where things are at.

Mr. Nakatani said that we are waiting to purchase the Yardi computer program that will organize ADC property. But it can be put on the ADC's annual report.

Mr. Hong said he wanted to go back to SB 2473 because it was something that ultimately, the board decision should be reflected.

Mr. Manuel said he also feels that was something that should come before the board.

Chair said he agrees although it's still early on.

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Mr. Nakatani said he just wanted the board to know if they want to get involved with legislation, they should pick a point person because the legislature moves quickly.

G. Adjourn

Chair asked for a motion to adjourn.

Motion to Adjourn: Mr. Hong, Second, Mr. Manuel.

Hearing no objection, the meeting was adjourned at 10:29 a.m.

Respectfully Submitted,



Lynette H. Marushige
Secretary