

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on May 18, 2022

Via Zoom Teleconference and/or In-Person at 1428 S. King St., Honolulu, HI 96814

Approved: June 15, 2022

ADC BOD meeting

1 *Pursuant to section 92-3.5, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board*
2 *members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person*
3 *meeting location available for public participation at the State of Hawaii, Department of Agriculture*
4 *(HDOA), Hale Waiolama Board Room, 1428 S. King St., Honolulu, HI 96814.*

5
6 **Members Present, virtually:**

7
8 Frederick Lau, City & County of Honolulu, Chairperson (Chair)
9 Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans)
10 James Gomes, Maui County Member (Mr. Gomes)
11 Lloyd Haraguchi, Member-At-Large (Mr. Haraguchi)
12 Glenn Hong, Member-At-Large (Mr. Hong)
13 Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
14 Karen Seddon, Member-At-Large (Ms. Seddon) – joined the meeting at 9:20 a.m.
15 Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-
16 Geiser)
17 Lyle Tabata, Kauai County Member (Mr. Tabata)
18 Warren Watanabe, Member-At-Large (Mr. Watanabe)
19

20 **Counsel Present, virtually:**

21
22 Delanie Prescott-Tate, Deputy Attorney General (Ms. Prescott-Tate)
23

24 **Staff Present, virtually:**

25
26 James Nakatani, Executive Director (Mr. Nakatani)
27 Ken Nakamoto, Project Manager (Mr. Nakamoto)
28 Lyle Roe, Property Manager (Mr. Roe)
29 Lance Tashima, Administrative Services Officer
30 Lynette Marushige, Executive Secretary
31 Mr. Jason Azus-Richardson, IT Specialist
32 Mr. Stephen Dalton, IT Specialist (Mr. Dalton)
33

34 **Guests Present, virtually:**

35
36 Kimi Makaiau, University of Hawaii (Ms. Makaiau)
37 Ronald Weidenbach, Hawaii Fish Company (Mr. Weidenbach)
38 Josh Uyehara, Kekaha Agriculture Association (Mr. Uyehara)
39 Mike Faye, Kekaha Agriculture Association
40 Stacy Ferreira
41 Scotty Wong
42 Rachel R. Cotton
43 Parker Spencer
44 Drew Hardman
45 Darlyn Chau
46 Linda Murai, HDOA
47 Russell Tsuji, DLNR
48 Farmer Dave
49 RR0109
50 “Senate Ways & Means”
51 “Public Testimony”

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1 **Guests Present, physical location:**

2 None.

3

4 **A. Call to Order**

5

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

7

8 **B. Roll Call**

9

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

15

16 Roll call: Ms. Evans, Mr. Gomes, Mr. Haraguchi, Mr. Hong, Mr. Manuel, Ms. Shimabukuro-Geiser, Mr.
17 Tabata, and Mr. Watanabe acknowledged attendance with no guests present. Ms. Seddon joined the
18 meeting at 9:20 a.m.

19

20 **C. Approval of Minutes**

21

22 Chair deferred approval of the April 20, 2022 board meeting minutes to the next meeting.

23

24 **D. New Business**

25

26 **1. Presentation by University of Hawaii Community Design Center (UHDCD) Regarding the**
27 **Whitmore Food Hub.**

28

29 Ms. Makaiiau of UHDCD gave a presentation on the Whitmore Food Hub.

30

31 Chair asked for public testimony. There was none.

32

33 Chair asked if there was any discussion.

34

35 Mr. Manuel thanked Ms. Makaiiau for the presentation. It’s good to see community engagement built
36 into the conceptual design. He had questions on the design strategy. On the phase 1, the splitting of the
37 12 acres and the Hawaii Department of Education (DOE). What was the strategy of a triangular piece
38 from a land use perspective and internal road work? Is that based on existing road networks or wouldn’t
39 we want to potentially re-design it and take advantage of that triangle. It looks like there was only
40 14,000 sq. ft. for the High-Pressure Processing (HPP) machine facility but it’s part of a 12.3-acre parcel.
41 He’s just curious what will the rest of the space be used for.

42

43 Ms. Makaiiau said the intent of this space, first of all you can see the topographic lines, it gets quite steep
44 as you go towards the back of the property. Currently, she believes there is a farmer or two doing ag but
45 it’s very terraced where they are. This wasn’t a decision that they had. As far as the useable space, this
46 was kind of what was initially in the original master plan. It kind of identified where the core of the
47 food hub would be. The original master plan, and what was approved in the environmental assessment
48 (EA), shows much more potential for expansion. There originally was a larger warehouse. But after
49 consideration of the community feedback, we incorporated their suggestions into the design. At one
50 point we considered cutting off a corner of the triangle but in terms of securing the site it didn’t really

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1 make sense. They had a suggestion of including that area and the private operator or the private partner
2 could come up with creative ways to utilize the space. In one area of their report they talk about site
3 security. There's also the potential for the Hawaii Department of Transportation (DOT) to build a
4 pedestrian bridge coming across from Wahiawa town; there's a couple of places under consideration
5 where it could be. One of the areas was close to the Wahiawa police station. In consideration of where
6 that would come across the site, they thought it would make more sense to have the private partner
7 secure their facility as needed and work with ADC and DOT to allow for safe pedestrian passage.
8

9 Mr. Manuel found the internal road network interesting from a planner perspective. The other question
10 he had was, this is a new conceptual plan revamped off of the original final EA so is it more or less
11 dense? Are we still within the final framework of the EA so there's no need for an additional EA?
12

13 Ms. Makaiau said yes very much scaled back and again that was the feedback from community who
14 were very adamant about maintaining the character and nature as well as not contributing to things like
15 noise and traffic. One of the main components that was removed was the focus of retail and commercial
16 activity. The original master was a gorgeous plan, it may not have necessarily fit into the character of
17 the community. Those designers had intended for the space to kind of mimic Dole Plantation, where
18 tour buses would come in and there would be site tours and we heard loud and clear that the community
19 did not desire that. However, there has been some interest in the possibility of occasional farmers
20 market. That's still approved in the EA, some of that type of activity. It would be up to ADC and
21 future partners how to work with the community and nail down what would be acceptable.
22

23 Mr. Manuel asked what was the total water demand for HPP processing, the DOE centralized kitchen,
24 and other types of uses?
25

26 Ms. Makaiau said she doesn't have that number off the top of her head, but it's in one of their reports so
27 she'll follow-up and get those numbers. It comes down to the size of the machine. The machines
28 themselves vary greatly in size and the water used in those pressurized chambers can be recycled.
29

30 Mr. Manuel asked if the DOE centralized kitchen was a part of the original EA or does she see them
31 having to go through their own compliance.
32

33 Ms. Makaiau said they met with the former Office of Environmental Quality Control to go over the
34 plans and it doesn't seem they need a new EA. It still falls within the proposed use, floor plans, and size
35 of the buildings.
36

37 Mr. Gomes asked her if she knew what the timeframe would be for the conceptual plan to be reality.
38

39 Ms. Makaiau said DAGS would be responsible for the Phase 1 infrastructure. DAGS is in the process
40 of selecting a consultant. She understands that once a consultant is selected, they would go through pre-
41 design, design, bidding process for a contractor, and permits. They don't have numbers but anticipate
42 construction starting at the end of 2024, early 2025. She would defer to DAGS. In terms of Phase 2,
43 the solicitation for the HPP, Mr. Nakamoto will be providing the board with an update on the Request
44 for Proposal (RFP) in order to get a private partner, the timeframe was 12 to 15 months to get a contract
45 in place. If the private contractor were to go ahead and either renovate or do construction there, they
46 may have to bring in temporary infrastructure. They were anticipating that if full infrastructure wasn't
47 available, they do have rough costs of what temporary infrastructure would be to at least get the HPP
48 facility up and running. That's in their report. And they had verbal discussions with DOE but there is
49 no lease agreement negotiated so she wouldn't have a timeframe for that. There is currently no funding

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1 allocated for any kind of renovation or construction of the warehouses for workforce housing so that is
2 3+ years down the road before any planning happens for that.

3
4 Mr. Haraguchi asked that when they did their study on the master plan he assumed it included potential
5 users of the HPP. How much interest is there really in having a unit like this?
6

7 Ms. Makaiiau said the HPP machine was brought to the attention of the State by potential users, Denise
8 Yamaguchi from the Hawaii Ag Foundation, and Ellie James of Mana. There's a handful of agricultural
9 producers and supporters that felt this was technology that needed to be in Hawaii. They approached
10 some of the elected officials to look into it. The interviews they have conducted with tolling across the
11 country and Canada, we foresee a great impact on what this type of technology can provide especially
12 being as isolated as we are. They had a consultant do a preliminary economic analysis in terms of
13 investment, break even, looking at what the existing market is. That information is included in their
14 report. They're also working on a broader economic study, which is challenging because this is brand
15 new. The best that they are doing is taking existing precedent from the United States and they're also
16 looking at other areas like New Zealand who had implemented this technology and how their markets
17 grew. Whoever ends up operating this, as well as ADC, should partner with the manufacturer to do
18 more outreach and marketing and explain to the different users how their businesses can apply this
19 technology and what the impact would be. There are a few different recommendations provided in the
20 report, but we're hoping this economic feasibility study and market analysis that we'll have ready in a
21 couple of months will shed more light into what the potential will be here in Hawaii.
22

23 Mr. Haraguchi said economic feasibility is really important. Does Hawaii have sufficient farmers to
24 provide the produce to create an added-value product?
25

26 Ms. Makaiiau said Hawaii has the land, they have the potential, but it's not going to be ADC alone that
27 can do this. There has to be a lot more involvement and participation from other agricultural support
28 businesses and landowners that can provide space for farmers to understand how they can scale their
29 businesses. If there are value-added producers that can turn those avocados into some other value-added
30 product, they do have the potential. Again, she'll defer back to the precedent studies that they're
31 looking at, how did other areas handle that in terms of growing their produce or their agricultural
32 products once the technology was implemented.
33

34 Mr. Haraguchi said going through some of the information, there are different sizes of HPP machines,
35 and one machine can process 6,000 pounds of produce per hour.
36

37 Ms. Makaiiau responded, not produce but value-added.
38

39 Mr. Haraguchi said, value-added so 6,000 pounds.
40

41 Ms. Makaiiau said yes and referred to a page in her presentation showing the types of products the HPP
42 machine can produce.
43

44 Mr. Haraguchi said 6,000 pounds in an hour, that's hard to imagine.
45

46 Ms. Makaiiau said each cycle is only a few minutes, roughly 5 or 6 minutes per cycle. Depending on the
47 size of the canisters. The product has to be in its final packaging before going into the machine, but the
48 cycles are pretty quick. Interestingly, she spoke with not only the tollers, the businesses that house these
49 machine that offer this service for a fee, but they also spoke with users where some of the smaller

1 machines, some of the businesses turn them into self-serve machines where they actually do the entire
2 process themselves.

3
4 Mr. Hong asked if she had the link to the HPP report.

5
6 Ms. Makaiau said yes, she provided it to ADC, so she'll make sure that it gets to them if it hasn't
7 already. She said it's a beefy document, but they tried their best to synthesize the information as
8 succinctly as they thought would be useful for ADC and the operator. Ms. Makaiau offered to present
9 more details in terms of the machine technology or the conceptual master plan to potential RFP bidders.

10
11 Mr. Hong asked to clarify that the HPP process was not applicable to fresh produce?

12
13 Ms. Makaiau responded, no it's not. There are certain requirements. Packaging is one. It has to have a
14 certain liquid content in order to be processed. This is primarily for value-added products. It's taking
15 raw goods and turning it into a new product; so, avocado into guacamole. The requirements are detailed
16 in the report.

17
18 Chair asked if there were any other questions. Chair thanked Ms. Makaiau and noted this was just a
19 presentation and there is no vote on this item.

20
21 **2. Request for Approval to Issue a Request for Proposal to Construct and Operate a HPP Machine**
22 **and Agricultural Facilities in the Whitmore Food Hub, Wahiawa, Oahu**

23
24 Motion to Approve: Ms. Evans, Seconded: Mr. Gomes.

25
26 Mr. Nakamoto said as Ms. Makaiau pointed out this was part of Phase 2 where we will be soliciting an
27 operator to operate the HPP machine as he presented last meeting, but he is open for any questions.

28
29 Chair asked for public testimony. There was none.

30
31 Chair asked if there was any discussion.

32
33 Mr. Gomes asked if after 7 years, they're committed for 7-years and ADC spends \$5.5 million, who will
34 own the machine?

35
36 Mr. Nakamoto responded that ADC owns the machine, as long as the lifespan, whatever the
37 manufacturer's lifespan we'll own the machine. Say we select an operator, and they fulfill their 7-year
38 term, but they don't want to do it anymore, we would solicit for a new operator or have the potential to
39 extend the lease or the agreement with the current operator if they wish to continue to operate.

40
41 Ms. Shimabukuro-Geiser said she saw the draft RFP, which was much better from previous drafts. She
42 said just a couple of questions. There is a 5-day protest and she's wondering if in the schedule and
43 significant dates, because this RFP involves several million...

44
45 Ms. Prescott-Tate asked if she could interrupt. She said we're not going to be going into the specifics of
46 the RFP right now because it's still a draft.

47
48 Ms. Shimabukuro-Geiser said ok, so when can she make recommendations to the draft.

49
50 Ms. Prescott-Tate said she can write them down and provide them to her anytime.

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Ms. Shimabukuro-Geiser said ok, she has a couple recommendations that she thinks would be in the best interest of ADC.

Ms. Prescott-Tate said just let her know and she'll work on it.

Mr. Manuel asked why they can't discuss it because it's not...well what's the issue.

Ms. Prescott-Tate said an RFP is supposed to be presented to everybody at the same time to give no one an unfair advantage of knowing what the procedure will be and when we anticipate putting it out there. So, until it's a final product, we don't want to give anybody an unfair advantage.

Mr. Manuel said well, since it's a draft he would assume you can talk about it but you're saying no.

Ms. Prescott-Tate said we don't want to put it out there until it's final.

Chair said that we do have an option to move to Executive Session.

Ms. Prescott-Tate said we could do that.

Mr. Manuel said that he has some general questions first before they do that if it's possible.

Chair said go ahead.

Mr. Manuel said if he's understanding it, we're asking for a minimum 7-years. What was the decision about the magic number 7 in this context and up to 35 years with an option for 20-year extension so what is the strategy in that?

Ms. Prescott-Tate said she thinks it would be better if they go into executive session to answer any of those questions because they're getting too much into the procurement issues, giving too much away.

Chair asked for a motion to move into executive session.

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

Board went into Executive Session at 9:53 a.m.

Chair called the meeting back to order at 10:33 a.m.

Ms. Evans said she would like to amend the original motion that she made prior to the Executive Session. It's a friendly amendment. Pursuant to HRS chapter 163D-4(8) to approve in concept to authorize the Executive Director to issue a request for proposal to purchase and operate an HPP and develop and manage a food processing facility in Wahiawa, Oahu. The motion does not include the conditions that are listed in the recommendation paragraph of the submittal. The motion does include that those items be deferred. Discussion and action on those items will be deferred until the next regular board meeting.

Mr. Gomes seconded the amended motion.

Chair asked if there was any discussion.

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1 Mr. Manuel asked to confirm that Exhibit A was not included in the motion.

2
3 Ms. Evans said that's correct.

4
5 Chair asked for public testimony. There was none.

6
7 Chair asked if there was any further discussion. Hearing none, Chair called for the vote.

8 Motion approved as amended. Vote: 10-0.

9
10 **3. Request for Approval to Renew Revocable Permit No. S-6814 Issued to Ronald P. Weidenbach**
11 **dba Hawaii Fish Company for 18 Acres, More or Less, in Kaena, Waialua, Oahu, Tax Map Key**
12 **(1) 6-9-001:003, :033 (por)**

13
14 Motion to approve: Mr. Gomes, Second: Mr. Manuel

15
16 Mr. Roe stood on his written submittal and was available for questions.

17
18 Chair asked for public testimony. There was none.

19
20 Mr. Manuel said he had a question for the applicant if he is available.

21
22 Mr. Dalton asked Mr. Weidenbach if he would come forward and identify himself.

23
24 Mr. Manuel said he had a couple of questions. In the staff submittal it says that to date, Mr.
25 Weidenbach has not signed the revocable permits from ADC. Why?

26
27 Mr. Weidenbach said the issue was that earlier there were questions about policies that said in the event
28 of any loss the payment would go to ADC rather than to himself. He said he's never seen such a clause
29 before, so he had questioned that. Subsequently the offer was reduced to 8 acres and only a portion of
30 the pond that they were currently farming so that made it unviable to proceed as a commercial farm.
31 This led to a decision that the best option to go forward would be to transfer the property to HDOA,
32 which the ADC Board subsequently approved as did the Board of Agriculture and most recently DLNR.

33
34 Mr. Manuel said, so basically you couldn't come to terms on the RP that was approved by the ADC
35 board and that's why you didn't sign the document.

36
37 Mr. Weidenbach said he wasn't actually aware that it had been approved by the board. But, yes, he
38 guessed that summarized it.

39
40 Mr. Manuel asked staff if we did not negotiate or come to terms, Mr. Weidenbach has no formal
41 document that was signed, and yet Mr. Weidenbach was still using the property.

42
43 Mr. Roe said that the tenant remained on the property under holdover status through the DLNR permit.

44
45 Mr. Manuel said he had a legal question. He thought that holdover permits were no longer allowed.
46 Maybe that's something legal can look into whether that's actually a practice that can continue,
47 "holdover" status. And maybe just another follow-up Mr. Weidenbach. Right now, how much water do
48 you use from the well on the property for your aqua-cultural activities because it's not in the record
49 anywhere.

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- 1 Mr. Weidenbach said he submits monthly water reports to the water commission and by memory
2 without having the document in front of him, he believes it varies seasonally from a low 70,000 gallons
3 per month to a high of perhaps 130,000 gallons per month.
4
- 5 Mr. Manuel clarified that he said he submits that to the water commission?
6
- 7 Mr. Weidenbach responded yes.
8
- 9 Mr. Manuel asked if he has a water use permit for that use.
10
- 11 Mr. Weidenbach said yes, he has an approved well. He said he put in the well.
12
- 13 Ms. Evans asked Mr. Roe about the recommendation. It states that the staff recommended the board
14 approve the land request noted above. Is that just the renewal of the revocable permit and is it a 30-day
15 permit and is that the DLNR permit or is that an ADC Revocable Permit?
16
- 17 Mr. Roe said that was the DLNR permit S6814 attached to the submittal as exhibit B.
18
- 19 Ms. Evans asked if ADC was able to renew an RP issued by the BLNR? Is that something we do, as
20 part of the transition from DLNR to ADC or HDOA?
21
- 22 Mr. Roe said, typically we do. He said there are a couple of others. One in Kekaha, Gary Smith but
23 he's made Mr. Smith aware that we are going to be updating that to an ADC RP at the next approval.
24 There may be one or two others.
25
- 26 Mr. Weidenbach said if he may clarify. He said they receive monthly rental bills from ADC which they
27 are current on, they always pay on time. They also have a security deposit with ADC for the property.
28 So, as far as the rent, they routinely make sure that it is paid on time.
29
- 30 Mr. Roe confirmed that.
31
- 32 Chair asked if there were any other questions. Hearing none, Chair called for the vote.
33 Motion approved. Vote: 10-0
34
- 35 **4. Request for Approval to Renew Revocable Permit No. RP17-01 Issued to Andros Engineering**
36 **Corporation for 132.25 Square Feet, More or Less, in Whitmore Village, Oahu, Tax Map Key (1)**
37 **7-1-002:004 (por)**
38
- 39 Motion to approve: Mr. Gomes, Second: Mr. Watanabe.
40
- 41 Mr. Roe stood on his written submittal and was available for questions.
42
- 43 Chair asked if there was any public testimony. There was none.
44
- 45 Chair asked if there was any discussion.
46
- 47 Mr. Manuel asked if staff had communicated with the Whitmore tenants about the HPP project and the
48 larger food hub? Do they know this is temporary use and once the project gets going we reserve the
49 right to not continue these revocable permits (RP's)? He just wants to make sure it's clear, so we don't
50 have any backlash when development starts. Has this been made clear to the current RP holders?

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1 Mr. Roe responded yes, both verbally and in writing. All tenants were encouraged to have
2 conversations with UHCDC as the design process moves forward. The businesses could potentially be
3 included if their use fits in with the eventual use of the property.
4

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

6 Motion approved. Vote: 10-0
7

8 **5. Request for Approval to Renew Revocable Permit No. RP20-02 Issued to Kelena Farms Inc. for**
9 **345.38 Acres in Waialua, Oahu, Tax Map Key (1) 6-5-002:011, :006, :008, (1) 6-5-001:046**

10 Chair withdrew this item noting that Kelena Farms had already been issued a license.
11
12

13 **6. Request for Approval to Renew Revocable Permit No. RP20-01 Issued to Ho Farms LLC for**
14 **57.296 Acres at Galbraith, Oahu, Tax Map Key (1) 7-1-012:001 (por)**

15 Chair asked for a motion to approve.
16
17

18 Motion to approve: Mr. Watanabe, Second: Mr. Haraguchi
19

20 Mr. Roe stood on his written submittal and was available for questions.
21

22 Chair asked for public testimony. There was none.
23

24 Chair asked if there was any discussion?
25

26 Mr. Manuel said that the Wahiawa Recycled Water Irrigation project was cited as the reason for the RP
27 on this property instead of doing long-term disposition. What is the timeframe, so we can support this
28 farmer who has been really good on this property, to move onto a longer-term disposition?
29

30 Mr. Roe said he cannot give an estimate on when the recycled water irrigation project will be up and
31 running or when a future reservoir might be constructed on part of the property. The tenant was aware
32 of the future use and they're currently fine with using it on a month-to-month RP.
33

34 Mr. Manuel asked if they were interested in a longer-term disposition?
35

36 Mr. Roe said they may be, they haven't told him that, but he imagines they might be.
37

38 Mr. Nakamoto said the project for planning and design was anticipated to be completed by July 2024
39 and assuming that construction funding was available, it will go out to bid shortly after that.
40

41 Mr. Manuel said so we're a couple of years out. These RP's will potentially be continued for another
42 couple of years if the tenants want to stay.
43

44 Mr. Roe believes that is accurate.
45

46 Ms. Shimabukuro-Geiser said that recently this session, ADC, HDOA, and Department of Land and
47 Natural Resources (DLNR) were given a budgetary appropriation to repair and improve the Wahiawa
48 Irrigation System that was currently operated by Dole. She's wondering if that system and the Ditch
49 serves ADC will the Ho's have an opportunity to tap into this system or is this location totally reliant on
50 the recycled water project?

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1 Mr. Nakatani stated no, those are two separate projects.

2
3 Chair asked if there was any other discussion? Hearing none, Chair called for the vote.

4 Motion approved. Vote: 10-0

5
6 **7. Request for Approval to Renew Revocable Permit No. RP-W257-21-02 Issued to The Davey Tree**
7 **Expert Company and Davey Tree Surgery Company for 21,392.7 Square Feet, More or Less, in**
8 **Whitmore Village, Oahu, Tax Map Key (1) 7-1-002:004 (por)**
9

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

11
12 Mr. Roe stood on his written submittal and was available for questions.

13
14 Chair asked for public testimony. There was none.

15
16 Chair asked if there was any discussion.

17
18 Mr. Manuel had the same question. Just for the record, has staff communicated with this tenant on the
19 potential impacts of the HPP project?

20
21 Mr. Roe said yes, this tenant probably more than any other.

22
23 Chair asked if there was any other discussion? Hearing none, Chair called for the vote.

24 Motion approved. Vote: 10-0

25
26 **8. Request for Authorization to Seek an Opinion from the Department of the Attorney General**
27 **Concerning Legal Issues Pertaining to Kekaha Agriculture Association's IAL Petition.**
28

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

30
31 Ms. Prescott-Tate said ADC has been asked by the Kekaha Agriculture Association (KAA) to request
32 that a department head ask the attorney general for an opinion on who would represent the fee owner in
33 a situation where ADC had the land transferred to it via Executive Order (EO) and the statute, HRS
34 section 171-2(11) removes ADC property from the designation of public lands. So, the Important
35 Agricultural Land (IAL) petition was withdrawn and in order to move forward on a new petition, should
36 KAA desire to do so, an opinion from the attorney general would be helpful. The request would be that
37 the ADC board be authorized to communicate with the chair of the department, whoever that may be,
38 and ask them to submit a request for an opinion to the attorney general.

39
40 Chair asked what department would this be HDOA, ADC or DLNR?

41
42 Ms. Prescott-Tate responded it's an ADC request. If it's before July 1st would be to HDOA. If after
43 July 1st it would be to the Department of Business, Economic Development and Tourism (DBEDT).

44
45 Chair asked for public testimony. There was none.

46
47 Chair asked if there was any discussion.

48
49 Ms. Evans said she strongly supports this motion, and she would like it to be broad. The opinion would
50 be concerning legal issues pertaining to KAA's petition rather than narrowing it down, so that should

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ADC BOD meeting

1 the AG’s office find other legal issues that relate to the withdrawn petition that they can provide
2 guidance to ADC’s board. She wants to make sure it’s not a narrow request as it’s worded in the
3 submittal subject description.
4

5 Mr. Manuel had a question on intent, and maybe this is for KAA because they are asking for the IAL
6 petition. If either staff or KAA could respond, what benefit were we trying to seek by designating it
7 IAL because IAL is primarily a mechanism for private landowners to get subsidies or credits, but we are
8 quasi-governmental entity with lessees. What is the benefit we’re seeking with the IAL designation?
9

10 Mr. Dalton said he has Mr. Uyehara in the audience and called him forward.
11

12 Mr. Uyehara said to answer the question, he thinks there’s a common misconception about the IAL
13 incentives. Most of the IAL incentives are actually for the benefit of the farmers, not the landowner.
14 The main incentive for the landowner and the one that really has been cited to date in much of the IAL
15 petitions has been basically to protect other lands from being subject to the County process for IAL
16 designation. As long as you designate at least more than 50% of a property you can protect other lands
17 from being designated in the future. That’s largely been seen as a way to sort of land bank for potential
18 future development without the risk of the County identifying your land as needed for agriculture in the
19 future which could restrict potential future uses. The actual incentives we’re looking at for KAA
20 members and non-member farmers on the property are tax credits that would be available for investment
21 in farming operations. That would apply to tractor purchases, buildings, any other capital expenditures
22 and even legal expenditures required to establish the operation and depending on the type of operation
23 those can be pretty substantial. The interest here is really to make that package of incentives available.
24 The other interest in the legal questions really come down to when they look at the foundation of the use
25 of land for ag in the area, it comes down to the EO. He doesn’t foresee a risk of the EO getting
26 withdrawn but there’s really no solid protection from the EO agriculture purpose being withdrawn for
27 any reason at any time. From the beginning, he thinks they’ve done good work trying to resolve some
28 of the water issues for the property for the medium and long-term. They’re making really good progress
29 on getting the land to be more productive in ag, including for local food production. In fact, this year
30 they’ll have more acres dedicated to local food and feed production than for seed production in their
31 operation. They’re really making a lot of progress in that area, that comes with a lot of investment in
32 the property on the part of farmers as well as the state. The other benefit of an IAL designation is to
33 confirm a long-term commitment on behalf of the state for the use of the land in agriculture. Kekaha is
34 one of the premier ag areas in the State with the greatest potential for addressing local food
35 sustainability and it would be really good for them to be able to make the case that the state is
36 committed to keeping the land in agriculture. There are economic incentives that will help them
37 develop the property successfully and that’s really what they see as an integral part of their strategy to
38 move this ball forward. He’s really excited about it because they’re making good progress with the
39 water issue, they have renewable energy so, from the prospective they can have food producers that can
40 truthfully say their food production is entirely renewable energy based. The energy is actually a lower
41 cost than retail so it’s more competitive but it’s in a large contiguous area dedicated to ag so there are
42 less concerns about the potential for impact to neighbors and things for a food processing facility or ag
43 operations in general. It’s a good opportunity and the designation would really help them out.
44

45 Mr. Manuel had a follow-up, more specifically, what he’s hearing is the benefit is to the farmers via tax
46 credits. Are there any other tax credits that IAL would provide and right now those tax credits don’t
47 exist without IAL designation, correct?
48

49 Mr. Uyehara responded that’s correct. Those tax credits don’t exist without an IAL designation. There
50 are other benefits as far as expedited permit processing for facilities and other related infrastructure

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1 although those are somewhat theoretical because nobody really knows exactly what that means. He
2 doesn't know what that expediting looks like in practice other than thankfully the County has been very
3 supportive of their petition and the general push to develop agriculture in the area, so they don't see a
4 problem there. But in theory it's another incentive. There is a question of potentially building worker
5 housing that is one of the main challenges they see for expanding operations there. Something like that
6 would be subject to further approval by the ADC board if that's something that would be allowable on
7 the property. But the IAL incentive actually also does allow for housing off-property if the housing is
8 for workers for operations hosted on the IAL. There's actually even a benefit to building worker
9 housing on private land outside of the state property provided it's for workers for ag operations there.

10
11 Mr. Manuel said so the benefits go beyond tax benefits, its expedited permitting, potential housing
12 opportunities and without the IAL, the expedited permitting and workforce housing are not allowed and
13 it's questionable whether it's still allowed even if it is IAL on ADC lands.

14
15 Mr. Uyehara responded saying it's not explicitly disallowed, it's just obviously something the board
16 would have to approve.

17
18 Mr. Manuel said he had questions on the incentives because it talks about the direct benefit for KAA
19 farmers, so he just wanted to be explicit about what those benefits include and that without IAL that is
20 not something that, those benefits don't exist right, that's what he's hearing?

21
22 Mr. Uyehara said yes that's correct.

23
24 Mr. Manuel said his question was to Ms. Prescott-Tate and maybe a response to Ms. Evans comment.
25 Having worked on AG opinions prior and asked questions, the question in his opinion needs to be very
26 narrow, otherwise the AG's opinion probably will not answer the question that we want them to answer.
27 Working with other agencies, he has reservations on this primarily because once you ask a question, you
28 might not like the answer and if we can work through this with the agencies that are involved to clear up
29 any issues then that might be a better way to process this and work through this rather than to ask for a
30 formal AG opinion. That's just his thoughts on the matter. He believes we should narrow the question
31 and be explicit about the question we want to ask, and not a broad question.

32
33 Chair said he has a question. One of the things with IAL is the smaller farmers don't have the
34 wherewithal to petition so will this incorporate the Waiaka Farms project into the IAL if this were
35 approved?

36
37 Mr. Uyehara said yes. That's partly why they have the petition for even areas outside what is currently
38 licensed to KAA members because they were looking for the incentives to be available to anyone
39 farming anywhere on the ADC property. When you look at the incremental cost to them, it doesn't cost
40 them anything to include the Waiaka area for example and make those incentives available to the small
41 farmers. Like you said, just basically, when they looked at it, it probably costs like \$70,000 - \$80,000
42 minimum to submit a petition for any amount of land. And so, they figured they might as well do that.
43 In fact, they may in the future and likely when the time is right, go back and look at the properties that
44 were transferred from the other departments to the ADC in the area and basically petition for those to be
45 designated as well. It's something they look at that is sort of the core mission of the co-op, is to try to
46 provide benefits for all of the farmers on the property. And they see this as almost an infrastructure
47 service to ensure that all of the state and federal incentives that should be available to farmers on the
48 property are in fact made available.

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ADC BOD meeting

1 Chair thanked Mr. Uyehara and stated he thinks it's really important, like he said, smaller farmers
2 struggle and to date only large corporations, large farmers have been given IAL status. So, he really
3 appreciated that. Chair asked if anyone else wanted to speak.
4

5 Ms. Shimabukuro-Geiser said she had a question before they vote can they clearly understand what the
6 motion is because Ms. Evans motion was for a broad request and in the submittal the recommendation
7 says that we're asking the AG for an opinion on four questions of law. So, can they get clarity on what
8 Ms. Evans means by broad and whether those recommendations are going to be part of the motion.
9

10 Ms. Evans said yes, all four.

11 Ms. Shimabukuro-Geiser said ok.

12 Chair asked Ms. Shimabukuro-Geiser if ADC should ask HDOA to ask the AG.
13

14 Ms. Shimabukuro-Geiser said it depends on when the request is made. If ADC is going to be
15 transferred over to DBEDT; that's the proposed bill before the Governor. It's a timing issue, if the
16 request is made before the end of the fiscal year then ADC is still attached to HDOA but if the request
17 doesn't go in by June 30 then subject to Governor's approval, ADC may have to go and seek the
18 approval of the Director of DBEDT.
19

20 Ms. Prescott-Tate asked if they get the request to her by next week would that be a problem?
21

22 Ms. Shimabukuro-Geiser said it wouldn't be a problem. It's a timing thing. ADC is still attached to
23 HDOA until ADC goes over to DBEDT.
24

25 Chair asked if there was anyone else.
26

27 Mr. Manuel said that he sits on the board as DLNR's ex-officio, so he wants to make it clear as part of
28 this opinion process, the agency has assigned deputy-AG, in this case Ms. Prescott-Tate to ADC. He
29 said when we're asking, depending on who asks, if it's HDOA, then HDOA's deputy AG would
30 probably draft something for the AG to review and more than likely go before their mock court, get
31 reviewed by other AGs including DLNR's AG. He just wants to make it clear that in general his
32 reservations come purely from a desire to try to work within agencies to deal with this. But, if this is the
33 avenue that the board wants to pursue for clarity on law then that's fine.
34

35 Mr. Uyehara said he thinks he understands what Mr. Manuel is saying and he thinks that the motion is
36 to get authorization to seek an opinion, not a mandate that we shall seek one. The reason he wants to
37 make that distinction is there might be reason for them to have discussions before submitting the request
38 both to clarify the content of the request as well as to see if it's ultimately necessary. But he thinks
39 having the authority to seek the request is definitely helpful because it may be where they end up, but
40 maybe not. At least the way he sees it from KAA's perspective, it's not a guarantee that the request is
41 ultimately submitted. But it's an option they would like to have on the table.
42

43 Mr. Manuel said he's just saying usually when you pull the trigger, you pull the trigger. Again,
44 speaking from other agency perspective, he just wants to make it clear, he said if we don't do it before,
45 also he'll have DBEDT's AGs now having to review this and draft the recommendation with their
46 purview and understanding of law. The AGs are great, he loves working with them but that is a whole
47 other process, and you might not get a response - the timeframe is unknown. These are just things he
48 wants the board to understand that we might not get a timely response.
49
50

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1 Ms. Evans said DBEDT’s AGs, especially the AGs that represent the Land Use Commission, are
2 thoroughly familiar with this issue and would not be starting from scratch. She’s had numerous
3 discussions with the Land Use Commission, the Office of Planning and Sustainable Development AGs
4 that represent the State before the Land Use Commission. She does not think it would be, it should not
5 be a concern in authorizing the possibility of requesting an AG’s opinion.
6

7 Mr. Manuel asked if they have this expertise specific to this IAL and the statutes mentioned should that
8 not be the AGs that they ask through that Director?
9

10 Ms. Evans said she would not want to be specific about that, but their AG’s are the experts on HRS
11 chapter 205, which does have the IAL section in it. So, they are prepared.
12

13 Ms. Prescott Tate said who gets assigned to do the opinion would ultimately be the AG’s decision. So,
14 we just need a department head to do the asking.
15

16 Hearing no further discussion, Chair called for the vote.
17

18 Mr. Manuel had reservations.
19

20 Motion Approved. Vote: 10-0, Mr. Manuel with reservations.
21

22 **E. Old Business**

23 None.
24
25

26 **F. Executive Director’s Update**

27
28 Mr. Nakatani said the legislative session was pretty interesting this year, a lot of money floating around, a
29 lot of bills floating around. There are two bills that ADC was tracking. SB2480 Relating to the Wahiawa
30 Irrigation System. This was the most important bill for agriculture but unfortunately it failed. However,
31 money was provided for each department can conduct their due diligence, mitigating the dangers of Lake
32 Wilson dam and everything like that. To give a little history, DLNR dam safety cited Dole to bring the dam
33 and spillway up to speed so that forced the issue. He thinks this will continue throughout the year and
34 maybe through next session on how we approach this thing. The department may have some obligation to
35 purchase some areas and fix the dam. DLNR has some obligations as well as ADC. SB2473 Relating to
36 Economic Development, passed. This bill gave ADC an accountant position and it also provides money for
37 an agricultural plan. Some other items: CIP on Oahu is \$4 million for infrastructure, and we got \$3.5
38 million to resolve the Kauai, Waimea lawsuit, modifications for the streams and another \$5 million for the
39 Waiahole Ditch. There might be some other monies floating around, one more thing is \$1.6 million for
40 completing the Wahiawa Recycle Program, the one Ms. Shimabukuro-Geiser was talking about. That’s
41 more planning money and everything else like that. There might be more money floating around however,
42 since the worksheets have not come out yet.
43

44 Lastly, he also wanted to give the board a heads-up on the REPI encroachment partnership that has been
45 proposed to us. We want to proceed with this. This is the Navy buying easements to keep out
46 encroachment of houses or anything like that. They like agriculture because it’s low key and doesn’t
47 interfere with their operation. The key for us is we’re working on getting a separate account so when we get
48 those funds we can put those funds in that account and use it just for that area.
49

50 Mr. Gomes said there’s also funding for two full-time positions; an accountant and an asset manager.

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1 Mr. Nakatani said yes, thank you for reminding him. One of the positions is in the bill, that's the
2 accountant. ADC had a position for an asset manager, but it wasn't funded. ADC received funding for the
3 two positions. So last year they had an asset manager position, but no funding, so this year we have the
4 funding for both positions. So hopefully, we'll be up to speed and do a lot more.

5
6 Chair asked how long it will be before we can solicit for the positions.

7
8 Mr. Nakatani said it should be as soon as the budget passes then we'll take it from there. We'll probably be
9 under DBEDT, and we don't know how the HR system works under there, so we have to wait and see. A
10 lot of the time the issue is not so much the process but it's hard to really find good people to work in the
11 State these days. It used to be really easy. Maybe some of the comments about coming to ADC is we are
12 controversial. But it's exciting right? As soon as we get the budget we'll start on that. The first priority
13 will be the accountant to get the financials in shape and in order, it's kind of loose right now so that would
14 be the priority and it will spill over into Waiahole so we can get a better accounting system for ADC.

15
16 Chair said that was the position he was most concerned about.

17
18 Mr. Gomes said what he does see, he sees it in the cattle industry when they're looking for a vet and for
19 example, Maui, they lost a vet, or some retired or whatever it is. When they lose a vet and you put
20 applications out to fill that position a lot of them don't want to come over to the state because of the wages
21 are too low or they're better off in the private sector or even moving over to USDA, which a lot of times
22 robs the State employee to go and work for them. The state doesn't pay enough.

23
24 Mr. Nakatani said to wish us luck.

25
26 Chair asked anything else.

27
28 Mr. Haraguchi asked since Ms. Kaichi left us, is there a position vacant because she left or is the asset
29 manager position going to be taking that?

30
31 Mr. Nakatani said we just sent up the request to fill the position. We did an interview; we're not going to
32 say who it is until we get the ok and he's accepted and everything like that. Hopefully we'll get an answer
33 in a week or two. We're trying to fill that position by mid-June.

34
35 Mr. Manuel said as he was reading SB2473 and he was curious what Mr. Nakatani's perspective and ideas
36 for the board with regard to the shift to DBEDT and the amendment to their purpose. He wanted to float
37 that to the board and the Director because it the changes are specific, kind of focus on increase in local food
38 production, support small farmers. It's different than how, or at least his understanding of what they have
39 operated so what are your thoughts on that moving forward.

40
41 Mr. Nakatani said he doesn't think they're changing that much. One of the Legislative audit hearings they
42 were pinging him on why we weren't doing more exports. Because of the pandemic, we didn't have really
43 much to export. Because of the pandemic, the focus on local food production was the key and that was the
44 Governor's impetus right, double food production and everything. That's where we concentrated on, and
45 we haven't moved off that. The discussion between big and small farmers will continue but he thinks they
46 alluded to that, but our perspective was the smaller farmers, 10 acres, 5 acres, that's ag park stuff and not so
47 much agribusiness. He thinks, you have an example of Waiaka on Kauai which represents smaller units. It
48 comes down to sustainability and what's the sustainable agriculture lot. If you ask Mr. Watanabe he would
49 agree that he doesn't know your definition of small farmers but it's getting bigger, lots and everything. But
50 lot size itself doesn't mean you can make money. If you take an example of Chair's place, it's not that big

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1 but it's a different type of operation. That's what you need to look at. Everything comes down to
2 sustainable economics. We should not try to judge or force anybody to grow something or mandate the size.
3 To him it hasn't changed that much, it gives us better direction, the comment was that the ADC statute was
4 so broad, and we get pulled from left and right because they say how come you're not converting these big
5 plantations to smaller lots and everything. We are, but at what speed do you want it done and how much
6 resources are you going to give us? That's the reason why if you read through 2473, they made quite a bit
7 of amendments and for us the majority was good. He doesn't think they really understand planning for
8 agriculture because there's a lot of plans, but he'll take that with a grain of salt, and we have a lot of ideas.
9 He doesn't think talking to the Chair, they're not far off. We just need to amend those, and we just need to
10 put them in perspective but it's not a monumental task and if we can get a consultant to help us write it then
11 that will be easier. The conversations with the legislature were good and there was a good exchange of
12 ideas. He would give the bill A+. It's not perfect, questions came up if we'll be better off in DBEDT, he
13 doesn't know but the thing is, if you look at the mission, it better sits with them versus regulatory.
14

15 Chair said pertaining to the small farms, even during the investigative hearings he answered to that. He
16 thinks we are looking at our tenants, Cedar Grove, KAA at Waiaka to begin to help the small farmers and
17 enabling them because that's a really big part of what HDOA does on the ag parks. And our larger tenants
18 have the capability of helping the small farmers clear the land, put in the infrastructure, etc. so he thinks
19 we're moving in that direction in trying to enable small farmers. Other than that, we would prefer to get
20 sustainable ag on the projects and this would be larger farmers.
21

22 Mr. Manuel said he was just curious because there was quite a rehaul when you read through the bill and
23 thinking through the implications on staff and them as the board and they may have to rethink or refocus,
24 different lens to look through. He had one specific question on the ADC Waiahole system improvements, is
25 any of that funding going to be used to address the requirements under the Waiahole supreme court case
26 which include like lining the reservoirs or is this just part of normal maintenance?
27

28 Mr. Nakatani said no, part of the thing is to make sure that, and maybe this was before the time you came on
29 the board, but they came up with a plan for water security for the Waiahole water security. What it does is to
30 put more reservoirs to make it more sustainable and so to increase the capacity of the system without
31 increasing allocation and lining the reservoir has been ongoing. That's with HDOA and we're supposed to
32 reline 2 reservoirs, 155 as well as 225 and that's ongoing, staff is working on that to get that done. Well,
33 fortunately or unfortunately when you work with the Army Corp. things takes a longer time to do things like
34 that. But that's the improvement, it's like how to conserve water, how to use water more efficiently and if
35 you store it then it's much easier to service farming and rather than just have one system. And of course, to
36 make it more efficient, trying to fix all the leaks, that's a priority. And prior to that, they fixed 4 siphons.
37 They relined them. So, they're on their way. They're looking, as soon as they get more money, especially
38 to the residential area, maybe lining it and covering it so it takes liability away from them. There's an
39 alignment, ¼ inch and the developer went through that area so what they did they lined the reservoir on the
40 irrigation system, they put pipes and they covered it with concrete, so it's not open you don't have
41 evaporation, you don't have a liability to people falling into the ditch. That's their goal. If they have
42 monies, maybe every so many years they can do a small section at a time to fix it.
43

44 Mr. Manuel said it's not to address the Waiahole order from the Supreme Court? Maybe one of the
45 suggestions just between Ms. Shimabukuro-Geiser and him if we can ask next session, next biennium for
46 funding to meet that? Cause that is over, almost 20 years old and there were specific orders from the
47 Supreme Court that were mandated so if we could move to get those done, that would be great. That way if
48 no one comes back to this body and sues us again for not meeting that order. Just a recommendation.
49

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1 Mr. Nakamoto said he's helping with the Army Corp and HDOA. They have funding; he thinks the funding
2 was provided by Senator Dan Inouye back in 2008 and they're very close to getting all the permits lined up.
3 If all goes well, they should start construction on those two reservoir linings that Mr. Manuel mentioned
4 from the lawsuit in September.

5
6 Chair asked if there was anyone else.

7
8 Mr. Gomes said that he thinks that lining the reservoirs were great. Reservoirs, if they're low-lying
9 elevations, the extreme heat, you have evaporation going on. It's great they're moving forward with that.

10
11 Ms. Shimabukuro-Geiser said she's going to speak out for HDOA. They're much more than regulatory.
12 Yes, they have a regulatory function that ADC doesn't have but they do provide data, they provide support
13 services to contribute to appropriate levels or rates of growth in this industry. She thinks that during the
14 session and in ADC's testimonies, ADC emphasized that the long-term goal was to increase productivity for
15 agriculture through modernization and innovation. The testimony of ADC said that they felt that the
16 modernization and innovation approach would be better served attached to DBEDT so that answers
17 anybody's question about that. She said it will be really interesting because if the transfer goes over and the
18 Governor does sign the bill then we're going to have to work out existing collaboration on ADC's projects
19 because ADC will no longer be an attached agency to HDOA and they're going to have to work it out with
20 DBEDT on how that's going to be handled because there's stuff in the pipeline.

21
22 Chair asked if there were any other comments or questions.

23
24 Mr. Gomes asked Ms. Shimabukuro-Geiser if he could call her after the meeting.

25
26 Ms. Shimabukuro-Geiser said yes, anybody on the board can call her.

27
28 **L. Adjourn**

29
30 Chair called for a motion to adjourn:

31
32 Motion: Mr. Gomes, Second: Mr. Manuel

33
34 Motion approved. Vote 10-0

35
36 Meeting adjourned at 11:37 a.m.

37
38 Respectfully Submitted,

39
40 *Lynette Marushige*

41
42 Lynette H. Marushige
43 Secretary