

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Suite 205
Honolulu, HI 96813
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Meeting of the ADC Board of Directors

Held via Teleconference

September 21, 2022
9:00 a.m.

Pursuant to section 92-3.5, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

Interested persons may submit written testimony in advance of the meeting, which will be distributed to Board members prior to the meeting. We request that testimony be received by our office not less than seventy-two hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street, Suite 205, Honolulu, Hawaii 96813.

When testifying via ICT, via telephone, or in-person, you will be asked to identify yourself and the organization you represent, if any. Each testifier will be limited to two minutes of testimony per agenda item.

The public may participate in the meeting via:

ICT: <https://us06web.zoom.us/j/87257668283>

Telephone: (669) 900-6833, Web ID: 872 5766 8283

In-Person: at the meeting location indicated below

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link at the top of the agenda. You will be asked to enter your name. The Board requests that you enter your full name, but you may use a pseudonym or other identifier if you wish to remain anonymous. You will also be asked for an email address. You may fill in this field with any entry in an email format, e.g., ****@****.com.

Your microphone will be automatically muted. When the Chairperson asks for public testimony, you may click the Raise Hand button found on your Zoom screen to indicate that you wish to testify about that agenda item. The Chairperson or staff will individually enable each testifier to unmute their microphone. When recognized by the Chairperson, please unmute your microphone before speaking and mute your microphone after you have finished speaking.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

TELEPHONE ACCESS

If you do not have ICT access, you may get audio-only access by calling the Telephone Number listed at the top on the agenda.

Upon dialing the number, you will be prompted to enter the Meeting ID listed next to the Telephone Number at the top of the agenda. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. Please wait until you are admitted into the meeting.

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your telephone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has been notified. When recognized by the Chairperson, you may unmute yourself by pressing “#” and then “6” on your telephone. A voice prompt will let you know that you are unmuted. Once you are finished speaking, please enter “#” and then “6” again to mute yourself.

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

Instructions to attend State of Hawaii virtual board meetings may be found online at <https://cca.hawaii.gov/pvl/files/2020/08/State-of-Hawaii-Virtual-Board-Attendee-Instructions.pdf>.

IN-PERSON ACCESS

There will also be one meeting location, open to the public, which will have an audio-visual connection. That meeting will be held at:

State of Hawaii, Leiopapa A Kamehameha
State Office Tower Building
235 S. Beretania St, Ste 204
Honolulu, HI 96813

For ICT, telephone, and in-person access, when testifying, you will be asked to identify yourself and the organization, if any, that you represent. Each testifier will be limited to two minutes of testimony per agenda item.

LOSS OF CONNECTIVITY

In the event of a loss of ICT connectivity, the meeting will be recessed for a period not to exceed thirty minutes to restore connectivity with all board members and the public in-person access location noted above. In the event that audio connectivity is re-established within thirty minutes without video connectivity, interested participants can access the meeting via the telephone number and Meeting ID number noted above.

In the further event that connectivity is unable to be restored within thirty minutes, the meeting will be automatically continued to a date and time to be posted on the ADC website at <https://dbedt.hawaii.gov/adc/> no later than close of business the next business day. New ICT, telephone, and in-person access information will be posted on the website no less than twenty-four hours prior to the continued meeting date. Alternatively, if a decision is made to terminate the meeting, the termination will be posted on the ADC website.

SPECIAL ASSISTANCE

If you require special assistance, accommodations, modifications, auxiliary aids, or services to participate in the public hearing process please contact staff at (808) 586-0186 preferably at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: dbedt.adc@hawaii.gov. Please allow sufficient time for the ADC to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 S. BERETANIA STREET, SUITE 205, HONOLULU, HAWAII, ON AND AFTER SEPTEMBER 15, 2022

Agribusiness Development Corporation Non-Discrimination Statement

The Agribusiness Development Corporation does not discriminate on the basis of race, color, sex, national origin, age, or disability, or any other class as protected under applicable federal or state law, in administration of its programs, or activities, and the Agribusiness Development Corporation does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected by, or oppose action prohibited by, 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

If you have any questions about this notice or any of the Agribusiness Development Corporation’s non-discrimination programs, policies, or procedures, you may contact:

Mark Takemoto
Acting Title VI Non-Discrimination Coordinator
235 S. Beretania St., Ste 205
Honolulu, HI 96813
(808) 586-0186
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[agenda begins on the following page]

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board of Directors Meeting, August 17, 2022
2. Executive Session, Board of Directors Meeting, August 17, 2022

This agenda item will be taken out of order and considered by the Board during executive session regarding agenda Item E-3, pursuant to Section 92-5(a)(2) Hawaii Revised Statutes, to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved.

D. New Business

1. Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-3-004:020
2. Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-4-012:005

E. Old Business

1. Request for Approval to Adopt the "Land Management Policy & Procedure Manual" as Recommended by the Investigative Committee on Land Management Policy & Procedures (continued from August 17, 2022, Item D-2)

This agenda item will be taken out of order and considered by the Board as the first item of business after consideration of the minutes.

2. Presentation and Update by Kekaha Agriculture Association Regarding the 2022 Readiness and Environmental Protection Integration (REPI) Program Challenge Grant for an Open Floodable Space Proposal in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.)
3. Annual Performance Review of the Executive Director (continued from August 17, 2022, Item E-1)

The Board may go into executive session, pursuant to §92-5(a)(2) Hawaii Revised Statutes, to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved.

F. Executive Director's Report

G. Adjourn

The Board may go into executive session pursuant to exceptions provided under Section 92-5, Hawaii Revised Statutes (HRS), including to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities, pursuant to Section 92-5(4), HRS.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held on August 17, 2022

Via Zoom Teleconference and In-Person at 235 S. Beretania St., Rm. 204, Honolulu, HI 96813

ITEM C-1

Pursuant to section 92-3.5, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha State Office Tower Building, 235 S. Beretania St., Rm. 204, Honolulu, HI 96813.

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)
Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Karen Seddon, Member-At-Large (Ms. Seddon) exited the meeting at 10:00 a.m.
Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-Geiser) joined the meeting at 9:58 a.m.
Mr. Earl Yamamoto (designated attendee for Ms. Shimabukuro-Geiser) exited the meeting at 10:00 a.m.
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)

Member Excused:

Lloyd Haraguchi, Member-At-Large

Counsel Present, virtually:

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

Staff Present, virtually:

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

Guests Present, virtually:

Beth Tokioka, KIUC
Brad Rockwell
David Bissell, KIUC (Mr. Bissell)
Dawn Huff
Mike Faye, KAA (Mr. Faye)
“Public Testifier”
Scott E
“T”

Guests Present, physical location:

None.

A. Call to Order

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

B. Roll Call

Chair conducted a roll call of the board. 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 vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Ms. Evans, Mr. Hong, Mr. Manuel, Ms. Seddon, Mr. Yamamoto on behalf of Ms. Shimabukuro-Geiser, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present. Ms. Shimabukuro-Geiser joined the meeting at 9:58 a.m. Ms. Seddon and Mr. Yamamoto exited the meeting at 10:00 a.m.

C. Approval of Minutes – Board of Directors Meeting on June 15, 2022

Chair called for a motion to approve. Motion to Approve: Mr. Watanabe; Second: Mr. Tabata

Chair asked if there was anything from the staff. There was none.

Chair asked if there was any comment from the public. There was none.

Chair asked for any board discussion.

Mr. Manuel asked to be excused from voting since he was not present at the June 15th meeting.

Chair asked if there was any objections to accepting the minutes. Hearing none, the motion was approved.

Vote: Approved 7-0 (Mr. Manuel excused)

D. New Business

1. Request for Approval to Extend the Term of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mānā Reservoir) Issued to Kauai Island Utility Cooperative in Kekaha, Kauai, Tax Map Keys (4) 1-2-002:001 (por.)

Chair called for a motion to approve. Motion to Approve: Ms. Evans; Seconded: Mr. Hong

Chair asked for presentation by Staff. Mr. Roe stood on his submittal and was available for questions.

Chair asked if there was any public testimony. Mr. Nakamoto said that Mr. Bissell had his hand raised.

Mr. Bissell stated his name and that he was from the Kauai Island Utility Cooperative (KIUC). He said KIUC had requested an extension of two of their license agreements. Originally KIUC asked for a six-month extension, and they appreciate staff's recommendation to approve the extension although the staff recommended four months. KIUC put in for a six-month extension to work on the new lease agreement with ADC staff as there were some issues that need to be resolved. More importantly, was to give the environmental assessment (EA) process time to work its way through, where they could have an EA or FONSI (finding of no significant impact) in place and be able to execute lease agreements within six-months. They're trying to be respectful of the board's time and hopefully not have to come

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back for another extension. They appreciate the four-months but wanted to explain the six-month request. He's available for any questions.

Chair asked if there was any discussion from the board members.

Mr. Tabata asked staff why they limited the extension to four months versus the requested six.

Mr. Roe responded that ADC has been holding the reservoir in abeyance for KIUC. ADC has been paying the dam safety fees and being responsible for the area. Staff would like KIUC to begin to take over maintenance and cover some of those fees, sooner rather than later.

Mr. Bissell said KIUC was certainly willing to handle their responsibilities and pay some of the fees. It's the environmental side that's running slower than they had hoped. The revised EA will be submitted for public comment in September and hopefully they will go before the Land Board before the end of the year. It's going to be tight on a four-month extension.

Mr. Manuel asked Mr. Roe what was the amount of the dam fee ADC was paying?

Mr. Roe thought it was approximately \$2300-\$2700 annually.

Chair asked what was the maintenance cost for the reservoir?

Mr. Roe said there was mowing, access roads to be kept up, and he believed there was some maintenance to the slope and other areas. Mānā is not operational but it's still registered and so there's maintenance things that dam safety would like them to accomplish. ADC would like to see these existing maintenance things taken over now.

Mr. Manuel said he's trying to understand KIUC's request for an extra two months. It's an extra \$450 to give them that two-month extension, at our cost. It seems reasonable considering how long the environmental review process takes. He understands what staff's saying but is there a way to give KIUC the extra two-months, so they don't have to come back to the board for an extension. Is there some way to recoup those costs or build in a back stop so ADC's not paying beyond that six-month period and transfer those fees to KIUC after that period, something like that?

Chair asked Mr. Bissell if KIUC was willing to take over the maintenance and other fees during this period.

Mr. Bissell said he thinks they would certainly be willing to incur the fees, either now or on a retroactive basis. It's taking over legal responsibility that they're concerned with. Those are things they have to work through, the actual liability side. The financial side they would be willing to make whole after the fact or take them on now on some type of stand-alone basis for those amounts.

Mr. Tabata asked if this conversation was ever had with KIUC before we sent the letter back saying only four months. If this was an issue and Mr. Bissell was amicable to pay retroactively, he sees no reason not to extend to the six months they are requesting.

Ms. Evans said she would accept a friendly amendment to amend the floor action from four to six months if the second was willing to do that.

Mr. Nakatani said this has been dragging on a long time. Yes, the conversation has been ongoing. They have spoken to the consultants, and it still lingers. It's almost to a point where fish or cut bait. It might not be a big thing for bigger agencies but for ADC, maintenance around the dam and everything else like that. If they want to take it over, take it over but the thing is you can't have your cake and eat it too.

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This was just a signal to light the fire under them. He doesn't have a problem with the six-month extension, but they have not been very proactive.

Chair asked if he would be opposed to an amendment to the motion.

Mr. Nakatani said he would not be opposed to the six months. This has been dragging on a long time. It is money from ADC and Kekaha Agriculture Association (KAA). Six months is fine, so they don't have to come back but make it clear that they have to move on this project.

Mr. Tabata said he seconds the amendment.

Chair asked Ms. Evans if she would rephrase her amendment.

Ms. Evans said as the maker of the motion she amends the motion from four months to six months with a suggestion to KIUC to try to complete all the due diligence, which she understands does take time, within that six-month period. She asked if Mr. Hong was the person who seconded the motion.

Mr. Hong responded yes he was. With what KIUC indicated about the willingness to discuss fee reimbursement, he would add that to the amendment. So, if Ms. Evans is willing to do that, he would second it.

Ms. Evans agreed.

Chair said that was the amended motion. Chair asked if there was any further discussion.

Mr. Manuel said he noticed that on the cover page it says that this item was subject to the ceded land 30% revenue. Has ADC contacted the Office of Hawaiian Affairs (OHA) or Department of Hawaiian Home Lands (DHHL) prior to bringing this to the board; if they were notified that there was action to be taken on this or if there is a process?

Mr. Roe said, we have not and there was none.

Mr. Manuel said maybe between now and the shift from a Revocable Permit (RP) to a license that the consultation happens to ensure that those entitlements are protected. He recommends that staff engage those two entities before bringing a formal license for a longer term. He just wants it noted on the record.

Chair thanked Mr. Manuel and asked Mr. Bissell if he had any comments.

Mr. Bissell said he appreciates the consideration and the help that staff has given on this amendment.

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

Ms. Prescott-Tate interjected that the board must have two votes; one to approve the amendment and then one to approve the amended motion.

Chair asked if there were any objections to amending the original motion as restated by Ms. Evans? Hearing none, the motion was approved. Vote: 8-0

Chair then called for a vote on the motion as amended. Hearing none, the motion was approved. Vote: 8-0.

2. Presentation by the Board's Investigative Committee on Land Management Policy and Procedures of the Land Management Policy & Procedure Manual

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Chair called on Ms. Evans who chaired the committee for the report.

Ms. Evans said in November 2021, the board created a permitted interaction group (PIG) to investigate the development of a policies and procedures manual pursuant to a recommendation of the state auditor and an endorsement of that recommendation by the House Investigative Committee. The committee has met frequently with the wonderful support of the staff and has created a draft policies and procedures manual for your consideration. This is the second meeting of the three-meeting rule for the PIG process. The draft manual is not up for deliberation and vote at this meeting. This is just a presentation. The committee comprised of herself, Mr. Hong, Chair, Ms. Seddon and the staff, especially Mr. Roe, welcomes any questions you may have. The draft manual was part of the meeting packet and available to the public as well, so she turned the meeting back over to the Chair.

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

Chair asked if there was any discussion by the board.

Mr. Manuel stated that if they were not deliberating on this at all, if they have comments should he send them to the committee and/or staff.

Ms. Evans said he can address them to the committee, but should they be substantive and result in changes then the committee will work with staff on it.

Mr. Manuel also wanted to make sure that the correspondence to the committee was not in violation of the Sunshine Law because now it's four members and not three. That was why he asked whether he should just send it to staff versus the committee.

Ms. Evans asked Mr. Manuel what's his math on that. Based on eleven members.

Mr. Manuel laughed and said he was basing it on his own commission with seven members. The question was then, can that communication happen beyond the PIG members?

Ms. Evans said they are turning over the draft to the full board at this meeting so he can address his comments to the full board.

Ms. Evans clarified this discussion was for questions and comments but not for deliberation.

Ms. Prescott-Tate acknowledged that was correct.

Mr. Manuel said he has a lot of comments. In reviewing the document, thank you, great work. It's nice to see the logic and the multiple conversations they've had throughout at least his tenure on the board, represented in a comprehensive kind of document so kudos to the committee. He's wondering how many of these policies/procedures should be promulgated as rules and not procedure and policy. Some of them actually read like administrative rules, which most state agencies are required to promulgate. He throws that out there as a general comment to the committee and the board and maybe the attorney general (AG) for guidance. That's really to protect them as board members in decision making, policy versus rule, that dilemma. All boards and commissions deal with this, but he just wondered if that was part of the discussion.

Chair said that was part of the discussion but will leave the explanation to Ms. Evans.

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Ms. Evans said her personal view was that the Legislature created ADC as a quasi-public corporation for a distinct purpose and that was to give the corporation the ability to operate in a business environment. That requires flexibility, nimbleness and the clear attention of the board to changes in that business environment, changes in everything about agriculture. We're watching changes to the climate, changes to market demand, changes to cost for farmers. She believed that policies and procedures for a quasi-public corporation are the right way to go, because it will allow the board to make changes as conditions change much more quickly. Mr. Manuel and I are familiar with rules. They are a good tool for stable programs where conditions don't change quickly because they're based on a statute; mandated programs that are very stable. The legislature made the right call when they created ADC as a quasi-public corporation rather than a division or department.

Mr. Manuel said he appreciates that sentiment, and the flexibility as a quasi-public corporation. Rules are generally a process to provide due process and notification to public not necessarily ease of access as an agency or corporation. That's his question to the AG, is this policies and procedures and the ability for those to be changed at any board meeting, sufficient notice for due process purposes. He just wanted to have this discussion publicly with the board if they're making this decision and then similarly as a quasi-public corporation he reflects on HCDA, which has similar powers and authorities, but they still have rules. He just wanted to strike the balance between if there's some of this that should be rule and then some can stay nimble and flexible as an agency. He just throws that out there for the body to think through. That was his first comment of twelve.

Chair asked Mr. Manuel that as we goes through this process, please notice that a lot of the line items have justification and require approval by the ADC board. The committee was trying to ensure that matters will always come back to the board for a final decision.

Mr. Manuel continued with his list, so hopefully deliberations can go quickly next month. He asked if the definitions were new or consistent with the existing statutes, or were created specifically for this policy and procedure manual, like tenant, lease, license, etc. are those consistent?

Mr. Roe responded that the definitions were created for this document.

Mr. Manuel said something to consider just for consistency with other State agencies, to use the terms that other agencies use versus creating our own. Maybe that is something the AG can help advise on. He said other agencies have similar definitions that have been vetted at the State level versus ADC creating its own definitions. This will protect the board from any discrepancy. Another question he has is the decision to have different procedures for the different lands, Galbraith lands, Kekaha lands and Kalepa lands. What was the logic behind having a place-based procedure? Galbraith has procedures A through M, and Kekaha and Kalepa have A through H. Why are procedures in Galbraith not included in Kalepa and Kekaha? Why aren't they consistent across the board?

Ms. Evans stated there was considerable discussion on that. It goes back to how the lands were acquired by ADC. Some came over with different legacy procedures and they all have different characteristics. The committee did talk about it and decided it made sense to have a different set of procedures.

Mr. Manuel asked if they could add a footnote explaining the logic because it looks awkward that one has more conditions. For example, he would wonder why Galbraith had all these extra steps that Kalepa and Kekaha don't. Next on my list is there seems to be duplicative language related to the phase one EA. Was that intentional to cover it in different places. For example, section 5.1, 6.3 and 7.2 are duplicative. Why are they in each of those sections instead of referencing a prior section?

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Chair said that would be a question for Ms. Prescott-Tate.

Ms. Prescott-Tate said they were addressing different situations, but sure the later sections could be changed to reference the first section.

Mr. Manuel said when he's reading through it logically he thinks, didn't I read this in a prior section?

Ms. Prescott-Tate said yes, the format was already established when the document was given to her, so she just plugged it in that format.

Mr. Manuel remarked that the document could be shortened by five-pages if they just referenced the prior section.

Ms. Evans said the committee discussed that and thought duplication actually led to clarity. Somebody reading the document wouldn't have to flip back to an earlier section to get a complete picture. They didn't want staff or a licensee to have to flip back and forth to understand what had to be complied with.

Mr. Manuel said ok, he gets that. The next question is on rent credit. It recommends up to twenty-year discount. Giving people opportunities to get rent credits for up to twenty years on a thirty-five-year license is super generous. We're here to support agriculture and ag corporations, but ADC also has to operate, maintain and manage the corpus of the corporation. Is there a desire to limit the credit amount by a percentage of the base fees or is this actually best practice in the industry? Was this part of the discussion?

Ms. Evans stated they did debate this, quite a while. As a public corporation ADC doesn't always get CIP improvements for improvements to lands they have purchased. Sometimes ADC must depend on their licensees to do improvements on ADC lands, and these needed improvements can be substantial. Improvements may need to be more than say, what the Department of Agriculture does for their agriculture parks. The Hawaii Department of Agriculture (HDOA) puts in all the improvements, including the common areas. Since each new license will come before the board, the board will have an opportunity to know the condition of the land and what is a reasonable incentive for improving our lands to the point where the licensee can be profitable. There are guardrails on the board's ability to say it's up to twenty years, but it's not an entitlement.

Mr. Manuel said he appreciates that. In reflecting on some of the conversations they've had about somebody asking for a credit to put in a fence when that's actually part of their business and should be provided by the tenant. Should there be more explicit criteria within the manual and not just make it a case-by-case decision. That's just a comment. The next question has to do with the option to extend for an additional thirty-five years. If the base term is thirty-five years, that takes us up to a seventy-year total license term. Is it just doubling the number as the justification or logic? For example, other state agency general leases have terms of sixty-five year maximum. What's the logic behind the thirty-five-year license extension?

Ms. Evans said she can share what she recalls, and other members can share their recollections. ADC is focused on commercial farming. We expect the licensees to put in substantial infrastructure in order to be profitable. Licensees don't have the same viewpoint that HDOA has on its Ag-park leases. HDOA subsidize the improvements up front and then turn over those leases to allow new farmers to come in and get started with lower start-up costs. We want to see that successful, profitable licensees can benefit

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from their investment in the space and continue to be profitable and add food and export to our agriculture cluster.

Chair asked Ms. Seddon to comment on Mr. Manuel's question about the policy of issuing base period licenses for thirty-five years, and a thirty-five-year extension. Is that standard practice in industry? As Ms. Evans was saying, if we're trying to support profit of our farmers why not have a larger base term, if we're just going to allow a thirty-five-year extension. He's just trying to understand the logic behind the term periods. What was the discussion of this committee in coming up with those numbers?

Ms. Seddon responded that a lot of it came down to control. The committee had lots of discussion and she sort of started out where Mr. Manuel is on some of this stuff. But, when you start looking at having to put the large infrastructure and the other things that they're talking about, it sort of turned into how do we support them to be able to do this? The timing turned out to be rather than start with a big base, let's make sure they're doing a good job. If we find something wrong it's easier to stop it at thirty-five years than at seventy-five years.

Mr. Hong said their objective was to find those farmers that can be successful at scale because of the size of the acreage ADC is doing. If someone has a continuous track record of success over the initial thirty-five years we really, really want to keep that going. So, we wanted to say, if you have in fact been successful we want to offer you the incentive of continuing your business for an extended period of time. Obviously as you approach the second half of the initial lease term, and we have a farmer that has not been delivering on what we think the potential is, then we evaluate that and determine that maybe we don't give them the extension, or maybe if they're in violation of any of the terms, we need to look at termination. But the ones that are successful, you want them to continue to be successful. So that's kind of their thinking.

Mr. Manuel said he knows they put a lot of time in those meetings; he just wanted to dabble in their logic and conversations. He continued, in supporting licensees that do good, paragraph 4.6 in the document, reads, in his opinion, reads like they're rewarding bad behavior by allowing an extension renewal after expiration. Why was that clause put in because there is a clear renewal process? You are notified, you have ample time within that time period if you want to extend, let us know in writing. The procedure is clear. Then we have a caveat at the end, which kind of gives people a way out. They can say oh sorry I didn't get to it, my license expired but can I renew it. What was the logic behind that after laying out a clear procedure for license renewals?

Ms. Evans said she thinks it was based on the staff's experience in working with the licensees that occasionally, and this would be the exception rather than the rule, that a good farmer may not have office staff that keeps track of all of the paperwork. So, they wanted to allow for the very rare and occasional exception, where you have a good farmer, who occasionally will let the expiration date get past them. But it all comes back to the board.

Mr. Manuel said yes, he can see that. He's almost done. Annual reporting requirements. He's been asking for every license, have a way to track percentage or poundage of crops produced for local consumption because that's been a big state metric that no one is measuring. Could we add that to paragraph 9.1? That would be his recommendation and we can deliberate it next month. It just talks about the crops, types of crops and what's produced. But the local consumption or for local production is a key metric the state is looking at. What does ADC contribute? He'd love to see that added to the policy document as an annual reporting metric.

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Chair said licensees are to submit crops and production and quantity of crops produced data in aggregate. What are you asking?

Mr. Manuel said, of the total quantity produced, what is the percentage of that quantity that stays in local market versus exported. He doesn't know if that's an important metric for ADC but it's an important metric for the State. How do we support growing our own food here in Hawaii versus importing that food? The State doesn't have a handle on what that number is and how are we as a corporation contributing to that metric.

Chair said he thinks as the Wahiawa food hub begins to grow that would be an important consideration.

Mr. Nakatani said we just want to be careful on collecting stats on crops and value, there's confidential business information considerations if only one person is growing or limited people are growing stuff like that, we could run into problems. Maybe leave it to HDOA who knows what they're doing. We can always say, turn over the farm information to them. He doesn't feel it's very useful when it comes from an agency. It's more holistic for the state rather than just for ADC. You have to be very careful when you collect stats on crops, especially if there's a limited amount. That's just his comment.

Chair said he's been a proponent of collecting this data because it's really hard to work in agriculture without this sort of information. Maybe Mr. Yamamoto has a comment on this data collection.

Mr. Yamamoto clarified that he was attending for Ms. Shimabukuro-Geiser, but in his personal opinion, data is always good, he's always looking for it. As for what Mr. Nakatani was speaking on regarding non-disclosure in order to protect an individual or a small group of individual producers, that is a requirement in federal publications. If there's a way to get around that or to minimize the threat of disclosure, he can't think like that, he's not a statistician.

Mr. Manuel said he hears what Mr. Yamamoto and Mr. Nakatani are saying but ADC has built in the caveat for proprietary information by aggregating crops produced. So, in the aggregate even if he said 10% of his 100 million pounds of whatever he grew stays in the local economy, what proprietary information is being revealed by sharing that percentage of total aggregate.

Mr. Yamamoto said, that's a way to get around it.

Mr. Manuel said to him, that is not proprietary in any way, shape or form. In his opinion he doesn't know what would be proprietary in that context. His specific recommendation would be asking for annual reporting of crops produced and then the percentage of those crops produced for local consumption. Then you can do math by saying if it's not locally consumed it's exported right? We just need to ask for that dataset. It would help HDOA. Like Mr. Yamamoto said, he's been looking for that data; no one is tracking that data or asking for it. Even a small corporation like ADC, we can say based on our tenants, our producers are contributing this amount, this percentage to the local economy and local consumption. That's a dataset that we can use, to uplift ADC and the things that we're doing here as a corporation.

Chair said he agrees, but to Mr. Nakatani's point should this remain with HDOA? We're monitoring our tenants but we're a very small portion of all of agriculture in Hawaii. Should HDOA be taking care of this, even for our guys?

Mr. Manuel said the Department of Business, Economic Development, and Tourism (DBEDT) is a statistician house for the State. It collects economic development and tourist data and aggregates that,

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protects confidentiality, protects proprietary information but does do statistical analysis of the economic drivers in the state. So, maybe when we shift over to DBEDT as a board or as an agency that's something that DBEDT can help ADC collect information on. He's been pretty consistent on it throughout his tenure on the ADC board. He didn't see it in the manual so he just wanted to elevate that as something they should think about.

Chair asked if Mr. Yamamoto had any final comments.

Mr. Yamamoto said he agrees with Mr. Manuel's thoughts, that's just him. But again, HDOA always get questions about what the farmers are doing or what HDOA's lessees in the agriculture park/non-agriculture park programs are producing, and he can't promise this, but he'll try to look into what HDOA's requirements are in terms of their annual or whatever period of time, the reporting by their land management programs to see if they even gather that information and, he'll pass it on to Ms. Shimabukuro-Geiser to apprise the board.

Chair thanked Mr. Yamamoto and asked that he please share it with ADC if there's something, they're very curious.

Mr. Manuel said he has four more things. He didn't see in the core license conditions if it needs to be clear there is no living or residing on premise. He knows ADC doesn't allow it and he wanted to know if it needs to be explicitly set out in this document or was that part of the discussion.

Chair asked if Ms. Evans had any response.

Ms. Evans said she'll refer it to Mr. Roe or Mr. Nakatani.

Mr. Nakatani said for all of the new farm developments, they don't plan for any kind of housing because that costs a lot of money to bring in fire suppression, potable water, sewer, etc. If there's any kind of housing on ADC property it's usually inherited like the purchase in Whitmore that has two houses on. But aside from that, we don't normally plan for any kind of housing or things like that. Housing presents a different type of problem. The priority for ADC is agriculture. For housing, in the Whitmore project, for agricultural farmers or workers, that's a separate issue but ADC wouldn't put the housing necessarily on the farmlands. He's not really keen on that and that's ADC's position so far.

Chair said he thinks what Mr. Manuel is saying is that it should be somewhere in the manual.

Mr. Manuel said yes, added as a general policy of this body that they want to preserve ag lands for agricultural production. He didn't see that in the policy.

Chair said he doesn't think that was discussed.

Mr. Manuel said, towards the end of the document it talks about entitlements. When he asked Mr. Roe earlier about if it could be added when entitlements are obligated to DHHL under OHA that there is some kind of consultation, notification to those entities prior to board decision making. At least when the board is making a decision they know the DHHL/OHA beneficiaries were talked to and notified and their entitlements are protected. He shared this as a practice for the DLNR board, that a similar outreach, so a draft submittal sent to the agency for review to work things out before it's brought to the body for decision making. It just helps with coordination amongst agencies, but he just throws that out for a potential added process/procedure that they build in.

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Ms. Evans said because the legislature passes laws from time to time that set a cap on the 20% revenue entitlements for non-sovereign revenue by state agencies using ceded lands she thought the appropriate language was as directed by Budget & Finance that carries out the legislature's mandate. They didn't put that in for the DHHL 30% former sugar lands entitlement so a consultation might be a good step to have.

Mr. Manuel said he hears what you're saying about OHA and the legislature's approval of that, but ADC pays directly to DHHL so maybe that would be good to consult with DHHL because the legislature doesn't have oversight on that process. If that could be added under the entitlement section that would be a good amendment. Similarly, is there a way in this policies and procedures manual to get an annual financial report to the board like how much revenue did ADC make this year. Revenues versus expenditures. How much was paid to DHHL, OHA etc. or maybe just DHHL because that comes out of our expenses. Is that part of or was that part of the discussion in this group?

Ms. Evans thought the statute had an annual report requirement.

Mr. Manuel said that's to the legislature correct, not to the board. He's just wondering if the board as a decision-making body could get a financial update on where we're standing; are we in the red are we in the black, did we do better this year? Since he's been here he hasn't seen that. It's a corporation, understanding their financial situation would be beneficial and an annual report would be minimal.

Ms. Evans said her personal view, which was not discussed with the committee, but these policies and procedures are pursuant to a recommendation to have written policies on land acquisition, land disposition, land management, and document management. They didn't try to throw in everything but the kitchen sink. They took direction from the house investigative committee. It doesn't cover everything. It covers those areas where there weren't sufficient written policies.

Mr. Hong said Ms. Evans is correct. But as a board matter he agrees with Mr. Manuel entirely.

Mr. Manuel said he appreciates the feedback. If that was the function of the manual, then maybe the financial report doesn't need to be captured here. Maybe this is something the board can consider in future, just best practices, like every December or end of fiscal year just report back to the board on where we're at. That's helpful. And finally, when they have licenses that come for amendments and renewals but a policy that says, bring the license up to current license standards. For example, if you built a house back in the 60's but you try to build a house today, you are required to bring everything up to compliance in order to meet all of the best environmental, public health and safety requirements as possible. So he's just thinking as licenses are renewed and are amended either staff or the board, they adopt the latest standards of their license document versus using a document that is outdated, that is missing components that this policy committee has agreed should be the minimum requirements in the license. He wants to make it explicit that every touch of this body should be an opportunity to bring the license into current standing. Just out of good practice so there's parity amongst licensees that we're not treating someone differently in our review. That's it, he's officially done with his comments, and he thanked the policy committee.

Chair said he thinks it's good and they'll address that prior to the next board meeting. This submittal was just for informational purposes.

Ms. Shimabukuro-Geiser advised the Chair that she joined the meeting at 9:58 a.m.

Ms. Seddon and Mr. Yamamoto were excused at 10:00 a.m.

Chair called for a ten-minute recess at 10:03 a.m.

Chair called the meeting back to order at 10:11 a.m.

3. Request for Approval to Issue a Grant of Easement to Hawaiian Electric Company, Inc. for the Installation of Electrical Service at Galbraith Small Farm Lots at Wahiawa, Oahu, Tax Map Key (1) 7-1-012:001 (por.)

Chair called for a motion to approve. Motion to Approve: Mr. Watanabe; Second: Mr. Tabata

Chair asked for presentation by Staff. Mr. Roe stood on his submittal and was available for questions.

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

Chair asked for board discussion.

Mr. Manuel noted this submittal was missing compliance with HRS chapter 343, which was on the KIUC submittal. He's assuming this isn't exempt from an EA, but he wants to make sure that it's on the record in some way, shape or form, formally.

Chair asked if Ms. Prescott-Tate could respond.

Ms. Prescott-Tate said it's a good idea for it to be added on to the submittals. This is for a very small piece of property, it's .115 acres, so it's like the corner of the property so she didn't believe there needs to be an EA for that.

Mr. Manuel said he appreciates that but that's not the trigger. He just wanted to be very clear, as a board member that the prior submittal had an HRS chapter 343 compliance reference, and the remaining ones don't. He just wanted to make sure that it's in their authority to grant this and no EA was required.

Ms. Prescott-Tate said in the future they can add a check box to the submittal.

Mr. Manuel asked if there could also be a notation for whether the exemption was under part 1 or part 2. That would be great. He had no objection. He just wanted to make sure that for our records we're making an explicit decision on that.

Chair had a question for Mr. Roe. Ho farms is not using the greenhouse as far as he knows, do we know what's going on, is it because they don't have electricity?

Mr. Roe said that he thought there were some plantings, but he can double-check. He hasn't been there to look into the greenhouse recently.

Chair said when he goes by he always looks and sees about six feet of California grass there. It's a huge greenhouse to be sitting there. He was wondering if it's because they can't open and close the curtains because they don't have electricity.

Mr. Roe said he doesn't know the answer to that.

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

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Motion approved. Vote: 7-0

4. Request for Approval to Accept the Settlement Offer from Waste Management of Hawaii Inc. for the Over-Excavation of Soil in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.) Between August 2008 and November 2019

Chair Lau asked Ms. Prescott-Tate if we should move to Executive Session.

Ms. Prescott-Tate suggested this matter be moved to the end of the agenda so they can consolidate the two matters that need to be discussed in Executive Session. We'll take Item number 4 out of order and move on to item number 5.

5. Request for Approval to Amend License Agreement No. LI-KA1405 Issued to Elesther Calipjo, an individual, for 305.43 Acres, More or Less, in Kalepa, Kauai, Tax Map Keys (4) 3-9-002:020 (por.) and (4) 3-9-002:009 (por.)

Chair called for a motion to approve. Motion to approve: Mr. Tabata; Second by Ms. Shimabukuro-Geiser

Chair asked for staff presentation. Mr. Roe stood on his submittal and was available for questions.

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

Chair asked for board discussion.

Ms. Shimabukuro-Geiser said she just had a question for Mr. Roe. On the first page it says rental rate, annual rent is \$9,781.58 and in Exhibit C on the last page, page 2, at the very top it says lease rent and insurance \$2,500.00. That's in the Preliminary Plan of Utilization and Development. Is the rent in the utilization plan outdated or was there an adjustment made to the rent?

Mr. Roe said the utilization plan was developed by the farmer at the start of the license, and there may have been subsequent rent increases following submission of his utilization plan. The rent listed on page 1 of the submittal is what is currently charged.

Ms. Shimabukuro-Geiser asked shouldn't the utilization plan be updated to reflect the correct rent and insurance cost? Is it just something they submit when they apply?

Mr. Roe said yes. There are escalators built into the license and the rents change.

Mr. Manuel asked if this tenant was in good standing, are they farming, are they paying all their dues to Kalepa-Koalition? What's the status of this tenant on our property?

Mr. Roe responded that the tenant is current with ADC. They are current with their dues to Kalepa-Koalition. There is an on-going dispute that he believes is being resolved with Kalepa Coalition about whether or not Mr. Calipjo owes or should be responsible for special assessments for the road since the common element road does not run through his property. That's an ongoing question with Kalepa Coalition. They have not resolved it yet, but Mr. Calipjo has indicated that regardless of which way Kalepa Coalition membership votes on that, or how the issue shakes out, he's willing to resolve it. He just wants them to address his concern.

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Mr. Manuel asked if staff did a site visit to make sure the lands are being used as stated in the license, and it's in production.

Mr. Nakatani said that Mr. Calipjo is very outstanding and has a very nice pasture and he's one of the few tenants that has helped ADC with the water crisis and everything. He's been very cooperative and we're lucky to have a tenant like that.

Mr. Manuel said that's good to hear. He just wanted to double-check, even though this is kind of an administrative matter, it's great to hear success stories of our tenants, so thank you. One comment again, because of the 30%, hopefully our policies and procedures can get updated to do some kind of consultation with DHHL. He's assuming we didn't notify DHHL based on the staff's prior comments.

Chair asked if there was any other discussion or objections. Hearing none, he called for the vote.

Motion Approved. Vote: 7-0

6. Request for Approval to Issue a Revocable Permit to Kekaha Agriculture Association for 1 acre, More or Less, in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.)

Chair called for a motion to approve. Motion to approve: Mr. Tabata, Second: Mr. Manuel

Chair asked for staff presentation. Mr. Roe stood on his submittal and was available for questions.

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

Chair asked for board discussion.

Ms. Shimabukuro-Geiser asked if this is a request to approve a RP for one-acre plus or minus; so, is the rental rate on the submittal correct? It says the annual rent of \$1,800. If it's only one acre shouldn't it be \$150.00?

Chair asked Mr. Roe if it's \$150 per acre, per year.

Mr. Manuel asked or was it per month?

Mr. Roe said he needs to consult with Mr. Nakatani on that. Typically, ADC's rental rates in Kalepa are \$150 per acre per year. So, he needs to consult on that, he thinks it's a typo.

Mr. Nakatani said it's \$150 per acre per year.

Mr. Roe said that's a typo on his part and apologized.

Chair asked if the motion should be amended.

Ms. Shimabukuro-Geiser said she thinks it should be amended because the motion was made including an annual rent of \$1800.

Chair asked Mr. Manuel if he had something to say.

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Mr. Manuel said similar to that, the map on the back shows 1.5 acres. Is it one acre more or less or is it 1.5 acres? If you do the 1.5, obviously it would change the fee amount. He can see that being an issue if it's \$150 per acre, per month that's a difference of \$900, that ½ acre. That clarity in the amendment would be helpful.

Mr. Roe clarified that the acreage is 1 acre. It's adjacent to the carpenter shop area that is currently licensed to Andros. The map on page 257 comes from the Andros license. Maybe that should be struck. But the location identified on page 258 is the acreage. It mapped out to one acre exactly.

Mr. Manuel said so the box on page 257 that says 1.5 is not accurate.

Mr. Roe said that is correct; that refers to the Andros property. He apologized and said he should have caught that.

Mr. Manuel thanked Mr. Roe for the clarification.

Chair asked if Mr. Tabata would amend his motion.

Mr. Manuel said he can make the amendment as the second to Mr. Tabata's motion. Mr. Manuel asked Mr. Tabata if he was open to amending the motion to approve the annual rent to \$150 per year.

Mr. Tabata said yes.

Chair asked if there was any further discussion. Hearing none, he asked if there were any objections to amending the motion. Hearing none, the motion to amend was approved. Vote: 7-0

Chair then asked if there were any objections to approving the motion as amended. Hearing no objections, the amended motion was approved. Vote: 7-0

Chair asked for a motion to go into executive session. Motion: Ms. Shimabukuro-Geiser, Second Mr. Manuel

Motion approved. Vote: 7-0

Board entered executive session at 10:27 a.m.

Chair called the regular board meeting back to order at 11:20 a.m.

Chair recalled Item D. 4.

D. 4. Request for Approval to Accept the Settlement Offer from Waste Management of Hawaii Inc. for the Over-Excavation of Soil in Kekaha, Kauai, Tax Map Key (4) 1-2-002:001 (por.) Between August 2008 and November 2019

Chair called for a motion to approve. Motion to approve: Ms. Evans, Seconded: Mr. Watanabe

There was no staff presentation.

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

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Chair asked the board if there were any further discussion. Hearing none, he called for the vote.

Motion approved. Vote: 7-0

E. Old Business

1. Annual Performance Evaluation of the Executive Director

Chair stated that the board has been presented with an oral report on the Annual Performance Evaluation of the Executive Director and the vote will be taken up at the next meeting.

F. Executive Director's Update

Mr. Nakatani stated that the board was provided with his written update. Briefly, KAA received a \$1.9 million grant for the REPI program KAA had previously spoken to the board about. Hopefully that will help with flooding and cleaning up some of the water.

ADC started a REPI program for Wahiawa and they were starting the talk with the military, it's a Navy facility in Wahiawa.

ADC's transition to DBEDT continues. There were a couple of bumps with the transactions but overall, the move was happening. DBEDT has a different system. We're adapting to it. It's a good system, it's a tracking system they use because they have so many attached agencies. Mr. Nakatani thanked Ms. Shimabukuro-Geiser, Mr. Dalton and Mr. Jason Azus-Richardson for assisting ADC with the I.T. One last thing he wanted to introduce Mr. Takemoto; the new Myra.

Mr. Takemoto said it's nice being here. He has primarily an ag background. He came from Dole, prior to that he was with Pioneer HiBred, and also with Dole and Castle and Cook before. He started in ag in 1981 or so - worked in extension so he's done all kinds of different agriculture. He's looking forward to being a part of this organization and moving agriculture forward.

Chair asked the board if there was anything else.

Ms. Evans asked Mr. Nakatani if the term "open floodable space" was a detention basin or a retention basin; she's not familiar with that term.

Mr. Nakatani responded, he's not sure what it is but he thinks it's to help with the flooding and keep sediment out of the ocean. He doesn't think it's a substitute for the discharge right now, but he thinks when they have inclement weather and flooding it's supposed to help. It's a good thing.

Ms. Evans asked if the scope of work for the \$1.9 million grant was a typical plan, design, construction project?

Mr. Nakatani said he doesn't know that. He can have KAA send us more information when they start the project. They made several presentations on this before and he understands the concept, but he doesn't know about the construction and everything else. But kudos to them for getting the funds. We're not sacrificing much of our agricultural lands because those are the lands that get flooded anyway.

Ms. Evans said if Mr. Faye was able to make an informational presentation at some future meeting.

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Mr. Nakatani said he'll make that request to Mr. Faye, and he can provide an update on the plans.

Chair stated that if any of the members had questions, he has a meeting with KAA at the end of the month so just forward the questions and he'll make sure he gets an understanding. We should have them here for a presentation.

Chair asked if there were any other questions or comments. Hearing none the Chair moved to the next item.

L. Adjourn

Chair called for a motion to adjourn. Motion to approve: Mr. Manuel, Second: Ms. Evans

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

Motion approved. Vote: 7-0

Meeting adjourned at 11:39 a.m.

Respectfully Submitted,

Lynette H. Marushige
Secretary



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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

September 21, 2022

Subject: Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map Keys (1) 7-3-004:020

Applicant: N/A

Authority: Section 163D-4 (a)(6); 163D-3(g), Hawaii Revised Statutes

Area: 0.207 acres

Field No(s).: N/A

Tax Map Keys: (1) 7-3-004:020

Land Status: N/A

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No X

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

Character of Use: Residential

Zoning: A-2 Medium Density Apartment

Land Doc. Type: N/A

Term: N/A

Rental Rate: N/A

BACKGROUND:

The Agribusiness Development Corporation (ADC) has identified property that is considered to be of interest to the State for agricultural related purposes, based on the

parcel's existing infrastructure, improvements, and location. It is the State's responsibility under Article XI, Section 3, of the State constitution to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

Parcel 20 (Exhibit A): ADC is currently planning and developing the Central Oahu Agriculture and Food Hub Project with the goal of revitalizing local agriculture and aiding local farms. One aspect of the project is to assist farmers by providing safe and affordable workforce housing for their employees. Parcel 20 is located in central Wahiawa within a couple miles of ADC farmlands and the food hub and includes an apartment-style building with parking that *may* be suitable for workforce housing. Seller is asking \$6,498,878.

REQUEST:

Staff requests that the ADC Board of Directors (Board) authorize the Executive Director, or designee, to issue a letter of intent, conduct due diligence, and negotiate the purchase of the fee simple interest in real property located at Wahiawa, Oahu, Hawaii, Tax Map Keys (1) 7-3-004:020.

WATER NEEDS AND SOURCE OF WATER:

Property has access to potable water from the City and County of Honolulu, Board of Water Supply.

OPERATIONAL PLAN

To be determined.

CONSERVATION PLAN:

N/A

DISCUSSION:

Staff believes that the subject parcel may be suitable for, and complimentary to, ADC's mission and goals as they relate to the Central Oahu Agriculture and Food Hub Project. Staff will seek funding in the next legislative session, as may be appropriate.

RECOMMENDATION:

Based on the forgoing, staff recommends that the Board approve the request to authorize the Executive Director, or designee, to issue a letter of intent, to conduct due diligence, and to negotiate the purchase of the fee simple interest in real property located at Wahiawa, Oahu, Hawaii, Tax Map Keys (1) 7-3-004:020, subject to the following condition:

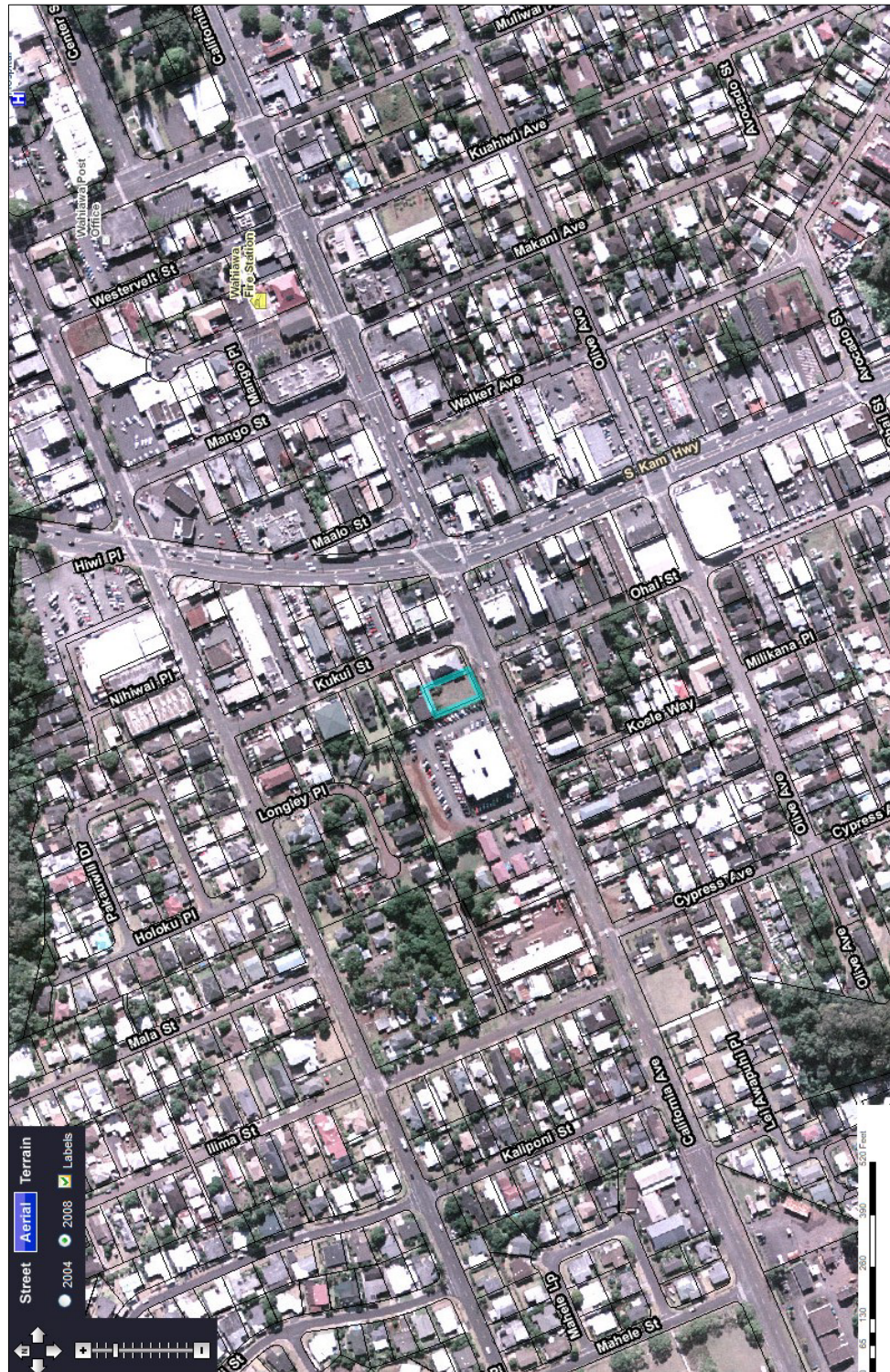
1. Staff will report due diligence findings to the Board, and, as appropriate, will seek approval of final terms and purchase authority.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A





STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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

September 21, 2022

Subject: Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-4-012:005

Applicant: N/A

Authority: Section 163D-4 (a)(6); 163D-3(g), Hawaii Revised Statutes

Area: 21,439 square feet

Field No(s).: N/A

Tax Map Keys: (1) 7-4-012:005

Land Status: N/A

Trust Land Status: Section ____ lands of the Hawaii Admission Act
Yes ____ No X

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

Character of Use: Commercial

Zoning: B-2 Community Business District

Land Doc. Type: N/A

Term: N/A

Rental Rate: N/A

BACKGROUND:

The Agribusiness Development Corporation (ADC) has identified property that is considered to be of interest to the State for both agricultural and educational related purposes, based on the parcels' existing infrastructure, improvements, and location. It is the State's responsibility under Article XI, Section 3, of the State constitution to conserve

and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands.

Parcel 05 (Exhibit B): ADC purchased the Tamura's warehouse at 1001 California Avenue in Wahiawa, Hawaii in 2013. ADC leased the site to the University of Hawaii (UH) in 2021 for the development of the Wahiawa Value Added Product Development Center (WVAPDC) with the goal of developing an entrepreneurial and product pipeline to aid in the agricultural development and food security of the State. Parcel 05 was formerly a gas station and mechanic shop and abuts the Tamura's warehouse site. The parcel *may* be suitable to complete the WVAPDC footprint and to ensure that the parcel is used for complimentary purposes. Seller is asking \$3,500,000.

REQUEST:

Staff requests that the ADC Board of Directors (Board) authorize the Executive Director, or designee, to issue a letter of intent, conduct due diligence, and negotiate the purchase of the fee simple interest in real property located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-4-012:005.

WATER NEEDS AND SOURCE OF WATER:

The property has access to potable water from the City and County of Honolulu, Board of Water Supply.

OPERATIONAL PLAN:

To be determined.

CONSERVATION PLAN:

N/A

DISCUSSION:

Staff believes that the subject parcel may be suitable for, and complimentary to, ADC's mission and goals as they relate to the Central Oahu Agriculture and Food Hub Project. However, due diligence with regard to Parcel 05 will include a particular focus on potential environmental concerns associated with the previous use. Staff will seek funding in the next legislative session, as may be appropriate.

RECOMMENDATION:

Based on the forgoing, staff recommends that the Board approve the request to authorize the Executive Director, or designee, to issue a letter of intent, to conduct due diligence, and to negotiate the purchase of the fee simple interest in real property located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-4-012:005, subject to the following condition:

1. Staff will report due diligence findings to the Board, and, as appropriate, will seek approval of final terms and purchase authority.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT B





STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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

September 21, 2022

Subject: Request for Approval to Adopt the "Land Management Policy & Procedure Manual" as Recommended by the Investigative Committee on Land Management Policy and Procedures

Authority: Sections 163D-4(a)(15), Hawaii Revised Statutes

BACKGROUND:

On November 10, 2021, the Board of Directors (Board) of the Agribusiness Development Corporation (ADC) authorized the establishment of the Investigative Committee on Land Management Policy and Procedures (Committee) pursuant to section 92-2.5(b)(1), Hawaii Revised Statutes for the purpose of developing land management policies and procedures for ADC.

ADC Chair Fred Lau appointed Board members Mary Alice Evans, Karen Seddon and Glenn Hong, to serve with him on the Committee. At the convening meeting of the Committee, Ms. Evans was elected as chair of the Committee and Ms. Seddon was elected as vice-chair of the Committee.

Staff compiled existing ADC policy materials into a "*Land Management Policy & Procedure Manual*" document (Manual), and over the course of the past nine months, the Committee and staff met to discuss and refine the policies and procedures and develop policies for unaddressed concerns. Your Committee held their final meeting on August 1, 2022 and agreed to the final draft (see Exhibit "A").

Your Committee presented the final draft of the Manual to the Board at the meeting on August 17, 2022.

DISCUSSION:

Your Committee has worked diligently with staff to develop detailed written policies and procedures that will provide ADC's Board of Directors and employees with a framework to ensure transparency and accountability in the conduct of ADC.

Your Committee members and staff have attempted to create a balance between the need for predictable standard processes and the ability to be flexible in a dynamic business environment. The Committee believes this framework will provide general guidance to ADC staff, while allowing the ADC Board to approve modifications as new conditions arise in the future.

RECOMMENDATION:

Based on the forgoing, and pursuant to section 92-2.5(b)(1), Hawaii Revised Statutes, the Committee respectfully recommends that the Board approve the "*Land Management Policy & Procedure Manual*", in accordance with section 92-2.5(b)(1)(C), Hawaii Revised Statutes.

Respectfully Submitted,



Mary Alice Evans
Committee Chair

EXHIBIT A

“Land Management Policy & Procedure Manual”

[see following pages]

Land Management Policy & Procedure Manual

State of Hawaii,
Agribusiness Development Corporation

FINAL DRAFT

This manual (v. 1.0) was approved by
the ADC Board of Directors on [insert
date].

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1.0 Definitions

“ADC” means the State of Hawaii, Agribusiness Development Corporation, an attached agency to the Hawaii Department of Business, Economic Development, and Tourism.

“Board” means the eleven members, collectively, of the ADC Board of Directors.

“FSMA” means the “Food Safety Modernization Act of 2011”.

“GAP” means “Good Agricultural Practices”.

“License” means a legal document by which ADC may grant a limited ownership interest to its property, or a portion thereof. Unless otherwise indicated herein, “license” shall be inclusive of the term “lease.”

“Licensee” means any person or entity to whom ADC has issued a fully executed license. Unless otherwise indicated herein, “licensee” shall be inclusive of the term “lessee.”

“Revocable Permit” means a legal document by which ADC may grant a highly limited ownership interest to its property on a month-to-month basis with an annual renewal. Such disposition is intended to be temporary and short-term.

“Right of Entry” means a legal document by which ADC may grant a right-to-enter a certain property or properties to accomplish a certain task, but which right conveys no ownership interest to the property.

“Staff” means the employees of ADC, including the executive director.

2.0 Criteria to Consider for Types of Agricultural Activities

In planning what types of agricultural activities are most appropriate for certain properties, consideration should be given to the following factors, including but not limited to: access to water (both irrigation and potable), access to utilities, topography, soil types, state land use district, zoning, trust land status, existing improvements, and proximity to external population centers (i.e. houses, schools, parks, commercial centers, etc.).

3.0 Property Disposition and Evaluation Procedures

3.1 Published Notice of Availability

Notices of Availability or Requests for Application shall be published at least once in the following publications: Star-Advertiser, ADC website, ADC newsletter/ mailing list, and local agricultural organizations, including but not limited to, Hawaii Farm Bureau, Hawaii Farmers Union United, and University of Hawaii, College of Tropical Agriculture and Human Resources.

The notice shall include the following information: maps and descriptions of land and infrastructure (size, location, and intended disposition), parcel challenges and condition of property, water source (type and availability), date of site inspections, deadline to applicants, applicant requirements, evaluation process and criteria, general terms of license, and anti-discrimination notice.

3.2 Procedure for Galbraith & Whitmore Lands

- A. Send request for applications. When a parcel or lot is available, issue a request for applications via written notification, email, online posting, and public announcement (for Star Advertiser ads, one posting per notification). The notification should include a brief description of the area, an outline of the basic requirements, type of agricultural activity, and a deadline or cutoff date to submit applications. ADC staff may meet with investigative committee appointed by the ADC Board Chair to discuss and develop a notification.
- B. Create a distributions list. Develop a list of potential applicants, which include but is not limited to county, state, and federal agencies, local non-profits with agricultural ties, and community groups. The list should also include the individuals who submitted expression of interest for land on Oahu. Use the information from the "ALL EXPRESSION OF INTEREST CONTACTS" in the "Request for land Application" folder in ADC shared. Include the expression of interest that selected the type of farming ADC is seeking (i.e. if the available area has been designated for field crops, include the expression of interest that selected "Field Crops").

Create a separate excel spreadsheet for each notification to track requests and responses. Include the contact person for the agencies, groups, and individuals, address, the date the notification was sent, and the date ADC received the application/acknowledgement and call it "CONTACT LIST FOR (INSERT DATE) NOTIFICATION." Create a subfolder in "Request for Land Application" and name file after the available area (i.e. Galbraith Agricultural Lands Lots 1 & 2) and file the list in the subfolder along with the notification.

- C. Review and rate submitted applications and proposal (business plan, land utilization plan, financials, etc.) Review all submitted applications, even if they don't meet the application requirements and check for incomplete forms or ineligible applicants. ADC staff may make a request to the ADC Board Chair to form an investigative committee to review and vet submitted applications. If there are multiple applicants interested in a parcel or lot, it is highly recommended to make a request to the ADC Board Chair to form an investigative committee to review and rate applications and formulate a report of their recommendations to be presented to the ADC Board of Directors (ADC Board). Use the ADC Rating Sheet for Application which has a maximum score of 100 points to determine the best applicant. Choose the highest scores.

- D. Conduct farm visits. Concurrent with paragraph “C”, conduct a site visit at the applicant’s current farming operations. This is optional, but very helpful when trying to evaluate the applicant and their operation.
- E. Negotiate terms and conditions of Land License, Lease, or Revocable Permit. Meet with the selected applicant to discuss the terms and conditions of the Land License/Lease/Permit (License). Any request for special conditions is subject to review by the Attorney General’s (AG’s) office and the approval of the ADC Board. There are general conditions within the License agreement that are standard and non-negotiable. Consult with the AG’s office if necessary.
- F. Submit a request to the ADC Board for approval to issue a License. Prepare a submittal to request approval from the ADC Board to issue License to the applicant. The submittal shall include but not be limited to, background information, the land request, operational plan, and recommendations to the ADC Board. All land agreements are subject to the ADC Board’s approval.
- G. Execute the License. Draft a License based on the terms and conditions approved by the AG’s office and the ADC Board. Send the final version to the applicant for signature. Prior to the execution of the License, the Executive Director may issue a right-of-entry to allow the approved applicant the opportunity to conduct due diligence, field clearing, conservation planning, and other appropriate pre-farming activities.
- H. Concurrent with paragraph “G”, request proof of liability insurance and approved conservation plan, or, alternately, proof of development of soil conservation plan (i.e. signed agreement with soil conservation agency and proof of payment).
- I. Issue notice to proceed. Once the Licensee/Lessee/Permittee (Licensee) has submitted a copy of their liability insurance, their approved soil conversation plan or proof of development thereof, and their License is fully executed, send notification to inform the Licensee that they may begin farming on the land.
- J. Send a copy of the fully executed License to City & County of Honolulu Real Property Assessment Division (RPAD) mapping. Mail or email a copy of the fully executed License to RPAD mapping.
- K. Inform the Licensee via written notification that they are responsible for petitioning the City to receive agricultural tax rates. Attach appropriate forms from the RPAD website to the letter.
- L. Inform Licensee via written notification that they may be eligible to receive City and State incentives for joining the Enterprise Zone (EZ) Program. Attach tax forms from the EZ Program website to the letter. Send a letter to the Licensee and attach all forms to be completed and submitted by the Licensee.

- M. In situations where exigent circumstances exist that have caused an ADC tenant to be displaced from their ADC premises, ADC reserves the option to bypass the forgoing procedures 3.2(A) – 3.2(D), with justification and approval by the ADC Board.

3.3 Procedure for Kekaha Lands

- A. Review submitted application and proposal (business plan, land utilization plan, financials, etc.) Review submitted applications and check for incomplete forms or ineligible applicants. ADC staff may make a request to the ADC Board Chair to form an investigative committee to review and vet submitted applications. Inform the applicant to contact the Kekaha Agricultural Association (KAA) to receive comments from the KAA members about the applicant's proposed farming activities. Consult with the ADC Board's Kauai delegate. If a specific field or area has not been identified in the application, consult with applicant and KAA to identify a field or area.
- B. Conduct farm visits. Concurrent with paragraph "A", conduct a site visit at the applicant's current farming operations. This is optional, but very helpful when trying to evaluate the applicant and their operation.
- C. Negotiate terms and conditions of License. Meet with the applicant to discuss the terms and conditions of the License. Any request made by the applicant for special conditions is subject to review by the AG's office and approval of the ADC Board. There are general conditions within the License agreement that are standard and non-negotiable. Consult with the AG's office if necessary.
- D. Submit a request to the ADC Board for approval to issue a License. Prepare a submittal to request approval from the ADC Board to issue License to the applicant. The submittal shall include but not be limited to, background information, the land request, operational plan, and recommendations to the ADC Board. All land agreements are subject to the ADC Board's approval.
- E. Execute the License. Draft a License based on the terms and conditions that were reviewed by the AG's office and approved by the ADC Board. Send the final version to the applicant for signature. Prior to the execution of the License, the Executive Director may issue a right-of-entry to allow the approved applicant the opportunity to conduct due diligence, field clearing, conservation planning, and other pre-farming operations.
- F. Concurrent with paragraph "E", request proof of liability insurance and approved conservation plan, or, alternately, proof of development of soil conservation plan (i.e. signed agreement with soil conservation agency and proof of payment).
- G. Issue notice to proceed. Once the Licensee has submitted a copy of their liability insurance, their approved soil conversation plan or proof of development thereof, and their License is fully executed, send notification to inform the Licensee that they may begin farming on the land.

- H. In situations where exigent circumstances exist that have caused an ADC tenant to be displaced from their ADC premises, ADC reserves the option to bypass the forgoing procedures 3.3(A) – 3.3(D), with justification and approval by the ADC Board.

3.4 Procedure for Kalepa Lands

- A. Review submitted applications and proposal (business plan, land utilization plan, financials, etc.) Review submitted applications and check for incomplete forms or ineligible applicants. ADC staff may make a request to the ADC Board Chair to form an investigative committee to review and vet submitted applications. Staff should consult with Kalepa Coalition for their thoughts and concerns.
- B. Conduct farm visits. Concurrent with paragraph “A”, conduct a site visit at the applicant’s current farming operation. This is optional, but very helpful when trying to evaluate the applicant and their operation.
- C. Negotiate terms and conditions of License. Meet with the applicant to discuss the terms and conditions of the License. Any request made by the applicant for special conditions is subject to review by the AG’s office and approval of the ADC Board. There are general conditions within the License agreement that are standard and non-negotiable. Consult with the AG’s office if necessary.
- D. Submit a request to the ADC Board for approval to issue a License. Prepare a submittal to request approval from the ADC Board to issue License to the applicant. The submittal shall include but not be limited to, background information, the land request, operational plan, and recommendations to the ADC Board. All land agreements are subject to the ADC Board’s approval.
- E. Execute the License. Draft a License based on the terms and conditions that were reviewed by the AG’s office and approved by the ADC Board. Send the final version to the applicant for signature. Prior to the execution of the License, the Executive Director may issue a right-of-entry to allow the approved applicant the opportunity to conduct due diligence, field clearing, conservation planning, and other pre-farming operations.
- F. Concurrent with paragraph “E”, request proof of liability insurance and approved conservation plan, or, alternately, proof of development of soil conservation plan (i.e. signed agreement with soil conservation agency and proof of payment).
- G. Issue notice to proceed. Once the Licensee has submitted a copy of their liability insurance, their approved soil conversation plan or proof of development thereof, and their License is fully executed, send notification to inform the Licensee that they may begin farming on the land.
- H. In situations where exigent circumstances exist that have caused an ADC tenant to be displaced from their ADC premises, ADC reserves the option to bypass the forgoing procedures 3.4(A) – 3.4(D), with justification and approval by the ADC Board.

3.5 Procedure for Hold-over Tenants

Upon expiration of the License, including any extensions, if the land is not otherwise disposed, ADC may allow the Licensee to continue to hold the land on a month-to-month basis for a period not to exceed one year, upon such rent, terms and conditions as provided for the last year of the term of the License. Requests to hold-over must be submitted to the ADC Board in writing no less than thirty days prior to the License expiration date. Requests submitted less than thirty days prior to the License expiration date may be summarily denied unless exigent circumstances exist.

4.0 Land Document Policies

4.1 Rent Setting Policy

Rent shall be based on agricultural fair market appraised value, however, the ADC Board may modify the rent rates and schedules, if appropriate.

4.2 Rent Credit (Deferments, Credits, and Discounts for Improvements)

A rent reduction or waiver is available to induce a Licensee to invest in the demolition of aged improvements or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public farm lands, including infrastructure improvements that would benefit both the Licensee and other ADC tenants.

The ADC Board may reduce or waive the License rental at the beginning of the License term for public land to be used for any agricultural, pastoral or agricultural service use where the land requires substantial improvements in order to support the activities. When a License requires a Licensee to demolish existing improvements or provide basic infrastructure, including water, electricity, roads and other utilities, before the Licensee can make productive use of the land, the ADC Board may approve a reduction or waiver of License rental for a period of up to twenty years; provided that the aggregate amount of the reduced or waived License rental shall not exceed the amount of the Licensee's total expenditures for demolition or provision of the infrastructure. Rent credit may be extended, as appropriate, with a License extension.

4.3 Term of License

In general, it shall be the policy of ADC to issue Licenses for up to thirty-five years. Exceptions may be made with appropriate justification and approval by the ADC Board.

4.4 License Re-opening

In general, it shall be the policy of ADC to issue Licenses with re-opening clauses for the purpose of adjusting the rental rate, every five years with an escalator at 2.5% of current rent. Exceptions may be made with appropriate justification and approval by the ADC Board.

4.5 License Extension

In general, it shall be the policy of ADC to issue Licenses for thirty-five years which shall include an option to extend. Beginning in the twenty-fifth year, Licensees may request in writing to extend the term of the License for a term not to exceed an additional thirty-five-year term. Any such extension option may be approved by the ADC Board, which approval may be withheld at the ADC Board's sole discretion.

4.6 License Renewal After Expiration

In general, it shall be the policy of ADC to allow the renewal of an expired License upon the faithful and diligent execution of all terms and conditions of the License, upon the request of the Licensee, and subject to approval by the ADC Board, which approval may be withheld at the ADC Board's sole discretion.

FINAL DRAFT

5.0 Environmental Policies and Procedures

5.1 Requirement of Remediation of Hazardous Materials Prior to License Termination

Where there is good cause to believe actions by the Licensee have caused the unwarranted or illegal release of a hazardous substance(s), pollutant(s), or contaminant(s) onto the Licensed property or near-environment during the term of the License, the Licensee shall, at its own cost and expense, conduct a Phase I Environmental Site Assessment (ESA).

What circumstances constitute good cause shall be determined by ADC, at its sole discretion, after consideration of the various Hazardous Materials laws, which include the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §5101, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. §§2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar federal, state or local laws, ordinances, rules, and regulations.

The Phase I ESA shall be conducted by an environmental professional utilizing the standards established by the American Society for Testing and Materials (ASTM), consistent with CERCLA.

Should the Phase I ESA identify potential contamination, Licensee shall at its own cost and expense, hire a trained environmental professional to conduct a Phase II ESA for purposes of confirming and identifying the presence of hazardous materials through sampling and laboratory analysis.

Where laboratory analysis confirms the presence of hazardous materials, Licensee at its sole cost and expense shall require the environmental professional who conducted the Phase II ESA to identify any further investigative needs, and develop action plans necessary to remediate the property.

Licensee, at its own cost and expense, shall institute the remedial action plan for purposes of restoring the property back to a safe condition that does not pose a danger to health or the environment.

Should the Phase I ESA reveal no unwarranted or illegal release of a hazardous substance(s), pollutant(s), or contaminant(s) occurred during the License term, ADC shall reimburse Licensee for the cost of the Phase I ESA.

5.2 Requirement of a Phase I Environmental Assessment for Hazardous Materials

A Phase I ESA utilizing standards established by the ASTM shall be conducted when ADC considers acquiring land that has previously been used for commercial purposes. Standards shall be consistent with the CERCLA. The services of a trained environmental professional shall be procured for purposes of conducting the Phase I ESA.

Where a Phase I ESA identifies potential contamination, a Phase II ESA including sampling and laboratory analysis shall be conducted by a trained environmental professional to confirm and identify the presence of hazardous materials.

Where laboratory analysis confirms the presence of hazardous materials, the Phase II ESA environmental professional shall identify any further investigative needs, and develop action plans necessary to remediate and clean up the property. The information obtained through the Phase I EAS, and if necessary, the Phase II EAS, shall be used to inform ADC's decision regarding acquisition of the land or renegotiation of the terms and conditions of the sale.

5.3 Soil Conservation Plan

It shall be the general policy of ADC that all agricultural operations shall submit an approved soil conservation plan within one year of the execution of their License, or an updated soil conservation plan within one year of the execution of a License amendment that may affect land holdings under the amended License. Licensees shall be required to update their approved soil conservation plan upon any significant change in use, or at the request of ADC. ADC may execute a License prior to the development of an approved soil conservation plan if the approved applicant provides a signed agreement and deposit payment to the soil conservation agency.

6.0 Termination of License Procedures

6.1 Procedure for Pre-Default Remediation

A. Financial Default

Form Letters shall be drafted for each of the following action triggers:

1. “Notice of Past Due Rents” letter. When the License payment is thirty days overdue, the Property Manager (PM) will send a “friendly reminder letter” to the Licensee via email or U.S. Postal Service.
2. “Notice of Violation for Past Due Rents” letter. If there is no response to the “friendly reminder letter”, and the payment continues to be overdue, at sixty days, the PM will send a “past due letter” notifying the Licensee of the delinquent payment amount(s), accrued late fees, accrued interest, and any other accrued fees. The “past due letter” shall include a demand for payment to bring the account current within thirty days to avoid further fees and shall note that failure to do so will result in referral of the License to the ADC Board for referral to the AG’s office for collection action. The PM shall send the “past due letter” to the Licensee via certified mail, return receipt requested.
3. “Notice of Violation for Past Due Rents & Board Hearing” letter. If there is no response to the “past due letter”, and payment continues to be overdue, at ninety-days, the PM shall send a “Board Hearing letter” notifying the Licensee of the matter of delinquent payment amount(s), accrued late fees, accrued interest, and any other accrued fees has been set for hearing before the ADC Board. The “board hearing letter” shall notify the Licensee of the date and time of the ADC Board meeting and that referral to the AG’s office will result in collection actions that may affect their credit rating as well as possible garnishment of bank accounts. The “board hearing letter” shall be sent to the Licensee via certified mail, return receipt requested.
4. “Notice of Board Action and Referral to AG’s Office” letter. Following the ADC Board meeting, the PM shall notify the Licensee of the ADC Board’s decision. If the ADC Board approves the referral to the AG’s office, the PM shall notify the Licensee that the matter has been referred to the AG’s office for collection and possible termination of the License. The “referral letter” shall be sent via certified mail, return receipt requested.

Final action as recommended by the AG’s office shall be submitted to the ADC Board for approval.

The PM shall be empowered to make payment arrangements with those Licensees who, prior to action by the ADC Board, have promptly notified the PM of any extenuating circumstances that have delayed monthly payment obligations in an effort to allow the Licensee to continue productive use of the Licensed property.

The PM, in collaboration with the AG’s office, shall draft standardized form letters.

B. Non-Financial Default

Form letters shall be drafted for each of the following action triggers:

1. Notification of Inspection. The PM shall notify the Licensee by phone or by email to schedule the inspection with no less than twenty-four-hour notice to the Licensee for regularly scheduled inspections. For suspected violations outside of a regularly scheduled inspection, the PM shall not be required to give notification and may enter the property at will, notwithstanding any License prohibitions to the contrary.
2. "Notice of Violation" letter. The PM shall notify the Licensee in writing of any License violations or concerns within five business days of the inspection via certified mail, return receipt requested. The notice will request that remediation of all concerns be resolved within thirty days from the date of the letter and will schedule a follow-up inspection at the close of the thirty-day window. PM shall be empowered, in consultation with the Executive Director, to allow a longer period of time for informal remediation before proceeding to the next step.
3. "Notice of Board Referral" letter. The PM shall notify the Licensee in writing of any outstanding License violations or concerns within five business days of the follow-up inspection via certified mail, return receipt requested, or process server. The notice will notify the Licensee that the matter will be considered by the ADC Board for referral to the AG's office at the next scheduled meeting. PM shall also send notice of the ADC Board meeting to the Licensee as soon as the meeting is publicly noticed.
4. "Notice of Board Action and Referral to AG's Office" letter. The PM shall notify the Licensee in writing of any action by the ADC Board and any referral of the License to the AG's Office within five business days of the ADC Board meeting via certified mail, return receipt requested.

Final action as recommended by the AG's office will be submitted to the ADC Board for approval.

The PM shall be empowered to make arrangements with those Licensees who, prior to delivery of the Final Notice Letter, have promptly notified the PM of any extenuating circumstances that have delayed obligations in an effort to allow the Licensee to continue productive use of the Licensed property.

The PM, in collaboration with the AG's office, shall draft standardized form letters.

6.2 Procedure for Default & Termination

- A. Upon failure to reach a satisfactory resolution under any pre-default proceedings that have been properly referred to the AG's office, ADC may initiate termination proceedings pursuant to the terms of the License. Staff shall include the request for termination on the ADC Board's meeting agenda and prepare the appropriate submittals.

- B. Notification to Licensee of Possible ADC Board Action to Terminate. Staff shall advise the Licensee of possible action by the ADC Board to terminate the License as soon as possible, but in any case not less than six days before the ADC Board meeting at which consideration of the License termination is to be heard via certified mail, return receipt requested.
- C. Notification of the ADC Board's Action; Demand to Vacate. The AG's office shall issue a letter by certified mail, return receipt requested, notifying Licensee of action taken by the ADC Board. When the ADC Board approves the termination of the License, the letter shall allow a reasonable amount of time for the Licensee to voluntarily leave the property and shall include a demand to clear the property of trash and personal belongings.
- D. Should the Licensee remain on the property after the deadline to vacate, the AG's office shall file an action to formally evict any hold-over Licensee. The resulting Writ of Ejectment shall be served by appropriate law enforcement and the officer(s) shall remove the Licensee.
- E. In the event that ADC is required to remove any personal property left on the premises and ADC expends funds to accomplish the removal, the AG's office may return to court to seek an order for damages against the Licensee.

6.3 Requirement of Remediation of Hazardous Materials Prior to License Termination

Where there is good cause to believe actions by the Licensee have caused the unwarranted or illegal release of hazardous substance(s), pollutant(s), or contaminant(s) onto the Licensed property or near-environment during the term of the License, the Licensee shall, at its own cost and expense, conduct a Phase I Environmental Site Assessment (ESA).

What circumstances constitute good cause shall be determined by ADC, at its sole discretion, after consideration of the various Hazardous Materials laws, which include the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §5101, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. §§2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §§300f through 300j, the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §§11011 through 11050, the Environmental Response Law, Chapter 128D, Hawaii Revised Statutes, and any similar federal, state or local laws, ordinances, rules, and regulations.

The Phase I ESA shall be conducted by an environmental professional utilizing the standards established by the American Society for Testing and Materials (ASTM), consistent with CERCLA.

Should the Phase I ESA identify potential contamination, Licensee shall at its own cost and expense, hire a trained environmental professional to conduct a Phase II ESA for purposes of confirming and identifying the presence of hazardous materials through sampling and laboratory analysis.

Where laboratory analysis confirms the presence of hazardous materials, Licensee at its sole cost and expense shall require the environmental professional who conducted the Phase II ESA to identify any further investigative needs, and develop action plans necessary to remediate the property.

Licensee, at its own cost and expense, shall institute the remedial action plan for purposes of restoring the property back to a safe condition that does not pose a danger to health or the environment.

Should the Phase I ESA reveal no unwarranted or illegal release of a hazardous substance(s), pollutant(s), or contaminant(s) occurred during the License term, ADC shall reimburse Licensee for the cost of the Phase I ESA.

FINAL DRAFT

7.0 Document Management Policies and Procedures

7.1 Pre-Acquisition Due Diligence Considerations

- A. Gather general property information -- county planning departments, real property assessment offices, internet searches, etc., and analyze for appropriateness for ADC ownership. Consider:
 - i. Tax Map Key Identification
 - ii. Parcel Size/Area
 - iii. Location/address (if any)
 - iv. Flood Zone Designation
 - v. State Land Use Classification
 - vi. County Zoning Designation
 - vii. Special District Designation
 - viii. Other Reasonable Inquiries as Information is Obtained
- B. Title – depending upon negotiated terms, receive or procure and review documents in Preliminary Title Report (PTR) to determine if all documents are acceptable or if particular exceptions to title need to be changed or deleted. Compare title report information against county real property planning or tax assessment division information on property for consistency. Review every document listed in PTR for reasonableness and to learn about easements, leases, licenses, permits, rights of way, grants, encroachments, etc. encumbering the property, lack of legal access, availability of irrigation and/or potable water, electricity, sewage, telecommunication issues, restrictive covenants, easements, analyze the impact of such encroachments on the value of the property, the intended use of the property, and potential liability that may arise therefrom. Confer with title company on questionable exceptions. Prepare letter to seller requesting removal of exceptions, if necessary, and negotiate same.
- C. Prepare request to seller for any and all information pertaining to the property that arises from site inspections, document reviews or generally known public information. Include any and all prior title reports, environmental reports and documents, surveys, take lead from these reports as appropriate.
- D. Environmental Phase 1 Report – procure environmental site assessment report. Review report for compliance with All Appropriate Inquiries (AAI) standards under 40 CFR Part 312 (final rule) and ASTM E1527-05. Confer with contractor concerning any questionable or objectionable environmental concerns. Determine if Phase II is required and proceed as appropriate.
- E. Value – procure and review appraisal report for completeness and correctness and appropriate adjustments to value. Confer with appraiser concerning any questionable or objectionable adjustments to value. Confirm purchase price with seller.

- F. Boundaries – determine whether boundary survey, ALTA-standard survey, or something in between would be reasonable and necessary, and procure and review the same for appropriateness, reasonableness, and acceptability.
- G. Obtain any and all subdivision or condominium property regime documents and maps, if applicable, review restrictions for appropriateness, reasonableness, and acceptability.
- H. Corporate Authority – verify seller is in good corporate standing with State of Hawaii DCCA, BREG. If seller is foreign corporation, verify good standing with state of incorporation's secretary of state. If necessary or if questionable, develop understanding of corporate seller, its various affiliates, and any impact of the corporate structure on transaction.
- I. Improvements, Additional Considerations:
 - i. Height limitations
 - ii. Sewage and solid waste requirements
 - iii. Potable water requirements
 - iv. Fire hydrants and fire code restrictions or requirements
 - v. Permitted and legal accesses
 - vi. Drainage restrictions and requirements
 - vii. Power issues
 - viii. Telecommunication issues
 - ix. Other reasonable inquiries, as information is obtained

Contact DAGS, Risk Management office with any questions on extraordinary risk issues.

7.2 Requirement of a Phase I Environmental Assessment for Hazardous Materials

A Phase I ESA utilizing standards established by the ASTM shall be conducted when ADC considers acquiring land that has previously been used for commercial purposes. Standards shall be consistent with the CERCLA. The services of a trained environmental professional shall be procured for purposes of conducting the Phase I ESA.

Where a Phase I ESA identifies potential contamination, a Phase II ESA including sampling and laboratory analysis shall be conducted by a trained environmental professional to confirm and identify the presence of hazardous materials.

Where laboratory analysis confirms the presence of hazardous materials, the Phase II ESA environmental professional shall identify any further investigative needs, and develop action plans necessary to remediate and clean up the property. The information obtained through the Phase I EAS, and if necessary, the Phase II EAS, shall be used to inform ADC's decision regarding acquisition of the land or renegotiation of the terms and conditions of the sale.

7.3 Soil Conservation Plan

It shall be the general policy of ADC that all agricultural operations shall submit an approved soil conservation plan within one year of the execution of their License, or an updated soil conservation plan within one year of the execution of a License amendment that may affect land holdings under the amended License. Licensees shall be required to update their approved soil conservation plan upon any significant change in use, or at the request of ADC. If the soil conservation planning agency does not request an executed land document prior to conservation planning, ADC may require the conservation planning be completed prior to the execution of the License agreement. ADC may execute a License prior to the development of an approved soil conservation plan if the approved applicant provides a signed agreement and deposit payment to the soil conservation agency.

8.0 Property Management Policies

8.1 Inspections; Frequency

In general, it shall be the policy of ADC that Licensee inspections shall occur at least annually in order to document the ongoing condition of the property, as well as to document any License violations or unauthorized activity. Inspections for each Licensee shall be conducted pursuant to the terms and conditions of the respective License agreements.

8.2 Inspections; Advance Notice

In general, it shall be the policy of ADC that Licensees shall receive at least two days advance notice of a formal annual inspection. However, ADC reserves the right to enter the premises without notice to the Licensee in cases where the PM believes that time is of the essence.

8.3 Inspections; Scope

In general, it shall be the policy of ADC to conduct inspections that document, by written form and photographic evidence, the condition of each Licensed premises and the Licensee's conformance with the terms and conditions of the License. Additionally, ADC may document additional parameters including, but not limited to, GAP, FSMA, and environmental concerns.

9.0 Standard Terms and Conditions for Licenses Policy

9.1 Licensee Reporting Requirements

In general, it shall be the policy of ADC to include a License requirement for Licensee to submit an annual report to ADC that shall include crops in production, quantity of crops produced for the report period, and status report on permitted subleases and rent received. ADC may allow Licensees who are members of cooperative arrangements with other Licensees to submit “crops in production” and “quantity of crops produced” data in aggregate.

9.2 Security Deposits & Performance Bonds

In general, it shall be the policy of ADC to require an amount equal to two month’s base rent for security deposit. Exceptions may be made upon request of the Licensee, and with appropriate justification to, and approval by, the ADC Board. In the event the cost of a performance bond is prohibitive, ADC may accept alternatives including, but not limited to, a joint ownership of certificate of deposit for the term of the License.

9.3 Consent to Mortgage

In general, it shall be the policy of ADC to not include a consent to mortgage as a standard License provision. Exceptions may be made upon request of the Licensee, and with appropriate justification and approval by the ADC Board.

9.4 Consent to Sublicense

In general, it shall be the policy of ADC not to allow the sublicensing of its properties. Exceptions may be made with appropriate justification and approval by the ADC Board.

9.5 Termination of License for Cause

In general, it shall be the policy of ADC to terminate a License for un-remediated cause. ADC reserves the right to sue for damages.

9.6 Termination of License by Licensee Request

In general, it shall be the policy of ADC to reserve the right to sue for damages in the event of the early termination of a License by the Licensee after a reasonable effort has been made by the Licensee to find a new and suitable tenant. ADC further reserves the right to approve or disapprove any proposed assignee based on their use conformance with ADC’s mission.

9.7 Disposition of Abandoned Property

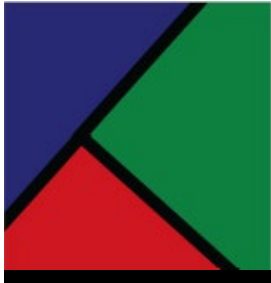
In general, it shall be the policy of ADC that upon the expiration, or earlier termination, of a License, the Licensee shall remove all personal property from the premises. In the case of termination, Licensee shall have thirty days from the date of termination, or such other time as approved by the ADC Board, to remove their personal property. Thereafter, any remaining personal property shall be considered abandoned. ADC may dispose of the property or sue to enforce the removal and/or for damages.

ADC, at its sole discretion, may charge rent for the storage of any personal property left on the premises.

10.0 Entitlement Revenue Policy

It shall be the policy of ADC that revenue derived by ADC from Lease rents, License rents, Permit rents, or royalty fees, from the utilization of public lands shall be collected by ADC to the extent required by law. Accordingly, thirty per cent (30%) of the state receipts derived from lands previously cultivated as sugarcane lands shall be separated and deposited into a separate account for transfer to the native Hawaiian rehabilitation fund in compliance with Article XII, section 1 of the Hawaii State Constitution, the "Hawaiian Homes Commission Act." Additionally, twenty per cent (20%) of the state revenues derived from the public land trust established by Section 5 of The Admission Act, shall be separated and deposited into a separate account as directed by the Department of Budget and Finance for transfer to the Office of Hawaiian Affairs in compliance with Article XII, section 6 of the Hawaii State Constitution, and sections 10-3(1) and 10-13.5 of the Hawaii Revised Statutes.

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Open Floodable Space

Prepared by the
Kekaha Agriculture Association
for the
Agribusiness Development Corporation
September 2022

**KEKAHA AGRICULTURE
ASSOCIATION**

A NON-PROFIT AGRICULTURAL COOPERATIVE
Est. 2003

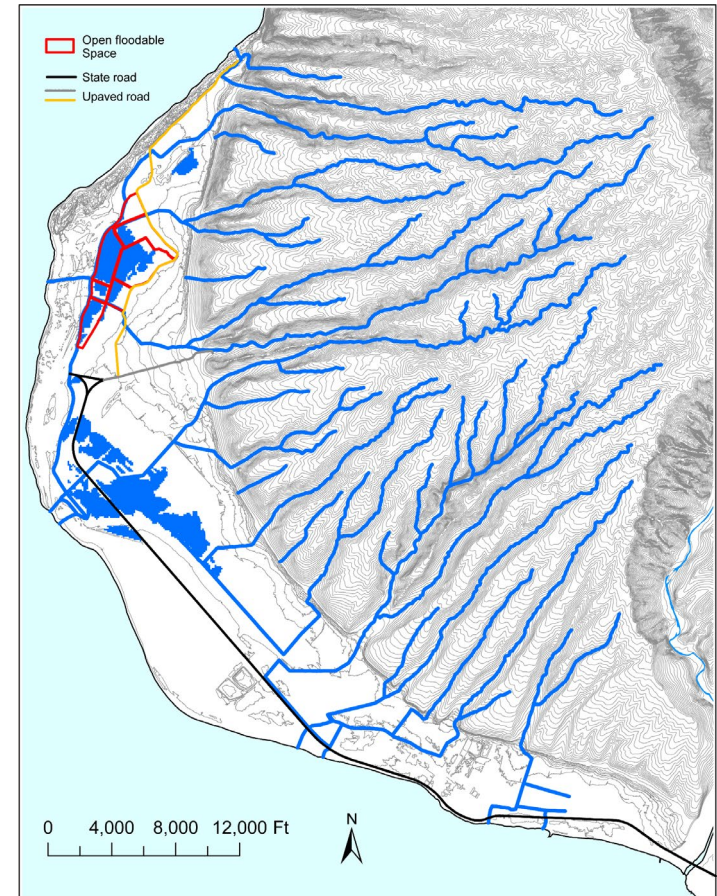


U.S. Department of Defense Readiness and Environmental Protection Integration (REPI) Program

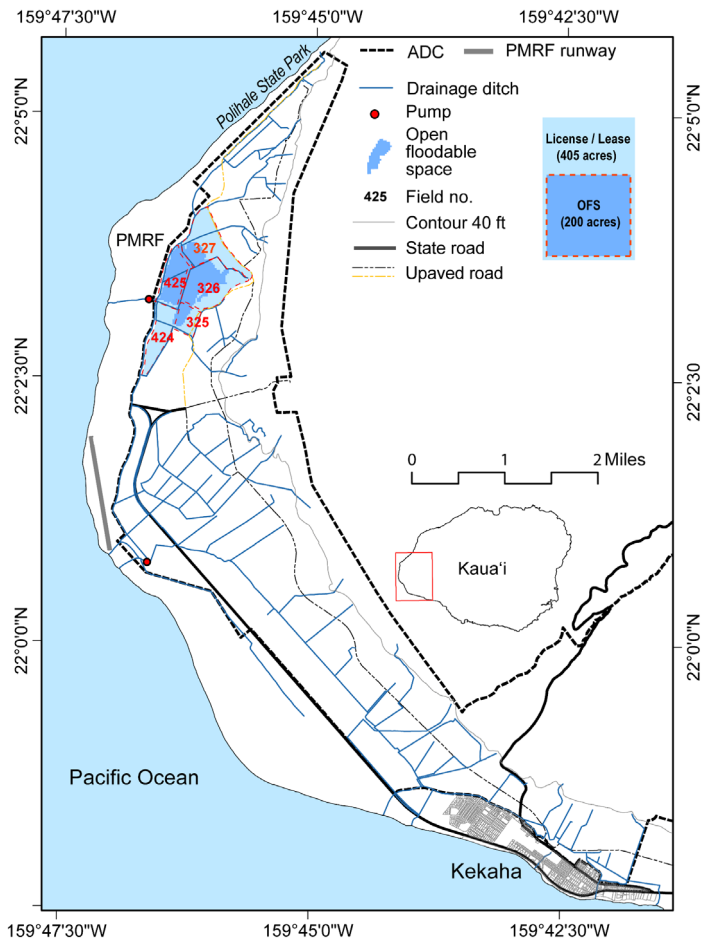
- **Preserves** compatible land uses near installations and ranges to sustain military mission capabilities
- **Promotes** land management activities that enhance resilience to climate change
- **Awarded** \$1.9 M to create 200 acres of Open Floodable Space on 400 acres of land on the Mānā Plain
 - for design and permitting (funded, next 3 yr)
 - projected total project cost \$10 M (completion 8 - 10 yr pending Office of Local Defense Community Cooperation (OLDCC) funding)

Open Floodable Space

- Land area where some storm runoff can be retained
 - Excess water naturally ponds in shallow depressions on the Mānā Plain (as in 2020)
- Green infrastructure



Project Goals

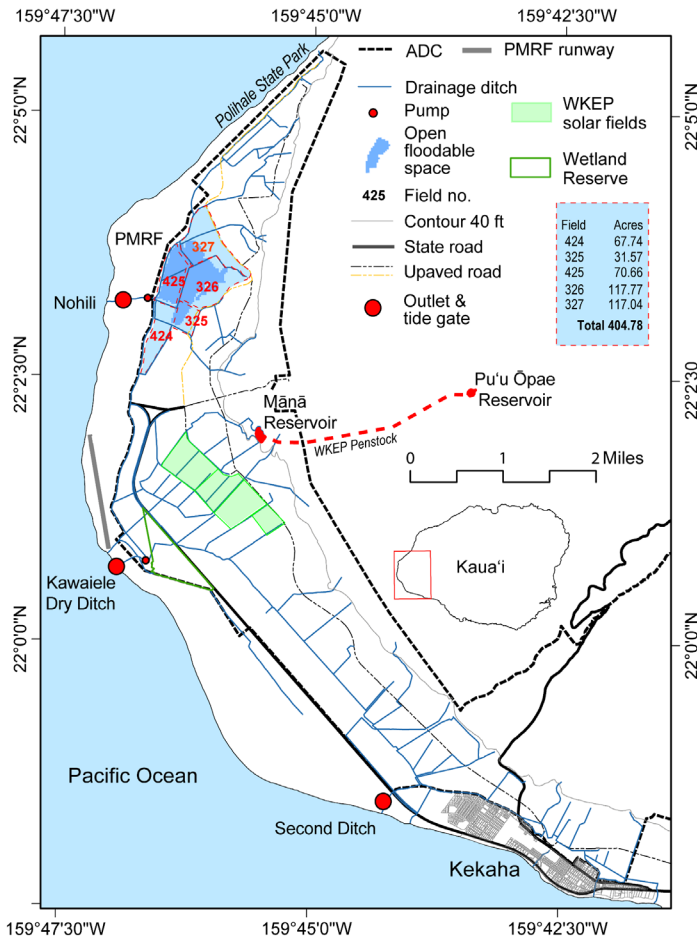


- **Preserve** gravity drainage of storm runoff and present water level in ditch system as sea level rises
 - Sea level was 0.83 ft lower when the first outlets to ditch system were excavated 100 years ago, and by mid-century it is projected to rise by an additional 2 ft
- **Limit** and better control the volume and quality of floodwater discharged into the ocean
- **Reduce** number of outlets to ocean
 - Help eliminate fish kills
 - Protect PMRF runway
- **Maintain and improve** (but not increase) existing area of flood-prone land that provides habitat for endangered Hawaiian waterbirds – not a managed wetland, stored floodwater will be pumped out over a period of time

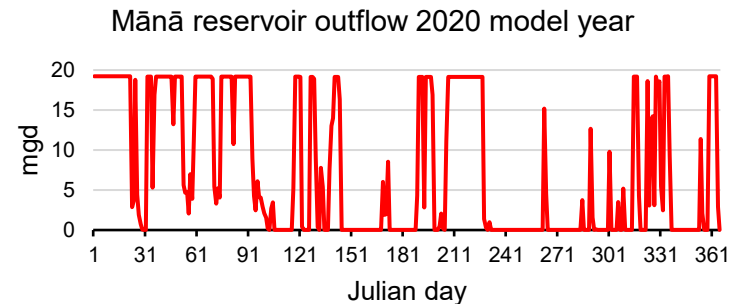
**KEKAHA AGRICULTURE
ASSOCIATION**

A NON-PROFIT AGRICULTURAL COOPERATIVE
Est. 2003

Actions and Outcomes



- **Realign** drainage ditch system
 - Trap sediment and improve water quality
- **Install** tide gates
 - Maintain gravity drainage as sea level rises
- **Upgrade** pumps
 - Enable ditch system to accommodate outflow from WKEP and additional agricultural runoff from DHHL lands



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Est. 2003

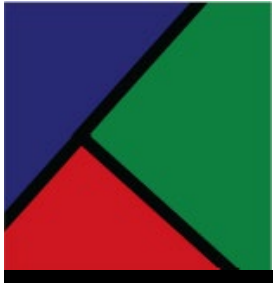
Implementation

- Request that ADC Board of Directors issues a lease or license for up to 405 acres of open floodable space in Kekaha, Kauaʻi for up to 65 years



**KEKAHA AGRICULTURE
ASSOCIATION**

A NON-PROFIT AGRICULTURAL COOPERATIVE
Est. 2003



Mahalo



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

EXECUTIVE DIRECTOR'S REPORT

September 21, 2022

1. Andros Engineering Corporation Vacates Whitmore Premises and Terminates Revocable Permits

ADC received formal notification (Exhibit A) from Andros Engineering Corporation (AEC) of their intent to terminate Revocable Permit Nos. RP16-02 (Bldg F for parking and storage) and RP17-01 (Bldg E (por.) for office space) at Whitmore Village, Oahu. Both permits allow termination of the RP by the permittee with 25 days notice¹ to ADC. AEC has already vacated their office space and as of this writing, have already cleared out most of their warehouse space. Once AEC has fully vacated, staff will conduct a final inspection and process the termination.



¹ Paragraph 5. "The PERMITTEE shall ...Give ADC twenty-five (25) day notice, in writing, before vacating the property."





2. Rights of Entry to the Department of Education for a) due diligence and site planning purposes for a commercial kitchen, and b) due diligence and site planning purposes for temporary classrooms in Whitmore Village, Oahu, Hawaii, Tax Map Key (1) 7-2-002:009 (por.)

Rights of Entry (ROE) have been issued to the Department of Education (DOE) to conduct due diligence and site planning for both their commercial kitchen project and for the use of a portion of the property to site a temporary classroom due to their displacement while the Wahiawa Civic Center Project is construction. The purpose of these ROEs is for the planning and design of two DOE projects. Both projects will require their planners, architects, and engineers to do site visits to the assess the area and possibly do any required measurements or readings. The DOE plans to start work upon issuance of the ROEs.

EXHIBIT A



4285 Second Wind Way
Paso Robles, CA 93446
P.O. Box 856
Santa Margarita, CA 93453
805-227-2801
www.andros-engineering.com

September 7, 2022

Lyle Roe
Property Manager
Agribusiness Development Corp.
235 S. Beretania St., RM 205
Honolulu, HI 96813

Dear Mr. Roe:

This letter is my company's formal notification to the ADC that Andros Engineering Corp. requests termination of Revocable Permits **RP 16-02 & RP 17-01**. We have removed all materials from the yard and office except for a forklift that is awaiting shipment off island and a truck that is currently for sale. Please provide a date in which these items need to be offsite. Please let me know if we need to schedule a final inspections of the property by an ADC representative.

Thank you for all your help, and the opportunity you provided to use this property as part of our Agricultural Services Division operations in the State of Hawaii.

Very Truly Yours,

Matt Andros
President
Andros Engineering Corp.