

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
Phone: (808) 586-0186 Fax: (808) 586-0189

MEETING OF THE ADC BOARD OF DIRECTORS

Held via Teleconference

November 2, 2022
9:00 a.m.

Pursuant to section 92-3.7, 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/87349094827>

Telephone: (669) 900-6833, Web ID: 873 4909 4827

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 OCTOBER 27, 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
dbedt.adc.titlevi@hawaii.gov

[agenda begins on the following page]

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. Board of Directors Meeting, September 21, 2022
2. Executive Session, September 21, 2022

D. New Business

1. Request for Approval to Amend License Agreement No. LI-K1901 Issued to Hawaii Labor Solutions Inc. to Remove Field 207 (por.) from the License Agreement; Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.)
2. Request for Approval to Issue License Agreement to Lovan Taro Farm LLC for 60 Acres, More or Less, in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-001:056 (por.)
3. Request for Approval to Amend License Agreement No. LI-KA-21-03 Issued to Hawaii Golden Farm, Inc. to Add 231 Acres, More or Less, of Land to Unit A-1 in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)
4. Request for Approval to Grant a Right-of-Entry to County of Kauai to Investigate Potential New Sites for a County Municipal Solid-Waste Landfill in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)
5. Request for Approval to Amend License Agreement No. LI-PU1807 Issued to George Rapoza dba JRs Ranch LLC and Margaret M. Bush to Remove George Rapoza dba JRs Ranch LLC as Licensee for Property in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-005:009 (por.)

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 September 21, 2022, Item E-1)
2. Annual Performance Review of the Executive Director (continued from September 21, 2022, Item E-3)

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

F. Executive Director's Report

G. Adjourn

The Board may go into executive session on any agenda item pursuant to the exceptions under §92-5, Hawaii Revised Statutes.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

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

1 Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board
2 members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person
3 meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha,
4 State Office Tower Building, 235 South Beretania St., Suite 204, Honolulu, HI 96813.

5

6 **Members Present, virtually:**

7

- 8 Frederick Lau, City & County of Honolulu, Chairperson (Chair)
- 9 Mary Alice Evans, Designated Representative, DBEDT, Ex-Officio Member (Ms. Evans) exited the meeting
- 10 at 9:38 a.m.
- 11 Glenn Hong, Member-At-Large (Mr. Hong)
- 12 Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
- 13 Phyllis Shimabukuro-Geiser, Chairperson, Board of Agriculture, Ex-Officio Member (Ms. Shimabukuro-
- 14 Geiser) joined the meeting at 9:50 a.m.
- 15 Morris Atta (Mr. Atta) (designated attendee for Ms. Shimabukuro-Geiser until her arrival) exited the meeting
- 16 at 9:50 a.m.
- 17 Lyle Tabata, Kauai County Member (Mr. Tabata)
- 18 Warren Watanabe, Member-At-Large (Mr. Watanabe)

19

20 **Members Excused:**

21

- 22 Lloyd Haraguchi, Member-At-Large
- 23 Karen Seddon, Member-At-Large

24

25 **Counsel Present, virtually:**

26

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

28

29 **Staff Present, virtually:**

30

- 31 James Nakatani, Executive Director (Mr. Nakatani)
- 32 Ken Nakamoto, Project Manager (Mr. Nakamoto)
- 33 Lyle Roe, Property Manager (Mr. Roe)
- 34 Lance Tashima, Administrative Services Officer
- 35 Lynette Marushige, Executive Secretary

36

37 **Guests Present, virtually:**

38

- 39 Senate Ways and Means Committee
- 40 Basil Gomez
- 41 F. Fuchigami
- 42 "Guest Guest"
- 43 Joshua Uyehara
- 44 Kristy Ringor
- 45 Mike Faye

46

47 **Guests Present, physical location:**

48

- 49 None.

50

51 **A. Call to Order**

AGRIBUSINESS DEVELOPMENT CORPORATION

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Chair called the virtual meeting to order at 9:02 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. 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, Mr. Atta for Ms. Shimabukuro-Geiser, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present. Ms. Evans exited the meeting at 9:38 a.m. Ms. Shimabukuro-Geiser joined the meeting at 9:50 a.m. Mr. Atta exited the meeting at 9:50 a.m.

C. Approval of Minutes – Board of Directors Meeting on August 17, 2022

Motion to Approve: Mr. Manuel; Seconded: Mr. Watanabe

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. Atta said he would abstain from voting because he was not present. Mr. Manuel stated that if Mr. Atta abstained, we do not have quorum.

Ms. Prescott-Tate reminded the Board that six members present makes quorum.

Chair called for the vote.

Motion approved: 6-0 (Mr. Atta abstained)

Chair asked if the Board should approve the August 17, 2022 minutes from the Executive Session at this time.

Ms. Prescott-Tate responded no, that will be taken up during executive session and to move on to the next agenda item.

D. New Business

Chair informed the Board that before addressing New Business, they will be taking Old Business Agenda Item E-1 out of order.

E. Old Business

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

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

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

103 Chair called for a motion to approve and accept the Land Management Policy and Procedure Manual as
104 presented at the previous meeting. Motion to Approve: Ms. Evans, Second: Mr. Tabata

105 Chair asked Ms. Evans, Chair of the Investigative Committee on Agricultural Policy, to present the findings
106 and recommendation of the committee regarding the Land Management Policy and Procedures Manual.

107 Ms. Evans said that the committee presented the Land Management Policy and Procedures Manual at the
108 previous meeting in August. She does not have a presentation at this time but speaks in favor of the motion
109 based on the nine months of careful due diligence that the committee and staff put into creating the policy
110 manual and ensuring that it is consistent with the auditor's findings and the House Investigative Committee's
111 recommendations.

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

113 Chair asked if there was any discussion.

114 Mr. Manuel asked Ms. Evans, just for the record, that he provided robust feedback and comments last month
115 so were there any edits made to the policy based on that conversation as detailed in the minutes that they just
116 approved or is the recommended approval an approval as is without incorporating or editing based on his
117 comments?

118 Ms. Evans responded that his comments were very helpful and robust and allowed them to approve, once
119 again, the recommendations that the committee made to the full Board last session. They did not make
120 changes based on the discussion, but she very much appreciated the questions he raised and the opportunity
121 to consider those issues.

122 Mr. Manuel asked Chair to indulge him, as one of the only people providing comments to try to help improve
123 the policy document, he's just going to vote no on this because if the intent is to include the entire Board, he
124 feels that he's been pretty consistent and every time he's asked for guidance on policy he was told it would
125 be taken up in the policy document. To get to this point and realize that it's not being considered and there's
126 no amendments being made, he just can't agree to the policy as drafted. He supports the work that has been
127 done but speaking for himself and having participated and engaged and read through the policy, provided
128 comments and to see those comments not being addressed or incorporated, it doesn't sit well with him, so
129 he'll respectfully be voting no.

130 Chair stated that Ms. Evans did write a relatively lengthy list of comments to Mr. Manuel's responses and the
131 committee did review them. Chair asked if Ms. Evans could chime in.

132 Ms. Evans said that Mr. Manuel's questions were helpful but as the committee went through those comments
133 they were able to see that they were either addressed in the Policy and Procedures Manual that was presented
134 to the full Board or they should be addressed in ways other than through the manual. There was discussion
135 on his questions but that didn't result in changes.

136 Mr. Manuel said that none of that was reflected in the report that was presented today. It's just being told to
137 him now so it would be helpful if the justifications not to include his recommended edits would be on the
138 record. It's helpful to understand why those weren't included. Why those suggestions weren't included were
139 not present in the submittal so it's hard to vote yes on this matter.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

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140 Ms. Evans asked that the responses to Mr. Manuel's questions from the last meeting be added to the record of
141 this floor action.

142 Mr. Manuel said if that's the case, could this be deferred till next month and then add the committee's
143 responses. That way he could potentially change his vote if his comments were addressed. It feels awkward
144 to add it to the record when he doesn't get to see it. He will still be voting no. Provide him with a response
145 so he can understand how they came to the conclusion that there was no need to amend the draft policy. He
146 leaves it up to the Board. He's just trying to understand the logic and right now he doesn't have anything
147 except for what Ms. Evan's is telling him. He doesn't see any justification in the submittal as drafted.

148 Chair thought the response was pretty detailed and he doesn't have a problem with sharing it with the Board
149 and he doesn't see a problem with delaying it until next month.

150 Mr. Watanabe asked to make a comment. He agrees with Mr. Manuel. He thinks it's important the full
151 Board understands. This is a very important document for ADC to move forward. He would also like to see
152 the responses to Mr. Manuel's questions. It makes for a better decision.

153 Chair asked Ms. Prescott-Tate if it's ok to defer until the next meeting.

154 Ms. Prescott-Tate said it can be deferred till the next meeting and the comments can be provided.

155 Chair deferred the matter until the next meeting.

156 Mr. Manuel said he appreciates the deferral. He looks forward to reading the responses and making this a
157 stronger document and hopefully voting yes at next month's meeting.

158 Chair asked if they should go back to the regular agenda.

159 Ms. Prescott-Tate responded yes.

160 **D. New Business**

161

162 **1. Request for Approval to Issue a Letter of Intent, Conduct Due Diligence, and Negotiate the** 163 **Purchase of Fee Simple Interest in Real Property Located at Wahiawa, Oahu, Hawaii, Tax Map** 164 **Key (1) 7-3-004:020** 165

166 Chair called for a motion for approval to issue a letter of intent, conduct due diligence, and negotiate the
167 purchase of fee simple interest in real property located at Wahiawa, Oahu, Hawaii, Tax Map Key (1) 7-3-
168 004:020.

169

170 Motion to Approve: Mr. Watanabe, Seconded: Mr. Tabata

171

172 Chair asked for staff presentation.

173

174 Mr. Nakatani stated he will do the presentation. This is to start the due diligence process with a Letter of
175 Intent (LOI). He visited the building and it's not quite an apartment complex, more like worker housing.
176 This will be part of the Whitmore Project. They looked at building housing in Whitmore and if this could be
177 a substitute instead of building it in Whitmore, this is already built and it's a pretty impressive building. It
178 has all the amenities. It's practically in the middle of downtown Wahiawa. It has transportation modes a

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Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

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179 block or two away, and drugstores, hospital and everything like that. This would be a perfect worker housing
180 setting. This is subject to appropriation and approval by the Governor and of course approval by the Board
181 so hopefully we can move on this, thank you.

182
183 Chair asked how many units are in the building, it's not mentioned in the submittal.

184
185 Mr. Nakatani responded there are twenty-four units, eighteen parking stalls. Usually worker housing you
186 don't depend on people parking cars, the farmers usually pick up the workers and take them to the worksite.
187 It's a very nice complex, very new so it's pretty solid. It's worth taking a look at.

188
189 Chair asked so it's twenty-four one-bedroom units.

190
191 Mr. Nakatani responded yes.

192
193 Chair asked if there was any other Board discussion.

194
195 Mr. Manuel noted that the map on Exhibit A included in Item D-1 shows a vacant lot. The lot that is
196 highlighted on California Avenue is a vacant lot, so what apartment are you referencing?

197
198 Mr. Nakatani said he's sorry but it's not a vacant lot. It's 360 California Avenue and it's already built. He's
199 not sure what he's looking at but it's not a vacant lot.

200
201 Mr. Manuel said that Exhibit A in Item D-1 has a blue square around the vacant lot on California Avenue.

202
203 Mr. Roe interjected that he generated that map from DPP's (Department of Permitting and Planning) website.
204 The map was just to show the location.

205
206 Chair said he missed asking if there was anyone from the public who wanted to testify. There were none.

207
208 Chair asked if there was any other Board discussion.

209
210 Ms. Evans said she speaks in favor of the motion. During the last year the Office of Planning and
211 Sustainable Development has conducted a comprehensive economic development strategy process that
212 included focus groups on all four counties and on Oahu. The need for farm worker housing was the top
213 priority. It's critical for agriculture to have farm worker housing available in order to allow workers to work
214 in commercial agriculture entities.

215
216 Chair said he did a drive-by to look at the building. It's within walking distance of the new Wahiawa Value-
217 added product center that is being developed on California Avenue. It is near transportation which could get
218 people over to the food hub or even farms in that area. It's a convenient building and this is the approval to
219 begin due diligence.

220
221 Mr. Manuel said he totally supports workforce housing. Just a question he has in anticipation of acquisition.
222 What's the strategy of our property management ability? Coming from an agency that struggles with housing
223 in general, it's a whole other field of expertise and capacity that will need to be built. He just wants to throw
224 that out to the Board knowing that ADC's focus is on Agribusiness, but now we're moving into housing.
225 There is a whole different set of additional kuleana that comes with managing that type of investment.
226 What's the thought on that? Would it be a partnership or leasing it out through a property management
227 company.

228

AGRIBUSINESS DEVELOPMENT CORPORATION

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229 Mr. Nakatani said this is the strategy also with Whitmore if we were to build housing. It's not the desire of
230 ADC to run housing because that's not our expertise. We'd probably go to some type of non-profit agency or
231 a private entity or some partnership. Right now it's not in our portfolio to run a housing unit. That's
232 something that's been discussed, and we're not in the housing business.
233

234 Chair said in previous discussions about worker housing, for example that was being talked about in
235 conjunction with the food hub, they were looking at a property management group to come in and take care
236 of that. Good question though because he's thought about that too.
237

238 Mr. Atta said he had the same thought as Mr. Manuel and he's glad that it's on the table for discussion.
239 Property management for residential purposes is really different from ag land management. He was
240 wondering how that would work with the staffing that ADC has. He knows ADC is stretched really thin, so
241 he was concerned about that. And the valuation estimate, he knows this is all due-diligence but the six odd
242 million dollars value, is that a number that the seller is putting out? He's assuming as this moves forward
243 that this will go through an appraiser and get appropriate appraisal values and the question that he would
244 have is what kind of parameters would be given to the appraiser if the intent is workforce housing as opposed
245 to market housing. He's assuming, whoever developed this property developed it with that intent so there
246 may be valuation issues that will need to be dealt with. He's just throwing it out there. He supports the
247 intent, but he's concerned about those issues.
248

249 Mr. Nakatani said they visited the site. It's on the market, that's what the seller is putting it on the market
250 for. The seller is aware that everything is subject to appropriation, and everything is subject to appraisal.
251 Yes, there's a valuation question but that's part of our due diligence. It's not a typical apartment, it's more
252 like a barracks type building, three stories. It has a common kitchen and common recreation area; individual
253 rooms, individual toilets. Again, this is part of due diligence. We're aware of what is available, and we're
254 doing a comparison with building new units in Whitmore. And it has to go to the legislature for
255 appropriation. It will be scrutinized again.
256

257 Mr. Atta said based on the description that Mr. Nakatani gave, it sounds like they could be looking at some
258 community concerns about those monster homes. That's what it sounds like in terms of the structure. He just
259 wants to throw it out there from a public perception standpoint. Do we run the risk of having to deal with
260 that issue given the controversial nature of that lately in the papers?
261

262 Mr. Nakatani said that's part of due diligence. But it's already built. He's not sure what it was previously
263 used for but there were people living in the building. Our concern is the condition of the building. That will
264 all come out in due diligence. And again, ADC is not in the business of housing. We would get help from
265 another agency or management company. It's the same issue we would have if we built in Whitmore as part
266 of the Food Hub. But as Ms. Evans pointed out this is an important thing for agriculture and ADC is willing
267 to walk through it.
268

269 Chair said it looks more like an apartment building than a big house. Chair called on Mr. Hong.
270

271 Mr. Hong said it sounds like it's fairly recent construction. Do we know when it was built?
272

273 Mr. Nakatani said he has some information but that's part of due diligence. It's been occupied, it has coin
274 operated washing machines, dryers and everything. He doesn't know exactly what was there before but it's a
275 very nice complex, it doesn't look like it has any repair issues. That's the attractiveness and as Chair pointed
276 out it's close to bus lines and all of the amenities. One of the biggest things, when you look at Whitmore, we
277 would have issues with entitlements to water and building permits. We will do a cost analysis and everything
278 else and come back to the Board. But just looking at it now, it seems like a great buy.

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Mr. Hong said as they get into due diligence, obviously you'll look at permitting and does it have all the permits in place for a multi-unit dwelling as well as looking at demand side. He's assuming that generally we know the space demand for that particular type of housing, single individual. Is that sufficient to meet the demand or is it more than the demand out there and how do we manage that if it was a bigger unit then there's demand. It's all a part of due diligence.

Mr. Nakatani said yes it's all a part of due diligence. But just looking at the property, and the way it's set up, it looks very, very good. You never know when you start the due diligence and if there's any kind of deficiencies and stuff like that, it will come out.

Ms. Evans noted that now ADC is attached to Department of Business, Economic Development (DBEDT), DBEDT has the Hawaii Housing Finance and Development Corporation, which from time to time she sits on that board and she's aware that they have very detailed knowledge of the non-profit that operate affordable rental housing and that might be helpful further down the line to ADC.

Mr. Tabata said along those lines he had a question. Now that ADC is under DBEDT, what is the structure, where does ADC sit? He knows this is off topic but if DBEDT has any synergies within the department that can assist and take over, like Mr. Nakatani said up front ADC's not in the housing business. There may be other sections in DBEDT that can assist and oversee a project like this because they have the general knowledge that Mr. Nakatani is confessing not to have. He finds it a bit hard not understanding now the charge that Mr. Nakatani has, what his role is supposed to be, maneuvering from the Department of Agriculture (HDOA) to DBEDT. He just would like to know.

Mr. Nakatani said that was a great question. Scott Murakami at DBEDT made arrangements for some of his staff, members of DBEDT, ADC staff, and the ADC Chair to look at the Food Innovation Center. He couldn't make it that day. That had spurred some interest. He received an email from Mr. Murakami, and he said they want to talk with ADC to help with this housing issue, and other issues that will come up. He's not sure what group in DBEDT but it's pretty wide and they're pretty knowledgeable. What's amazing is that everybody's there to help and willing to put it together and they have an interest to see how ADC can fit within DBEDT, not only for our organization but the State. It's very refreshing. We're going to have a meeting in a couple of weeks. It's always been his position that he's not getting into the housing business. He would warn ARM that they shouldn't get into the housing business cause it's like Mr. Manuel said, it brings a different set of problems. A lot of it is social, family and stuff that you never anticipate. So, if you can avoid it, avoid it at all costs.

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

Motion approved: 7-0

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

Chair called for a motion 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.

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

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

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

329 Chair asked for presentation by staff.

330

331 Mr. Nakatani said this is a parcel on the corner of California Avenue and Plum Street, 1001 California
332 Avenue. It's adjacent to the property that the Food Innovation Center is on. The property owner came to
333 them and asked if they wanted to purchase it. This has always been on the radar, but the owner wasn't
334 interested in selling that property. Now they're interested in selling. Again they want to start with the LOI
335 and conduct due diligence on this property to be part of the Food Innovation Center. This would be an
336 addition to the Food Innovation Center. The Chair visited the center and said it's already too small and they
337 need more space. This would be a very good addition to that space.

338

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

340

341 Chair asked for Board discussion.

342

343 Mr. Atta said he had a comment. He knows that they are approving a due diligence inquiry to the property.
344 Just something to think about. He's been involved in a bunch of contaminated property litigation,
345 specifically with regards to service stations, gas stations, and he does know the due diligence that will go into
346 that inquiry. It's something that he wants them to be acutely aware of. Very often the liabilities and risks
347 associated with these sites tend to be pretty high and he just wanted to point that out. He appreciates the fact
348 that they are doing due diligence and not actually moving forward.

349

350 Chair agreed with Mr. Atta. There is always a concern every time he looks at a service station. He has seen
351 some major problems that can take years to take care of. But again, this is just allowing the due diligence. It
352 does have to come back to the Board for approval. Chair asked if there was any other discussion? Hearing
353 none, Chair called for the vote.

354

355 Motion approved: 7-0

356

357 **E. Old Business**

358

359 1. Item 1 was taken out of order before Item D-1 regarding the Adoption of the Policy & Procedure Manual.

360

361 Ms. Evans exited the meeting at 9:38 a.m.

362

363 2. **Presentation and Update by Kekaha Agriculture Association (KAA) Regarding the 2022 Readiness**
364 **and Environmental Protection Integration (REPI), Program Challenge Grant for an Open**
365 **Floodable Space Proposal in Kekaha, Kauai, Tax Map Key (4) 1-2-002.001(por.)**

366

367 Chair asked for the representative from KAA to make the presentation.

368

369 Mr. Gomez joined the meeting and said that Mr. Faye was having communication issues this morning, so he
370 was available to speak on behalf of KAA. This presentation follows up on the presentation made to the
371 Board in March 2022 about a request to approve an in-concept lease or license of up to four hundred acres of
372 open space in Kekaha. KAA applied for a grant through the Department of Defense Readiness and
373 Environmental Protection Integration (REPI) Program. The grant will cover design and permitting over the
374 next three years. Total of ten million dollars is needed to complete the project and it will take eight to ten
375 years to complete. KAA will apply for other grants to complete the project.

376

377 Mr. Nakamoto said that Mr. Faye was now available to do the presentation. Mr. Faye entered the meeting.

378

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

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

379 Mr. Faye shared a power point presentation giving an update on the open floodable space project. The initial
380 grant was for 1.9 million. The purpose of the project was to address flood water, sea level rise, climate
381 change, and improve the water quality. The project will use approximately four hundred acres of land near
382 Nahili Pond. Only two hundred acres will be flooded for purposes of trapping sediment. This will improve
383 the quality of water entering the ocean. The land is currently fallow and unlicensed.
384

385 Chair thanked Mr. Faye for the presentation and said he assumes that at some time in the future, they will be
386 back to give the Board another update.
387

388 Mr. Faye said that is correct.
389

390 Ms. Shimabukuro-Geiser joined the meeting at 9:50 a.m.
391

392 Mr. Atta exited the meeting at 9:50 a.m.
393

394 Chair called for a ten-minute recess.
395

396 Recess taken from 9:52 a.m. to 10:12 a.m.
397

398 **2. Annual Performance Review of the Executive Director (continued from August 17, 2022,**
399 **Item E-1)**
400

401 Chair called the meeting back to order at 10:12 a.m.
402

403 Chair stated the Board may go into executive session, pursuant to HRS section 92-5(a)(2), to consider the
404 evaluation of employees where consideration of matters affecting privacy will be involved; pursuant to HRS
405 section 92-5(a)(4), to consult with the Board's attorney on questions and issues pertaining to the Board's
406 powers, duties, privileges, immunities, and liabilities; and, pursuant to HRS section 92-5(a)(8), to deliberate
407 or make a decision upon a matter that requires the consideration of information that must be kept confidential
408 pursuant to a state or federal law.
409

410 Before going into executive session, Chair asked if there was any public testimony? Please be advised that
411 testimony is limited to the decision to go into executive session. There was none.
412

413 Chair asked for a motion to go into executive session.
414

415 Motion: Mr. Tabata, Seconded: Mr. Watanabe
416

417 Chair asked if the staff had any presentation. There was none.
418

419 Chair asked if there was any Board discussion. There was none.
420

421 Chair called for the vote.
422

423 Motion approved: 6-0
424

425 Chair called the meeting back to order at 10:46 a.m.
426

427 Chair stated that the Board deferred the acceptance of the annual performance evaluation of the ADC
428 Executive Director James Nakatani until the next meeting.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 21, 2022

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

429

430

F. Executive Director’s Update

431

432

Mr. Nakatani said that ADC received notification from Andros Engineering Corporation at Whitmore, and he believes also on Kauai, that they were moving out of Hawaii. They have been accommodating the Board of Education to look at that site for their commercial kitchen and a temporary site for one of their buildings in Wahiawa, due to displacement while the Wahiawa Civic Center Project is under construction.

433

434

435

436

437

Aside from that ADC is still waiting for their budget to be transferred from HDOA to DBEDT; it is somewhat tied up between the two agencies. We’re in a lull period and he’s hopeful that in the next couple of weeks the issue will be resolved, and they can start paying their bills again. In the meantime, they are keeping track of ADC’s projects, and everything is moving ahead.

438

439

440

441

G. Adjourn

442

443

Chair called for a motion to adjourn.

444

445

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

446

447

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

448

449

Motion approved: 6-0

450

451

Meeting adjourned at 10:48 a.m.

452

453

Respectfully Submitted,

454

455

456

457

Lynette H. Marushige

458

Secretary

459



ITEM D-1

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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

November 2, 2022

Subject: Request for Approval to Amend License Agreement No. LI-K1901 Issued to Hawaii Labor Solutions Inc. to Remove Field 207 (por.) from the License Agreement; Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Licensee: Hawaii Labor Solutions Inc.

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

Area: 69.16 tillable acres, more or less
15.16 non-tillable acres, more or less
84.32 gross acres, more or less

Field No(s): 123 (por.), 207 (por.), 314 (por.), 316 (por.)

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

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

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes No

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

Character of Use: Orchard, Shade house

Land Doc. Type: License

Term: 35 years (currently in year 3)

Rental Rate: \$150 per acre per year (tillable); \$1 per acre per year (non-tillable)
Annual Rent: \$10,398.16

BACKGROUND:

Hawaii Labor Solutions Inc. (Licensee) was organized and established in 2016 under the ownership of Wallace and Jorienda Johnson for the purposes of providing contract labor,

growing mangoes, and building and operating greenhouses for the production of fruits and vegetables. In March 2019, the Board (Board) of the Agribusiness Development Corporation (ADC) approved the issuance of License No. LI-K1901 (License) to Licensee for 13.25 acres, more or less, of Field 123 (por.) on which Licensee currently grows mangoes for sale and distribution to restaurants and retail operations across Kauai. They have also constructed a tunnel house for production of the same and have plans to erect more.

At its meeting on September 23, 2020, the Board approved Licensee's request to add 40.82 acres, more or less, of Field 207 (por.) under the License for the construction of tunnel houses for the production of mangoes and melons. The first amendment to the License was executed on October 20, 2020.

In April 2021, the Board approved Licensee's request to add 9 acres, more or less, of Field 314 (por.) under the License, for experimental tobacco plantings and the construction of shade houses for melon and bell pepper production. The second amendment to the License was executed on June 1, 2021.

In September 2021, the Board approved Licensee's request to add 21.25 acres, more or less, of Field 316 (por.) under the License for the purpose of erecting shade houses for the production of melons and bell peppers. The third amendment to the License was executed on November 17, 2021 (see Exhibit "A" for all lands currently under the License).

LAND REQUEST:

Licensee requests that the License be amended by withdrawing Field 207 from the License (Exhibit B).

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

N/A

CONSERVATION PLAN:

N/A

DISCUSSION:

Approval of Licensee's request to return approximately 40.82 acres of Field 207 represents an annual loss of \$6,123.00 in rental income to ADC. The License is currently set to expire in March 2054, which represents a cumulative loss of over \$195,000.00 through the remaining thirty-two years of the License term. To avoid negative fiscal repercussion due to Licensee's request, ADC will assist Licensee in

finding a suitable assignee for Field 207. Alternatively, ADC may seek damages for breach of contract, as well as to recover litigation costs and attorney fees.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Land Request noted above, subject to the following conditions:

1. ADC will assist Licensee in finding a suitable assignee for the License; and
2. If Licensee is unable to find a suitable assignee for the License, ADC reserves the right to seek damages for lost rents based on breach of contract, and any other remedies allowed by law.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A



November 2, 2022

Page 5 of 5

EXHIBIT B

From: [Sandi Kato-Klutke](#)
To: [Roe Lyle T](#)
Cc: [Sandi Kato-Klutke](#)
Subject: [EXTERNAL] Global Ag Services, Wally Johnson Field 207
Date: Thursday, August 4, 2022 3:05:26 PM

Looking to give back Field 207 to ADC. What do we have to do/submit?
Why is he doing this?
Cost to clean the area is close to \$100,000
Unable to secure funding to utilize 207
Moving to only using Fields 314, 316 & 123

Thank you,
Sandi

Sent from my iPhone



ITEM D-2

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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

November 2, 2022

Subject: Request for Approval to Issue License Agreement to Lovan Taro Farm LLC for 60 acres, more or less, in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-001:056 (por.)

Applicant: Lovan Taro Farm LLC

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

Area: 60 acres, more or less

Field No(s).: Parcel 56 (por.)

Tax Map Key: (1) 6-5-001:056

Land Status: Acquired in fee by the Agribusiness Development Corporation in 2020.

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes ___ No

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

Character of Use: Orchard, Diversified Agriculture

Land Doc. Type: Revocable Permit (current)

Term: Month-to-month (annual renewal)

Rental Rate: \$1,890.75 per month
Annual Rent: \$22,689

BACKGROUND:

In December 2020, ADC finalized the purchase 114.504 acres from Dole Food Company, Inc. (Dole) of a certain property in Waialua, Oahu near Thompson's Corner, more specifically identified as Tax Map Key (1) 6-5-001-056. As part of the purchase of the property, ADC assuming the ownership of Dole License Agreement No. DLR 065, as amended, issued to Loan Lovan (Mr. Lovan) for 60 acres of land for agricultural purposes.

Beginning January 1, 2021, Mr. Lovan became a tenant of ADC.

ADC staff met with Mr. Lovan on January 25, 2021 to inspect his premises and review his operation. Staff noted a number of items that need to be remedied, including cleaning and repairing a wooden building structure, removing a fire pit, removal of what appeared to be a number of unused and/or abandoned vehicles, tractors, and non-farm equipment.

At their meeting on February 24, 2021, the Board of Directors of the Agribusiness Development Corporation approved the issuance of Revocable Permit No. RP-PU-2101 to Mr. Lovan with the understanding that if he were to clean up his premises, ADC may issue a longer-term license agreement. Staff inspected the premises on September 19, 2022 and noted improvements to the condition of the property (Exhibit B).

LAND REQUEST:

Mr. Lovan requests to convert his RP to a license agreement under business entity "Lovan Taro Farm LLC" (Land Request).

WATER NEEDS AND SOURCE OF WATER:

Permittee currently accesses irrigation water via water agreement with Dole.

OPERATIONAL PLAN:

Permittee currently grows orchard crops including soursop, mango, avocado, papaya, lemon, limes, sugar apple, and guava on the upper portion of the property, and assorted row crops on the lower portion of the property and intends to continue those operations under a potential license agreement.

CONSERVATION PLAN:

Permittee has applied for assistance with USDA, Natural Resource Conservation Service to develop an approved conservation plan.

DISCUSSION:

ADC staff conducted an inspection of Mr. Lovan's premises on September 19, 2022 and found the condition of the property to be satisfactory and much improved from the prior inspection in February 2021. Mr. Lovan continues to implement better practices although staff has recommended additional GAP and FSMA training. Mr. Lovan is current on his rent obligations.

Initial base rent will be the same as is currently charged under the RP with a 2.5% increase at the start of year 5.

RECOMMENDATION:

Based on the forgoing, staff recommends that the Board approve the Land Request, subject to the following conditions:

1. License term shall be for 10 years; and
2. Initial base rental rate shall be \$378.15 per acre per year; and
3. Initial base rental rate will increase by 2.5% at the beginning of year 5; and
4. Applicant shall be required to obtain an approved soil conservation plan within one year of license execution; and
5. Applicant shall be required to submit a utilization plan prior to license execution.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A



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

November 2, 2022

Subject: Request for Approval to Amend License Agreement No. LI-KA-21-03 Issued to Hawaii Golden Farm, Inc. to Add 231 Acres, More or Less, of Land to Unit A-1 in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)

Licensee: Hawaii Golden Farm, Inc.

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

Area: 250 acres, more or less, currently under license

Field No(s): Unit A-1, Unit C (por.) (co-tenant)

Tax Map Key: (4) 3-9-002:001

Land Status: Set aside by the Governor's Executive Order Nos. 4328 to the Agribusiness Development Corporation for Agricultural and Related Purposes

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes No

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

Character of Use: Diversified Agriculture

Land Doc. Type: License

Term: 35 years (currently in year 1)

Rental Rate: \$100 per acre per year
Annual Rent: \$21,600

BACKGROUND:

The Board of Directors (Board) of the Agribusiness Development Corporation (ADC) approved a 35-year license to Hawaii Golden Farm, Inc. (HGF) for 182 acres¹, more or less of Unit A-1 at their meeting on September 29, 2021. License Agreement No. LI-K-21-03 (License) was effective on January 1, 2022. Additionally, HGF is currently a co-licensee with Taiwan Gu on 68 acres, more or less, of Unit C (por.) under a separate license agreement.

On August 25, 2021, the Board of Directors (Board) of the Agribusiness Development Corporation (ADC) approved the issuance of a license for land identified in Exhibit "A" as Unit A-2 to HGF under a separate 10-year license. The unit has access to irrigation water via the Hanamaulu Ditch and is ideally suited for diversified crops. However, questions regarding how to best divide the unit persisted. Following resolution of those questions, Licensee and staff believe the most prudent and efficient path forward is to amend the License (for Unit A-1) to include Unit A-2 as depicted in Exhibit "A".

LAND REQUEST:

Licensee requests that the License be amended to add 231 additional acres, more or less, of land (designated as Unit A-2 in Exhibit "A") to the License (214 acres designated as Unit A-1 in Exhibit "A"), for a total of 445 gross acres, more or less, to be designated as one contiguous Unit A-1 (Land Request).

WATER NEEDS AND SOURCE OF WATER:

Ditch irrigation water can be accessed via Hanamaulu Ditch which runs through the premises.

OPERATIONAL PLAN:

HGF supplies sweet potato and ginger to Hawaii markets and to mainland wholesalers and distributors.

CONSERVATION PLAN:

HGF will be required to obtain an approved conservation plan for the additional acreage within one year of amendment execution.

DISCUSSION:

The Board has already approved additional lands in a slightly different configuration. This request rescinds the prior approval and makes adjustments to the prior land request to make more efficient use of lands which are best suited for diversified agriculture, rather than pastoral use. Licensee has been a good steward of the land (see Exhibit "B") and is current on all rent assessments.

¹ Updated mapping indicates Unit A-1 is actually 214 acres, more or less, hereinafter identified as such.

Request for Approval to Amend License Agreement No. LI-KA-21-03 Issued to Hawaii Golden Farm, Inc. to Add 231 Acres, More or Less, of Land to Unit A-1 in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)

November 2, 2022

Page 3 of 5

Approval of this Land Request represents an annual increase of \$26,300 to ADC in rental income.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Land Request noted above, subject to the following terms and conditions:

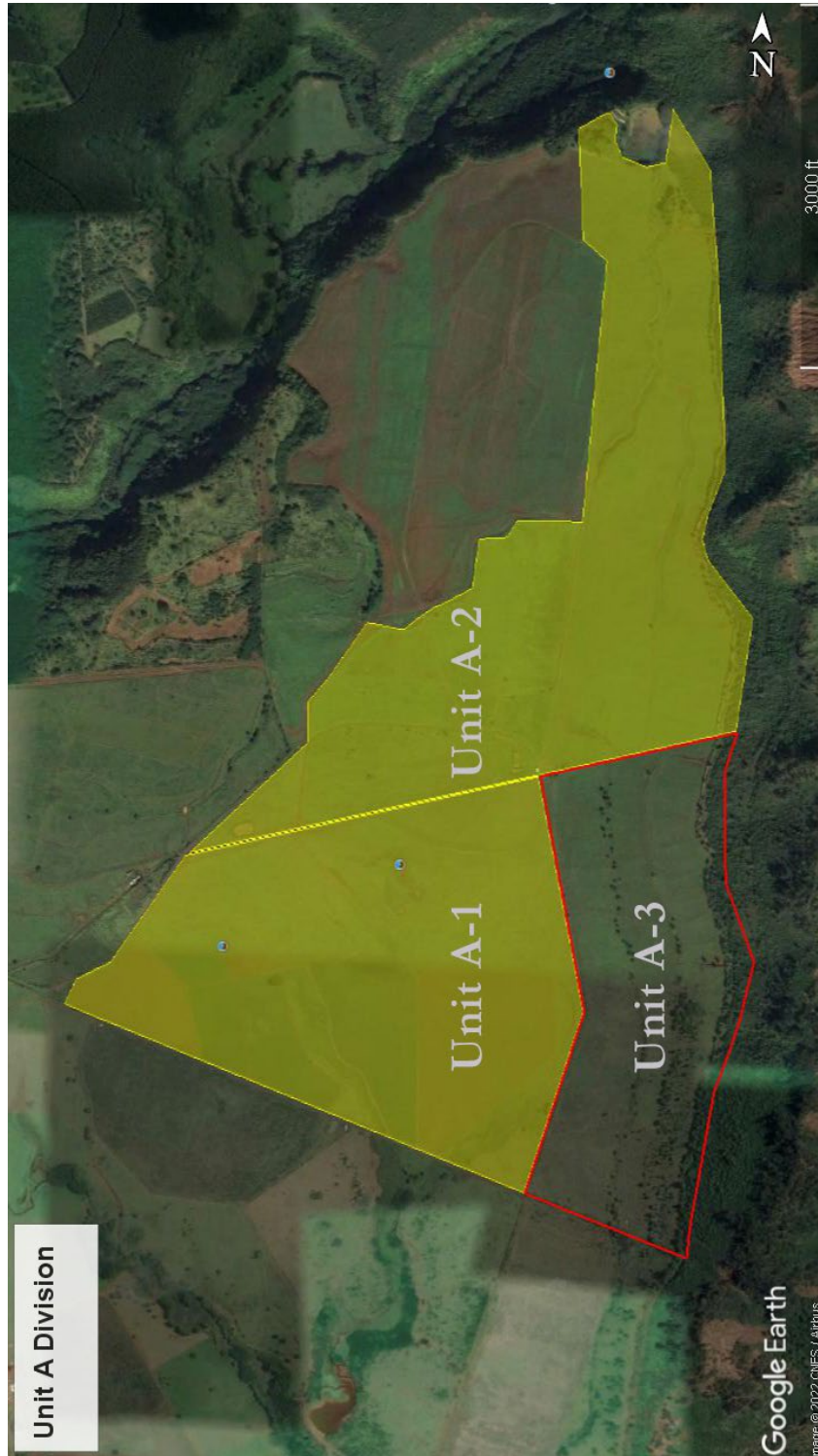
1. The August 25, 2021 Board meeting approval of Item K is rescinded; and
2. Base license rent for the additional acreage shall be \$100 per acre per year (same as current acreage for Unit A-1); and
3. Licensee shall obtain an approved soil conservation plan for the additional acreage, or have the additional acreage included under the existing approved soil conservation plan, within one year of the execution of the License amendment.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A



Request for Approval to Amend License Agreement No. LI-KA-21-03 Issued to Hawaii Golden Farm, Inc. to Add 231 Acres, More or Less, of Land to Unit A-1 in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)

November 2, 2022

Page 5 of 5

EXHIBIT B





ITEM D-4

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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

November 2, 2022

Subject: Request for Approval to Grant a Right-of-Entry to County of Kauai to Investigate Potential New Sites for a County Municipal Solid-Waste Landfill in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Requester: County of Kauai

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

Area: 176.9 acres, more or less

Field No(s): 116, 117, 217, Niu Valley (por.)

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

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

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes No

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

Character of Use: Engineering, Geotechnical, Environmental Investigation

Land Doc. Type: Right-of-Entry Agreement

Term: Up to 2 years; option to extend for additional studies if site is found to be suitable

Rental Rate: N/A

BACKGROUND:

The County of Kauai is interested in siting a new Municipal Solid Waste Landfill in Kekaha on ADC land. While the previously studied site directly across the highway from Kekaha Landfill is currently being utilized, there is property near the old quarry that appears to have potential for siting a landfill. The County is seeking permission execute a right-of-

entry agreement with the ADC in order to perform engineering analyses to assure the site is suitable for a landfill. This process is estimated to take about 2 years. If the engineering work confirms the site is good for landfill development, the County would seek an extension of the agreement to perform specific studies related to an environmental impact statement and work on other entitlements, including a determination on access roads that may also involve DHHL and KIUC.

LAND REQUEST:

COK requests a right-of-entry (ROE) from ADC (Exhibit "A") to investigate certain lands managed by ADC (Exhibit "B") as a potential site(s) for a new county municipal solid-waste landfill (Land Request).

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

COK will utilize the ROE to conduct engineering investigations to determine the suitability of sites for use as a municipal solid-waste landfill, including but not limited to surveying, soil sampling, and other engineering, geotechnical, and environmental investigations and studies.

CONSERVATION PLAN:

N/A

DISCUSSION:

The purpose of this ROE is to allow for engineering, geotechnical, and environmental investigation and study only. No rent will be assessed; fiscal impact is neutral.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Land Request noted above, subject to such terms and conditions that the Executive Director and the Deputy Attorney General may determine to be in the best interest of the State of Hawaii and ADC.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

EXHIBIT A

DEPARTMENT OF PUBLIC WORKS

TROY K. TANIGAWA, P.E., ACTING COUNTY ENGINEER
BOYD GAYAGAS, DEPUTY COUNTY ENGINEER



DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

June 6, 2022

Mr. James Nakatani
Executive Director
State of Hawai'i Agribusiness Development Corporation
235 South Beretania St., Room 205
Honolulu, HI 98813

RE: Proposed New Landfill Site in Kekaha

Dear Mr. Nakatani,

We are writing to formally confirm our interest in siting a new Municipal Solid Waste Landfill in Kekaha on Agribusiness Development Corporation (ADC) land. ADC-managed property near the old quarry appears to have potential for siting a landfill, please reference the attached arial photo that delineates the approximate location.

On Thursday, March 17, 2022, our County team went to Kekaha and met with Josh Uyehara and Mike Faye of Kekaha Agriculture Association to discuss how a landfill could be located on ADC lands in Kekaha. Our initial discussions covered the Kekaha Mauka site, which is a potential landfill site identified in previous landfill siting studies performed by the County over the past 20 years. We learned that ADC would not agree to locating a County landfill at the Kekaha Mauka site because the property provides ideal conditions for growing a number of crops and is currently being utilized. Discussions moved to other parts of ADC managed lands in Kekaha and eventually focused on the property around and including the old rock quarry we'll refer to as the "Kekaha #2" site and a site visit was conducted. The area is approximately 180 acres and rectangular in shape.

We are hopeful that we can work with you and the ADC Board to confirm the availability of the Kekaha #2 site for use as a sanitary landfill. Accordingly, we would like to begin these discussions at your earliest opportunity in order to formalize our intent to gain access and conduct preliminary engineering work to confirm the viability of the site.

Should you have any questions, please contact me at (808) 241-4993. We look forward to your response.

Sincerely,

**Boyd
Gayagas**

Digitally signed by Boyd
Gayagas
Date: 2022.06.06
13:01:19 -10'00'

Troy Tanigawa
Acting County Engineer

EXHIBIT B





ITEM D-5

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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

November 2, 2022

Subject: Request for Approval to Amend License Agreement No. LI-PU1807 Issued to George Rapoza dba JR's Ranch LLC and Margaret M. Bush to Remove George Rapoza dba JRs Ranch LLC as Licensee for Property in Waialua, Oahu, Hawaii, Tax Map Key No. (1) 6-5-005:009 (por.)

Licensee: George Rapoza dba JR's Ranch LLC and Margaret M. Bush

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

Area: 19.75 gross acres, more or less

Field No(s).: Parcel 9 (por.)

Tax Map Key No: (1) 6-5-005:009

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

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes No

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

Character of Use: Ranching

Land Doc. Type: License

Term: 10 years (currently in year 5)

Rental Rate: \$60 per acre per year
Annual rent: \$1,186

BACKGROUND:

The Agribusiness Development Corporation (ADC) acquired 434.188 acres of real property located at Waialua, Oahu in 2017 which included a 19.75-acre portion of land on which George Rapoza has been boarding and training horses under a land license from Dole Food Company (Dole) since 1997. Following the purchase of the property from Dole, ADC offered the Licensee the right of first refusal, after which ADC issued License Agreement No. LI-PU1807 effective August 16, 2018 (License) for a ten-year term.

At their meeting on November 10, 2021, The ADC Board of Directors (Board) approved a request to amend the License to include "George Rapoza dba JR's Ranch LLC and Margaret M. Bush" (Licensee), which amendment was effective December 1, 2021. Ms. Bush was Mr. Rapoza's ranch manager.

LAND REQUEST:

Licensee requests that the License be amended by removing "George Rapoza dba JR's Ranch LLC from the license, leaving Margaret M. Bush as the sole licensee (Exhibit B).

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

Licensee plans to continue boarding and training horses; there is no change to the current operational plan.

CONSERVATION PLAN:

N/A

DISCUSSION:

Mr. Rapoza has requested that he be removed from the License due to his age and the fact that he is currently unable to assist with the management of the ranch (Exhibit B); Ms. Bush concurs. This request is budget neutral and will have no affect on ADC's rental income.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Land Request noted above, subject to the following conditions:

1. Amendment shall be effective January 1, 2023.

Respectfully Submitted,

.. 

James J. Nakatani
Executive Director

November 2, 2022

EXHIBIT A



EXHIBIT B

To: State of Hawai'i Agribusiness Development Corporation

Attn to: Lyle Roe (Property Manager)

From: Mr. George Rapoza (Licensee)

Jr Ranch LLC
30 Hoe Way
Wahiawa, HI 96786

I Mr. George Rapoza am writing this letter to relinquish my position as Licensee of Leased Land POR (TMK-6-5-005-009) located in Waialua Hawai'i Pa'alaakai as of January 1, 2023. I resigned from the lease due to my age. I am unable to assist with the management of the ranch. As of January 1, 2023, I would like to request and approve Margaret Bush (Joint Licensee) as the new Licensee of the share leased land of 19.75 acres at Waialua, Hawai'i, Pa'alaakai. Mrs. Margaret Bush dedicated herself to managing and preserving the state land. She has built trust with the community. In closing, i would like to thank Agribusiness Development Corporation for having me as one of their Licensee and taking me on from Dole Plantation from 2017-2023.


Sincerely George Rapoza

Date: October 14, 2022
To: State of Hawai'i Agribusiness Development Corporation
Attn To: Lyle Roe (Property Manager)

From: Margaret Bush
B+W Sunshine Ranch
3075 Kalihi Street Apt. #8
Honolulu, Hawai'i 96819

I Mrs. Margaret Bush was informed on October 8, 2022, that Mr. George Rapoza (Licensee) will be relinquishing his position as Licensee of the property effective January 1, 2023. Due to the joint licensee, I am requesting Agribusiness Development Corporation for approval that I Margaret Bush will take over and become the new Licensee effective January 1, 2023.

Sincerely Mrs. Margaret Bush



Margaret Bush
10/14/22



ITEM E-1

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

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

November 2, 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. The Committee held their final meeting on August 1, 2022 and agreed to the final draft (Exhibit A).

Pursuant to section 92-2.5(b)(1)(B), Hawaii Revised Statutes, the Committee presented the final draft of the Manual to the Board for review at the August 17, 2022 meeting. Pursuant to section 92-2.5(b)(1)(C), Hawaii Revised Statutes, the final draft of the Manual was presented to the Board for approval at the September 21, 2022 Board meeting. Based upon Board discussions at the September 21, 2022 meeting, the Board deferred approval of the Manual to the next Board meeting to allow the Committee and staff to respond in writing to questions posed by Board members.

DISCUSSION:

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

To address questions and concerns raised by the Board at the September 21, 2022 meeting, the Committee submits its written responses for the Board's consideration (Exhibit B).

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

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].

Contents

1.0	Definitions.....	4
2.0	Criteria to Consider for Types of Agricultural Activities.....	5
3.0	Property Disposition and Evaluation Procedures	6
3.1	Published Notice of Availability	6
3.2	Procedure for Galbraith & Whitmore Lands.....	6
3.3	Procedure for Kekaha Lands	8
3.4	Procedure for Kalepa Lands	9
3.5	Procedure for Hold-over Tenants	10
4.0	Land Document Policies.....	10
4.1	Rent Setting Policy	10
4.2	Rent Credit (Deferments, Credits, and Discounts for Improvements)	10
4.3	Term of License	10
4.4	License Re-opening	10
4.5	License Extension.....	10
4.6	License Renewal After Expiration	11
5.0	Environmental Policies and Procedures	12
5.1	Requirement of Remediation of Hazardous Materials Prior to License Termination	12
5.2	Requirement of a Phase I Environmental Assessment for Hazardous Materials	12
5.3	Soil Conservation Plan.....	13
6.0	Termination of License Procedures	14
6.1	Procedure for Pre-Default Remediation	14
6.2	Procedure for Default & Termination	15
6.3	Requirement of Remediation of Hazardous Materials Prior to License Termination	16
7.0	Document Management Policies and Procedures.....	18
7.1	Pre-Acquisition Due Diligence Considerations.....	18
7.2	Requirement of a Phase I Environmental Assessment for Hazardous Materials	19
7.3	Soil Conservation Plan.....	20
8.0	Property Management Policies.....	21
8.1	Inspections; Frequency	21
8.2	Inspections; Advance Notice.....	21
8.3	Inspections; Scope	21
9.0	Standard Terms and Conditions for Licenses Policy	22

9.1 Licensee Reporting Requirements 22

9.2 Security Deposits & Performance Bonds 22

9.3 Consent to Mortgage 22

9.4 Consent to Sublicense 22

9.5 Termination of License for Cause 22

9.6 Termination of License by Licensee Request 22

9.7 Disposition of Abandoned Property 22

10.0 Entitlement Revenue Policy 23

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FINAL DRAFT

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.).

FINAL DRAFT

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.

FINAL DRAFT

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.

FINAL DRAFT

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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EXHIBIT B

Staff and Committee’s Response for Consideration by the Board Regarding Questions and Concerns from Board Members

[see following pages]

STAFF AND COMMITTEE RESPONSE FOR CONSIDERATION BY THE BOARD AT THE NOVEMBER 2, 2022 BOARD MEETING:

At the Agribusiness Development Corporation's (ADC) last board meeting on August 17, 2022, Board Member Kaleo Manuel (Mr. Manuel) made several comments regarding the Land Management Policy & Procedures Manual (Policy & Procedures Manual) that was presented by the Policy & Procedures Committee (Committee) to the full Board for review and comment. Mr. Manuel also made several procedural suggestions for the ADC Board's consideration. After consultation with the Committee and the assigned deputy attorney general, Staff offers the following information and comments in response to Mr. Manuel's inquiries.

Policy & Procedures Manual:

- 1) *Should the Policy & Procedure's Manual be something that the ADC Board could change at a board meeting, or should it be Administrative Rules subject to the chapter 91, Hawaii Revised Statutes (HRS)?*

The Committee responded that the Legislature created ADC as a quasi-public corporation for a distinct purpose, which was to give the corporation the ability to operate in a business environment. A business requires flexibility, nimbleness, and the clear attention of a board who can pivot quickly when changes are necessary. The ADC board must pay attention to changes in the business environment, changes in market demand, changes in agriculture, changes to costs, and issues related to climate change. The board must be able to react quickly in response to agricultural challenges. Administrative rules are a good tool for stable programs where conditions don't change quickly because they're based on a statute. Statutes that mandate the creation of administrative rules are usually very stable. The Committee discussed the policy & procedures manual verses administrative rules very carefully and came to the conclusion that the rigidity of formal administrative rules would not be in ADC's best interest.

The statute creating ADC, chapter 163D, HRS, as amended, mentions rules in four different places:

HRS section 163D-4 **Powers; generally.** (a) Except as otherwise limited by this chapter, the corporation **may**:

* * *

(4) Adopt **rules** under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties.

* * *

HRS section 163D-8 **Project facility program.**

* * *

(c) Unless and except as otherwise provided by law, the corporation **may** adopt **rules** pursuant to chapter 91 **to establish the method of undertaking and financing project facilities in a project area.**

(d) Unless and except as otherwise provided by law, bonds issued to provide funds to finance project facilities shall be secured solely by the real properties benefited or

improved and the assessments thereon, or by the revenues derived from the project for which the bonds were issued The bonds shall be issued according to and subject to the rules adopted pursuant to this section. . . .

- (e) The rules adopted pursuant to this section may include, but are not limited to:
- (1) The methods of establishing assessment areas within a project area;
 - (2) The method of assessing real properties specially benefited;
 - (3) The costs to be borne by the corporation, the county in which the project facilities are situated, and the property owners;
 - (4) The procedures before the corporation relating to the creation of the assessment areas by the owners of real property therein, including provisions for petitions, bids, contracts, bonds, and notices;
 - (5) Provisions relating to assessments;
 - (6) Provisions relating to financing, such as bonds, the Hawaii agricultural development revolving fund, advances from available funds, special funds for the payment of bonds, the payment of principal and interest, and the sale and use of bonds;
 - (7) Provisions relating to funds and the refunding of outstanding debts; and
 - (8) Provisions relating to limitations on time to sue, and other related provisions.

* * *

(Emphasis added.)

As demonstrated above, the only rules ADC is required to adopt are those associated with the issuance of revenue bonds.

Section 91-1, HRS, defines “rule” as “each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.”

The Committee believes its Policy & Procedure Manual is meant to describe ADC’s internal management and does not rise to the level of affecting private rights.

- 2) *Should the definitions section use statutory definitions rather than those definitions that are applicable only to ADC?*

The Policy and Procedure Manual defines nine words:

- ADC
- Board
- FSMA (Food Safety Modernization Act of 2011)
- GAP (Good Agricultural Practices)
- License
- Licensee
- Revocable Permit
- Right-of-Entry
- Staff

These definitions are specific to ADC. The terms license, licensee, revocable permit, and right of entry are terms used as descriptors in ADC issued licenses, revocable permits and right of entry documents. As the words used have meaning relevant only to ADC, and the Policy & Procedures Manual is meant to address internal management issues, the Committee believes the definitions are appropriate.

- 3) *Why are the Property Disposition and Evaluation Procedures for the Galbraith & Whitmore Lands different from the Kekaha and Kalepa Lands? Galbraith has procedures A to M, and Kekaha and Kalepa have procedures A – H. Shouldn't they be consistent?*

There was considerable discussion by the Committee on whether all land licensing should be consistent. But not all land acquired by ADC comes with similar backgrounds. Some are acquired in fee, some are subject to Executive Order, some are transferred from the Hawaii Department of Agriculture (HDOA) or the Hawaii Department of Land and Natural Resources (DLNR). Different legacy procedures affect different properties. Galbraith lands have different considerations that Kekaha and Kalepa do not. A one size fits all approach will not work in this situation, especially when different counties are involved. The mere differences between the City and County of Honolulu and Kauai County provides further justification for the difference in procedures.

- 4) *Should the duplicative language regarding hazardous materials remediation in sections 5.1, 6.3, and 7.2 be eliminated from sections 6.3 and 7.2, and replaced with references to section 5.1, instead of being repeated verbatim?*

The Committee believed that duplication leads to clarity. The Committee did not want somebody reading the document to have to flip back and forth to an earlier section to get a complete picture and understanding of how to comply. The hazardous materials protocols come into play in three different scenarios: 1) under environmental policies and procedures; 2) when license termination occurs; and 3) under document management. As the Policy & Procedure Manual is primarily for use by staff, a staff member could consult the table of contents for information on a single subject and be able to get a complete picture by reading the relevant section. In this instance the Committee favors repetition.

- 5) *The Policy & Procedure's Manual allows a licensee to obtain rent credit for up to twenty years on a thirty-five-year license? Is such generosity warranted?*

The Committee debated the rent credit option for quite a while. The Committee noted that CIP funds were not always available for ADC properties. HDOA puts in the improvements for the ag-parks, including the common areas. HDOA subsidizes the improvements up front and then turns them over to new farmers to get started with lower start-up costs. Unlike HDOA ag-parks, ADC often relies upon tenants to build the infrastructure necessary to support agriculture. The ADC Board is able to know the condition of the property when a new license is presented for approval. Rent credit can provide an incentive for the licensee to improve the property. All requests for rent credit will come before the board and will be considered on a case-by-case

basis. Infrastructure investment is a means of helping the farmer be profitable, and at the end of the license term the infrastructure belongs to ADC.

- 6) *Why are the terms of ADC licenses thirty-five years, with a thirty-five-year renewal option? Why not just do a sixty-five-year term like other state agencies?*

ADC's focus is on commercial farming, not start-ups. ADC licenses large parcels. A shorter license term allows ADC to ensure its licensees are doing a good job. When a farmer is a good tenant the license can be extended beyond the thirty-five years. ADC wants its tenants to be successful and offering an additional term for those who have a good track record is a good incentive. If the farmer is having problems, ADC can terminate the license and give someone else a chance to be successful. It's easier to terminate a bad tenant after thirty-five years, rather than have to wait until sixty-five years have gone by.

- 7) *Why does section 4.6 allow a person to renew a license after expiration where there is a procedure clearly set out to renew a license prior to expiration? It seems like a reward for bad behavior.*

Based upon Staff's past experience, situations sometimes arise where a good tenant will inadvertently let the renewal period lapse. Not all farmers have staff available to monitor expiration dates. ADC has also been guilty of failing to initiate the renewal conversation. All renewal decisions will come before the Board, which gives the Board final authority to determine what constitutes "faithful and diligent execution of all terms and conditions of the License."

- 8) *Could the annual reporting of crops in production and quantity of crops produced established in section 9.1 include a requirement to identify what percentage of the quantity of crops produced stayed in Hawaii to support the local market. This is a metric that is not being collected by the State.*

The Committee believes collecting this data may serve a useful purpose for the State, however production by ADC farms is a very small portion of the agricultural production state-wide. The Committee is not sure that ADC is the appropriate agency to be collecting such information. HDOA is in a better position to collect and make use of this information. As the Policy & Procedures Manual is essentially for internal use, this may not be the place to insert such a requirement but should be part of a larger conversation that includes HDOA, and possibly the Department of Commerce, Economic Development and Tourism, or other interested agencies.

- 9) *Should the core license conditions in section 9.0 of the Policy & Procedures Manual specifically include the prohibition against living or residing on the property?*

The Committee recognizes that in a few instances ADC has obtained property with a residence and tenant already on the premises. ADC properties are generally reserved solely for agriculture and does not have the necessary and costly infrastructure in place to provide housing (potable water, sewer, fire suppression). During the application process, and through the standard terms contained in the ADC licenses, prospective tenants are informed that the property is not to be

used for residential purposes. However, in consideration of future agricultural trends the Committee did not want to preclude the possibility that farm worker housing be considered if properly permitted by the various counties.

- 10) *Can the policy in section 10.0 of the Policy and Procedures Manual regarding the revenue entitlements to the Office of Hawaiian Affairs (OHA) and the Hawaiian rehabilitation fund, payable through the Department of Hawaiian Homelands (DHHL), be amended to include a requirement that ADC consult with OHA and/or DHHL when making decisions involving the DHHL/OHA beneficiaries?*

ADC is bound by statutory and constitutional obligations to collect and properly account for the revenue derived from ceded lands and former sugar cane lands. The Committee chose to memorialize this obligation by including section 10.0 in the Policy & Procedures Manual. Adding a consultation requirement does not belong in a Policy & Procedures Manual that is meant for internal management as it would add another layer of bureaucracy that ADC is not prepared to handle. There is no statutory or constitutional requirement to conduct such a consultation. ADC is fulfilling its legal obligations and should not be the gatekeeper for other agencies. While interagency cooperation is a valuable tool, ADC does not have the manpower to engage in such an ambitious undertaking. Presently the ADC submittals identify agenda items that involve trust land obligations, and OHA and/or DHHL may ask for notification of ADC Board meetings and take part in the public meetings.

- 11) *Is there a way to include a requirement in the Policy & Procedure Manual that staff prepare an annual financial report for the board?*

It does not seem appropriate to add the preparation of an annual financial report for the Board to a Policy & Procedure Manual that was created to focus on Land Management issues. The Committee sought to address issues raised by the House Investigative Committee, by trying to cover those areas where there weren't sufficient written policies. The Committee notes that the legislature approved a new accountant position for ADC. Once that position is filled, the Board may consider requesting an annual financial report.

- 12) *When a license comes up for renewal or amendment, should there be a requirement that the license be brought up to current standards so there is parity among all the licensees? After thirty-five years there may be new environmental, public health, or safety requirements that have evolved.*

The Committee believes all licensees should be treated equally. Where best practices have evolved over time it is assumed that the Policy & Procedure Manual will be updated accordingly and that the current manual will be consulted when a change in licensing is considered. A complete license review may not be appropriate in all cases, such as when a license comes before the board for a ministerial amendment like a name change, but after a lengthy period of time the license should be reviewed to ensure compliance with current licensing standards, which are anticipated to be included in the most recent version of the Policy & Procedure manual.

Finally, Mr. Manuel noted that on page 2 of the KIUC submittal (Item D-1), a reference to chapter 343, HRS, was included, but none of the other submittals contained a reference to the statute that requires an environmental assessment to be conducted for, among other things, an action that proposes “the use of state or county lands, or the use of state or county funds[.]” Section 343-5(a)(1), HRS.

KIUC requested a six-month extension for two of its land licenses to allow for completion of the Environmental Assessment of the West Kauai Energy Project. Accordingly, the submittal made reference to HRS chapter 343 as it was the basis of the request. Other items on the agenda that did not reference HRS chapter 343 included the submittal for Item D-3, which requested approval to grant an easement for Hawaiian Electric Co. to install electric equipment, service lines, poles, guy wires, overhead transmission, control circuits and to allow trimming, removal, and control of trees and vegetation on ADC’s land; and Item D-6, which sought to issue a revocable permit to Kekaha Agriculture Association for the use of one-acre of land in Kekaha, Kauai, land that was under ADC’s management and control.

Mr. Manuel asked that all the submittals identify whether an action undertaken by ADC triggers chapter 343, HRS. As a public body corporate and politic and an instrumentality and agency of the State (see section 163D-3(a), HRS), there is an argument to be made that all ADC lands are State lands, and generally, all funds used by ADC are State funds. Following this logic, **all actions taken by ADC would trigger HRS chapter 343** as actions proposing the use of state lands, or the use of state funds.

In recognition of the fact that some agency actions will individually and cumulatively have minimal or no significant effect on the environment, ADC has applied for a Comprehensive Exemption List (exemption list) that was approved by the Office of Environmental Quality Control, now known as the Environmental Review Program, which is under the direction of the Environmental Advisory Council. This exemption list was approved on May 1, 2018 and is valid for seven years (resubmit for concurrence by May 1, 2025). See section 11-200.16(d), *Hawaii Administrative Rules*. The exemption list offers ten comprehensive exemption classifications.

Relevant to the installation of electrical service to Ho Farms through grant of an electrical easement to Hawaiian Electric Co., Inc. (8/17/2022 Agenda Item D-3), such activity falls under Exemption Class 3, which excludes construction of small facilities to support public utility service extensions.

To demonstrate ADC’s commitment to consideration of the effects its actions may have on the environment, it is suggested that a section be added to the submittals that acknowledges the applicability of HRS chapter 343, and identifies the relevant exclusion, if any, that applies to the action. This notification can be accomplished by added the following:

HRS section 343-5(a) applicable? Yes ___ No ___
Action exempt for HRS chapter 343 based on approved Exemption Class ___.

Staff feels this suggestion would not be overly burdensome and will confer with the assigned deputy attorney general if questions arise.

Staff further recommends that Mr. Manuel's suggestions regarding requirements for reporting of percentage of crops grown for local consumption and the creation of an annual financial report be considered by the ADC Board in the future.



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EXECUTIVE DIRECTOR'S REPORT

November 2, 2022

Progress Update on the 2021 Land Awardees

In 2021, the Board of Directors vetted and approved five applicants for land awards on Oahu. Rights-of-entry (ROE) were issued to the awardees and they have been conducting on-site due diligence, land clearing, and conservation planning.

Ohana Hui Ventures (OHV) – ADC issued a ROE to OHV and they immediately began conservation planning efforts and land clearing along the parcel that fronts Whitmore Avenue in Whitmore Village. OHV obtained approval for their conservation in September and are awaiting upgrades to Board of Water Supply line before license approval is sought.

Thomas, Tony, & Manyvone Law (Laws) – ADC issued rights-of-entry to the Laws and they immediately began planning efforts and land clearing on their parcel. Conservation planning/approval process is nearly complete. Their contractors recently installed a pump and filter station near the 10 MG reservoir and irrigation lines are being developed. Staff will seek license approval prior to planting operations.

Cedar Grove – ADC issued a right of entry to Cedar Grove and are currently approved as a cooperator with USDA-NRCS and are waiting for their turn in the queue.

Malama Aina Collective (MAC) – ADC issued a right of entry to MAC and was on the agenda for the West Oahu Soil and Water Conservation District's April meeting and were referred to work with the Oahu Resource Conservation and Development Council on the development of the plan.

Hawaii Sustainable Agricultural Products (HSAP) – ADC issued a right of entry to HSAP who recently developed a conservation plan. West Oahu Soil and Water Conservation District board approved their plan at their meeting on October 4, 2022.

FY24 Capital Improvement Project Requests

ADC's FY24 Capital Improvement Project Requests include the following:

1. Wastewater Reclaimed Water Irrigation System - \$124M

Plans, construction, and equipment for a new wastewater reclaimed water irrigation system at the Wahiawa Wastewater Treatment Plant. Request includes construction management and contract administration.
2. Agricultural Warehouses, Oahu - \$14.5M

Construction for warehouses on TMK 7-1-002-009 (por) and 7-1-002-004 (por). Funding is part of an ongoing project and will be expended by the Department of Accounting and General Services.
3. Aahoaka Reservoir Improvements, Kauai - \$1.1M

Design and construction for improvements to the upper and lower Aahoaka Reservoirs. Funding is part of an ongoing project and will be expended by the Department of Accounting and General Services.
4. Galbraith Agricultural Lands Improvements, Oahu - \$500K

Construction for improvements at the Galbraith Agricultural Lands. Projects may include, but not limited to, the removal of hazardous materials, solid waste, ground and site improvements, and other incidental work. The work is necessary to complete the environmental assessment of a portion of the Galbraith Agricultural Lands that was affected by the September 2021 fire in Poamoho. The anticipated completion of the assessment and a Hawaii Department of Health approved removal plan is February 2023.
5. Agricultural Workforce Housing, Oahu - \$6.5M

Land acquisition for residential units on Oahu located at 360 California Ave., Wahiawa, HI, TMK 7-3-004-020. The property will be used for agriculture workforce housing. ADC is completing its due diligence. Final sales cost will be based on appraised value, provided that, funding is available.
6. Wahiawa Value Added Product Development Center, Oahu - \$3.75M

Land acquisition and plans for property on Oahu located at 1011 California Ave., Wahiawa, HI, TMK 7-4-012-005. The property will be used as an auxiliary site for the University of Hawaii Leeward Community College's Wahiawa Value Added Product Development Center. ADC is completing its due diligence. Final sales cost will be based on appraised value, provided that, funding is available.
7. Agricultural Lands, Oahu - \$3M

Land acquisition for agricultural lands (22.71 acres) on Oahu, TMK 6-5-002-027. The property will be licensed for agricultural production. ADC is completing its due diligence. Final sales cost will be based on appraised value, provided that funding is available.