

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on March 16, 2023

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

APPROVED: ADC BOARD MTG
April 20, 2023

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

Members Present, virtually:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Sharon Hurd, Chair HBOA, Ex-Officio Member (Ms. Hurd)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member (Mr. Wicker) joined at 9:10 a.m.
Vacant – Member-At-Large
Vacant – Hawaii County Member

Members Excused:

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Jayson Watts, Maui County Member (Mr. Watts)

Counsel Present, virtually:

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

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Mark Takemoto, Executive Assistant (Mr. Takemoto)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)
Lynette Marushige, Executive Secretary

Guests Present, virtually:

ADC Guest
Beth Amaro, KIUC
David Bissell, KIUC (Mr. Bissell)
Dawn Huff, KIUC
Ford Fuchigami
Jason Okuhama (Mr. Okuhama)
Joshua Uyehara
Thomas Heaton
Linda Rosehill
Kathy Sokugawa

Guests Present, physical location: None.

A. Call to Order

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Chair called the virtual meeting to order at 9:02 a.m.

Chair apologized for his camera not working, so he would not be visible.

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 over the age of eighteen was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Mr. Hong, Ms. Hurd, Ms. Seddon, Mr. Tabata, and Mr. Watanabe acknowledged attendance with no guests present. Mr. Watts and Mr. Manuel were excused. Mr. Wicker joined the meeting at 9:10 a.m.

C. Approval of Minutes

1. Board of Director’s Meeting, **February 16, 2023**

Chair called for a Motion to Approve: Ms. Hong; Seconded: Mr. Tabata.

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

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

Chair asked for Board discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 6-0.

D. New Business

1. **Request for Approval to Issue a Lease to Hartung Brothers Hawaii, LLC for 42.019 Acres of Existing Office and Processing Operations in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:035**

Chair called for a Motion to Approve: Mr. Tabata; Seconded: Mr. Watanabe.

Chair asked if there was any background from staff.

Mr. Roe noted that DLNR Lease No. S4654 was issued to Pride Company, Inc., in 1980 for 42.019 acres. Over the years the lease has been intermittently assigned, extended, transferred, set-aside and re-set aside. The property is now managed by ADC and held by Hartung Brothers Hawaii for office space and agricultural processing purposes. The lease is set to expire May 15th of this year and Hartung requested the lease be extended for a term of 35 years. Consistent with past practices, staff recommends that a new ADC lease agreement be issued.

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

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Chair asked if there were any questions from the Board. There were none.

Chair asked if an updated assessment of the property was necessary.

Mr. Roe said that regular BMP [Best Management Practices] inspections were conducted. He is going to Kauai on the 22nd and this is one of the properties he'll be inspecting.

Chair asked what the 42 acres were being used for.

Mr. Roe responded office space, processing, employee parking, and storage.

Chair asked if it was for fuel storage.

Mr. Roe responded no.

Chair asked if there was any other discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 6-0.

2. Discussion of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mānā Reservoir) Issued to Kauai Island Utility Cooperative for the West Kauai Energy Project in Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.), Various

Chair called for a motion to approve: Mr. Watanabe; Seconded: Mr. Tabata.

Chair asked for staff presentation.

Mr. Roe stated that in 2017 ADC issued two license agreements to Kauai Island Utility Cooperative (KIUC) for the Kokee Ditch, and the Mānā Reservoir, for the West Kauai Energy Project (WKEP). The Board has been briefed on the WKEP several times. The terms of those license agreements allowed the licenses to be converted to long-term lease agreements with very generous terms. ADC negotiated those terms with KIUC on the basis of KIUC's status as a not-for-profit utility cooperative. ADC remains supportive of the WKEP. However, in January 2021, KIUC announced that they were partnering with AES Corporation, a global for-profit energy company who would provide development and operational expertise for the project. Participation of a for-profit project partner is reason for pause and concern as it represents a for-profit entity potentially benefitting from generous lease terms that were negotiated for a not-for-profit entity and project at the expense of ADC, the State, and taxpayers. Staff recommends that the Board authorize the executive director to open discussions with KIUC on updated lease terms that reflect the change and the development in operational realities of the project.

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

Mr. Nakamoto said that Mr. Bissell wished to testify.

Chair thanked Mr. Bissell for attending.

Mr. Bissell said he appreciated the opportunity to testify and wanted to emphasize that even though AES was brought into the project the terms of the agreement have not changed, the core agreement has not changed, and the benefits to the Kauai rate payers and the people of Kauai has not changed

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with AES coming on board on this project. It's not like there's a windfall certainly for KIUC and the AES terms are the standard development side so it's a risk management strategy from KIUC to minimize the risk of their membership. AES bears all the development risks and in return for that, they have fixed costs that have not changed, ever since they first brought AES into this, the people of Kauai benefit significantly from the project.

Chair asked if the Board had any questions.

Mr. Tabata said he doesn't have any questions, but from his standpoint this project has many benefits for the people on the island of Kauai, but particularly the West-side. Teaming with AES on this project was the only way to pull it off so they need to keep moving forward.

Chair asked if there was anyone else.

Mr. Hong said in reading the submittal, he wondered if the term "partnership" was the right term. Is this more of a management consulting agreement? The only thing he's concerned with is the term "development". Are they developing a project for a fee or are they developing lands for a development, typical construction development purpose. If it's really a contract for services to utilize the AES management expertise and they're paid for their consulting services that's different than a partnership where they actually have equity ownership in the entire development. He needs clarification on that.

Chair asked if Mr. Bissell was still available.

Mr. Bissell said the term partnership comes when a joint development between KIUC and AES. AES actually owns the project; they would build the project; they would operate the project, at least in the initial years. The terms of the agreement they have with AES, KIUC has opportunities to buy the project back at certain points as it goes forward. But, the partnership comes in we're jointly developing it, we're working together. KIUC leads how the project would be operated, how the water would be handled. AES builds it, they operate it, they have to meet certain performance standards of it and in return they get paid for the availability of the equipment, but KIUC directs the operation of it, they just have a payment stream that goes to them. AES from the KIUC side it's nice, they bear all the risks with constructing the project, negative things that happen in construction and all that goes to AES rather than KIUC.

Chair asked if Mr. Bissell answered Mr. Hong's question.

Mr. Hong said yes. He guesses it's a situation where AES really takes an equity position in the project. We have to balance that against the purpose of what ADC is trying to do. He understands Mr. Tabata's position that it's probably the only way they're going to get this project done. They will have to see what the net benefit is in fact going to the community and Kauai, as well as the goals of ADC.

Mr. Nakatani said he thinks that Mr. Hong hits it right on the spot. It came from a non-profit to a for-profit and he thinks that we have to justify our position for ADC. He understands where Mr. Tabata is coming from that KIUC needs to be successful on this but at the same time, ADC needs to do its due diligence as far as the responsibility for ADC.

Chair asked if Mr. Bissell had any further comment.

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Mr. Bissell said he just wanted to clarify one thing to try and put the Board into a negotiation frame of when they brought AES in. Back in 2017 the project was failing. The price setting the capitol costs were going higher and higher and KIUC was in a position where they were likely going to have to recommend cancelling the project. When they brought AES into this, they had a rate that they needed to get for their membership to be able to ensure the members that the benefits were there. The whole negotiation with AES was centered around trying to deliver this project at a cost that was beneficial to their membership and would work for KIUC. So, there's really in effect a ceiling brought in of what they could pay, of what made sense for KIUC to go forward with this and that was the whole negotiation with AES was working with them, trying to drive the rate down to what we needed to make it beneficial for the people of Kauai. And they succeeded in that so that's where it's at, they do have an equity interest in this, they are a for-profit business, they have to make an acceptable return, but that return was all factored in those initial negotiations, based on their assumptions. AES at some point is going to say if the costs escalate past that, they will walk away from the project, or have to renegotiate, and all that will pass back onto the people of Kauai.

Mr. Hong asked if this agreement had to go through the PUC [Public Utilities Commission] approval process or has it gone through the approval process.

Mr. Bissell responded that it has been approved by the PUC.

Mr. Hong asked, at the stipulated rate?

Mr. Bissell responded yes.

Mr. Hong asked, what if AES comes back and says they want to renegotiate. That kind of botches the whole deal, correct?

Mr. Bissell responded they likely would have to go back for PUC approval for any material changes in the terms.

Mr. Hong said this was for the Board. They have been through a PUC review process and those processes are fairly expensive. The Board should give some heavy weight toward that other regulatory process in terms of the benefit to the community. The question then is can ADC approve this, is it within their power to say yes, this is the type of agreement that they can move forward with. So, the question is what would happen if AES miscalculated the amount of capital that they would have to put in for the amount of revenue they would receive from it. Would they walk away from it? We're left with a partially developed project and does KIUC or ADC have any residual liability in this situation if they walk away from it?

Mr. Bissell said he doesn't know the answer to that. It would all depend on what stage the project was at. If they had land agreements in place, KIUC would have certain obligations regarding the condition of the land but in terms of what happens with AES, it would all depend on the stage they walk away and the facts and circumstances.

Mr. Hong asked if ADC staff sees any liability or recourse that AES would have against ADC if they were to decide to walk away.

Mr. Roe said that's a question better directed to Ms. Prescott-Tate. He wanted to remind the Board that all this request does is authorize ADC to engage in discussions on negotiated terms. What the actual terms would be is dependent on some of these conditions.

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Mr. Hong said that part of this Board's question is that hopefully they'll be providing some guidance to that next process, the next step, in terms of things to consider. Clearly they don't want to get into a situation where ADC is left holding the bag. Mr. Bissell has to look after the interests of their shareholders, their owners. In the larger scheme of things, having this project move forward makes sense, Hawaii needs to diversify its energy reliability somehow. He just wanted to raise these questions.

Ms. Prescott-Tate said another question to be considered is has the HRS Chapter 343 requirement been met given that EarthJustice filed a lawsuit challenging the result of a finding of no significant impact (FONSI).

Mr. Bissell said that's purely a legal question. They do have a FONSI in place that has not been revoked; it's currently in place so that's something that would need to have legal advice from legal counsel.

Chair asked if there was any further discussion. So, should the Board permit the Executive Director to negotiate with KIUC on the license versus lease terms and conditions and bring the matter back to the Board for further discussion? If the answer to those questions are no, then do things remain status quo? The current license expires in September 2023 and the matter would be set for issuance and approval of KIUC's 65-year lease upon terms and conditions previously approved by the Board in 2016. Ms. Prescott-Tate could you give us some guidance?

Ms. Prescott-Tate said there should be some kind of consensus on what the Board would like to see going forward. Do you want to let the Executive Director take the lead? Or do we not even need to go there and just go with the 2016 decision of the Board, or we could refer the matter to the newly formed administration committee.

Chair said they have an administration committee now that could work with KIUC. Chair asked so how do they do this? A motion? An amendment to the motion?

Ms. Prescott-Tate said it's a discussion right now. Where would the Board like it to go? If they come up with one solution then the Board can vote on that.

Chair said so the three options are, allowing the Executive Director to negotiate with KIUC; remain status quo with the agreement that was approved in 2016; or refer it to the administration committee to work with KIUC.

Mr. Nakatani asked why doesn't staff do more fact gathering and put some options on the table for the Board to consider at a subsequent meeting. As Ms. Prescott-Tate mentioned there's a [HRS Chapter] 343 contested case at this point so there's time. He thinks it can be done fairly quickly to look at what was agreed to prior and what they want today. What they're missing is, as Mr. Hong pointed out, they don't know what really, what the numbers are, the facts are, as far as AES they're doing their thing. They want to give a fair deal to all parties but that is what they are not sure of, what is the deal. So, they just have to find some facts to justify each position. We know what KIUC's position is but it's a matter of ADC and AES and for our obligation for our organization to get a fair deal for this whole project.

Chair said in that case we will defer the matter to get more information.

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3. Request for Approval to Issue a New and Amended Revocable Permit to The Davey Tree Expert Company and Davey Tree Surgery Company for 21,510.5 Square Feet of Space, More or Less, in Whitmore Village, Oahu, Hawaii, Tax Map Key Nos. (1) 7-1-002:004 (por.), :009 (por.)

Chair called for a motion to approve: Mr. Tabata; Seconded: Mr. Watanabe

Chair asked for staff presentation.

Mr. Roe said Davey Tree Expert Company has been a tenant with ADC since 2016. Except for a brief period of contraction during the pandemic they've enjoyed pretty consistent growth. In mid-2021, an allied company, Davey Tree Surgery Company, joined their workspace at Whitmore and due to their expansions, the Davey Tree Company collectively requests an additional 117.5 square feet of office space at Whitmore. Staff recommends a new and amended revocable permit that includes that new office space.

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

Chair asked if there were any questions or discussion by the Board. There were none.

Chair called for the vote. Hearing no objection, the motion was approved: 7-0.

4. Request for Approval to Issue a Right-of-Entry to the State of Hawaii, Department of Education, Helemano Elementary School for 1.0 Acre, More or Less, for Parking Access for May Day Activities on May 12, 2023 in Whitmore Village, Oahu, Hawaii, Tax Map Key Nos. (1) 7-1-002:004 (por.), :009 (por.)

Chair called for a motion to approve: Ms. Hurd; Seconded: Mr. Hong.

Chair asked for staff presentation.

Mr. Roe said Helemano Elementary School located in Whitmore Village is requesting to use a portion of the open space in Whitmore for overflow parking for their May Day celebration on May 12th this year. Staff recommends that the Board authorize the issuance of a Right of Entry for that purpose. It's the same location that we approved last month for the 46th Annual Wahiawa Pineapple Run and it's the day before.

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

Chair asked if there were any questions from the Board. There were none.

Chair asked if this has to come before the Board or is this something that staff can approve.

Ms. Prescott-Tate responded there was some liability involved if something should happen on ADC property so it's something the Board should know about and approve.

Chair asked if ADC is requiring insurance from the school.

Mr. Roe responded yes.

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Chair asked if there were any other questions. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 7-0.

E. Old Business

1. Presentation of the Draft Annual Performance Review of the Executive Director (continued from January 25, 2023, Item D-8)

Chair stated that HRS section 92-4, allows the Board to hold an executive meeting closed to the public. The Board will be discussing Old Business Item 1, which is the presentation by the committee established to conduct an evaluation of the Executive Director's performance for fiscal year July 2021 to June 2022. This presentation may be closed to the public pursuant to HRS section 92-5(a)(2) to allow discussion of an employee evaluation where consideration of matters affecting privacy will be involved.

Before entering executive session, Chair asked if there was anyone from the public who wished to testify on the decision to go into executive session. There was none.

Chair called for a Motion to go into Executive Session: Ms. Seddon; Seconded: Mr. Hong.

Chair asked if there was any presentation by Staff. There was none.

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

Chair called for the vote. Hearing no objection, the motion was approved: 7-0.

The Board went into Executive Session at 9:35 a.m.

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

Chair stated that this was just a presentation by the Executive Director's Evaluation Committee and the motion to adopt the evaluation committee's report and recommendation will be heard at the next Board meeting.

F. Executive Director's Report

Chair called upon Mr. Nakatani to provide his monthly update.

Mr. Nakatani told the Board they had the legislative update in front of them. The most significant bill was SB 833, SD 2, which was just passed out and it has a couple of more committees to go through but it's still alive. All the bills that they see before them are alive. SB 836, which was ADC's condemnation powers, was never heard. However, SB 837, SD 1, is a similar bill but gives the Department of Business, Economic Development and Tourism (DBEDT) the authority to condemn. The rest are related to value-added products. Those have already passed and so that's good.

Mr. Nakatani pointed out that Mr. Takemoto has been in charge of having staff meetings, weekly or every two weeks.

The budget has crossed-over so we'll see how everybody's budget goes.

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Ms. Seddon and Mr. Watts' senate confirmation hearing is coming up soon. Mr. Nakatani thinks the committee on agriculture, Senator Gabbard will send a questionnaire to them prior to the hearing. There is a new applicant, Mr. Okuhama, for the at-large Oahu seat. He comes from USDA services. Mr. Okuhama's recommendation came from the Governor's office. We may also have one other applicant from the Big Island, Jacob Tavares from Parker Ranch, although we have not seen the GM [Governor's Message] yet.

Mr. Nakatani noted that the Dole well purchase is in escrow, and regarding Ohana Hui Ventures, the proceedings will probably be in the next two weeks, they're waiting for paperwork from Ohana Hui Ventures.

Chair asked if anyone had any questions. There were none.

G. Adjourn

Chair called for a Motion to Adjourn: Mr. Hong; Seconded: Mr. Tabata.

Chair asked if there was any discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 7-0.

The meeting was adjourned at 10:14 a.m.

Respectfully submitted:

Lynette Marushige

Lynette Marushige
Secretary