

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



WENDY GADY
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Suite 205
Honolulu, HI 96813

Regular Meeting of the Board of Directors

Hybrid Meeting via Teleconference with In-Person Viewing Location

November 16, 2023
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. If possible, 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, or delivered to:

Agribusiness Development Corporation
235 S. 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: [click here to join](#)

Telephone: (669) 900-6833, Webinar ID: 861 6905 8352

In-Person: at the meeting location indicated below

ICT ACCESS

To view the meeting and provide live oral testimony, please use the link above. You will be asked to enter your name in order to access the meeting as an attendee. 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](#).

As an attendee, 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 above.

Upon dialing the number, you will be prompted to enter the Meeting ID that is listed next to the Telephone Number above. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. You will not have a panelist number. 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., Suite 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 meeting process, including translation or interpretation services, please contact staff at (808) 586-0186 or by email at dbedt.adc@hawaii.gov.

Please allow sufficient time for ADC staff to meet requests for special assistance, accommodations, modifications, auxiliary aids, translation, or interpretation services.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 S. BERETANIA STREET, SUITE 205, HONOLULU, HAWAII 96813 ON AND AFTER NOVEMBER 10, 2023.

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

If you believe that you have been discriminated against with respect to an Agribusiness Development Corporation program or activity, you may contact the Acting Non-Discrimination Coordinator identified above.

AGENDA

- A. Call to Order
- B. Approval of Minutes
 - 1. Board Meeting Minutes, October 3, 2023
 - 2. Executive Session Minutes, October 3, 2023
 - 3. Regular Session Minutes, October 19, 2023
- C. Chairperson's Report
 - 1. None
- D. Committee Reports
 - 1. None
- E. Action Items
 - 1. Request for approval to remove the "sand site" from the Agribusiness Development Corporation's portfolio of available lands in Kekaha, Kauai, Hawaii, and issue notice to vacate to Pohaku O'Kauai Materials, LLC, TMK 1-2-002:001 (por.)
 - 2. Request for the Board to make a determination that it is necessary to conduct limited meetings for on-site inspection of ADC assets on Oahu and Kauai for purposes related to the Board's business at which public attendance is not practicable; and for approval to submit a limited meeting schedule to the director of the Office of Information Practices for limited meeting concurrence
- F. Informational Items
 - 1. Presentation by Allison Fraley on behalf of the County of Kauai for an update regarding a proposed new landfill site to be located near Kekaha, Kauai, Hawaii, TMK (4) 1-2-002:001 (por.)
 - 2. Update on Sunshine Law complaint (S APPEAL 24-02) by anonymous complainant dated August 21, 2023, and supplemental complaint dated September 22, 2023 regarding the hiring of the new executive director
 - 3. Presentation by Mike Yonemura on behalf of Diamond Head Seafood regarding Oahu Feed Mill in Kalaeloa, Oahu, Hawaii
 - 4. Update regarding ADC-owned buildings in Whitmore Village, Oahu, Hawaii

5. Executive Director's Report regarding project updates, budget updates, status of vacant positions, and a branding and marketing project

G. Adjourn

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

AGRIBUSINESS DEVELOPMENT CORPORATION

ITEM B-1

Minutes of the Board of Directors Meeting held on October 3, 2023

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

Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, 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 in attendance:

Warren Watanabe, Chair (Chair)

Glenn Hong, member-at-large (Mr. Hong)

Sharon Hurd, ex officio member of HDOA (Ms. Hurd)

Jason Okuhama, member-at-large (Mr. Okuhama)

Karen Seddon, member-at-large (Ms. Seddon) entered the meeting at 4:15 P.M.

Lyle Tabata, Kauai County Member (Mr. Tabata)

Russell Tsuji, designee for ex officio member of DLNR Dawn Chang (Mr. Tsuji)

Jayson Watts, Maui County Member (Mr. Watts)

Dane Wicker, designee for ex officio member of DBEDT James Tokioka (Mr. Wicker) entered the meeting at 4:15 P.M.

Members excused:

None

Counsel Present:

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

Staff Present:

Wendy Gady, Executive Director (Ms. Gady)

Mark Takemoto, Executive Assistant

Ken Nakamoto, Project Manager, Teams operator (Mr. Nakamoto)

Lyle Roe, Property Manager

Guests Present:

18087728178

ADC Guest

Beth Amaro, KIUC

Chunk KB

Janet

LM

M

Thomas Heaton

Trisha Yamato

Ford Fuchigami

Yamamotoej

1 call-in listener

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held on October 3, 2023

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

Call to Order:

Chair started the meeting by welcoming everyone to the Special Meeting of the Board of Directors of the Agribusiness Development Corporation and noted that prior to calling the meeting to order, Mr. Nakamoto would explain how the public can participate in this hybrid meeting, which could be accessed by video conference, telephone, or in-person.

Mr. Nakamoto provided information on how to participate in this hybrid-meeting.

Chair reminded testifiers that there was a two-minute limit of testimony per agenda item.

Chair called the meeting to order at 4:09 P.M.

Roll Call:

Chair conducted a roll call of the Board Members present and asked that when their name was called, to please indicate their presence with a “here” or “present” and state who, if anyone over the age of eighteen was present in the room. Chair called the names of the Board Members:

1. Chair responded he was here and alone.
2. Mr. Hong responded he was here and alone.
3. Ms. Hurd responded she was here and alone.
4. Mr. Okuhama responded he was here and alone.
5. Ms. Seddon was not present (Ms. Seddon entered the executive session at 4:15 P.M.)
6. Mr. Tabata responded he was here and alone.
7. Mr. Tsuji responded he was present and alone.
8. Mr. Watts responded he was present and alone.
9. Mr. Wicker was not present. (Mr. Wicker entered the executive session at 4:15 P.M.)

Chair noted that a quorum of seven members was present and preceded on to new business agenda item 1.

C-1. Executive Session to be held pursuant to HRS section 92-4, and HRS section 92-5(a)(2) to discuss personnel matters, and HRS section 92-5(a)(4), to consult with the board’s attorney regarding OIP S APPEAL 24-02

Chair stated that HRS section 92-4, allows the board to hold an executive meeting closed to the public. Pursuant to HRS section 92-4(a), the Board will be discussing OIP S APPEAL 24-02, which involved a personnel matter. HRS section 92-5(a)(2) allows a board to hold a meeting closed to the public to consider hiring decisions where consideration of matters affecting privacy will be involved. HRS section 92-5(a)(4), also allows a board to hold a meeting closed to the public for purposes of consulting with the Board’s attorney. The Board will be consulting with its attorney regarding OIP S APPEAL 24-02.

Chair asked if there was any public testimony before going into executive session. There was none.

Chair called for a motion to go into executive session.

Motion by Ms. Hurd; Second by Mr. Okuhama.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held on October 3, 2023

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

Chair asked if there was any staff presentation. There was none.

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

Chair conducted a roll call vote on the motion to enter executive session:

Chair voted aye.

Mr. Hong voted aye.

Ms. Hurd voted aye.

Mr. Okuhama voted aye.

Ms. Seddon – not present.

Mr. Tabata voted aye.

Russell Tsuji voted yes.

Jayson Watts voted yes.

Dane Wicker – not present.

Following the roll call vote Chair stated OK, the motion is . . .

Mr. Tsuji interjected saying Mr. Wicker was trying to get on. I think he's going to just join us in the executive session.

Mr. Nakamoto said Mr. Wicker was having trouble logging onto the ZOOM link and he asked Mr. Wicker to join the executive session and he's in there waiting in the executive session right now. So when you guys log out and go into Teams for the executive session he's there waiting.

Chair stated that the motion to enter executive session was approved on a 7-0 vote. The public meeting is in recess, subject to reconvening at the conclusion of the Executive Session.

The Board exited the public meeting at 4:14 P.M

BACK ON THE PUBLIC RECORD

Mr. Wicker was still having trouble logging into the ZOOM link. He was eventually successful in logging in via telephone. For the remainder of the public session Mr. Wicker attended the meeting via audio, without video.

Chair called the public meeting back to order at 5:22 P.M.

Chair stated pursuant to Act 19 of the 2023 Legislative Session, I will briefly summarize what happened in executive session regarding New Business Item C-1. The Board discussed Sunshine Law Complaint S APPEAL 24-02 involving a personnel matter with the Board's attorney. This was a discussion with no action taken.

Chair continued onto Agenda Item 2 regarding the discussion and action regarding Motion for Ratification of the Selection of Wendy L. Gady as Executive Director of the State of Hawaii, Agribusiness Development Corporation

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held on October 3, 2023

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

Chair called for a Motion for Ratification of the Selection of Wendy L. Gady as Executive Director of the State of Hawaii, Agribusiness Development Corporation?

Motion to Approve by Mr. Tabata; Second by Mr. Hong.

Chair asked if there was any staff presentation. There was none

Chair asked, for those members who were not present at the August 8, 2023 board meeting, have you sufficiently reviewed the materials provided that will enable you to make an informed decision?

Chair called on Ms. Seddon who responded yes.

Chair called on Mr. Tsuji who said I reviewed the materials, but I was going to ask Chair if we are going to have discussion on this motion first before the vote.

Ms. Prescott-Tate said the discussion will occur after we go through the roll call.

Mr. Tsuji said, no I mean discussion prior to the vote on the motion.

Ms. Prescott-Tate said yes, after we do the roll call. Yes.

Chair asked for Mr. Tsuji's response to the question.

Mr. Tsuji said I reviewed the materials. Yes.

Chair asked and you're prepared to make an informed decision?

Mr. Tsuji said I can. I was not present during the interviews but other than that, I can.

Chair asked those members who were present at the August 8, 2023 board meeting, if they recall the events of August 8th, or have sufficiently reviewed the materials provided to refresh their recollection and enable them to make an informed decision? Chair called the names of the Board Members who were present at the August 8th board meeting:

Chair responded aye.

Mr. Hong responded yes.

Mr. Tsuji interrupted and asked are we going to have a discussion Chair?

Chair responded, after this vote.

Mr. Tsuji asked, on the motion? We're supposed to have discussion first before we vote on the motion.

Chair responded correct; that's the process we are following.

Mr. Tsuji said, normally discussion is had before the vote. Discussion on the motion.

Mr. Hong said we are not voting on the motion yet.

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Ms. Prescott-Tate said we are confirming that everyone has read the materials.

Chair responded yes, then continued with the roll call:

Ms. Hurd responded yes.

Mr. Okuhama responded yes.

Mr. Tabata responded yes.

Mr. Watts responded yes.

Mr. Wicker responded yes.

Mr. Nakamoto noted that Mr. Wicker had joined the meeting via telephone.

Chair verified that 9 board members are prepared to vote on Agenda Item C-2.

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

Chair asked for Board discussion and called on Mr. Tsuji.

Mr. Tsuji said, like I stated in executive session, and I will state it here, I think, being that we have been informed that OIP will be rendering a decision as soon as tomorrow, on what happened and what their opinion about, and apparently told that they are going to find a violation of August 8th, what transpired at the August 8th, 2023 meeting, I ask that either number one, we consult with OIP to talk about that meeting to find out exactly what was the problem and how to resolve that matter, or secondly just wait for the decision and then review it, and perhaps then invite OIP to come talk to the Board, whether it's at an open meeting or executive session; probably should be done at an open meeting.

Chair thanked Mr. Tsuji and called on Mr. Watts.

Mr. Watts echoed the comments of the previous speaker and said he was conflicted here with the discussion that occurred and if a legal opinion was forthcoming I would like to work with OIP to address that correctly, but if it's the will of this board to keep moving forward, I will not support that and will be voting no.

Chair called on Ms. Hurd.

Ms. Hurd stated the motion we are discussing right now is Item 2, to ratify the vote of Ms. Gady and we all just voted that we understand and are prepared to take the vote. So I think we should move on that, and that's my opinion.

Chair asked if there was any other board discussion.

Mr. Wicker stated that he would also like to acknowledge that OIP is going to provide a response regarding our August 8th meeting, and it would be prudent to wait for their response to see if there was any violation. If not we can move forward at our next regular meeting. And if there was a violation for them to provide guidance on how to correct that so we can properly have an ED in place. Just a comment.

Chair asked if there was any other discussion and called on Ms. Hurd.

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Ms. Hurd stated, again the motion today is to ratify, and OIP said that we were kind of held in violation I think is the right word, because the previous agenda showed that we would confirm the vote, and we did not, we chose to just say that the vote stands, so I think maybe for this agenda item, we should follow the agenda, do what we said we were going to do and then OIP is going to come out with their opinion. We should just follow the agenda.

Chair asked if there was any further discussion. Hearing none, Chair called for a roll call vote.

Ms. Prescott-Tate asked if Chair wanted to address Mr. Tsuji, Mr. Wicker, and Mr. Watt's request to wait until OIP's decision comes out and ask for guidance.

Chair asked Mr. Tsuji if he wanted his remarks addressed.

Mr. Tsuji said he was just explaining why he would not be voting in favor of the current motion to ratify the prior August 8th decision because OIP has already indicated that they found a violation even if they didn't specify what exactly it was, but they would be coming out with a decision.

Ms. Prescott-Tate interjected that she just didn't want you three to feel you were ignored.

Mr. Tsuji said he didn't know if Mr. Wicker or Mr. Watts had something to say.

Mr. Wicker said the AG made it pretty clear what a motion could be, to wait until what is one more day, twenty-four hours, for OIP and to be clear what the violation is, and the guidance to correct it, and if no violation then it is status quo. And if there is a violation, hopefully we can fix that and address that at the next regular board meeting, which is this month.

Ms. Prescott-Tate asked if the Board was ready to take the vote.

Chair stated, to be clear, there is no motion to delay the ratification until after OIP issues its opinion. Chair asked if everyone was ready to take the vote.

Ms. Prescott-Tate reminded the Board that they were voting on was a Motion for Ratification of the Selection of Wendy Gady as Executive Director of the State of Hawaii, Agribusiness Development Corporation?

Chair asked if everyone understood the motion. Hearing no response, Chair continued with the roll call vote:

Chair voted aye.

Mr. Hong voted aye for the unanimous confirmation selection of the executive director during the August 8th executive session.

Ms. Hurd voted aye.

Mr. Okuhama voted aye.

AGRIBUSINESS DEVELOPMENT CORPORATION

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

Ms. Seddon voted aye.

Mr. Tabata voted aye.

Mr. Tsuji voted no.

Mr. Watts voted no.

Mr. Wicker asked for a point of clarification. Is it consistent with the previous board member said unanimous but we did a roll call vote on August 8th I'm sorry a paper ballot vote. We are voting to ratify Ms. Gady, not unanimous right?

Ms. Prescott-Tate responded to ratify Ms. Gady.

Chair said that's correct.

Mr. Wicker voted aye.

Chair stated the motion was approved on a vote of 7-2.

Having no further business before the Board may I have a Motion to Adjourn?

Motion by Mr. Tabata; Second by Mr. Okuhama.

Chair asked if there was any board discussion.

Mr. Watts said as I understand it OIP may come out with a ruling as soon as tomorrow?

Chair responded that is the understanding.

Mr. Watts asked will that immediately be made available to all board members?

Ms. Prescott-Tate said when the opinion comes out you will be informed.

Chair asked if there was any other discussion. Hearing none, Chair called for the vote. Hearing no objections the motion was approved. Vote: 9-0.

The meeting was adjourned at 5:36 P.M.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on October 19, 2023

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

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 Hawai'i, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Room 204, Honolulu, HI 96813.

Members Present, virtually:

Warren Watanabe, Member-At-Large, Chair (Chair)
 Glenn Hong, Member-At-Large (Mr. Hong), joined the meeting at 9:05 A.M.
 Jason Okuhama, Member-At-Large (Mr. Okuhama)
 Karen Seddon, Member-At-Large (Ms. Seddon), exited the meeting at 10:00 A.M.
 Lyle Tabata, Kauai County Member, Vice-Chair (Mr. Tabata)
 Jayson Watts, Maui County Member (Mr. Watts), joined the meeting at 9:04 A.M.
 Earl Yamamoto, Designated Representative, HDOA, for Ex-Officio Member Ms. Sharon Hurd (Mr. Yamamoto), joined the meeting at 9:12 A.M.
 Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member (Mr. Wicker)
 Russell Tsuji, Designated Representative, DLNR for Ex-Officio Member Ms. Dawn Chang (Mr. Tsuji)

Members Excused:

None.

Counsel Present, virtually:

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

Staff Present, virtually:

Wendy L. Gady, Executive Director (Ms. Gady)
 Mark Takemoto, Executive Assistant
 Ken Nakamoto, Project Manager
 Lyle Roe, Property Manager (Mr. Roe)

Guests Present, virtually:

18082272350
 Scott Ishikawa
 ADC Guest
 dnakano
 Garrett Leong, Brown & Caldwell (Mr. Leong)
 Susan Mukai, Brown & Caldwell (Ms. Mukai)
 Trisha Yamato
 ChunKB
 Mark Ladao
 Aldric Ulep (LTG)
 LM

Guests Present, physical location:

None.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on October 19, 2023

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

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 a roll call vote, and for each subsequent vote, he 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: Chair, Mr. Okuhama, Ms. Seddon, Mr. Tabata, Mr. Tsuji, and Mr. Wicker acknowledged attendance with no guests present. Mr. Watts joined the meeting at 9:04 A.M. Mr. Hong joined the meeting at 9:05 A.M. Mr. Yamamoto joined the meeting at 9:12 A.M.

A. Call to Order

Chair called the meeting to order at 9:03 A.M.

B. Approval of Minutes

1. Board Meeting Minutes, August 17, 2023

Chair asked for a motion to approve the August 17, 2023 minutes.

Motion to Approve: Mr. Okuhama, Second: Mr. Wicker

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

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

Chair asked for Board discussion. There was none.

Chair called for the vote. Hearing no further objections, the August 17, 2023 minutes were approved: 8-0. [Chair, Mr. Hong, Mr. Okuhama, Ms. Seddon, Mr. Tabata, Mr. Tsuji, Mr. Watts, and Mr. Wicker.]

2. Board Meeting Minutes, September 21, 2023

Chair asked for a motion to approve the September 21, 2023 minutes.

Motion to approve: Mr. Tabata, Second: Mr. Wicker

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

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

Chair asked for Board discussion. There was none.

Chair called for the vote. Mr. Okuhama noted that he was not present at the September 21, 2023 meeting and would abstain. Hearing no further objections, the minutes of September 21, 2023, were

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on October 19, 2023

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

approved: 7-0. [Chair, Mr. Hong, Ms. Seddon, Mr. Tabata, Mr. Tsuji, Mr. Watts, and Mr. Wicker. Mr. Okuhama abstained]

3. Board Meeting Executive Session Minutes, September 21, 2023

Chair stated that during the executive session held on September 21, 2023, the Board discussed with its attorney matters related to settlement authority for a civil complaint, matters regarding a procurement issued under RFP 2022, and matters related to Sunshine Law Complaint S APPEAL 24-02. HRS sections 92-4, 92-5(a)(2), and 92-5(a)(4) allows a meeting to be closed to the public when necessary to consult with the board's attorney, to discuss a hiring decision where matters affecting privacy will be involved, and where matters must be kept confidential pursuant to HRS section 103D-101. In order to maintain the confidentiality of matters discussed in the executive session, the draft minutes were provided directly to the Board members for review. Chair asked that the Board respect the confidentiality of the executive session held on September 21, 2023 in discussing approval of these minutes.

Chair asked for a motion to approve the September 21, 2023 minutes from the executive session.

Motion to approve: Ms. Seddon, Second: Mr. Wicker.

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

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

Chair asked for Board discussion. Ms. Seddon identified a typo on page 12 and informed staff that where it states "HFC", it should be "HHFDC."

Noting the typographic error, Chair called for the vote. Hearing no objections, the minutes of September 21, 2023 executive session were approved: 7-0. [Chair, Mr. Hong, Ms. Seddon, Mr. Tabata, Mr. Tsuji, Mr. Watts, and Mr. Wicker. Mr. Okuhama abstained.]

C. Chairperson's Report

1. None

D. Committee Reports

1. None

E. Action Items

1. **Request for approval to conduct due diligence for the purpose of negotiating the fee simple interest of 6,200 acres, more or less, of real property located in Kauai, Hawai'i**

Mr. Yamamoto joined the meeting at 9:12 A.M.

Chair asked for a motion to approve: Mr. Wicker, Second: Mr. Okuhama

Chair asked for staff presentation.

AGRIBUSINESS DEVELOPMENT CORPORATION

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Mr. Roe stated that ADC staff recently traveled to Kauai and learned that property was going to be put up for sale. These lands are in agriculture and conservation and contain portions of the Kekaha Ditch that staff believes may be important to acquire. Mr. Roe went on to explain that there was not a lot of information about these lands, and that this request was to begin due diligence and conduct research on the property.

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

Chair asked for board discussion. Mr. Wicker asked if ADC staff could provide a map of the 6,200 acres to see the proximity to ADC lands and the potential to see how it fits into ADC's plan for Kauai.

Mr. Roe noted that a map was provided directly to the Board due to privacy concerns as the land owner(s) have not publicly announce the land sale.

Mr. Tsuji asked what kind of due diligence budget ADC staff has, or were they planning to request funding, and secondly, what type of due diligence was ADC staff planning to do; if it was for feasibility purposes or for complete land acquisition due diligence, such as environmental studies, the condition of the land, title reports to ensure ownership and other issues are disclosed, encumbrances on record, etc.

Mr. Roe said if ADC moves to a Purchase Sale Agreement, then they would look at those sorts of things, like history of the land, phase 1 assessment, and encumbrances. ADC does not know a whole lot about the property. The reason for this request is to bring the Board into the discussion. If it's decided that the land is appropriate for purchase it would involve approaching the Legislature for funding, although it is believed the time to do so this year has passed.

Mr. Wicker confirmed that the time to submit a funding request through DBEDT [Department of Business, Economic Development and Tourism] for the administration part has already passed. The next step would be to work with legislators to see if they would support the purchase and put in a request during the legislative session. Mr. Wicker then asked about the map provided to the Board that shows two areas, one outlined in red and one in yellow. What is the distinction between the two?

Mr. Roe explained that the yellow area is ADC's property, and the red is the proposed area ADC is looking at.

Mr. Tabata said he wanted to make a correction. The maps were incorrectly labeled. Exhibit A named Kalepa is Waimea, and Waimea is Kalepa.

Mr. Roe apologized and acknowledged that it was his mislabeling.

Mr. Hong asked how the property was being used now; is it in production, grazing, or what.

Mr. Roe said all of the above. Some of the land's in conservation, some has cattle on it, there's diversified agriculture on it, there's housing proposed on some of it. The current landowner wants to do different things on different portions of land and some of the areas about the urban areas; the owner(s) anticipate shaving those off and subdividing it and using these areas for housing development. The land towards the interior of the island closer to ADC lands are in conservation, pasture, and diversified agriculture particularly as you get more mauka, a lot of those areas are in conservation.

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Mr. Watts asked for clarification on the background. On page 5 it states ADC staff was recently made aware. Did ADC staff seek it out, or was staff approached.

Mr. Roe said Ms. Gady could answer that question. Mr. Roe explained that Ms. Gady had several meetings on Kauai during an inspection trip and the landowner(s) approached her.

Ms. Gady stated that she had a number of meetings while she was on Kauai and she was invited to subsequent meetings of large landowners. Those meetings were not initially on her to-do list but they wanted to meet because some lands adjoin ADC land and during the conversation ADC was offered right of first refusal. This is why the matter is on the agenda. The land sale is not public.

Mr. Watts asked Ms. Gady about Mr. Wicker's comment on the budget. Has ADC already missed the deadline and will the Board be reviewing and voting on the ADC budget.

Mr. Wicker stated yes, the deadline was the end of September. Could Chair or Ms. Prescott-Tate clarify if there is a statute that authorizes the Board to approve the budget? Some Boards do, such as the Board of Education and the Board of Regents. In the future maybe ADC should present its budget. He doesn't know what it is yet because DBEDT is still having internal discussions with BNF [Budget and Finance] on what's in and what's out. It would be the final budget that BNF agrees upon that could be presented to the Board.

Mr. Watts asked if it was a statutory thing that the Board doesn't approve the budget. Who created the ADC budget?

Mr. Wicker replied, ADC's budget is created by the agency itself and DBEDT has input on it.

Mr. Watts stated he understands that; who is the "agency?"

Mr. Wicker replied, ADC.

Mr. Watts asked isn't the Board the agency? Who speaks for ADC?

Mr. Wicker acknowledged Mr. Watts' point of inquiry, is it the Executive Director, or is the Board considered the agency.

Mr. Watts confirmed that was his question. Who created the budget and who submitted it?

Mr. Wicker stated the ADC budget was submitted by the Executive Director.

Mr. Watts asked was there any approval process? Does the Board vote on the budget? This is my first Board budget process and I'm just trying to figure out what that process is.

Mr. Wicker asked the other Board members, has the budget ever come before the board for their review and approval? It's probably not required under this Board.

Ms. Seddon stated the Board never entertained the budget.

Mr. Tsuji said his understanding was that it may not be required in the ADC statute at this point. In the past probably the executive director working with the attached director, whatever department before, was Hawaii Department of Agriculture (HDOA), now it's DBEDT, worked together with

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them to submit the budget administratively. That does not prevent notwithstanding if there's no statutory requirement requiring the board to approve the budget that does not mean the board cannot see the budget or approve it anyway. He doesn't think there's a prohibition on that statutory.

Mr. Watts stated he knows this isn't on the agenda but this response is to the line of questions about this due diligence if and when potentially there's going to be a request to the legislature to pay for this, he wanted it put on the record that he would like to request in the future the Board should review ADC's budget and we should vote on that budget for the year. We are a governing board and in previous audits it was made very clear the Board was not involved. When the Deputy Director says the word "agency" I think the word "agency" would be the Board. The Executive Director cannot act without the Board. In the future I would like to review the budget, or help put together a budget, vote on that budget. That way when we're questioned by legislators or other people about the budget, the Board can truthfully say they were involved in the process.

Ms. Prescott-Tate interrupted to explain that Article 6, section 1 of the ADC By-laws, under "Executive Director and Staff" it says the "executive director shall submit the annual corporation budget to the chairperson for the consideration of the board of directors."

Mr. Watts thanked Ms. Prescott-Tate and asked if the Board was going to review the budget?

Chair offered a point of information that he has never seen the budget.

Mr. Wicker asked for clarification on what point that is. Is it the budget as submitted by the agency to the attached department?

Mr. Hong stated that in the years he has been on the Board the budget has never been presented to the Board. The Board has a responsibility and as Ms. Prescott-Tate pointed out it should be done.

Mr. Wicker stated that he just wants to know at what point. Is it the point when it goes down to Budget and Finance, or after Budget and Finance agrees? Does the Board want the first touch and see everything before it goes down?

Chair stated correct me if I'm wrong, but I think it's before it gets submitted to Budget and Finance.

Mr. Watts said correct and he suspects the Board would agree to a budget and the ED [Executive Director] would turn it over to DBEDT and DBEDT would go through whatever process it goes through with the Governor's office etc.

Chair stated it would be an opportunity for the Board to provide some input in the budget.

Mr. Hong stated that they need to summarize that the staff under the direction of ED in consultation with the Chair would put together a detailed budget that would then be presented to the Board then be presented on up through the rest of the process.

Ms. Gady stated that she has consistently put in the ED report that her projection was to bring the budget as proposed to the Board in the November meeting.

Mr. Watts stated at that point the budget is already public, and it's gone to the legislature, and the Board hasn't even seen it yet.

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Mr. Wicker said it is not public by then, but it would probably be closed internally by the administration by then. The budget is public in mid-December.

Mr. Tsuji said maybe this year they can start in November, but the following year staff, knowing it has to be presented to the Board, can prepare it earlier before the deadline before it has to submit it to DBEDT.

Mr. Wicker said July-August of next year would give the Board time to review, opine, and make adjustments before being submitted for review by DBEDT.

Ms. Prescott-Tate asked if the Board could stop for a second because this is not an agenda item. The Board was getting very close to making decisions, which was not allowed when an item was not on the agenda. Could this discussion be moved to November?

Mr. Watts said he understands that, but his question goes to this exhibit here that's talking about expenditures, and he hasn't seen any documents about any money regarding ADC. When he came on to the Board and reviewed the audits he was very critical of the Board. He's not asking for a decision, but going forward part of the Board's responsibility is to create and assemble a budget with the staff, vote and approve a budget that goes to the Governor. Right now there's an ADC budget out there that none of the Board Members has seen or worked on.

Chair stated that in his opinion this Agenda Item is all very preliminary right now. Once the Board decides they may be interested in pursuing these lands, then the Board can discuss financing. The question at this point is whether to explore this purchase.

Mr. Watts said he's not debating whether or not to explore the purchase; it just raises the budget question. He hasn't seen a budget so he's curious as to why this would be. If this was submitted after November or already past the date even if it was submitted today for approval to purchase, we would have to submit an amendment to Budget and Finance. It would be outside our 2024 budget request. I'm trying to figure out what our process and deadlines for stuff like this is if we're going to consider purchases for a fiscal year maybe that deadline should be in June or July so it can be included in the October submission to DBEDT, to Budget and Finance, and to the Governor without us having to go back for a supplemental request.

Chair stated that the way Ms. Prescott-Tate read the bylaws and the way the bylaws are written he thinks the procedure has been followed. We can move this discussion to the November meeting.

Mr. Roe asked Chair if Agenda Item E-1 was being moved to the November meeting.

Chair stated that the discussion on the budget will be moved to the November meeting.

Mr. Yamamoto asked for clarification on the map. Is the area under consideration in Kalepa outlined in yellow?

Mr. Roe stated the area outlined in yellow was ADC's property. The area outlined in red is the area potentially up for sale.

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

Chair called for the vote. Hearing no objections the motion was approved: 9-0.

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F. Informational Items

- 1. Presentation by Allison Fraley on behalf of the County of Kauai for an update regarding a proposed new landfill site to be located near Kekaha, Kauai, Hawaii, TMK (4) 1-2-002:001 (por.)**

Chair stated that at the last minute Ms. Fraley was unable to attend so this presentation will be rescheduled to a future date.

- 2. Presentation by Brown & Caldwell on the Wahiawa Reclaimed Water Irrigation System**

Ms. Mukai, Brown and Caldwell's Project Manager, introduced herself and Mr. Leong. Ms. Mukai gave a PowerPoint presentation regarding Galbraith Irrigation System Improvements. (See PowerPoint presentation attached to the submittal as pages 042 - 052.)

Following the presentation Mr. Hong noted that it appeared the phases have similar construction routes and asked, from a construction stand point wouldn't it make sense to do that simultaneously since both will be using similar conduits or excavation?

Ms. Mukai said they tried to break it up to what's necessary in terms of the agreement with the City. Ms. Mukai explained there is a Memorandum of Agreement (MOA) between the City and the State and that there are simultaneous projects going on between this project and the City's projects to upgrade the wastewater treatment plant to convey the water to ADC property, as well as, to meet R-1 certification requirements. Brown & Caldwell was focusing on MOA compliance in Phase 1. She doesn't know if the pipelines would be running through the exact same trench. The pipelines might be running in a slightly separate alignment and they tried to break it up into portions that would be easier to get the construction funds for.

Mr. Hong stated that the point was if they could be put in the same trench, then we wouldn't have to go back and do it a second time and double the cost. It would be more efficient. He understands the phased approach, but from an overall project standpoint the question is wouldn't it be more efficient to design it simultaneous and have it constructed simultaneous. Regarding the lake intake pump station, did they considered taking it further up the reservoir so it's coming from cleaner water and also higher up elevation wise so they could use some gravity flow down to the 10MG reservoir rather than pumping because the cost of operation is going to be high.

Ms. Mukai replied they've done some studies to see where the best place to pull the water from based on the flow. They did not evaluate anything upstream as far as possible locations for the pump station due to the lack of accessibility. She was not sure where else they could pull the water from because of the residential areas and the amount of space needed to bring large vehicles into the area to do construction and maintenance. It didn't appear there was anywhere else that was readily available to construct the lake intake pump station. What does help is they are using the same access for the dual pipelines. It would fall in the same trench essentially as the other pipelines.

Mr. Hong said he understands and he's just trying to find ways to make the overall system more efficient with less overall maintenance and operational cost on an annual basis. By doing phase one and phase three simultaneously you would avoid dual easement issues and having to go back and revisit the same easement issues a second time.

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Mr. Tabata said he assumed in the PR and phasing there were operation and maintenance costs included that ADC would have to budget for.

Ms. Mukai stated they haven't looked into the operation and maintenance cost as of yet. She knows that needs to be looked at for ADC to move forward and for budgeting purposes.

Mr. Tabata said having a little bit of knowledge on wastewater, what happens if the plant cannot meet the standards? What do you do with that off spec water?

Ms. Mukai stated that would be a responsibility of the City as part of the MOA. The City is working on doing some upgrades at the treatment plant and there's 1.72 MGs of storage onsite for them to store any off-spec water onsite and recirculate it through the MBR system that they have onsite to treat it before it would be sent to ADC.

Mr. Wicker thanked Ms. Mukai and echoed some of the comments made by Mr. Hong. We must figure out a way to lower that cost and be more efficient. \$178 million is a lot of money especially if ADC is going to ask for the money in the next year or two. Anywhere you can be more efficient so we don't have to go back and double the efforts would be much appreciated. And for the lake intake pump station, have you checked if Dole has any preexisting lake intake stations? Dole had one on top of their parcel in Whitmore Village and if the lake intake pump station is just to draw lake water to feed the reservoirs, then to Mr. Hong's point you might be able to look where that intake was before or if it can be renovated and reused that might make it a shorter path to the reservoirs.

Ms. Mukai asked Mr. Wicker to clarify that Dole previously owned and operated a pump station.

Mr. Wicker said he thought Dole had one on the 42 acre parcel. He heard that, but it might be hearsay and he will check with Dole if they have any pumps going into the lake.

Ms. Mukai said she noted that and thanked Mr. Wicker for letting her know. She wanted to point out that this project isn't just an irrigation project. Although that's in the title, it's really a concerted effort between the City and the State to work together and use their resources to not dump into Lake Wilson anymore and to use that water for beneficial purposes. With climate change and wanting to have a more sustainable irrigation source this recycled effluent is a drought proof source and will always be there. This is something that would be consistent, and we need to look at ways to pool resources and look at it in terms of a "one water" lens. Using things like water and wastewater efficiently in a concerted effort in CIP [Capital Improvement Projects] project to make sure we are being sustainable in the future. We're trying to convey to the public and to the agricultural users that it's not just an irrigation and ag project, it's a holistic thing; a "one water" vision and they're trying to be mindful of that.

Mr. Wicker stated that Ms. Mukai's correct and the Board will echo that. You might be speaking to the choir here, we're all for ag. This is an underutilized water source, and it's costly to take this on. This morning there was an editorial from Board of Water Supply talking about droughts. This project is also about resiliency and ADC is looking at and considering acquiring the Wahiawa Irrigation System. This dove tails into that. He asked Ms. Mukai to figure out a way to lower the cost at any point because that would help get support from the legislature to fund it. It's going to be a big ask for \$178 million and it's broken down in phases already. If they can bring down the cost of each phase that would make it more attractive.

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Mr. Hong stated there is a 5.4 million gallons per day (MGD) use requirement projection, 1.6 from wastewater and 5.1 from the lake intake pump station. He asked if once all the phases are done, would ADC be able to sideline Bott Well and avoid pumping, and could the 5.1 MGD from the lake be used universally for irrigating things like leafy crops.

Ms. Mukai stated that the lake water can be used to irrigate leafy crops but potable water must be used to finish.

Mr. Hong stated that it appears it would eliminate for the most part the need to pump water from the Bott Well at that point.

Ms. Mukai stated that Bott Well would be a backup source. ADC may want to exercise the Bott Well every so often because the Water Commission requires it, but the whole idea is to not use groundwater.

Mr. Hong stated it's a very expensive water source with huge pumping costs.

Chair asked if there were any other questions.

Ms. Mukai said that she wanted to clarify that she will look into ways to combine the phase one and two pipelines, but while it does look like they are close to each other there is an existing access road on the ADC site, phase one will be located on the south side because they didn't want to encroach on the farmer's areas. Phase two will be located on the other side of the road, which helps with a connection to a conjunction vault they'll be installing and going up to the 3MGD reservoir. There is an existing pipeline in the roadway now and by locating the pipes on each side they wouldn't have to cross the roadway. She understands Mr. Hong and Mr. Wicker's comments and will look into ways to reduce the price and the need for cost savings.

Chair asked if there was any further discussion. Seeing none Chair thanked Ms. Mukai and stated this was just an informational presentation so no motion or vote was needed.

Chair noted that Ms. Seddon left the meeting at 10:00 A.M.

3. Presentation by staff regarding the East Kauai Irrigation System

Mr. Roe started the presentation by providing an overview of the East Kauai Irrigation System. (*See attached PowerPoint presentation for reference.*)

Ms. Gady asked if Mr. Tabata and Mr. Tsuji could provide some additional insight from their unique perspectives.

Mr. Tabata said, referencing a map in the presentation, traditionally when there were sugar operations everything makai of Maalo Road was furrow and in the end drip irrigation. Everything mauka of Maalo Road, which ends at Wailua Falls, was traditionally unirrigated. There are several reservoirs on the system. The Kapaia reservoir is where Grove Farms surface water treatment plant draws water to turn surface water to potable water. The water now serves all the way to the Wailua River and Puhi. The groundwater resources had dried up over time. When Lihue Plantation converted to drip irrigation, the furrow irrigation was a recharge source for all the other wells in the Lihue area. The groundwater dried up, so Grove Farm wanted to utilize Kapaia Reservoir to service Kauai Department of Water with 5.5 MGD of potable water. After the Lihue plantation shut down, he got calls that the Fern Grotto, Reservoir 21, dried up. Grove Farm is allowing the water to flow to get to Reservoir 21.

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If they take that system out of service, there is no water to keep ferns green at the Fern Grotto, which is a major tourist attraction on the island. The long and short of it is the possible available lands that were presented by Mr. Roe is located to the south of the boundary state versus other from Kalepa Ridge and abutting Lihue town and Hanamaulu town that all gets irrigated and is in diversified ag in certain areas and the irrigation water comes off of the Hanamaulu ditch and Ilililiula (North Ditch System).

Mr. Tabata continued, there was a plan as seen in the CIP funds for Aahoaka Reservoir, which shows as inactive on a map. When he was working for Kauai County, the former executive director and himself were trying to work a plan to revitalize that reservoir and bring a pipeline down, so that more of the lands above Maalo Road could potentially be irrigated and bring a direct water source wholly on State land down to the farms behind Kalepa Ridge. An operating agreement needs to be looked at because there's a siphon going through DHHL [Department of Hawaiian Home Lands]. Right now DHHL has that portion in front of Kalepa in pasture, so it's mostly for grazing and water for the cattle, but there's also potential discussion because there is enough elevation in several locations that micro turbine hydro generators could be put in place and take on the model that Kekaha Ag Association has for the West Kauai lands where you generate electricity to bring more commerce to the area. In Kekaha a lot of the water flows in the ditch, and it doesn't really get to where you need it unless you pump it. Pumping water is expensive and having a source of available electricity to power the pumps is really important. He doesn't know the DLNR perspective. The reason Kauai Island Utility Cooperation (KIUC) hasn't improved the two hydro plants, the upper Waiahi and the lower Waiahi is because KIUC doesn't have anything more than a year-to-year revocable permits and it doesn't allow them to go to the bank and borrow money to reinvest and upgrade those generators. He heard that those generators only put out 1.5 MW. In its heyday they had 2.5 MW, almost 3 MW being output through that with 50 MGD of water flowing through the penstock. Another point of interest was after Hurricane Iniki, the Lihue plantation abandoned the Kaapoko tunnel and Hanalei tunnel system that brought additional water from the Hanalei River all the way to the East Kauai system and that's how you end up with over 100 MGD.

Mr. Tsuji said from the perspective of DLNR's Land Division that inherited this reservoir and this system from the plantation when it closed, the system was being operated 20 years ago by the East Kauai water users. They have all since disbanded and there is no operator at this point. That was in 2001 or 2002. Since that time DLNR has been trying to find someone to take it over because from DLNR's perspective, under Act 90 they turned over almost all their ag leases to HDOA. On Kauai in particular, DLNR turned over almost all their ag inventory, most of it, to ADC both on the West side and East side. Anyone using water right now, technically it's not authorized by them. To use water, you need a water license or lease and there is a process to follow under HRS chapter 171-58, which is quite cumbersome. As Mr. Tabata mentioned maybe the utility has a hydro and they're planning some pump storage that he couldn't recall if it was on the West side or the East side. The utility is planning that, but to go through the process of obtaining a long-term disposition such as a 65, or even a 35, 45-year lease requires a lot of work, EIS, etc. For purposes of this, DLNR has been in discussions with HDOA who thought that this would fit in to their mission in that the water users tend to be farmers in the area, although some of them are private, they thought it would fit their mission. HDOA has been taking its time evaluating the feasibility, meanwhile, the reason there's a sense of urgency on DLNR's side is the land division continues to expend their operating revenue to the tune of about \$150,000 per year just to pay a contractor to bare minimum to maintain the system for health and safety purposes only, not to deliver water or manage water to water users; it's solely for health and safety and to make sure we don't have a bad situation with the reservoir. Fortunately the Wailua Reservoir is in relatively good shape. At this point, there is minimal maintenance that needs to be done. When ADC expressed interest, he thought that they should have thought of ADC

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earlier because he knew DLNR gave ADC all their lands on the West side and East side and DLNR gave ADC the East side with the Green Energy Team and all those guys out there, as well as the West side with all those farmers out there near the Pacific Missile Range Facility. That is pretty much what it is and DLNR is looking for someone to take over the system. DLNR understands there are a lot of potential private agriculture users and perhaps that could fit, whether it's HDOA or ADC. DLNR is willing to work with either one of them, whoever is willing to take it. ADC is a better fit because they have tenants out on this side in addition to supporting ag in general for private ag users. One of the issues DLNR wants to get out of it, and its very unusual, is because they appear before the Land Board, and it is not so much this reservoir, but DLNR have other reservoir they've inherited from the plantation when they closed because they just turn up their leases, or they say they're defunct or not operating and DLNR had to take over. They have another sister division called the Engineering Division who actually regulates these dams. It would probably be better to separate being that the BLNR [Board of Land and Natural Resources] is the regulator from being a land manager of the dams. Considering that together with the fact that most tenants are all over at HDOA, or ADC that it is probably best that one of those agencies, if they wish to, take over the reservoir and they take it rather than DLNR managing it, so we don't have one agency telling another agency what to do about getting the reservoir ready for health and safety purposes from a regulation stand point.

Mr. Roe thanked Mr. Tsuji and Mr. Tabata and asked if there were any other questions from the Board.

Hearing no further questions Chair thanked Mr. Roe and stated that this was just an informational presentation and no motion, or vote was needed.

4. Update regarding ADC-owned buildings in Whitmore Village, Oahu, Hawai'i

Mr. Roe stated there is nothing new to report. The Contractor has done air sampling and wipe sampling of the enclosed spaces at Whitmore. A report will be submitted to ADC by the Contractor within a month.

Mr. Tsuji said that he hopes ADC staff look at the Whitmore Village issue about contamination in the buildings very carefully. Next time ADC starts an acquisition for example if they start acquiring property in Kauai that it look at it and evaluate thoroughly, not just the feasibility of ADC acquiring the land and how it would help its program, but also just on the land, the environmental aspects of the land and the buildings just to make sure it's clean, free of hazardous materials, making sure title is clean and you don't have in-land holding or kuleana lots in between. Sometimes when you acquire a large amount of land, you will find many times that there are kuleana lots in between and there are access issues that need to be worked out. All of that should be studied and it's quite a feat to complete the due diligence for acquisitions. A lot of times we're all excited about acquiring property and sometimes the excitement may get in to trying to close the deal quicker than you ought to, but when you do that it comes back and later on you'll have to do what you guys are doing right now, which is finding out about the contamination that exist in the buildings and the environmental regulatory agencies, DOH [Department of Health] or EPA [Environmental Protection Agency], will require remediation. For the next acquisition ADC staff must make sure they do their due diligence. Hopefully the Board Members will be diligent enough to inquire about these issues.

Ms. Gady stated Mr. Tsuji brought up excellent points and that these points have been fully received by staff.

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Chair asked if there was any other discussion. Hearing none, Chair noted this was just an informational presentation.

5. Update regarding Ohana Best v. State of Hawaii, et al., Civ. No. 19-1-1640-10.

There was no nothing new to report.

6. Executive Director's Report

Chair stated that the Executive Director has been submitting weekly reports to the Board, which are posted on the ADC website under "reports" and Chair asked the Board members and the public to please visit the website to view these weekly reports.

Mr. Watts asked if they have questions about the Executive Director reports do they just review the report and ask questions at the next Board meeting.

Ms. Gady said she would welcome Mr. Watts calling her directly if he would like to have clarification on anything or more information.

Mr. Watts stated that he only asked because he would prefer to communicate his questions with the Board. The Board sometimes may have further consideration and he's trying to figure out how not to violate the Sunshine Law and how Board members raise questions.

Ms. Prescott-Tate said if a Board member has a question, they should direct it to staff. If a Board member wants something placed on the agenda, they should direct their inquiry to Chair.

G. Adjourn

Having no further business before the Board, Chair asked for a motion to adjourn.

Motion to adjourn: Mr. Tabata, Second: Mr. Wicker.

Chair called for the vote. Hearing no objections the motion was approved: 8-0.

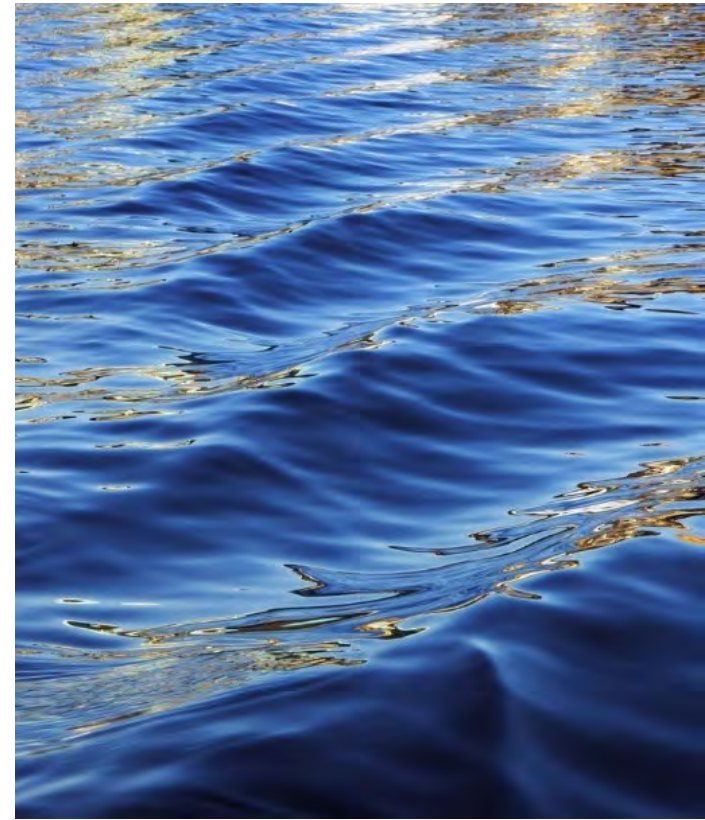
The meeting was adjourned at 10:28 A.M.

Date of Next Meeting: The next meeting will be held on November 16, 2023, at 9 A.M.

EAST KAUAI IRRIGATION SYSTEM OVERVIEW

**Agribusiness Development
Corporation**

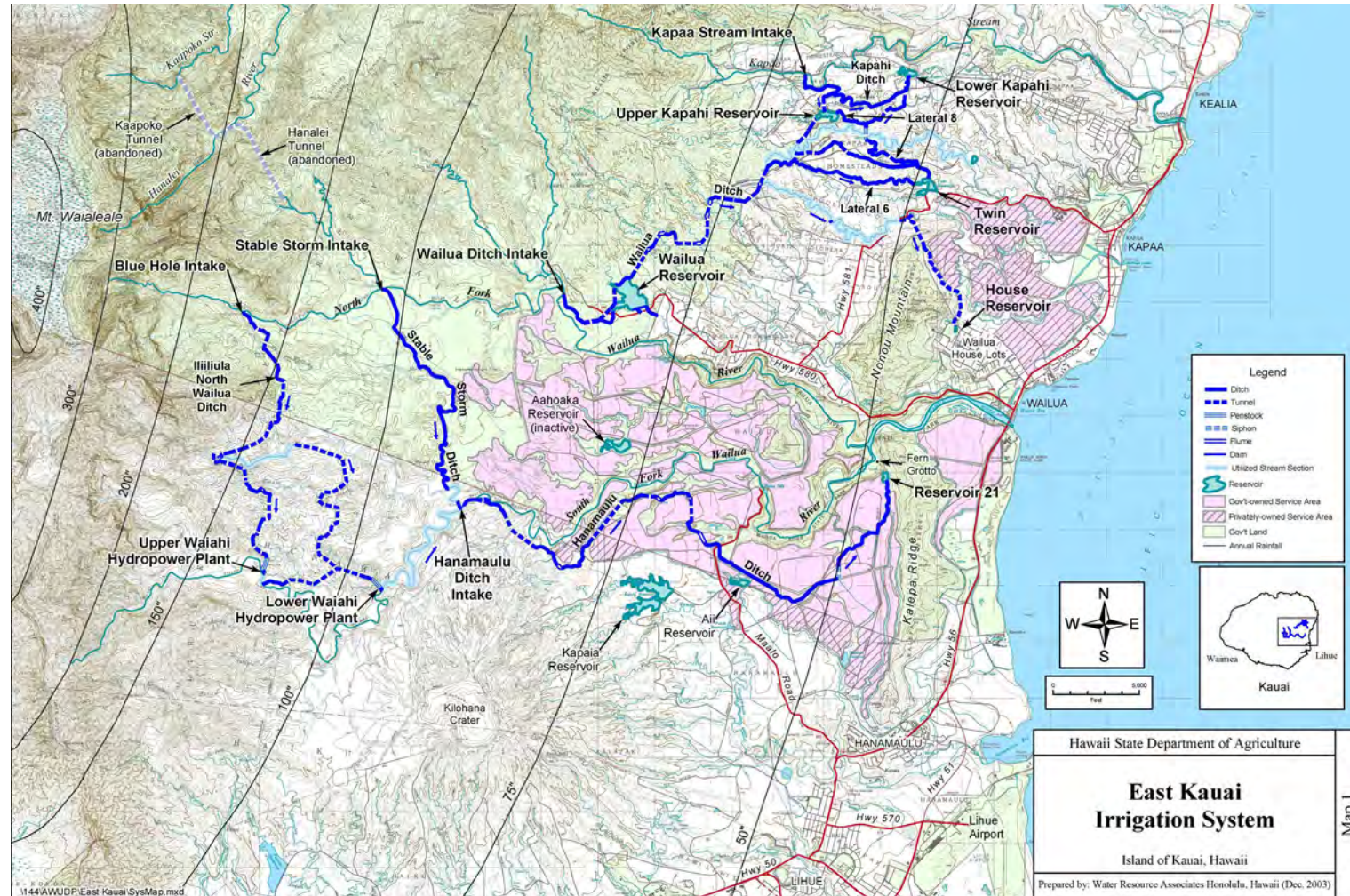
1994-2024
30 Years & Growing



East Kauai Irrigation System (EKIS)

- Earliest portions of the ditch were constructed c. 1856 by William Harrison Rice.
- At its peak, EKIS consists of 51 miles of ditch, 18 diversions, and delivered 80-100 million gallons of water per day to plantation lands.
- In 1984, East Kauai Water Company and Lihue Plantation jointly provided 11 workers to maintain EKIS.
- EKIS was later managed by the East Kauai Water Users' Cooperative which dissolved in 2021 due to lack of funding.
- System is currently in decline; DLNR conducting EIS to evaluate several options, including decommissioning the Wailua Reservoir.
- Discussions have commenced with DLNR regarding the possibility of transferring EKIS to ADC.

Source: Carol Wilcox, *Sugar Water: Hawaii's Plantation Ditches* ch 5, 68-84 (1st ed., University of Hawaii Press 1997)



Wailua Reservoir

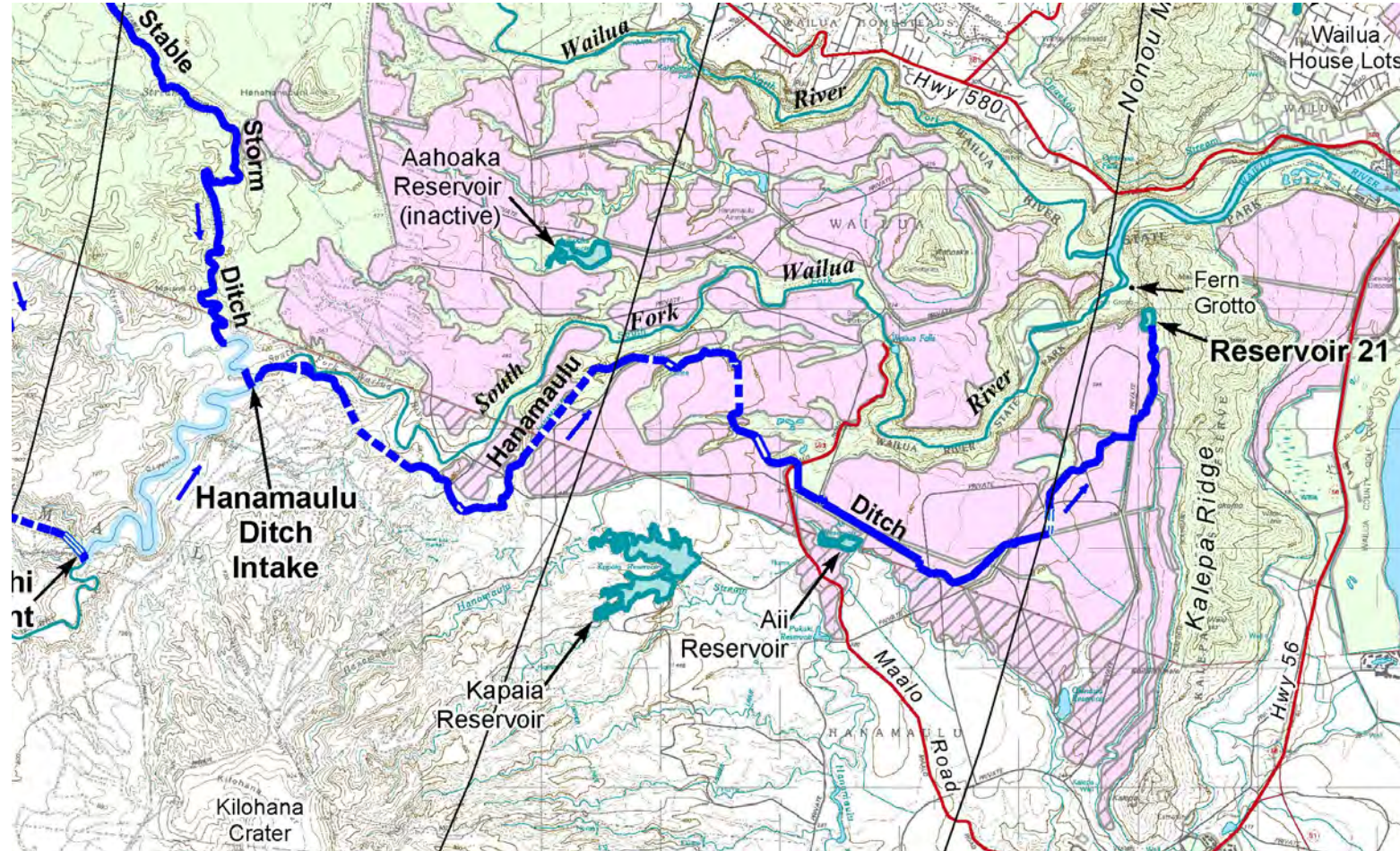
- Construction completed in 1920 and is situated above Wailua Homesteads. Currently owned by DLNR.
- Capacity: 274.4 million gallons
- Hazard Classification: High
- Condition listed as “Fair” as of 2/10/23
- Used for recreational fishing, provides irrigation water to only a couple nearby users,
- Recent Phase 1 inspection report notes Priority 1 recommendations including documenting that altered spillway satisfies hydrologic and hydraulic analyses, removing ponding water at downstream toe, clearing vegetation from embankment slopes and abutments, updating the EAP.
- Priority 2 recommendations including regrading crest roadway to direct drainage, installing staff gage to measure full range of reservoir levels, restricting motorized vehicle access to dam, spillway, and abutments, and removing unofficial boat access ramp, and repair to upstream slope.

Source: Phase I Investigation, Wailua Reservoir, Kauai, Hawaii. February 10, 2023



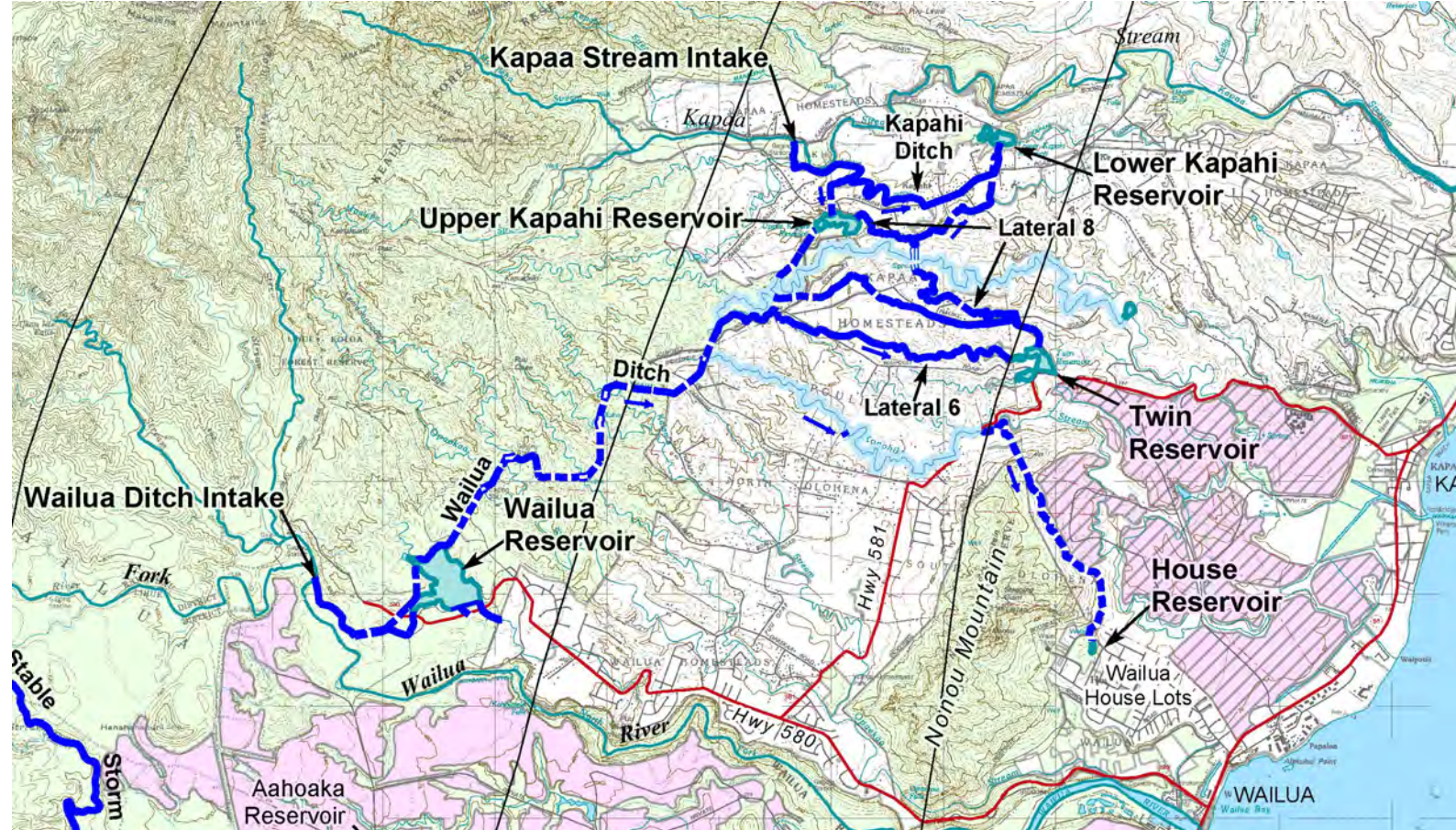
Hanamaulu Ditch

- EKIS includes the Hanamaulu Ditch, a branch of system, that provides water to certain ADC tenants who rely on the ditch for their operations.
- Tail water from Hanamaulu Ditch empties to Reservoir 21. Seepage from Reservoir 21 provides the “waterfall” to Fern Grotto.
- DLNR does not currently have the staff to properly maintain the ditch.
- In recent years, following the departure of Lihue Plantation and the dissolution the East Kauai Water Users’ Co-op, the Hanamaulu Ditch has fallen into disrepair resulting in loss of water to affected ADC farmers and ranchers. In most cases, the tenants themselves have been able to restore water access.
- Portions of the ditch will require immediate repair work to keep it operational.



Kapahi Reservoirs

- EKIS includes the Hanamaulu Ditch, a branch of system, that provides water to certain ADC tenants who rely on the ditch for their operations.
- Tail water from Hanamaulu Ditch empties to Reservoir 21. Seepage from Reservoir 21 provides the “waterfall” to Fern Grotto.
- DLNR does not currently have the staff to properly maintain the ditch.
- In recent years, following the departure of Lihue Plantation and the dissolution the East Kauai Water Users’ Co-op, the Hanamaulu Ditch has fallen into disrepair resulting in loss of water to affected ADC farmers and ranchers. In most cases, the tenants themselves have been able to restore water access.
- Portions of the ditch will require immediate repair work to keep it operational.

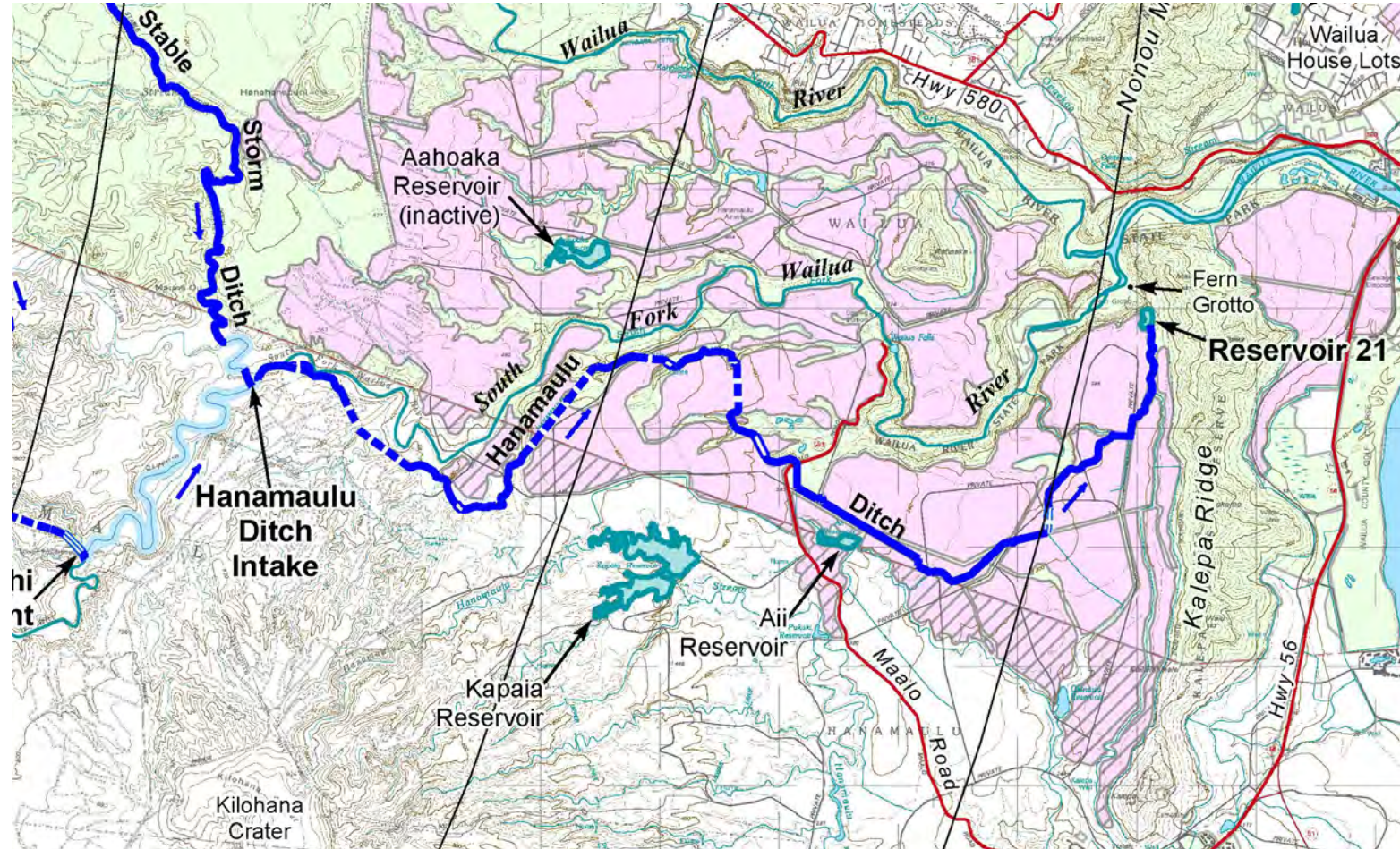


Benefits of Maintaining EKIS

- Would preserve an existing irrigation system that would likely cost multiple hundreds of millions of dollars to build, assuming permitting could even be obtained.
- Potentially provides access to irrigation water for hundreds of acres of land in Kalepa that is currently in livestock production.
- Potentially provides access to irrigation water to other non-ADC tenants.
- Helps ensure that ADC has the authority to maintain and repair portions of the system that currently provide water to ADC tenants.
- Potentially provides continuing tailwater to Fern Grotto.
- Potentially provides continuing water to DHHL ranchers makai of Kalepa Ridge.

Next Steps

- Continuing discussions with DLNR, the legislature, and local stakeholders regarding potential uses, tenant expansion, funding for operations and upgrades, and possible transfer of the system to ADC.
- ADC staff will continue research and due diligence and provide periodic updates to the Board.
- If it is later determined that ADC can and should preserve the system, staff will approach the Board for approval to initiate the set aside process with DLNR.



Questions and Comments

f i n

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



WENDY GADY
Executive Director

E-1

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Suite 205
Honolulu, HI 96813

November 16, 2023

Subject: Request for approval to remove the "sand site" from the Agribusiness Development Corporation's portfolio of available lands in Kekaha, Kauai, Hawaii, TMK (4) 1-2-002:001 (por.)

Applicant: Agribusiness Development Corporation (ADC)

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

Area: 20.74 acres, more or less

Field No(s).: "Sand Site" (Site)

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

Land Status: Set aside to the Agribusiness Development Corporation by Governor's Executive Order No. 4007 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 ☐

Zoning: SLUD: Agricultural
CZO: Agricultural

Chapter 343: In accordance with the Comprehensive Exemption List for the Agribusiness Development Corporation dated May 1, 2018, this request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 10 (Item 9 and 12).

Character of Use: N/A

Land Doc. Type: Right-of-Entry to allow for removal of equipment

Term: N/A

Rental Rate: N/A

BACKGROUND:

On August 20, 2013, the ADC Board (Board) approved the issuance of an agreement to Pohaku O'Kauai Materials, LLC (POKM). Among the terms and conditions purportedly approved by the Board was a five year term, allowed the removal of rock and sand in Kekaha for a license fee of \$200 per acre per year, required that POKM pay a royalty fee of \$5 per ton (to be split \$2.50 to ADC & \$2.50 to Kekaha Agriculture Association (KAA)), required POKM to assist KAA with road maintenance, and not to sublicense any portion of the premises without prior written approval of the ADC Board.

The Right-of-Entry and License Agreement (ROE) was executed between ADC, KAA, BASF Plant Science LP, Pioneer HI-Bred Intl., Inc., Syngenta Seeds, Inc. and POKM, with an effective date of January 13, 2014. The ROE gave POKM the right to remove rocks and sand from fields 101-103, 105-108, 110-113, 115-117, 119, 121, 221, and 321. Field numbers 101, 116, and 121 were licensed to BASF; field numbers 102-103, 105-108, 110-113 and 115 were licensed to Pioneer Hi-Bred Intl.; and field numbers 117, 119, 121 (por.), 221 & 321 were licensed to Syngenta. The ROE required POKM to pay a royalty fee of \$2.50 per ton to ADC and \$2.50 per ton to KAA. The ROE further required a negotiated modification to the payment rate beginning July 1, 2015, and every second year thereafter. The ROE did not establish the length of the agreement or assess a licensing fee.

In 2021, ADC obtained a copy of an appraisal commissioned by a Kaua'i purchaser of sand. The purpose of the appraisal was to determine if \$39.41 per cubic yard was an appropriate royalty rate for sand on Kaua'i. The appraisal was effective as of October 16, 2020. The appraisal noted that there were two sources of sand on Kaua'i, one was located on the Mānā Plain Kawai'ele Waterbird Sanctuary, which is under the jurisdiction of the Department of Land and Natural Resources (DLNR), and the second was located about 1.5 miles away from Kawai'ele at the POKM quarry. The sand was purchased for use in concrete and other construction purposes. The appraisal set the royalty fee at no more than \$39.41 per cubic yard, which is equivalent to \$29.19 per ton. Since 2009, DLNR has offered the Kawai'ele sand at the royalty rate of \$39.41 per cubic yard.

By way of letter dated June 30, 2021, KAA reminded POKM that the ROE called for good faith negotiations with regard to the payment rate (as the term was defined in the ROE) no later than July 15, 2015 and every second year thereafter. The letter invited POKM to negotiate a new payment rate as the current rate was no longer commercially reasonable. POKM did not respond to the invitation to negotiate a new payment rate.

By way of letter dated December 1, 2021, KAA notified POKM that having not received a response to the June 30, 2021 letter, the payment rate was being increased to \$37.00 per ton (payable \$18.50 per ton to ADC and \$18.50 per ton to KAA) effective January 1, 2022.

The January 2022 combined payment (to ADC & KAA) received from POKM reflected the prior gross payment rate of \$5.00 per ton. The February 2022 payment received from POKM reflected the prior payment rate of \$5.00 per ton. KAA made several attempts to contact POKM to discuss the insufficient payment with no success.

By way of letter dated March 24, 2022, ADC advised POKM that if the appropriate payment amount for January 2022, February 2022, and March 2022 was not received by April 7, 2022, the ROE would be terminated immediately.

On March 29, 2022, POKM responded by way of email asking that the rate increase be postponed because the rate increase was substantial and POKM wanted to prepare a "sand report" for purposes of negotiating a lesser royalty rate increase. On March 31, 2022, ADC received a check from POKM that was purportedly the amount necessary to cover the arrearage that had accrued since January 1, 2022, and to bring the account current at the new payment rate through the end of February.

On April 3, 2022, ADC notified POKM that due to discrepancies recently discovered between the terms the Board originally approved and the ROE that was ultimately executed, (1) the amount of the payment rate increase should have been adjusted to reflect the difference between per ton (\$29.19) and per cubic yard (\$39.41), and (2) ADC intended to terminate the current ROE and negotiate a new license agreement. POKM was also informed that the matter would be brought to the Board at its April meeting.

On April 20, 2022, the Board approved the termination of the ROE effective May 31, 2022 and authorized staff to enter into negotiations for a new agreement.

On May 24, 2022, by way of certified mail, ADC received a sand rate counteroffer from POKM for \$18.50/ton of sand removed.

On June 6, 2022, staff, KAA, and POKM reached agreement in principle on updated terms for a new agreement in the amount of \$20/ton of sand removed.

On June 15, 2022, the Board approved the issuance of a new non-exclusive license agreement for access to the Site for continued sand excavation purposes for concrete and construction uses at a royalty rate of \$20/ton of sand removed. A license agreement (LI-K-22-03) was drafted and sent to POKM, but was never executed.

On February 3, 2023, staff received a letter from POKM attorneys requesting ADC contact POKM representatives to discuss "...a new license under acceptable terms and conditions..."

On April 3, 2023, staff received email communications from POKM representatives again asking to renegotiate the terms that had been approved earlier by the Board. Staff requested POKM submit requested changes in writing for consideration. No request from POKM was ever received.

On July 28, 2023, staff sent letters to ADC tenants in the Kekaha area, including POKM, informing them of the respective findings of ADC's recent Best Management Practices inspections (BMP Letter) and requesting immediate remedial action to correct any deficiencies. Enforcement of Best Management Practices is a requirement of the Settlement Agreement between ADC and EarthJustice in the 2018 Clean Water Act case.

On August 7, 2023, staff received an emailed letter from POKM attorneys acknowledging receipt of the BMP Letter and requesting a face-to-face meeting between ADC staff and POKM representatives. POKM attorneys again followed up with the same request by email September 26, 2023. Staff responded by email on September 26, 2023 to the attorneys that ADC was conducting internal discussion regarding the future disposition of the site and that they would be in touch once they had reached a conclusion on how they wished to proceed. The internal

discussion included the potential environmental impact imposed on ADC by way of POKM's National Pollutant Discharge Elimination System (NPDES) permit application pending before the Hawaii Department of Health that is required for quarrying operations.

On October 12, 2023, staff met with representatives of POKM and their contractors and informed them that based on consideration of the environmental impact of a quarrying operation on the EarthJustice settlement agreement, ADC may be withdrawing the Sand Site from ADC's portfolio of available lands for lease. POKM requires a new right-of-entry to remove equipment from the sand site and to restore the property to its original condition as required by ROE paragraphs 3d, 5, and 15(c).

REQUEST:

Request that the Board approve the removal of the Sand Site from ADC's portfolio of available lands in order to preserve the resource for future use; rescind the Board's June 15, 2023 approval of the non-exclusive license agreement to POKM for access to the Site for sand excavation purposes; authorize staff to issue a notice to vacate the premises; and approve a new nine-month right-of-entry to POKM for equipment removal (no further sand excavation allowed) (Request).

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

The ROE is currently terminated and there are no current operations on the premises. However, staff contemplates future POKM operations under a new right-of-entry to remove their equipment.

CONSERVATION PLAN:

N/A

CHAPTER 343:

For the purpose of the Request, the action(s) are exempt from the requirement to conduct an environmental assessment pursuant to ADC's Comprehensive Exemption List dated May 1, 2018 as the proposed disposition will probably have minimal or no significant effect on the environment.

However, if it is determined to be in ADC's interest to have the Site restored to its original topographic condition, an environmental assessment may be required.

DISCUSSION:

The ROE is currently terminated and, as of this writing, POKM has not removed their excavation equipment and portable toilets. KAA and ADC may have use for the sand which begs the question of whether or not it is to ADC and KAA's advantage to restore the site to its original topography with other, and potentially different, soils. ADC and KAA discussions on this matter are ongoing.

The sand revenue was split 50-50; half to ADC and half to KAA. Paragraph 16 of the Restated Memorandum of Agreement between ADC & KAA requires ADC to pay the pro rata share of any revenue derived from ceded lands, which means that all of ADC's portion of the sand

Request for approval to remove the "sand site" from ADC's portfolio of available lands in Kekaha, Kauai, Hawaii, TMK 1-2-002:001 (por.)

November 16, 2023

Page 5 of 5

revenue went to pay the Office of Hawaiian Affairs and the Department of Hawaiian Home Lands. As such, there is no budget impact to ADC.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board:

1. Approve the Request noted above; and
2. Declare that pursuant to ADC's Comprehensive Exemption List dated May 1, 2018, the Request will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment, pursuant to chapter 343, Hawaii Revised Statutes

Respectfully Submitted,

Mark Takemoto

For LYLE ROE
Property Manager

Approved for Submission:



Wendy Gady, Executive Director

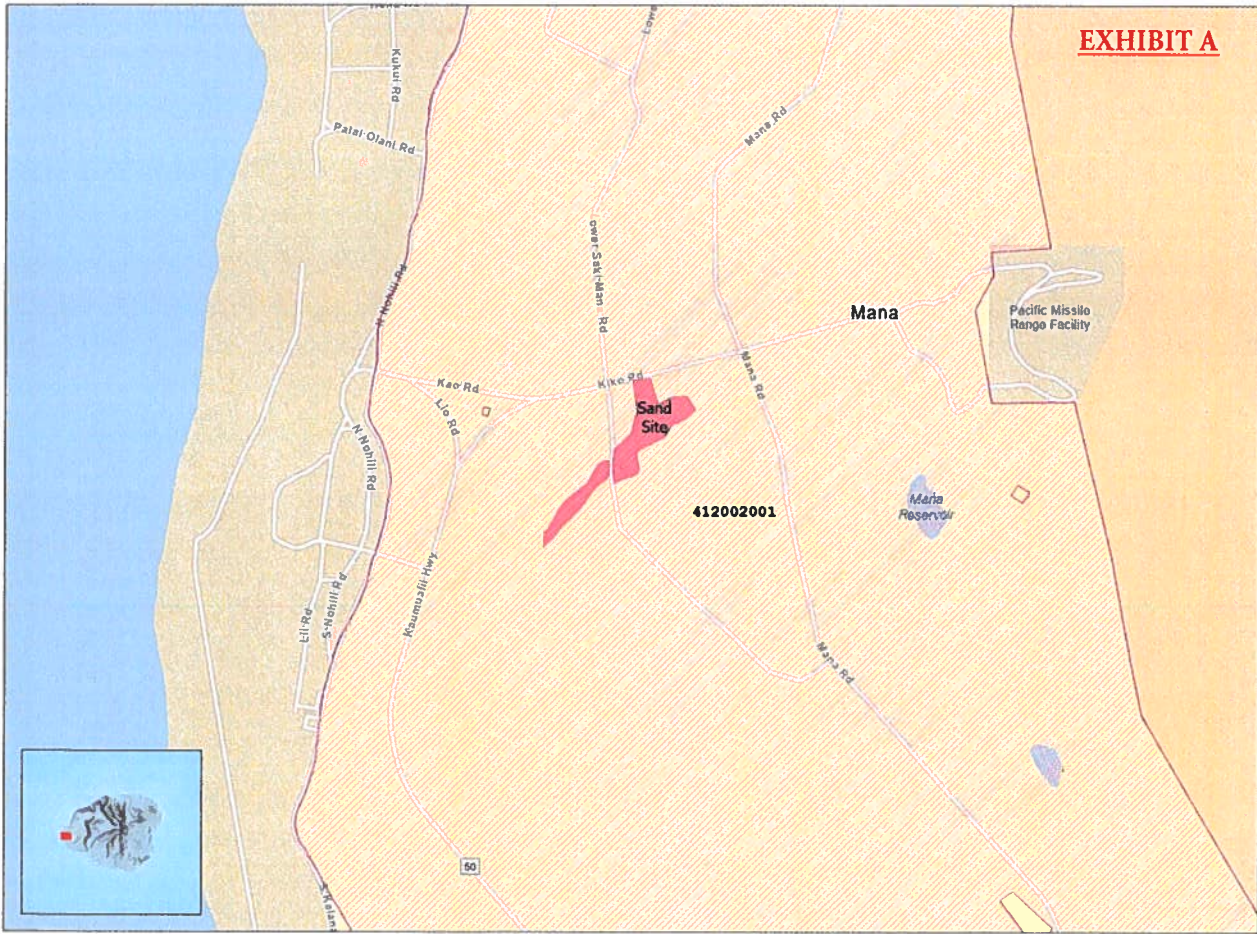


EXHIBIT A

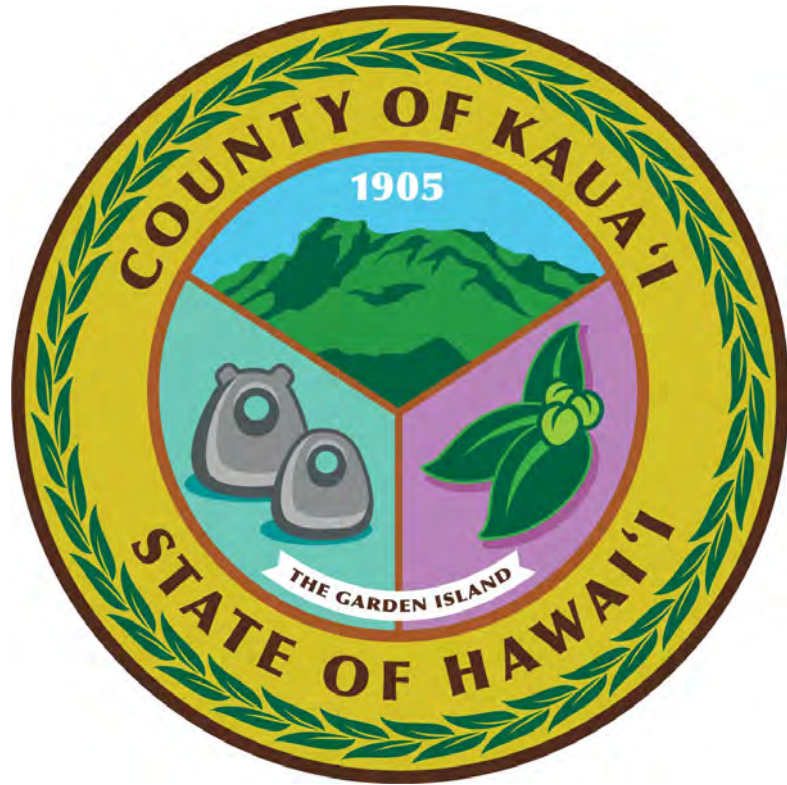


STATE OF HAWAII
AGRIBUSINESS
 DEVELOPMENT CORPORATION

"Sand Site"
 Kekaha, Kauai



Esri Community Maps Contributors, Esri, HERE, Garmin, SafeGraph, METI/USA, USGS, EPA, US Census Bureau, USDA, Esri, HERE, Garmin, FAO, NOAA, USGS, EPA, Esri, USGS. This map was developed by the Agribusiness Development Corporation, State of Hawaii.



UPDATE PROPOSED NEW LANDFILL SITE

Allison Fraley, Environmental Services Manager
County Public Works Dept., Solid Waste Division

Previous Landfill Siting Studies

- Kaua‘i MSWLF Siting Studies 2001/2002
- Mayor’s Advisory Committee on Landfill Site Selection 2009
- County of Kaua‘i Integrated Solid Waste Management Plan 2009
- Community Criteria Evaluation (CCE) 2012
- Kaua‘i Landfill Siting Study Report, July 2012
- New Kaua‘i Landfill Traffic and Roadways Engineering Feasibility Study (TREFS), April 2014/November 2016
- Conceptual Design Report, Municipal Solid Waste Landfill and Resource Recovery Park at Ma‘alo, August 2014
- Alternatives Analysis, Proposed New Kaua‘i Landfill and Resource Recovery Park Ma‘alo 2017
- Final Environmental Impact Statement New Kauai Landfill, Maalo, Island of Kauai, Hawaii, July 2018
- County of Kauai Integrated Solid Waste Management Plan, November 2021

Current Landfill Capacity

- The County's sole operating landfill in Kekaha is currently approaching capacity.
- FY 23 accepted 88,000 tons of MSW
- All waste goes to Kekaha – no C&D landfill
- Kekaha Landfill has capacity through June 2027
- Pursuing vertical expansion capacity to April 2030

Proposed Site

Site Suitability

- The proposed site is within a ½ mile of the Kekaha-Mauka site
- The proposed site similar to previously studied Kekaha-Mauka Site including landfill life
- A Right-of-Entry to perform a preliminary engineering analysis was granted by the landowner on April 27, 2023

Preliminary Information

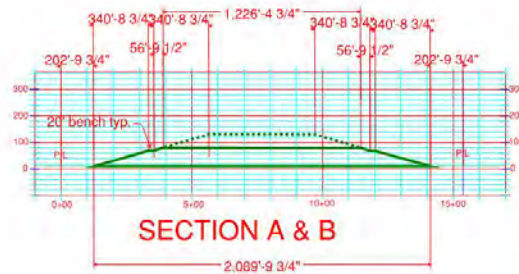
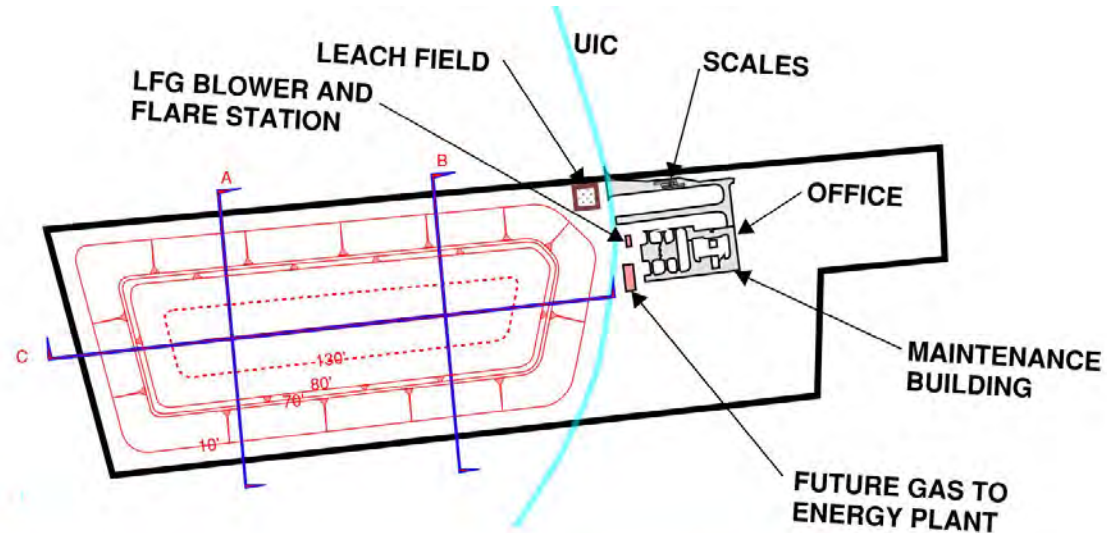
- Location Map
- Preliminary Conceptual Site Grading Plan and Sections
- Information for Pacific Missile Range Facility (PMRF)
- Information for State Department of Health Solid and Hazardous Waste Branch (DOH)

Location Map



Preliminary Conceptual Site Grading Plan

Approx. Distance from Runway
7,000' @ 100:1 = 70' Height or 80'
Elevation

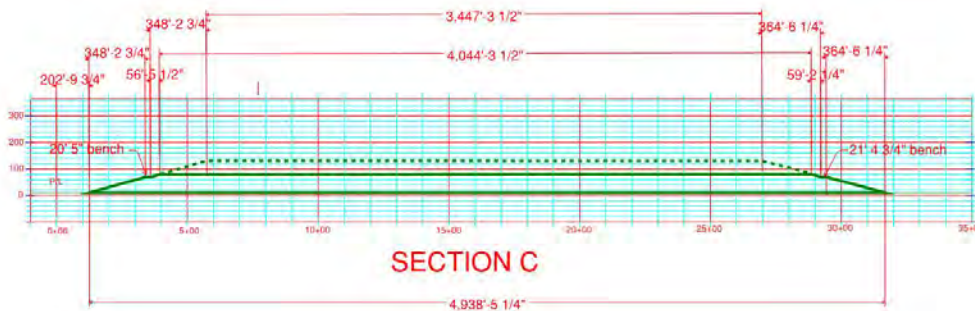


3.5:1 sideslope based on Drawing 29
Alternative 1 Proposed MSW Landfill and
Resource Recovery Park at Maalo,
Appendix D of FEIS

Section A & B (90') 79,823 sf total
10' to 70' - 64,551 sf
70' to 80' - 7,909 sf
Section C
Average Length
10' to 70' - 3,039'
70' to 80' - 2,618'

Approx. Total Volume: 8,033,244 cy from 10' to 80'
Approx. Total Area: 3,830,835 sf
Approx. Final Cover Volume: 354,707 say 400,000 cy

Approx. Disposal Volume with Daily Cover: 7,678,537 cy



0 1,000 2,000



PRELIMINARY DRAFT CONCEPT
GRADING PLAN

Coordination with PMRF

Proposed site is:

- Within 10,000 foot distance from the runway, approximately 6,500 feet
- Landfill height will require coordination with PMRF
- Will provide pertinent site information and request a meeting with PMRF

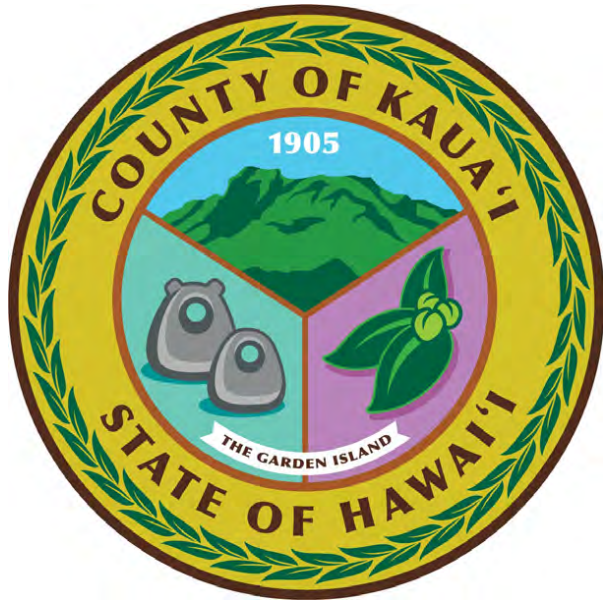
Coordination with DOH

- Over 2 miles from Kekaha Town
- Located near the UIC Line coordination with DOH will include locating all landfilling activities below the UIC Line
- Located in the Mana Plain where groundwater is managed by the Agricultural Development Corporation (ADC) ditch system DOH is requesting for information on the future long-term maintenance of the ditch system from the ADC
- Will provide pertinent site information and request a meeting with DOH



NEXT STEPS

- Conceptual Design - 2024
- Perform an EIS - 2025
- State Land Use - 2026
- County Zoning - 2027
- Design – 2029



MAHALO

ALLISON FRALEY

ENVIRONMENTAL SERVICES MANAGER
AFRALEY@KAUAI.GOV
(808) 241-4837



JOSH GREEN, M.D.
GOVERNOR

**STATE OF HAWAII
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www.oip.hawaii.gov

CHERYL KAKAZU PARK
DIRECTOR

OPINION

Requester: Anonymous
Board: Agribusiness Development Corporation Board of Directors
Date: November 3, 2023
Subject: Selection of New Executive Director (S APPEAL 24-02)

REQUEST FOR OPINION

Requester, an anonymous member of the public, seeks a decision as to whether the Agribusiness Development Corporation (ADC) Board of Directors (Board) violated the Sunshine Law during its selection of a new executive director (ED).

Unless otherwise indicated, this decision is based upon the facts presented in an email from Requester to OIP dated August 21, 2023; a Notice of Appeal from OIP to the Board dated August 24, 2023, but emailed to the Board on August 21, 2023, with enclosures; an email from ADC to OIP dated September 5, 2023, with attachments; an email from the Department of the Attorney General (AG) on behalf of ADC to OIP dated September 12, 2023, with attachment; an email from the AG to OIP dated September 15, 2023, with attached email thread; a letter from OIP to the AG dated September 15, 2023; an email from Board member Mr. Dane Wicker (Wicker) to OIP dated September 22, 2023, with attached email thread; an email from ADC to OIP dated September 26, 2023, with attachments; an email from OIP to the AG dated October 3, 2023, with attached email thread; an email from the AG to OIP dated October 4, 2023, with attached email thread; an email from ADC to OIP dated October 4, 2023; an email from the AG to OIP dated October 6, 2023, with attachment; an email from the AG¹ to OIP dated October 13, 2023, with attachments; an email from ADC to OIP dated October 16, 2023, with attachments;

¹ The AG's responses to this appeal on behalf of the Board are collectively referred to herein as "Response."

and an email from ADC to OIP dated October 31, 2023, with attachment and attached email thread.

QUESTIONS PRESENTED

1. Whether the Board gave proper notice that the location of an executive session would be solely the in-person location listed on a remote meeting notice, with no indication that the executive portion of the meeting was in-person only; and whether this allowed the Board to require board members to attend in-person only for the executive session portions of the agenda.

2. Whether a board may discuss an item in executive session without having first allowed public testimony on the agenda item to be discussed in the executive session.

3. Whether the Board properly considered and voted on the hire of an officer or employee in an executive session.

4. Whether the Board was authorized under the Sunshine Law to take a secret ballot vote on an item of board business.²

5. Whether the executive session summary provided after the Board's executive session on August 8, 2023, complied with Act 19 of 2023, to be codified at section 92-4(b), HRS (Act 19).³

6. Whether the Board has options to remedy Sunshine Law violations, including taking a subsequent vote to ratify selection of the ED.

² "Board business" is defined as "specific matters over which a board has supervision, control, jurisdiction, or advisory power, that are actually pending before the board, or that can be reasonably anticipated to arise before the board in the foreseeable future." HRS § 92-2 (Supp. 2022) (definition of "[b]oard business").

³ Act 19, which was enacted on April 19, 2023, and effective July 1, 2023, amended section 92-4, HRS, by retaining the statute's original language in a new section (a), and creating a new subsection (b), which requires that any discussion or final action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held; provided that the report need not defeat the purpose of holding the executive session. Act 19 is discussed in detail in section V, infra.

BRIEF ANSWERS

1. No. As explained in section I starting on page 16, the Sunshine Law requires that a notice be filed six days before a meeting; that the notice include the location of the meeting; and for remote meetings, the notice must list at least one physical location that is open to the public. The notice for the Board's meeting on August 8, 2023, clearly stated it was a remote meeting under section 92-3.7, HRS. The notice did not state that the executive session would be in-person only. OIP therefore concludes that the notice did not give proper notice that the "location" of the executive session would be only the listed in-person meeting location and Board members could not participate via remote link. OIP finds that the fact that there was no legal notice that the executive session was in-person only resulted in little, if any, harm to the general public, as the public is not entitled to attend the executive session. However, the Sunshine Law's protections apply to board members as well as the general public, and a meeting notice also serves as notice to the members of a board. Because members were prevented from participating remotely in the executive session, OIP finds that the improper notice of the in-person only executive session deprived Board members of the ability to attend and participate in the executive session in violation of section 92-3, HRS.

2. No. As explained in section II starting on page 19, section 92-3, HRS, requires that boards accept oral and written testimony on any agenda item, and does not exclude executive session agenda items from that requirement. Prior to taking a vote to enter executive session during the public portions of the meetings on August 8, September 21, and October 3, 2023, the Board allowed public testimony only on the decision to go into executive session, and not on the executive session agenda items themselves. OIP therefore finds that the Board denied the public's right to testify on the agenda items the Board discussed in executive session, and OIP concludes that the Board's denial violated section 92-3, HRS.

3. Yes. As explained in section III starting on page 20, section 92-5(a)(2), HRS, allows a board to enter an executive session to consider the hire of an officer or employee where consideration of matters affecting privacy will be involved. The Board relied on this executive session purpose when it met in executive session to interview the top two candidates⁴ for the ED position, to set the next ED's salary, to select a candidate to make an employment offer to, and to decide how to inform the public of its hiring decision. OIP finds that the Board properly voted to enter an executive session in accordance with section 92-4(a), HRS, and had a valid reason to enter an executive session under section 92-5(a)(2), HRS, to interview candidates, and then to discuss the selection and salary of the new ED. OIP finds it could be reasonably anticipated that the executive session discussion of the candidates,

⁴ ADC used the terms "candidates" and "applicants" in various meeting notices and minutes, and OIP uses both terms herein interchangeably.

including the salary discussion, involved consideration of matters affecting privacy, either directly or indirectly. OIP therefore concludes that the Board was properly in executive session for these discussions. OIP concludes, however, that the discussion on how to inform the public of the successful candidate's selection did not implicate any privacy interests and should have been in the public portion of the meeting.

OIP further concludes that the Board was permitted by the Sunshine Law to vote in executive session on selection of the ED to avoid revealing the candidates' identities as both had privacy interests to be protected, and to protect the privacy interests of the selected candidate until such time as she accepted the employment offer. Holding this vote in a public meeting would have revealed the candidates' identities, which, at that time, carried privacy interests that allowed the Board to hold the executive session.

However, the Board should have voted in the public portion of the meeting on selection of the new ED's salary because the minutes show the salary discussion focused primarily on budgetary considerations and not on qualifications of either candidate such that a privacy interest would have been implicated.

4. No. As explained in section IV starting on page 26, multiple provisions of the Sunshine Law require that votes be taken in a way that makes clear how each member voted. HRS §§ 92-3.7(b)(5); 92-4; 92-9(a)(3), (b)(3) (Supp. 2022). Because the secret ballot did not identify how each member voted during the executive session on August 8, 2023, the Board was unable to meet the requirements of section 92-9, HRS, to keep minutes for all meetings, including executive session meetings, that include a record by individual member of any votes taken. OIP therefore concludes that the Board's secret ballot vote to select the ED taken during its executive session on August 8, 2023, was in violation of the Sunshine Law.

5. Yes. As explained in section V starting on page 29, Act 19 requires that any discussion or final action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held. Act 19 further specifies that the information reported should not be inconsistent with the purpose for which the executive meeting was convened, and a board may maintain confidentiality of information for as long as its disclosure would defeat the purpose of convening the executive meeting. The Act 19 report for the Board's executive session on August 8, 2023, did adequately describe what happened, including reporting that the board had decided to make an offer to a candidate. The Board's failure to specify which candidate it had decided to make an offer to was justifiable to protect the candidates' privacy, and thus avoid frustrating the purpose of the executive session, because the candidates had a privacy interest in the fact that they had applied for the ED position and at that point, the chosen candidate had not yet accepted the offer.

6. Yes. As explained in section VI starting on page 32, the Sunshine Law does not provide a way for a board to undo a prior violation by its subsequent action, so a board cannot entirely “cure” a violation, but it can make efforts to mitigate public harm from past violations and to follow proper procedures in the future. While this appeal was pending, the Board publicly voted to ratify its earlier selection of the ED via secret ballot vote, which did mitigate the public harm from that and other violations. While OIP favorably views timely and appropriate mitigation efforts, only the courts can determine whether such actions make voiding a board’s final action inappropriate or unnecessary, as only the courts have the power to void the final action of a board under section 92-11, HRS. A circuit court action under section 92-11, HRS, to void a final action of a board must be filed within 90 days of the final action to be challenged. The courts may provide additional remedies under section 92-12(b), HRS.

FACTS

ADC is “a public body corporate and politic and an instrumentality and agency of the State” that was created “to administer an aggressive and dynamic agribusiness development program.” HRS § 163D-1 and 3(a) (Supp. 2022). Its purpose is “to support the production of local agricultural products for local consumption in a manner that is economically and environmentally sustainable while continuing to develop commercial exports of locally produced agricultural products. HRS § 163D-1. In furtherance of that purpose, ADC’s mission is to “acquire and manage, in partnership with farmers, ranchers and aquaculture groups, selected high-value lands, water systems and infrastructure for commercial agricultural use and to direct research into areas that will lead to the development of new crops, markets and lower production costs.” Agribusiness Development Corporation, About Us, <https://dbedt.hawaii.gov/adc/about-us/> (last visited October 27, 2023).

ADC is headed by the Board and is administratively attached to the Department of Business, Economic Development, and Tourism (DBEDT). Id. The Board has eleven members: three ex-officio and eight private citizens appointed by the Governor. HRS § 163D-3(b). The Board’s ex officio voting members include the DBEDT Director, the Chairperson of the Board of Agriculture, and the Chairperson of the Board of Land and Natural Resources (DLNR), or their designated representatives. Id. At all times relevant to this appeal, the Board had two vacant positions.

The Board appoints the ADC ED, delegates authority to the ED, evaluates the ED’s work performance annually, and sets the ED’s salary. HRS § 163D-3(d), (f), (g). The ED may hire staff and prescribe staff duties, among other things. HRS § 163D-3(h).

On April 23, 2023, ADC's ED passed away. The Board held an emergency meeting⁵ on April 24, 2023, to appoint a staff member as the Acting ED. At its next regular meeting on May 18, 2023 (May 18 Meeting), the Board Chair⁶ established a permitted interaction group (PIG) pursuant to section 92-2.5(b)(1), HRS,⁷ for the purpose of searching for the new ED (First PIG).

At its meeting on May 30, 2023 (May 30 Meeting), the Board disbanded the First PIG and created a new PIG referred to as the "Search Committee" with different Board members assigned to it. The assigned tasks of the Search Committee were to: (1) develop an ED application process; (2) develop a solicitation/advertisement for the ED position; (3) select a method of posting the solicitation/advertisement and post it; (4) develop criteria for ranking applicants; (5) accept applications and conduct the initial review and ranking of applicants; and (6) narrow the selection to the top two or three candidates and report the findings to the Board.

⁵ The Sunshine Law allows a board to hold an emergency meeting "[i]f an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, with less time than is provided for in section 92-7 to notice and convene a meeting of the board[.]" HRS § 92-8(b) (Supp. 2022). At an emergency meeting, a board may "deliberate and decide whether and how to act in response to the unanticipated event[.]" subject to certain conditions. Id. The Board's emergency meeting held on April 24, 2023, is not at issue in this appeal.

⁶ On May 25, 2023, the Chair resigned from the Board and member Warren Watanabe (Watanabe) thereafter became the Chair.

⁷ While the formation and actions of the Board's PIGs are not at issue here, a brief summary of investigative PIGs may be helpful. Section 92-2.5(b)(1), HRS, allows a board to create an investigative PIG consisting of two or more members of a board, but less than the number of members which would constitute a quorum. Investigative PIGs may be assigned to investigate a matter relating to board business. HRS § 92-2.5(b)(1) (Supp. 2022). In order for a board to take action on a matter investigated by a PIG, three separate board meetings must occur. Id. At the first meeting of the full board, the PIG is formed, and the scope of the investigation and the scope of each member's authority are defined. Id. The PIG may then conduct its investigation outside of open meetings. At a second meeting of the full board, the findings and recommendations of the PIG are presented to the board. Id. After the PIG makes its report to the board at the second meeting, the PIG is automatically dissolved and should not continue working. OIP Op. Ltr. No. F23-01 at 16. The board cannot discuss, deliberate, or make any decisions regarding the PIG's report until a third meeting held separately, which gives the public the opportunity to testify on the PIG's findings and recommendations that had been presented at the second meeting. Id. A detailed discussion of PIGs is set forth in OIP Opinion Letter Number F23-01 (Opinion F23-01).

At its meeting on July 20, 2023 (July 20 Meeting), the Search Committee reported to the Board as required by section 92-2.5(b)(1)(B), HRS. The Search Committee reported that it had selected the top three applicants for the ED position, but one subsequently withdrew from consideration. The Search Committee recommended, among other things, that the Board interview the two remaining top applicants, determine the salary to be offered, and decide upon how the public would be notified of the new ED's selection

ADC Board Meeting on August 8, 2023

Boards may hold remote meetings using interactive conference technology (ICT) in accordance with section 92-3.7, HRS. The Board published a notice for its meeting to be held "via Teleconference" on August 8, 2023 (August 8 Meeting). The August 8 Meeting notice included instructions for Board members, staff, and the public to remotely attend the meeting or to attend at the in-person location.⁸

The August 8 Meeting notice included the following agenda items of relevance here:

D. New Business

Executive Director candidate interviews

The Board may go into executive session pursuant to section 92-5(a)(2), Hawaii Revised Statutes.

2. Discussion of Executive Director Salary

The Board may go into executive session pursuant to section 92-5(a)(2), Hawaii Revised Statutes.

3. Board selection of Executive Director

The Board may go into executive session pursuant to section 92-5(a)(2), Hawaii Revised Statutes.

E. Old Business (to be taken out of order as first agenda item)

⁸ Section 92-3.7(a), HRS, requires that remote meetings held using ICT shall have "at least one meeting location that is open to the public and has an audiovisual connection." Section 92-3.7(a)(1), HRS, requires that the notice for an ICT meeting "[l]ist at least one meeting location that is open to the public that shall have an audiovisual connection[.]" Due to the in-person location requirement, remote meetings are sometimes referred to as "hybrid" meetings.

1. Deliberation and decision making on the recommendation(s) of the Executive Director Search Committee permitted interaction group submitted to the Board at the July 20, 2023 regular meeting.

At the August 8 Meeting, agenda item E.1 was taken out of order. The Chair announced that the Search Committee had recommended that the Board hold in-person interviews of the two candidates, and, among other things, select a candidate to make an employment offer to, decide on the new ED's salary, and decide on how to notify the public should the selected candidate accept the offer of employment, such as by press release, on the ADC website, and/or at the next meeting to be held on August 17, 2023.

The Board voted unanimously to accept the recommendations of the Search Committee. It then voted to enter executive session⁹ for agenda items D.1, 2, and 3, and the two candidates were thereafter interviewed in executive session.¹⁰ Although the notice did not state that the executive session would be held in-person only, the members not present at the listed physical location were unable to attend the executive session remotely.¹¹

After the candidate interviews, the Board deliberated on which candidate to offer the ED position to, and at what salary. A detailed discussion of the

⁹ Prior to the vote, the Chair asked if there was any public testimony and stated that testimony would be limited to the decision to go into executive session. This testimony limitation is discussed in more detail in section II, infra.

¹⁰ The Board's attorney was also present for this executive session and the other executive sessions discussed herein. OIP has recognized that a board may properly have its attorney in executive session whether the executive session is convened under section 92-5(a)(4), HRS, to consult with its attorney, or for one of the other executive session purposes, so it is appropriate for a board's primary attorney to be in attendance whenever it is in executive session. OIP Op. Ltr. No. F20-01 at 6 (citations omitted).

¹¹ The public and executive minutes of the August 8 Meeting list six members who were present "in person" at the physical location when the meeting started, one who arrived late to the physical location, and none who were present remotely. However, board members' recollections at the executive sessions held later to discuss this appeal suggested that the two absent members had initially logged in remotely and when it became clear that members could only attend the interviews in-person, one of the four remotely attending members came to the physical location and was present there from the beginning of the public meeting. Another member arrived late at the physical location but was present there for the remainder of the meeting. The remaining two members were listed as excused in the August 8 Meeting minutes. The in-person only requirement for this executive session is discussed in more detail in section I, infra.

deliberations and votes, or lack thereof, during this executive session is set forth in sections III and IV, infra. The Board then discussed how to inform the public once the new ED accepted the position.

As the executive session was ending, one member left the meeting to catch a flight, and another left to attend another meeting, so the Board lost quorum¹² and the five remaining members could not take further action. After losing quorum, the Board returned to the public portion of the August 8 Meeting and the Chair provided the report of the executive session pursuant to Act 19.¹³ He announced that the Board had conducted in-person interviews of the top two applicants; discussed the salary range to offer the selected applicant; had selected an unidentified applicant to be offered the ED position and salary amount; would offer the position to the selected applicant via U.S. mail; and if the selectee accepted the position, would issue a press release naming that person as the new ED.

That same afternoon, fires resulted in the catastrophic loss of life and property on Maui, and “in respect for the ongoing tragedy,” the Response stated that the Director of DBEDT and the Board “withheld the news of Ms. Wendy Gady’s (Gady) acceptance of the offer of the position” until the next Board meeting.

¹² Quorum for Sunshine Law boards is set in section 92-15, HRS, which states, in relevant part:

[w]henever the number of members necessary to constitute a quorum to do business, or the number of members necessary to validate any act, of any board or commission of the State or of any political subdivision thereof, is not specified in the law or ordinance creating the same or in any other law or ordinance, a majority of all the members to which the board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board or commission is entitled shall be necessary to make any action of the board or commission valid[.]

HRS § 92-15 (2012). The Board is entitled to eleven members and its quorum is six.

¹³ OIP reminds the Board that, as explained in Opinion F23-01 at pages 19-20, a board lacking quorum is, by definition, not in a meeting. It thus cannot discuss or take action on its agenda items. Further, it is unnecessary for a board to vote to adjourn a meeting (as the Board did after losing quorum at the August 8 Meeting) for the meeting to end; once quorum is lost, the meeting has ended, and the Chair can so announce to those present. OIP discusses the effect of losing quorum on the required executive session report in section V, infra.

The approved minutes¹⁴ of the public portion of the August 8 Meeting stated, in relevant part:

SEE OLD BUSINESS AGENDA ITEM E-1, WHICH WAS TAKEN OUT OF ORDER AS THE FIRST AGENDA ITEM.

D. New Business

Chair stated HRS Section 92-4 allows the board to hold an executive meeting closed to the public. The board will be discussing new business items 1, 2, and 3, which is the interview of the top 2 applicants, salary discussion, selection of the applicant and salary amount, and decide on the public notification method. This discussion may be closed to the public pursuant to HRS Section 92-5(a)(2) to allow discussion of a hiring decision where consideration of matters affecting privacy will be involved. Chair said before they go into executive session is there any public testimony. Please be advised that testimony is limited to the decision to go into executive session.

There was no public testimony.

Chair asked for a motion to go into executive session.

Motion: Mr. Tabata; Second: Mr. Okuhama.

Chair noted there was no staff presentation.

Chair asked for board discussion. There was none.

¹⁴ The August 8 Meeting minutes presented the events of the meeting in the same order that they were listed on the agenda instead of in chronological order reflecting when they were discussed at the meeting, which differed from the agenda order because the Board took an item out of order. By listing meeting events in order of their agenda number instead of in chronological order, the August 8 Meeting minutes give the misleading impression that the meeting was adjourned due to loss of quorum prior to the Board's (actually earlier) discussion and decision to accept the Search Committee's recommendations. Because the sufficiency of the minutes was not raised in this appeal, OIP will not address it in detail, but reminds the Board that section 92-9(a), HRS, requires written minutes to "give a true reflection of the matters discussed at the meeting and the views of the participants." To give a true reflection of what happened at a meeting, the minutes of that meeting should present events in the order in which they actually occurred, regardless of their listing on the agenda, and preferably with some indication of the times at which different events occurred.

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

Chair stated that the public meeting was in recess subject to reconvening at the conclusion of the executive session. The Board entered into executive session at 9:20 A.M. pursuant to HRS section 92-5(a)(2).

The Board lost quorum at 12:30 p.m. with the departure of Mr. Tabata and Mr. Wicker.

Chair Watanabe called the virtual meeting back to order at 12:31 p.m.

Chair stated that pursuant to Act 19, SLH 2023, the board took the following actions based upon discussions by the full board in executive session. The board of directors conducted in-person interviews of the top 2 applicants; the board of directors discussed the salary range to be offered to the selected executive director applicant; the board of directors selected the person to be offered the executive director position and salary amount; the board of directors will offer the selected person the executive director position in writing via letter to be delivered by the US postal service. If the offer is accepted, the name of the new executive director will be made public by press release.

E. Old Business (taken out of order as first agenda item)

- 1. Deliberation and decision making on the recommendation(s) of the Executive Director Search Committee permitted interaction group submitted to the Board at the July 20, 2023 regular meeting.**

Chair stated that on July 20, 2023 the Executive Director Search Committee presented its findings and recommendations to the full board. The committee recommended that the full board conduct in person interviews of the top 2 applicants in executive session. The term in-person interview means all board members and two applicants attend the executive session in-person.

It was suggested that the in-person interviews take place on Thursday, August 3, 2023 provided that the 2 applicants were available that day. If the applicants were unavailable, the committee recommended that the in-person interviews be scheduled on a mutually agreeable date. Following the in-person interviews, the committee recommended that in executive session the full board discuss the salary to be offered and select the applicant who will be offered the Executive Director position and the salary amount. The committee recommended that the selected candidate be notified of the offer by written letter and if the offer is accepted, the board decide how the public should be notified, such as by press release, posting on the ADC website, and/or at the next board meeting to be held on August 17, 2023.

Chair asked for a motion to accept the July 20, 2023 recommendations of the Executive Director Search Committee.

Motion: Mr. Watts; Second: Mr. Tabata.

Chair noted that the applicants were not available on August 3, 2023 and the next mutually agreeable date is today, August 8, 2023.

Chair asked for public testimony on the Committee's recommendations. 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.

ADC Board Meeting on August 17, 2023

The Board held a meeting on August 17, 2023 (August 17 Meeting). The relevant portion of the August 17 Meeting notice stated under "Old Business" item "2. Update on the progress of the Executive Director search[.]" The relevant portion of the August 17 Meeting minutes read the "Chair stated that he was happy to announce that Wendy Gady has been selected as the new Executive Director effective August 21, 2023."

After the August 17 Meeting, Requester filed this appeal. Requester's concerns were: (1) the announcement of the ED appointment was withheld from the public until August 17, 2023, when the press release was issued, and the press release did not state when the vote was taken or ratified; (2) the announcement was made at the Board's August 17 Meeting and not the August 8 Meeting; and (3) it was not clear how and when the vote was taken, and who voted in favor and who voted against the selected candidate. Requester asked for "a review of the process that was taken to hire the" ED, and asked that OIP confirm whether the executive session vote on August 8, 2023 was ratified or whether a vote to approve the ED's appointment was made at that meeting. Two more Board meetings relevant to this appeal were subsequently held and are described next.

ADC Board Meeting on September 21, 2023

The Response stated that at the Board's next meeting on September 21, 2023 (September 21 Meeting), the Board Chair "will call for a motion to confirm the selection of Gady as the new [ED]" to address the complaint regarding the "absence of the vote and/or ratification by the" Board.

Relevant portions of the Board's notice for the September 21 Meeting stated:

E. Action Items

...

6. Discussion of Sunshine Law complaint (S APPEAL 24-02) by anonymous complainant regarding the hiring of the new ADC Executive Director

The Board may go into executive session, pursuant to section §92-5(a)(4), Hawaii Revised Statutes.

7. Confirmation vote regarding the hiring of the new ADC Executive Director

OIP asked the AG to have OIP's letter to the AG dated September 15, 2023, placed in the Board packet¹⁵ for its September 21 Meeting to provide guidance on various Sunshine Law provisions, such as the procedures for entering executive sessions and how to write legally sufficient minutes. It was not meant to serve as OIP's inclinations as to whether the Board had violated the Sunshine Law because OIP had not yet received or reviewed all of the extensive materials for this appeal.¹⁶

Eight members were present at the September 21 Meeting.¹⁷ Before taking the vote on whether to enter the executive session for agenda item E. 6., the Chair stated, "[p]lease be advised that testimony is limited to the decision to go into executive session." The Board then voted to enter executive session.

The public minutes for the September 21 Meeting state that, when the Board returned to the public session, the Chair gave his executive session report. With regard to agenda item E. 6, the Chair stated "Board requires no further action." No vote was taken on agenda item E. 7 in the executive or public portion of the September 21 Meeting and the Board moved on to other agenda items not relevant to this appeal.

ADC Board Meeting on October 3, 2023

The notice for the Board's meeting on October 3, 2023 (October 3 Meeting), contained only two substantive agenda items:

C. New Business

¹⁵ "Board packet" means documents compiled by a board and distributed to the members before a meeting for use at the meeting. HRS § 92-7.5 (Supp. 2022). The board packet law requires that the packet be available to the public to the extent the documents are public under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA). Board packets need not disclose executive session minutes or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available. *Id.* OIP did not review board packets for any of the relevant meetings.

¹⁶ OIP reviewed draft public minutes for all four meetings discussed herein, and Board approved public minutes for the August 8, August 17, and September 21 Meetings. OIP also reviewed copies of draft executive minutes for the August 8, September 21, and October 3 Meetings, and approved executive minutes for the August 8 and September 21 Meetings that had been provided by ADC, along with ADC's written transcript for the executive session on September 21, 2023. Additionally, OIP reviewed recordings for the relevant public and executive sessions for all four meetings.

¹⁷ Member Russell Tsuji (Tsuji) became the DLNR Chairperson's designee and replaced DLNR designee Mr. Kaleo Manuel (Manuel) at the Board meetings on September 21 and October 3, 2023.

1. Executive Session to be held pursuant to HRS section 92-4, HRS section 92-5(a)(2) to discuss personnel matters, and HRS 92-5(a)(4), to consult with the board's attorney regarding OIP S APPEAL 24-02
2. Discussion and action regarding Motion for Ratification of the Selection of Wendy L. Gady as Executive Director for the State of Hawaii, Agribusiness Development Corporation

The Chair called for a motion to go into executive session for agenda item C. 1. The Chair then asked if there was any public testimony and stated that testimony was limited to the decision to go into executive session. The Board voted to enter executive session.

When the Board returned to the public session, the Chair summarized what happened in the executive session as required by Act 19 (Act 19 is discussed in detail in section V, *infra*). The Chair's summary stated that agenda item C. 1 was discussed with the board's attorney, and no action was taken. The Chair then asked for a motion "for the ratification of the selection of Wendy L. Gady as the Executive Director of the State of Hawaii, Agribusiness Development Corporation." It was moved and seconded. The Chair asked whether the two members who were not present at the August 8 Meeting¹⁸ had sufficiently reviewed the materials provided and whether they were able to make an informed decision. Both replied in the affirmative. The Chair then asked the other members whether they had reviewed the materials and refreshed their recollections of the August 8 Meeting so that they could make an informed decision and all members answered in the affirmative. The Chair determined all nine members were able to make a decision and discussion ensued. The Board then voted by roll call, voting 7-2 in favor of the ratification.

Requester asked to know how and when the vote for ED was taken, as well as who voted in favor and who voted against the selected candidate. During the public meeting, Chair Watanabe and members Lyle Tabata, Jason Okuhama, Glenn Hong, Sharon Hurd, Karon Seddon, and Wicker voted in favor of the motion. Members Jayson Watts and Tsuji voted against the motion and indicated that the reason for their no votes was a preference to wait until the Board either consulted with OIP regarding the August 8 Meeting or received the OIP decision for this appeal.

¹⁸ Member Seddon was not present at the August 8 Meeting, and member Tsuji was not yet on the Board on August 8, 2023.

DISCUSSION

I. The August 8 Meeting was Noticed as a Remote Meeting with an In-Person Location, so Requiring In-Person Attendance of Members for the Executive Session was Improper

After this appeal was opened a Board member asked whether the Board met the Sunshine Law's notice requirements for the location of the in-person only executive session of the August 8 Meeting. Accordingly, OIP first discusses whether the August 8 Meeting notice complied with the Sunshine Law.

Boards have three options to conduct their meetings: (1) a meeting in person at one site, which is the traditional method; (2) a meeting in person at multiple sites connected via ICT, without any requirement to provide remote access, as allowed by section 92-3.5, HRS; or (3) a "remote" meeting using ICT where board members and the public may participate either remotely, or from an in-person site listed on the notice, as allowed by section 92-2.7, HRS.

The Sunshine Law requires that notice be filed six days before a meeting, and that the notice include the date, time, and location of the meeting, among other things. HRS § 92-7(a) (Supp. 2022). For remote meetings, section 92-3.7(a), HRS, requires that the notice inform the public how to contemporaneously remotely view the video and audio of the meeting through internet streaming or other means. Section 92-3.7(a), HRS, also requires that a remote meeting notice list at least one meeting location that is open to the public and has an audiovisual connection to the meeting. It also requires that a board provide a method for remote oral testimony that allows board members and other meeting participants to hear the testimony through an internet link, a telephone conference, or other means.

The August 8 Meeting was noticed as a remote meeting "Held via Teleconference." The notice stated:

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.

The August 8 Notice contained detailed instructions for Board members and the public to participate in the meeting by ICT, telephone, or in person. The August 8 Notice did not state that the executive sessions or any other part of the meeting would be in-person only.

The Search Committee had recommended in-person candidate interviews of the top candidates, and the Board voted to adopt those recommendations at the August 8 Meeting. However, the location of a meeting is set by a board's notice, and the Sunshine Law does not generally allow a board to amend a previously filed notice and agenda. See HRS § 92-7(a), (c) (requiring agenda to include place of meeting; prohibiting board from adding items to an agenda within six days of a meeting except in limited circumstances). The Board's adoption of the Search Committee's recommendation could not retroactively amend the August 8 Meeting notice that had already been posted for a remote meeting. Similarly, the notice could not be retroactively amended by the email sent to the Board members on August 7, 2023,¹⁹ which indicated that the candidate interviews would be conducted in person during the executive session. Indeed, because the August 8 Meeting notice clearly indicated that it was a remote meeting, at least two Board members initially attended the public portion of the meeting via ICT, suggesting that the email not only failed to provide legally sufficient notice of the location of a Sunshine Law meeting, but was also ineffective as a form of actual notice to the Board members.

The public meeting minutes for the August 8 Meeting list members Manuel and Seddon as excused. During the October 3 Meeting executive session, a member recalled that when the August 8 Meeting started, four members were at the in-person location and four members (Hurd, Manuel, Seddon, and Wicker) were attending remotely by Zoom link, but that Hurd and Wicker "rushed over" to attend in person after it became apparent that members could not participate unless they were present in person. Member Hurd noted that she arrived late to the in-person location, and she was told she missed approximately 20 minutes of the first candidate's interview. Member Seddon stated at the October 3 Meeting that she did not "log in" to the August 8 Meeting because she had informed the Chair she was not available to attend in-person that day. Manuel was no longer a Board member or present at the October 3 Meeting, but another member stated that Manuel was instructed to "show up" but he was not feeling well and did not want to spread his germs. As noted in footnote 11, *supra*, this account of events differs from the August 8 Meeting minutes, which indicate six members were present at the in-person location when the meeting started.

The August 8 Meeting notice included over a page of detailed instructions regarding participation in the meeting, but nowhere did it state that the executive session would be in-person only. Had the notice filed six days before the August 8 Meeting included language stating that the executive session would not be

¹⁹ OIP did not receive a copy of the materials provided to the Board for the August 8 Meeting, but the executive session discussions on October 3, 2023, referred to an August 7 email that was sent to Board members indicating the executive session would be in-person only.

conducted as a remote meeting and would be in-person only, it would have been sufficient notice to comply with the requirement in section 92-7, HRS, that the notice and agenda include the “location” of the meeting. However, OIP finds that the Board’s adoption on August 8 of the Search Committee’s recommendation for an in-person executive meeting and the August 7 email sent to the Board members requiring in-person attendance the next day were not part of the meeting notice required by section 92-7, HRS. OIP therefore concludes that those attempted amendments to the meeting location could not constitute proper notice of the “location” of an in-person only executive session on August 8.

The Sunshine Law’s requirements are primarily intended to protect the general public’s access to the formation and conduct of public policy, but its protections apply with equal force to the board members themselves. See HRS § 92-1 (2012) (setting out policy and intent of the Sunshine Law). A meeting notice serves not only to notify members of the public of the details of an upcoming meeting, but also serves to notify the members of a board of those same details.

OIP finds that failing to provide notice of the in-person location of the executive session resulted in little, if any, harm to the public, as the public is not entitled to attend an executive session anyway. OIP finds, however, that Board members were improperly prevented from participating remotely in the August 8 Meeting executive session by the Board’s decision to require in-person participation in that executive session when the meeting notice clearly stated that it was a remote meeting. Although in-person participation by all members could have been encouraged while still allowing remote participation for the members who were unable to participate in person, no members were allowed to participate remotely in the executive session despite the notice indicating the meeting was remote.²⁰ Thus, OIP must conclude that the improper notice of the in-person only executive session

²⁰ Without having to amend its agenda, a potential way the Board could have encouraged in-person attendance was by continuing the executive meeting to a reasonable day and time, pursuant to section 92-7(d), HRS. This provision has been used to move a noticed physical location to a more suitable location, such as when a larger room was needed, or the air conditioning was inoperable. Although OIP and the courts have not previously addressed the legality of continuing a remote meeting to a fully in-person location, it may be an acceptable way to accommodate the desire for in-person interviews during an executive session where all members were already on the same island. When a meeting is continued for a short time, and especially when it is recessed and reconvened on the same day, supplemental written notice to the public is not generally necessary and the continuance requirements of section 92-7(d), HRS, can be met by an announcement of when and where the meeting will be reconvened. Here, the board could have announced that the public meeting would be recessed and then reconvened in-person for the executive session after a time period that reasonably allowed board members remotely participating to reach the in-person physical location. After the executive session was concluded, the meeting could have been recessed again and reconvened as a remote public meeting.

deprived members of the ability to attend and participate in the executive session in violation of the Sunshine Law. OIP further finds that some public harm could have resulted from the decision to require in-person attendance because the vote to select the ED could possibly have turned out differently if two additional members had been able to participate and vote remotely as the meeting had been noticed. This speculative public harm, however, was partially mitigated by the public vote taken by the Board at the properly noticed October 3, 2023, meeting to ratify the selection of Gady as the ED, as discussed in section VI, infra.

II. Testimony Not Allowed on Topic of Executive Session

During the public portion of the August 8, September 21, and October 3 Meetings reviewed by OIP, and prior to taking votes to enter executive session, the Chair asked if there was any public testimony and stated that testimony was limited to the decision to go into executive session. Each time, the Board's staff stated that no one from the public had raised their hand to testify.

The Sunshine Law requires that "boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item." HRS § 92-3 (Supp. 2022). Boards shall also "afford all interested persons an opportunity to present oral testimony on any agenda item[.]" Id. OIP previously concluded that the requirement that a board must "afford all interested persons an opportunity to present oral testimony on any agenda item" does not have any qualification or exception for agenda items that the board will discuss in executive session. OIP Op. Ltr. No. F15-02 at 8, citing OIP Op. Ltr. No. 05-02 (stating the general rule that a board must accept testimony on any agenda item at every meeting and distinguishing items not on the board's agenda, which it is not required to hear testimony on). OIP then clarified that the requirement to accept testimony applies to every agenda item at every meeting, including items to be discussed in executive session at a meeting where only executive session items are on the agenda. Id.

Here, OIP finds that by limiting testimony only to a discussion of whether the Board could go into executive session, the Board denied the public the opportunity to testify on the agenda items that would be discussed in executive session. For example, agenda items on the August 8 Meeting notice included candidate interviews, and the salary and selection of a new ED, and the Board did not allow public testimony on those issues. Although no one from the public raised their hand to testify on the decision to go into executive session or to object to not being able to testify on the actual agenda items being discussed in the executive sessions, that does not mean there was no public harm because the Chair's routine announcement that testimony would be limited to the decision to go into executive session apparently had the effect of deterring public testimony on the actual agenda items.

It is unknown how many members of the public may have wished to testify on the agenda items, but were not interested in testifying on the limited question of whether the Board would be going into executive session. It is clear, however, that the public was not invited to provide testimony on executive meeting agenda items. OIP therefore concludes that the Board violated the public testimony requirements of section 92-3, HRS, by preemptively declining to accept testimony on executive agenda items. A discussion on mitigation of these violations is in section VI, *infra*.

III. A Board May Hold an Executive Session to Consider the Hire of an Officer or Employee and May Vote in Executive Session in Appropriate Circumstances

The questions raised on appeal require OIP to next discuss whether the Board was allowed by the Sunshine Law to interview two candidates and deliberate and vote in executive session regarding the salary and selection of a new ED.

Section 92-4(a), HRS, authorizes a board to hold an executive session closed to the public “upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled.”²¹ The board must also publicly announce the reason for holding the executive session “and the vote of each member on the question of holding a meeting that is closed to the public shall be recorded and entered into the minutes of the meeting.” HRS § 92-4(a).

Citing the Hawaii Supreme Court (Court), OIP previously stated:

[h]aving entered into a closed session, however, the board is obligated by the Sunshine Law to limit its discussion to topics “directly related to” its purpose for closing the meeting. *Id.* at 487, 445 P.3d 68, *citing* HRS § 92-5(b). A determination of whether a board’s discussion was properly closed to the public thus requires first examining whether the topic to be discussed fell within the scope of the claimed purpose or purposes for the executive session, and then whether and to what extent the board’s discussion and deliberation of that topic were “directly related to” the executive session’s purpose or purposes. *Id.* at 486-87, 445 P.3d at 67-68; *see also* HRS §§ 92-4, -5.

OIP Op. Ltr. No. F20-01 at 10, *citing* Civil Beat Law Center for the Public Interest v. City & County of Honolulu, 144 Haw. 466, 445 P.3d 47 (2019) (CBLCLC).

²¹ Section 92-4, HRS, was amended by Act 19, which recodified its existing language as section 92-4(a), HRS.

A. The ADC Board Properly Voted to Enter the Executive Session at its August 8 Meeting

OIP finds that seven members were present during the public portion of the August 8 Meeting at the time of the Board's 6-0 vote to enter an executive session, with the Chair apparently abstaining from voting. The Board is entitled to eleven members (including the two vacant positions) and a majority is six. OIP therefore concludes that the 6-0 vote met the requirement for an affirmative vote of "two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled" in section 92-4(a), HRS.

The August 8 Meeting minutes stated that, prior to the vote, the Chair announced that the Board was entering the executive session for:

new business items 1, 2, and 3, which is the interview of the top 2 applicants, salary discussion, selection of the applicant and salary amount, and decide on the public notification method. This discussion may be closed to the public pursuant to HRS Section 92-5(a)(2) to allow discussion of a hiring decision where consideration of matters affecting privacy will be involved.

OIP further finds that the reason for holding the executive session was "publicly announced" by the Chair as required by section 92-4(a), HRS. OIP therefore concludes that the vote to enter the executive session at the August 8 Meeting complied with the procedural requirements in section 92-4(a), HRS.

B. The ADC Board's Candidate Interviews, and Discussions on Salary and Selection of a Candidate Were Allowed Under the Sunshine Law

The Sunshine Law does not require that meetings related to personnel matters be closed to the public; rather, that decision is discretionary, provided that certain statutory requirements are met. CBLC, 44 Haw. at 476-477, 445 P.3d at 57-58. Section 92-5(a)(2), HRS, allows boards to hold an executive session "[t]o consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held[.]"

The August 8 Meeting notice stated that the Board anticipated entering an executive session under section 92-5(a)(2), HRS to discuss three agenda items: (1) ED candidate interviews; (2) discussion of ED salary; and (3) selection of the new ED. As noted above, the August 8 Meeting minutes show the Board first voted to accept the recommendations of the Search Committee. The Chair called for a

motion to enter executive session to interview the top two applicants, and to select the new ED and set the ED salary.

A board may enter an executive meeting and deliberate and vote in an executive session “convened to protect an employee’s privacy interest.” See OIP Op. Ltr. No. 20-01 at 10-11 (concluding that the Maui County Council had a proper basis for invoking the personnel-privacy purpose under section 92-5(a)(2), HRS, when it could reasonably anticipate that it would be discussing the potential hire of employees and possibly the details of individual employee’s performance and past evaluations that were likely to concern their individual privacy); OIP Op. Ltr. No. 06-07 at 4 (finding that executive meeting minutes discussing a board’s evaluation and dismissal of the ED of the Charter School Administrative Office reflected a discussion and vote properly done in executive session, but portions of the minutes were publicly disclosable at the time the minutes were requested because the ED no longer had a privacy interest in that information).

The applicability of section 92-5(a)(2), HRS, which the Court refers to as the “personnel-privacy exception” to the Sunshine Law’s public meeting requirement, must be determined on a case-by-case basis because an analysis of privacy requires a specific look at the person and the information at issue. CBLC, 144 Haw. at 478, 445 P.3d at 58. For section 92-5(a)(2), HRS, to apply, the person at issue must have a “legitimate expectation of privacy” in the information to be discussed, and people have a legitimate expectation of privacy in “highly personal and intimate information[.]” including financial and employment records. CBLC, 144 Haw. at 480, 445 P.3d at 61 (citations omitted).

A matter discussed in an executive session affects the privacy of an individual if it is one that would generally be protected under the UIPA, which governs access to public records. OIP Op. Ltr. No. 06-07 at 4 (Opinion 06-07).²² The UIPA includes a list of information in which individuals have a significant privacy interest, including “applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position,” and information

²² Footnote 8 in Opinion 06-07 notes that, because the Sunshine Law does not elaborate on what kinds of matters affect an individual’s privacy, the AG opined that it is appropriate to look to the UIPA for guidance in construing the phrase “matters affecting privacy[.]” Footnote 8 goes on to say that matters protected would be those falling within section 92F-13(1), HRS, which protects information when disclosure would constitute a clearly unwarranted invasion of personal privacy. However, the Court clarified that it does “not read the UIPA’s balancing test [at section 92F-14(a), HRS] into the Sunshine Law’s personnel-privacy exception. We adhere to the plain language of this exception, which allows specific personnel discussions to take place in a closed meeting, conditioned on whether ‘consideration of matters affecting privacy will be involved.’ HRS § 92-5(a)(2).” CBLC at 144 Haw. 480, 445 P.3d 61.

describing an individual's finances and income. HRS § 92F-14(b)(4), (6) (Supp. 2012).

Section 92-5(a)(2), HRS, explicitly allows executive discussions regarding the "hire" of an employee. The candidates interviewed at the August 8 Meeting were prospective employees at that time, and OIP finds that their status as applicants for government employment was a matter affecting privacy. OIP further finds that their respective interviews revealed not just their identities but additional information about their backgrounds and qualifications in which, as applicants, they had a privacy interest of the sort recognized under section 92-5(a)(2), HRS.

A discussion of the salary amount for an unfilled position is not, by itself, a matter affecting privacy, and budgetary issues relevant to that discussion are not matters affecting privacy, particularly if the salary is already set by statute. In this instance, however, OIP finds that there was no statutorily set salary and the Board's discussion of the salary amount to offer whichever applicant it chose could be reasonably anticipated to be so intertwined with its discussion of the applicants themselves and their respective qualifications for the position that the full discussion involved consideration of matters affecting privacy, whether directly or indirectly. For example, depending on which candidate was ultimately selected and offered the ED position, it was possible that the salary would be a different amount due to the individual's qualifications or salary requirements. Consequently, the salary discussion could have impacted the applicants' privacy interests.

OIP further finds that because the candidates' status as applicants for government employment was a matter affecting privacy, and the candidates remained applicants until such time as the successful candidate accepted the Board's offer, the Board could not have publicly voted on the question of hiring a specific candidate without revealing that candidate's identity and thus frustrating the purpose of the executive session. OIP therefore concludes that the Board's interviews of and discussions about the two candidates in executive session, including salary discussions, were proper.²³

²³ The Search Committee made its recommendations to the Board in executive session during the July 20 Meeting. OIP did not review the executive session minutes, recordings, or board packet for the July 20 Meeting. The actions taken by the Search Committee were not at issue for this appeal, and OIP notes that generally it would be appropriate for a PIG to supplement its report given for public consumption during the public portion of a meeting with a more detailed version of the report delivered in executive session, so long as the executive session was for one of the reasons set forth in section 92-5(a), HRS, and the public report sufficiently informed the public of the PIG's work to allow the public to meaningfully testify on it at the next meeting. See also footnote 7, supra.

C. The Discussion of the PIG's Recommendation on How to Inform the Public of the Successful Candidate's Selection as ED Should Have Occurred in the Public Portion of the August 8 Meeting

One of the Search Committee's recommendations that the Board approved at the August 8 Meeting was to decide on "how the public should be notified [about the selection of the ED], such as by press release, posting on the ADC website, and/or at the next board meeting to be held on August 17, 2023." This discussion occurred during the executive session at the August 8 Meeting. Having reviewed the recordings and minutes, OIP finds that this discussion in executive session did not implicate the privacy interests of the candidates, would not have frustrated the purpose of the executive session if done publicly, and thus did not fall within the executive session purpose cited to justify it. OIP concludes that the discussion on how to inform the public that the selected candidate had accepted the employment offer was not authorized to be held in executive session and should instead have been done during the public session. Although this executive session discussion was not justified by the personnel-privacy exception of section 92-5(a)(2), HRS, OIP recognizes that it occurred when the Board was about to lose quorum and was rushing to wrap up its business before two members left the meeting.

D. Boards May Vote in Executive Session in Appropriate Circumstances

Decisions of a board are made by a majority vote of members in attendance at a meeting, and they may not deliberate toward a decision or vote unless a quorum of the board is present. OIP Op. Ltr. No. 01-01 at 21, 37. OIP advises that, in most instances, a board must vote in an open meeting on the matters considered in an executive session. However, OIP has previously opined that boards may deliberate and make decisions in executive sessions in limited situations. OIP Op. Ltr. No. 03-07 at 4 (Opinion 03-07). OIP reasoned that, in some circumstances, to require a vote in an open meeting on matters discussed in executive sessions would defeat the purpose of going into an executive session. "Thus, it would be illogical if boards could enter into executive meetings pursuant to section 92-5(a), HRS, but could not vote on the matters discussed, except in an open meeting." *Id.* at 5. Opinion 03-07 further stated that, in keeping with the Sunshine Law's policy on openness, votes should only be held in executive session when to do otherwise would defeat the lawful purpose for holding an executive session in the first place, and such a determination must be made on a case-by-case basis. *Id.*

In appropriate circumstances, a vote on the hire, evaluation, discipline, or dismissal of a government employee can be one that, if taken in open session, would frustrate the purpose of the executive session in which the proposed action was discussed. In the case of a board's vote on whether to hire a particular individual, unless the individual had previously been publicly identified as a candidate, the

individual would have a significant privacy interest as an applicant. E.g., OIP Op. Ltr. No. 95-2 (finding the UIPA's personal privacy exception at section 92F-13(1), HRS, permits an agency to withhold the names and other identifying information of unsuccessful "eligibles"). Additionally, OIP has recognized the privacy interest of unsuccessful candidates and that disclosure of candidates' identities may discourage people from applying for positions due to possible adverse effects on their current employment. See OIP Op. Ltr. No. 91-08 at 4 (concluding that information identifying unsuccessful applicants for appointment to government boards and commissions can be withheld under section 92F-13(1), HRS, to avoid a clearly unwarranted invasion of their privacy).

OIP finds that the executive session during the August 8 Meeting was an appropriate circumstance for the Board to vote in executive session to select the winning candidate, to protect the privacy interests of both candidates while they remained applicants. However, the manner of voting – by secret ballot – was not appropriate and was a violation of the Sunshine Law for the reasons discussed in section IV, infra.

With regard to the Board's decision on a salary, OIP concluded above that it was proper for the Board to enter into executive session because it could have reasonably anticipated that it would be discussing different salaries to offer the ultimately selected candidate based on their individual qualifications or salary requirements. See OIP Op. Ltr. No. 20-01 at 10-11 (recognizing that because the executive session had not yet been held, the board did not know exactly what would be said and that it could go into executive session if it reasonably anticipates that it would be discussing a matter concerning possible hiring and individual privacy). The executive minutes reveal, however, that the discussion did not concern the candidates' qualifications or salary requirements, but rather what the Board could afford to pay based on its budget. OIP finds that the discussion of the salary amount was not so intertwined with the discussion of the two candidates, their qualifications, or their salary requirements as to justify a vote in executive session on the salary to be offered to an unidentified candidate. OIP finds the Board could have voted on the salary amount in public without frustrating the executive session

purpose of protecting candidates' privacy interests. OIP therefore concludes that the salary vote should have been taken in public session.²⁴

Finally, the Board discussed and agreed, without a vote, upon the method by which the public would be notified of the Board's decision on selection of the new ED. Having reviewed the evidence, OIP does not find any privacy interest that would have been affected by this portion of the executive discussion. OIP concludes this discussion should also have occurred during the public portion of the meeting.

IV. Boards May Not Take Secret Ballot Votes Because the Sunshine Law Requires a Record by Individual Member of Votes Taken

Having confirmed that a board may in limited circumstances vote in an executive session, OIP next discusses the secret ballot vote that was taken to select the ED.

Several sections of the Sunshine Law clearly show that boards may not take secret ballot votes. First, section 92-9, HRS, sets forth the requirements for meeting minutes. Boards must keep written or recorded minutes of all meetings, and the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. HRS § 92-9(a). Written minutes "shall include" the substance of all matters proposed, discussed, or decided; and "a record, by

²⁴ The executive session minutes for the August 8 Meeting state that a member suggested a dollar amount, the attorney asked if everyone was "good with that," and "[t]here was a unanimous response of yes and nodding heads." The Sunshine Law does not require that votes be conducted by making and seconding of a motion, or that boards otherwise follow parliamentary procedure. However, without some kind of adherence to parliamentary procedure, it may be difficult to meet the reporting requirements in section 92-9, HRS, which states that meeting minutes shall include the substance of all matters proposed, discussed, and decided, the views of the participants, and a record of votes by individual member of motions and votes made. The motion and vote structure of typical parliamentary procedure clarifies what proposition a board is currently considering and how many of the members are for or against it, and allows each member to confirm that his or her vote has been registered correctly. The absence of that structure in the Board's executive session discussions and decisions left considerable ambiguity as to when it was discussing and when it was voting on an issue, what constituted its decision, and which members were for or against that decision. OIP therefore recommends that if a board prefers not to follow standard parliamentary procedure, it should ensure that its discussion and decisions are done in a way that makes clear when it is discussing an issue and when it is voting on a proposal, as well as what the proposal is and which members are voting for or against it. OIP specifically recommends against head nods or other types of inaudible votes because there may be confusion as to whether a vote is unanimous and because it could make it difficult for a board to create an accurate record of the meeting as required by section 92-9, HRS.

individual member, of any votes taken[.]” HRS § 92-9(a)(3). A written summary must accompany any minutes that are posted in a digital or analog recording format and shall include a “record, by individual member, of motions and votes made by the board[.]” HRS § 92-9(b)(3). The requirement to keep minutes applies to “all” meetings, and does not distinguish between public or executive sessions, and minutes shall be publicly disclosed unless “such disclosure would be inconsistent with section 92-5[(a),]” HRS, which allows executive meetings to be closed to the public for eight specified purposes. HRS § 92-9(b).²⁵

Second, for a remote meeting held by ICT, section 92-3.7(b)(5), HRS, requires that “[a]ll votes shall be conducted by roll call unless unanimous[.]”

Third, section 92-4(a), HRS, requires that “the vote of each member on the question of holding a meeting that is closed to the public shall be recorded and entered into the minutes of the meeting.”

All these sections clearly require, based on a plain reading, that boards record votes by individual member. To have a record of votes by individual member, a board must use a roll call vote unless the vote is unanimous (in which case it is evident that all members recorded as present voted for the same result). OIP therefore concludes that boards may not hold secret ballot votes, whether in public or executive session.

Here, during the August 8 executive session discussion of the applicants, it was suggested that the vote could be done by “secret ballot.” The executive session minutes indicate that while discussions about the candidates continued, “paper ballots” were passed out and each member present wrote the name of one of the two candidates. The votes were placed in an envelope that was passed around.

Before the secret ballot results were announced, one board member asked whether, “whatever the results are,” the Board could announce publicly that it was unanimous, and further discussion ensued as to whether the board could reach a “unanimous decision based on the majority.” The Board’s attorney then announced that Gady had received more votes, and another member asked whether there was a “consensus of a unanimous board” on selection of the candidate who had more votes. The executive minutes then show that a member asked if it was “unanimous based on a majority” and “[t]he board members nodded in agreement” without

²⁵ Notably, the Court has stated that executive minutes must be disclosed “[w]here an executive meeting, or a portion thereof, unlawfully took place behind closed doors[.]” CBLCL at 144 Haw. 490, 445 P.3d 71.

specifying that “all” members had nodded.²⁶ Due to the imminent loss of quorum, it is unclear whether board members may have intended to follow up with a more formal vote once it returned to the public meeting, but because the Board lost quorum and the ability to act, no vote could have been taken in the public portion of the meeting. Notwithstanding the ambiguity as to what constituted the Board’s actual number of votes to select Gady as the ED, OIP finds that the Board’s subsequent actions were consistent with an understanding that it had decided to make an offer to her.

Members also discussed the timing and approval of a press release that would subsequently be issued to announce the new ED’s identity to the public. It was stated that there would be a press release, but there was no vote on the matter. Soon thereafter, two members left the executive session and the Board returned to the public session. Because there was no quorum, the Board could not take any further action on August 8, but the Chair did provide the report required by Act 19 in public session.²⁷

Based on this review of the recordings and minutes of the executive sessions for the August 8 and September 21 Meetings (which recounted what occurred at the August 8 Meeting), OIP finds that (1) the Board voted by secret ballot on which candidate to make an offer to when each member wrote the name of his or her selected candidate on a paper ballot; (2) the paper ballots were collected while the Board continued to discuss the issue; and (3) the number of votes for each candidate was announced, with Gady having more votes, but without identifying how each member voted. OIP further finds that shortly before the results of the secret ballot were announced, there was a discussion on whether it would be publicly announced that there was a unanimous decision for whichever candidate had been selected by the secret ballot, and an unspecified number of Board members voted by head nods in favor of announcing that the vote for the selected candidate was unanimous.

Due to the ambiguity surrounding the head nod vote, it is not clear whether the Board’s intent was to treat the secret ballot vote as an interim decision on which candidate to focus on and with that decided, agree unanimously to make an employment offer to Gady, or to publicly announce unanimous support for her despite the secret ballot vote. In either event, OIP notes that the secret ballot vote clearly affected the eventual outcome. Once the majority had selected Gady via the

²⁶ During the executive discussion at the subsequent September 21 Meeting, a member stated that the Board had not taken a second vote on August 8 to select the ED, but the understanding was that the Board wanted to be “unanimous as a general rule.” Thus, at least one member apparently did not understand the head-nods as a second vote to unanimously select Gady.

²⁷ The question of whether the Sunshine Law authorized giving the Act 19 report after the meeting ended due to lack of quorum is addressed in section V, *infra*.

secret ballot vote, the Board treated the question of which candidate to select as being closed; in other words, regardless of the Board's intent in the head nod vote, it is clear that the secret ballot vote decided the issue of who was the winning candidate.

Thus, OIP concludes that the secret ballot vote violated the Sunshine Law's provisions requiring a vote by individual board member. HRS §§ 92-9(a)(3); 92-3.7(b)(5); see also HRS § 92-9(b)(3). OIP also concludes that without identifying how each member had secretly voted, the Board cannot meet the Sunshine Law's requirement that the minutes of the August 8 Meeting executive session include a record, by member, of votes taken. HRS § 92-9. These conclusions are "consistent with the legislature's '[d]eclaration of policy and intent' set forth in § 92-1 (1985), 'that the formation and conduct of public policy -- the discussions, deliberations, decisions, and action of governmental agencies -- shall be conducted as openly as possible' in order 'to protect the people's right to know[.]'" Kaapu v. Aloha Tower Dev. Corp., 74 Haw. 365, 383, 846 P.2d 882, 890 (1993). OIP again suggests that following parliamentary procedure, even in executive session, would make clearer what decisions a board is making and how each member is voting.

V. Executive Session Reports

Act 19 requires that any discussion or final action²⁸ taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held. Act 19 further provides that the information reported should not be inconsistent with the purpose for which the executive meeting was convened, and allows a board to maintain confidentiality of information for as long as its disclosure would defeat the purpose of convening the executive meeting.

The sufficiency of the executive session report made at the August 8 Meeting, and specifically whether it should have named the selected candidate, has been questioned as part of this appeal. At the August 8 Meeting, after the executive session, the Chair announced the Board had:

conducted in-person interviews of the top 2 applicants; . . . discussed the salary range to be offered to the selected executive director applicant; . . . selected the person to be offered the executive director

²⁸ The Sunshine Law does not define the term "final action," but the Court has defined it in the context of section 92-11, HRS, to mean "the final vote required to carry out the board's authority on a matter." Kanahele v. Maui County Council, 130 Haw. 228, 259, 307 P.3d 1174, 1205 (2013) (Kanahele) (holding that multiple continuances of public meetings did not violate the Sunshine Law, but the distribution of memoranda between councilmembers was a violation).

position and salary amount; [and noted it] will offer the selected person the executive director position in writing via letter to be delivered by the US postal service. If the offer is accepted, the name of the new executive director will be made public by press release.

Although the executive session report did not state which candidate had been selected, OIP finds that the Board was authorized under Act 19 to withhold Gady's name as the selectee at that time because she had not yet been informed of her selection and had not accepted the position. At that time, the Board had not disclosed the name of any applicant for the ED position to protect their privacy interests, and as OIP has already concluded, the Board legally discussed and voted on which candidate to select in executive session under section 92-5(a)(2), HRS, to protect their privacy as applicants. OIP accepts that there was a significant privacy interest here by Gady in the fact that she applied for the ED position and that premature disclosure would have frustrated the purpose of the executive session at the August 8 Meeting, which was to protect applicant privacy.²⁹

Gady retained a privacy interest in the fact that she was an applicant until she accepted the offer, and OIP declines to find here that the Board should have disclosed a "short list"³⁰ of the top two candidates who were interviewed. The Board did not publicly disclose the names of any candidates during the selection process, including when the Search Committee reported its recommendations. The applicants were all being treated as having significant privacy interests. OIP therefore concludes that in this instance, Act 19 allowed the Board to leave out the

²⁹ OIP notes, that one way to protect a candidate's privacy interests while also conducting the meeting as openly as possible could have been to conduct a vote in public without stating the candidate's name or providing any other identifying information or candidate ranking. For example, a vote could have been taken in the public session on a motion to "make an offer of employment to Candidate X or Candidate Y."

³⁰ For some positions of particularly high public interest, a "short list" of finalists being considered is made public prior to selection of the individual to be offered the position. See OIP Op. Ltr. No. 93-13 (finding that lists of nominees generated by the Judicial Council to fill vacancies on the State Ethics Commission from which the Governor must make an appointment are public under the UIPA because none of the exceptions to disclosure at section 92F-13, HRS, permit the Judicial Council to withhold the list). However, this is not a UIPA appeal where publication of a list of names is at issue. Further, the Court previously stated that it does "not read the UIPA's balancing test [at section 92F-14(a), HRS] into the Sunshine Law's personnel-privacy exception. We adhere to the plain language of this exception, which allows specific personnel discussions to take place in a closed meeting, conditioned on whether 'consideration of matters affecting privacy will be involved.' HRS § 92-5(a)(2)." CBLCL, 144 Haw. at 480, 445 P.3d at 61.

selected candidate's name, even though it was a key detail of the action taken, to avoid frustrating the purpose of the executive session.

Regarding the salary amount the Board had agreed upon, OIP has already concluded that the salary amount to be offered, by itself, was not a matter affecting privacy since the candidates remained unidentified, and the vote on it should have been taken in public. OIP therefore concludes that in this case the salary amount decided upon at the time of the August 8 Meeting should have been disclosed in the executive session report.³¹

OIP notes also that the executive session report for the August 8 Meeting was actually delivered after the meeting had ended due to the Board's loss of quorum. In other words, five members of the Board (including the Chair) were present at the time the Chair made the executive session report to the public, but they were not in a meeting. No permitted interaction clearly authorizes this situation, and the most applicable permitted interaction, section 92-2.5(d), HRS, only authorizes board members "present at a meeting that must be canceled for lack of quorum" to receive testimony and presentations on agenda items, with no deliberation or decision-making. Yet at the same time, the plain language of Act 19 calls for the executive session report to be given "when the board reconvenes in the open meeting at which the executive meeting is held." HRS §92-4(b). A board that loses quorum in executive session could technically meet that requirement by continuing the meeting to a later date and time at which it can make its executive session report, but the delay entailed in doing so would be contrary to Act 19's purpose to promptly inform the public as to what occurred in an executive session. OIP therefore concludes that to give effect to Act 19 when a board's meeting has ended prematurely due to a loss of quorum in executive session, the Sunshine Law must be interpreted to allow the remaining members present to nonetheless give the

³¹ The actual salary or salary range for most current and former government employees is public under section 92F-12(a)(14), HRS. Until an ED was hired, this section would not have required the ED's actual salary to be disclosed. A board could, however, discuss in public the salary or salary range that it intended to offer any successful applicant for a position, without discussing individual applicant's qualifications or confidential information.

public executive session report before announcing the meeting's adjournment, as the Board did here.³²

VI. Potential Remedies

A. Courts May Void a Board's Final Action

OIP does not have the power to void final actions taken in violation of the Sunshine Law. This power is reserved to the courts, as section 92-11, HRS, states that "[a]ny final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action."

For an action to be voided, there must first be a violation of section 92-3 or 92-7, HRS, or a violation of another Sunshine Law provision that also results in violation of the open meetings requirement of section 92-3, HRS. CBLIC, 144 Haw. at 491, 445 P.3d at 72 (concluding that discussions and deliberations that are not directly related to a permissible exception, as required under section 92-5(b), HRS, also violate the open meetings requirement under section 92-3, HRS, and thus the board's final action is voidable under section 92-11, HRS).

Second, the final action must be timely challenged within 90 days under section 92-11, HRS. The Court has recognized that in establishing a 90-day limit on the voidability provision of section 92-11, HRS, the Legislature recognized that "[v]iolations cannot be made to render administrative action invalid without durational limitations" as to do so would mean that "administrative actions would be robbed of all sense of finality." Kanahele, 130 Haw. 228, 258, 307 P.3d 1174, 1204 (2013) (citing the Senate Judiciary Committee's S. Stand. Comm. Rep. No. 878 in the 1975 Senate Journal at 1178). The 90-day limit helps to bring finality to board actions and avoid a perpetual cloud of uncertainty as to whether a board's

³² OIP notes there were executive summaries given after the executive sessions at the September 21 and October 3 Meetings. The sufficiency of those executive summaries was not raised in this appeal, so OIP does not make a determination regarding them. OIP nonetheless reminds the Board that an executive session report is specifically required to include the board's "discussion" during the executive session. When no action was taken the report should not simply state that no action was necessary but instead should generally summarize the issues raised or considered by the board in the course of its discussion, leaving out any details that might frustrate the purpose of the executive session.

action is final. The beginning of the 90-day period for a court challenge depends upon when the final vote is taken.³³

The Court has “expressly decline[d] to adopt a standard for determining when the Sunshine Law would warrant invalidation under HRS § 92-11.” Kanahele 130 Haw. at 260, 307 P.3d at 1206. Moreover, the Court has warned that it is not suggesting “that HRS § 92-11 applies only to meetings at which a “final action” is taken, or that any actions taken in violation of the Sunshine Law during meetings or discussions prior to “final action” are “cured” if the final action is taken in compliance with the Sunshine Law. Id. at 259, 307 P.3d at 1205.

Finally, even if section 92-11, HRS, is not directly applicable, the courts “may award any appropriate remedy” pursuant to section 92-12(b), HRS, which states, “The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.” CBLC, 144 Haw. at 489, 445 P.3d at 70. In CBLC, in addition to possibly voiding a retirement agreement, the Court stated that the circuit court “shall order the Commission to release the applicable executive meeting minutes, either in full or in redacted form, if a violation is found.” Id. at 489-90, 445 P.3d at 70-71.

B. Ratification and Other Mitigation Efforts

When a violation of the Sunshine Law has occurred, a board’s later action cannot undo the fact that the violation occurred. As discussed above, the Court has recognized that retroactive attempts to correct improper procedures may not necessarily “cure” a Sunshine Law violation. Kanahele at 259, 307 P.3d at 1205.

Nevertheless, boards will often take steps to attempt to “cure” a violation and in such a case, what the board is really doing is acting to “mitigate” public harm that may have resulted from it. Boards have also changed their procedures so as to not repeat past Sunshine Law violations.

This opinion makes clear that the Board did violate the Sunshine Law by, among other things, preventing Board members’ remote participation in the executive session and taking the secret ballot vote that resulted in selection of the ED at the August 8 Meeting. At its October 3 Meeting, the Board proactively took action to mitigate possible violations by voting 7-2 “for the ratification of the selection of Wendy L. Gady as the Executive Director of the State of Hawaii, Agribusiness Development Corporation.”

³³ In Kanahele, the Court concluded that because the Maui County Council’s first of three readings on bills did not constitute a “final action,” the complaint was prematurely filed and had not been taken within 90 days of the final action as required by section 92-11, HRS. Kanahele, 130 Haw. At 259, 307 P.2d at 1205.

Black's Law Dictionary includes four legal definitions for "ratification." The one most relevant here defines "ratification" as "[c]onfirmation and acceptance of a previous act, thereby making the act valid from the moment it was done[.]" Black's Law Dictionary 1289 (8th ed. 2004). Robert's Rules of Order, which sets suggested rules for parliamentary procedure, describes ratification as a motion used to confirm or make valid an action already taken that cannot become valid until approved by the assembly. Robert, Henry M. (2011), Robert's Rules of Order Newly Revised, 11th ed., p. 124. Based on the legal and parliamentary definitions of the term that are generally aligned, OIP's understanding is that "ratification" is generally the act of adopting or confirming a prior act, including one that was not validly taken. Ratification, however, does not necessarily "cure" Sunshine Law violations. Kanahele at 259, 307 P.3d at 1205.

Nevertheless, OIP commends the Board's attempt to mitigate its Sunshine Law violations by taking a ratification vote by roll call at the October 3 Meeting. OIP further finds that, despite the multiple Sunshine Law violations found herein, there was no bad faith by the Board, and the Board evidenced its desire to be transparent and to comply with the law. OIP, however, is unable to predict whether the ratification would satisfy the courts if a lawsuit challenging the Board's action is timely filed.

There may be no other practical remedy besides ratification of the August 8 secret ballot vote. While "re-doing" the hiring process and starting from scratch is theoretically an option, this could raise new problems given that Gady is already in place as the ED, and it seems unlikely that the Board's support of Gady would have changed following the August 17 public announcement of her selection as the ED. Moreover, different and potentially greater harm to the public could occur from a complete "re-do" as the delay and uncertainty could hamstring the Board and cast doubt on the validity of actions taken in the interim by it and the ED.

OIP notes, however, it may not be possible to mitigate any harm caused by disallowing Board members' remote participation at the August 8 Meeting or by failing to provide an opportunity for public testimony on executive session agenda items. Moreover, the Board's ratification still does not inform the public what the original vote was by member, and thus does not meet the purpose of the minutes requirement and other Sunshine Law requirements that call for recording votes by member to ensure that each member agrees his or her vote was reflected correctly and inform the public of who voted in which way.

Because the ratification vote would not serve to mitigate these and other Sunshine Law violations, the Board may want to consider the guidance regarding potential remedies provided by the Court in CBLC, such as the disclosure of executive session minutes. Here, relevant executive session minutes could be disclosed with redactions to only those portions that related to the applicant

interviews or that could identify unsuccessful applicants or adversely affect any applicants' legitimate privacy interests under section 92-5(a)(2), HRS. CBLC, 144 Haw. at 478-482, 445 P.3d at 59-63; OIP Op. Ltr. No. F20-01 at 11-17. Factors relevant to applicants' legitimate privacy interest include whether the information is required by law to be disclosed or has already been publicly disclosed. CBLC at 481-82, 445 P.3d at 62-63. Further redactions may be possible if the executive session materials may also be withheld under the attorney consultation exception at section 92-5(a)(4), HRS, regarding "questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."³⁴ See OIP Op. Ltr. No. F20-01 at 11-12, 16-17 (concluding that the board's discussion of internal management issues at a systemic level and their legal implications fell within the attorney consultation exception of 92-5(a)(4), HRS, and could be redacted).

In conclusion, OIP is unable to predict what the courts would do if a timely lawsuit is filed under section 92-11, HRS, but it has found no bad faith by the Board and has provided guidance to aid the Board with additional mitigation possibilities and advice on how to comply with the Sunshine Law in the future. Additionally, OIP has extensive online training materials at oip.hawaii.gov, and reminds the members of the Board that they, as well as the public, are always welcome to contact OIP's "Attorney of the Day" (AOD) by email or telephone for informal guidance on the Sunshine Law or UIPA.

RIGHT TO BRING SUIT

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.

This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint with the circuit court within thirty days of the date of an OIP decision in accordance with section 92F-43. HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). OIP and the person

³⁴ As the Court explained in CBLC, the Sunshine Law's attorney consultation exception is not equivalent in scope and is far narrower than the attorney-client privilege. CBLC, 144 Haw at 488-89, 445 P.3d at 69-70.

who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES



Carlotta Amerino
Staff Attorney

APPROVED:



Cheryl Kakazu Park
Director

Project Update November 2023

Fish Meal & Feed Production Plant

James Campbell Estate

91-269 Olai Street Kapolei, Hawaii 96707



01. Mission

With our expertise in aquaculture feed production, we aim to produce high-quality feeds that meet the nutritional requirements of various fish species and promote their growth and health. Our goal is to build a state-of-the-art feed mill equipped with the latest technology and operated by a skilled team of professionals committed to delivering consistent and reliable products.

Our 30-plus years of experience in the seafood industry gives us unique insights into the needs and challenges of aquaculture operations. We understand the importance of quality feeds in achieving optimal production and profitability.

02. Vision

- Provides a solution for using fish/animal waste as a resource
- Keeps money in the state's economy
- Creates jobs and boosts the economy
- Offers economical prices for a higher protein product
- Supports local research and development
- Improves productivity
- Provides educational opportunities
- Reduces feed cost
- Reduces food cost
- Promotes environmentally conscious practices

Who We Are

Diamond Head Seafood is a local owned and operated business that has been operating in Hawaii for over 26 years. It has established itself as a leading provider of fresh seafood, with a large family of brands supporting the complete Halm's Enterprise. We currently support over 102 grocery stores, 150 restaurants, provide over 185 local jobs, all while maintaining a 99% minority employed business.

Diamond Head Seafood prides itself on sourcing only the highest quality seafood from local waters, and has a commitment to sustainability and responsible fishing practices. With a loyal customer base and a reputation for excellence, Diamond Head Seafood and its family of brands are an integral part of Hawaii's culinary scene.



About Our Team

Mike Irish - CEO of Halm’s Enterprises. Starting with Park’s Brand in 1985, he has grown the family of brands to encompass four companies, twelve plus brands. His leadership and dedication to the community have led him to sit as a Board Member for the Rehabilitation Hospital of the Pacific, State of Hawaii Judicial and Executive Salary Commissions, Castle Resorts, St. Louis Schools, Honolulu Community Foundation, and more. He brings more than 38 years of experience to the group.

Michael Yonemura With over 32 years of experience in the seafood industry, Mr. Yonemura has worked in every role, starting from a fish cutter. He understands the significance of each job in the seafood processing industry. 2015, he was named President of Diamond Head Seafood and L. Kang, overseeing their DBA businesses. Since then, these companies have expanded their product range across the mainland USA, sharing the beloved "local" delicacies with people all over the country.

Ryan Murashige Ryan Murashige has extensive experience in aquaculture, having worked at various hatcheries and research facilities in Hawaii and North Carolina. He has focused on developing hatchery and grow-out technologies for Southern Flounder and Blue Crab and culturing Japanese flounder and Pacific Threadfin. Ryan was CEO of Hukilau Foods in Hawaii and started his company, Aquaculture Technologies of the Marshall Islands. He has spent most of his career working in aquaculture and conducting research in the field.

Troy Antonelis In 2002, Troy earned a Master's degree in Public Administration and a Master's certificate in Environmental Planning from the University of Hawaii, Manoa. He then worked at the State of Hawaii's Department of Land and Natural Resources, focusing on coral reef ecosystems outreach and education. Troy shifted his focus to entrepreneurship in 2005, succeeding in catering and earning a "Fastest 50" small business award in 2012. Recently, Troy joined Diamond Head Seafood to pursue new challenges.

Dani Chu Dani has an impressive 15-year track record in media and marketing. She began her career at The University of Kansas Center for Research on Learning under Dr. Don Deschler, gaining experience in grant writing and fundraising for special education development. She later transitioned into digital media, app development, and design. Dani has worked with multiple seafood companies in the local area, where she helped modernize their processes, setting them up for growth and expansion, bringing local seafood nationwide.

Pre-Award Investments

It is essential to consider all expenses, including those incurred before the start of a project when evaluating the overall cost and benefits. The expenses listed, such as real property taxes, retainer fees, and payroll, can contribute to the project's success. Additionally, the investment in the Campbell Property shows a commitment to long-term growth and stability. By accounting for these expenses, we can create a more accurate budget and ensure that the project is set up for success from the beginning.

- 4/2/2007 Assignment lease, sublease 16 years of expenses
- Annual Real Property Taxes \$491.91 per year \$7871.56 (16 yrs)
- Ryan Murashige:
 - Nine years on retainer \$12,000 per year \$108,000.00 R&D
 - Payroll 7/1/22 – 12/31/22 \$3,000 per month \$18,000.00
- Rent 12/2008 – 6/2021 \$6,900 per year \$96,600.00 Total
- Add'l charges lease negotiations increases \$2540.00
- New Rent 7/2021 – 12/31/22 \$9,000 per year \$13,500.00 Total
- Prior investment in Campbell Property \$246,510.56 Total





Refuse amount impact in dollars

The Western Pacific Regional Fishery Management Council has released its SAFE report for 2022, which includes reported values adjusted to a whole/round weight basis from auction data, including H&G, G&G, and whole fish. In 2022, the total commercial pelagic fish landings in Hawaii were 29.6 million lbs, with total deep set (bigeye tuna directed trips) LL fish landings of 24.2 million lbs and total shallow-set (swordfish directed trips) LL fish landings of 1.9 million lbs. Please note that actual HG and GG plus whole fish require access to UFA data, which reports on a sold basis. This information is important for understanding the current state of fisheries and seafood industry as a whole in Hawaii and making informed decisions for sustainable management.

v4 (9/21/2023)

[Download Full Report Here](#)

Project Summary and Updated Timeline

Construction	\$1.5 Million	12-18 Months
Fish Mill & Other Equipment	\$2.5 Million	6-12 Months
Fish Feed Formulation	TBD	6-12 Months
Market Testing	TBD	12-24 Months

Our project timeline has been delayed due to unforeseen challenges we've encountered in the process. Here are the updated timelines:

- By the end of the year 2023, we aim to have our 300 lbs per hour machine fully operational to increase our output.
- By the summer of 2024, we will have our 2000 lbs per hour machine up and running. This will significantly boost our production capacity, enabling us to undertake larger projects and broaden our customer base.

The original timeline outlined in the RFP has been deferred due to barriers we've experienced in obtaining the necessary permits and addressing land development challenges. The recent Maui fires and Hawaiian Electric's involvement have forced them to reassess their priorities. Unfortunately, we're now facing a 70-week wait to receive outstanding reviews and approvals for the properties needed for electrical enhancements from HECO. These enhancements are for Connecting electricity/water to the property/sprung structure that exceed the specifications of the Fish Feed Mill with a reasonable buffer for cold storage, prep, etc. When the proposed system is LIVE/in operation, total plant electrical requirements call for 286 KW/Hr and water at 180 GPH.

See Production Requirements for extensive description of construction needs for property improvements still outstanding.



Production Requirements

Construction -- \$1.5 million/ 12-18 months. The tentative scope of construction includes:

- a. Utilities. Connecting electricity/water to the property/sprung structure that exceed the specifications of the Fish Feed Mill with a reasonable buffer for cold storage, prep, etc. When the proposed system is LIVE/in operation, total plant electrical requirements call for 286 KW/Hr and water at 180 GPH.
- b. Gas. There is also a gas requirement if connecting gas lines is possible. If gas is not an option, we have the option to purchase a larger boiler.
- c. Wastewater. Designing the process/location of the wastewater. Wastewater would come from the 180 GPH to operate the system. The proposed system at 2,080 hours per year has the capacity of 6,000 tons of fish feed per year (12 million pounds of fish feed). We are only looking at 10% of this, or 1.2 million pounds of fish feed. Assuming the plant operates at 10-20% of the 2,080 hours, this would be 3,000-6,000 gallons per month. Along with any other wastewater from the property (restrooms/sanitation/cleaning/etc.). Total wastewater capacity may be up to ~10,000 gallons per month. Steam requirement of the proposed plant is 631,800 BTU. This may not translate to wastewater since the steam evaporates.
- d. Paved Road. Paving a road from the entrance of the property to the sprung structure with a turnaround radius for delivery vehicles. Paving will continue to workshop site, second slab, and around the sprung structure and through certain parts of the property for the most convenient delivery vehicle egress/ingress.
- e. Customer Parking (MAKAI). Design/install 8-12 stalls for onsite customer parking near the office (makai side of sprung structure). If we collaborate with Island Commodities, customers could park in their parking lot and walk to sprung structure. Note: if we collaborate with Island Commodities, would need a Gate System to be installed to open/close daily connecting both properties.
- f. MAUKA Receiving Area/Scale. Design/build a receiving area with bins/scale to weigh in fish waste received. Receiving-related information will be manually entered.
- g. Cold Storage. Design/build cold storage adjacent to Receiving Area and in close proximity to the Fish Feed Mill that makes sense logistically (see attachment 2, 3, 4). The cold storage would be ~8,000 SF to store pre-processed fish waste and any fish waste by-products that require cold storage.
- h. MAYBE: Grinder Step. There may be a step to convert fish waste through a grinder and then to Fish Feed Mill. Designate a physical location for this step to take place.
- i. Production Line. Design/install production line that would be used as an area to bag/weigh the finished fish feed product and then place the bags on pallets. Pallets would be placed on the storage racks that could be transported to a storage area next to the MAKAI Office for customer pick-up.
- j. Scale. Commercial grade scale to weigh bagged finished product.
- k. Fish Feed Mill Installation. The equipment installation will be performed by the Fish Feed Mill equipment provider; however, there may be additional scope that could be detailed with the General Contractor through change orders.
- l. Stickwater/Fish Oil. Stickwater (water) yield is 30% from the fish waste or about 8,000 gallons per month. Two liquid tanks will collect the stickwater and fish oil, separately, and would be located somewhere outside of the sprung structure that makes the most logistical sense for trucks to access and that takes into consideration setback requirements, if any. Both stickwater and fish oil will be byproducts that can be sold separately. The stickwater can also be used to bind fish pellets so we would need equipment to boil/sanitize the stickwater.
- m. Production Line for Fish Oil/Stickwater. Some of the fish oil/ stickwater will be re-claimed for fish feed production. The remainder would be processed in this area for sale to a secondary market. Fish Oil would be poured into 55-gallon drums, stored, and sold separately. Stickwater would be pumped directly from the tank into a truck/tanker and sold separately.
- n. PCS/Customer Pick-Up Area. Design an area outside of the office for customer pick-up of bagged fish feed. The area would have a POS system.
- o. Storage Racks. Designing/install storage racks for the fish feed manufactured from the Fish Feed Mill. The fish feed/fish meal will not need to go into cold storage because it is a dry feed. The fish feed would go to the production line to be bagged and stored onto pallets on the storage racks for customer pick up/delivery. Most of the finished product will be delivered.
- p. Office/Restrooms. Design/build restrooms/office space in the BACK of the sprung structure. Approx. 500 SF of office space plus approx. 250 SF of restrooms (men's & women's). Customer pick-up area would either be outside of the office or it could be a pick-up window that can be accessed from the office.
- q. Fan/Cooling System. Design/install fans or some type of cooling system (not HVAC) for workers.
- r. Camera System. WiFi enabled camera system throughout building to see interior and exterior of sprung structure.
- s. Inventory Management System. Finished product will be tracked manually and entered into a software in the office.

Potential value of feed used and savings (Usage Numbers)

The American Animal Feed Industry Association's 2020 report on Feeding Domestic Livestock estimated that aquaculture consumed 613k of animal by-products and waste for feed. However, post-COVID, the organization has reported processing disruptions in livestock feed products. Our feed project now has a greater opportunity to offer a sustainable, local solution that helps reduce the negative environmental effects of seafood processing plants.

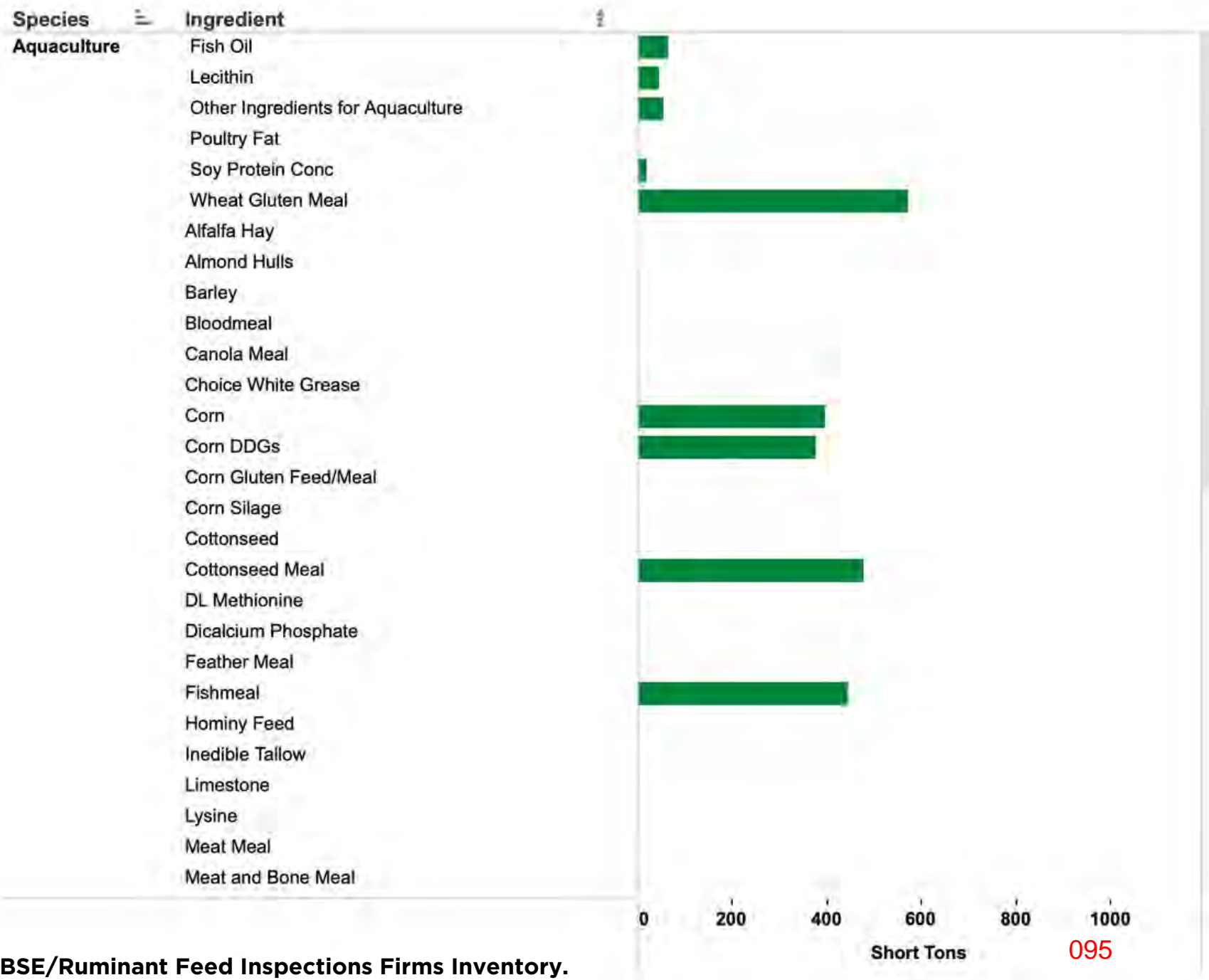
To promote sustainability and self-sufficiency in Hawaii's aquaculture industry, it is important to focus on locally sourced feed ingredients. By doing so, we can reduce our reliance on outside sources and ensure a more stable and resilient industry. The current chart highlights the need for more locally sourced feed ingredients to be incorporated into the industry. The chart below shows the State of Hawaii’s aquaculture ingredient consumption by weight.

Below are our anticipated feed used and savings projections:

- Shrimp
- Shrimp Improvement Kanpachi
- Ocean Era
- Tilapia
- Kohala Mountain Fish
- Hawaii Fish Company
- Puna Aquafarms
- Kunia Country Farms
- Mari’s Garden

Approximate 10 Million lbs being imported in to the state at a approximate value of \$20 Million dollars

[Download Full Report Here](#)



Location:



James Campbell Industrial Park
91-269 Olai Street Kapolei, Hawaii 96707
Approximately 4 Acres



Site Details

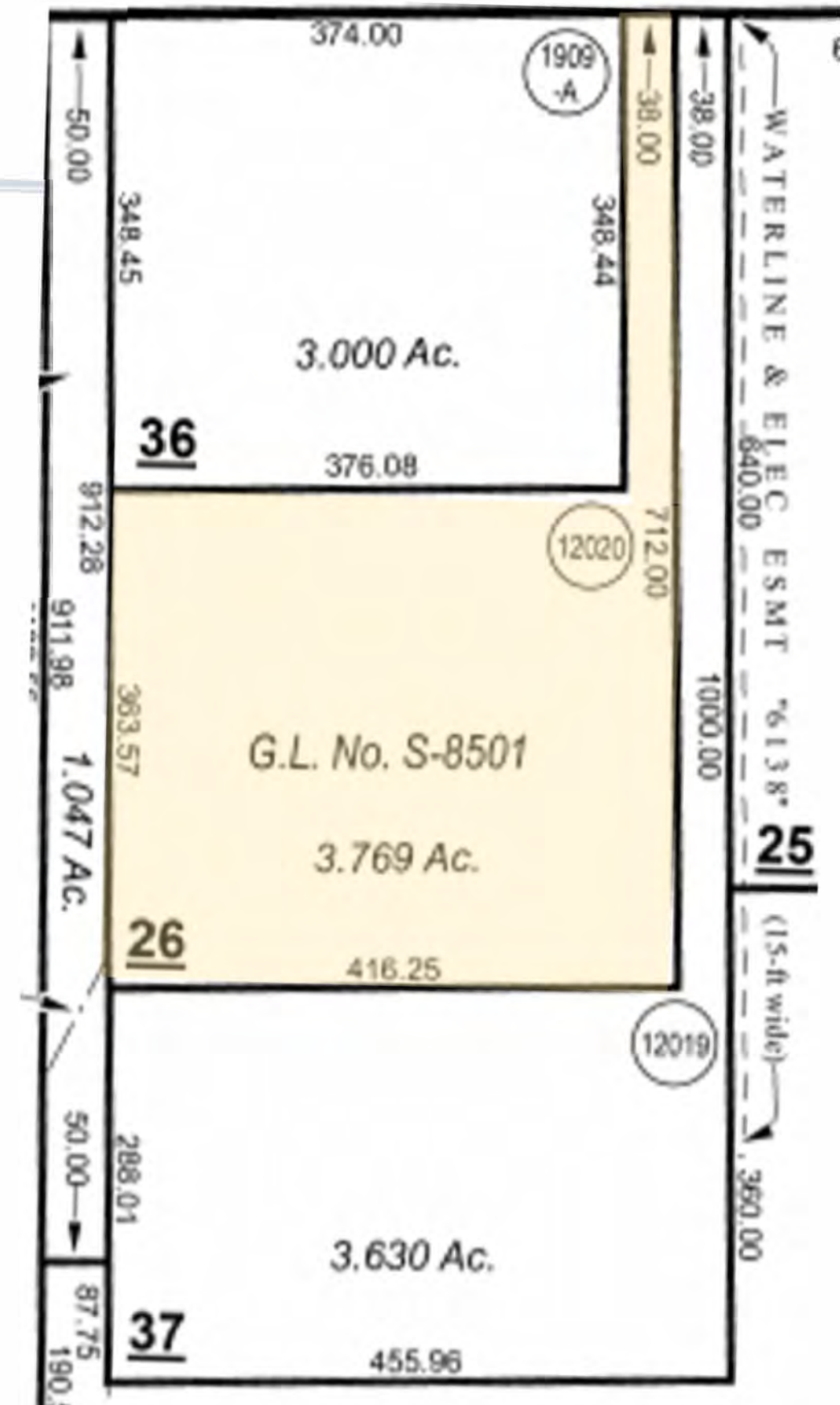
Address: 91 269 Olai Street, Kapolei, HI 96707

TMK: 9-1-0-31-0-26

Acres: 3.769

Fee Owner: State of Hawaii

Lessee: Grove Farm Fish & Poi LLC







Overview of Space

01. Fishmeal Plant

Feed Mill Machine

02. Research Tanks

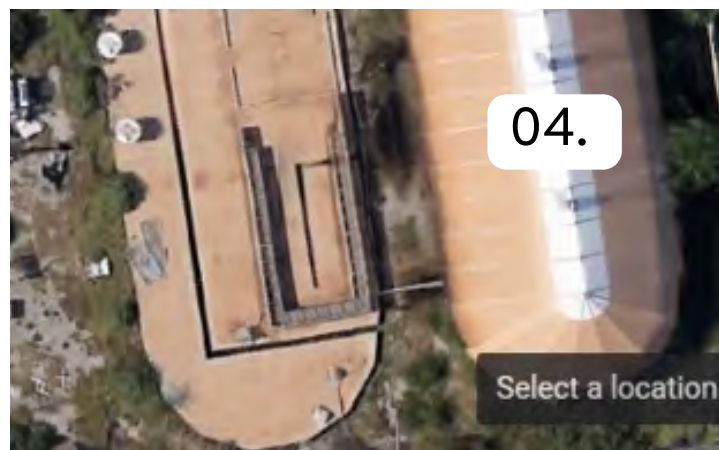
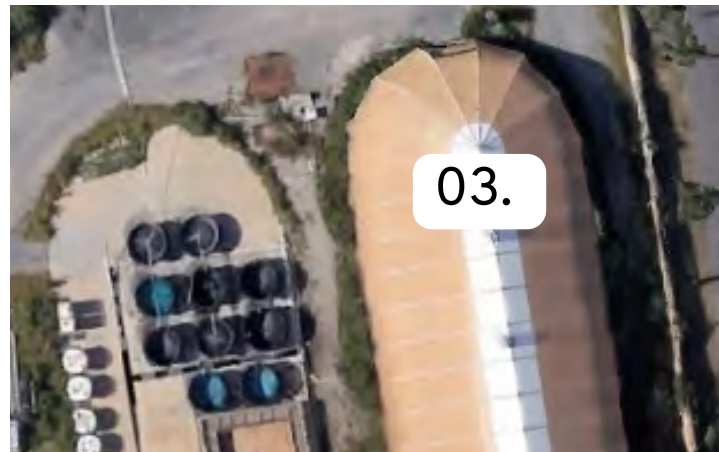
Fish and Shrimp feed trials for palatability and growth

03. Storage: Feeds, Dry Ingredients

Storage of dry ingredients and goods.

04. Feed Production Plant

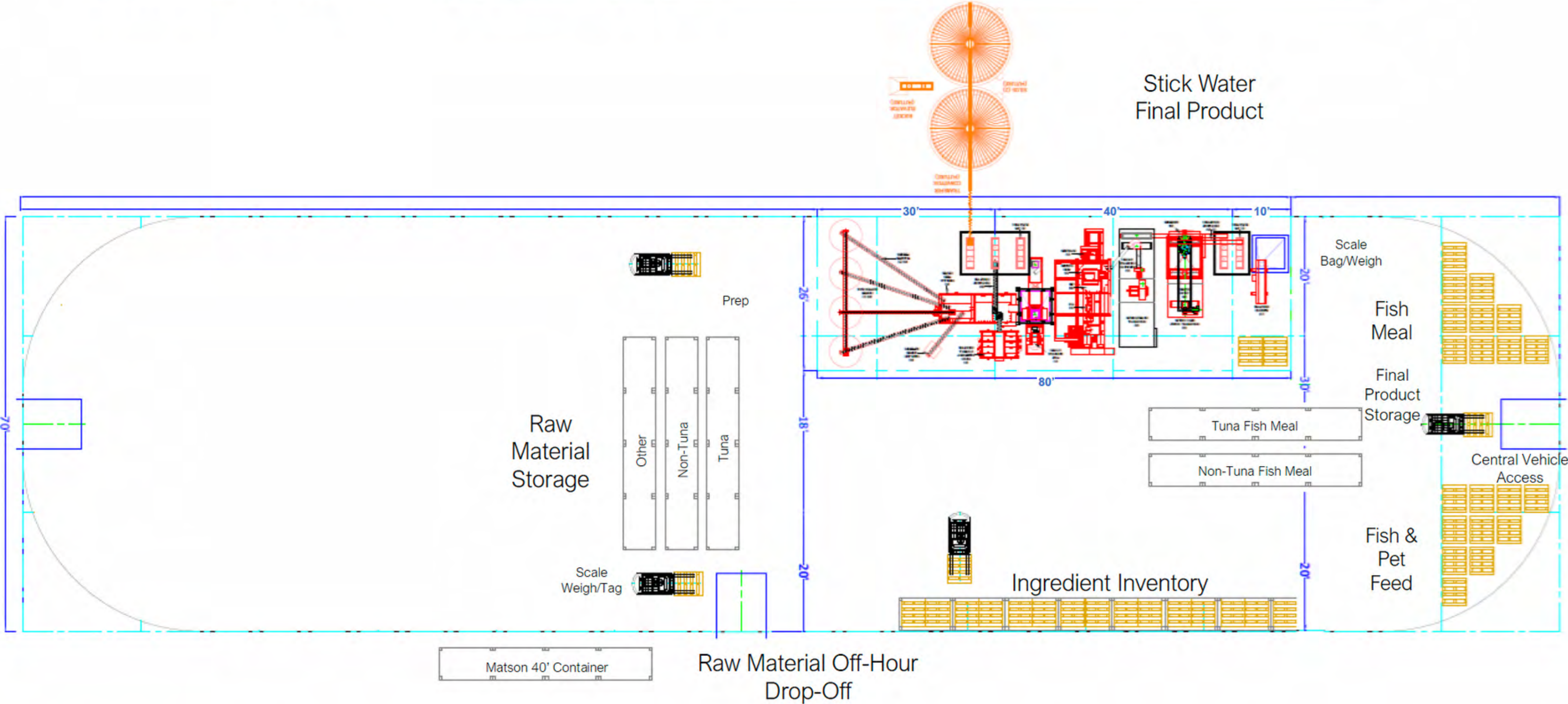
Feed produced from the meal.



Design Layout



Fish & Pet Feed Mill layout – Option 1



Fish Feed Production Line

100-150kg/h Fish Feed Production Line



1. Grinder 2. Bone Broken Machine 3. Bone Paste Machine 4. Mixer
5. Screw Conveyor 6. Twin-screw Extruder 7. Air Conveyor 8. Gas-fired Dryer
9. Hoisting & Flavoring Machine 10. Oil Sprayer 11. Single-roller
12. Vibrating Screen 13. Cooling Conveyor 14. Semi-automatic Packing System

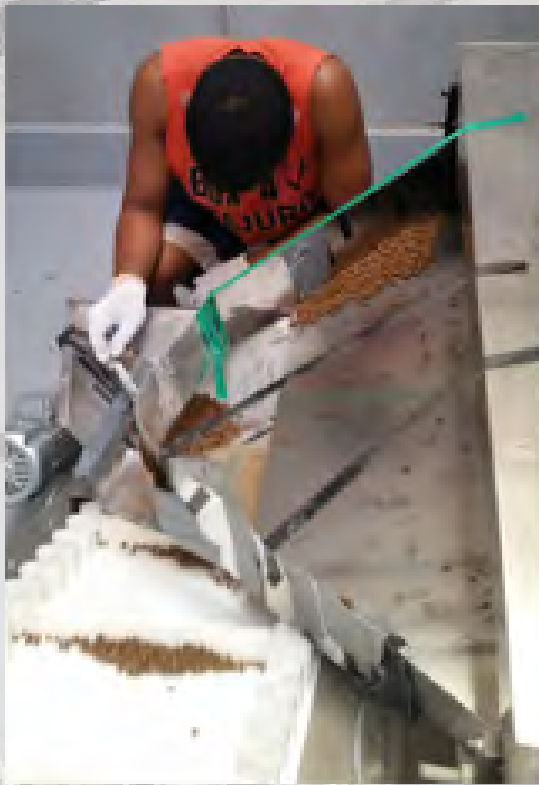
Will be located figure 4 page 13.

This machine will produce about 300 lbs Per Hour.



Fish Feed Production Line - 300 lbs Per Hour

- Twin Screw Extruder
- Mix Feed Ingredients



Fish Feed Production Line - 300 lbs Per Hour

- (Left to Right) Conveyor, Dryer, Sprayer: Flavor Additives

Fish Pellets

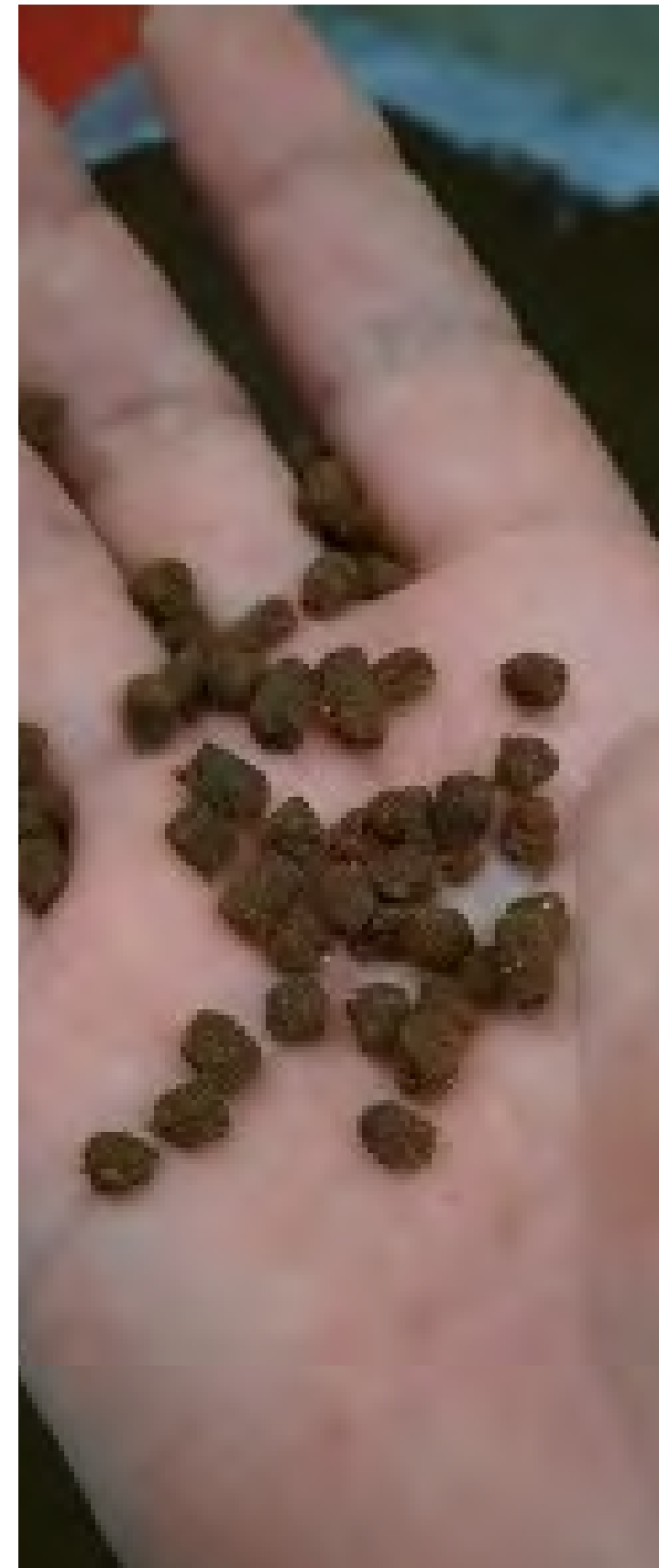
47%

Crude Protein
Bone Meal

Current Yearly Imported Feeds to Hawaii:

- KAMPACHI
- SHRIMP
- TILAPIA
- CATFISH

*(10 Million Pounds of feeds: Estimated total statewide)



ESTIMATED FEED PRODUCTION

Feed Production: Use IC Meal

- 5,500 lbs per day of meal
- Feed formulation with 80% meal, pellets produced = 6,875 lbs pellet per day

Diamond Head Seafood: Pellet Production Line

- Feed production line output = 300 lbs/hr
- 8 hour feed line operational to produce 2,400 lbs pellet per day

Note: With current output from IC, the following can occur:

1. Operate three of the 300 lbs/hr units with multiply production of feeds.
2. Operate a 2,000 lbs/hr unit, 4 hours a day and produce one type of feed.

Location For Receiving & Processing Waste

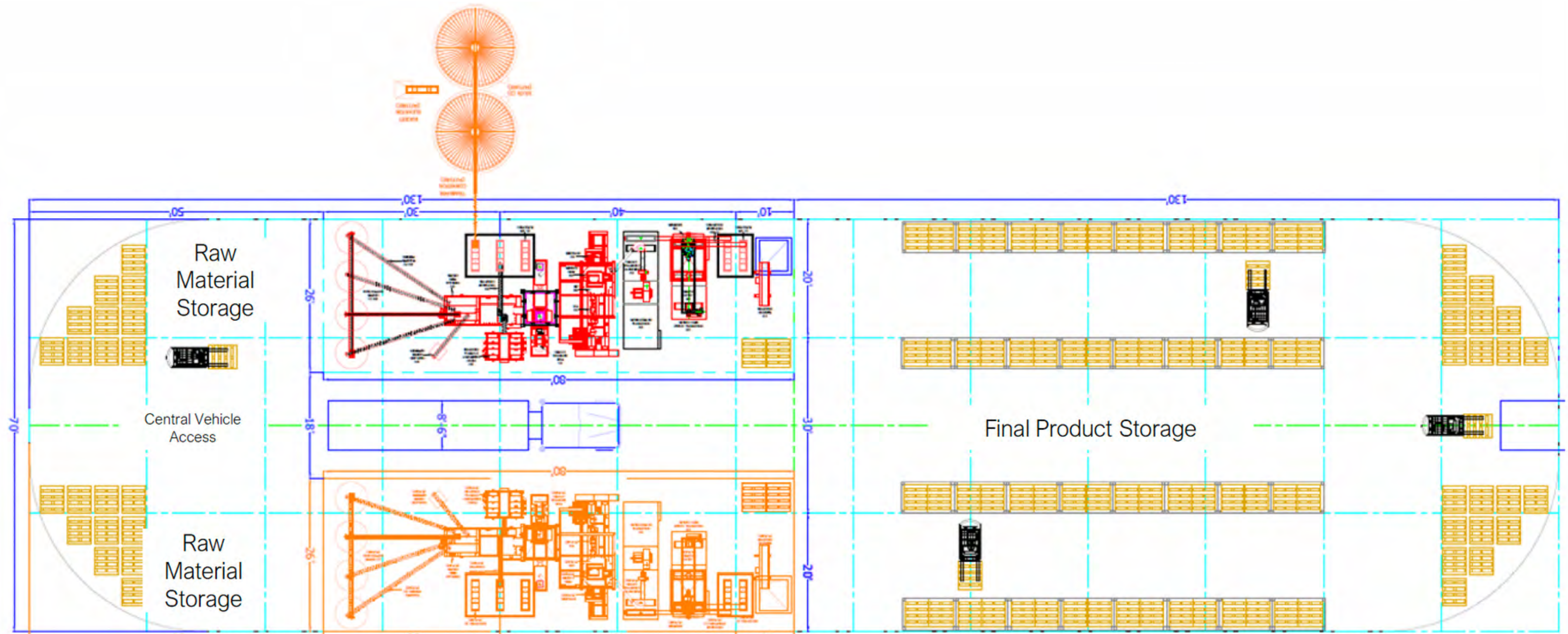
Fish, Animal, Other By-Products & Waste Processing Area
Capacity 6-10 Tons Per Day



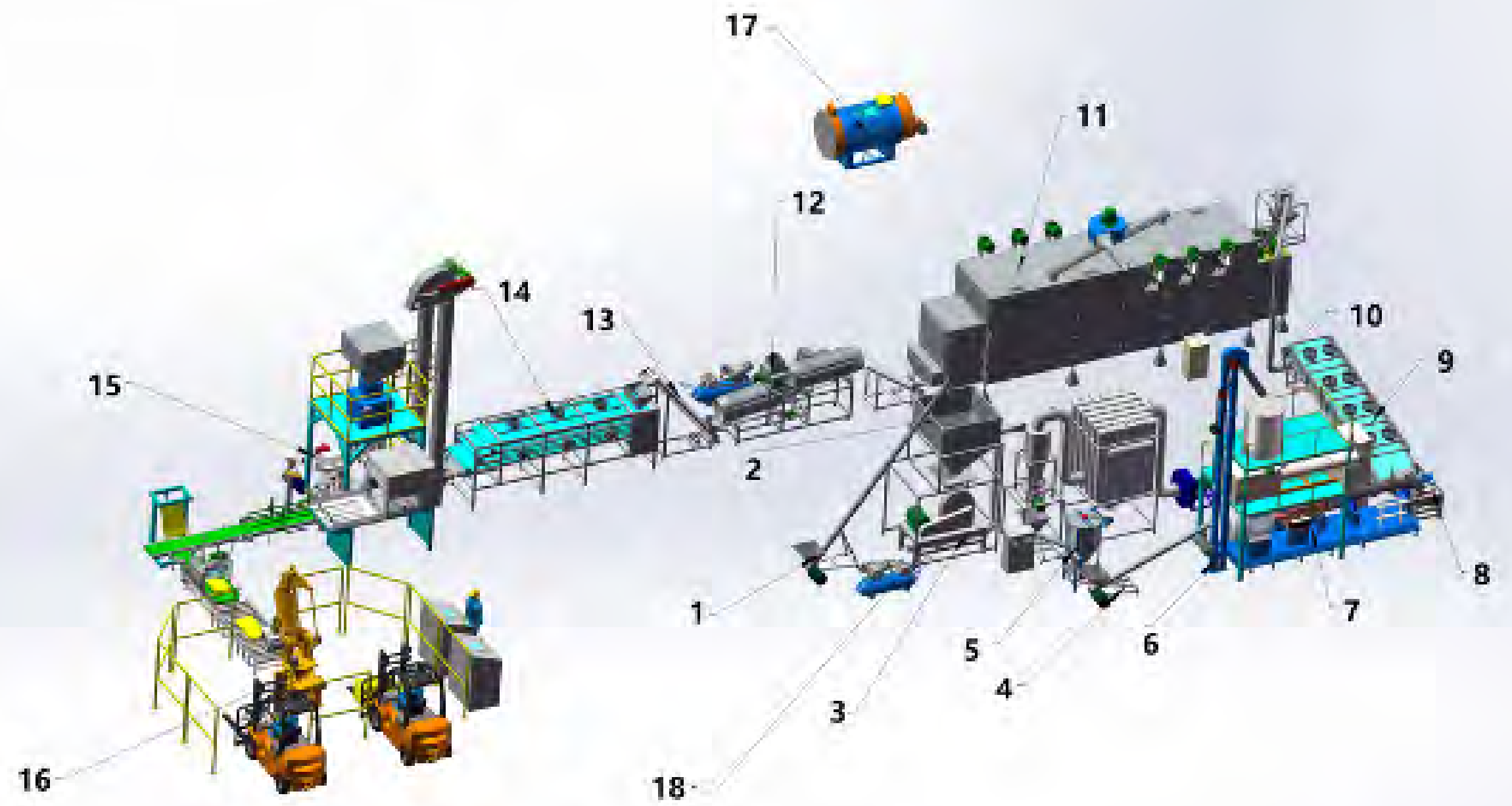
Diamond Head Seafood

- Cutting Room Waste
- 150,000 lbs Average Fish Waste Per Month

Fish & Pet Feed Mill layout – Option 2



Fish Feed production line



Produces about 2000 lbs Per Hour. Will be located figure 4 page 13.

- 1. Screw Conveyor 2. Stock Bin 3. Grinding Group 4. Screw Conveyor 5. Mixing Bin
- 6. Bucket Elevator 7. Twin-screw Extruder 8. Vibrating Screen 9. Cooling Conveyor
- 10. Negative Pressure Air Conveyor 11. Steam Dryer 12. Flavoring System 13. Hoister
- 14. Multi-layer Cooling Machine 15. Packing System 16. Palletizing Robot
- 17. Gas-fired Boiler 18. Air Compressor

AVAILABLE FISHMEAL/FISH WASTE

Diamond Head Seafood (DHS)

- Monthly Waste 150,000 lbs fish waste per month
- 20% conversion from fish waste to meal = 24,000 lbs fishmeal per month

Island Commodities (IC)

- Meal production: 5,000 – 8,000 lbs per day, average = 6500 lbs per day
- 85% of the meal reserved for DHS = 5,500 lbs meal per day
- 27,500 lbs per week, 110,000 lbs per month

FISHMEAL/FISHWASTE REQUIREMENTS

FEED FORMULATION (47% crude protein)

Fishmeal, Cassava Flour and vitamin/mineral pre-mix

- Amount of fishmeal required
-300 pounds pellets requires 255 pound of fishmeal
- $255 \text{ lbs. fishmeal/hr.} \times 8 \text{ hrs./day} \times 5 \text{ days/week} \times 4 \text{ weeks/month}$
= 40,800 lbs of fishmeal per month



Aquired Permits for Campbell Project

- Aquaculture Facility License – DAR
- Aquaculture Dealers License – DAR
- Import Permit (Plant Quarantine) DOA Marine Shrimp, *L. vannamei*
- Licensing and Permitting DOA



November 7, 2023

Mr. Ken Nakamoto
Agribusiness Development Corporation
235 South Beretania Street, Suite 205
Honolulu, Hawaii 96813

RE: Sampling and Analysis for Asbestos and Lead
Agribusiness Development Corporation
1116 Whitmore Avenue
Wahiawa, Hawaii
ENPRO Project Number: 2309-00312-APM
State of Hawaii Purchase Order Number: 170-4023

Dear Mr. Nakamoto,

This letter is regarding sampling and analysis for asbestos and lead conducted at the above-referenced property on October 18 and October 19, 2023. The purpose of this project was to evaluate the presence of potential asbestos fibers and lead in 12 structures across 2 parcels ([TMK (1) 7-1-002: 004 and 009]) of the subject property.

ENPRO Environmental (ENPRO) collected 24 area air samples and 12 surface samples from the following areas listed below (Project Area, Figure 1):

- Dole Break Room
- Dole conference Room
- Dole Office Area
- Davey Main Room
- Conference Room # 2
- Pineapple Crate Room
- Office Area #2
- Mechanical Shop Office
- Christmas Tree Office 1
- Christmas Tree Office 2
- AG Tech Pacific
- Shop

Asbestos

Air Sampling

ENPRO collected air samples for asbestos analysis using a high-volume pump, calibrated to 17 liters per minute (LPM) to pull ambient air through a sampling cassette with a 0.8-micron filter. The air samples were collected for 80 minutes for a total sampling volume of 1,360 liters (L).

These samples were analyzed by a National Voluntary Laboratory Accreditation Program accredited laboratory, Hawaii Analytical Laboratory, LLC, (HAL) of Honolulu, Hawaii using phase contrast microscopy in accordance with the National Institute for Occupational Safety and Health (NIOSH) Method 7400. In addition, a lot blank and a field blank were collected and submitted to HAL. The blanks were held pending the results of the primary samples.

The air sample results did not exceed the Environmental Protection Agency (EPA) clearance level of 0.01 fibers per cubic centimeter (cc). The results are presented in Table 1 below:

Table 1
Asbestos Air Locations and Analytical Results

SAMPLE ID	LOCATION	AIR VOLUME (L)	FIBERS PER CC	ASBESTOS LEVELS ABOVE 0.01 f/cc
A1	Dole Break Room	1,360	0.0045	No
A2	Conference Room (1)	1,360	0.0036	No
A3	Dole Office Area (1)	1,360	0.0032	No
A4	Davey Main Room	1,360	0.0067	No
A5	Conference Room (2)	1,360	0.0029	No
A6	Pineapple Crate	1,360	0.0023	No
A7	Office Area (2)	1,360	0.002	No
A8	Mechanic Shop Office	1,360	0.0034	No
A9	Christmas Tree Office (1)	1,360	< 0.002	No
A10	Christmas Tree Office (2)	1,360	0.0022	No
A11	AG Tech Pacific	1,360	< 0.002	No
A12	Shop	1,360	0.0022	No

L = liters

f/cc = fibers per cubic centimeter

Note that while some airborne fibers were detected, these are not necessarily asbestos fibers. Positive identification of the fibers as asbestos or non-asbestos would require additional, more expensive analysis. EPA clearance criteria are intended for an abatement work area exposure scenario but were used as a general comparison.

Lead

Air Sampling

ENPRO collected air samples for metals analysis using a high-volume pump, calibrated to 17 liters per minute (LPM) to pull ambient air through a 37-millimeter, 0.8 micron, mixed-cellulose ester cassette. The air samples were collected for 80 minutes for a total sampling volume of 1,360 liters.

These samples were analyzed by HAL an American Industrial Hygiene Association accredited laboratory in accordance with the NIOSH Method 7082m by flame atomic absorption spectrophotometer (FAAS). In addition, a lot blank and a field blank were collected and submitted to HAL. The blanks were held pending the result of the primary samples.

The air sample results did not exceed the Occupational Safety and Health Administration (OSHA) established Permissible Exposure Levels (PELs), The results are presented in Table 2 below:

Table 2
Lead Area Air Sampling Locations and Analytical Results

SAMPLE ID	LOCATION	AIR VOLUME (L)	RESULTS ($\mu\text{g}/\text{m}^3$)	OSHA PEL ($\mu\text{g}/\text{m}^3$)
L1	Dole Break Room	1,360	< 3.7	50
L2	Conference Room (1)	1,360	< 3.7	50
L3	Dole Office Area (1)	1,360	< 3.7	50
L4	Davey Main Room	1,360	< 3.7	50
L5	Conference Room (2)	1,360	< 3.7	50
L6	Pineapple Crate	1,360	< 3.7	50
L7	Office Area (2)	1,360	< 3.7	50
L8	Mechanic Shop Office	1,360	< 3.7	50
L9	Christmas Tree Office (1)	1,360	< 3.7	50
L10	Christmas Tree Office (2)	1,360	< 3.7	50
L11	AG Tech Pacific	1,360	< 3.7	50
L12	Shop	1,360	< 3.7	50

L = liters

$\mu\text{g}/\text{m}^3$ = micrograms per cubic meter

Surface Sampling

ENPRO collected surface samples for lead analysis using a wipe sampling method. The samples were analyzed by HAL using NIOSH Method 7082m LEAD by FAAS.

Based on the analytical results, 3 of the 12 lead surface samples exceeded the EPA's lead dust hazard standards and clearance levels. EPA's current hazard standards are 10 micrograms per square feet ($\mu\text{g}/\text{ft}^2$) for floors and 100 $\mu\text{g}/\text{ft}^2$ for windowsills. EPA's current clearance levels are 10 $\mu\text{g}/\text{ft}^2$ for floors, 100 $\mu\text{g}/\text{ft}^2$ for windowsills and 400 $\mu\text{g}/\text{ft}^2$ for window troughs. The results are listed in Table 3 below:

Table 3
Lead Surface Sampling Locations and Analytical Results

SAMPLE ID	LOCATION	RESULTS ($\mu\text{g}/\text{ft}^2$)	EPA LEAD DUST HAZARD STANDARD	
			FLOOR ($\mu\text{g}/\text{ft}^2$)	WINDOWSILL ($\mu\text{g}/\text{ft}^2$)
LW1	Dole Break Room	24	10	100
LW2	Conference Room (1)	< 5	10	100
LW3	Dole Office Area (1)	< 5	10	100
LW4	Davey Main Room	< 5	10	100
LW5	Conference Room (2)	< 5	10	100
LW6	Pineapple Crate	< 5	10	100
LW7	Office Area (2)	< 5	10	100
LW8	Mechanic Shop Office	< 5	10	100
LW9	Christmas Tree Office (1)	420	10	100
LW10	Christmas Tree Office (2)	< 5	10	100
LW11	AG Tech Pacific	130	10	100
LW12	Shop	220	10	100

$\mu\text{g}/\text{ft}^2$ = micrograms per square feet



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EXECUTIVE DIRECTOR'S UPDATE

November 16, 2023

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1. Project updates
 - a. \$10MM FY24 – Food & Product Innovation Network (FPIN). **Funding reduced to \$500K.**
 - b. \$2MM FY24 – Complete plans for the Wahiawa Wastewater Pipeline. Waiting for funding release, \$1.62MM earlier request. **Funding reduced to portion of \$500K**
 - c. \$3MM FY24 – Purchase property TMK (1)6-5-2-27. **Funding reduced to portion of \$500K**
 - d. \$1.1MM CIP FY24 – AAHOAKA reservoir improvements. DAGS running project, received funds.
 - e. Reservoir 155 & 225 improvements – \$6.7MM ADC requested funds for HDOA to complete the improvements to the two reservoirs. Kunia, Oahu
 - f. Central Oahu Food Hub – ADC requested \$5.65MM for DAGS to complete the project. **Funding reduced to \$500K**
 - g. Purchase of Wells #24, #25, and #26, Delay closing, possible to end of year. Well permit transfer and connecting wells #24 & #26 to ADC property \$4MM.
 - h. \$4MM CIP FY25 – Slaughterhouse design and construction. Actively working on site selection with DLNR.
 - i. Yardi – Staff inputting data. 90% complete
 - j. Accountant Consultant – Staff working with consultant on discovery phase.
 - k. Oahu, Wahiawa Irrigation System – \$770K, Consultant started on Due Diligence. Preparing supplement to contract for complete scope.
 2. Budget update
 - a. ADC accounting staff is working on reconciliation of FY23 and FY24 in preparation of the upcoming response to the auditor's recommendations.
 - b. FY 24 budget and FY 25 supplemental requests
 3. Vacant positions
 - a. Accountant V – Filled, 8/24/23.
 - b. Accountant IV – Filled, 10/16/23.
 - c. Asset Manager – Filled, 11/16/2023.
 - d. Secretary III – planned fill, 12/1/23
 - e. Contract Manager – Identified qualified candidate, pending approval of funds.
 - f. Water Worker – Identified qualified candidate, pending approval of funds.
 - g. Property Manager – request to fill position
 - h. Intern – first intern started 9/15/23, helping Yardi implementation.
 4. Branding & Marketing
 - a. Please respond to questionnaire

FY24 and FY25 budget

	FY24	FY25
Passed by 2023 Leg Session	106,160,761	2,380,359
(GM 1267)	(88,800,000)	
Appropriation	17,360,761	3,816,133
General fund CIP		
FPIN \$10MM		
purchase of land \$3MM		
design fees R1 water \$2MM	15,000,000	
(EM 23-08)	(14,000,000)	
General fund	3,360,761	2,380,359
CIP		
Slaughterhouse, CIP A		4,000,000
Aahoaka Reservoir, CIP C	1,100,000	

Supplemental requests for FY25

CIP	FY24	FY25
Oahu Ag Land Purchase		9,100,000
Wahiawa R1 Wastewater		178,000,000
Galbraith Land Cleanup		500,000
Christian Crossing Bridge		
Improvements		1,000,000
Kekaha Irrigation Improvements		6,470,000
Kekaha Bridge Improvements		2,500,000
Kauai Ag Land Purchase		1,300,000
Kekaha Infrastructure Improvements		730,000
Total CIP requests		199,600,000

Supplemental requests for Positions

- (6) Security positions – Kauai, and Oahu guards and supervisor
- (1) Property manager – Kauai
- (1) Water System Manager – Kauai
- (1) Director, Food & Product Innovation Network – Statewide
- (1) Grounds Keeper – Oahu

People use the terms: *brand*, *branding*, and *brand identity* as interchangeable synonyms every day, but they don't mean the same.

As individuals, we have a sense of what a brand is:
a set of distinctive perceptions, ideas and feelings that people have about a product or service.

As consumers, we often don't realize what it takes to build a strong and memorable brand.

That brings us to branding: all the actions that you take to build awareness and reputation around your company.

There are many things that go into the making of a brand, but design plays an essential role. Brand identity is the tangible expression of your brand - elements will vary depending on the company, but the basic must-have elements would include:
logo, shape, color, typography, and voice.

It's tempting to dive right into the juicy stuff like creating a logo, but before that, it's essential to look inward.

- Understanding what your company is and what it stands for is imperative before you start tackling any of the specific design elements.
- Investing time upfront to define and articulate your brand strategy is key to success.
- Internally, your brand strategy provides the core concept around which everything else evolves. It ensures that all your branding efforts are aligned according to a clear strategic direction.
- Externally, an effective strategy manifests itself in a strong brand image.
- Your strategy can be very comprehensive, but the basics would include:
your target audience, mission statement, and brand personality.

Answer the following questions to help start shaping a brand strategy.

ABOUT THE COMPANY

- What is your company/organization/product/service name?

- How long has your company been established?
- Can you describe your business?
- Why was your company started in the first place and what was the motivation?
- If you had to describe your business in one word, what would it be and why?
- Who are your main competitors?
- What sets your company apart from the competition?
- How do your competitors' market themselves?
- What services or products do you provide?
- How big is your company? (Number of employees? And revenue?)
- What are the strengths of your company?
- What are your weaknesses?
- What are the long-term goals of the company?
- Where do you see your company in 5 years? 10 years? 30 years' time?

ABOUT THE TARGET AUDIENCE

- Who is the primary target audience?
- What is the target audience's age group?
- Are they mainly male or female?
- Where do most of your audience live?
- What is the average household income of your target audience?
- Are there any new markets you'd like to break into? If so, what would they be and why?
- If your customers had to describe your company in one word, what would it be and why?
- How do most of your customers find out about your company?
- How do you plan to communicate with your target audience?

ABOUT THE BRANDING

- What are the values and/or mission statement of your company?
- What do you want the new logo to accomplish?

- What three attributes would you like your target audience to think of when they look at your new branding?
- Which of these words is a better fit for your brand? Traditional or modern?
- Which of these words is a better fit for your brand? Friendly or corporate?
- Which of these words is a better fit for your brand? High end or cost-effective?
- Which of these words is a better fit for your brand? Consumer or Trade?

DESIGN PREFERENCES

- What colors or color palettes do you like and why?
- What fonts do you like and why?
- Where will the logo be mainly used? Print, web, etc.?
- In your opinion, what defines a successful logo?
- Are there any restrictions to consider when designing the new logo?
- Looking at other people's branding, what logos do you like and why?
- Are there any logos that you particularly dislike and why?

Answers to these questions set the course for developing your unique brand.