

# Land Management Policy & Procedure Manual

State of Hawaii,  
Agribusiness Development Corporation

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## 1.0 Definitions

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

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

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

“GAP” means “Good Agricultural Practices”.

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

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

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

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

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

## 2.0 Criteria to Consider for Types of Agricultural Activities

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

## 3.0 Property Disposition and Evaluation Procedures

### 3.1 Published Notice of Availability

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

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

### 3.2 Procedure for Galbraith & Whitmore Lands

- A. Send request for applications. When a parcel or lot is available, issue a request for applications via written notification, email, online posting, and public announcement (for Star Advertiser ads, one posting per notification). The notification should include a brief description of the area, an outline of the basic requirements, type of agricultural activity, and a deadline or cutoff date to submit applications. ADC staff may meet with investigative committee appointed by the ADC Board Chair to discuss and develop a notification.

- B. Create a distributions list. Develop a list of potential applicants, which include but is not limited to county, state, and federal agencies, local non-profits with agricultural ties, and community groups. The list should also include the individuals who submitted expression of interest for land on Oahu. Use the information from the "ALL EXPRESSION OF INTEREST CONTACTS" in the "Request for land Application" folder in ADC shared. Include the expression of interest that selected the type of farming ADC is seeking (i.e. if the available area has been designated for field crops, include the expression of interest that selected "Field Crops").

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

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

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

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

### 3.3 Procedure for Kekaha Lands

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



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

### 3.4 Procedure for Kalepa Lands

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

### 3.5 Procedure for Hold-over Tenants

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

## 4.0 Land Document Policies

### 4.1 Rent Setting Policy

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

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

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

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

### 4.3 Term of License

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

### 4.4 License Re-opening

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

### 4.5 License Extension

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

#### 4.6 License Renewal After Expiration

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

## 5.0 Environmental Policies and Procedures

### 5.1 Requirement of Remediation of Hazardous Materials Prior to License Termination

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

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

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

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

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

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

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

### 5.2 Requirement of a Phase I Environmental Assessment for Hazardous Materials

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

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

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

### 5.3 Soil Conservation Plan

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

## 6.0 Termination of License Procedures

### 6.1 Procedure for Pre-Default Remediation

#### A. Financial Default

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

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

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

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

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

## B. Non-Financial Default

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

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

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

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

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

## 6.2 Procedure for Default & Termination

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

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

### 6.3 Requirement of Remediation of Hazardous Materials Prior to License Termination

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

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

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

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

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



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

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

## 7.0 Document Management Policies and Procedures

### 7.1 Pre-Acquisition Due Diligence Considerations

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

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

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

## 7.2 Requirement of a Phase I Environmental Assessment for Hazardous Materials

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

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

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

### 7.3 Soil Conservation Plan

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

## 8.0 Property Management Policies

### 8.1 Inspections; Frequency

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

### 8.2 Inspections; Advance Notice

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

### 8.3 Inspections; Scope

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

## 9.0 Standard Terms and Conditions for Licenses Policy

### 9.1 Licensee Reporting Requirements

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

### 9.2 Security Deposits & Performance Bonds

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

### 9.3 Consent to Mortgage

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

### 9.4 Consent to Sublicense

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

### 9.5 Termination of License for Cause

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

### 9.6 Termination of License by Licensee Request

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

### 9.7 Disposition of Abandoned Property

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

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

## 10.0 Entitlement Revenue Policy

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

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