

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



WENDY GADY
EXECUTIVE DIRECTOR

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OU LU AINA MAHIAI

Regular Meeting of the Board of Directors

Held via Teleconference with In-Person Viewing Location

February 15, 2024
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: 823 4432 1005

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.

Board Meeting Agenda
February 15, 2024

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 205
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 FEBRUARY 9, 2024.

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. Regular Session Minutes, November 16, 2023
 - 2. Regular Session Minutes, January 16, 2024
Defer to March meeting
 - 3. Executive Session Minutes, January 16, 2024
Defer to March meeting
- C. Chairperson's Report
 - 1. None
- D. Committee Reports
 - 1. None
- E. Action Items
 - 1. Request for approval to refer License Agreement No. LI-GA1713 issued to Touan Farm LLC for 25.191 tillable acres at Wahiawa, Oahu, Hawaii, TMK (1) 7-1-012:001 (por.), to the Department of the Attorney General for enforcement action
 - 2. Request for approval to enter into a memorandum of understanding between ADC, Hawaii Technology Development Corporation, and Natural Energy Laboratory of Hawaii Authority, and Hawaii Department of Agriculture to encourage, support, and facilitate planning and research-related activities
 - 3. Request to re-authorize the Board's delegation of authority to the Executive Director to execute non-extraordinary rights-of-entry without Board approval
 - 4. Appointment of members to the Board's standing Administration Committee (*no submittal*)
 - 5. Request for approval to establish a permitted interaction group to provide recommendations to the Board related to ADC's strategic plan regarding land (*no submittal*)
 - 6. Request for approval to establish a permitted interaction group to provide recommendations to the Board related to ADC's strategic plan regarding water (*no submittal*)
 - 7. Request for approval to establish a permitted interaction group to provide recommendations to the Board related to ADC's strategic plan regarding agribusiness efficiencies (*no submittal*)

8. Discussion regarding the status of Lease Agreement No. LE-K1201 assigned to the State of Hawaii, Department of Education. *The Board may go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.(no submittal)*
9. Discussion and action on letter from Senator Donovan Dela Cruz asking the ADC Board to waive attorney-client privilege with regards to the August 8, 2023 executive session minutes relating to candidate interviews, discussion of executive director salary, and board selection of executive director, continued from January 18, 2024 board meeting. *The Board may go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.*

F. Informational Items

1. Presentation by Dane Wicker, Deputy Director, Department of Business, Economic Development, and Tourism regarding the budget process for the State of Hawaii
2. Update regarding sunshine lawsuit filed by Public First Law Center, Civil No. 24-0-000-50, First Circuit Court, State of Hawaii. *The Board may go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.*
3. Presentation by Brian Miyamoto, Executive Director, Hawaii Farm Bureau, regarding the 2024 Farm Fair
4. Executive Director's Report regarding training updates, restrictive use easements, ADC's strategic plan, HPP machine procurement, Kokee Ditch modifications, Ag Days at the Capitol, ADC staffing, introduction of new hires, and budget update.

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

Minutes of the Board of Directors Meeting held on November 16, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Suite 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 Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Suite 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 9:17 A.M. – had connection problems)
 Dexter Kishida, designee for HBOA Ex Officio Member Sharon Hurd (Mr. Kishida)
 Jason Okuhama, Member-At-Large (Mr. Okuhama)
 Karen Seddon, Member-At-Large (Ms. Seddon)
 Russell Tsuji, designee for DLNR Ex-Officio Member Ms. Dawn Chang (Mr. Tsuji) (left the meeting at 10:00 A.M.)
 Jayson Watts, Maui County Member (Mr. Watts)
 Dane Wicker, designee for DBEDT Ex-Officio Member James Tokioka (Mr. Wicker)

Members Excused:

Lyle Tabata, Kauai County Member, Vice-Chair

Counsel Present, virtually:

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

Staff Present, virtually:

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

Guests Present, virtually:

18083757151
 18086527531
 Allison Fraley, County of Kauai (Ms. Fraley)
 Amy Perruso
 Anderson
 Bryan Yee, Deputy Attorney General (Mr. Yee)
 Dani Chu, Diamond Head Seafood
 John Doe
 Kawai Warren (Mr. Warren)
 Kendall M
 Kylie Wager Cruz, EarthJustice (Ms. Cruz)
 Mark Ladao
 Mary Rose Manar (Ms. Manar)
 Mike Faye
 Mike Irish, Diamond Head Seafood (Mr. Irish)
 Mike Yonemura, Diamond Head Seafood (Mr. Yonemura)

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Ryan Murashige, Diamond Head Seafood
Scott Ishikawa
PTower
Sean Andrade
Troy Antonlis, Diamond Head Seafood (Mr. Antonlis)

Guests Present, physical location:

None.

A. Call to Order

Chair Watanabe called the virtual meeting to order at 9:04 a.m.

Chair conducted a roll call of the Board. Chair called the name of each board member and asked them to identify their presence and to state who if anyone over the age of eighteen was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there are no objections the motion would be approved on the same basis as the roll call.

Roll call: Chair, Mr. Kishida, Mr. Okuhama, Ms. Seddon, Mr. Tsuji, Mr. Watts, and Mr. Wicker acknowledged attendance with no guests present. Mr. Hong joined the meeting at 9:17 A.M. Mr. Tsuji left the meeting at 10:00 A.M.

B. Approval of Minutes

1. Board Meeting Minutes, October 3, 2023

Chair called for a motion to approve the October 3, 2023 special meeting minutes.

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

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

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

Chair asked for board discussion. There was none.

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

2. Board Meeting Executive Session Minutes, October 3, 2023

Chair stated that during the executive session held on October 3, 2023 the Board discussed a hiring decision with the Board's counsel. HRS sections 92-4, 92-5(a)(2), and 92-5(a)(4) allows the meeting to be closed to the public when necessary to discuss matters affecting privacy and to consult with the Board's attorney. 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 October 3, 2023 when discussing approval of these minutes.

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Chair called for a motion to approve the October 3, 2023 executive session minutes.

Motion to approve: Mr. Wicker; Second: Mr. Okuhama.

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

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

Chair asked for board discussion. There was none.

Chair called for the vote. Hearing no objections the Executive Session minutes of October 3, 2023 were approved. Vote: 7-0.

3. Board Meeting Minutes, October 19, 2023

Chair called for a motion to approve the October 19, 2023 regular session minutes.

Motion to approve: Ms. Seddon; Second: Mr. Okuhama.

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

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

Chair asked for board discussion. There was none.

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

Informational Item F-3 was taken out of order due to time constraints.

3. Presentation by Mike Yonemura on behalf of Diamond Head Seafood regarding Oahu Feed Mill in Kalaheo, Oahu, Hawaii

Chair called on representatives of Diamond Head Seafood to give their presentation.

Mr. Irish introduced his team, then turned the meeting over to Mr. Yonemura and Mr. Antonelis who gave a PowerPoint presentation. *See attached presentation.*

Mr. Hong joined the meeting at 9:17 A.M.

Mr. Yonemura thanked the Board for giving them the opportunity to share their project and give an update at where they were at now, and asked if there were any questions.

Ms. Gady asked if they had a projection of what staffing levels would look like for the feed mill once production gets going.

Mr. Yonemura said outside of our current team they may add 4-5 new employees.

There were no further questions. Chair thanked Mr. Irish and his team for the presentation.

C. Chairperson's Report

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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, Hawai‘i and issue notice to vacate the Pohaku O’Kauai Materials, LLC, TMK 1-2-002:001 (por).**

Chair asked for a motion to approve: Mr. Wicker; Second: Mr. Tsuji.

Chair asked for staff presentation.

Mr. Roe stated the right of entry license agreement for Pohaku O’Kauai was executed in 2013. They have removed quite a bit of sand. Last year we terminated the license and gave Pohaku a draft license that updated the terms including an increase in the rate. The license was never executed. For these reasons and because ADC has found internal uses for the sand, we would like to remove the site from our portfolio of lands that we license and reserve the raw resource for ourselves. That’s the gist of it.

Mr. Wicker said Mr. Tsuji has his hand up.

Chair called on Mr. Tsuji.

Mr. Tsuji had a question for staff. He was going through the submittal and noticed that an appraisal had just been done. How was the rent established in the first place? And secondly, if ADC has not utilized appraisals in establishing rents with this inventory, I strongly urge you to do so. With ceded lands, there is a public trust responsibility that goes along with managing those lands but there is apparently a very significant difference in the price that was being charged versus the appraised value. Can you comment on that?

Mr. Roe stated he was not with ADC when the license was executed and cannot confirm how the original rate was established. Once the appraisal was done, notice was given to Pohaku that ADC was going to open a discussion about increasing the rate.

Mr. Tsuji noted that the rent for an area of Campbell Industrial Park was \$500.00 per year is markedly below fair market value. There is a large divide between what ADC is charging for rent in Campbell and the fair market value. ADC might need to re-evaluate the rents based off of this discrepancy.

Mr. Roe stated that he would have to talk to legal to see if we can go in and change rates based on whether we have evidence that the rates should be different. He would defer to the AG’s office on that.

Ms. Prescott-Tate stated that if Mr. Tsuji is talking about the feed mill, she does not believe it sits on ADC property.

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Mr. Tsuji asked if that's the case why were they presenting?

Mr. Nakamoto explained that ADC has a contract with Diamond Head Seafood to do this pilot project for the feed mill. The property is with the Hawaii Department of Agriculture (HDOA), which is the one who established rent on this project.

Mr. Tsuji still wanted ADC to look at the rents on the leases and agreements they have on land. The board should know the fair market value of rent, so the Board does not believe that the rent they are currently charging is fair market value, when it's not. Then they can evaluate if there is a justification to go below fair market value.

Mr. Roe reiterated that once ADC became aware of the sand appraisal, ADC issued notice to Pohaku that they were going to renegotiate the royalty and rent.

Mr. Wicker asked for clarification on the structure of Kekaha lands. KAA has an agreement with ADC to manage the land and does that mean they don't set the lease rates that also comes through the board?

Mr. Roe explained that KAA sets their own infrastructure rates, which KAA assesses based on a cost per acre, per year. This is unrelated to the ADC lease rents.

Mr. Wicker asked that, on top of these lease rents, were there some sort of CAM [common area maintenance] fee.

Mr. Roe agreed and noted that for Pohaku the Board originally approved a lease fee as well as a royalty fee but when the right of entry license agreement was executed, it did not contain the same terms that were approved by the Board. When staff discovered the executed right of entry license agreement did not match the terms approved by the Board, staff sought approval from the board to terminate the license.

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

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

Mr. Roe noted that Mr. Hong has his hand up.

Mrs. Gady stated that in the chat box, Mr. Hong says his microphone isn't working.

Chair suggested that Mr. Hong put any questions into the chat box.

Mr. Okuhama had a question about the best management practices (BMP) letter mentioned in the submittal related to the 2018 Clean Water Act violation case.

Mr. Roe stated that ADC contracts with Stantec to conduct BMP inspections once a year to comply with the EarthJustice settlement agreement in the Clean Water Act case. Findings from the inspections are shared with EarthJustice. The tenants receive violation notices for noncompliance with the BMPs. These are separate and distinct inspections from the staff inspections.

Mr. Okuhama asked if there were any issues with this tenant.

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Mr. Roe stated that there is a pit in the ground and there's no NPDES [National Pollutant Discharge Elimination System] permit. No big violations but clearly things that need to be cleaned up.

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

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

Mr. Roe stated that Mr. Hong noted in the chat that he had no objection.

2. **Request for the board to make a determination that it is necessary to conduct limited meetings for on-site inspections of ADC assets on Oahu and Kauai for purposes related to the Board's business of 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.**

Chair called for a motion to approve.

Motion to approve: Ms. Seddon; Second: Mr. Okuhama.

Chair asked for staff presentation. There was none.

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

Chair stated that HRS section 92-3.1 allows the board to hold a limited meeting that is not open to the public when the Board determines that it is necessary to meet at a location that is dangerous to health or safety, or if the Board determines that it is necessary to conduct an on-site inspection of a location. To allow a limited meeting, at a regular noticed public meeting, after public discussion, the Board must determine that the specific locations on Oahu and Kauai, due to health and safety concerns, which makes public attendance not practicable. The limited meeting must be videotaped and later replayed for the public and no decisions may be made at the meetings.

Chair stated for the Board as a group to inspect its properties on Oahu and Kauai outside of a public meeting, the Board needs to make findings and determinations necessary for the Board to hold a limited meeting.

Mr. Okuhama agreed that site visits need to be limited. Board site visits to ADC lands on Oahu and Kauai need to be limited and not really open to the public due to safety concerns. These are active farms under productive business with chemicals, pesticides, machinery, equipment, and other hazards that could be very dangerous. Tenants also have liability if someone gets hurt on the property, and so on. There are also privacy issues due to confidential business operations, etc.

Chair asked if there were any other comments from the board. There were none.

Chair asked Ms. Prescott-Tate if the exact property locations should be specified or would locations on Oahu and Kauai be sufficient.

Ms. Prescott-Tate stated perhaps we could name the areas or towns where the ADC properties are located such as Kalepa or Kekaha, and Wahiawa, and we could fill-in the specific addresses later.

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And we do have some property and potential property in Waialua. So that will be the extent of our site visit, if we could find that those are the sites we can fill in the exact addresses later.

Chair stated another question for the board is should they hold a public meeting on Oahu and Kauai before inspecting the properties.

Chair asked if there were any other comments from the board. There was none.

Chair asked Ms. Prescott-Tate if we do hold a public meeting, it would have to be publicly noticed, correct?

Ms. Prescott-Tate responded correct, and asked if anyone from the public had any insight. Would they like the Board to have a meeting in Wahiawa or on Kauai?

Chair asked if anyone from the public wished to give testimony. There was one.

Ms. Manar said she was from Kekaha and that it would be a good idea to have public meetings periodically in Kekaha. It is a small and close-knit community, and they would like to be more involved.

Mr. Nakamoto said there was one more hand raised.

Mr. Warren said he was the Kapena for Na Kia'i Kai and we would also like to have public meetings so we can understand the impacts of ADC tenants on the near shore fisheries, our people, and our land. Thank you.

Chair asked Ms. Prescott-Tate if he needs a motion.

Ms. Prescott-Tate said that before the motion she will read the findings of the Board: ADC would like to do site visits to Wahiawa, Waialua, Kekaha, and Kalepa. The Board would like to schedule a public meeting on Kauai before that visit. The Board's findings are that the reason why it is not practicable to have the public go along on the site visit is because these farms are in active production. There are chemicals, pesticides, unstable footing, ditches; it's dangerous to the public. If an injury occurs, the tenant who is paying for their own insurance may be liable for the injury. There are privacy interests involved for the tenants, protection for the tenants confidential business information, and the tenants have their personal possessions on the property. Based on those considerations it might not be a good idea to have the public roaming around on ADC land occupied by private parties. Anymore?

Mr. Okuhama asked if this was for getting concurrence from the Office of Information Practices?

Ms. Prescott-Tate said correct these are the findings we will provide to the Director of the Office of Information Practices asking for concurrence.

Chair asked if the Board was clear on what was being proposed. There was no response.

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

F. Informational Items

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Chair reminded the Board that the following items are for informational purposes only so there will be no motion or vote needed.

1. Presentation by Allison Fraley on behalf of 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.)

Ms. Fraley gave a PowerPoint presentation regarding the proposed new landfill site to be located near Kekaha, explaining what Kauai County had been doing for the last twenty years in trying to site a new landfill. *See attached presentation.*

Following the PowerPoint presentation Ms. Fraley asked if there were any questions. There were none.

Chair thanked Ms. Fraley and asked if any of the board members had a question. There were none.

Chair asked if there were any comments from the public and called on Ms. Cruz to provide testimony.

Ms. Cruz introduced herself as an attorney with EarthJustice and explained that they've been partnering with community groups on the west-side of Kauai for many years to protect the environmental and cultural resources in the area. ADC can and should put a stop to Kauai County's plans to put a new landfill on the Mānā plain and should do it now because the county will then have more time to explore other options before landfill capacity is reached. It doesn't take an expert to know that landfills are not an agricultural purpose and doesn't fit within ADC's mission. From my understanding, the list of sites the county is considering is based on an old analysis from the early 2000's and the list has only been whittled down since then. Ms. Fraley mentioned Act 73, which prohibits a landfill within a ½ mile of a residential area, but just mauka of the proposed sites are DHHL lands where there are residential lots proposed. Ms. Fraley also mentioned tsunami inundation concerns. There's a DOH rule saying that you can't site a new landfill in a tsunami inundation area, but for some reason Kauai County can't find that map that falls under the rule, and it's undisputed that the Mānā plain is a tsunami evacuation area. On top of that, the proposed site is located really close to, if not in, a sea level rise exposure area. The Mānā plain is all former swamp land and our expert in another lawsuit against ADC said that all of the water in the ditches pulls ground water from the area and into the ocean, so it doesn't make sense to put a landfill in this area. And on top of that, there's a really long history of concentrating harmful facilities on the west-side. As Ms. Fraley mentioned, the only other landfill on the island is in Kekaha. There's the old sugar plantation lands and related infrastructure that are still contaminating the community today. We have ongoing water diversions, heavy use of restricted-use pesticides, and gravel and asphalt plant. I'm here to plant the seed and let ADC know that we strongly disagree that there should be a landfill on the Mānā plain. Thank you.

Chair thanked Ms. Cruz for her testimony and asked if there was anyone else who wanted to testify.

Mr. Nakamoto responded yes, Mr. Warren.

Chair said, go ahead Mr. Warren.

Mr. Warren stated he is the Kapena for Na Kia'i Kai and a cultural practitioner that gathers from the shorelines and rivers on West Kauai. He is a Department of Hawaiian Homelands (DHHL)

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beneficiary living in the Kekaha Hawaiian homesteads and is wait-listed for a pastoral site situated very close to this proposed site. Na Kia'i Kai strongly opposes this new hazardous waste forever landfill site proposal because of the environmental risk to near shore fisheries. The proposed site is located at sea level, surrounded by ditches that will discharge hazardous waste into our oceans during seasonal flooding and hurricane storm surges and flooding. As we learned from hurricane Katrina, the levies and pumps could not prevent flooding in Louisiana. Additionally, during flooding this hazardous waste material will contaminate our aquifers and spring waters located adjacent to this site as it percolates into the ground. DHHL is developing the land mauka of this proposed new land site for Kuliana subdivision, 244 homes. DHHL subdivisions are sited adjacent to this new landfill site. Future residents would be subjected to the smell of trash 24 hours a day. Furthermore, they will have to drive past the rubbish dump on a daily basis going up to their subdivision and coming out. Kawaiele Bird Sanctuary, 0.30 miles from the proposed site. During seasonal flooding, the sanctuary will be subjected to hazardous waste via drain ditches. PMRF [Pacific Missile Range Facility] beach cottages is located 0.84 miles from the new site, PMRF housing is located 1.1 miles from the new site. PMRF airport, which is a FAA certified runway, is located 1.0 mile from the new site. ADC is an agribusiness company and not a landfill company. ADC should return the unusable farm lands to the original fish ponds and marshes. This would increase our near shore fisheries, filter sediment during flooding, and be environmentally friendly for generations to come. I hope that ADC shuts down this new landfill site. Thank you.

Chair thanked Mr. Warren and asked if there were any further questions from the Board or the public. There was none.

Chair noted that Russel Tsuji left the meeting at 10:00 A.M.

Mr. Ken Nakamoto noted that Ms. Cruz had her hand up.

Ms. Cruz stated that Ms. Manar wanted to provide testimony.

Ms. Manar said her father was one of the first workers of Kekaha sugar mill and she started working there because she really wanted to clean it up. When the Kekaha mill started operating, we operated as one community, and it was a wonderful time in our history. However, over the years, our community has really suffered. I know that we have been trying to restart, not just agriculture but a lot of things for our community. If you saw from a bird's eye view what Ms. Fraley showed, you see all the beautiful lands and you see some of the farms that ADC put on the land continue to struggle. Before we even think about using such good land and water for something like trash, ADC should consider the original intention of the land. Kekaha still has a lot of descendants that come from farming and the plantation era and are very supportive of food sustainability. Our community was built on farming and ranching. We were very self-sufficient. If ADC can support our community and see it from our perspective of how we should be using that land, which is why I raised my hand to say that meetings are good because our Community has a huge silent majority that would like to understand and would like to support the use of the land in ways that Mr. Warren has spoken. Yes, we understand there's pesticide. Yes, we understand a lot of things. However, you know, I stand for just the voices of the people of Kekaha who would love to be here, but they're not able to. And I think ADC should consider all of our voices and all of our needs as well. That's all I have to say. Thank you.

Chair thanked Ms. Manar and the other testifiers and suggested moving on to the next agenda item, and called on Mr. Yee, supervisor of the Commerce and Economic Development Division, Department of the Attorney General, to talk about the Sunshine Law complaint.

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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

Mr. Yee stated his intention was to go through the Opinion that was submitted by the Office of Information Practices (OIP) to opine for you where there is agreement, where there could be concerns that ADC could express and why, and then ask you what your preferences are with respect to a response to OIP and on what basis. I would normally do this in executive session, but it is certainly your right to have this discussion in open session. If I could confirm with you whether you want to go into executive session or not to discuss the rights, liabilities, duties, and obligations of this matter with your attorney.

Chair asked if the Board members would like to go into executive session or have the discussion in open session?

Ms. Seddon stated that it seems like it should be an executive session. Does Mr. Yee have an opinion on that?

Mr. Yee stated there's legal and policy issues involved. In most cases, I would expect to be in executive session. You should be informed that once we are in open session, there's no going back. You can't put the toothpaste back in the tube.

Ms. Seddon said so if there's legal issues, usually we go to executive session.

Mr. Yee concurred and said he certainly will be talking about legal issues.

Ms. Seddon stated she would like to make a motion that we go into executive session.

Chair agreed and said Ms. Seddon has made a motion to go into executive session, may I have a second?

Second: Mr. Okuhama.

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

Chair called for the vote. Hearing no objection and noting the Mr. Tsuji had left the meeting, the motion was approved: 7-0.

Mr. Nakamoto asked for a five minute recess to send out the Teams link for the executive session.

Chair called for a five minute recess.

The Board exited the public meeting at 10:25 A.M.

The Board returned to the public session at 11:20 A.M. Board members present: Chair, Mr. Hong, Mr. Kishida, Ms. Seddon, Mr. Watts, and Mr. Wicker.

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Chair stated that we're back on public record at 11:20 A.M. and reported pursuant to Act 19 that while in executive session the Board received a report from Mr. Yee on his analysis of the November 3rd opinion by OIP. No further action will be taken.

Chair moved on to the rest of the agenda.

Mr. Yee asked if he could be excused as this time.

Chair agreed and thanked Mr. Yee for his presentation.

3. The Diamond Head Seafood presentation was taken out of order following agenda item B-3.

4. Update regarding ADC-owned buildings in Whitmore Village, Oahu, Hawaii

Chair called on Mr. Nakamoto for an update of the ADC owned buildings in Whitmore.

Mr. Nakamoto stated ADC requested follow-up testing from the last findings of hazardous materials. The contractor conducted air and swipe testing in 12 structures, primarily the structures where people are working or accessing the buildings. All of the areas that we tested, the results were that they did not exceed OSHA or EPA exposure levels. You received copies of the reports. We did notify the tenants.

Chair asked if there were any comments. There was none.

Chair moved on to item 5 and called on Ms. Gady for the executive director's report.

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

Ms. Gady stated that in the Board packet, you're going to see the executive directors update. I'll just highlight a couple of things. First of all, the \$10 million food and product innovation network, the funding got cut due to the budget crisis, moved from \$10 million down to \$500,000, a loss of \$9,500,000. This money tentatively could be pushed into next year's budget. But in the meantime, we are looking for additional funding in other locations. The same thing with completing the plans for the Wahiawa wastewater pipeline, that funding has also been reduced to \$500,000 and the purchase of the \$3,000,000 Oahu property was also reduced to \$500,000. The Central Oahu food hub was reduced to \$500,000. I think the Board members wanted to take a quick look at the budget, which was included in the Board submittal (pages 118-119). We don't always have a lot of control over what was passed by the legislature, and what programs and projects are going to be assigned to ADC. In the last legislative session a total of \$106 million was appropriated, but when it went to the governor, there was about \$88,800,000 that was line item vetoed. The governor reduced the amount to complete the designs to fully understand the potential cost of the R1 pipeline in Wahiawa ditch system. That's pushed to next year. The appropriation dropped from \$17.3 million to \$3.3 million, and what we're starting to see is a shift from general funds, which has kind of been our mainstay. For us as an organization we may have to start leaning into our bonding capability and our revenue bonds and so that's kind of a change moving forward. Are there any questions on the budget that you would like me to go into further detail?

Chair asked if the Board members any questions?

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Mr. Okuhama asked yeah, just wanted to ask about the reduction in the \$3,000,000 to purchase the property. The seller has been waiting for a while. I was just curious, I know we wanted to obtain that parcel, is it going to happen.

Ms. Gady asked Mr. Takemoto to speak on that.

Mr. Takemoto said that money was being placed into the supplemental budget request and of course that's not a certainty. We are still working with the seller, going through the due diligence process and there are some title issues that may need to be cleared up. So oddly enough the timing may work out quite well. Right now we're still proceeding. We are asking for the money to be reappropriated in the supplemental budget for 2025.

Mr. Okuhama thanked Mr. Takemoto and said you know some companies are getting rid of all their lands and patience was not really what they want when it comes to selling their parcels. But if there's title issues, then good we have time.

Ms. Gady continued that with the addition of the Accountant V hired in August, and the Accountant IV hired in October, they have been a huge support to the entire organization. They have been helpful not only in working on our current fiscal year, but the new staff is also going back to reconcile fiscal year 2023-2024. In the years prior to 2023, we are working with the consultant Spire and going back to reconcile as much information as possible. But it does provide like a clean slate moving forward. We are asking the consultant if we should go forward on QuickBooks, or do they think we should be moving forward on Yardi? And, in regard to Yardi, we have 90% of the information already in the system and our Accountant IV has an incredible working knowledge of the software. So that has been a wonderful addition and leaping us forward in some of our goals. In the vacant positions, we are still trying to encumber funds for two positions, the contract manager and the water worker. And I just want to emphasize that the water worker was a safety issue for us because we send the teams out in twos to take a look at the ditch. And currently we have 5 workers over 26 miles of ditch. That means each worker is trying to cover 5 miles of ditch. That's a pretty lean organization. I also wanted to let you know that my weekly reports are available to the public on the ADC website. One of the other things that's in your board packet is a questionnaire about branding and marketing. The Board originally thought it would be good to come in with some samples, like new logos, and then it was suggested to work with the stakeholders in regard to brand positioning. Ideally I'd like to get some feedback in the next 30 days. The questions are very general in terms of what colors you like, what colors you associate us with, what logos that you like and it's not just in the ag space, it's also in the marketplace as a whole. I think it goes to the heart of what our brand promise is for ADC and positioning and when I think about a couple of examples, I think about, you've got Mercedes-Benz, you've got BMW, and you've got Toyota. They're all car companies. But when you're buying a Mercedes, you're buying luxury; when you're buying the BMW, you're buying a performance vehicle; and when you're buying a Toyota, it's about reliability. So thinking long and hard strategically about what our brand promise is to our current stakeholders, to our current customers, to our future customers, we are relying heavily on the input from the Board. The information from the questionnaire is really, really important for us moving forward, especially in light of the fact that ADC is turning the big 30 in 2024. We should take a hard look at where we've been and where we're headed. Does anyone have any questions?

Chair called on Ms. Seddon.

Ms. Seddon asked Ms. Gady if she could send out the questionnaire separately so it's not buried in the Board packet?

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Ms. Gady replied absolutely, that's an excellent suggestion.

Chair stated OK, seeing no further questions we appear to be down to five board members.

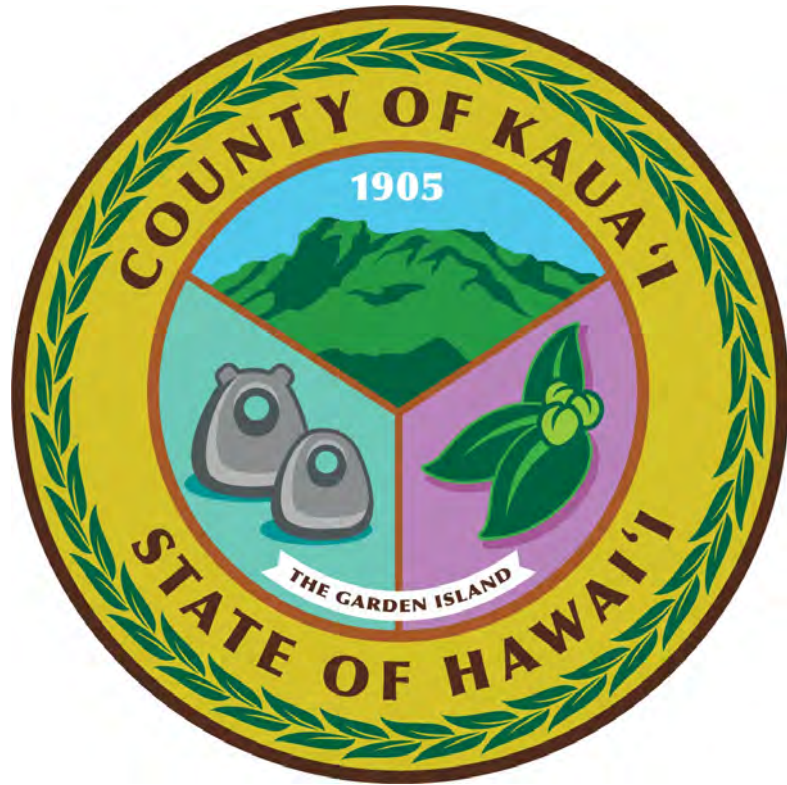
G. Adjourn

Having no further business before the Board, Chair adjourned the meeting at 11:32 A.M.

Date of Next Meeting: The next meeting is scheduled for January 18, 2024, at 9 A.M.

Respectfully submitted:

Ingrid P. Hisatake
Secretary III



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

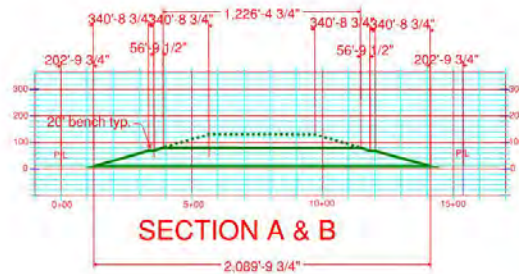
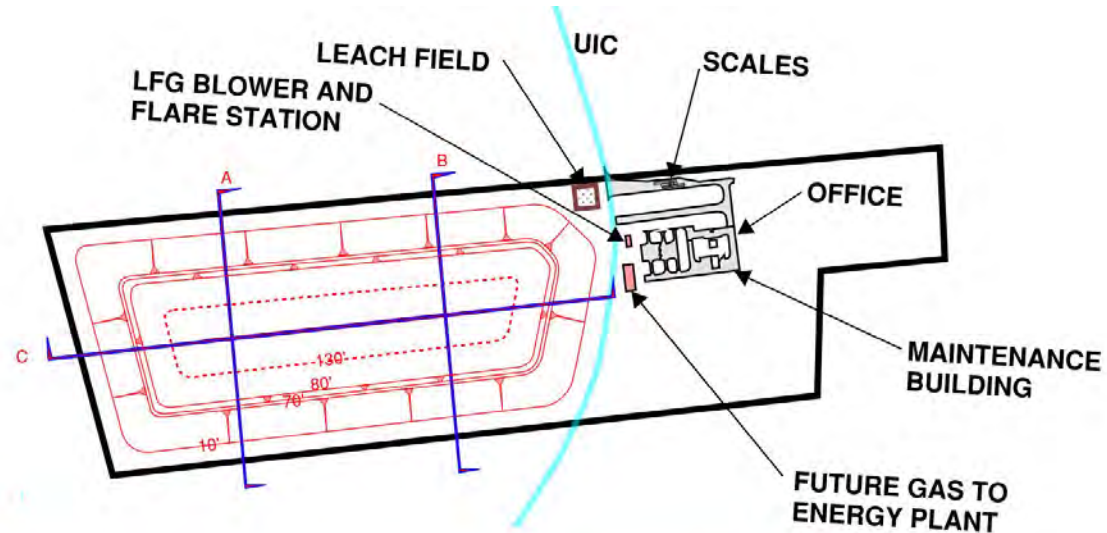
- Location Map
- Preliminary Conceptual Site Grading Plan and Sections
- Information for Pacific Missile Range Facility (PMRF)
- Information for State Department of Health Solid and Hazardous Waste Branch (DOH)

Location Map



Preliminary Conceptual Site Grading Plan

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

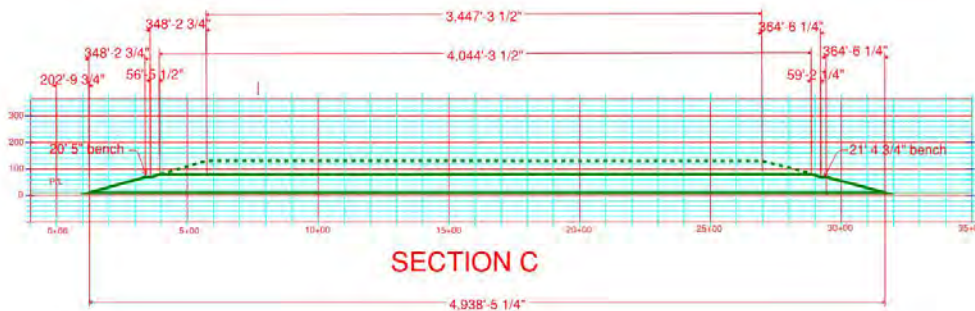


3.5:1 sideslope based on Drawing 29
Alternative 1 Proposed MSW Landfill and
Resource Recovery Park at Maalo,
Appendix D of FEIS

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

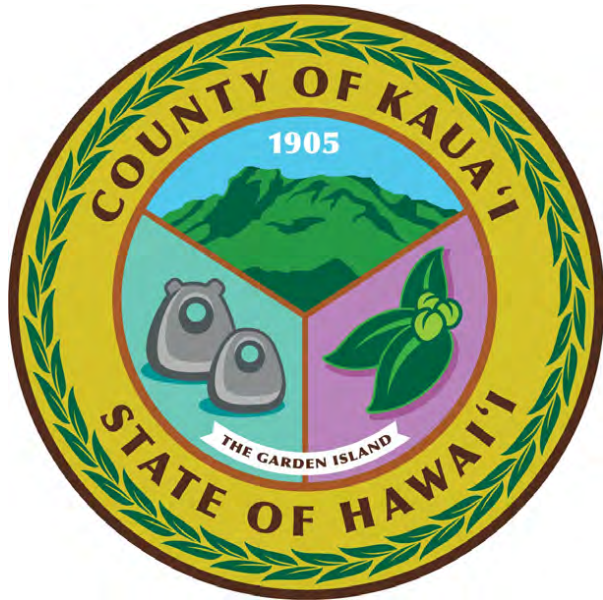
Coordination with DOH

- 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



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.

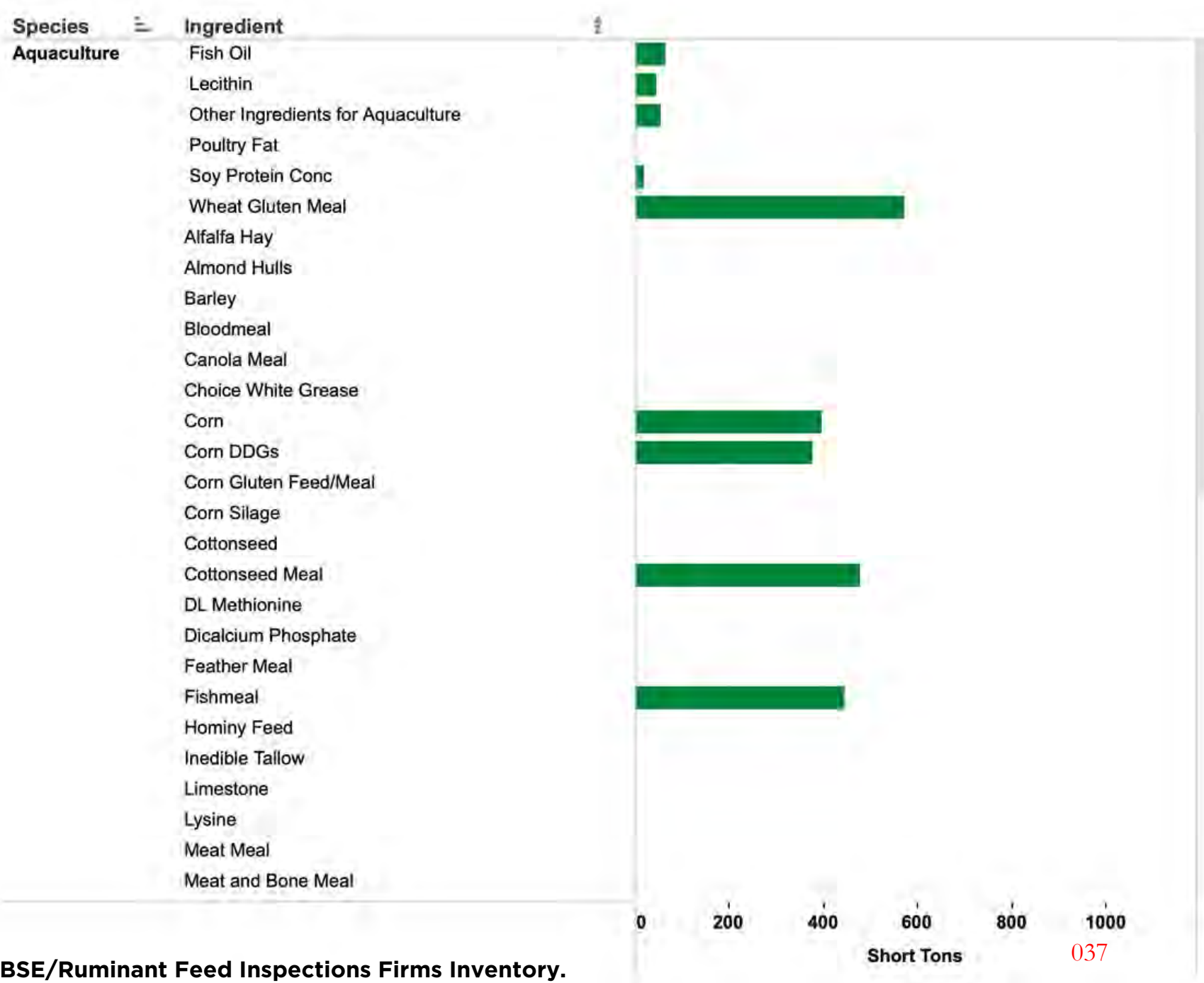
To promote sustainability and self-sufficiency in Hawaii's aquaculture industry, it is important to focus on locally sourced feed ingredients. By doing so, we can reduce our reliance on outside sources and ensure a more stable and resilient industry. The current chart highlights the need for more locally 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

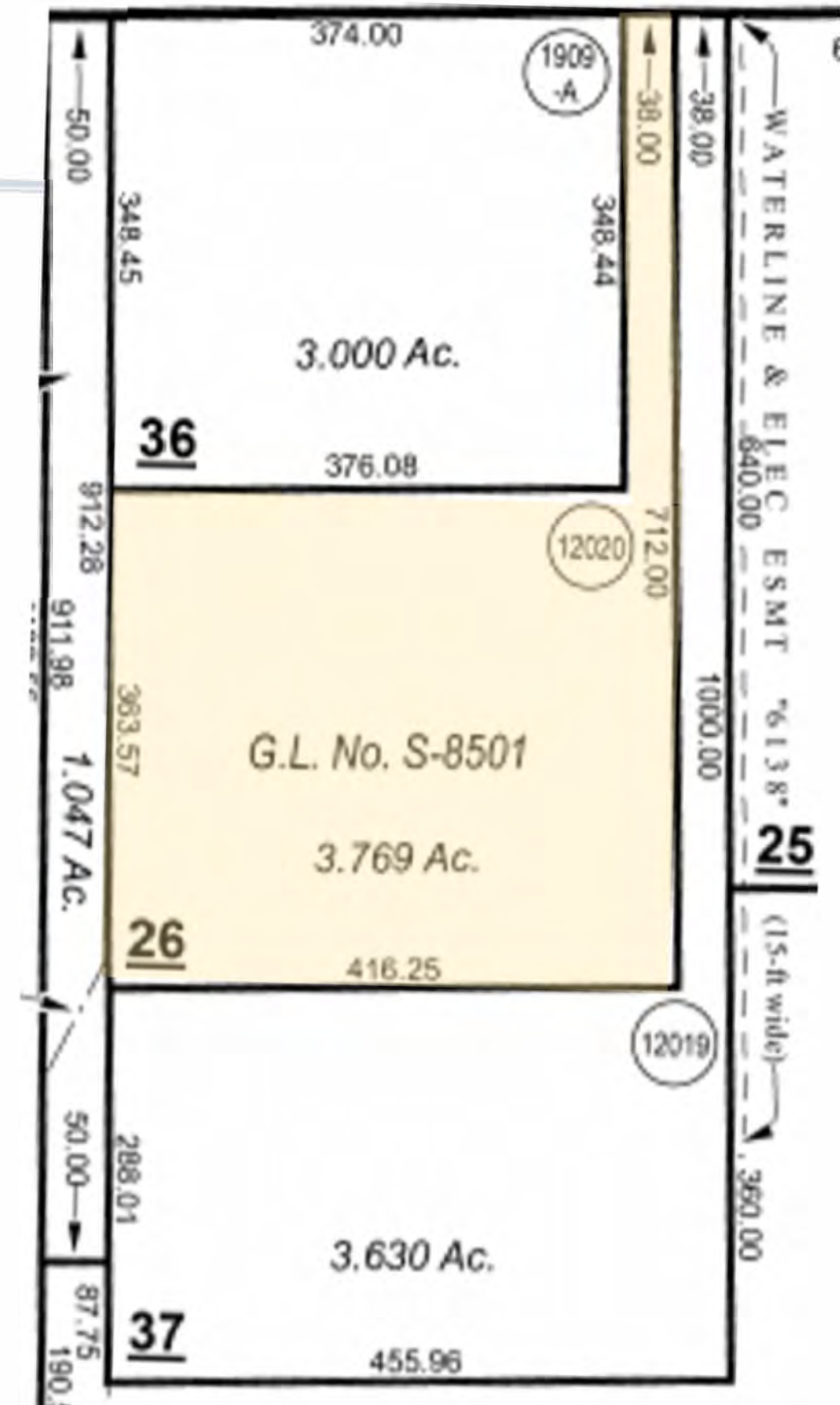
Address: 91 269 Olai Street, Kapolei, HI 96707

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

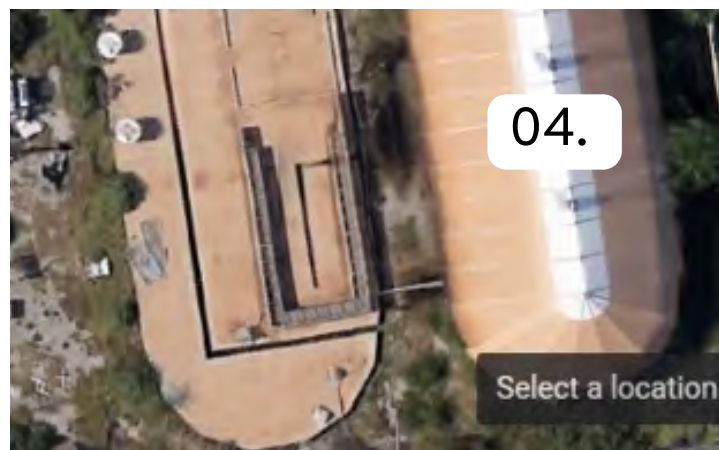
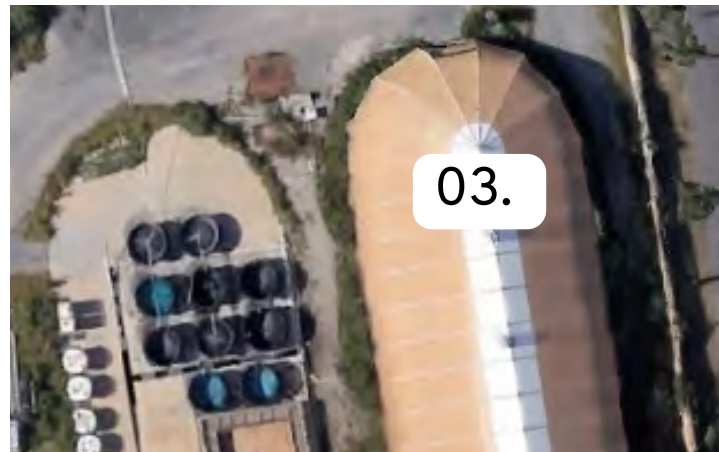
Fish and Shrimp feed trials for palatability and growth

03. Storage: Feeds, Dry Ingredients

Storage of dry ingredients and goods.

04. Feed Production Plant

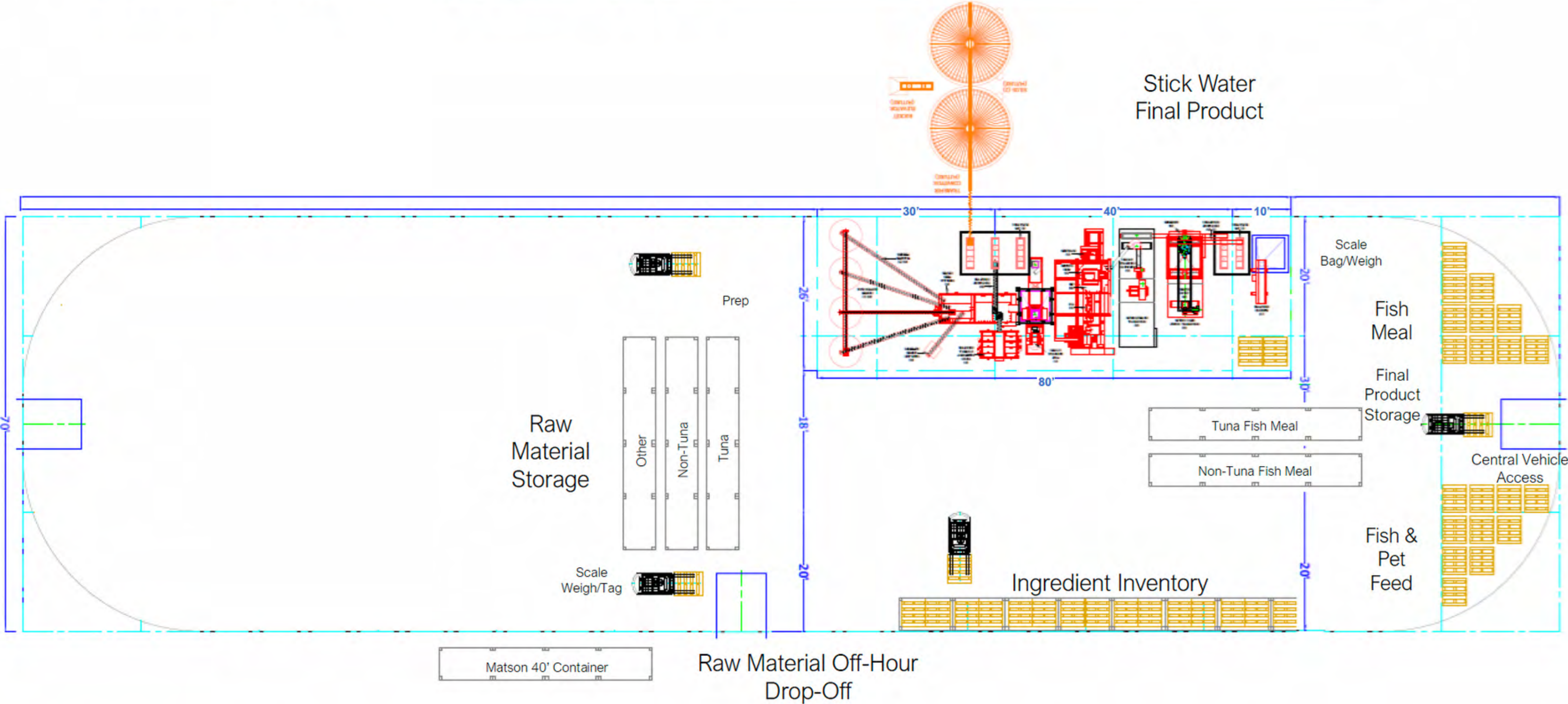
Feed produced from the meal.



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

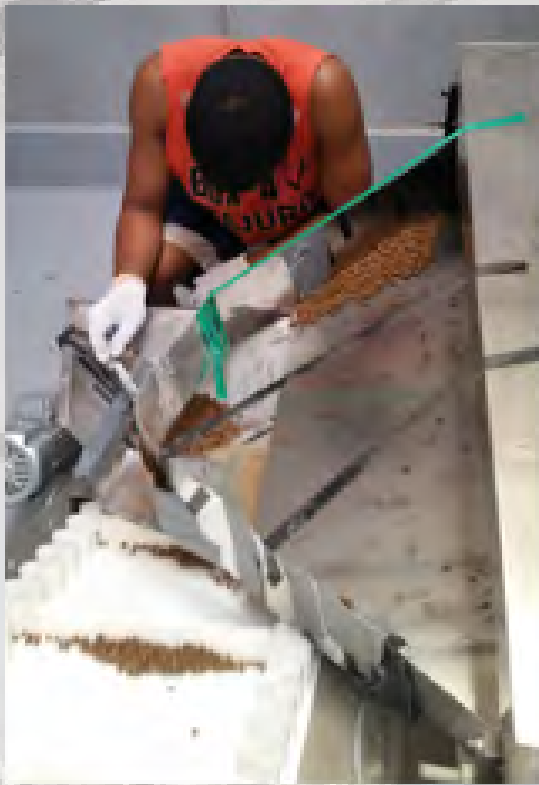
Will be located figure 4 page 13.

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

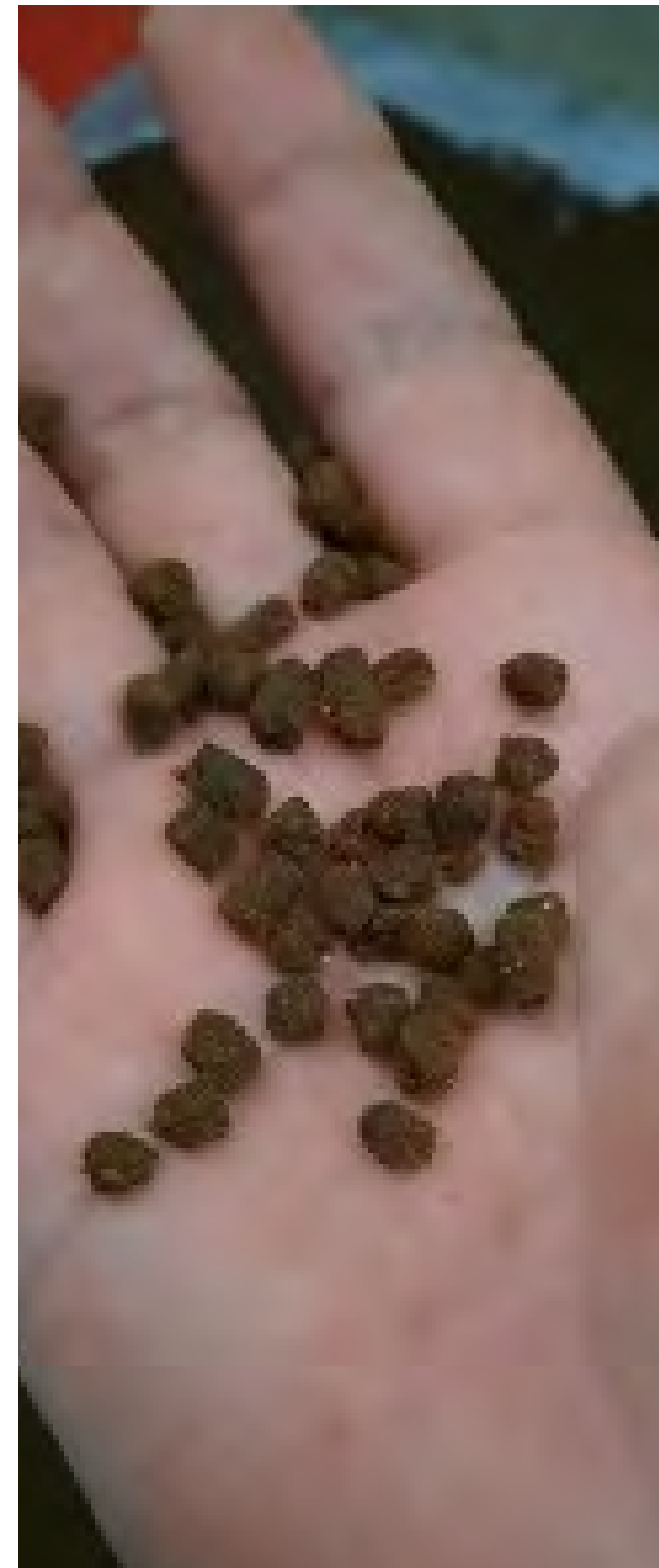
47%

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

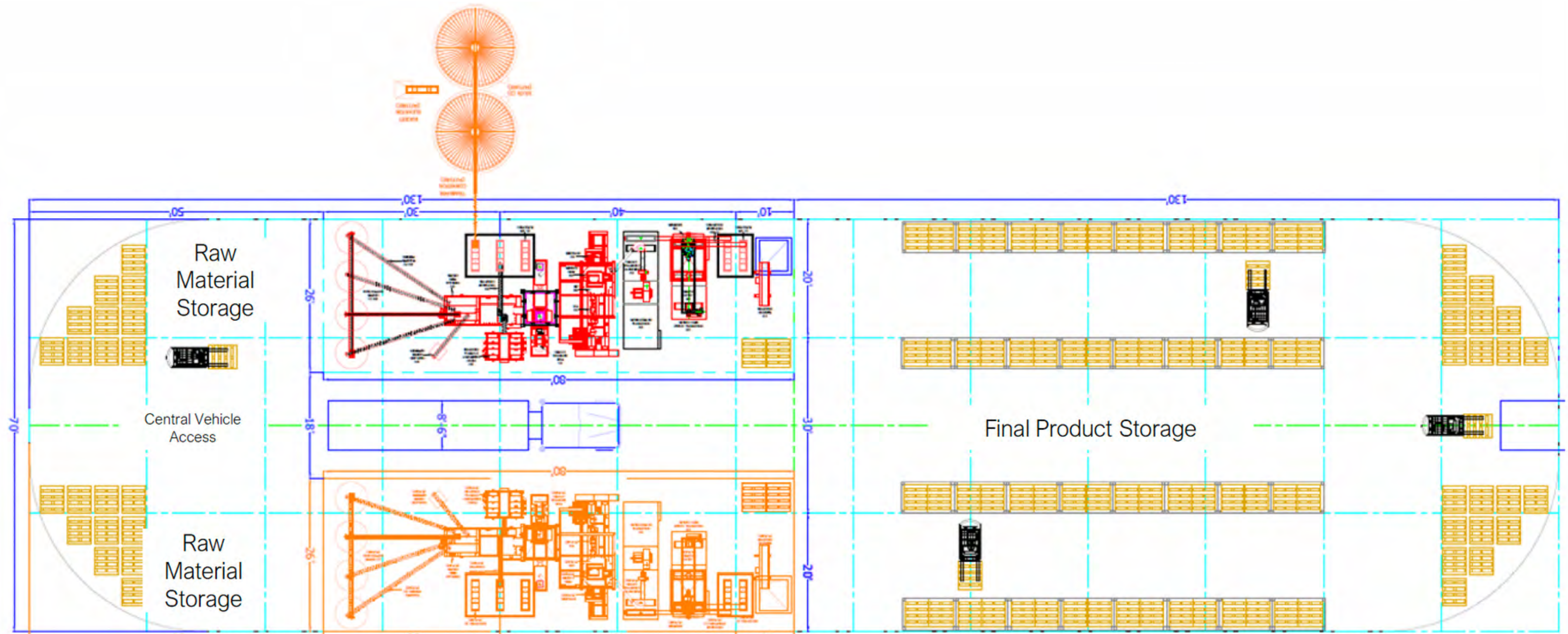
Fish, Animal, Other By-Products & Waste Processing Area
Capacity 6-10 Tons Per Day



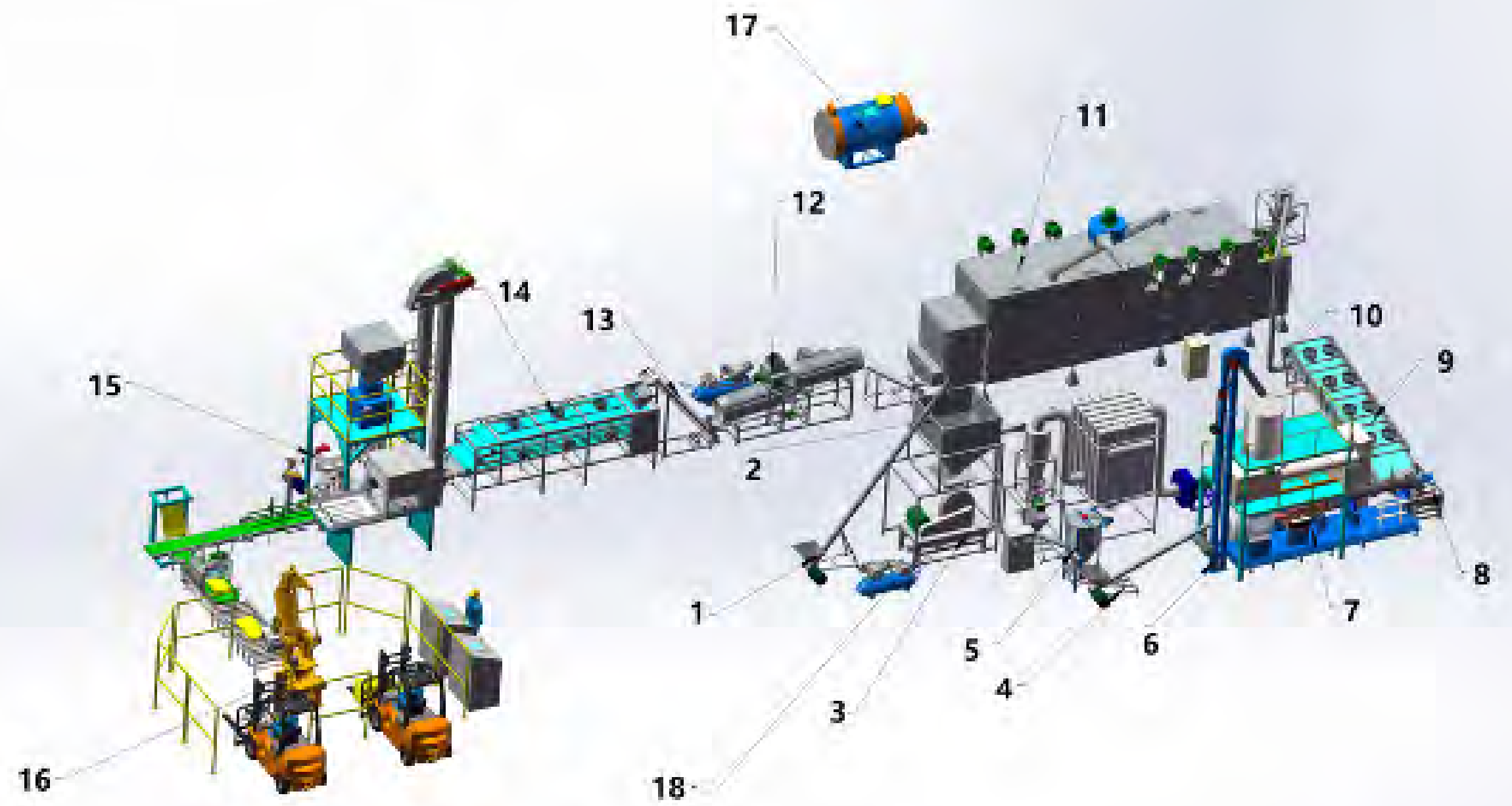
Diamond Head Seafood

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

Fish & Pet Feed Mill layout – Option 2

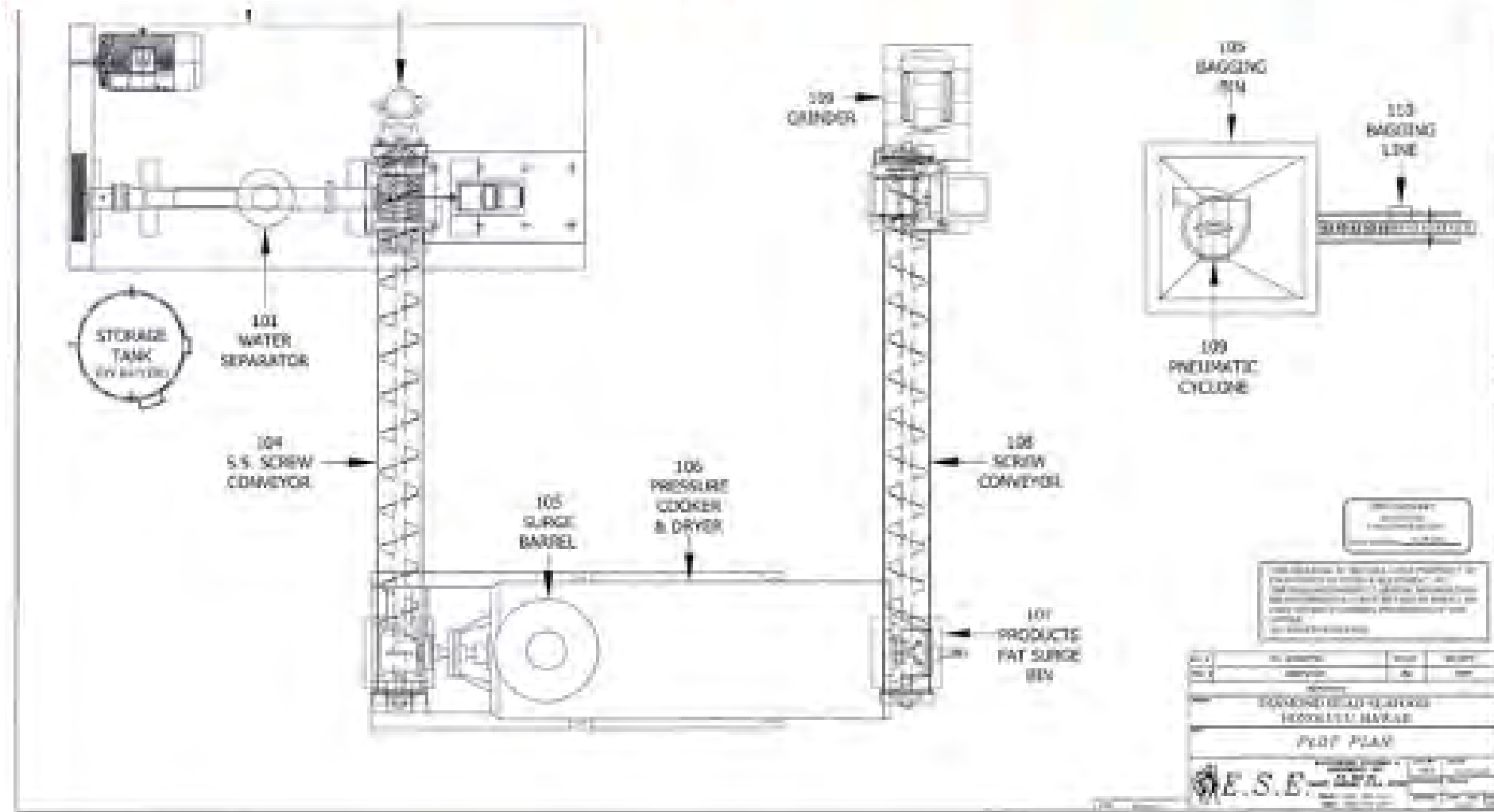
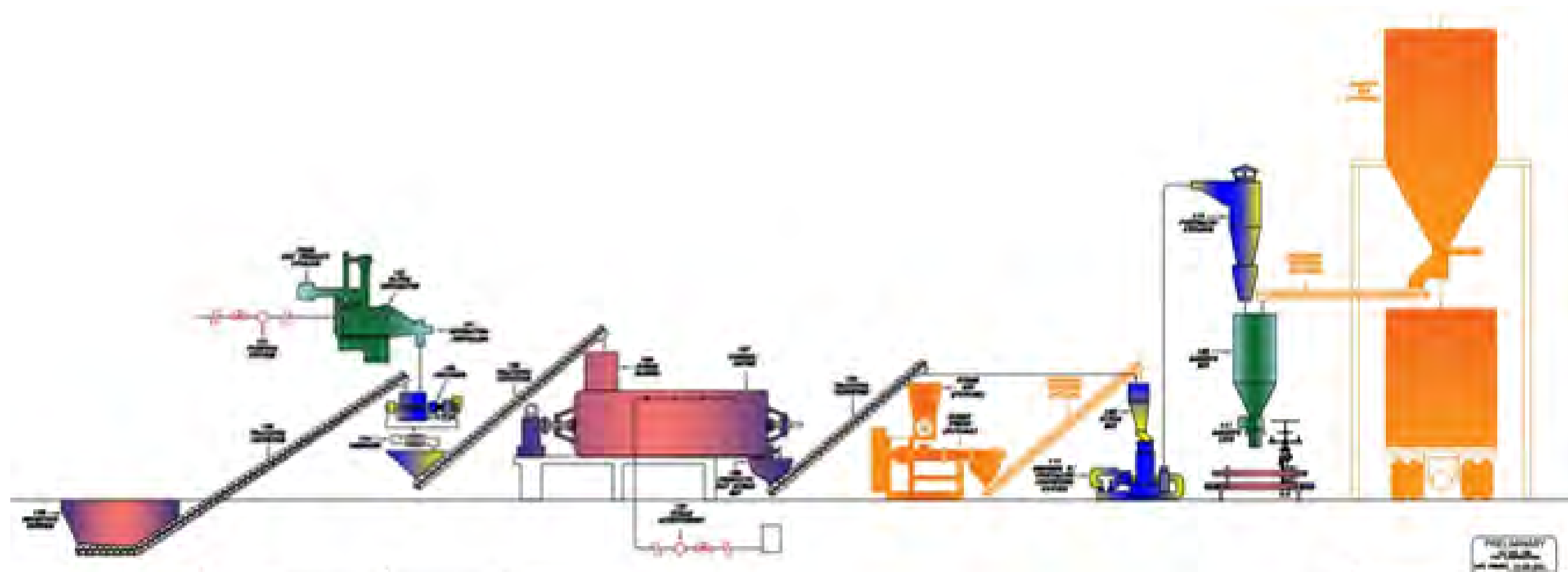


Fish Feed production line



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-layerCooling 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

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



E-2

WENDY GADY
EXECUTIVE DIRECTOR

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OU LU AINA MAHIAI

FEBRUARY 15, 2024

Subject: Request for approval to execute and enter into a memorandum of understanding between ADC, Hawaii Technology Development Corporation, Natural Energy Laboratory of Hawaii Authority, and Hawaii Department of Agriculture to encourage, support, and facilitate planning and research related activities

Applicant: Agribusiness Development Corporation (ADC)

Authority: 163D-4(a)(5),(15) Hawaii Revised Statutes

BACKGROUND:

About the Hawaii Technology Development Corporation

HTDC is a dynamic state agency responsible for diversifying Hawaii's economy and developing a flourishing technology industry that provides quality, high-paying jobs for Hawaii residents. HTDC aims to accelerate the growth of Hawaii's technology industry by providing capital, building infrastructure and developing talent to foster innovation. HTDC is attached to the Department of Business, Economic Development and Tourism (DBEDT). Created in 1983, the Hawaii Technology Development Corporation, is the state's economic development agency focused on developing the technology sector. Since its inception, technology has evolved and permeates facets of all industries. HTDC continues to innovate and create programs relevant to meet the changing technology industry. In addition to providing incubation facilities to foster the growth of technology startups, HTDC has grant programs, educational and networking programs, statewide mentoring and technology workforce development.

About Natural Energy Laboratory of Hawaii Authority

NELHA administers the world's premier energy and ocean technology park. This unique master-permitted park is located on 870 acres of prime coastal property in Kailua-Kona Hawaii and offers research support facilities for the development of renewable energy and other demonstration projects that utilize the unique resources found at the park. It is the world's only facility that continually brings ashore high quality, pristine supplies of both warm surface and cold deep seawater 24 hours a day which allows for various tests to take place with views to reap economic potentials from the dual temperature seawater delivery system and high solar insolation. Tenants located in HOST Park work at the pre-commercial, commercial, research and educational levels. It is the largest diversified economic development project in the State and is solely focused on developing green economic projects.

About Hawaii Department of Agriculture

The Hawaii Department of Agriculture's (HDOA) 268 employees statewide work to support, enhance, promote, and protect Hawaii's agriculture and aquaculture industries. We work to create and maximize

Request for approval to refer License Agreement No. LI-GA1713 issued to Touan Farm LLC for 25.191 tillable acres at Wahiawa, Oahu, Hawaii, TMK (1) 7-1-012:001 (por.), to the Department of the Attorney General for enforcement action
February 15, 2024

opportunities for exporting; and facilitate growth of existing and new agricultural commodities and value-added products. In addition, the department works to prevent the introduction and establishment of plants, animals and diseases that are detrimental to the state's agriculture industry and the environment.

REQUEST:

Staff requests that the Board authorize staff to execute the Memorandum of Understanding (MOU) (Exhibit "A") between ADC, Hawaii Technology Development Corporation (HTDC), Natural Energy Laboratory of Hawaii Authority (NELHA), and the Hawaii Department of Agriculture (HDOA). (Request).

OPERATIONAL PLAN:

ADC anticipates the proposed MOU facilitating increased cooperation and collaboration between HTDC, NELHA, and DOA to further the missions of the respective agencies (for details, see Exhibit "A").

CONSERVATION PLAN:

N/A

CHAPTER 343:

N/A

DISCUSSION:

ADC is actively working to develop working relationships with other state agencies to broaden collaborative efforts to advance state-level and agency-level priorities. A partnership with and between HTDC, NELHA, and DOA will allow ADC to further explore the agency's interest in aquaculture development.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the Request noted above.

Respectfully Submitted,

Lyle Roe

LYLE ROE

Asset Manager

Approved for Submission:

Wendy Gady

Wendy Gady

Executive Director

MEMORANDUM OF UNDERSTANDING
between
Agribusiness Development Corporation
and
Hawaii Technology Development Corporation
and
Natural Energy Laboratory of Hawaii Authority
and
Hawaii Department of Agriculture

This Memorandum of Understanding (“MOU”) is entered into by and between the Agribusiness Development Corporation (“ADC”), an instrumentality and agency of the State of Hawai‘i whose business address is 235 S. Beretania St., Suite 205, Honolulu, Hawai‘i 96813, the Hawai‘i Technology Development Corporation (“HTDC”), an instrumentality and agency of the State of Hawai‘i whose business address is 521 Ala Moana Blvd., Suite 255, Honolulu, Hawai‘i 96813, the Natural Energy Laboratory of Hawaii Authority (“NELHA”), an instrumentality and agency of the State of Hawai‘i whose business address is 73-4460 Queen Ka‘ahumanu Hwy., #101, Kailua-Kona, Hawai‘i 96740, and the Hawaii Department of Agriculture (HDOA), a department within the State of Hawai‘i whose business address is 1428 South King Street, Honolulu, Hawai‘i 96814. ADC, HTDC, NELHA and HDOA may be referred to herein individually as a “Party” and collectively as the “Parties”.

WHEREAS, the Parties desire to further develop and grow the aquaculture industry in Hawai‘i;

WHEREAS, aquaculture was the fastest growing food production sector in the world, growing 6.2% annually between 2000 and 2012 (9.5% between 1990 and 2000) and continues to show significant potential;

WHEREAS, improved coordination and increased collaboration between the Parties will assist in the economic growth of aquaculture. Detailed identification of new opportunities will lay the foundation for strong and equitable economic development and may provide an alternative source of revenue to the State;

WHEREAS, pursuant to chapter 163D, *Hawaii Revised Statutes* (HRS), ADC’s purpose is to create a vehicle and process to make optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawai‘i;

WHEREAS, ADC’s charter establishes a public corporation to administer an aggressive and dynamic agribusiness development program;

WHEREAS, ADC’s statutory mission is to support the production of local agricultural

products for local consumption, develop commercial exports of locally products;

WHEREAS, ADC's purpose is to coordinate and administer programs to assist agricultural enterprises to facilitate the transition of agricultural infrastructure from plantation operations into other agricultural enterprises, increase local production of agricultural products for local consumption, reduce the State's reliance on imported agricultural products, and increase access to farmland and related infrastructure for small local farmers and cooperatives;

WHEREAS, ADC's statutory powers include the power to acquire or contract to acquire by grant or purchase any real, personal or mixed property infrastructure or accessory facilities in connection with any project, and water facilities for conveying distributing and transmitting water for irrigation and agricultural uses;

WHEREAS, ADC's statutory powers include providing advisory, consultative, training and educational services, technical assistance and advice to any person, partnership, or corporation, either public or private, in order to carry out the purposes of HRS chapter 163D, and to engage the services of consultants on a contractual basis for rendering professional advice;

WHEREAS, ADC's statutory powers include the ability to initiate and coordinate business and agricultural development plans for its projects, enter into cooperative agreements, organize a subsidiary corporation, acquire the assets of a private or other corporation, and develop a project to identify necessary project facilities;

WHEREAS, ADC's statutory powers include issuance of bonds to provide funds to finance project facilities and with the governor's approval may issue revenue bonds;

WHEREAS, ADC's current licensees include both agriculture and aquaculture agribusinesses. The sharing of best management practices, innovation and technology grants, and access to current research and development, present opportunities for scaling agriculture production within the State;

WHEREAS, NELHA and HTDC partnered to support the establishment of the HATCH aquaculture accelerator program at NELHA and has provided venture capital for a follow-on fund;

WHEREAS, several recipients of HTDC's Hawai'i Small Business Innovation Research (HSBIR) matching grants that were conducting aquaculture research at NELHA have transitioned their research into commercially viable products;

WHEREAS, NELHA and HTDC were two of the lead agencies that partnered in 2021 to submit a proposal targeting the Ocean Economy Growth Cluster in response to the Economic Development Administration's Build Back Better Challenge Grant Opportunity. Although the proposal was not awarded funding, it highlighted joint potential project opportunities and common interests;

WHEREAS, HRS section 206M-2(a)(7) directs HTDC to coordinate with other State agencies and entities to support the innovation and technology industry as it relates to growing the aquaculture sector;

WHEREAS, NELHA's purpose as detailed in HRS chapter 227D, which is to facilitate research, development, and commercialization of natural energy resources and ocean-related research, technology, and industry in Hawai'i and to engage in retail, commercial, or tourism activities that will financially support that research, development, and commercialization at a research and technology park in Hawai'i;

WHEREAS, NELHA's HOST Park, located on 870 acres of land and including 4.4 square miles of ocean research corridor is the largest single green economic development project in the world. Its focus is on the uses of deep and surface ocean water for renewable energy research, aquaculture and other areas, as well as on sustainable uses of natural energy sources such as solar energy;

WHEREAS, NELHA has developed world-class aquaculture infrastructure that has been put in place at HOST Park. The State has invested over \$120 million since 1974 to create HOST Park, a unique outdoor demonstration site for ocean-based technologies. Three sets of pipelines deliver deep sea water from up to 3,000 ft. depth as well as pristine sea surface water;

WHEREAS, NELHA also serves as a business incubator, research facility, and economic development agency. It offers the opportunity for businesses and organizations using sea water, sunshine, and ingenuity to perform research, engage in conservation and education activities, workforce development, and produce sustainable commercial products from aquaculture;

WHEREAS, NELHA provides proof-of-concept (POC) and commercialization services to start-ups in Hawaii's Aquaculture cluster through the management of a contract for the operation of one of the only aquaculture accelerator's worldwide and has a limited partnership agreement for one \$10 million follow-on venture investment funds and access to one additional follow-on venture fund of \$10 million managed by its same contractor for successful business coming out of the aquaculture accelerator. These efforts have demonstrated the State's commitment to developing Hawai'i's commercial aquaculture industry and focus entrepreneur and investor interest on Hawai'i as a location for globally relevant aquaculture companies; and

WHEREAS, HOST Park is essentially a POC or outdoor demonstration site for universities, businesses and individuals that have completed their work in the laboratory and are entering the next phase in their growth, which is to scale up their aquaculture technology outside the laboratory in real world conditions. In this regard, HOST Park plays a key role as a site for these

demonstrations and allowing start up aquaculture business before graduating to other sites around the State, including sites being developed by ADC.

WHEREAS, HRS section 141-52 establishes within the Hawaii Department of Agriculture a program to promote and support the aquaculture industry. The program shall act as an information clearinghouse for aquaculture activities, coordinate development projects to investigate and solve biological and technical problems, actively seek federal funding, and develop and expand the aquaculture industry.

NOW, THEREFORE, the Parties hereby memorialize their intention to collaborate on efforts to grow the aquaculture sector of Hawaii's economy as described below.

BACKGROUND AND OVERVIEW.

Purpose. This MOU documents the intended relationship between Parties to encourage, support, and facilitate planning, implementation, research related activities between the Parties in this MOU. Each Party may contribute to this effort through appropriate means including, but not limited to, cash or in-kind support, program and project coordination, information sharing of other relevant expertise, and program and project management of implementation elements defined in this MOU.

Policy. The general policy, areas of cooperation, and joint activities are planned by ADC, HTDC and NELHA. All work done or actions taken are consistent with the mission of each Party to support identification of opportunities to grow the aquaculture sector in Hawai'i.

Non-Binding. This MOU does not create a binding agreement and is not enforceable in a court of law as a contract. This MOU shall not be used to obligate or commit funds, or as the basis for the transfer of funds. This MOU does not commit any Party to take any actions. The actions of each Party are independent of the actions of the other Party. The Parties anticipate their activities under this MOU will lead to agreements to perform and pay for certain tasks, the details of which will be memorialized in final binding agreement(s), if any.

The Parties intend to: 1) cooperate and share resources to identify growth opportunities; 2) provide experts and resources as needed to complete this work; 3) provide the information gathered for the betterment of others; and, 4) provide the following additional resources to implement this project.

MANAGEMENT AND PROGRAM GUIDELINES.

Scope of Collaboration. The Parties shall leverage their assets, to support the overlap in mission, including but not limited to the following:

1. Sharing best practices, templates, and collateral;

2. Cost-sharing in activities and contracts that are mutually beneficial;
3. Pursuing federal grant opportunities as they arise;
4. Promoting each other's programs and events, whenever appropriate, through newsletters, email marketing, and social media platforms;
5. Exploring new aquaculture opportunities;
6. Create an efficient agribusiness industry.
7. Surveying and reporting on shared companies served; and
8. Meeting quarterly, or as deemed appropriate, to identify and plan new joint venture partnership opportunities.

ADC intends to provide:

1. Identification and collaboration opportunities within current licensees, lands and identified future licensees and lands;
2. Access to data collected from licensees regarding current production and needs for equipment, expertise, and funding for future scale of their production needs;
3. Information collected regarding the logistics for inter-island and export of goods and services;
4. Business development expertise specific to agricultural and value-added agricultural production in Hawai'i;
5. Identification and collaboration on energy projects for creating business efficiencies for land holdings and licensees; and
6. Identification and collaboration regarding current and future needs of Food & Product Innovation Network clients.

HTDC intends to provide:

1. Provide expertise on managing and coordinating technology a local Hawaii accelerator programs;
2. Access to the Department of Commerce – National Institute of Standard and Technology – Manufacturing Extension Partnership Program National Network Resource (NIST MEP);
3. Partnership with Statewide Economic Development Partnership network; and
4. Sharing of Hawaii SBIR PROGRAM best practices on working with technology companies in Hawaii.

NELHA intends to provide:

1. Technical expertise to ADC in the development of requests for proposals, solicitations, etc. for aquaculture projects;
2. Access to data collected at NELHA through its SCADA system;
3. Access to laboratory facilities and water quality laboratory;
4. Business development expertise specific to aquaculture in Hawai'i;
5. Grant ADC access to system performance data;

6. Monitoring, analyzing and sharing the aggregate and non-proprietary operation and performance data of aquaculture businesses at HOST Park; and
7. Participating in education and outreach and workforce development for the aquaculture sector.

HDOA intends to provide:

1. Expertise and veterinary services;
2. Administer permit framework for the importation of existing and new species relevant to aquaculture;
3. Identification and collaboration of Research and Development land assets;
4. Identification and collaboration of production land assets;
5. Economic analysis of the industry.

Management Arrangements. This MOU envisions direct communication between ADC, HTDC, and NELHA officials involved in managing the information to be exchanged.

1. This MOU is intended to broadly state the basic understandings of the Parties of the tasks described herein.
2. This MOU in no way restricts either of the Parties from participating in any activity with other public or private agencies, organizations, or individuals.
3. This MOU is neither a fiscal nor a funds obligation document. Nothing in this MOU authorizes or is intended to obligate the Parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value.
4. This MOU is strictly for internal management purposes for each of the Parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of any Party. This MOU shall not be construed to provide a private right or cause of action for or by any person or entity.
5. Nothing herein is intended to create a common-law "partnership" with joint and several liabilities of any Party for the acts or omissions of any other Party/Parties.

ADMINISTRATION.

Patent and Technical Data. Parties shall retain exclusive right, title, and interest to their individual underlying technologies if any. No Party warrants that any information or technology disclosed to the other Party shall be merchantable or fit for a particular purpose or free of claims of infringement from third parties.

Release of Information. Production or release to news media, to the general public, or any third party regarding the existence, nature, or purposes of this MOU shall require mutual written agreement of all Parties prior to its release; subject to any requirements of the

Freedom of Information Act and the Uniform Information Practices Act, as applicable.

IMPLEMENTING AGREEMENTS.

The details of the levels of support to be furnished to one organization by the other(s) with respect to funding will be developed in specific implementing agreements subject to availability of funds.

Agreements or project plans that set forth specific arrangements for program implementation shall be separately developed and agreed to in implementing agreements facilitated by this MOU. Specific funding and tasking will be established under such implementing agreements.

Appropriate patent and other intellectual property provisions shall be included in implementing agreements entered into by the Parties.

MISCELLANEOUS.

1. The terms of this MOU shall be governed by the laws of the State of Hawai'i.
2. A Party may not transfer or assign its role in this MOU without the previous written consent of all other Parties. Any such attempt to transfer or assign shall be null and void.
3. This MOU is intended to document the intended relationship between the Parties without creating legally enforceable obligations upon the Parties. All actions documented in this MOU are subject to available funding, and no liability shall be imposed upon a Party for failure to undertake any activity documented.
4. This MOU be effective upon the signatures of all Parties and shall remain in full force and effect for a period of five (5) years from the date of the MOU. Any Party may withdraw from this MOU in its sole discretion upon thirty (30) days written notice to the other Parties.
5. Nothing in this MOU shall be deemed to constitute any Party hereto as partner, agent or representative of the other Parties or to create any fiduciary relationship between the Parties.
6. Each Party shall be responsible for damages or injury that may be caused by its respective agents and representatives within the scope of their employment and performance under this MOU, to the extent that the liability for such damage or injury has been determined by a court or otherwise agreed to by the Parties, and the responsible party shall pay for such damage and injury to the extent permitted by law. Claims for damage of any nature whatsoever shall be limited to direct damages only.

7. This MOU may be executed, and signatures transmitted electronically or by facsimile. This MOU may be executed in counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument notwithstanding that all of the Parties are not signatories to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[The remainder of this page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the undersigned being duly authorized by the respective agencies have signed this Memorandum of Understanding.

AGRIBUSINESS DEVELOPMENT CORPORATION

By: _____
Name: Wendy L. Gady
Its: Executive Director
Date: _____

HAWAII TECHNOLOGY DEVELOPMENT CORPORATION

By: _____
Name: _____
Its: _____
Date: _____

NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

By: _____
Name: Gregory Paul Barbour
Its: Executive Director
Date: _____

HAWAII DEPARTMENT OF AGRICULTURE

By: _____
Name: Sharon Hurd
Its: Chairperson
Date: _____

January 18, 2024

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



E-3

WENDY GADY
EXECUTIVE DIRECTOR

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OU LU AINA MAHIAI

FEBRUARY 15, 2024

Subject: Request to authorize the Board to delegate authority to the Executive Director to execute non-extraordinary rights-of-entry without Board approval

Applicant: Agribusiness Development Corporation (ADC)

Authority: Section 163D-3(g), Hawaii Revised Statutes (HRS)

BACKGROUND:

On June 25, 2014, the ADC Board of Directors (Board) approved the *Corporate Resolution Authorizing the Executive Director to Grant Non-Extraordinary Rights of Entry* (Delegation). (Exhibit "A"). The purpose of the Delegation was to authorize the Executive Director to grant non-extraordinary rights-of-entry for such things as third-party access to ADC land, assets, and utilities for repair and maintenance, survey work on adjacent properties, survey and due diligence work by contractors for upcoming projects, approved tenants who do not yet have a lease or license for the purpose of farm and conservation planning, etc. The rights of entry formalize a process for third-party access to ADC lands in order to, in part, indemnify ADC, and require general commercial liability insurance as a requirement of that access, and is explicit that absolutely no property interest is conveyed by the right of entry.

Staff notes that other rights of entry that might be termed *extraordinary rights of entry* such as a local school or community group using ADC property for temporary events or parking, or long-term project planning for significant future projects would still be brought to the Board for approval.

REQUEST:

Staff requests that the Board authorize the delegation of authority to the Executive Director to execute non-extraordinary rights-of-entry without Board approval (Exhibit "B") (Request).

WATER NEEDS AND SOURCE OF WATER:

N/A

OPERATIONAL PLAN:

N/A

February 15, 2024

CONSERVATION PLAN:

N/A

CHAPTER 343:

N/A

DISCUSSION:

Pursuant to section 163D-3(g), HRS (Supp. 2022), the Board is required the to document specific delegations of authority to the executive director¹. The Delegation currently in place was approved nearly ten years ago. The Board has since hired a new executive director. In accordance with section 163D-3(g), HRS, which became effective July 1, 2022, staff believes that it is necessary and appropriate for the Board to consider and authorize the delegation of authority to the Executive Director to execute non-extraordinary rights-of-entry without further notice to or approval by the Board. This delegation of authority shall expire in four-years, with the option to extend for additional four-year periods, or until such time the delegation of authority is amended, revoked or rescinded.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the request.

Respectfully Submitted,

Lyle Roe

LYLE ROE

Asset Manager

Approved for Submittal:

WGS

Wendy Gady

Executive Director

¹ 163D-4(g), HRS states: "The board shall document the specific authority delegated to the executive director, including but not limited to the types of access and use of corporation property that the executive director may approve without notice to or approval by the board, and the rent credits and other amendments to board-approved contract terms that the executive director may approve without notice to or approval by the board."

**CORPORATE RESOLUTION
AUTHORIZING THE EXECUTIVE DIRECTOR
TO GRANT NON-EXTRAORDINARY RIGHTS OF ENTRY**

WHEREAS, the State of Hawaii, through its Agribusiness Development Corporation ("ADC"), owns and otherwise manages tens of thousands of acres of agricultural and commercial real property throughout the State of Hawaii;

WHEREAS, the Board of Directors of the ADC ("Board") routinely considers new projects and project facilities, and determines whether, and to what extent, the ADC will undertake, assist, or co-venture in such projects and project facilities;

WHEREAS, due diligence in preparation and implementation of these ADC projects and project facilities often require physical entry onto ADC lands by both the public and private sector entities and others involved in these projects and project facilities; and

WHEREAS, once a project or project facility has been approved by the Board of the ADC, the executive director should have the power to implement and facilitate the development and operation of the project or project facility.

NOW, BE IT RESOLVED, that the Board of Directors of the Agribusiness Development Corporation grants to its executive director the authority to grant rights of entry onto ADC property when reasonable and necessary to effectuate the projects, project facilities, as well as leases, licenses, revocable permits, and other activities previously approved by the Board.

The undersigned, Letitia N. Uyehara, certifies that she is the duly appointed Chairperson of the Agribusiness Development Corporation and that the above resolution was duly adopted at a meeting of the directors thereof, convened and held in accordance with law of the State of Hawaii, and the Bylaws of said Corporation on June 25, 2014, and that such resolution is now in full force and effect.

IN WITNESS THEREOF, I have affixed my name as Chairperson of the Board of Directors of the Agribusiness Development Corporation.

By: Letitia N. Uyehara
Letitia N. Uyehara,
Chairperson

Date: 8/27/14

BOARD RESOLUTION NO. 2024-1

A RESOLUTION TO DELEGATE AUTHORITY TO THE EXECUTIVE DIRECTOR TO
GRANT NON-EXTRAORDINARY RIGHTS OF ENTRY

The Board of the Agribusiness Development Corporation
hereby resolves:

WHEREAS, the State of Hawai'i, through its Agribusiness
Development Corporation (ADC), owns and otherwise manages tens
of thousands of acres of agricultural and commercial real
property throughout the State of Hawai'i; and

WHEREAS, the Board of Directors of ADC (Board) routinely
considers new projects and project facilities, and determines
whether, and to what extent, ADC will undertake, assist, or co-
venture in such projects and project facilities; and

WHEREAS, due diligence in preparation and implementation of
these ADC projects and project facilities often require physical
entry onto ADC lands by both the public and private sector
entities and others involved in these projects and project
facilities; and

WHEREAS, once a project or project facility has been
approved by the Board, the executive director should have the
power to implement and facilitate the development, due
diligence, monitoring, and operation of the project or project
facility; and

WHEREAS, the Board approved that certain "Corporate Resolution Authorizing the Executive Director to Grant Non-Extraordinary Rights of Entry" at their meeting on June 25, 2014, which was executed on August 27, 2014; and

WHEREAS, effective July 1, 2022, section 163D-3, Hawai'i Revised Statutes was amended, in part, to require the Board to document the specific authority delegated to the executive director¹; and

WHEREAS, the Board wishes to update and affirm its delegation of authority to the executive director to grant non-extraordinary rights of entry;

NOW THEREFOR BE IT RESOLVED, that effective February 15, 2024 (Effective Date), and for a period of four years from the Effective Date, the Board delegates to its executive director the authority to grant non-extraordinary rights of entry onto ADC property when reasonable and necessary to effectuate the projects, project facilities, including but not limited to, leases, licenses, revocable permits, utility access, asset operation, and other appropriate activities. This delegation of authority shall expire on February 14, 2028, with the option for the Board to extend for additional four-year periods, or until such time the delegation of authority is amended, revoked or rescinded by the Board.

The undersigned, Warren Watanabe, certifies that he is the duly elected Chairperson of the Board of Directors of the Agribusiness Development Corporation, and that the above resolution was duly adopted and made effective at a meeting of the Board, convened and held in accordance with the laws of the State of Hawai'i and the Agribusiness Development Corporation Bylaws, on February 15, 2024, such resolution is now in full force and effect as of the Effective Date, until such time as the Board may amend, extend, revoke or rescind this resolution.

IN WITNESS THEREOF, I have affixed my signature as Chairperson of the Board of Directors of the Agribusiness Development Corporation.

By _____
WARREN WATANABE
Its Board Chairperson
Date _____

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



E-9

WENDY GADY
EXECUTIVE DIRECTOR

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OU LU AINA MAHIAI

FEBRUARY 15, 2024

Subject: Discussion and action on letter from Senator Donovan Dela Cruz asking the ADC Board to waive attorney-client privilege with regards to the August 8, 2023 executive session minutes relating to candidate interviews, discussion of executive director salary, and board selection of executive director

Applicant: Agribusiness Development Corporation (ADC)

Authority: Sections 163D-3(a), 92-5(a)(2) & (4), 92F-13, and 92F-14, Hawaii Revised Statutes

BACKGROUND: On November 3, 2023, the Office of Information Practices (OIP) issued its opinion in response to S APPEAL 24-02, where an anonymous individual asked OIP to determine if the ADC Board of Directors violated the Sunshine Law during its selection of the new executive director on August 8, 2023. (See November 16, 2023 ADC Board Agenda and submittal F-2, pages 051-086, for a copy of OIP Opinion No. F24-03, available at https://dbedt.hawaii.gov/adc/files/2023/11/23_11_16-ADC-Board-Meeting-Submittals-signed.pdf.) After review of the executive session minutes OIP found 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.” See OIP Op. Ltr. No. F24-03 at page 24. OIP further found 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.” See OIP Op. Ltr. No. F24-03 at page 25. OIP noted that the Board could have voted on the salary amount in public without frustrating the executive session purpose of protecting candidates’ privacy interests. See OIP Op. Ltr. No. F24-03 at page 25-26.

In regard to the candidate interviews, OIP found “that their status as applicants for government employment was a matter affecting privacy. . . . [and] 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.” See OIP Op. Ltr. No. F24-03 at page 23.

Likewise, Board discussions regarding the hiring of an employee also involved a privacy interest subject to HRS section 92-5(a)(2), which OIP referred to as the “‘personnel-privacy exception’ to the Sunshine Law’s public meeting requirements” and noted that HRS section 92-5(a)(2) “explicitly allows executive discussions regarding the ‘hire’ of an employee.” See OIP Op. Ltr. No. F24-03 at page 22-23. OIP

concluded 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.” See OIP Op. Ltr. No. F24-03 at page 23.

ADC had the option of requesting reconsideration of the November 3, 2023 OIP Opinion. See OIP Op. Ltr. No. F24-03 at page 36. At the ADC Board meeting held on November 16, 2023, it was decided that ADC would make no further response to OIP regarding OIP Op. Ltr. No. F24-03.

On November 17, 2023, Senator Donovan M. Dela Cruz (Senator Dela Cruz) sent a letter to Chair Watanabe requesting “a complete and unredacted copy of the minutes of the ADC Board’s executive meeting on August 8, 2023 for the purpose of discussing Agenda Items D.1, D.2 and D.3 relating to Executive Director candidate interviews, discussion of Executive Director salary, and board selection of Executive Director.”

Based on OIP’s opinion that the August 8, 2023 discussions regarding salary and the public notification method should have been conducted during the public session, the executive session minutes regarding salary and the public notification method were provided to Senator Dela Cruz on November 21, 2023. Based on OIP’s opinion that the August 8, 2023 interviews and candidate discussions were properly held in executive session, information regarding the candidate interviews and selection of the new executive director were redacted and not disclosed. Board discussions covered by section 92-5(a)(4), HRS were also redacted and not disclosed.

In his November 17, 2023 letter, Senator Dela Cruz also requested that the Board waive its attorney-client privilege “with regard to any records responsive to this request as has been determined to be permissible pursuant to OIP Op. Ltr. No. 91-23.” Senator Dela Cruz was informed that his request would be presented to the Board at its next meeting, which was eventually scheduled for January 18, 2024.

On January 14, 2024, after receipt of the redacted August 8, 2023 minutes, Senator Dela Cruz filed a complaint with OIP arguing that the redactions were inappropriate. On January 16, 2024, OIP notified Chair Watanabe that a Notice of Appeal from Denial of Access to General Records (U APPEAL 24-25) was filed and gave ADC until January 30, 2024 to file a response. Based on the filing of U APPEAL 24-25, the only outstanding issue in regard to Senator Dela Cruz’s November 17, 2023 letter request for government records is the issue of attorney-client privilege.

ADC filed its response to U APPEAL 24-25 on January 30, 2024. A copy of the response, along with Exhibits A to H, are attached to this submittal.

At the January 18, 2024 Board meeting the motion to waive attorney-client privilege failed to garner sufficient votes to allow the Board to take action.

REQUEST:

Senator Dela Cruz requests that the Board waive its attorney-client privilege in regard to the August 8, 2023 candidate interviews and selection of the new executive director.

Discussion and action on letter from Senator Donovan Dela Cruz asking the ADC Board to waive attorney-client privilege with regards to the August 8, 2023 executive session minutes relating to candidate interviews, discussion of executive director salary, and board selection of executive director
February 15, 2024

RECOMMENDATION:

Subject to Board discussion in executive session pursuant to section 92-5(a)(4), HRS.

Respectfully Submitted,

Lyle Roe

LYLE ROE

Asset Manager

Approved for Submittal:

WGS

Wendy Gady

Executive Director

JOSH GREEN, M.D.
GOVERNOR



ANNE E. LOPEZ
ATTORNEY GENERAL

SYLVIA LUKE
LT. GOVERNOR

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MATTHEW S. DVONCH
FIRST DEPUTY
ATTORNEY GENERAL

January 30, 2024

VIA EMAIL: OIP@HAWAII.GOV

Carlotta Amerino
Staff Attorney
Office of Information Practices
250 S. Hotel St., Suite 107
Honolulu, HI 96813

Re: Notice of Appeal from Denial of Access to General Records (U APPEAL 24-25)

Dear Ms. Amerino:

The State of Hawai'i Agribusiness Development Corporation (ADC) received a copy of U APPEAL 24-25 on January 16, 2024, which was forwarded to me for response on January 17, 2024. *See* Exhibit "A". As I am sure you are aware, this is not the first time the August 8, 2023 Executive Session Minutes has been the subject of an inquiry by the Office of Information Practices (OIP). *Please see* S APPEAL 24-02 and OIP Op. Ltr. No F24-30 attached hereto as Exhibit "B". As such, I formally request that the records and files of OIP Op. Ltr. No. F24-03, which responds to S APPEAL 24-02 be incorporated under U APPEAL 24-25.

Additionally, please be advised that the Public First Law Center has filed a Complaint in Circuit Court of the First Circuit, under 1CCV-24-0000050, against Defender Council; Jon N. Ikenaga; and the ADC Board of Directors, which seeks, in part, to challenge the method used to select the ADC executive director on August 8, 2023, and OIP's Op. Ltr. No. F24-03 regarding the Sunshine Law. ADC was served with the Complaint on January 22, 2024. Accordingly, this response to U APPEAL 24-25 is constrained by the ongoing litigation.

By way of the January 16, 2024 letter, OIP asked ADC to provide "unaltered copies of the executive minutes for ADC's meeting on August 8, 2023, along with a video or audio recording of the executive session and a transcript if one was made for OIP's *in camera* use in

reviewing ADC's partial denial of Senator Dela Cruz's request." See Exhibit "A" at page 2. The letter goes on to state that "[e]ven when OIP believes a record cannot be withheld under the UIPA, OIP will not disclose the *in camera* record to the requester. If the *in camera* record is to be disclosed, disclosure will be by the agency maintaining the record and not by OIP." See Exhibit "A" at page 2.

ADC notes that a similar assurance to maintain the confidentiality of executive session audio or written transcript was made in the August 24, 2023 letter to ADC from OIP with regards to S APPEAL 24-02. The August 24, 2023 letter stated:

Please provide OIP with unaltered copies of the recordings of the ADC meetings on August 8 and 17, 2023, including relevant portions of any executive sessions. Please also provide copies of the meeting minutes, including relevant portions of the executive session minutes for both meetings for OIP's use in reviewing this appeal. . . . Even when OIP believes all or part of an executive session should have been opened to the public, OIP will not disclose the executive session recording or minutes to the complainant or any other requester. If the recordings or minutes are to be disclosed, disclosure will be by the board and not by OIP.

See letter dated August 24, 2023 attached as Exhibit "C" at pages 1-2. (Emphasis added.)

In reliance upon OIP's assertion that OIP would not disclose confidential information obtained through *in camera* review of the August 8, 2023 executive session recording or minutes, on September 5, 2023 ADC provided OIP with an audio recording of the August 8, 2023 Board Meeting (both public and executive session) as the minutes of the Board meetings had yet to be prepared. The August 8, 2023 minutes of the public and executive sessions were prepared from the recording and approved by the ADC Board on September 21, 2023. Unredacted copies of the executive session and public session minutes were provided to OIP on October 16, 2023.

OIP Op. Ltr. No. F24-03, which was issued by OIP in response to S APPEAL 24-02, was published on November 3, 2023. <https://oip.hawaii.gov/wp-content/uploads/2023/11/OIP-Op.-Ltr.-No.-F24-03-Anonymous-re-ADC-Board.pdf>. ADC was extremely dismayed to observe that passages from ADC's executive sessions were quoted and discussed in the published opinion in spite of OIP's claim that OIP would not disclose information obtained through the *in camera* review process. See OIP Op. Ltr. No. F24-03 pages 4, 8, 17, 18, 26, 27, 28, and 29 attached hereto as Exhibit "B".

In light of OIP's public disclosure of confidential information via OIP Op. Ltr. No. F24-03, ADC declines to provide any further confidential information to OIP for *in camera* review. ADC has concerns that publishing of this confidential information contributed to Senator Dela Cruz's assertion that:

The OIP opinion also cites multiple discussion points from the executive session regarding voting and how voting could be presented to the public. It is unclear then, why OIP was able to publicly publish such discussion points while the

redacted minutes eliminate all discussion surrounding the vote on the executive director.

See "Request to Access a Government Record" dated January 14, 2024, to OIP from Senator Dela Cruz attached hereto as Exhibit "D".

BACKGROUND

By way of letter dated November 17, 2023, Senator Donovan Dela Cruz (Senator Dela Cruz) asked the ADC Chair for:

[A] complete and unredacted copy of the minutes for the ADC Board's executive session meeting on August 8, 2023 for the purpose of discussing Agenda Items D.1, D.2 and D.3 relating to Executive Director candidate interviews, discussion of Executive Director salary, and board selection of Executive Director.

See Exhibit "E".

Senator Dela Cruz also requested that the ADC Board's "attorney-client privilege be waived with regard to any records responsive to this request as has been determined to be permissible pursuant to OIP Op. Ltr. No. 91-23." See Exhibit "E". Senator Dela Cruz asked for a response by November 21, 2023. See Exhibit "E". It is unclear whether Senator Dela Cruz's request was made pursuant to sections 92F-11 or 92F-19(a)(6), *Hawaii Revised Statutes* (HRS).

In reliance on OIP Op. Ltr. No. F24-03, on November 21, 2023, the ADC Chair through ADC staff, provided Senator Dela Cruz with the August 8, 2023 executive session minutes regarding the executive director salary discussion and the August 8, 2023 executive session discussion on the public notification method. Senator Dela Cruz was advised that his request to have the ADC Board members waive their attorney-client privilege would be brought up at the next board meeting.¹ See Exhibit "F". ADC did not provide Senator Dela Cruz with the executive director candidate interviews and Board decision making discussion based on OIP Op. Ltr. No. F24-03, which found the candidates had a privacy interest under section 92-5(a)(2), HRS. See Exhibit "B" at pages 22-23.

A. IN PROVIDING COPIES OF DISCUSSIONS CONDUCTED IN EXECUTIVE SESSION, ADC RELIED UPON OIP'S FINDINGS THAT PORTIONS OF THE AUGUST 8, 2023 EXECUTIVE SESSION SHOULD HAVE BEEN CONDUCTED DURING THE PUBLIC PORTION OF THE MEETING.

Regarding the public notification method, in hindsight OIP found:

¹ The attorney/client privilege matter was included as an agenda item at the Board's next meeting on January 18, 2024. The motion failed to garner sufficient votes to allow the Board to take action. The matter will be revisited at the February 15, 2024 ADC Board Meeting.

[T]he 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.

Exhibit "B" at page 4.

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.

Exhibit "B" at page 24.

Regarding the Salary Discussion, in hindsight OIP found:

[T]he 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.

Exhibit "B" at page 4.

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 reasonable 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 Bard 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.

Exhibit "B" at pages 25-26.

Based on the foregoing, the executive director salary discussion and public notification discussion were provided to chapter 92F, HRS, requesters after publication of OIP Op. Ltr. No. F24-03.

B. OIP FOUND THE CANDIDATE INTERVIEWS AND BOARD SELECTION DISCUSSIONS WERE PERMITTED TO BE CONDUCTED IN EXECUTIVE SESSION PURSUANT TO SECTION 92-5(a)(2), HRS, AND WERE PROTECTED FROM DISCLOSURE BASED ON THE CANDIDATE'S PRIVACY INTERESTS.

Regarding protection of the privacy interests of the Executive Director Candidate Interviews, OIP found:

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[.]"

Exhibit "B" at page 21 (emphasis added).

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. (Citation and footnote omitted.) 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 describing an individual's finances and income. HRS § 92F-14(b)(4), (6) ([Rpl.] 2012).²

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

² HRS section 92F-14(b) (Supp. 2022) also includes "(5) Information relating to an individual's nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position" and "(8) Information comprising a personal recommendation or evaluation" as examples of a significant privacy interest. (Emphasis added.)

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.

* * *

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. (Footnote omitted.)

Exhibit "B" at pages 22-23.

Section 92-4(a), HRS, states:

A board may hold an executive meeting that is 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. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced 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.

The August 8, 2023 Agenda met the notice requirements set forth in section 92-7, HRS, (date, time, place of the meeting; boards contact information to submit testimony; instructions for accommodations due to disability; purpose(s) of any executive meeting; posted not less than six calendar days prior to the meeting). *See* Exhibit "G". The August 8, 2023 Agenda reveals that the Board sought to hold an executive meeting closed to the public pursuant to section 92-5(a)(2), HRS, for purposes of executive director interviews, discussion of executive director salary, and selection of the executive director. *See* Exhibit "G".

The August 8, 2023 agenda also provided notice to the public that in addition to section 92-5(a)(2), HRS, the Board may go into executive session on any agenda item pursuant to the exceptions provided under section 92-5, HRS. *See* Exhibit "G". Section 92-5(a)(4), HRS, allows an executive session to be closed to the public in order for the Board to "consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities[.]" *See* S MEMO 20-6 posted June 9, 2020 (generic language at the end of the agenda was instructive in nature and served to inform the public of the possibility of holding unanticipated executive session). The Board's attorney was present at the executive

session held on August 8, 2023 and was asked questions during the executive session pertaining to the board's powers, duties, privileges, immunities, and liabilities.

The Board members present at 9:11 A.M. on August 8, 2023 when the public meeting was called to order included (1) Warren Watanabe (Chair); (2) Glenn Hong; (3) Jason Okuhama (Mr. Okuhama); (4) Lyle Tabata (Mr. Tabata); (5) Jayson Watts; and (6) Dane Wicker (Mr. Wicker).³ Pursuant to section 163D-3(b), HRS, the ADC Board is entitled to eleven members. The majority of members to which the board is entitled is six. To comply with section 92-4, HRS, an affirmative vote of two-thirds of the six members present on August 8, 2023 to authorize a closed meeting would be four. *See Minutes of the August 8, 2023 public session attached hereto at Exhibit "H".*

The Chair asked for public testimony on the "decision to go into executive session" or put another way, the "reasons" for going into executive session, which would have been the three items identified on the agenda under New Business.⁴ There were five members of the public in attendance at the August 8, 2023 public session. *See Minutes of the August 8, 2023 Public Session attached hereto as Exhibit "H".* No member of the public elected to provide testimony. Chair called for a motion to enter executive session. Mr. Tabata made the motion and Mr. Okuhama seconded the motion. Chair called for Board discussion. There was none. Chair called for the vote. The vote was unanimous: (1) Chair; (2) Glenn Hong; (3) Mr. Okuhama; (4) Mr. Tabata; (5) Jayson Watts; and (6) Mr. Wicker all voted in the affirmative to enter executive session.

As acknowledged by OIP Op. Ltr. No. F24-03:

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:

³ OIP's finding "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" is erroneous. *See Exhibit "B" at 21.* Only six members were present.

⁴ In OIP Op. Ltr. No. F24-03, OIP took offense at Chair's use of the phrase "limited to the decision to go into executive session" insinuating that use of that phrase "apparently had the effect of deterring public testimony on the actual agenda items." OIP Op. Ltr. No. F24-03 at 19. ADC asserts that use of the term "decision" is merely a question of semantics. Chair's intent was to ask for testimony on the agenda items to be discussed in the executive session. Considering there were only five members of the public present when Chair asked for testimony on the reasons for going into executive session, the lack of public testimony on the agenda items should not be considered unusual.

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 announce” 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.

See Exhibit “B” at page 21.

It is clear the requirements of section 92-4, HRS, were met. At 9:20 A.M., the Board entered into executive session pursuant to section 92-5(a)(2), HRS. See Exhibit “H”.

Section 92-5(a)(2), HRS, states that a board may hold a meeting closed to the public to “consider the hire . . . of an 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[.]” Neither of the executive director candidates requested an open meeting.

On the date of the interviews both candidates were not State employees; they were private citizens entitled to protection from public scrutiny as allowed under section 92-5(a)(2), HRS. The passage of time does not cause the candidates to lose the protections provided by statute at the time of the interview, even if one of them subsequently becomes a State employee. And certainly the non-selected candidate has a continuing right to protection under section 92-5(a)(2), HRS. As recognized under section 92-9(b), HRS, minutes shall be posted on the Board’s website, EXCEPT “where disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.” (Emphasis added.) Here, the interview process to consider hiring of candidates who were not State employees, delved into matters involving an individual’s nongovernmental employment history, the candidate’s State employment application, involved consideration of personal recommendations, and evaluation of the candidates by the Board members. This information, if disclosed would violate an individuals privacy interest.

As OIP specifically recognized:

Section 92-5(a)(2), HRS, explicitly allows executive discussion 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.

See Exhibit “B” at page 23.

OIP Op. Ltr. No. F-24-03, was decided under chapter 92, HRS, the Sunshine Law. See Exhibit “B”. In this instance, Senator Dela Cruz is seeking disclosure under chapter 92F, HRS, the Uniform Information Practices Act (UIPA), by claiming that the public’s interest in disclosure of the executive session minutes outweighs the privacy interest of the individuals as set forth in section 92F-14(a), HRS.

The Hawai‘i Supreme Court has found that, when applying section 92-5(a)(2), HRS, the so-called personnel-privacy exception, “a government board may decide to close a meeting to engage in deliberations without risking the invasion of fundamental privacy rights.” *Civil Beat Law Center for the Public Interest, Inc. v. City and County of Honolulu*, 144 Hawai‘i 466, 480, 445 P.3d 47, 61 (2019). The Court goes on to recognize that the plain language of HRS section 92-5(a)(2), “allows specific personnel discussions to take place in a closed meeting, conditioned on whether consideration of matters affecting privacy will be involved.” *Id.* (internal quotation marks omitted).

People have a legitimate expectation of privacy in highly personal and intimate information. Generally, highly personal and intimate information may include medical, financial, educational, or employment records. [G]enerally, personnel records may contain information that, if disclosed, would constitute an invasion of privacy.

Id. (internal citations and quotation marks omitted).

The Court went on to find that “[w]hen a UIPA’s exception applies, the record is directly exempted from the disclosure requirement.” *Id.* (Emphasis added.) The Court specifically noted that where a government record, “if disclosed, would constitute a clearly unwarranted invasion of personal privacy”, HRS section 92F-13(1), “shall not require disclosure” *Id.* (Emphasis added.) In this instance, State employment interviews may be expected to include discussions about an employment application for the governmental position, information relating to an individual’s nongovernmental employment history, and information comprising a personal recommendation or evaluation. All of these topics of conversation have been identified as examples of significant privacy interests. See section 92F-14, HRS. The candidate’s privacy interests must be respected and maintained.

In his Request for Access a Government Record addressed to OIP, Senator Dela Cruz complains that portions of the August 8, 2023 executive minutes regarding the salary discussion and the public notification method contained redactions. See Exhibit “D”. Senator Dela Cruz appears to assert that since OIP found the salary discussion and the public notification method should have been conducted in a public meeting, there should be no redactions. See Exhibit “D”.

OIP came to the conclusion that the salary discussion and the public notification method should have been conducted in a public meeting in hind-sight. The discussions took place in the waning minutes of the meeting while the Committee was trying to wrap up the session before Mr. Wicker had to leave. In this rush many different conversations ensued. The OIP opinion does not say that the salary discussion and the public notification discussion were not interspersed with conversations entitled to privacy considerations under sections 92-5(a)(2), 92-5(a)(4) or 92F-13, HRS, which in fact they were.

CONCLUSION

OIP has already determined that the job candidates on August 8, 2023 have a privacy interest in their August 8, 2023 job interviews. The subject matter of the job interviews clearly meet the exemptions to disclosure under sections 92F-13 and 92F-14, HRS. The interest in maintaining personal privacy of those citizens seeking government employment trumps the public's desire to discover the contents of these private conversations.

Should you have any questions or concerns, please do not hesitate to contact me at (808) 586-1191 or via email at delanie.d.prescott-tate@hawaii.gov.

Very truly yours,



Delanie D. Prescott-Tate
Deputy Attorney General
On behalf of
Agribusiness Development Corporation

cc: file
ADC Board



JOSH GREEN, M.D.
GOVERNOR

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CHERYL KAKAZU PARK
DIRECTOR

January 16, 2024

VIA EMAIL

Mr. Warren Watanabe
Chair
Board of Directors
Agribusiness Development Corporation

Re: Notice of Appeal from Denial of Access to General Records (U APPEAL 24-25)

Dear Chair Watanabe:

The Office of Information Practices (OIP) received an appeal from Senator Donovan M. Dela Cruz with respect to the Agribusiness Development Corporation Board of Directors' (ADC) partial denial of his request for records made under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA). Specifically, Senator Dela Cruz indicated that he made a written request to ADC dated November 17, 2023, for a copy of the minutes of the ADC's executive session on August 8, 2023, for the purpose of discussing agenda items D.1, D.2, and D.3 relating to Executive Director candidate interviews, discussion of Executive Director salary, and board selection of Executive Director.

Senator Dela Cruz provided OIP with a copy of ADC's letter to him dated November 21, 2023, along with a copy of redacted executive minutes provided to him by ADC. ADC's letter did not state the legal basis for the redactions under section 92F-13, HRS, or indicate what was redacted.¹ Copies of Senator Dela Cruz's appeal to OIP and his record request to ADC are enclosed for your information. OIP requests that ADC provide a copy of this letter, with enclosures, to all its members.

ADC's response to this appeal is ADC's opportunity to provide additional justification for its denial, or any additional information that ADC would like OIP to consider regarding this appeal. Within ten business days of receipt of this notice, please provide OIP with a written statement that includes the information listed in the enclosed summary of appeal procedures. Please remember that

¹ Section 2-71-14(b), Hawaii Administrative Rules (HAR), states that, when the agency intends to deny access to all or part of a requested record, the agency's notice to the requester shall state: (1) the specific record or parts of the record that will not be disclosed; and (2) the specific legal authorities under which the request for access is denied under section 92F-13, HRS, or other laws.

EXHIBIT A

the UIPA places the burden on the agency to establish justification for the nondisclosure of government records. HRS § 92F-15(c) (2012).

Please provide OIP with unaltered copies of the executive minutes for ADC's meeting on August 8, 2023, along with a video or audio recording of the executive session and a transcript if one was made for OIP's *in camera* use in reviewing ADC's partial denial of Senator Dela Cruz's request. See HRS § 92F-42(5) (2012). OIP would appreciate receiving the copies of the records no later than ten business days from receipt of this notice. For your information, OIP will destroy the *in camera* records and any copies of the records in its possession upon completion of this matter. If you would prefer that these records and any copies of the records be returned to you at the conclusion of this matter, please let OIP know. Even when OIP believes a record cannot be withheld under the UIPA, OIP will not disclose the *in camera* record to the requester. If the *in camera* record is to be disclosed, disclosure will be by the agency maintaining the record and not by OIP.

ADC and Senator Dela Cruz, by copy of this notice, are informed that OIP appeals are informal proceedings. Parties are not required to provide each other with copies of their submissions to OIP unless so ordered by OIP. With the exception of records provided for OIP's *in camera* review, OIP will, upon request, provide copies of a submission by a party to other parties without notice to the submitting party. Submissions to OIP are generally considered public records subject to the exceptions to disclosure at section 92F-13, HRS. If a party's submission to OIP contains what the party believes to be nonpublic information, it should indicate on the submission what the nonpublic information is.

Please be aware that an appeal to OIP remains pending until it is closed by either an opinion issued pursuant to section 2-73-17, HAR, or by a notice of dismissal pursuant to section 2-73-18, HAR, either of which will be sent to all parties to the appeal. Unless you receive either an opinion or a notice of dismissal for this appeal, then the appeal is still pending.

Please be advised that, for purposes of complying with the UIPA, ADC should not destroy a requested record that may be required to be made available for public inspection by OIP or the court. See OIP Op. Ltr. No. 92-13 at 6 n.l.

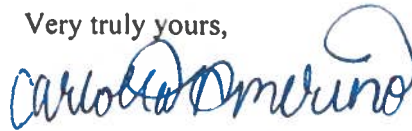
Please also be advised that a record requester need not wait for OIP's decision on this appeal, and may file a lawsuit for access within two years after an agency denial. HRS § 92F-15 (2012).

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.

Mr. Warren Watanabe
January 16, 2024
Page 3

Thank you in advance for your cooperation and assistance in this matter. Please do not hesitate to contact me if you have any questions or require assistance in responding to this letter.

Very truly yours,



Carlotta Amerino
Staff Attorney

CMA:rt
Enclosures

cc: Ms. Wendy Gady
Senator Donovan M. Dela Cruz (without enclosures)



JOSH GREEN, M.D.
GOVERNOR

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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]henver 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) (CBLC).

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[.]” CBLC 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. CBLC, 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

A handwritten signature in blue ink, reading "Carlotta Amerino", written over a horizontal line.

Carlotta Amerino
Staff Attorney

APPROVED:

A handwritten signature in blue ink, reading "Cheryl Kakazu Park", written over a horizontal line.

Cheryl Kakazu Park
Director



JOSH GREEN, M.D.
GOVERNOR

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August 24, 2023

VIA EMAIL

Mr. Warren Watanabe
Chair
Board of Directors
Agribusiness Development Corporation

Re: Notice of Appeal of Sunshine Law Complaint (S APPEAL 24-02)

Dear Chair Watanabe:

The Office of Information Practices (OIP) received an appeal from an anonymous complainant (Complainant) concerning the meetings of the Agribusiness Development Corporation Board of Directors (ADC) on August 8 and 17, 2023, regarding the hire of a new ADC Executive Director (ED). Specifically, the Complainant asks whether ADC voted in executive session¹ to approve the hire of a new ED in violation of the provisions on openness in the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS). A copy of the Complainant's appeal is enclosed for your information.

The ADC's response to this appeal is ADC's opportunity to provide justification for its actions or any additional information that the ADC would like OIP to consider for this appeal. Within ten business days of receipt of this notice, please provide OIP with a written statement that includes the information listed in the attached summary of appeal procedures. Please remember that OIP is required to interpret the Sunshine Law to favor openness and to disfavor closed meeting provisions. HRS § 92-1. For this reason, when a member of the public complains to OIP that a board's action was not in compliance with the Sunshine Law, the board has the burden to justify any departure from the law's general requirement of openness to OIP.

Please provide OIP with unaltered copies of the recordings of the ADC meetings on August 8 and 17, 2023, including relevant portions of any executive sessions. Please also provide copies of the meeting minutes, including relevant portions of the executive session minutes for both meetings for OIP's use in reviewing this appeal. OIP would appreciate receiving the copies of the recordings and

¹ OIP generally advises boards that they should not vote in executive sessions. See *Quick Review: Executive Meetings Closed to the Public* at page 7, a copy of which is enclosed.

minutes no later than ten business days from receipt of this notice.² For your information, OIP will destroy the copies of the executive session recordings and executive minutes OIP's possession upon completion of this matter. If the ADC prefers that the copies of the executive recordings and minutes be returned at the conclusion of this matter, please let OIP know. Even when OIP believes all or part of an executive session should have been opened to the public, OIP will not disclose the executive session recording or minutes to the complainant or any other requester. If the recordings or minutes are to be disclosed, disclosure will be by the board and not by OIP.

The ADC and Complainant, by copy of this notice, are informed that OIP appeals are informal proceedings. Parties are not required to provide each other with copies of their submissions to OIP unless so ordered by OIP. With the exception of records provided for OIP's *in camera* review, OIP will, upon request, provide copies of a submission by a party to other parties without notice to the submitting party. Submissions to OIP are generally considered public records subject to the exceptions to disclosure at section 92F-13, HRS. If a party's submission to OIP contains what the party believes to be nonpublic information, it should indicate on the submission what the nonpublic information is.

Please be advised that any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law. HRS § 92-12(c).

Please be aware that OIP is currently operating with a backlog of cases, so it will take time to resolve this appeal. Moreover, OIP's decision for this appeal will be limited to a finding as to whether the ADC violated the Sunshine Law. Even if OIP determines that the Sunshine Law was violated, OIP does not have the power to enforce its decisions by voiding the ADC's final actions.

Only the court may void a final action of a board that was taken in violation of the open meeting or notice requirements of the Sunshine Law. HRS § 92-11. While any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law, a suit to void any final action must be commenced within ninety days of the action. HRS §§ 92-11, -12. After determining whether the Sunshine Law was or will be violated, the court may also order payment of reasonable attorney's fees and costs to the prevailing party. HRS § 92-12(c).

Note that the ninety-day deadline to file a lawsuit is not tolled while an appeal is pending with OIP. This appeal refers to violations that allegedly occurred at meetings on August 8 and 17, 2023. Please be aware that if the Complainant wants to have any final action taken by the ADC voided, there appears to be only a limited time left in which to file a timely court action.

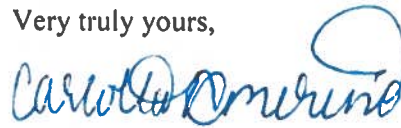
This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

² OIP acknowledges that under section 92-9, HRS, the ADC has 40 days to prepare meeting minutes and that minutes for the August 8 and 17 meetings may not be available in ten business days. If this is the case, please let OIP know and we will accept the minutes after 40 days.

Mr. Warren Watanabe
August 24, 2023
Page 3

Thank you for your attention to this matter. If you have any questions or would like to discuss this, please do not hesitate to contact the undersigned attorney.

Very truly yours,



Carlotta Amerino
Staff Attorney

CMA:rtt
Enclosures

cc: Complainant (w/o enclosures)

REQUEST TO ACCESS A GOVERNMENT RECORD

This is a model form that may be used by a Requester to provide sufficient information for an agency to process a record request. Although the Requester is not required to use this form or to provide any personal information, the agency needs enough information to contact the Requester with questions about this request or to provide its response. This request may not be processed if the agency has insufficient information or is unable to contact the Requester.

DATE: 01/14/2024

TO: Office of Information Practices
Agency that Maintains the Government Record

808-586-1400
Agency's Contact Information

FROM: Senator Donovan M. Dela Cruz
Requester's Name or Alias

sendelacruz@capitol.hawaii.gov

Requester's Contact Information

808-586-6800

AS THE REQUESTER, I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the requested government record will prevent delays in locating the record. Attach additional pages if needed.

A review of the provided redacted minutes from the Agribusiness Development Corporation's August 2023 executive session. The redacted minutes remove significant portions of the discussion that are not deemed to be privileged under HRS92-5. OIP's opinion, dated November 3, 2023, noted that the salary discussion and means with which the ADC board should alert the public does not have a privacy interest that constitutes a need for executive session. However, in the redacted minutes provided to the Chair's office, the minutes contained redacted portions in the discussion of both those areas.

The OIP opinion also cites multiple discussion points from the executive session regarding voting and how voting could be presented to the public. It is unclear then, why OIP was able to publicly publish such discussion points while the redacted minutes eliminate all discussion surrounding the vote on the executive director.

This request is for a review of the attached redacted ADC executive session minutes and a determination if the redactions, in comparison to the recorded meeting or transcript, were appropriate. For any areas where OIP determines that the redactions were inappropriate, a request is made for the redacted portions of the meeting that should not have been redacted.

I WOULD LIKE: (Please check one or more of the options below, as applicable)

☐ To inspect the government record

☒ A copy of the government record: (Please check only one of the options below.) See the next page for information about fees and costs that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

☐ Pick up at agency (date and time): _____

OIP 1 (rev. 12/1/2015)

EXHIBIT D

- ☐ Mail (address): _____
☒ E-mail (address): s.fuji@capitol.hawaii.gov
☐ Fax (toll free and only if available; provide fax number): _____
☐ Other, if available (please specify): _____

- ☐ If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.

☒ Electronic ☐ Audio ☐ Other (please specify): _____

- ☒ Check this box if you are attaching a request for waiver of fees in the public interest
(See waiver information on next page).

FEES FOR PROCESSING PUBLIC RECORD REQUESTS

You may be charged fees for the services that the agency must perform when processing your request for public records, including fees for making photocopies and other lawful fees. **The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you.** Fees are as follows:

Search for a Record	\$2.50 for 15 minutes
Review and Segregation of a Record	\$5.00 for 15 minutes

Generally, no search, review, and segregation fees may be charged if you are making a request for personal records that are about you.

WAIVER OF FEES IN THE PUBLIC INTEREST

As an alternative to the \$30 fee waiver (not in addition to), the agency may waive the first \$60 of fees for searching for, reviewing and segregating records when the waiver would serve the public interest. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are

- (1) The requested record pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

COSTS

The Agency may charge you any other lawful fees and the costs to copy and deliver your personal or public record request.

AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in *extenuating circumstances*, the agency must respond within 20 business days from the date of your request. If you have questions about the response time or the records being sought, you should first contact the agency and request to consult with the agency's UIPA contact person.

Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies and a requester must seek records directly from the agency. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at 808-586-1400, oip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

REQUESTER'S RESPONSIBILITIES

You have certain responsibilities under section 2-71-16, Hawaii Administrative Rules, which include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees and costs, if assessed. The rules and additional training materials are available online at oip.hawaii.gov or from OIP.



The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

November 17, 2023

Mr. Warren Watanabe, Chair
Agribusiness Development Corporation
235 S. Beretania St., Rm 205
Honolulu, Hawaii 96813

Aloha Chair Watanabe:

An anonymous complaint was filed to the Office of Information Practices against the Agribusiness Development Corporation (ADC) Board of Directors (Board). This resulted in Formal Opinion No. 24-03 relating to the Selection of the New Executive Director.

A request is hereby made for a complete and unredacted copy of the minutes of the ADC Board's executive session meeting on August 8, 2023 for the purpose of discussing Agenda Items D.1, D.2 and D.3 relating to Executive Director candidate interviews, discussion of Executive Director salary, and board selection of Executive Director.

As the requested government records relate to the selection of the Executive Director by the ADC Board, it is the position of the requester that pursuant to Section 92F-14(a), Hawaii Revised Statutes, the public interest in disclosure of the executive session minutes outweighs the privacy interest of the individual and therefore disclosure of the requested government records shall not constitute a clearly unwarranted invasion of personal privacy. Additionally, it is requested that the attorney-client privilege be waived with regard to any records responsive to this request as has been determined to be permissible pursuant to OIP Op. Ltr. No. 91-23.

I would appreciate your response by 4:00 p.m., November 21, 2023. Please respond via email to Committee Clerk Scott Fuji at s.fuji@capitol.hawaii.gov. Please contact Scott Fuji at 586-6639 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Donovan M. Dela Cruz", written over a large, stylized number "7".

Senator Donovan M. Dela Cruz

State Senate, State Capitol
415 S. Beretania Street, Rm 208
Honolulu, HI 96813

JOSH GREEN
GOVERNOR



WENDY L. GADY
EXECUTIVE DIRECTOR

SYLVIA LUKE
LT. GOVERNOR

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

November 21, 2021

Senator Donovan M. Dela Cruz
415 S. Beretania Street, Rm. 208
Honolulu, HI 96813
c/o Committee Clerk Scott Fuji
via email to
s.fuji@capitol.hawaii.gov

Dear Senator Dela Cruz:

Thank you for your letter dated November 17, 2023. Attached please find redacted minutes from the executive session of the Board of Directors of the State of Hawai'i, Agribusiness Development Corporation's meeting held on August 8, 2023.

As to your other requests, they will be brought up at the next board meeting.

Regards,

A handwritten signature in black ink, appearing to read "WW", is written over a horizontal line.

For Warren Watanabe, Chair
Agribusiness Development Corporation

Attachment

AGRIBUSINESS DEVELOPMENT CORPORATION

Executive Session Minutes of the Board of Directors Meeting held on August 8, 2023

In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

HRS section 92-4 allows the board to hold an executive meeting closed to the public. The board will be further discussing New Business Items 1 (Interview Two Top Executive Director Candidates), 2 (Discuss Executive Director Salary and Candidate Selection), and 3 (Method of Public Notification). This meeting was 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.

Members Present, in person:

Warren Watanabe, Member-At-Large (Chair)

Glenn Hong, Member-At-Large (Mr. Hong)

Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd) (arrived at 9:50 A.M.)

Jason Okuhama, Member-At-Large (Mr. Okuhama)

Lyle Tabata, Kauai County Member, Vice-Chair (Mr. Tabata) (left at 12:30 P.M.)

Jayson Watts, Maui County Member (Mr. Watts)

Dane Wicker, DBEDT Designated Representative for Ex-Officio Member James Tokioka (Mr. Wicker) (left at 12:30 P.M.)

Members Excused:

Kaleo Manuel, DLNR Designated Representative for Ex-Officio Member Dawn Chang

Karen Seddon, Member-At-Large (Ms. Seddon)

Counsel Present, in person:

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

Staff Present, in person: Ken Nakamoto, Project Manager, operated recording device (Mr. Nakamoto)

Guests Present, in person: None.

A. Call to Order

Chair called the Executive Session to order at 9:20 a.m.

[Interview session omitted pursuant to HRS section 92-5(a)(2), the personnel-privacy exception.]

Interview session ended at 11:45 A.M.

BOARD DISCUSSION

Ms. Hurd addressed Mr. Wicker stating that HDOA cannot purchase or own land, so it's been a real challenge. ADC is the only one that can do that.

Mr. Wicker acknowledged that fact and said HDOA can only get land [by Executive Order] EO'ed to you.

Ms. Hurd remarked well you can, but it's still not a purchase right. HDOA still doesn't own the land, it's still state land. DLNR keeps saying this is state land, this is state land. We do have a parcel on Hamakua that came to us because of a bankruptcy on an ag loan but that's small. Your point is really important. ADC can buy land.

AGRIBUSINESS DEVELOPMENT CORPORATION

Executive Session Minutes of the Board of Directors Meeting held on August 8, 2023
In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

Ms. Prescott-Tate asked Mr. Wicker what time do you have to leave?

Mr. Wicker responded I have an appointment at 12:30. We got to walk there. Are we doing action today?

Mr. Nakamoto asked we're still in Executive Session, right?

Ms. Prescott-Tate answered yes.

Chair stated he was moving on to Agenda Item 2 for the Board executive session discussion of salary.
The former executive director salary was \$147,000.

Mr. Hong: 147?

Chair responded 147. ADC's budget allows us to offer up to \$150,000.

[The following redactions were done for purposes of preserving attorney-client communications pursuant to HRS 92-5(a)(4) and for purposes of discussing the hiring of a private citizen where matters affecting privacy were discussed pursuant to HRS 92-5(a)(2).]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Watts said we're in the middle of the biennium, right? So if you gave the person the 147 at least you can give them \$3,000 on the pay raise next year.

Mr. Wicker clarified that would be after their annual eval, right for ED?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Wicker said thank you. On a side note, we are in executive session DBEDT put out our program managers to tell their boards that they are to stay within what's budgeted. What the legislature authorized per the budget journal table because at the end of the day, it's the DBEDT director that has to go in front of the Leg to justify the budget; not the chair. I'm going to start asking Chairs and boards that if you're going to go above and beyond what the legislature authorized, you defend it. There's some fiscal restraint here because some of these boards I tell you don't know whose money they think they're spending and to Ms. Prescott-Tate's point it's the tax payer's money. I know we want to hire and retain good people but at the same time we have to be fiscally responsible and the legislature is going come down on the boards and the director for spending above and beyond.

AGRIBUSINESS DEVELOPMENT CORPORATION

Executive Session Minutes of the Board of Directors Meeting held on August 8, 2023

In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

Mr. Hong said my sense is the salary is not that much of an issue [REDACTED]
[REDACTED] so whether it's 147, or 148, or 149, or 150 it doesn't really matter.

Mr. Okuhama agreed.

Mr. Wicker asked did they disclose the salary range during the PIG process?

Mr. Hong said no, but if they do their homework they can get in to the budget and find the appropriation.

Mr. Wicker said true. It's public information. Chair, what is our next action?

Ms. Hurd asked wasn't it 147 and change?

Mr. Hong said I remember the change because it was a percentage of the base before. We can give them a round number.

Ms. Hurd said I would round up 148.

Mr. Hong said I'm good with that.

There was a unanimous response of yes and nodding heads.

Chair said now we discuss the candidates?

[The applicant selection process was omitted pursuant to HRS 92-5(a)(2) for purposes of discussing the hiring of a private citizen where matters affecting privacy were discussed.]

[Redactions in the following discussion on the public notification method were done for purposes of preserving attorney-client communications pursuant to HRS 92-5(a)(4) and for purposes of discussing the hiring of a private citizen where matters affecting privacy were discussed, pursuant to HRS 92-5(a)(2).]

Mr. Wicker said do we do a press release? We have Becker Communications.

Mr. Hong said I think, after acceptance though.

Mr. Tabata asked [REDACTED]
[REDACTED]
[REDACTED]

Mr. Watts said my preference would be [REDACTED] we go through the process again

Mr. Hong repeated, the process again? My position is to go with [REDACTED]
[REDACTED]

AGRIBUSINESS DEVELOPMENT CORPORATION

Executive Session Minutes of the Board of Directors Meeting held on August 8, 2023
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[REDACTED]

Mr. Watts said well you know I'll go with it because I think it's important to get somebody going as quickly as we can. And I think that Scott Ishikawa and Becker Communication should be evaluated and that there be a more aggressive media push, to be as broad as possible. I didn't even see this ED selection thing on the news at all. So when somebody tells me that they went put out a press release I don't believe it because on Maui, Mauinow.com they just print press releases. They don't even do any reporting at all. So if it's not even there. I just think a wider net would've been better.

Ms. Hurd said to your point when it was announced at the board meeting that the application was on the HDOA website I texted our [Public Information Officer] (PIO), and it wasn't. So, it was immediately put it, but it wasn't there.

[REDACTED]

Mr. Hong said speaking for the committee I think we had a great list of candidates. We had fourteen and we had a whole day meeting getting it down to seven and we interviewed seven and so I think we had a really good representation of the people out there. I mean could we have gotten more candidates? Maybe, but I think we got some great candidates.

Ms. Hurd said you did. I'm good with [REDACTED]

Mr. Wicker said I agree with Mr. Watts on Becker Communications. My experience with them 'cause they have contracts with other attached agencies as clients and they're not aggressive enough. I've asked them to get ahead of stuff so we can revisit that approach. However, I think ADC doesn't need its own PIO, it should continue to contract out because we have a communications officer in DBEDT that's something ADC was able to benefit from. On the timetable, [REDACTED] I think the longer we wait, we're going to lose funds. We're not going to encumber in time. That's just the way the legislature did it. And the second thing, the names of the people that applied, I was familiar with some of them, and I thought there was such diverse backgrounds of those who applied, it would have been interesting to see if there was an even bigger push. ADC got fourteen applicants. The HTDC is also doing its executive director search and they got fifteen.

Ms. Hurd commented "wow."

Mr. Wicker said he was impressed, and kind of shocked at the same time that there was that much turn out for both of these positions. I think there was enough time and HTDC got only one additional and they're in the same ballpark as a salary range.

Mr. Okuhama said he went through the [Hawaii Community Development Authority] (HCDA) executive director search and the quality of candidates was a bit disappointing actually. We had a lot of candidates but not the quality of candidates. I think this time, the ones that we interviewed there was not one person that didn't encompass everything. They were pretty good quality and they had strengths, each of their own in different things. Speed is important so I agree that [REDACTED] because we need to move on this pretty quick

Mr. Hong asked so who's doing the letter?

Mr. Wicker asked Becker Communications?

AGRIBUSINESS DEVELOPMENT CORPORATION

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[REDACTED]
Mr. Hong asked so how fast could [REDACTED]
[REDACTED]

Mr. Hong asked so by tomorrow we're going to have a press release?
[REDACTED]
[REDACTED]

Mr. Watts asked will we be able to review the press release before it goes out? I only ask because I think . . . is it going to just be the board saying we're announcing this person or is it going to be the board saying we announce this person and kind of talk a little bit about the vision going forward?
[REDACTED]
[REDACTED]

Mr. Hong said so the full board has to approve this action, this offer?

Mr. Wicker noted we are the full board.

Mr. Hong said no I understand that but we're in executive session, does it have to be in an open forum?
[REDACTED]

Mr. Hong repeated with no names. Ok, that's good but before we do a press release, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Okuhama asked so the press release would be pretty immediate then.
[REDACTED]

Mr. Okuhama said if [REDACTED] we wait to the 17th, which is the next meeting, the word will get out. That's how I feel; it's going to get out.

Mr. Tabata suggested the letter goes out, [REDACTED], then we notify [REDACTED] Once [REDACTED] then we can do a press release.
[REDACTED]
[REDACTED]
[REDACTED]

The board members nodded in agreement.

Mr. Hong said we can actually just record it in open session saying that the board has made a decision, no names yet, and put it to a vote and it can be unanimous at that point.
[REDACTED]

AGRIBUSINESS DEVELOPMENT CORPORATION

Executive Session Minutes of the Board of Directors Meeting held on August 8, 2023
In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

Mr. Hong oh we don't need to vote?

[REDACTED]
[REDACTED]
Mr. Watts confirmed postal mail?

Mr. Hong asked so it's going to be a couple days?

Mr. Okuhama asked can't we e-mail [REDACTED]?

[REDACTED]
Mr. Hong said unless [REDACTED] willing to come in and pick up a letter

[REDACTED]
Mr. Hong said that'll save two, three days. That's what it comes down to really.

[REDACTED]
[REDACTED]
Mr. Hong acknowledged right. That'll give you a day or two to get the press release done with Becker.

[REDACTED]
[REDACTED]
Mr. Wicker said I think just for awareness we should look at it before it goes out, just to make sure.

Mr. Watts noted that [REDACTED] rewrote three or four op eds of Becker's, I don't trust that Becker's will be appropriate. I'd like to review it first.

[REDACTED]
Chair asked just press release?

[REDACTED]
Mr. Okuhama said it will be good to see what goes out before it goes out.

Mr. Wicker asked can I excuse myself?

[REDACTED]
Mr. Wicker said thank you, Chair, thank you, Board. Sorry I got to head out.

Mr. Tabata added can we tell whoever made my flight that I'm not going to make it? My flight is 1:20 p.m. I've got to return a car and everything. Can I leave already?

Mr. Okuhama asked Chair if he was going to do the press release?

Mr. Watts said we're supposed to go back to Maui today too.

AGRIBUSINESS DEVELOPMENT CORPORATION

Executive Session Minutes of the Board of Directors Meeting held on August 8, 2023
In-Person at 235 S. Beretania St., Suite 204, Honolulu, HI 96813

Mr. Hong said excuse me . . .

Mr. Okuhama said don't we need to stop executive session? We need six, yeah?

Chair called for a motion to exit executive session.

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

Chair called for the vote. Hearing no objection the motion was approved.

Executive session adjourned at 12:30 P.M.

Mr. Tabata and Mr. Wicker exited the meeting.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



MARK H. TAKEMOTO
Acting Executive Director

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

Special Meeting of the ADC Board of Directors

Held via Teleconference

August 8, 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. We request that testimony be received by our office not less than seventy-two hours prior to the meeting to ensure that staff has time to disseminate it and that Board members have time to review it. Written testimony may be submitted electronically to dbedt.adc@hawaii.gov or sent via U.S. Postal Service to: Agribusiness Development Corporation, 235 South Beretania Street, Suite 205, Honolulu, Hawaii 96813.

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

The public may participate in the meeting via:

ICT: [click here to join](#)

Telephone: (669) 900-6833, Webinar ID: 893 7401 5751

In-Person: at the meeting location indicated below

ICT ACCESS

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

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

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

TELEPHONE ACCESS

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

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

When the Chairperson asks for public testimony, you may indicate you want to testify by entering “#” and then “9” on your telephone’s keypad. After entering “#” and then “9”, a voice prompt will let you know that the host of the meeting has

Board Meeting Agenda

August 8, 2023

Page 2 of 3

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 hearing process please contact staff at (808) 586-0186 preferably at least three business days prior to the meeting so arrangements can be made. To request translation or interpretation services please contact staff at (808) 586-0186 or email: dbedt.adc@hawaii.gov. Please allow sufficient time for the ADC to meet translation or interpretation services requests.

NOTE: MATERIALS FOR THIS AGENDA WILL BE AVAILABLE FOR REVIEW IN THE ADC OFFICE, 235 SOUTH BERETANIA STREET, SUITE 205, HONOLULU, HAWAII 96813 ON AND AFTER AUGUST 2, 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

AGENDA

A. Call to Order

B. Roll Call

C. Approval of Minutes

1. None

D. New Business

1. 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)

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.

F. Acting Executive Director's Report

1. None

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

Minutes of the Board of Directors Meeting held Virtually on August 8, 2023

Via Zoom Teleconference and 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 at the In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Room 204, Honolulu, HI 96813.

Members Present, in person:

Warren Watanabe, Member-At-Large (Chair)

Glenn Hong, Member-At-Large (Mr. Hong)

Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd) (arrived at 9:50 A.M.)

Jason Okuhama, Member-At-Large (Mr. Okuhama)

Lyle Tabata, Kauai County Member, Vice-Chair (Mr. Tabata) (left at 12:30 P.M.)

Jayson Watts, Maui County Member (Mr. Watts)

Dane Wicker, DBEDT Designated Representative for Ex-Officio Member James Tokioka (Mr. Wicker) (left at 12:30 P.M.)

Members Excused:

Kaleo Manuel, Designated Representative, DLNR for Ex-Officio Member Ms. Dawn Chang (Mr. Manuel),
Karen Seddon, Member-At-Large (Ms. Seddon)

Counsel Present, in person:

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

Staff Present, in person

Ken Nakamoto, Project Manager (Mr. Nakamoto)

Staff Present, virtually:

Mark Takemoto, Executive Assistant

Lyle Roe, Property Manager

Guests Present, virtually:

Beth Amaro

Brian Miyamoto

Dexter Kishida

Mark Ladao

Thomas Heaton

Guests Present, physical location: None.

A. Call to Order

Chair called the meeting to order at 9:11 a.m.

B. Roll Call

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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”. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Chair, Mr. Hong, Mr. Okuhama, Mr. Tabata, Mr. Watts, and Mr. Wicker acknowledged attendance with no guests present. Ms. Hurd entered the meeting at 9:50 A.M.

C. Approval of Minutes

None.

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.

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

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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.

F. Adjourn

Chair stated seeing no other business he asked for a motion to adjourn.

Motion to adjourn: Mr. Hong; Second: Mr. Watts.

Chair called for the vote – hearing no objections the motion was approved.

Vote: 5-0. Mr. Wicker and Mr. Tabata excused.

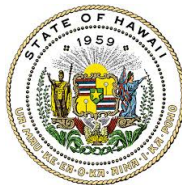
Meeting adjourned at 12:32 p.m.

Date of Next Meeting: The next meeting will be held on August 17, 2023, at 9 A.M.

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The Senate

STATE CAPITOL
HONOLULU, HAWAII 96813

November 17, 2023

Mr. Warren Watanabe, Chair
Agribusiness Development Corporation
235 S. Beretania St., Rm 205
Honolulu, Hawaii 96813

Aloha Chair Watanabe:

An anonymous complaint was filed to the Office of Information Practices against the Agribusiness Development Corporation (ADC) Board of Directors (Board). This resulted in Formal Opinion No. 24-03 relating to the Selection of the New Executive Director.

A request is hereby made for a complete and unredacted copy of the minutes of the ADC Board's executive session meeting on August 8, 2023 for the purpose of discussing Agenda Items D.1, D.2 and D.3 relating to Executive Director candidate interviews, discussion of Executive Director salary, and board selection of Executive Director.

As the requested government records relate to the selection of the Executive Director by the ADC Board, it is the position of the requester that pursuant to Section 92F-14(a), Hawaii Revised Statutes, the public interest in disclosure of the executive session minutes outweighs the privacy interest of the individual and therefore disclosure of the requested government records shall not constitute a clearly unwarranted invasion of personal privacy. Additionally, it is requested that the attorney-client privilege be waived with regard to any records responsive to this request as has been determined to be permissible pursuant to OIP Op. Ltr. No. 91-23.

I would appreciate your response by 4:00 p.m., November 21, 2023. Please respond via email to Committee Clerk Scott Fuji at s.fuji@capitol.hawaii.gov. Please contact Scott Fuji at 586-6639 with any questions.

Sincerely,

Senator Donovan M. Dela Cruz