

**AGRIBUSINESS DEVELOPMENT CORPORATION**

Minutes of the Board of Directors Meeting held Virtually on January 18, 2024

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Suite 205, Honolulu, HI 96813

*Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawai'i, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Suite 205, Honolulu, HI 96813.*

**Members Present, virtually:**

- Warren Watanabe, Member-At-Large, Chair (Chair)
- Earl Yamamoto, Designated Representative for HBOA Ex-Officio Member Sharon Hurd (Mr. Yamamoto)
- Jason Okuhama, Member-At-Large (Mr. Okuhama)
- Karen Seddon, Member-At-Large (Ms. Seddon)
- Lyle Tabata, Kauai County Member, Vice-Chair (Mr. Tabata)
- Russell Tsuji, Designated Representative for DLNR Ex-Officio Member Dawn Chang (Mr. Tsuji)
- Jayson Watts, Maui County Member (Mr. Watts) (left the meeting at 2:10 P.M.)
- Dane Wicker, Designated Representative for DBEDT Ex-Officio Member James Tokioka (Mr. Wicker)

**Members Excused:**

- Glenn Hong, Member-At-Large

**Counsel Present, virtually:**

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

**Staff Present, virtually:**

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

**Guests Present, virtually:**

- 1360
- 1-808-383-5259
- ADC Guest
- Basil Gomez, KAA
- Beth Amaro, KIUC
- Dana Shapiro, Ulu Coop (Ms. Shapiro)
- Dave Bissell, KIUC
- Dawn Huff, KIUC
- Elena Bryant, EarthJustice
- Jesse Cooke, Ulu Pono
- Josh Uyehara, KAA (Mr. Uyehara)
- Mark Ladeo
- Mike Faye, KAA
- Rae Gee
- Scott Ishikawa
- Trisha Yamato

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## **Guests Present, physical location:**

Henry Curtis, Life of the Land (Mr. Curtis)

### **A. Call to Order**

Chair called the 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 a roll call vote, and for each subsequent vote, he would ask if there were any objections. If there were no objections the motion would be approved on the same basis as the roll call.

Roll call: Chair, Mr. Yamamoto, Mr. Okuhama, Ms. Seddon, Mr. Tabata, Mr. Tsuji, Mr. Watts, and Mr. Wicker acknowledged attendance with no guests present.

### **B. Approval of Minutes**

#### **1. Regular Session Minutes, November 16, 2023**

Chair stated that the approval of the November 16, 2023, minutes would be deferred to the February meeting and introduced Ms. Hisatake, the new executive secretary who joined ADC in mid-December 2023, and she was getting familiar with creating the board minutes from the Zoom records.

Ms. Hisatake thanked everyone and stated she was happy to be here and to be part of the ADC team.

#### **2. Executive Session Minutes, November 16, 2023**

Chair stated that during the executive session held on November 16, 2023, the Board discussed Sunshine law complaints appeal 24-02 with counsel. HRS section 92-4 and 92-5(a)(4) allows a meeting to be closed to the public when necessary 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 Board Members for review. Chair asked that the Board respect the confidentiality of the November 16, 2023 executive session when discussing approval of the minutes.

Chair called for a motion to approve the November 16, 2023 executive session minutes.

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

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

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

Chair asked for Board discussion. There was none.

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Chair called for the vote. Mr. Yamamoto, Mr. Tsuji, and Mr. Tabata stated they were not present at the November 16, 2023 executive session and would abstain from voting.

Ms. Prescott-Tate noted that would leave only five member to vote on approving the minutes and a quorum of six members was necessary for the board to take action.

Chair asked for a motion to defer approval of the minutes from the November 16, 2023 executive session until the next meeting.

Ms. Seddon asked if it would be easier to withdraw her motion to approve the November 16, 2023 executive session minutes.

Chair agreed.

Ms. Seddon withdrew her motion to approve the November 16, 2023 executive session minutes.

Mr. Wicker withdrew his second of the motion to approve.

Chair deferred the approval of the minutes from the November 16, 2023 executive session until the next meeting.

### **C. Chairperson's Report**

1. None

### **D. Committee Reports**

#### **1. Administration Committee Report, January 16, 2024 meeting**

Chair called on the Administration Committee chair Mr. Tabata to give his report.

Mr. Tabata said the administration committee was formed in February 2023 for purposes of licensing vacant ADC property. Former-Chair Lau appointed Mr. Tabata, Mr. Watts, and Mr. Wicker to the committee and Former-Chair Lau also made himself a member of the committee. The first order of business on January 16, 2024 was getting the committee organized by electing a chair and vice chair. Mr. Tabata was elected Chair and Mr. Watts was elected vice chair. The committee reviewed the last version of the land application and discussed what modifications needed to be made to include economic drivers, food security, and a way of objectively measuring the applicants. The committee was assigned to make amendments to the application form and provide their suggested amendments to staff before the next meeting scheduled for February 20, 2024 at 10 A.M.

### **E. Action Items**

1. **Request for approval to terminate lease agreement DLR-220 issued to 808 Stone, Inc., as amended, and issue notice to vacate the premises in Whitmore Village, Oahu, Hawaii, Tax Map Key (1) 7-1-002:009 (por.)**

Chair called for a motion to approve.

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

Chair called on staff for the presentation.

Mr. Roe stated the submittal pretty much covers everything. Several years ago the legislature appropriated money for a pedestrian bridge between Wahiawa and Whitmore Village. The path of the bridge goes through ADC property. Two tenants were affected. One is 808 Stone, and the other is the next agenda item, Manoa Honey. Both tenants have had plenty of notice that when construction begins they have to vacate the property. Work on the pedestrian bridge is scheduled to begin in the third or fourth quarter of this calendar year.

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

Chair asked if there was any board discussion.

Mr. Wicker asked if we have to relocate the tenant to another area on ADC property.

Mr. Roe stated that this tenant will be applying for vacant ADC land, which was fortuitous we were opening up the land for applications now. These tenants had been aware for some time that the bridge was coming.

Mr. Tsuji asked if this was a revocable permit that could be terminated with thirty days' notice.

Mr. Roe replied that this was a Dole lease that expired in 2015 and we have been treating it as a month to month revocable permit with ADC.

Mr. Tsuji asked if there were any improvements reverting to the State or do the improvements have to be moved?

Mr. Roe said all the improvements are movable; agricultural ponds and plastic tubs; some small structures on the side will have to be removed.

Mr. Okuhama asked who was responsible for cleaning up the property. Based on the pictures it looks like there is a lot of stuff that needs to be cleaned up.

Mr. Roe stated the tenant was responsible for cleaning up the property under the revocable permit. If the tenant's interested in applying for another ADC property the tenant must be in good standing with ADC. That's an incentive to clean up the property.

Chair asked if there was any further discussion or questions. There was none. Chair called for the vote. Hearing no objections the motion was approved: 8-0.

2. **Request for approval to terminate Revocable Permit No. RP16-05 issued to Manoa Honey Company LLC, as amended, and issue notice to vacate the premises in Whitmore Village, Oahu, Hawaii, Tax Map Key (1) 7-1-002:009 (por.)**

Chair called for a motion to approve.

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

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Chair called on staff for the presentation.

Mr. Roe stated this submittal was similar to the last request. This tenant is using the space to store equipment. It's well kept and clean. The pedestrian bridge will be coming through affecting this operation, and the tenant will be submitting a land application request.

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

Chair asked if there was any board discussion.

Mr. Tsuji asked if the building belonged to the tenant.

Mr. Roe explained that the tenant did not build the building and was only using a portion of the building under a revocable permit.

Chair asked if there was any further discussion or questions. There was none. Chair called for the vote. Hearing no objections the motion was approved: 8-0.

### **3. Request for approval to issue a license agreement to Gary Smith for 2,780 square feet of land in Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.)**

Chair called for a motion to approve.

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

Chair called on staff for the presentation.

Mr. Roe stated this tenant has held a revocable permit since 1996 that was first issued by DLNR [Department of Land and Natural Resources] and then the property came to ADC. The map attached to the submittal shows that the tenant's backyard abuts the property along the Kekaha ditch. From the pictures you can see the property is well maintained for home gardening purposes. This tenant has remained on a revocable permit for years, which must be approved annually by the Board. Based on feedback from the Board, staff offered the tenant a license, so the Board doesn't have to keep approving the revocable permit every year. Staff recommended giving the tenant a five year license for 2,780 square feet.

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

Chair asked if there was any board discussion.

Mr. Wicker asked if this home gardening concept was available for other communities to help maintain buffers between ADC land and homes.

Mr. Roe stated yes we have done that in Whitmore with the gardening permits.

Mr. Wicker encouraged ADC to try and get more neighborhood involvement to help with the maintenance of ADC property.

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Mr. Tsuji interjected that DLNR does that. Parcels can be better managed by those living close to State parcels. It helps keep the area clean.

Mr. Roe stated, to follow up on Mr. Wicker's comment, the gardening permits in Whitmore were based off of this particular tenant. You need the right person. If you look at the photos his yard is immaculate. There are some beautiful yards in Whitmore, but there have been some challenges with others.

Mr. Yamamoto asked if there was any liability to the State by allowing neighboring land owners to garden on ADC property. What if someone gets injured on the property?

Mr. Roe responded that to be eligible to receive a gardening permit there was an insurance requirement and indemnity clause.

Chair asked if there was any further discussion or questions. There was none. Chair called for the vote. Hearing no objections the motion was approved: 8-0.

#### **4. Request for approval to execute and enter into a memorandum of understanding between ADC, Hawaii Technology Development Corporation (HTDC), and Natural Energy Laboratory of Hawaii Authority (NELHA) to encourage, support, and facilitate planning and research-related activities**

Chair called for a motion to approve.

Mr. Wicker interjected saying that there was actually a newer version of this Memorandum of Understanding (MOU) that added the Hawaii Department of Agriculture (HDOA). We just received the new version yesterday and it's not the one attached to the agenda. This MOU was created for purposes of figuring out how not to duplicate things. HTDC and NELHA are both attached agencies to DBEDT. Aquaculture also involves University of Hawaii, workforce development, and research. This MOU was driven by the Director's Office of DBEDT. ADC's role would be to help out once an incubator company moves out of NELHA to help them scale up their operations. I would ask the board to defer this until the next meeting.

Chair called on Mr. Watts.

Mr. Watts asked if HTDC could do a presentation for the Board or if we could hear from the other Boards involved to make sure we can actually handle what's being agreed to.

Chair stated that may be possible to add it to a future agenda. Any comments from the other Board members about having a presentation from the other boards? Hearing no further discussion Chair stated with no objection from the Board, this matter will be deferred to the February meeting.

#### **5. Discussion and action on public records request from Kauai County Councilperson Bill DeCosta requesting the personal email addresses of members of the ADC Board of Directors**

Chair asked Mr. Roe for the presentation.

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Mr. Roe stated this was a request for personal email addresses. For example, Ms. Hurd, Mr. Tsuji, and Mr. Wicker do not have a privacy interest in their State of Hawaii email addresses, and their email addresses will be provided. But non-state employed board members do have a privacy interest in their personal email addresses. Generally, if a member of the public wishes to communicate directly with a specific board member, the public is able to send their communication through ADC's email address [dbedt.adc@hawaii.gov](mailto:dbedt.adc@hawaii.gov) or telephone number 808-586-0186. ADC staff will communicate the public request to the respective Board member. It's the Board member's decision on how he or she responds to public communications. The Board member could respond directly to the public or ask ADC staff to relay the response. The public has always been able to contact the Board members through ADC at any time.

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

Chair asked if there was any Board discussion.

Mr. Watts asked what was the genesis of this request?

Mr. Roe responded that he did not want to mischaracterize what Council Member DeCosta's intentions were, but believed he wanted to communicate his land application directly to the Board members. If you will remember back in February 2023 the Board set up a process for land applications for vacant lands through the Administration Committee. Council Member DeCosta appeared to be frustrated that his land application has not been given consideration outside of this process. Council Member DeCosta was invited to this meeting and would be the one to verify why he wanted this contact information. Page 042 of the submittal contains everything we actually know.

Mr. Watts said as long as the Councilman has been instructed on the normal process, but I have raised this before, some board members have been given government email addresses, so they don't have to use their personal or business accounts. That way communications are property of the State. I think all Board members should be issued hawaii.gov email addresses.

Ms. Seddon stated that we can talk about that in the future. Could we get back to the issue to be decided.

Chair called on Mr. Tsuji.

Mr. Tsuji stated that from the other boards and commission he's seen they don't give out the personal email address of individuals. They give centralized email addresses like ADC for all comments to the Board.

Mr. Tabata noted that Council Member DeCosta used his council letterhead to make his HRS 92F request. That is unusual.

Ms. Seddon asked if we could stick to the process. If someone wants to communicate with us they should go through the ADC email address. I have no desire for another email address.

Chair thanked Ms. Seddon and asked if there was any more discussion. Hearing none, Chair stated that he will call for a "yes" or "no" individual vote on the following question: I authorize my personal non-hawaii.gov email address to be released. If you answer "yes" the email address

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ADC uses to communicate with you will be released in response to Kauai County Council Member DeCosta's public records request. If you answer "no" your email address will not be released. Everybody understand that?

Hearing no response Chair conducted a roll-call vote:

Mr. Okuhama: No.  
Ms. Seddon: No.  
Mr. Tabata: No.  
Chair: No.  
Mr. Watts: No.

Chair thanked the Board members and said the Hawaii.gov email addresses for Ms. Hurd, Mr. Tsuji, and Mr. Wicker are the only email addresses that will be provided.

Moving on. Agenda Action Items 6, 7, 8, 9, and 10 may be discussed in an executive meeting closed to the public pursuant to HRS sections 92-4 and 92-5(a)(4), to allow the Board to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities. We will take agenda item F. Information Items one to four out of order, then move into executive session to discuss Action Items 6, 7, 8, 9, and 10.

6. **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 the candidate interviews, discussion of executive director salary, and board selection of executive director.**

Was taken out of order following Agenda Item F. Informational Items 1 to 4.

7. **Discussion of Kauai Island Utility Cooperative's recent announcement regarding changes to the West Kauai Energy Project and future impacts to ADC and KAA.**

Was taken out of order following Agenda Item F. Informational Items 1 to 4.

8. **Discussion regarding the status of Lease Agreement No. LE-K1201 assigned to the State of Hawaii, Department of Education.**

Was taken out of order following Agenda Item F. Informational Items 1 to 4.

9. **Discussion regarding funding options for the Ohana Best settlement agreement, Civil No. 19-1-1640-10, First Circuit Court, State of Hawaii.**

Was taken out of order following Agenda Item F. Informational Items 1 to 4.

10. **Update regarding a lawsuit filed by Public First Law Center.**

Was taken out of order following Agenda Item F. Informational Items 1 to 4.

## F. Informational Items



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### **1. Presentation by Dane Wicker, Deputy Director, Department of Business, Economic Development, and Tourism regarding the department's strategic plan**

Mr. Wicker gave a PowerPoint presentation. *See* attached presentation.

Chair thanked Mr. Wicker for the presentation and asked if the Board had any questions.

Mr. Watts had a question about the Food Product Innovation Centers. With the Maui wild fires, will the money appropriated for this project be affected?

Mr. Wicker said it was affected but planning this will take twelve months. To bring the project to fruition will take three to five years. We need expertise to manage and operate the machines. We should have funds in the appropriation to at least complete the planning and design of these innovation centers.

Mr. Watts asked if during the next budget cycle will we be able to actually look at construction and equipping these facilities.

Mr. Wicker responded that was correct.

Mr. Watts stated that small cottage industries were unable to grow because of a lack of equipment and capital. These government facilities will benefit small private users. The challenge right now is scaling up. If we have alignment with the legislators and the university system we can help the small producers.

Chair called on Ms. Gady.

Ms. Gady asked Mr. Watts about Mahi Pono's community program. Are they required to be FSMA [Food Safety Modernization Act] or GAP [Good Agricultural Practices] certified to continue farming?

Mr. Watts replied that we work with them on their business plan and help guide them on how to pass an audit and tell them about organizations that will help them with grants and community farmers that will help them complete the NCRS Conservation plan.

Ms. Gady asked if they provide potable water, or do you allow the tenants to pack and process? And on Maui, how long does it take to have a conservation plan approved?

Mr. Watts said it does takes about a year to get a conservation plan approved; about a year. We let them farm as long as they are working on the plan or waiting for the NCRS decision. As far as food processing, we provide the land, but we do not provide the food innovation aspect, or commercial kitchen, or testing of products, or research and development. Having this items provided by the government would be a big plus for the farmers. And the question about potable water, we do not provide the farmers with potable water, which is why they have to go to another facility for food safety and washing their produce.

### **2. Presentation by Dana Shapiro on behalf of the Hawaii Ulu Cooperative regarding their operations and objectives**

Chair called on Ms. Shapiro to give her presentation.

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Ms. Shapiro gave a PowerPoint presentation. *See* attached presentation.

Ms. Shapiro thanked the Board and asked if there were any questions.

Mr. Watts said first I'd like to thank you for your work, I know you created the Aina Pono Farm to School program, and that would never have been possible without the Ulu Co-op. Your product volume slides in 2019, 2020, kinda concerned me. But it's reassuring to see that you have still been able to progress without active DOE [Department of Education] participation. I'm curious; the menu development grant working with DOE was that only for targeted schools or was that for the entire DOE system?

Ms. Shapiro responded that it was for the entire state school district. We presented the recipes we developed along with tasting samples to the menu planning committee and a panel of middle school students in late October. I was told they were well received. We had a consultant working with us to make sure the recipes were USDA standardized so they could go right in DOE meals, but we haven't heard a lot since then.

Mr. Watts asked what was the total acreage for the entire Ulu Co-op farm participants?

Ms. Shapiro stated a little over 200 acres were in Ulu production right now; a little over 6,000 trees. That's not the total farm acreage, most farmers are growing a little bit of Ulu and a little bit of this or that. They're trying out Ulu with interest in expanding if it's successful. We have a few farms, the biggest is fifteen acres, where Ulu is the primary crop, but most of those are still young. We've talked over the years about establishing a larger scale Ulu agroforestry commercial project that the co-op manages as anchor supply for the co-op, and a research and development space for farmers that could be an example of potential collaboration with ADC. Looking at the lands ADC has available are optimal for Ulu. We're thinking about planting an Ulu agroforestry design that's commercially viable and will provide additional benefits as well.

Mr. Watts asked in your ideal world, best case scenario, would you like 20,000 trees or how many trees would you like to see?

Ms. Shapiro said the number of trees planted was going to increase significantly over the next five years as a result of a USDA funding program. We might see another 20,000 trees planted over the next five years. In terms of how many, if you think about the staple food consumption needs of the state, like rice where Hawaii imports 100 million pounds a year, or potatoes where Hawaii imports 25 million pounds a year; with 6,000 trees we're only going to produce about two million pounds. If we want to take out half of the potato imports we would need 36,000 trees. We could use a lot more trees, but we need to be thoughtful about how we develop this so that we don't get into a situation of glutting the market with fresh fruit and having the fruit rot by not having enough processing capacity or storage capacity or not having the value added products and markets developed to ensure that farmers get a good price. It's important that we develop this through a vertically integrated framework. Otherwise you risk Ulu falling into the pitfall of Guava where it was heavily promoted and there wasn't enough vertical value chain development and the market fell. And now you see a ton of unutilized guava all-over East Hawaii. There's lessons to be learned and we should pay close attention to these failures.

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Mr. Watts encouraged the board members to go see Ms. Shapiro's operation if they have a chance; it's impressive. It would also benefit the Board to go to the Hilo operation between the schools to see the facilities they use. It's a good example for ADC to consider.

Chair called on Ms. Gady for the next question.

Ms. Gady stated that ADC's statutes were meant to focus on small farmers and cooperatives. That was a strategic change put in by the legislature in 2022. As the Board is currently embarking on strategic planning it was key for Ms. Shapiro to come and provide some Ag business opportunities. It's taken the Ulu co-op about ten years to ramp up. But how does that compare to other co-ops? And a point of reference, the largest co-op in the United States is Land-o-Lakes. Co-ops are not meant to be small but are meant to scale up to become economically viable. How long do you guess that would be?

Ms. Shapiro replied there's probably a wide range depending on whether they're coming into an established industry like dairy, or an emerging industry like Ulu. Organic Valley, which is one of our advisors and also a co-op, has been able to focus on aggregating milk and helping farmers convert to organic certified and they use co-packers for almost all of their value-added processing because there's tons of dairy processors across the United States. For us, we haven't been able to focus on any one thing because Hawaii doesn't have anything we need. It doesn't have manufacturing co-packers. It doesn't have facilities. It doesn't have a strong extension service that can focus on farmers. I'm just sharing my experience. We've really had to build the whole value chain at one time. I hope by the time we turn ten we'll break even. It might take longer because of the reality with what we're dealing with. We're building an industry from the ground up and there are not a lot of already existing support structures we can lean into. If we could aggregate Ulu and partner with co-manufactures located in the State that would make our lives much easier, but they literally don't exist. The trail that we've laid actually provides a much warmer ecosystem for subsequent co-ops to emerge. I feel like co-ops are more popular now than they were. Just having a success model, even if we're not profitable yet helps future co-ops.

Ms. Gady asked do we need to get the trees planted first and then work on processing?

Ms. Shapiro replied it's different on each island. On Kauai there's a good amount of fruit. Very quickly you can have more fruit than processing capacity, but then immediately, it can flip and go back and forth. When we started, we had more Ulu than there was demand for. We did a lot of marketing and there is more demand. Ulu is a tree crop, and it takes a good five years to have a decent harvest. If you plant 10,000 trees tomorrow, that supply isn't gonna be here for another five to seven years. We've seen economy of scale makes so much difference when it comes to efficiencies, of running facilities, hiring labor, having consistent production. You can plant, you can work with your existing processing capacity and then you can assess how to expand your processing capacity to get ready for more supply in five to seven years.

Ms. Gady asked if you were to work with ADC on Kauai, how much of a dollar investment would you need for capital improvements?

Ms. Shapiro stated that it would depend on what you're starting with. I can just share the numbers at Honalo; the overall upgrade cost at Honalo with an existing building, when we're done will be \$3 million for the whole renovation. Then we'll be able to handle 2 million pounds a year. Then you need working capital to hire staff, coordinate with farmers, establish operations, and solidify markets and sales channels.

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Ms. Gady asked what would be the size of staff? Like ten employees?

Ms. Shapiro responded not initially. We have a partner with a beautiful kitchen but it's not big enough to scale and they're trying to build another facility for more industrial processing, which will probably need about six employees for processing. Because Ulu is seasonal you need to incorporate other crops for year round processing, then you have one person on the farmer side, and maybe two people on the sales side; a staff of less than ten in year one. We currently have about 32 employees with about 21 of them in production because production is labor intensive until you can mechanize part of the process.

Chair called on Mr. Okuhama for the next question.

Mr. Okuhama said that when you're dealing with tree crops it's not like you plant today, harvest by the end of the year. You need to ramp up the operations. How many of your farmers are at peak production?

Ms. Shapiro responded right now across our 6,000 trees we have about 2,000 that are "mature." Another 2,000 are in the between phase so they could be anywhere from zero to half of mature production. And then the other third are not yet fruiting, so they were planted less than five years ago. That's based on the 6,000 trees planted now and how old they are.

Mr. Watts asked if spacing of the trees has been an issue.

Ms. Shapiro said there have been a lot of issues. It's a new industry from a commercial perspective and there's a steep learning curve for farmers as well.

Chair asked if there was any other discussion or questions.

Mr. Watts said with Kauai's move on the farm to school initiative, at least going forward, the Ulu Co-op could be a good way to help the momentum there.

Chair thanked Ms. Shapiro for the presentation and moved on to agenda item 3.

**3. Meeting report for recent travel by ADC staff on January 13, 2024, to review certain properties and assets on Maui island, which was also attended by Board members Warren Watanabe, Lyle Tabata, and Jayson Watts**

Chair noted that the meeting was cancelled on January 12, 2024, so there will be no report at this time. It may come up again in future discussions. Moving on to the ED's report.

**4. Executive Director's Report regarding project updates, land acquisition due diligence, legislative priorities, and introduction of new hires**

Ms. Gady stated she would start with the highlights. The ADC annual report was submitted to DBEDT and then DBEDT submitted it to the legislature so that item is completed. We filled our vacancy for a water worker and the new employee starts on January 22nd. We have filled the vacancy of the property manager, and the new employee will start on January 23rd. There were five vacant budgeted positions; four of them have been filled. The one remaining position was contract manager. We do have two candidates. Those requests were still being reviewed by

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budget and finance and governor's office and we should get the monies encumbered. We have an expression of interest form that people continue to fill out. It's a one-pager of any interest a person may have in a project in land, in a building, in a business idea. We currently have 21 expressions of interest on Oahu with 65 acres remaining, and 27 for Kauai with 3,036 acres remaining. We also have seven expressions of interest on the Big Island where we currently have no assets, but it provides a way for the board to set strategy and give direction on where ADC should be looking for potential land acquisitions. On January 16th the standing administration committee did meet and begin the process of awarding licenses. In legislative updates, I did attend opening day and spent time walking around meeting with the legislators. One of my goals was to meet with 100% of the legislators before opening day. I met with the final two senators yesterday, so 100% face-to-face meet and greets with the entire Senate. I also had great conversations with numerous members of the House. I was introduced to the mayor. We completed our budget hearings for the House Finance and Senate Ways and Means. No questions from ways and means but there were a couple of questions on House finance about looking for land acquisitions and why? I provided them with information on two private sales that we are looking at. In one case, there are three specific TMKs for sale inside of our currently managed TMK needed to access our water systems, which would be very crippling for ADC. The second one was also a private sale of a thousand acres on Kauai that adjoins our property. It is currently occupied by small and disadvantaged farmers, and it also contains some of our water sources. Currently we're tracking forty-seven bills. ADC went through legislative training by DBEDT. And a question for the Board, how would you like me to work with the board in terms of tracking bills? How was this done in the past? How would you like me to keep everybody informed? Are there any suggestions from the board?

Chair called on Mr. Watts.

Mr. Watts stated the only suggestion I have on bill tracking would be just provide us with what you're starting off with. Then we could provide input on what measures were important. Your position on the budget is also important. You could keep us updated in your weekly report by adding legislative tracking. I'm in the capital one or two days a week and get questions from senators and reps about ADC. For instance, yesterday I got a question about agritourism. It would be helpful if you could provide a list of what you're tracking and why.

Ms. Gady responded that's very helpful. I am not lobbying or putting forth any strategies or policies because that comes from the board. I was also approached by legislators saying they were planning to write a bill on agritourism. There have also been a number of questions regarding ADC's position on ag worker housing. My response was it's not currently in our statute but I'm aware that it's desperately needed. I've not taken a position on those issues. If members have further questions, please email me.

Mr. Watts stated you can have the legislators approach me. I know tourism has been a topic of discussion that could help us too.

Ms. Gady said we've been working on our due diligence regarding the acquisition of the Wahiawa dam, reservoir, and ditch. We meet biweekly with the consultants. The field work is about 50% complete on the ditch. Due diligence was also being conducted by HDOA and DLNR. ADC's focus was specifically on the irrigation system, data review, planning, and assessments. The governor released \$500,000 for the Food and Product Innovation Network (FPIN). We're collaborating with the University of Hawaii Center for Design on the FPIN so that can get moving quickly. Staff visited the feed mill project last week as a follow-up to the November 16th Board

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presentation to help us keep abreast of the project. They are currently assembling the equipment. And that concludes my executive director report.

Chair thanked Ms. Gady and called on Mr. Okuhama.

Mr. Okuhama stated when he was on the HCDA board, during the session the board was provided with a spreadsheet of all the bills that impacted HCDA. It kept the board on top of all the bills, even those that touched HCDA just a little. It was informative, and the board could follow along with whatever bills needed watching.

Ms. Gady thanked Mr. Okuhama and stated she had created a spreadsheet and will include it with the weekly ED [Executive Director] report. If anybody has questions just email. In regard to what Mr. Watts was suggesting I could identify things that we're planning to testify on that directly impact ADC.

Chair called on Mr. Tabata.

Mr. Tabata suggested using the legislative tracker mechanism available on the legislature's website using the list of bills from Ms. Gady.

Chair stated that agencies like the Hawaii Farm Bureau use the tracker to keep track of bills affecting agriculture. Regarding the spreadsheet, my only suggestion is to include it in your weekly report because the bills move fast. That will give the Board information on what bills would affect ADC. Any other discussion or questions? Seeing none I suggest we take a ten minute break. Time now is 11:23 A.M.

Break taken at 11:23 A.M.

Returned from Break at 11:40 A.M.

6. **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 the candidate interviews, discussion of executive director salary, and board selection of executive director. *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.***

Chair called the meeting back to order and stated that the five items that were deferred earlier in the Agenda would be discussed now. HRS section 92-4 allows the board to hold an executive meeting closed to the public. The board will be discussing action items 6, 7, 8, 9, and 10 to allow the board to confer with its attorney pursuant to HRS section 92-5(a)(4). Before going into executive session, was there any public testimony on item 6, which was 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 the candidate interviews, discussion of executive director salary, and board selection of executive director. There was none.

Mr. Tsuji asked Chair if discussion of item E-6 was going to be discussed at the Board level. He did not see any reason for the Board to go into executive session to make a decision on the senator's request and thought the matter should be discussed in open session. He doesn't know how others feel, but he had no problem discussing this in open session.

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Ms. Prescott-Tate referred the Board to the third paragraph of Senator Dela Cruz's request (submittal page 047), the last sentence, which was the request for the Board to waive attorney-client privilege.

Mr. Tsuji stated he did not have the information in front of him. The senator wants to see the executive session minutes correct?

Ms. Prescott-Tate said he wants the Board to waive their attorney-client privilege. That is the matter to be discussed in executive session.

Mr. Tsuji continued, what is the item for decision making? The letter requested the August 8th meeting minutes; is that not the essence of his request? I don't know, I'm asking everybody else.

Ms. Prescott-Tate referred the Board to submittal item E-6, middle of the second page, numbered 045.

Mr. Tsuji responded okay, waiving the attorney client privilege. That's the board's call, board members call. Actually, a board member's call, individual board members call. Right?

Ms. Prescott-Tate suggested maybe the matter should be discussed in executive session if you're asking for my advice.

Mr. Tsuji said I'm an attorney you can talk to me on open session.

Chair called on Ms. Seddon.

Ms. Seddon stated she would prefer to have the discussion with our Board council in executive session.

Mr. Tsuji continued; the question was do we wanna waive the executive session privilege. The session minutes right now are closed to the public. The senator's requesting to actually not make it open to the public but just have the ability to view it. Is there a concern there?

Ms. Seddon responded I would like to go into executive session and discuss that exact question. That's what we're going into the executive session for.

Mr. Tsuji said good luck. Can someone please explain what the question is?

Ms. Seddon asked Ms. Prescott-Tate if the question could be repeated.

Mr. Tsuji said we should go to the agenda. I think that's the appropriate place. What does the agenda say? What does that agenda title say? Could someone read that to me? I'm pulling up my PDF right now. I don't have it in front of me.

Ms. Prescott-Tate read from the agenda: "Discussion and action on letter from Senator Donovan Dela Cruz asking"

Mr. Tsuji interrupted saying stop there. There's nothing privileged in that statement, correct?

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Ms. Prescott-Tate asked to finish reading the entire agenda item.

Mr. Tsuji replied okay. We answered the first question. Yes, move on.

Ms. Prescott-Tate continued “asking the ADC Board to waive attorney-client privilege with regards to the August 8th, 2023 executive session minutes relating to the candidate interviews, discussion of executive director salary, and board selection of executive director.

Mr. Tsuji said he thought the executive session minutes were privileged not because of attorney client communication but because of the confidential nature of the applicant process, right? You guys wanted to make sure the applicants were shuttered from public view at least until the selection of the executive director (ED). That was the purpose of the executive session not to have attorney client privilege to discuss with a lawyer. The board went into executive session not because of attorney client privilege but because it was a confidential personnel matter that it was interviewing and selecting an ED. Therefore, the senator’s asking for the purpose that you went into executive session that was closed to the public. Can he see that? That’s the question; the ultimate question that we’re deciding here. Why would we be going into executive session to decide to turn over the executive session minutes to the senator? The executive session minutes were really about the selection of the ED not so much attorney client discussion. Correct me if I’m wrong, but there was very little attorney-client discussion.

Ms. Prescott-Tate replied there were questions directed towards her as the Board’s attorney and there were answers provided that were in the nature of advice to the Board from the Board’s attorney.

Mr. Tsuji asked “really?” Again, these minutes were about the selection of the ED. You guys were trying to decide who to select. None of that was between the attorney and client.

Ms. Prescott-Tate reiterated, that’s not the item on the agenda. Did you read the submittal? That will explain why we’re here.

Mr. Tsuji said your submittal? I didn’t read it. I’m just asking questions and having a discussion.

Ms. Prescott-Tate suggested the submittal would answer Mr. Tsuji’s questions.

Mr. Tsuji said I don’t think so and I’m not interested in sitting here listening while you read the submittal. I’m just asking, just talk straight here. The request was to review the executive session minutes of August 8th. The executive session, that meeting was specifically to hire or make the selection between two applicants. That meeting was virtual, right? An open public meeting that went into a closed session because we’re selecting the ED. And that required all board members who wanted to participate to be physically present and that ended up leaving out a Kauai board member who was off island and one board member here locally, the DLNR representative, and so was Ms. Seddon who could not make it in person. You guys went into executive session, and you guys the whole meeting minutes as I reviewed was all about the selection of the ED. Not much attorney client discussion, as I recall. That’s what I see. Maybe, if you use the words attorney-client, maybe the senator just misunderstood. The confidential nature of the minutes was not really based on the attorney-client as I understand it. It was really based upon two applicants who did not want their names made public at least during the interview or selection process, and that was why it was done that way. That was the justification I recall you gave me when I asked that question in one of the earlier meetings.



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Ms. Prescott-Tate repeated that the agenda item asked if the board was willing to waive the board's attorney-client privilege. That's what we're here to address.

Mr. Tsuji replied okay, we can do that in open session as well.

Mr. Wicker said it's yes or no. I don't see a reason to go into executive session on this item. It's pretty straightforward when I read the senator's letter.

Ms. Prescott-Tate asked, "do you want to vote then?"

Mr. Watts stated yeah, I tend to agree with Mr. Tsuji and Mr. Wicker. I guess there's still a question that remains about the attorney-client privilege component, but as far as the minutes itself that's been the crux of the problem in this whole thing, right? Should the public have an opportunity to weigh in on selection process? I'm in support of Mr. Wicker's and Mr. Tsuji's position.

Ms. Prescott-Tate asked to read the submittal, because obviously some of the board members have not read it. It's in the public packet. [The board submittal starting with the first paragraph on page 044 through the sixth paragraph on page 045, was read to the Board].

[During the reading of the submittal Mr. Tsuji answered a telephone call that was audible to the meeting participants. This telephone conversation has been omitted.]

Mr. Tsuji asked, just for my clarification, has the senator been provided the August 8th minutes? Yes or no?

Ms. Prescott-Tate responded, redacted minutes.

Mr. Tsuji asked what did you redact?

Ms. Prescott-Tate responded, the items that OIP found were privileged.

Mr. Tsuji replied privileged at the time we did the executive session are not necessarily privileged now. OIP did not decide that.

Ms. Prescott-Tate responded nothing has changed. The candidates were private citizens with a privacy interest in topics discussed at the time of the interview.

Mr. Tsuji said that's your opinion. The nature of the executive session was selection of the ED. At the time the two applicants wanted to keep their names confidential from the public. That was the nature of going into executive session and keeping it confidential. That was confidential at the time of selection. It has been announced since then. That the selection has been made. I don't think OIP has decided at this point that after the selection it still remains confidential. It did not say that.

Ms. Prescott-Tate replied that the unselected candidate still requests to remain anonymous.

Mr. Wicker asked, do we know that? Have we checked recently with the other applicant or was that back in August.

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Ms. Prescott-Tate replied that the applicant was contacted to see if he or she would waive their right to privacy and have the minutes publicly produced in response to a UIPA [Uniform Information Practices Act] request.

Mr. Tsuji said, again, this is not public. This was a senator's request. The senator was requesting a copy of the minutes. He was not necessarily saying I want to make it public so the whole world can see it and ADC should publish it on your website. He just wanted to have a copy of the executive session minutes. So if you told the applicant that it was going to be made public. That's not true. To the senator is what you should have asked.

Ms. Prescott-Tate responded that the question to be addressed now is will the board waive its attorney client privilege? That's the sole question to be answered.

Mr. Wicker asked what the outcome would be. Would the requested materials not be redacted for the senator to review?

Ms. Prescott-Tate stated if the board agrees to waive its attorney-client privilege then the minutes of the executive session that were redacted for that purpose may be provided to the senator unredacted.

Mr. Wicker continued, so another item on the agenda was a lawsuit. Am I able to request unredacted documents for that lawsuit? I don't see the difference in saying okay, at this point non-redacted may be provided to someone else other than the senator so why prevent it at this point? We met twice. We were told by our counsel the process was done correctly and we did not violate sunshine. I recall being told in the November meeting the process was correct. I don't see why the materials are not gonna go out non-redacted. For me, a decision not to waive, then we're telling the legislative no.

Ms. Prescott-Tate said items made public would be subject to disclosure pursuant to a UIPA request. The senator's request was made under HRS 92F-14, a public record request claiming the privacy interest of the individual was outweighed by the public interest in disclosure.

Mr. Tsuji remarked ADC's a state agency. All of its practices are subject to public review.

Ms. Prescott-Tate responded unless privilege applies. The attorney-client privilege is an exception to public disclosure.

Mr. Watts asked if there would be an issue if we didn't waive the attorney client privilege. Is there a mechanism to provide the senator as an officer of the state and an elected official with an unredacted copy?

Ms. Prescott-Tate stated the request was not made under HRS 92F-19(a)(6). I guess the Board could request he sign a confidentiality agreement.

Mr. Watts asked, senator wants to see the interview minutes, right?

Ms. Prescott-Tate replied yes, but privilege exists.

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Mr. Tsuji stated, in my opinion I looked at the August 8th minutes, and I didn't see very much attorney-client communication. It was all about who we want as ED. Later on there's a long discussion of how we're going to announce. None of that's confidential. None of that is privileged. The big question was should that have been public especially about how to announce it. I was not part of that. I only came on the Board after that. I was concerned about that meeting and OIP later issued a pretty strongly worded opinion on that issue. But, here, if you're asking the board whether we like the senator to have a copy of the unredacted minutes of August 8th you're saying you produced a redacted version. I think we should put that up for vote and my position would be I support an unredacted version because I really did not see, and I still do not see that there was actual attorney-client advice about the potential liability of the board members or liability of ADC in the selection of either one of their applicants. It was confidential in nature. Applicants who were applying for the ED job at the time. It was about the selection of the ED, so they wanted to keep their names private. Certainly wouldn't want their existing employer to know they're looking for another position. So I would support opening it up and unless people wanna discuss this further, maybe we should make a motion to decide the matter or vote on that.

Chair responded based on the way the agenda was written, that's not an item on the agenda so no action could be taken. The specific action requested the ADC Board to waive its attorney-client privilege. That's it.

Mr. Tsuji asserted that Ms. Prescott-Tate redacted certain portions of August 8th minute meetings and assuming that applicant names were redacted, but the applicant names had nothing to do with attorney-client, that's what you're doing.

Ms. Prescott-Tate repeated the agenda item up for discussion was the Board's willingness to waive attorney-client privilege.

Mr. Tsuji responded yeah, okay, fine. We can take that in open meeting and the reason is this: It says what it says, but we really know what we're talking about is actually if it is the name of the applicants, that is not attorney-client privilege. More importantly, the title is just the title. It does not mean it must be decided in an executive session. This thing goes further so that the board may decide to go in executive session to discuss the board's own powers and duties and privileges and immunities and liability. Fine, none of which would be triggered in this context because really the issue was about should be redacted version with the name of the applicants be disclosed to the senator, since that is the part that Ms. Prescott-Tate apparently decided should be redacted from the August 8th minutes, is the name of the applicants.

Ms. Prescott-Tate again stated the agenda item up for discussion was the Board's decision to waive attorney-client privilege.

Mr. Tsuji replied okay, and I think we can do that in open session is what I'm saying.

Ms. Prescott-Tate added that the Board's attorney would be without the ability to provide advice to the Board.

Mr. Tsuji stated it's the Board's decision to waive. It's not your decision, you know.

Ms. Prescott-Tate agreed it's the board's decision.

Mr. Tabata moved to go into executive session on this item.

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Chair asked if there was a second?

Ms. Seddon seconded the motion.

Chair stated there's been a motion and a second to go into executive session for agenda item 6.

Mr. Nakamoto said there was a member of the public, Mr. Curtis, who wished to comment.

Chair said go ahead Mr. Curtis.

Mr. Curtis thanked the Board and asked how the Board was able to decide whether the document can be released to some people and not to others. If two people were willing to sign confidentiality agreements, how can the board select who gets to see the document?

Mr. Tsuji interjected that I think right now, Mr. Curtis, there's a request from the senator to actually see the executive session minutes. Are you orally requesting to review those minutes?

Mr. Curtis continued, if the board grants the document to the senator, then we will also file to see the same document.

Mr. Tsuji responded fair enough.

Chair thanked Mr. Curtis and asked if there was any other public testimony. There was none.

Chair called for a roll-call vote to enter executive session:

Chair:	Aye.
Mr. Yamamoto:	Aye.
Mr. Okuhama:	Aye.
Ms. Seddon:	Aye.
Mr. Tabata:	Aye.
Mr. Tsuji:	No.
Mr. Watts:	No.
Mr. Wicker:	No.

Chair stated we have a 5 to 3 vote. Motion does not pass.

Mr. Tsuji moved to call for the question that would be the agenda item, Chair.

Chair asked, for clarification, is the question to waive attorney client privilege?

Ms. Prescott-Tate replied that the question is, without discussing the matter with the Board's attorney does the board waive its attorney-client privilege in regard to the August 8th executive session minutes relating to the candidate interviews, discussion of executive director salary, and board selection of the executive director.

Chair asked if everyone was clear on the item to vote on. Again, I will take a roll call vote . . .

Mr. Tabata said there was no second on this motion. I did not hear a second.

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Chair responded that's correct, thank you Mr. Tabata.

Mr. Wicker said, motion.

Mr. Tsuji said, second. Can we have a discussion?

Chair replied okay, a motion was made by Mr. Wicker and seconded by Mr. Tsuji. Any Board discussion?

Mr. Tsuji said yeah. What the senator apparently wants to see is the selection of the ED, and the salary maybe. Ultimately salary is a public record. It's not a secretive matter. The ED of ADC's salary is published in Civil Beat. We're talking about minutes done back in November 8th when the Board had not yet decided on an executive director. The Board has since decided on the executive director. I think the confidential nature of the process has lapsed and the names can be released. Certainly the ED who was selected is known and it was the other candidate who did not make it. I did not have a discussion with this finalist. If Ms. Prescott-Tate tried to ask that individual if he or she wanted his or her name published to the public, I think that's exaggerating. What we have here is a request of a senator. Or even with this recent request by Mr. Curtis, I don't know if he's technically releasing it to Mr. Curtis, which means published to the public viewpoint. I don't know if the senator was actually requesting to make the applicants public. If I understood his letter correctly he just wanted to see the executive session minutes of August 8th unredacted. That's the way I understood it anyway. I think it should be open, should be disclosed. I think the senator ought to see that document. That's my position. Thank you.

Chair called on Mr. Wicker.

Mr. Wicker said just looking at the process at that point in time, yes, for privacy. But this also exposes the process of selecting managerial positions. I'm the Deputy Director of DBEDT. I have to go in front of the public as well as on the Senate floor and people sent testimony at the time of my confirmation. That's how the public participates. This executive session is still of concern. The candidates did reach out and asked for people to submit letters of recommendation. And we got requests to support certain candidates through email. So people in the public knew in August. Not all, but people did know. It's not a secret. I see Mr. Tsuji's position that the time has passed. Salaries are public. That's not the request the senator was asking. We've had discussions three times on this. I don't see any problem with waiving our attorney-client privilege based of all the documentation and OIP. Thank you. Just want to put that out there. People already know who the two candidates were.

Chair asked if there was any further discussion.

Ms. Prescott-Tate asked the Board to please think about the other boards and commissions that may be affected if you decide to waive attorney-client privilege. Look at the big picture.

Mr. Watts said that's not the issue. I'll point to the Board of Regents. Look what's happening now. The question is is this Board willing to waive its attorney-client privilege?

Chair called for a roll-call vote and to be clear, a "no" answer means no waiver and therefore not to disclose to the senator.

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Chair:	No.
Mr. Yamamoto:	No.
Mr. Okuhama:	No.
Ms. Seddon:	No.
Mr. Tabata:	No.
Mr. Tsuji:	Yes.
Mr. Watts:	Yes.
Mr. Wicker:	Yes.

Chair stated we have a 5 to 3 vote. Motion does not pass. As a practical matter I'm going to ask staff to respond to the senator.

Mr. Tsuji asked to look at the redacted version of the minutes to see if it is really in the nature of attorney-client privilege or not or if it was solely to protect the applicants because I don't believe the redacted portion of those minutes has anything to do with attorney-client privilege.

Chair called on Mr. Watts.

Mr. Watts said I just want to add to Mr. Tsuji's point it's hard because I've made several requests to ask the OIP Director if he might do a presentation to come and talk to us so we can figure this out. I want to make sure the public can participate as much as possible. So I'm torn. But thank you for your opportunity to vote.

Mr. Wicker interjected, that's correct. We did request Chair to have OIP come in front of this Board to answer questions and that was not provided. We've been blasted in the media for not being transparent. And if you look at those executive session minutes, we question the process. And I feel like this board with its current leadership is going down that process of not being transparent. It's a concern, especially when it touches DBEDT as a department.

Chair responded, "so noted."

Mr. Wicker continued and we still have to answer for the DBEDT budget even if ADC is an attached agency. I'll share with you members that DBEDT is gonna have to push for ADC. We have to go in front of the legislature to do that. And if we want our current ED to be successful, this process and this lack of transparency is going to make it difficult to do that. And that's on your folks conscience. So don't turn to the ED later when we can't deliver.

Chair said in my opinion we should have gone into executive session to get the advice of our counsel, and that's it. As far as releasing information to the senator, that's separate.

Mr. Wicker replied we took a vote, and you voted no.

Chair responded, for me I wanted to get our legal counsel's opinion. Based on that I have no other issues.

Mr. Wicker replied it was a straightforward question and I'm not sure what we could have learned.

Mr. Tsuji said what's out there already is the OIP decision, which raises a lot of questions. What's not out there was the subsequent direct communication by OIP to the attorney general. And the executive session minutes were not available to the public. If we leave it like that, go into

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executive session, which we're going into right now, I think it leaves a lot of questions in a lot of people's minds. Rather than just be open and I think it's a better course to just open it up at this point because there's the OIP decision that is public by itself, and I have questions about what ADC's doing; what is this board doing; what's gonna happen. A lot of this stuff can be explained and answered, through subsequent direct communication between OIP and the attorney general. It's confidential still yet, but it also might be explained by just opening up the minutes at this point. Is there any reason not to do that? And what if there is a reason? I think the only thing I've heard was the applicants' wishes for confidentiality and if that applicant really believes that, well it's a senator who's requesting to see the minutes. At least maybe you can just redact it by changing the name, applicant A, applicant B, and like that if that's the case. We already know who was selected. But there's only two applicants in the minutes; it wasn't everyone that applied; it was only down to the finalists. It's the discussion of what happened in those minutes. And I think that's relevant and perhaps would be enlightening for the public to be aware of what happened.

Chair called on Mr. Tabata.

Mr. Tabata stated he's not anywhere near an attorney and he wanted to get some questions answered. So don't put the lack of transparency on me. You guys voted the way you voted and didn't allow us to ask the questions we requested. So whatever road we go down, don't ever put it on me. We can agree to disagree, it's a public board, and it's a public process. I did not prevent you from asking any questions, but you did. We needed to have a conversation with our attorney. We needed to be sure. Yes, that's your opinion but I'm not accusing you of lack of transparency, so don't accuse me of that.

Chair called on Ms. Seddon.

Ms. Seddon asked the Chair where we were in the agenda. I'd like to figure out where we are and what's the next step here. Thank you.

Chair stated for purposes of entering into executive session, is there was any public testimony on Action Item 7, which is:

- 7. Discussion of Kauai Island Utility Cooperative's recent announcement regarding changes to the West Kauai Energy Project and future impacts to ADC and KAA. *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.***

Mr. Nakamoto stated Mr. Uyehara had his hand raised.

Chair called on Mr. Uyehara.

Mr. Uyehara introduced himself as the president of the Kauai Ag Association (KAA) and he wanted to speak about the potential ramifications and future impacts to ADC and KAA due to the announced change to the West Kauai Energy Project. KAA does operate the infrastructure being affected by the change. If you have any questions I can try to answer as best I can. I don't know how this works with you going into executive session, but I just wanted to let you know I'm here and available if necessary.

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Mr. Tabata asked if Mr. Uyehara could share with the rest of the Board any implications of losing this opportunity or the effects of losing this opportunity.

Mr. Uyehara shared a PowerPoint presentation. *See* attached.

Mr. Uyehara continued, one of the first issues we're gonna have to discuss with the parties involved would be the long term implications of various intakes or diversions that collect the water and bring it into the system. Those were the first things that would have been modified and maintained by KIUC had that aspect of the project gone forward. Now that's not going to happen. Basically we have to look at what the long term plan would be. Based on the 2017 Mediation Agreement, KIUC does have some obligations related to that. Now we're trying to find the best path forward. KAA and ADC would be responsible for all the downstream infrastructure and about three miles of tunnels. We're taking a look at how to maintain that going forward. There's a reservoir that is deficient and does not meet safety requirements. The reservoir is part of the infrastructure. It would have to be renovated if the project had gone forward. That would have been for KIUC to maintain, but now that's something we have to think about. Beyond that, there's a portion of the open ditch that goes down to the Puu Moi Divide, where the water is split; part of it goes down toward the ADC mauka property and a sliver of the DHHL property. The western branch that goes to DHHL is the primary source of water for the tenants of their mauka property. So clearly the future of this portion of the system is going to require discussion and partnership with DHHL. And again, I think ADC and KAA were relying on the KIUC project to take on the burden of a lot of the maintenance, which clearly is not going to be the case given this change. So there's a ton of details behind each portion that I just went over very quickly. This was just to inform you of the scope of the infrastructure that we previously thought would be part of the energy project, and now we have to think about it going forward.

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

Mr. Watts said quick question, so the reservoir, the pool. Is it a dam or a reservoir.

Mr. Uyehara replied, there's a dam wall that creates the reservoir. Because of the capacity and size of the reservoir it would be a regulated dam that must meet dam safety requirements.

Mr. Watts asked for dam safety purposes, who owns that reservoir?

Mr. Uyehara replied, I don't know exactly the details, but that reservoir was not included in the executive orders that transferred the rest of the infrastructure to ADC.

Mr. Watts asked Chair if staff could follow up on that, because he thought the state has, millions, or some damn safety money that's still available for improvements like this and some of the staff must have worked with DLNR or whoever has the money to do that. I don't know if that's possible but to my understanding there's a mechanism to release the funds so they can work on a build this session.

Mr. Tsuji said I think the issue was, I don't know if it's AG or what, told the division of engineering that they needed rules to be implemented. That reservoir was not set aside to ADC. I'm familiar with the KIUC project and we definitely were looking forward to it and definitely were stunned by its decision to pull back. We were hoping that KIUC was going to upgrade the reservoir and make it safer. We were looking forward to it and now we're also assessing what that impact means. It certainly was a disappointment to the land division that administered this



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area. This is not necessarily something for executive session. It is something that a lot of agencies, even private as well as public and DHHL probably. We were all looking forward to the KIUC project. I cannot speak as to why there was a change. I'm not sure if it was even disclosed. It might have been connected with the dispute in the area; I think it was heavy opposition, contested case that might have been going on, I'm not sure or a lawsuit.

Chair called on Mr. Watts.

Mr. Watts suggested that maybe that's something Ms. Gady could answer with the legislation tracker to see if the funding mechanism for the reservoir has been fixed or whatever.

Chair replied, "so noted" and asked if there were any further questions for Mr. Uyehara. Hearing none, Chair thanked Mr. Uyehara and asked if there was any public testimony on Action Item 8, which is:

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.***

There was none.

Chair asked if there was any public testimony on Action Item 9, which is:

9. **Discussion regarding funding options for the Ohana Best settlement agreement, Civil No. 19-1-1640-10, 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.***

There was none.

Chair asked if there was any public testimony on Action Item 10, which is:

10. **Update regarding a lawsuit filed by Public First Law Center. *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.***

There was none.

Chair asked for a motion to go into executive session.

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

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

Chair asked for Board discussion. There was none.

Chair called for the vote. Hearing no objection the motion was approved 8-0. Chair, Mr. Yamamoto, Mr. Okuhama, Ms. Seddon, Mr. Tabata, Mr. Tsuji, Mr. Watts, and Mr. Wicker voted yes.

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The Board exited the public meeting at 12:56 P.M.

The Board returned to the public meeting at 2:18 P.M. Board members present: Chair, Mr. Okuhama, Mr. Tabata, Mr. Tsuji, Mr. Wicker, and Mr. Yamamoto. Ms. Seddon rejoined the meeting at 2:20 P.M.

Chair called the meeting back to order at 2:18 P.M. and stated that pursuant to Act 19, codified as HRS section 92-4(b) (2023), the following actions were taken by the Board in executive session:

On Action Item 7, the West Kauai Energy Project was discussed with no action taken.

On Action Item 8, the lease agreement number LE-K1201 was discussed and again with no action taken.

On Action Item 9, a legislative request to fund the Ohana Best Settlement has been made. No other action was taken.

And on Action Item 10, ADC has not been served with the lawsuit filed by Public First Law Center and so cannot comment at this time.

### **G. Adjourn**

Ms. Seddon rejoined the meeting at 2:20 P.M.

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

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

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

The meeting was adjourned at 2:20 P.M.

**Date of Next Meeting:** The next meeting will be held on February 15, 2024, at 9 A.M.