

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

Special Meeting of the Board of Directors

Held via Teleconference with In-Person Viewing Location

August 20, 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 as soon as possible 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: <https://us06web.zoom.us/j/84895460048>
Telephone: (669) 900-6833, Webinar ID: 848 9546 0048
In-Person: at the meeting location indicated below

ICT ACCESS

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

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

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

TELEPHONE ACCESS

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

Upon dialing the number, you will be prompted to enter the Meeting ID that is listed next to the Telephone Number above. After entering the Meeting ID, you will be asked to either enter your panelist number or wait to be admitted into the meeting. You will not have a panelist number. Please wait until you are admitted into the meeting.

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

Board Meeting Agenda

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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, accommodation, 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 AUGUST 14, 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, May 16, 2024
 - 2. Regular Session Minutes, June 20, 2024
 - 3. Executive Session Minutes, June 20, 2024
 - 4. Special Meeting Minutes, August 1, 2024
 - 5. Special Meeting Executive Session Minutes, August 1, 2024
- C. Chairperson's Report
 - 1. None
- D. Committee Reports
 - 1. None
- E. Action Items
 - 1. Request for consent to convert Hawaii Department of Agriculture (HDOA) Ag Park Lease Agreement Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020, issued to Sunrise Capital, Inc., to ADC Kekaha License Agreements retroactive to the September 23, 2021 execution date of Executive Order No. 4660, which transferred the lands previously dedicated as the HDOA Kekaha Agricultural Park pursuant to Executive Order No. 3633, to ADC for agricultural and related purposes.

Pursuant to section 92-4(a), HRS, 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 as provided by section 92-5(a)(4), HRS.
 - 2. Request for consent to assign the ADC Kekaha License Agreements, if the conversion of HDOA Lease Agreement Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 is approved, from Sunrise Capital, Inc. to Aloun Kauai Farming LLC, effective upon the closing of the asset purchase agreement tentatively scheduled for October 1, 2024.

Pursuant to section 92-4(a), HRS, 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 as provided by section 92-5(a)(4), HRS.

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F. Informational Items

1. Executive Director's Report (*see prior weekly reports to the Board*)

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 May 16, 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)
Jesse Cooke, City and County of Honolulu Member (Mr. Cooke)
Glenn Hong, Member-At-Large (Mr. Hong) (left the meeting at 10:00 A.M.)
Dexter Kishida, Designee for HBOA, Ex-Officio Member Ms. Sharon Hurd (Mr. Kishida)
Ryan Kanaka'ole, Designee for DLNR, Ex-Officio Member Ms. Dawn Chang (Mr. Kanaka'ole)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Dane Wicker, Designee for DBEDT, Ex-Officio Member James Tokioka (Mr. Wicker)

Members Excused:

Karen Seddon, Member-At-Large (Ms. Seddon)
Jayson Watts, Maui County Member
Lyle Tabata, Kauai County Member, Vice-Chair

Counsel Present, virtually:

Delanie Prescott-Tate, Deputy Attorney General
Bryan Yee, Deputy Attorney General (Mr. Yee) (joined the meeting at 9:30 A.M.)

Staff Present, virtually:

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

Guests Present, virtually:

Frankie Empeno (Mr. Empeno)
Frederic Berg
Kimi Makaiau, UHCDC
Mike Faye, Kekaha Agriculture Association
"Observer"
Seta Malufau, Office of Sen. DeCoite

Guests Present, physical location:

None.

A. Call to Order

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

Chair conducted a roll call of the Board. Chair called the name of each Board member and asked them to acknowledge their presence and 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 or abstentions. If there were no objections or abstentions the motion would be approved on the same basis as the roll call.

Roll call: Chair, Mr. Cooke, Mr. Hong, Mr. Kishida, Mr. Kanaka'ole, Mr. Okuhama, and Mr. Wicker acknowledged their presence with no guests present. Mr. Hong left the meeting at 10:00 A.M.

B. Approval of Minutes

1. Regular Session Minutes, March 21, 2024

Chair called for a motion to approve the March 21, 2024 regular session minutes.

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

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

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

Chair asked for Board discussion. There was none.

Mr. Kishida noted that he would abstain from voting since he was not present at the March 21, 2024 meeting.

Chair called for the vote. Hearing no objections, the motion to approve the March 21, 2024, regular session minutes was approved: 6-0; Mr. Kishida abstained. [Chair, Mr. Cooke, Mr. Hong, Mr. Kanaka'ole, Mr. Okuhama, and Mr. Wicker voted in favor of the motion.]

2. Executive Session Minutes, March 21, 2024

Chair called for a motion to approve the March 21, 2024 executive session minutes.

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

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

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

Chair asked for Board discussion.

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Mr. Wicker noted that he would abstain from voting since he left the meeting shortly after the executive session started and Mr. Kishida noted that he would also abstain as he was not present for the March 21, 2024 executive session meeting.

Chair called for the vote. It was noted that the Board lacked quorum with Mr. Wicker and Mr. Kishida abstaining from the vote.

Mr. Wicker withdrew his motion to approve the March 21, 2024 executive session minutes.

Mr. Okuhama withdrew his second to the motion.

Chair deferred the motion to approve to the March 21, 2024 executive session minutes until the next Board Meeting.

3. Regular Session Minutes, April 18, 2024

Chair called for a motion to approve the April 18, 2024 regular session minutes.

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

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

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

Chair asked for Board discussion.

Mr. Hong noted that he would abstain from voting since he was not present at the April 18, 2024 meeting and Mr. Kishida noted that he would also abstain from voting since he was not present at the April 18, 2024 meeting.

As previously noted, with Mr. Hong and Mr. Kishida abstaining from the vote there would not be quorum. Chair deferred the motion to approve the April 18, 2024 minutes from the regular session until the next Board Meeting.

C. Chairperson's Report

1. None

D. Committee Reports

1. Administration Committee Report, May 14, 2024 meeting.

Mr. Roe gave a brief update on behalf of Committee Chair Tabata. Mr. Roe stated that the administration committee discussed matters regarding the scoring process and approved the scoring matrix. The application process closed on May 3, 2024. Thirty-four applications were received. The committee approved the schedule for review of applications. Staff will do an initial review and pull out the ones that were late or incomplete. Then the committee will start reviewing and scoring.

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E. Action Items

1. **Request to (a) rescind board approvals dated January 26, 2022 which approved and accepted Malama Aina Collective LLC as an approved applicant; and (b) terminate the right-of-entry agreement issued to Malama Aina Collective LLC dated April 11, 2022 for property near Mililani Mauka, City & County of Honolulu, State of Hawaii, Tax Map Key No. (1) 9-5-003:007**

Chair called for a motion to approve.

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

Chair asked if there was any presentation by staff.

Mr. Clemente said it had been nearly two and a half years since ADC approved Malama Aina Collective (MAC) as a tenant. A Right-of-Entry was issued to allow MAC to complete their due diligence. Due to a number of obstacles cited by MAC including high startup costs, lack of reliable water access, and difficulty accessing the property this process was never completed. The location is in a remote area. Recently MAC inquired about subletting the property for livestock. The property is located on a narrow ridge and is considered highly erodible. It is ideally suited for orchard crops. There is no fiscal budget impact to ADC should the board approve the request.

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

Chair asked if there was any Board discussion.

Mr. Wicker asked if the issue was no water infrastructure how do we address that? Is there an opportunity to bring water to the site in the future?

Chair echoed Mr. Wicker's concerns about the water. MAC was hoping to plant tree crops but it appears there is insufficient water for that. The lack of adequate water supply is a concern the Board has been aware of for some time.

Mr. Wicker asked if we anticipate any costs to ADC for the removal of any equipment or materials brought on site.

Mr. Clemente said nothing he was aware of.

Ms. Gady stated that ADC will be looking to see if somebody else has applied for this land. If this parcel remains after this next round of staff recommendations, ADC will do soil testing to see what the optimal crop would be, start to target specific crops, and look at irrigation infrastructure. Thinking about orchard crops, olive trees love that location. Olive trees are ideal for value-add production.

Mr. Cooke asked if his understanding is correct that there's no subleasing of ADC land.

Mr. Clemente stated that is correct, there is no subleasing of ADC land.

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Mr. Roe added there's a board of water supply tank nearby. Initially it was thought there may be the opportunity to coordinate with board of water supply. He doesn't know if MAC actually approached the board of water supply.

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

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

2. **Request for approval to issue a construction right-of-entry agreement to Kiewit Infrastructure West Company to construct a portion of the Wahiawa-Whitmore pedestrian bridge on ADC property in Whitmore Village, City & County of Honolulu, State of Hawaii, Tax Map Key Nos. (1) 7-1-002:009 (por.), :004 (por.)**

Chair called for a motion to approve.

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

Chair asked if there was any presentation by staff.

Mr. Roe stated that last month Kiewit gave a presentation to the Board on construction of the Whitmore Wahiawa pedestrian bridge. ADC will be issuing a pre-construction right-of-entry. This request is for the actual construction that was thought to be significant enough that the board should approve it. Construction is slated to start 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. There was none.

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

3. **Request for (a) rescind board approval dated September 29, 2021 which approved and accepted Cedar Grove Hawaii, LLC as an approved applicant; and (b) terminate the right-of-entry agreement issued to Cedar Grove Hawaii, LLC dated October 13, 2021 for property located in Wahiawa, City & County of Honolulu, State of Hawaii, Tax Map Key No. (1) 6-4-003:016**

Chair called for a motion to approve.

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

Chair asked if there was any presentation by staff?

Mr. Clemente stated that it has been nearly two and a half years since ADC approved Cedar Grove Hawaii's (CGH) application, and that a right-of-entry was issued to allow CGH to complete their due diligence. On July 20, 2023, GCH withdrew their application stating they were unable to utilize such a large piece of property. Staff recently realized that the

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Board did not rescind the license approval and terminate the right-of-entry. This property was listed as available on the ADC website and applications for this property were received. There is no fiscal budget impact should the Board approve the 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. Wicker asked if there was a map showing where the TMK was.

Mr. Roe worked to pull up a map and share his screen.

Ms. Gady pointed out that in an effort to be better stewards of the assets of ADC, staff has been looking at the rights-of-entry to see how long they've been in place, and if there has been no movement in terms of conservation planning and production, bringing this to the Board's attention. ADC currently has thirty-four applicants who desperately need land. The number one issue for farmers on Oahu is actually access to land.

Chair stated that a yearly status report of things like this inactivity on ADC lands, on lands that have already been approved, would bring awareness of issues the Board could help address.

Mr. Wicker asked what CGH was going to use the 500 acres for?

Mr. Roe stated they were largely rural crops like potato, sweet potatoes, beans, cucumbers, that sort of thing. They were also looking at truck crops. Mr. Roe shared a map (submittal page 65) that showed the 510 acre parcel. This is the largest parcel ADC has on Oahu.

Chair called on Mr. Okuhama.

Mr. Okuhama said this parcel is next to the Savio Ohana Farms development; you look to the right and that's where Savio is doing the two acre and up condominium project. I would imagine this property would have to be leased as one 500-acre parcel or can it be broken up?

Mr. Roe stated that ADC has received a number of applications from displaced farmers who are going to be losing their property down in Kunia later this year. This might be a location to place some of the higher scoring farmers that meet all the criteria the committee is looking for.

Ms. Gady stated that these farmers have expressed an interest in forming a co-op, so that would present an easier management option. ADC is working on the water system for that.

Mr. Hong asked for a description of the water access.

Mr. Roe stated that the Wahiawa ditch runs through a portion right up here, and there's a flume that comes right through here. One of the three wells ADC is purchasing from Dole is right there. It's still unknown how soon that water can get there. Right now the access to water is where the Wahiawa ditch goes under Kamehameha highway.

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

Chair called for the vote. Hearing no objections or abstentions the motion was approved:

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7-0.

4. **Request to (a) dissolve the permitted interaction group to provide recommendations to the board related to ADC's strategic plan regarding land, previously approved at the board meetings held on February 15 and March 21, 2024, and (b) establish a new permitted interaction group to provide recommendations to the board related to ADC's strategic plan regarding land; appointment of members thereto**

Chair called for a motion to approve.

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

Chair asked for presentation by staff.

Mr. Roe said when there are additions needed to the membership of permitted interaction groups (PIG), law requires the PIG be dissolved and the Board authorize the Chair to create a new one and then appoint members to the new PIG.

Ms. Gady clarified that one of the PIG members could not devote the time necessary to serve, so a replacement member was needed.

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. There was none.

Chair mentioned that he believes a PIG should consist of more than two members, and that's another reason why it was brought back for board action.

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

Chair appointed Mr. Hong, Mr. Okuhama, and Mr. Cooke to the land group. The land group is to investigate and report back to the full board on information to be incorporated into the Agribusiness plan as required by HRS section 163D-5, which establishes the goals, objectives, policies, and priority guidelines for ADC's development strategy. The information collected should be geared toward objectives and outcomes that include metrics, timeframes, budget expectations and annual performance goals and measures that will allow ADC to be evaluated annually. The land group may consider additional items contained on page 100 of the March 21, 2024, board submittal package. The land group shall prepare a written report for presentation to the board that contains recommendations for inclusion in the ADC Strategic Plan report. This presentation is tentatively scheduled for the June 20th meeting.

5. **Request for approval to authorize rent credits in the amount of \$5,152.40 under License Agreement LI-KA1409 issued to Antone J. Reis, Jr. for work at ADC's request to restore Hanamaulu Ditch flows at Kalepa, County of Kauai, State of Hawaii, Tax Map Key (4) 3-9-002:001 (por.)**

Chair called for a motion to approve.

Motion to approve: Mr. Kanaka'ole; Second: Mr. Kishida.

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Chair asked for staff presentation.

Mr. Roe noted that earlier this year, Kauai had significant rains in the Hanamaulu ditches that are part of the East Kauai irrigation system. ADC doesn't own it; it's still under the jurisdiction of Department of Land And Natural Resources (DLNR). A number of ADC tenants rely on that ditch and water because a portion of that ditch runs through various tenant's properties through earth and tunnels that don't have any sort of culvert protecting them. Because of the rains, the mouth of some of those tunnels collapsed and blocked stream flow to the farmers in Kalepa. Those crops were in danger of dying because of no water. ADC identified where the blockage was and reached out to Mr. Reis and his family asking to help restore the stream flow by clearing the mouth of the tunnel that collapsed. They cleared a significant portion. The submittal shows one of those stream mouths. You can see some of that collapse. It's a huge tunnel. They dug through that channel there; you can see the shovel marks. It was a lot of work for him and his sons. They did restore the stream flow. There were two other tunnel mouths that collapsed and had to be cleared. This was done at ADC's request. Mr. Reis provided an accounting of his expenses that are on page 74 of the submittal. Staff recommends approval.

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

Chair asked for board discussion.

Mr. Kanaka'ole stated that license conditions put it on the licensee to do routine maintenance like debris management and vegetation management. Wouldn't this type of work be considered routine maintenance?

Mr. Roe stated it's due to the immediate need to clear the ditch as soon as possible, to restore the stream flow. ADC's downstream tenants are growing sweet potato (Lin's Farm). By the time we heard about it, it was already three or four days of no water, so we tried to act fast to restore water flow. You are correct, it is a term of the license that the licensees are supposed to maintain any portion of the ditch that goes through their property, but you can see the nature of the tunnel there, it's prone to collapse.

Mr. Kanaka'ole asked if the East Kauai irrigation system acquisition appropriation, would include funds for repair and maintenance for things like this?

Mr. Roe confirmed that it does. ADC is struggling to prioritize how much to spend on that particular portion of the ditch. There may be other ways to circumvent that portion of the ditch entirely. But that's still in discussion.

Ms. Gady stated that there is a study coming from the Hawaii Department of Agriculture that is in addition to the due diligence that ADC has been doing on the East Kauai Irrigation System and asked Mr. Kishida if he could comment.

Mr. Kishida stated the East Kauai irrigation document should be done by the end of summer and it should contain some recommendations.

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

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

6. Presentation of the draft annual performance review of the executive director by the permitted interaction group established on March 21, 2024 for the purpose of conducting the annual performance review of the executive director

Chair noted that Mr. Wicker was the only member of the PIG in attendance and asked if he was going to present on this agenda item or should it be deferred due to the unavailability of Ms. Seddon and Ms. Hurd.

Mr. Wicker asked that it be deferred.

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

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

Chair deferred this item to the next meeting.

F. Informational Items

1. Letter from Councilperson Bill DeCosta, County of Kauai, regarding ADC's land application process and status

Chair stated that Agenda Items F 1 and 2 were informational items so there will be no motion or vote needed. Chair called on Ms. Gady for remarks.

Ms. Gady stated that Councilperson DeCosta (Mr. DeCosta) sent a letter to ADC dated May 2, 2024 that was addressed to the Chair, members of the Board, and Executive Director. Mr. DeCosta asked for information on a Kekaha land applicant, Keala Foundation. Staff distributed the letter to the Chair and the Board. Staff contacted Keala Foundation directly. Mr. DeCosta expressed concern regarding fire mitigation on Kauai. Mr. DeCosta and the Kauai City Council Chair Rapozo, have also approached Lieutenant Governor Sylvia Luke and Ms. Gady about setting up a meeting to discuss fire mitigation. Ms. Gady is scheduled to speak at the Kauai City Council meeting on June 5th to talk about fire mitigation regarding ADC's land on Kauai. It is unknown if other adjoining landowners such as DLNR or DHHL [Department of Hawaiian Homelands] have also been asked to attend the fire mitigation meetings. These adjacent landowners have a much larger footprint on Kauai than ADC. Does the Board have a suggested action in response to Mr. DeCosta's letter.

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. Kanaka'ole stated he was unaware of an invitation to DLNR.

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Mr. Cooke mentioned that he thinks it would be good to know about ADC's plan on how to improve wildfire mitigation or what Kauai City Council wanted ADC to do.

Mr. Roe noted that Keala Foundation is a land applicant. They did submit an application that will be reviewed by the Administration Committee. Given the fact that it's a pending application it may not be appropriate to discuss it in public.

Mr. Kanaka'ole asked for clarification on Mr. DeCosta's relationship to the Keala Foundation.

Mr. Roe stated ADC is uncertain. It has raised some eyebrows in our office.

Ms. Gady stated that ADC's had multiple applicants from Kauai but this was the only applicant that was followed up on by the council.

Mr. Hong left the meeting at 10:00 A.M.

2. Presentation by Supervising Deputy Attorney General Bryan C. Yee on what it means to be a corporation placed within the Hawaii Department of Business, Economic Development, and Tourism for administrative purposes, as guided by section 26-35, Hawaii Revised Statutes

Mr. Yee stated he would provide a fairly short presentation on one particular subject. HRS section 26-35 describes the administrative supervision of boards and commissions that are placed within the administrative control or supervision of a department. The concept is basically that substantive decisions are made by the board; administrative decisions are made by the department. This is because boards and commissions do not necessarily have large staff and so administrative assistance is provided by the subject matter department. In the case of ADC, they are administratively attached to the department of business, economic development, and tourism (DBEDT). DBEDT has more staff than some boards and commissions. ADC is administratively attached, and this law does apply to ADC. The first section says that the head of the department, the Director of DBEDT, shall represent the Board or Commission in communications with the Governor and with the legislature unless the legislature or a legislative committee communicates directly with the Board or Commission. It means that before you submit testimony to the legislature, you submit that testimony to the DBEDT Director. Before you talk to the Governor, you go through the Director of DBEDT unless the legislature or committee directly communicates with you. It's the choice of the legislature, not ADC's choice. The second section is financial requirements from State funds of the Board or Commission shall be submitted through the head of the department and included in the budget for the department. Many boards and commissions really do not have financial staff, so all of their financial issues will go through the head of the department and your budget request does not get submitted directly to the legislature, it goes through the DBEDT Director to the Governor's office and included in DBEDT's budget. The third section is all rules adopted by the Board or Commission shall be subject to the approval of the Governor. This is really a repeat of another law, it just means that the rules that you pass cannot become effective unless the Governor approves it. The fourth section is the employment, appointment, promotion,

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transfer, demotion, discharge, and job descriptions of all officers and employees of, or under the jurisdiction of the Board or Commission shall be determined by the Board or Commission, subject to approval of the head of the Department and to applicable personnel laws. It's best described as the board proposes, the department disposes. The department doesn't get to say, hire this person, but they can say no you may not hire this person. They don't choose the person, but they have the right to refuse the hiring, the promotion, the appointment, the transfer, etc. It's a split in job responsibilities between the board and the department. And of course, the board is subject to applicable personnel laws. Although most boards and subject matter departments get along well there is sometimes conflict between the department and the board. Just realize you need to work with each other. This is just my observation of prior problems with boards. The fifth section is that all purchases of supplies, equipment, or furniture by the Board or Commission, shall be subject to the approval of the head of the department. As in employment issues, the board makes the request, but that request could be disapproved by the department. So anytime contracts or invoices are paid by ADC the DBEDT Director must approve. This can sometimes be delegated to the board, but that is the choice of the DBEDT Director, not the board. In some cases, the DBEDT Director will not delegate procurement authority to a board. In some cases he will. It's a choice by the DBEDT Director. The sixth section is the head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the Board or Commission. If you want more space, you go to the DBEDT Director and ask. It is the choice of the DBEDT Director as to whether or not to grant that. Section seven, any quasi-judicial functions of the Board or Commission shall not be subject to the approval, review, or control of the head of the department. This just emphasizes the substantive decisions of the board lay with the board. In this case, ADC does not exercise any quasi-judicial functions. That's the statutory provisions regarding the division of responsibilities between the board and DBEDT.

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

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

Chair asked if there was any board discussion.

Ms. Gady added that this topic was meant to be part of board orientation but since we still have one vacant board seat that may be delayed. Some attached agencies have bylaws and some have policies and procedures. Ms. Gady asked Mr. Yee if he could you tell what the differences are between bylaws versus policies and procedures.

Mr. Yee stated for me rules and policies are best. Rules have to follow a particular procedure set out in statute, which involves public hearings, approval by the Governor, etc. Rules are anything that affects the public. As a general matter, if you're going to set out rights of the public, those should be rules. Policy should be more internal management or simply informational material. The Board can just adopt policy. Bylaws are a remnant from a time when we wanted certain boards to act like a private agency rather than a public one. Bylaws were sometimes simply policies that were called bylaws. If the bylaw contained a rule that bylaw actually had to be adopted through the regular rulemaking process. You look at the substance of the bylaw to determine its

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role. The bylaw is a policy called a bylaw, unless it contains something that you know substantively needed to be considered a rule.

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

3. Executive Director's Report regarding prior weekly reports to the board

Ms. Gady gave some highlights over the last four weeks. The weekly reports are posted on the ADC website. New ADC logos are in the reports. Everyone please provide feedback. The logo design will be on the June agenda. The land application process is going smoothly. Mr. Clemente's work in the field has caught the attention of the Wahiawa community who have called and complimented his way of connecting with the houseless individuals. There were forty-four individuals living on ADC property; we are now down to eight. Two individuals were reunited with their families. ADC is now fully staffed. The new contract manager, Mr. Empeno, will start on Monday. ADC will be transitioning to a new financial system effective July 1. The ADC accountants are working to get the new financial system up and running. ADC's accounting contractor has drafted a financial policy and procedure manual for Board review. An appraisal for Oahu and Kauai has been contracted to determine the current rental rate for ADC lands. The Board will need this information in the future. ADC is in the process of submitting a defense infrastructure grant to upgrade the bridges on our Kekaha property. ADC has been given notice to proceed with discussions regarding land acquisition in Central Oahu for the Wahiawa Dam reservoir irrigation system. Mr. Okuhama and Ms. Gady are actively engaged with the Hawaii Investment Ready program. They are working exclusively on ADC's strategy. Hawaii Investment Ready does coaching and training for presenting investment pitches. The end goal is to give ADC the opportunity to pitch to 150 investors here on Oahu.

Chair asked if there were any questions for executive director. There were none.

G. Adjourn

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

Motion to adjourn: Mr. Wicker; Second Mr. Kishida.

Chair called for the vote. Hearing no objections or abstentions the motion was approved: 6-0.

The meeting was adjourned at 10:16 A.M.

Date of Next Meeting: The next meeting will be held in-person on June 20, 2024, at 9 A.M.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held in-person on June 20, 2024

At Entrepreneurs Sandbox, 543 Ilalo St., Honolulu, HI 96813

Pursuant to section 92-3, Hawaii Revised Statutes (HRS), this meeting was held with Board members, Staff, Applicants, and the Public participating at an In-Person meeting location at the Entrepreneurs Sandbox, 543 Ilalo St., Honolulu, HI 96813.

Members Present:

Warren Watanabe, Member-At-Large, Chair (Chair)
Jesse Cooke, City and County of Honolulu Member (Mr. Cooke)
Mary Alice Evans, Designee for DBEDT, Ex-Officio Member James Tokioka (Ms. Evans)
Glenn Hong, Member-At-Large (Mr. Hong)
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd)
Ryan Kanaka'ole, Designee for DLNR, Ex-Officio Member Ms. Dawn Chang (Mr. Kanaka'ole)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Karen Seddon, Member-AT-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Jayson Watts, Maui County Member (Mr. Watts)

Members Excused: None.

Counsel Present:

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

Staff Present:

Wendy L. Gady, Executive Director (Ms. Gady)
Mark Takemoto, Sr. Executive Assistant
Ken Nakamoto, Project Manager
Lyle Roe, Asset Manager (Mr. Roe)
Roger Clemente, Property Manager
Frankie Empeno Contract Manager
Ingrid Hisatake, Executive Secretary

Guests Present:

Nathan Trump, Hawaii County Member effective July 1, 2024
Carlotta Amerino, Office of Information Practices
Claudelle Bayawa, ADC Intern from McKinley High School
Adleigh Bumanglag, ADC Intern from McKinley High School
Janet Kelley, President of Mana Means, Inc. (Ms. Kelley)
Seta Malufau, Office of Sen. DeCoite
Camille Masutomi, HDOE
Ryan Roylo, Deputy Attorney General
Amanda Shaw, Oahu Agriculture & Conservation Assoc.
Jadine Urasaki, HDOE

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held in-person on June 20, 2024

At Entrepreneurs Sandbox, 543 Ilalo St., Honolulu, HI 96813

A. Call to Order

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

Chair conducted a roll call of the Board. Chair called the name of each Board member and asked them to acknowledge their presence. 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 or abstentions. If there were no objections or abstentions the motion would be approved on the same basis as the roll call.

Roll call: Chair, Mr. Cooke, Ms. Evans, Mr. Hong, Ms. Hurd, Mr. Kanaka'ole, Mr. Okuhama, Ms. Seddon, Mr. Tabata, and Mr. Watts acknowledged their presence.

B. Approval of Minutes

1. Executive Session Minutes, March 21, 2024

Chair called for a motion to approve the March 21, 2024 executive session minutes.

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

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

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

Chair asked for Board discussion. There was none.

Chair called for the vote. Hearing no objections or abstentions, the motion to approve the March 21, 2024, executive session minutes was approved: 10-0.

2. Regular Session Minutes, April 18, 2024

Chair called for a motion to approve the April 18, 2024 regular session minutes.

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

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

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

Chair asked for Board discussion.

Mr. Watts and Mr. Hong noted that they would abstain from voting as they were not present for the April 18, 2024 regular session meeting. Mr. Watts asked that the minutes be amended because his name was listed as attending and as being absent.

Ms. Waihee-Polk stated that the minutes would need to be amended.

Mr. Cooke withdrew his motion to approve; Mr. Tabata withdrew his second.

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Chair called for a motion to amend the April 18, 2024 regular session minutes to strike Mr. Watts name as an attendee.

Motion to amend: Mr. Cooke; Second: Mr. Kanaka'ole.

Chair conducted a roll call vote:

	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
Chair:	X		
Mr. Cooke:	X		
Ms. Evans:	X		
Mr. Hong:			X
Ms. Hurd:	X		
Mr. Kanaka'ole:	X		
Mr. Okuhama:	X		
Ms. Seddon:	X		
Mr. Tabata:	X		
Mr. Watts:			X

Motion approved: 8-2.

Chair called for a motion to approve the April 18, 2024 regular session minutes as amended.

Motion to approve as amended: Mr. Tabata; Second: Ms. Hurd.

Chair conducted a roll call vote:

	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
Chair:	X		
Mr. Cooke:	X		
Ms. Evans:	X		
Mr. Hong:			X
Ms. Hurd:	X		
Mr. Kanaka'ole:	X		
Mr. Okuhama:	X		
Ms. Seddon:	X		
Mr. Tabata:	X		
Mr. Watts:			X

Motion approved: 8-2.

3. Regular Session Minutes, May 16, 2024

Chair deferred this agenda item until the next meeting as the minutes were not ready for review.

C. Chairperson's Report

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Chair submitted a written report, which was part of the Board packet. Chair noted this was his last board meeting. Chair commended the board and staff for their tremendous work. With the new executive director he believed he was leaving the board in good hands. Chair suggested that ADC continue to expand across the State. ADC is supposed to be a Statewide organization and that is a mandate the Board and staff need to carry out. Chair would like to see the Board create partnerships to work on invasive species. Once a pest becomes established it is an ongoing cost to the farmers and ranchers. Chair referred the Board to his written report thanking them for their dedication to Hawaii agriculture.

D. Committee Reports

1. None.

E. Action Items

1. **Introduction of ADC's new public relations contractor, Mana Means Incorporated; Presentation and board input regarding new ADC logo designs**

Chair called on Ms. Kelley, President of Mana Means, Inc. to provide the presentation.

Ms. Kelley introduced herself and stated that Mana Means has been in business since 1992 and she has worked with a number of State of Hawaii departments. They have a staff of seven with an office on Bishop Street. They will be doing things like drafting a new newsletter and updating the ADC website. They do press releases and just helped clarify the Kauai fire media coverage. They also do graphic design and that's where the logo comes in. Ms. Kelley provided examples of several designs and asked the Board to provide feedback on the designs and color, format, font, do you want the entire name or just initials; things like that. Think about it and let Ms. Gady know.

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

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

Ms. Kelley thanked the Board and stated she was looking forward to working with them.

2. **Request for approval by way of Board Resolution, to authorize the Executive Director to submit, respond to, bind, and oversee the Agribusiness Development Corporation's application for federal grants when such authority is required as part of the federal grant application process**

Chair called for a motion to approve.

Motion to approve: Ms. Evans; Second: Mr. Hong.

Chair asked if there was any presentation from staff.

Mr. Roe stated that a copy of the resolution was included in the Board packet. ADC applied for its first federal grant, which was for \$19.7 million for bridge repair in Kekaha. Because of the timeline of the grant application process, the executive director had to sign a letter

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of authorization. Staff is seeking ratification from the Board to authorize the Executive Director to pursue the grant retroactive to May 16, 2024, and to authorize the Executive Director to pursue federal grants in the future.

Mr. Hong asked for an explanation of the purpose of the grant. Was it from the Pacific Missile Range Facility (PMRF) or the federal government?

Mr. Roe stated it's a federal grant to bring the bridges in Kekaha up to code and make sure they are structurally sound.

Ms. Gady explained it was to address flooding and sea level rise. The grant is for \$19.7 million with no matching requirement.

Mr. Roe continued that the authority to bind ADC will expire in 2028 and allows the Executive Director to seek other grants, where the grant requires the person signing the grant application to sign on behalf of the corporation.

Mr. Watts asked that the Board be updated whenever the Executive Director submits a grant application on behalf of ADC.

Ms. Gady responded that she would include any future grant applications in her weekly report.

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

Chair asked if there was any further Board discussion.

Ms. Hurd congratulated staff for being able to submit the grant application in such a short amount of time.

Chair asked if there were any more questions. There were none.

Chair called for the vote. Hearing no objections or abstentions the motion was approved: 10-0.

3. Request for approval to delegate authority to the Executive Director to enter into negotiations with the Hawaii Department of Education regarding LE-K1201, Kekaha, Kauai

Chair stated that this agenda item will be moved to the end of the agenda so the matter can be discussed in an executive meeting closed to the public pursuant to section 92-4, HRS, 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 as provided by section 92-5(a)(4), HRS.

4. Presentation of the draft annual performance review of the Executive Director by the permitted interaction group established on March 21, 2024 for the purpose of

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conducting the annual performance review of the executive director, continued from May 16, 2024

Chair stated that this item will be deferred to the next meeting because the permitted interaction group needs more time to finish their report.

5. Election of the Chairperson and Vice-Chairperson of the Board of Directors of the Agribusiness Development Corporation for a one-year term, July 1, 2024 to June 30, 2025

Chair stated that the Board of Directors of the Agribusiness Development Corporation has two officers: the Chairperson and Vice-Chairperson. According to Article 3, Section 2 of the ADC By-Laws, the positions of Chairperson and Vice-Chairperson shall be elected by the Board of Directors from among its members, provided that neither of them shall be an ex officio member. The election shall be held on the last regular meeting held prior to July 1st of each year, and the officers elected at each regular election shall take office on the first day of July following their election. The duties of the officers are set forth in Article 3, Section 5 of the ADC By-Laws, which explains that the chairperson shall preside at all meetings of the Corporation. At the meetings, the chairperson shall submit any information and recommendations the chairperson may deem proper concerning the policies and other affairs of the Corporation. In the absence or disability of the chairperson, the vice-chairperson shall perform the duties of the chairperson and such other duties as may be assigned by the Board of Directors. Members of the Board who qualify to hold office are Mr. Cooke, Mr. Hong, Mr. Okuhama, Ms. Seddon, Mr. Tabata, and Mr. Watts.

Chair opened nominations for chairperson from the floor.

Mr. Okuhama nominated Mr. Tabata for chairperson of the ADC Board.

Chair asked if there were any further nominations. There were none.

Chair asked if there were any objections to closing the nominations. There were none. Nominations were closed.

Chair proposed that the vote be taken by voice vote. Chair asked if there were any objections to a voice vote. There was none.

Chair called for the vote, asking all those in favor of Mr. Tabata for chairperson to say aye. Chair, Mr. Cooke, Ms. Evans, Mr. Hong, Ms. Hurd, Mr. Kanaka'ole, Mr. Okuhama, Ms. Seddon, Mr. Tabata, and Mr. Watts voted aye. Chair called for those opposed to say no. There was none.

Chair announced that the ayes have it and Mr. Tabata was elected chair.

Chair opened nominations for vice-chairperson from the floor.

Mr. Cooke nominated Mr. Okuhama for vice-chairperson of the ADC Board.

Chair asked if there were any further nominations. There were none.

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Chair asked if there were any objections to closing the nominations. There were none. Nominations were closed.

Chair proposed that the vote be taken by voice vote. Chair asked if there were any objections to a voice vote. There was none.

Chair called for the vote, asking all those in favor of Mr. Okuhama for vice-chairperson to say aye. Chair, Mr. Cooke, Ms. Evans, Mr. Hong, Ms. Hurd, Mr. Kanaka'ole, Mr. Okuhama, Ms. Seddon, Mr. Tabata, and Mr. Watts voted aye. Chair asked for those opposed to say no. There was none.

Chair announced that the ayes have it and Mr. Okuhama was elected vice-chair.

Chair congratulated Chair-elect Tabata and Vice-Chair-elect Okuhama.

F. Informational Items

1. Executive Director's Report regarding prior weekly reports to the board, and ADC interest in establishing subsidiaries

Chair stated that the following item was for informational purposes only, so there will be no motion or vote needed, and called on Ms. Gady to give her reports.

Ms. Gady thanked the Hawaii Technology Development Corporation for hosting ADC's in-person meeting at the Entrepreneurs Sandbox. Ms. Gady introduced members of the ADC staff that were present at the meeting. Ms. Gady informed the Board that she was looking into possibly forming a subsidiary or non-profit to operate the food and product innovation centers or the central Oahu irrigation water project. The permitted interaction groups were working on their reports to the Board and the Yardi system should be up and running by July 1st.

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

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

As this was Chair's last meeting, Ms. Gady presented him with a token of the Board's appreciation for his decades of service to the agribusiness ohana.

Recalling E. Action Item 3:

Request for approval to delegate authority to the Executive Director to enter into negotiations with the Hawaii Department of Education regarding LE-K1201, Kekaha, Kauai

Chair stated that pursuant to section 92-4, HRS, the Board will be discussing Action Item 3, in executive session to allow the Board to confer with its attorney pursuant to section 92-5(a)(4), HRS.

Chair asked if there was any public testimony on Action Item 3. There was none.

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Chair called for a motion to go into Executive Session.

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

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

Chair asked if there was any public testimony regarding the decision to go into Executive Session. There was none.

Chair conducted a roll call vote:

	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
Chair:	X		
Mr. Cooke:	X		
Ms. Evans:	X		
Mr. Hong:	X		
Ms. Hurd:	X		
Mr. Kanaka'ole:	X		
Mr. Okuhama:	X		
Ms. Seddon:	X		
Mr. Tabata:	X		
Mr. Watts:	X		

Motion approved: 10-0.

Chair announced that the public meeting was in recess, subject to reconvening at the conclusion of the Executive Session.

Exited the public meeting at 10:05 A.M.

Public session began at 11:26 A.M.

Chair stated we are back on the public record. Pursuant to section 92-4(b), HRS (2023), the following action was taken by the Board in executive session: the Board discussed Action Item 3 with the Board's attorney regarding the decision to delegate authority to the Executive Director to enter into negotiations with the Hawaii Department of Education regarding LE-K1201, Kekaha, Kauai, consistent with the license terms, the ADC statutes, and the Policies and Procedures Manual, subject to Board approval of final action.

Chair called for a motion to approve.

Motion to approve: Ms. Evans; Second: Ms. Hurd.

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

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

Chair called for the vote. Hearing no objections or abstentions the motion was approved: 10-0.

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G. Adjourn

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

Motion to adjourn: Ms. Evans; Second: Mr. Kanaka'ole.

Chair called for the vote. Hearing no objections or abstentions the motion was approved: 10-0.

The meeting was adjourned at 11:28 A.M.

Date of Next Meeting: The next meeting will be held in-person on July 18, 2024, at 9 A.M.

DRAFT

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Special Board of Directors Meeting held Virtually on August 1, 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:

Lyle Tabata, Kauai County Member, Chair (Chair)
Jesse Cooke, City and County of Honolulu Member (Mr. Cooke)
Glenn Hong, Member-At-Large (Mr. Hong)
Sharon Hurd, Designee for HBOA, Ex-Officio Member (Ms. Hurd)
Dean Okimoto, Member-At-Large (Mr. Okimoto)
Jason Okuhama, Member-At-Large, Vice-Chair (Vice-Chair)
Karen Seddon, Member-At-Large (Ms. Seddon)
Nathan Trump, Hawaii County Member (Mr. Trump)
Dane Wicker, Designee for DBEDT, Ex-Officio Member James Tokioka (Mr. Wicker)

Members Excused:

Ryan Kanaka'ole, Designee for DLNR, Ex-Officio Member Ms. Dawn Chang
Jayson Watts, Maui County Member

Counsel Present, virtually:

Jennifer Waihee-Polk, Deputy Attorney General
Delanie Prescott-Tate, Deputy Attorney General

Staff Present, virtually:

Wendy L. Gady, Executive Director
Mark Takemoto, Sr. Executive Assistant
Roger Clemente, Property Manager
Frankie Empeno
Ingrid Hisatake, Executive Secretary

Guests Present, virtually:

Aldric Ulep
Alex Sou
Craig Inouye
Craig Wagnild
David Kerr
Elizabeth Tatofi
Frank Rogozienski
Heath Williams
Mac Blanchard
Mark Ladao
Office of Sen. DeCoite

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Special Board of Directors Meeting held Virtually on August 1, 2024

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

Guests Present, physical location:

Kawai Warren, Na Kia'i Kai (Mr. Warren)

A. Call to Order

Vice-Chair called the meeting to order at 9:14 A.M.

Vice-Chair conducted a roll call of the Board. Vice-Chair called the name of each Board member and asked them to acknowledge their presence and state who if anyone over the age of eighteen was present in the room with them. Vice-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 or abstentions. If there were no objections or abstentions the motion would be approved on the same basis as the roll call.

Roll call: Chair, Mr. Cooke, Mr. Hong, Ms. Hurd, Mr. Okimoto, Vice-Chair, Ms. Seddon, Mr. Trump, and Mr. Wicker acknowledged their presence with no guests present.

B. Action Items

1. **Request to consent to the assignment of Lease Agreement Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020, currently assigned to Sunrise Capital, Inc., to Aloun Farms, Inc. for 145.65 gross acres, more or less, at Kekaha Agricultural Park, Kekaha, County of Kauai, State of Hawaii, Tax Map Key Nos. (4) 1-2-016:001; :002; :005; :006; :007; :008; :009; :010; :011; :012; :013; :014; :015; :016; :017; :018; :019; deferred from July 18, 2024 Meeting**

Chair moved this item to the end of the agenda to be heard in executive session.

2. **Presentation of the draft annual performance review of the Executive Director by the permitted interaction group established on March 21, 2024 for the purpose of conducting the annual performance review of the executive director, continued from May 16, 2024 and deferred from June 20, 2024 and July 18, 2024.**

Chair asked if Ms. Seddon, Ms. Hurd or Mr. Wicker were ready to present their report to the Board.

Ms. Seddon remarked that the permitted interaction group was still waiting for some information and would like to defer this agenda item.

Chair deferred the agenda item until the next meeting.

3. **Request for approval to dissolve and reappoint members to the Land Application permitted interaction group and the Capital Improvement Project Priorities permitted interaction group that were appointed on July 18, 2024**

Chair called for a motion to approve.

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

Chair asked if there was any presentation by staff?

AGRIBUSINESS DEVELOPMENT CORPORATION

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

Mr. Takemoto stated that pursuant to Chapter 92 of the *Hawaii Revised Statutes*, entitled the Sunshine Law, to add new members to an already established permitted interaction group, the group must be dissolved and reformed. Pursuant to Article 4, Section 3 of the ADC By-Laws and section 92-2.5 of the *Hawaii Revised Statutes*, the Board must authorize the Chair to establish and appoint members to a permitted interaction group, which the by-laws refer to as an ad hoc committee. Chair would like to increase the membership of the Land Application Permitted Interaction Group and the Capital Improvement Project Permitted Interaction Group from three to five members. The current members of the Land Application group are Chair, Mr. Trump, and Mr. Cooke. The current members of the Capital Improvement Project group are : Chair, Mr. Hong, and Ms. Seddon. Staff recommends that the Board approve the dissolving of the current land application group and capital improvement project group and authorize the Chair to reform new committees with five members. The land application group shall be tasked with the responsibility of evaluating the applications for vacant land, rate and rank the applicants, and make recommendations to the full Board. In forming the recommendations, the permitted interaction group should interview the applicants, visit applicant farming operations, and may be permitted to review any written materials from the former Administration Committee. The capital improvement project priorities group shall rank the projects and make recommendations to the full Board.

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. There was none.

Chair called for the vote.

Mr. Wicker asked Chair to identify the group members.

Chair responded that the Land Application permitted interaction group members were Chair, Mr. Trump, Mr. Cooke, Vice-Chair, and Mr. Okimoto. The Capital Improvement Project permitted interaction group members were Chair, Mr. Hong, Ms. Seddon, Mr. Wicker, and Mr. Watts.

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

4. Chair appointment and removal of members to the standing Administration Committee and the Marketing and Communications Committee

Article 4, Section 1 of the ADC By-Laws establishes three standing committees to facilitate consideration of policies and other significant matters that require approval of the Board of Directors. The standing committees are: 1) Administration Committee; 2) Technical Assistance Committee; and 3) Marketing & Communications Committee.

Pursuant to Article 4, Section 2 of the ADC By-Laws, the members of each standing committee shall be appointed by the Chair and shall serve for one year or until the appointment of their successors. The Chair may serve as an ex officio, voting member of any standing committee. On July 18, 2024, Chair appointed members to the three

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standing committees. After the committees were established several members asked to join other committees. Five is the maximum number of members that can be on any committee. The committees were established with five members so someone would have to be removed from the committee to allow for new members to join their preferred standing committee. The membership of the Administration Committee and the Marketing and Communications Committee will be rearranged. According to Article 4, Section 1 of the ADC By-Laws, the Administration Committee was assigned to:

- a. Review and make recommendations regarding all financial matters requiring approval of the Board of Directors, including, but not limited to, contractual matters and the annual budget of the corporation;
- b. Review and make recommendations regarding all personnel matters requiring approval of the Board of Directors; and
- c. Review and make recommendations regarding any other matter referred by the chairperson of the Board of Directors.

Chair appointed the following members to the Administration Committee:

1. Chair (reappoint)
2. Vice Chair (reappoint)
3. Mr. Hong (reappoint)
4. Mr. Cooke (reappoint)
5. Mr. Watts (new replacing Mr. Trump)

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

Chair asked if there was any Board Discussion? There was none.

Chair stated that according to Article 4, Section 1, the Marketing & Communications Committee shall:

- a. Review and make recommendations regarding all marketing-related projects requiring approval of the Board of Directors; and
- b. Review and make recommendations regarding any other matter referred by the chairperson of the Board of Directors.

Chair appointed the following members to the Marketing/Communications Committee:

1. Chair (reappoint)
2. Mr. Watts (reappoint)
3. Mr. Cooke (reappoint)
4. Mr. Wicker (reappoint)
5. Mr. Okimoto (new replacing Karen Seddon)

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

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Chair asked if there was any Board Discussion? There was none.

Chair reminded the Board that the authority to act on all matters was reserved to the Board of Directors, and the functions of each committee shall be to consider and make recommendations to the Board of Directors.

Recalling Action Item 1 that will be further discussed in an executive meeting closed to the public pursuant to HRS section 92-4 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 pursuant to HRS section 92-5(a)(4).

Chair stated that pursuant to HRS section 92-4, the Board will be discussing Action Item 1 in executive session to allow the Board to confer with its attorney pursuant to HRS section 92-5(a)(4).

Chair called for a motion to go into Executive Session.

Motion to approve: Mr. Trump; Second: Vice-Chair.

Chair asked if there was any public testimony on Action Item 1.

Mr. Warren identified himself as the representative of Na Kia’i Kai. He is from Kekaha and is a native Hawaiian fisherman that has been trying to protect nearshore fisheries and water. His testimony is in reference to the sale, as well as the present operation. His concern is with a drainage ditch all around the pond that is unlined. These ponds, or a moat that surrounds this huge fish pond is unlined and the effluence from the fish pond goes into the near shore waters of the fisheries we are trying to protect to feed our families. He wants some treatment, like wastewater treatment. It’s so close to the ocean and no wastewater management, it percolates into the ocean as well as the groundwater. I support taking care of the local employees but have concerns about the next owner. We’re not sure what species are going to do, worldwide there’s a lot of shrimp disease. The company is using pristine water from 500 feet below ground and doing testing on shrimp. My concern is this acquisition, because it’s a public land trust. Should an EA [Environmental Assessment] be generated? Should a public meeting be held in Kekaha? Should the lease just be handed over? This is about my grandkids tomorrow. We want to keep Kauai’s water pristine and keep our nearshore fisheries abundant with fish. We already had two fish kills in the past five years due to algae blooms, the high nutrient levels from byproducts of raising shrimp. I’m not a scientist but more research needs to be done on how to manage and protect the environment.

Chair thanked Mr. Warren and asked if there was any further questions or testimony. There was none.

Chair conducted a roll call vote:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Chair:	X		
Mr. Cooke:	X		
Mr. Hong:	X		
Ms. Hurd:	X		
Mr. Okimoto	X		
Vice Chair:	X		

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Ms. Seddon: X
Mr. Trump: X
Mr. Wicker: X

Motion approved: 9-0.

Chair announced that the public meeting was in recess, subject to reconvening at the conclusion of the Executive Session.

Exited the public meeting at 9:41 A.M.

Public session began at 10:27 A.M.

Chair stated we are back on the public record. Pursuant to HRS section 92-4(b) (2023), the following action was taken by the Board in executive session: the Board discussed Action Item 1 with the Board's attorney and deferred the matter until the next meeting, which will be an in-person meeting held on Kauai.

G. Adjourn

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

Motion to adjourn: Mr. Wicker; Second Mr. Trump.

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

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

Date of Next Meeting: The next meeting will be held in-person on August 15, 2024, at 9 A.M.

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

E-1

STAFF SUBMITTAL
August 15, 2024

Subject: Request for consent to convert Hawaii Department of Agriculture (HDOA) Ag Park Lease Agreement Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020, issued to Sunrise Capital, Inc., to ADC Kekaha License Agreements retroactive to the September 23, 2021 execution date of Executive Order No. 4660, which transferred the lands previously dedicated as the HDOA Kekaha Agricultural Park pursuant to Executive Order No. 3633, to ADC for agricultural and related purposes.

Applicant: Sunrise Capital, Inc.

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

Area: 145.65 gross acres

Field No(s): Lots 1 – 19 (excluding Lots 3 and 4)

Tax Map Key: (4) 1-2-016:001; :002; :005; :006; :007; :008; :009; :010; :011; :012; :013; :014; :015; :016; :017; :018; :019 (Property)

Land Status: Set aside to the Agribusiness Development Corporation by Governor's Executive Order No. 4660 for Agricultural and Related Purposes

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes No
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution?
Yes No

Zoning: SLUD: Agricultural
CZO: Agricultural

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

Character of Use: Aquaculture

Land Doc. Type: Lease

Term: Various (35 – 45 years)

Rental Rate **Annual Rent: \$16,685.56/year¹**

¹ This amount does not include payment of a percentage of gross receipts assessed annually on each property and may not include rent reopening subject to appraisal.

Request for consent to convert Hawaii Department of Agriculture (HDOA) Ag Park Lease Agreement Nos S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020, issued to Sunrise Capital, Inc., to ADC Kekaha License Agreements retroactive to the September 23, 2021 execution date of Executive Order No 4660, which transferred the lands previously dedicated as the HDOA Kekaha Agricultural Park pursuant to Executive Order No 3633, to ADC for agricultural and related purposes

August 15, 2024

BACKGROUND:

The Kekaha Agricultural Park was created by Executive Order No. 3633 (EO 3633) in 1994. EO 3633 gave control and management of the Kekaha Agricultural Park to the Hawaii Department of Agriculture (HDOA). The subject leases (Leases) were originally awarded to various business entities. The Leases were subsequently bought out by, and assigned to, Sunrise Capital, Inc. (Sunrise).

On April 9, 2020 the Board of Land and Natural Resources (BLNR) approved the Cancellation of Governor's Executive Order No. 3633. On September 23, 2021, pursuant to Executive Order No. 4660 (EO 4660), the Kekaha Agricultural Park was reset aside to the Agribusiness Development Corporation (ADC), including the subject leases, described as follows:

- S-8001: comprised of premises identified as TMK (4) 1-2-16:001; 006; 007; 009; 010; 011; 014; 015; 016; 018; and 019, commonly known as Lots 01, 06, 07, 09, 10, 11, 14, 15, 16, 18, and 19, containing approximately 82.949 gross acres, more or less.
- S-8002: comprised of premises identified as TMK (4) 1-2-16:002, commonly known as Lot 02, containing approximately 13.726 gross acres, more or less.
- S-8005: comprised of premises identified as TMK (4) 1-2-16:005, commonly known as Lot 05, containing approximately 9.954 gross acres, more or less.
- S-8008: comprised of premises identified as TMK (4) 1-2-16:008, commonly known as Lot 08, containing approximately 8.113 gross acres, more or less.
- S-8012: comprised of premises identified as TMK (4) 1-2-16:012, commonly known as Lot 12, containing approximately 5.465 gross acres, more or less.
- S-8013: comprised of premises identified as TMK (4) 1-2-16:013, commonly known as Lot 13, containing approximately 5.976 gross acres, more or less.
- S-8017: comprised of premises identified as TMK (4) 1-2-16:017, commonly known as Lot 17, containing approximately 9.447 gross acres, more or less.
- S-8020: comprised of premises identified as TMK (4) 1-2-16:004, commonly known as Lot 04, containing approximately 10.014 gross acres, more or less.

With the demise of the Kekaha Agricultural Park, and the transfer of the premises to the control and management of ADC, the subject Leases were to be converted to ADC licenses. However,

Request for consent to convert Hawaii Department of Agriculture (HDOA) Ag Park Lease Agreement Nos S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020, issued to Sunrise Capital, Inc, to ADC Kekaha License Agreements retroactive to the September 23, 2021 execution date of Executive Order No 4660, which transferred the lands previously dedicated as the HDOA Kekaha Agricultural Park pursuant to Executive Order No 3633, to ADC for agricultural and related purposes

August 15, 2024

due to intervening circumstances, the HDOA lease to ADC license conversion did not take place as planned. Additionally, the Leases were subject to rent reopening by appraisal in 2022. This also has not occurred.

On June 19, 2024, ADC received a letter from Sunrise requesting approval to assign the Leases to Aloun Farm, Inc. Based on this request, the Lease files were retrieved from storage and ADC Staff began researching the propriety of approving the assignment of the Leases.

On August 2, 2024, ADC received a request from Sunrise asking for consent to the conversion of the Leases to ADC licenses retroactive to the effective of the date of Executive Order No. 4660, September 23, 2021, as originally contemplated by ADC and Sunrise. (Exhibit “A”). Upon conversion of the Leases to licenses, Sunrise further requested approval from ADC for the newly converted licenses be assigned to Aloun Kauai Farming LLC (Aloun), upon closing of the asset purchase, tentatively scheduled for October 1, 2024.

REQUEST:

Sunrise requests that ADC consent to convert the Leases to ADC Kekaha License Agreements retroactive to the September 23, 2021 execution date of Executive Order No. 4660. (Request)

OPERATIONAL PLAN:

N/A

CONSERVATION PLAN:

N/A

CHAPTER 343:

Under section 343-5(a), Hawaii Revised Statutes, an environmental assessment shall be required for actions, that propose, among other things, the “(1) use of state land or county lands, or the use of state or county funds[.]” In this case, the project triggers an environmental assessment because it proposes the use of state or county lands.

In accordance with the Comprehensive Exemption List for the Agribusiness Development Corporation dated May 1, 2018, the subject Request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 10, item 9, which includes “Creation or termination of easements, covenants, or other rights in structures or land[.]” The Request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment.

DISCUSSION:

ADC staff does not manage any agricultural parks, and recommends the Board approve the Request, as this conversion to ADC License Agreements should have occurred upon assumption of the Leases by ADC. The ag parks leases are designed to meet certain circumstances that are specific to ag park operations. For example, one ag park lease specific term is the additional

Request for consent to convert Hawaii Department of Agriculture (HDOA) Ag Park Lease Agreement Nos S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020, issued to Sunrise Capital, Inc , to ADC Kekaha License Agreements retroactive to the September 23, 2021 execution date of Executive Order No. 4660, which transferred the lands previously dedicated as the HDOA Kekaha Agricultural Park pursuant to Executive Order No 3633, to ADC for agricultural and related purposes

August 15, 2024

rental, which requires the lessee to provide a yearly report disclosing the gross proceeds. The yearly report is used to determine if additional rental is due to HDOA by determining the value representing three per cent of the gross proceeds. Any excess of the values so derived over the base annual rental constitutes additional rental. Sunrise did file some yearly reports with HDOA, however, no additional rental was sought or paid to HDOA based on these yearly reports. Rent is currently set at \$150 per acre per year.

ADC staff does not have any record of active performance bonds nor annual reports, upon assumption of the Leases as Lessor from EO-4660. (Records)

These Records are necessary for ADC staff to accurately determine any potential fees payable by Sunrise to ADC, and upon conversion to ADC Kekaha License Agreements, calculate the difference, if any, of that amount and annual rent due under the current terms of the Leases.

Regarding the rent reopening, ADC has contracted with an appraiser to determine the fair market value of all ADC property statewide. However, the appraisal has not been completed for property in Kekaha. Sunrise has committed to paying the updated rental amount retroactive to the reopening date through the date of assignment to Aloun. In lieu of waiting for the appraisal, the ADC Land Management Policy & Procedure Manual section 4.4² offers another solution.

RECOMMENDATION:

Based on the foregoing, should the Board deem it appropriate to approve the Request, staff recommends the following:

1. Approve the Request, subject to the resolution of the following conditions:
 - a. ADC staff shall determine the effectiveness of the rent reopening; and
 - b. ADC staff shall determine the amount of any potential fees payable by Sunrise to ADC, including any difference between against annual rent paid to date under the terms of the Leases before conversion.
2. Declare that, pursuant to ADC's Comprehensive Exemption List dated May 1, 2018, Class 10, the proposed action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment, pursuant to Chapter 343, Hawaii Revised Statutes.

² "4 4 License Re-opening In general, it shall be the policy of ADC to issue Licenses with re-opening clauses for the purpose of adjusting the rental rate, every five years with an escalator of 2.5% of the current rent Exceptions may be made with appropriate justification and approval by the ADC Board "

Request for consent to convert Hawaii Department of Agriculture (HDOA) Ag Park Lease Agreement Nos S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020, issued to Sunrise Capital, Inc., to ADC Kekaha License Agreements retroactive to the September 23, 2021 execution date of Executive Order No 4660, which transferred the lands previously dedicated as the HDOA Kekaha Agricultural Park pursuant to Executive Order No 3633, to ADC for agricultural and related purposes

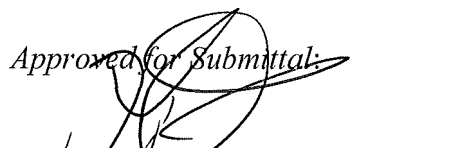
August 15, 2024

Respectfully Submitted,



FRANCIS A. EMPENG JR.
Contract Manager

Approved for Submittal:



Wendy Gady
Executive Director



Attorneys at Law

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A Partnership of
Law Corporations

Jason N. Baba
(1957-2001)

August 2, 2024

Via E-mail (delanie.d.prescott-tate@hawaii.gov)

Delanie Prescott-Tate
Deputy Attorney General
Department of the Attorney General, State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Re: Revised Request in connection with General Lease Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020

Dear Ms. Prescott-Tate:

As you know, we represent Sunrise Capital, Inc., a Hawaii corporation (“**Sunrise**”) with respect to the approximately 393.58 gross acres of land in Kekaha licensed from the State of Hawaii Agribusiness Development Corporation (“**ADC**”) pursuant to License Agreement No. LI-K1001, dated July 21, 2009, as amended (“**License**”) and the approximately 145.64 acres of land in Kekaha leased from the ADC pursuant to General Lease Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 hereto (collectively, the “**General Leases**”), which General Leases the ADC assumed from the State of Hawaii Department of Agriculture (“**HDOA**”) as landlord in accordance with the Governor’s Executive Order 4660, dated September 23, 2021 (“**Governor’s Order**”).

On behalf of Sunrise, we are writing to revise our request for the ADC Board’s approval of the assignment of the General Leases (“**Assignment**”),¹ as initially requested in that certain letter to ADC Executive Director Wendy Gady, dated June 19, 2024. The Assignment is being made in accordance with that certain Asset Purchase Agreement, dated effective as of July 11, 2024 (“**Purchase Agreement**”), by and between Sunrise and Aloun Kauai Farming LLC, a Hawaii limited liability

¹ The ADC Board approved, at its Regular Meeting held on July 18, 2024, the assignment and assumption of the License by Sunrise to Aloun Farms (effective as of the closing of the transactions contemplated under the Purchase Agreement); provided that the assignment and assumption of the License excluded the portion of the License described as Field 408, which portion Sunrise will retain and continue to license from the ADC in connection with Sunrise’s “Kona Bay” business and operations.

company (“**Aloun Farms**”).²

Pursuant to subsequent conversations and correspondence with you since our initial letter and the Regular Meeting and the Special Meeting of the ADC Board held on July 18, 2024, and August 1, 2024, respectively, to discuss the Assignment, we are hereby revising our initial request to request that the ADC Board approve the following:

(1) First, that the ADC Board convert the General Leases to the ADC’s standard license form used for the License effective as of the date of the Governor’s Order (September 23, 2021); and

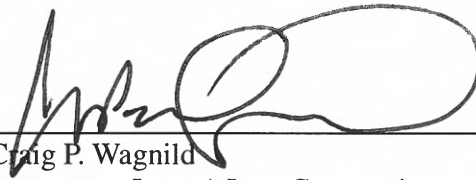
(2) Second, that the ADC Board then approve the assignment by Sunrise and the assumption by Aloun Farms of the General Leases, as converted to the ADC’s standard license form (“**Converted-to-License**”), effective as of the closing of the transactions contemplated under the Purchase Agreement, which scheduled closing date is October 1, 2024.

With the approval of this revised request regarding the Assignment, the ADC could retroactively determine the amount of any license fee payable by Sunrise to date under the Converted-to-License, with Sunrise agreeing to pay any difference of that amount and the annual rent paid to date under the terms of the General Leases before the conversion.

Thank you in advance for your and the ADC Board’s consideration of Sunrise’s revised request in connection with the Assignment to Aloun Farms. As always, please do not hesitate to contact me with any questions or to discuss any of the above.

Sincerely,

LUNG ROSE VOSS & WAGNILD

By: 
Craig P. Wagnild
Attorney at Law, A Law Corporation
Its General Partner

CPW:rgc

cc: Sunrise Capital, Inc.
Aloun Kauai Farming LLC
ADC Executive Director Wendy Gady

² As we have previously discussed, the assignee-party originally identified in our initial letter, dated June 19, 2024, was Aloun Farm, Inc., a Hawaii corporation; however, the business entity that intends to assume the General Leases is Aloun Kauai Farming LLC, a Hawaii limited liability company, which is an affiliate of Aloun Farms, Inc. and the entity by which Aloun Farms conducts its business and operations on the Island and County of Kauai.

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

E-2

STAFF SUBMITTAL
August 15, 2024

Subject: Request for consent to assign the ADC Kekaha License Agreements, if the conversion of HDOA Lease Agreement Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 is approved, from Sunrise Capital, Inc. to Aloun Kauai Farming LLC, effective upon the closing of the asset purchase agreement tentatively scheduled for October 1, 2024.

Applicant: Sunrise Capital, Inc. & Aloun Farm Inc./Aloun Kauai Farming LLC¹

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

Area: 145.65 gross acres

Field No(s): Lots 1 – 19 (excluding Lots 3 and 4)

Tax Map Key: (4) 1-2-016:001; :002; :005; :006; :007; :008; :009; :010; :011; :012; :013; :014; :015; :016; :017; :018; :019 (Property)

Land Status: Set aside to the Agribusiness Development Corporation by Governor's Executive Order No. 4660 for Agricultural and Related Purposes

Trust Land Status: Section 5(b) lands of the Hawaii Admission Act
Yes No
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution?
Yes No

Zoning: SLUD: Agricultural
CZO: Agricultural

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

Character of Use: Aquaculture

Land Doc. Type: License

Term: Various (35 – 45 years)

Rental Rate **Annual Rent: \$16,685.56/year²**

¹ The document staff received from Sunrise requested consent for assignment to Aloun Farm, Inc. However, the executed asset purchase agreement references Aloun Kauai Farming LLC as the buyer/assignee.

² This amount does not include payment of a percentage of gross receipts assessed annually on each property and may not include rent reopening subject to appraisal.

Request for consent to assign the ADC Kekaha License Agreements, if the conversion of HDOA Lease Agreement Nos S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 is approved, from Sunrise Capital, Inc to Aloun Kauai Farming LLC, effective upon the closing of the asset purchase agreement tentatively scheduled for October 1, 2024

August 15, 2024

BACKGROUND:

The Kekaha Agricultural Park was created by Executive Order No. 3633 (EO 3633) in 1994. EO 3633 gave control and management of the Kekaha Agricultural Park to the Hawaii Department of Agriculture (HDOA). The subject ADC Kekaha License agreements, originally leases, (Leases) were awarded to various business entities. The Leases were subsequently bought out by, and assigned to, Sunrise Capital, Inc. (Sunrise).

On April 9, 2020 the Board of Land and Natural Resources (BLNR) approved the Cancellation of Governor's Executive Order No. 3633. On September 23, 2021, pursuant to Executive Order No. 4660 (EO 4660), the Kekaha Agricultural Park was reset aside to the Agribusiness Development Corporation (ADC).

On June 19, 2024, ADC received a joint request from Sunrise and Aloun Farm, Inc. (Aloun) to consent to the assignment of the leases from Sunrise to Aloun (as memorialized in a letter of the same date from Sunrise legal counsel and attached as Exhibit "A").

On August 2, 2024, ADC received a revised request from Sunrise to convert the Leases to license form similarly used for License Agreement No. LI-K1001, dated July 21, 2009, made between ADC and Sunrise effective as of the date of Executive Order No. 4660, September 23, 2021. (as memorialized in a letter from Sunrise legal counsel and attached as Exhibit "B").

On August 15, 2024, request to consent to the conversion of the Leases was presented before the Board as Action Item 1, subject to Board approval.

REQUEST:

Sunrise and Aloun request that ADC consent to the assignment of ADC Kekaha License Agreements, if the conversion of HDOA Lease Agreement Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 from Sunrise Capital, Inc., to Aloun Kauai Farming LLC (Aloun)³, effective upon the closing of the asset purchase agreement tentatively scheduled for October 1, 2024. (Request)

OPERATIONAL PLAN:

Sunrise currently operates a number of shrimp ponds on the subject parcels. It is anticipated that Aloun will continue this operation, however, Aloun has not yet provided an operational plan for the subject parcels.

CONSERVATION PLAN:

N/A

CHAPTER 343:

³ Governor's Executive Order No 4660 includes Parcel D which is currently leased to Sunrise. That parcel will remain with Sunrise and is not subject to this assignment request

Request for consent to assign the ADC Kekaha License Agreements, if the conversion of HDOA Lease Agreement Nos S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 is approved, from Sunrise Capital, Inc to Aloun Kauai Farming LLC, effective upon the closing of the asset purchase agreement tentatively scheduled for October 1, 2024

August 15, 2024

Under section 343-5(a), Hawaii Revised Statutes, an environmental assessment shall be required for actions, that propose, among other things, the “(1) use of state land or county lands, or the use of state or county funds[.]” In this case, the project triggers an environmental assessment because it proposes the use of state or county lands.

In accordance with the Comprehensive Exemption List for the Agribusiness Development Corporation dated May 1, 2018, the subject Request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 10, item 9, which includes “Creation or termination of easements, covenants, or other rights in structures or land[.]” The Request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment.

DISCUSSION:

ADC staff has not received a land utilization plan from Aloun for the subject premises so it is difficult to discuss the merits of the Request with any degree of specificity. ADC expects that approval of this request will be revenue neutral. Sunrise is current on semi-annual lease rents, however, staff recently discovered the other lease revenues that may be due to ADC have not been assessed or paid.

ADC staff does not have any record of active performance bonds or bank account statements, nor additional rent reports, upon assumption of the Leases as Lessor as of EO-4660, as required by the performance bond and additional rent provisions set out in the Leases. (Records)

These Records are necessary for ADC staff to accurately determine any potential fees payable by Sunrise to ADC, and upon conversion to ADC Kekaha License Agreements, calculate the difference, if any, of that amount and annual rent due.

ADC staff further notes that Aloun is currently an applicant under the most recent request for land application and is seeking significant additional acreage.

Additionally, there is a provision in the Leases that allow the Board to condition its approval of assignment on payment of a premium based on the amount by which the consideration for assignment, exceeds the depreciated cost of the improvements and trade fixtures being transferred to the assignee. The assets must be appraised to determine this amount.

Regarding the rent reopening, ADC has contracted with an appraiser to determine the fair market value of all ADC property statewide. However, the appraisal has not been completed for property in Kekaha. Sunrise has committed to paying the updated rental amount retroactive to the reopening date through the date of assignment to Aloun. In lieu of waiting for the appraisal, the ADC Land Management Policy & Procedure Manual section 4.4⁴ offers another solution.

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

Request for consent to assign the ADC Kekaha License Agreements, if the conversion of HDOA Lease Agreement Nos S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 is approved, from Sunrise Capital, Inc to Aloun Kauai Farming LLC, effective upon the closing of the asset purchase agreement tentatively scheduled for October 1, 2024

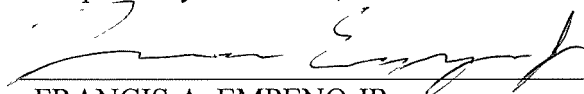
August 15, 2024

RECOMMENDATION:

Based on the foregoing, should the Board deem it appropriate to approve the Request, staff recommends the following:

1. Approve the Request, subject to the resolution of the following conditions:
 - a. The Board approve Action Item E-1 “Request for consent to convert Hawaii Department of Agriculture (HDOA) Ag Park Lease Agreement Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020, issued to Sunrise Capital, Inc., to ADC Kekaha License Agreements retroactive to the September 23, 2021 execution date of Executive Order No. 4660, which transferred the lands previously dedicated as the HDOA Kekaha Agricultural Park pursuant to Executive Order No. 3633, to ADC for agricultural and related purposes.” for Board meeting dated August 15, 2024; and
 - b. ADC staff shall determine the effective of the rent reopening; and
 - c. ADC staff shall determine the value of any unassessed rents; and
 - d. ADC shall determine the need for staff to assess any unassessed rents prior to issuing the written consent; and
 - e. ADC shall determine the value of the premium of any assets due to ADC because of the sale of the assets contained in assignment language of the original ag park leases; and
 - f. Determine the need for Aloun to procure and deposit performance bonds with lessor; and
 - g. Aloun shall provide their utilization plan; and
 - h. Aloun shall update the conservation plan pursuant to their plan of utilization; and
 - i. ADC shall institute rent reopening by appraisal pursuant to the license terms.
2. Declare that, pursuant to ADC’s Comprehensive Exemption List dated May 1, 2018, Class 10, the proposed action will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment, pursuant to Chapter 343, Hawaii Revised Statutes.

Respectfully Submitted,



FRANCIS A. EMPENO JR.
Contract Manager

Approved for Submittal:



Wendy Gady
Executive Director



Attorneys at Law

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700 Bishop Street, Suite 900
Honolulu, Hawaii 96813

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June 19, 2024

Via E-mail (wendy.l.gady@hawaii.gov)

Executive Director Wendy Gady
Agribusiness Development Corporation
235 S Beretania Street, Suite 205
Honolulu, Hawaii 96813

Re: License Agreement No. LI-K1001 and General Leases Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020: Request for the State of Hawaii Agribusiness Development Corporation Board Approval of Assignment by Sunrise Capital, Inc. to Aloun Farm, Inc.

Dear Executive Director Wendy Gady:

As you know, we represent Sunrise Capital, Inc. ("**Sunrise**") with respect to the approximately 414.85 acres of land in Kekaha licensed from the ADC pursuant to License Agreement No. LI-K1001 dated July 21, 2009, as amended ("**License**") and the approximately 145.64 acres of land in Kekaha leased from the State of Hawaii Agribusiness Development Corporation ("**ADC**") pursuant to General Leases Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 hereto (collectively, the "**General Leases**"), which General Leases the ADC assumed from the State of Hawaii Department of Agriculture as landlord in accordance with Governor's Executive Order 4660 dated September 23, 2021. Both the License and the General Leases are described in further detail in the attached Exhibit A.

We are writing to request the ADC Board's approval of the assignment by Sunrise to and assumption by Aloun Farm, Inc., a Hawaii corporation ("**Aloun Farm**") of the License and the General Leases ("**Assignment**"); provided that the Assignment would not apply to Field 408 under the License, which Sunrise intends to retain in connection with its continuing Kona Bay Business (defined below).¹ The Assignment is being made in accordance with an Asset Purchase Agreement ("**Purchase Agreement**") currently being negotiated by and between Sunrise and Aloun Farm to incorporate the terms of that certain Letter of Intent executed by Sunrise and Aloun Farm on April 8, 2024. For reference, a copy of the signed Letter of Intent is provided in the attached Exhibit B with certain sensitive financial terms that remain subject to continuing

¹ Sunrise will also retain General Lease No. S-5367, which lease was assumed by the ADC. General Lease S-5367 is adjacent to Field 408 and is the site of additional improvements used by Sunrise in connection with the Kona Bay Business and the hatchery.

negotiations redacted. Pursuant to the terms and conditions to be set forth in the Purchase Agreement, the closing of the transactions contemplated therein is contingent on, among other things, the ADC Board's approval of the Assignment. Due to the sensitive nature of the transactions contemplated between the parties, **we ask that the ADC keep the attached Letter of Intent confidential**, including the terms and conditions (such as the Assignment) and all other information relating to the transactions contemplated therein, to the greatest extent permissible under applicable laws and regulations.

As previously discussed, under the terms of the contemplated Purchase Agreement, Sunrise will sell to Aloun Farm its business of processing and selling farm-raised shrimp grown on the Island of Kauai, Hawaii, through its "Kauai Shrimp" brand and operations ("**Kauai Shrimp Business**"). The Kauai Shrimp Business comprises all of Sunrise's farm and aquaculture land, facilities, equipment, and inventory and for raising, farming, and sale of meat shrimp, including Sunrise's shrimp processing facilities. Sunrise will retain and continue to operate its business of shrimp breeding and supplying shrimp broodstock through its "Kona Bay" brand and operations ("**Kona Bay Business**"). The Kona Bay Business, involves and includes Sunrise's hatchery for broodstock production and selective breeding program, which is why Sunrise will retain Field 408 on which is located Sunrise's hatchery and breeding facilities. While Sunrise is proud of its Kauai Shrimp Business and its growth and development into one of the state's largest farm-raised shrimp providers, Sunrise seeks to make the Kona Bay Business its primary focus to better align with the operations, expertise, and holdings of Sunrise's parent company, Hendrix Genetics USA LLC ("**Hendrix**"), a leading multi-species breeding, genetics, and technology company.

When Sunrise and Hendrix initially partnered, Hendrix's primary interest was in the Kona Bay Business due to its skilled and dedicated team, advanced technology, state-of-the-art facilities, and the highly remote and pristine environment on the Island of Kauai – all of which has allowed Hendrix (via Sunrise) to implement a world renowned and extensive shrimp breeding program where shrimp are selected for fast growth, strong resistance to multiple pathogens, high nauplii production, and efficient feed utilization. However, as with Hendrix's other operations for laying hens, turkeys, traditional poultry, swine, salmon, and trout, the Kona Bay Business is at the start of the "animal protein value chain," which refers to the entire process of producing, processing, and delivering animal-derived products to consumers. It encompasses several stages from farm to table, each of which adds value to the final product. The Kauai Shrimp Business, which involves the actual farming, processing and delivery of shrimp meat is at a much later stage in the value chain, and therefore, is less in unison with the Hendrix's overall operations. In other words, the contributions Hendrix receives from the Kauai Shrimp Business is diminished by the significant resources needed to sustain it within Hendrix's broader operations.

Notwithstanding the foregoing, as part of Aloun Farm's business model that focuses on later stages in the value chain – primarily food production and distribution to consumers, Hendrix is confident that the Kauai Shrimp Business can provide better value and see increased development than would otherwise be possible within Hendrix's operations. Indeed, Hendrix would not have been willing to divest and part ways with Sunrise's Kauai Shrimp Business unless

it knew that a potential buyer had the business experience, financial capability, and community support to: (i) continue the development and growth of the Kauai Shrimp Business and build upon Sunrise's goodwill and reputation in the community, and (ii) to be proactive and responsible stewards of the land, such as the land subject to the License and the General Leases. This is why Hendrix and Sunrise see Aloun Farm as the right "fit" for the Kauai Shrimp Business and why the Assignment is expected to be in the best interest of all parties involved.

Aloun Farm has a long and successful history of farming in Hawaii. Aloun Farm's founder, Aloun Sou, together with his family, immigrated to Hawaii from Laos, arriving from a refugee camp on the Thailand-Laos border. They settled in Waianae in 1977 and began farming on five (5) acres of leased land. Today, Aloun Farm now oversees a thriving farm operation – cultivating row crops such as onions, melons, pumpkin, squashes, sweet corn, and dozens of various leafy greens and herbs on over 1,000 acres in central Oahu. Aloun Farm's has also expanded its operations to include repacking and packaging produce and distributing to all the largest retailers in Hawaii. Recently, Aloun Farm expanded its farming operations to Kauai on the island's former sugar plantation fields, with over 1,000 acres in West Kauai and growing each year. Aloun Farm provides full-time employment to 180 people in Hawaii, including over 50 employees on Kauai. To put it plainly, Aloun Farm has been exemplary in its commitment to reduce Hawaii's dependency on imported produce through increased production and a dedication to revitalizing the farming industry here in Hawaii, which Aloun Farm now wishes to do so to include aquaculture such as the Kauai Shrimp Business.

Accordingly, Sunrise is confident that Aloun Farm can seamlessly integrate the land and property under the License and the General Leases into its operations, which will further empower and enable Aloun Farm to pursue its goal of providing Hawaii consumers with "the highest quality of fresh island grown produce" and its mission to be responsible stewards of the land through land management and community development. In addition, on a local level, Sunrise currently employs approximately 30 full-time Hawaii residents for its Kauai Shrimp Business, who receive comprehensive benefits, including medical coverage, paid vacation and sick leave. Many of these employees are directly involved in the work conducted on the ADC land under the License and General Leases. Under the terms of the Purchase Agreement, Aloun Farm will retain almost all of these employees in their same capacities and with the same benefits so to ensure the long-term economic benefits these jobs provide to the local community. The remaining employees will be retained by Sunrise in connection with its on-going Kona Bay Business.

Sunrise views Aloun Farm's involvement in the operations of the Kauai Shrimp Business as an important component for the development, growth, and long-term security of the Kona Bay Business, which Sunrise will retain and continue to invest in going forward. Both businesses are reliant upon the existing microgrid supplying uninterrupted and economical sustained power for their operations, and both companies will be involved with and members of the Kekaha Agriculture Association (KAA). As part of the contemplated Purchase Agreement, Sunrise is committing to provide on-going support to Aloun Farm to ensure a successful transition and long-term growth and development of the farming operations. In addition, Aloun Farm will

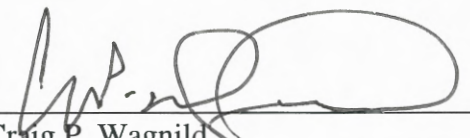
commit to purchase its shrimp broodstock from Sunrise's Kona Bay Business for at least the next 10 years, intrinsically and synergistically linking these two companies and businesses. The ongoing, long-term agreements between Sunrise and Aloun Farm will also help ensure that the Kauai Shrimp Business under Aloun Farm's control maintains effective biosecurity measures, and create a lasting partnership between the parties, where Sunrise has a vested interest in Aloun Farm's sustainability, productivity, and economic viability as Sunrise continues to develop and grow the Kona Bay Business on Kauai for years to come.

In conclusion, as demonstrated stewards of the land currently under its possession and control, and with Aloun Farm's plans for expansion and development of its operations in various parts of the ADC-licensed and leased land, Sunrise is confident that Aloun Farm can successfully assume the License and the General Leases to the benefit of the ADC, the State of Hawaii, and Hawaii's community members. The land licensed and leased from the ADC has allowed Sunrise to become one of the state's largest locally grown food providers, a position which Aloun Farm is eager and ready to continue, as further described in Aloun Farm's business, utilization, and development plans to be provided to the ADC once finalized. In short, Sunrise would not be selling its Kauai Shrimp Business and would not be making this approval request to the ADC Board unless Sunrise was confident that Aloun Farm has the experience, expertise, connections, and resources necessary to successfully take over and operate the Kauai Shrimp business, and manage, maintain and meaningful utilize the ADC-licensed and leased lands.

Thank you in advance for your and the ADC Board's consideration of Sunrise's request for the Assignment. As always, please do not hesitate to contact me with any questions or to discuss this request.

Sincerely,

LUNG ROSE VOSS & WAGNILD

By: 
Craig P. Wagnild
Attorney at Law, A Law Corporation
Its General Partner

CPW:
Attachments

cc: Sunrise Capital, Inc.
Aloun Farm, Inc.

EXHIBIT A

A. License.

1. License Agreement No. LI-K1001, dated July 21, 2009, between ADC and Sunrise, as amended by that First Amendment of License Agreement, dated August 26, 2011, as amended by that certain Second Amendment of License Agreement, dated August 31, 2020, as amended by that certain Third Amendment of License Agreement, dated June 1, 2021, as amended by that certain Fourth Amendment of License Agreement, dated November 9, 2021, as amended by that certain Fifth Amendment of License Agreement, dated March 5, 2024; provided that, notwithstanding anything to the contrary in this Agreement, Field 408 under License Agreement LI-K1001 shall be excluded from the ADC Leases, and the interest therein, as to Field 408, shall remain that of Sunrise's.

2. Sunrise's interest, as "sub-licensor" under that certain Sub-License (Under License No. LI-K1001), executed June 2019, between Sunrise, as sub-licensor, and HARTUNG BROTHERS HAWAII, LLC, a Hawaii limited liability company, as sub-licensee.

3. Sunrise's interest, as "sub-licensor" under that certain Sub-License (Under License No. LI-K1001), executed on June 5, 2020, between Sunrise, as sub-licensor, and SHREDCO, L.L.C., a Hawaii limited liability company, as sub-licensee.

B. General Leases.

1. General Lease No. S-8001, dated December 31, 1997, leased to Ceatech Plantations, Inc., a Hawaii corporation, as lessee, as assigned to Sunrise.

2. General Lease No. S-8002, dated February 1, 2001, leased to Ceatech Plantations, Inc., a Hawaii corporation, as lessee, as assigned to Sunrise.

3. General Lease No. S-8005, dated July 31, 1998, leased to James K. Shintani, as lessee, as assigned to Sunrise.

4. General Lease No. S-8008, dated September 4, 1997, leased to Kealohanui Baclayon, as lessee, as assigned to Sunrise.

5. General Lease No. S-8012, dated January 12, 1998, Noboru and Michie Munechika, husband and wife, as lessee, as assigned to Sunrise.

6. General Lease No. S-8013, dated August 8, 2000, leased to Ceatech Plantations, Inc., a Hawaii corporation, as lessee, as assigned to Sunrise.

7. General Lease No. S-8017, dated August 8, 2000, leased to Ceatech Plantations, Inc., a Hawaii corporation, as lessee, as assigned to Sunrise.

8. General Lease No. S-8020, dated October 1, 2006, leased to Sunrise, as lessee.

EXHIBIT B

LETTER OF INTENT

[To be attached.]

Hendrix Genetics B.V.
Villa 'de Körver', Spoorstraat 69, 5831 CK Boxmeer
P.O. Box 114, 5830 AC Boxmeer, The Netherlands-EU
T +31 485 801 911 F +31 485 801 912 W hendrix-genetics.com



CONFIDENTIAL

Aloun Farm, Inc.
91-1440 Farrington Hwy
Kapolei, HI 96707
Attention: Alec Sou

April 4, 2024

Re: Indication of Interest by Sunrise Capital Inc., for and on behalf of its affiliate Hendrix Genetics B.V. to sell its meat shrimp activities, Kauai Shrimp to Aloun Farm, Inc.

Dear Alec,

On behalf of Sunrise Capital Inc. ("Sunrise"), Hendrix Genetics B.V. ("Hendrix Genetics") is pleased to submit this preliminary, non-binding indication of interest ("Indication of Interest") for a potential transaction (the "Transaction") in which Sunrise would sell its meat shrimp operation, Kauai Shrimp, located at 9663 Kaumualii Hwy, Waimea, HI 96796, United States ("Kauai Shrimp"), to Aloun Farm, Inc. ("Aloun").

The highlights of our proposal are as follows:

About Hendrix

Hendrix Genetics has a longstanding involvement in shrimp genetics, via its "Kona Bay" brand. In North America, Sunrise is the operational entity performing the Kauai Shrimp activities.

In addition, Hendrix Genetics is a worldwide leader in animal genetics and breeding programs, and is active in multiple species including swine, turkeys, chickens (layers and traditional poultry), salmon and trout, as well as shrimp.

Purchase Price Proposal and Structure

Sunrise proposes to sell 100% of Kauai Shrimp to Aloun in accordance with the following:

- (a) a fixed purchase price of [REDACTED], [REDACTED] (the "Purchase Price"), which will be payable in accordance with the following payment schedule (all amounts referenced in this proposal are in United States Dollars, unless otherwise indicated):

(i) Payment Schedule

- (1) Year 1: aggregate payment of [REDACTED] at the beginning of each of the [REDACTED] of the term as defined in the definitive agreement (the "Term") to be entered into by the parties;
- (2) Year 2: aggregate payment of [REDACTED] at the beginning of each of the [REDACTED]
- (3) Year 3: aggregate payment of [REDACTED] payable at the beginning of the [REDACTED]

(ii) Early Repayment/Late Payments

- (1) Hendrix Genetics will offer an early repayment discount to Aloun, if the full outstanding balance of the Purchase Price is paid before the commencement of the [REDACTED] of the Term, at a [REDACTED] from the remaining portion of the Purchase Price, to a maximum available discount of [REDACTED]
- (2) Any scheduled payment that is not made on or before its due date will be subject to applicable late fees and/or interest (IRS posted short term quarterly compounding AFR Interest Rate + 2.00% markup)

- (b) All current leases will be transferred from Hendrix to Aloun effective as of the date of completion of the transaction.
- (c) For the first three months following the date of completion of the transaction, Hendrix agrees to provide support to Aloun in meetings its payroll obligations to Kauai Shrimp employees [REDACTED] (excluding sales commission – this should be paid by Aloun).
- (d) In connection with the transaction, the parties will enter in a PL supply agreement, the terms of which will include: [REDACTED] the option for Aloun to purchase the Hendrix hatchery should Hendrix decide to discontinue its operations in the State of Hawaii; and an initial price of [REDACTED], with a value of [REDACTED], and the potential to increase volumes in subsequent years.
- (e) The parties will use best efforts to settle a technical support agreement, whereby Hendrix will provide advice and assistance to Aloun as may be appropriate, to facilitate Aloun's successful assumption and integration of the Kauai Shrimp business, [REDACTED]
- (f) Applicable inventories will be based on mutually agreed volumes and/or values, to be determined as of the date of the transaction, with live inventory to be paid [REDACTED] payment schedule from the date of the Transaction, and frozen inventory to be paid for [REDACTED]

Consideration

Hendrix Genetics will receive the Purchase Price in an [REDACTED] transaction payable in accordance with the schedule described above.

Due Diligence & Timing

Subject to agreement to the outline of the further support as described herein and immediately after signing of this Indication of Interest, Aloun will be allowed to conduct, together with its professional advisors, a due diligence investigation. The due diligence investigation may include among other matters, business, technical, financial/tax, legal, personnel, environmental and regulatory matters. It is both parties' wish to minimize the extent and period of disruption related to a due diligence investigation but also to each of their own organization. Aloun agrees to execute and complete due diligence by May 31, 2024.

The proposed effective date of the Transaction is October 1, 2024, but the parties agree to make all reasonable endeavors to expedite this date and bring it forward into Q3 2024.

Employees

Hendrix Genetics has been committed to the long-term success of the Kauai Shrimp employees and it is our understanding that the Kauai Shrimp employees will be integrated into Aloun post-acquisition in a fair and equitable manner that will allow them to continue to succeed and thrive as a part of Aloun.

Definitive Agreements

Our counsel will work collaboratively with your counsel in connection with the drafting of a customary, market purchase agreement for a transaction of this size and type. Our counsel will provide a first draft of such agreement as well as the necessary ancillary agreements no later than [REDACTED].

Assumptions

Hendrix Genetics and Aloun are entering into this Indication of Interest based on the following assumptions among others, and the parties, as their respective interests appear, shall be responsible for satisfying themselves concerning such assumptions during the ensuing negotiations and due diligence:

- a. The meat shrimp business of Kauai Shrimp is indeed of the claimed advanced level which can be expected from a world leading breeding company like Hendrix Genetics/Kona Bay;
- b. Kauai Shrimp's key personnel are in support of the Transaction and will continue their employment;
- c. All required permits to perform the meat shrimp activities as referred to in this Indication of Interest are in place and will not be affected by the transaction contemplated hereunder; and
- d. The transaction as contemplated in this Indication of Interest will not be hindered by any existing pre-emptive rights;

Conditions

Hendrix Genetics and Aloun further contemplate that the closing of transactions described in this Indication of Interest shall be subject to the following conditions:

- a. The right for Aloun to perform a due diligence investigation as set out in the section entitled "Due Diligence & Timing" herein and the due diligence investigation does not reveal any onerous matters or material undisclosed liabilities for which Hendrix Genetics and/or Aloun will become liable after the closing of the envisaged transaction;
- b. The definitive agreement(s) provides for a tax optimal structure and shall have representations and warranties and guarantees and indemnities customary for this kind of transaction;

- c. The full and unrestricted clearance and approval for the overall transaction by the relevant authorities;
- d. The approval by the respective executive and supervising boards and shareholders of the parties; and
- e. In order to facilitate the protection and maintenance of the health status at Hendrix Genetics' hatchery and its stocks, Aloun agrees that, for so long as Hendrix is operating in the State of Hawaii, it will not purchase shrimp from any supplier other than Kona Bay nor shall it import live shrimp from any other source

Transaction Expenses

[REDACTED]

Exclusivity

For a period of [REDACTED] following execution of this letter (the "Exclusivity Period"), Hendrix Genetics will not, and will cause its equity holders, subsidiaries, affiliates, directors, officers, managers, employees and representatives not to, directly or indirectly, solicit, initiate, or encourage the submission of any proposal or offer from any person or entity relating to the acquisition of any material part of the outstanding capital stock, business or assets of Sunrise or its subsidiaries or the liquidation, recapitalization, reorganization, or any similar transaction involving Kona Bay or its subsidiaries, or enter into any agreement, arrangement or understanding (written or oral) with respect to any of the foregoing. At the end of the initial Exclusivity Period or any extension thereof, the Exclusivity Period will automatically be [REDACTED], prior to the end of the initial Exclusivity Period or any extension thereof, a party delivers to the other party a written notice terminating the Exclusivity Period as of the end of the Exclusivity Period then in effect.

Confidentiality

This letter is being provided to you confidentially and is subject to the confidentiality obligations set forth in the Mutual Nondisclosure Agreement dated May 3rd, 2023, which terms and conditions are hereby repeated and referenced in and will govern the exchange of information hereunder.

Key Contact Persons – Hendrix Genetics

Raf Beeren
Chief Operating Officer
+31 485 801 951
raf.beeren@hendrix-genetics.com

David Danson
Director of Operations and Shrimp
+31 485 801 911
david.danson@hendrix-genetics.com

Expiration

This letter, if not agreed to by 5.00 p.m. Central European Time on April 12, 2024, will expire.

Preliminary Nature of Indication of Interest

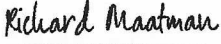
This letter does not represent a binding legal agreement (other than under this section and the Exclusivity and Confidentiality sections hereof). A binding agreement will require the completion of, among other things, satisfactory due diligence by Aloun and the execution of definitive legal documents. This letter is governed by

the laws of the State of Delaware applicable to contracts to be performed wholly within such state. Any disputes related to this letter will be resolved in any state or federal court located in Delaware, together with courts of appellate jurisdiction therefrom, and each party hereby submits to the jurisdiction of such courts for purposes of resolving such disputes.

On behalf of Hendrix Genetics, we are enthusiastic about this opportunity. Should you require clarification regarding any aspect of this letter, please do not hesitate to contact us.

Very truly yours,

HENDRIX GENETICS B.V.

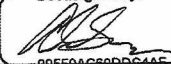
DocuSigned by:

By: _____
Name: Richard Maatman
Title: Chief Executive Officer

DocuSigned by:

By: _____
Name: Roger van Biljouw
Title: Chief Financial Officer

ACKNOWLEDGED AND AGREED TO BY:

ALOUN FARM, INC.

DocuSigned by:

By: _____
Name: ALEC SOU
Title: President & General Manager
Date: 4/8/2024



Attorneys at Law

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A Partnership of
Law Corporations

Jason N. Baba
(1957-2001)

August 2, 2024

Via E-mail (delanie.d.prescott-tate@hawaii.gov)

Delanie Prescott-Tate
Deputy Attorney General
Department of the Attorney General, State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Re: Revised Request in connection with General Lease Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020

Dear Ms. Prescott-Tate:

As you know, we represent Sunrise Capital, Inc., a Hawaii corporation (“**Sunrise**”) with respect to the approximately 393.58 gross acres of land in Kekaha licensed from the State of Hawaii Agribusiness Development Corporation (“**ADC**”) pursuant to License Agreement No. LI-K1001, dated July 21, 2009, as amended (“**License**”) and the approximately 145.64 acres of land in Kekaha leased from the ADC pursuant to General Lease Nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, and S-8020 hereto (collectively, the “**General Leases**”), which General Leases the ADC assumed from the State of Hawaii Department of Agriculture (“**HDOA**”) as landlord in accordance with the Governor’s Executive Order 4660, dated September 23, 2021 (“**Governor’s Order**”).

On behalf of Sunrise, we are writing to revise our request for the ADC Board’s approval of the assignment of the General Leases (“**Assignment**”),¹ as initially requested in that certain letter to ADC Executive Director Wendy Gady, dated June 19, 2024. The Assignment is being made in accordance with that certain Asset Purchase Agreement, dated effective as of July 11, 2024 (“**Purchase Agreement**”), by and between Sunrise and Aloun Kauai Farming LLC, a Hawaii limited liability

¹ The ADC Board approved, at its Regular Meeting held on July 18, 2024, the assignment and assumption of the License by Sunrise to Aloun Farms (effective as of the closing of the transactions contemplated under the Purchase Agreement); provided that the assignment and assumption of the License excluded the portion of the License described as Field 408, which portion Sunrise will retain and continue to license from the ADC in connection with Sunrise’s “Kona Bay” business and operations.

company (“**Aloun Farms**”).²

Pursuant to subsequent conversations and correspondence with you since our initial letter and the Regular Meeting and the Special Meeting of the ADC Board held on July 18, 2024, and August 1, 2024, respectively, to discuss the Assignment, we are hereby revising our initial request to request that the ADC Board approve the following:

(1) First, that the ADC Board convert the General Leases to the ADC’s standard license form used for the License effective as of the date of the Governor’s Order (September 23, 2021); and

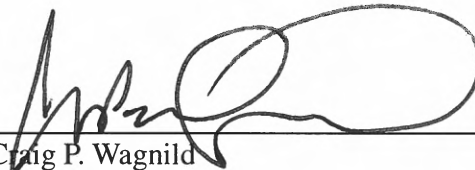
(2) Second, that the ADC Board then approve the assignment by Sunrise and the assumption by Aloun Farms of the General Leases, as converted to the ADC’s standard license form (“**Converted-to-License**”), effective as of the closing of the transactions contemplated under the Purchase Agreement, which scheduled closing date is October 1, 2024.

With the approval of this revised request regarding the Assignment, the ADC could retroactively determine the amount of any license fee payable by Sunrise to date under the Converted-to-License, with Sunrise agreeing to pay any difference of that amount and the annual rent paid to date under the terms of the General Leases before the conversion.

Thank you in advance for your and the ADC Board’s consideration of Sunrise’s revised request in connection with the Assignment to Aloun Farms. As always, please do not hesitate to contact me with any questions or to discuss any of the above.

Sincerely,

LUNG ROSE VOSS & WAGNILD

By: 
Craig P. Wagnild
Attorney at Law, A Law Corporation
Its General Partner

CPW:rgc

cc: Sunrise Capital, Inc.
Aloun Kauai Farming LLC
ADC Executive Director Wendy Gady

² As we have previously discussed, the assignee-party originally identified in our initial letter, dated June 19, 2024, was Aloun Farm, Inc., a Hawaii corporation; however, the business entity that intends to assume the General Leases is Aloun Kauai Farming LLC, a Hawaii limited liability company, which is an affiliate of Aloun Farms, Inc. and the entity by which Aloun Farms conducts its business and operations on the Island and County of Kauai.