

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on September 19, 2024

Via Zoom Teleconference and 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, Chairperson, Kauai County Member (Chair)
Jesse Cooke, City & County of Honolulu Member (Member Cooke)
Glenn Hong, Member-at-Large (Member Hong)
Sharon Hurd, HDOA, Ex-Officio Member (Member Hurd)
Ryan Kanaka‘ole, Designated Representative, DLNR, Ex-Officio Member Ms. Dawn Chang (Member Kanaka‘ole)
Dean Okimoto, Member-at-Large (Member Okimoto)
Jason Okuhama, Member-at-Large (Member Okuhama)
Karen Seddon, Member-at-Large (Member Seddon) (left the meeting at 11 A.M.)
Nathan Trump, Hawaii County Member (Member Trump)
Jayson Watts, Maui County Member (Member Watts)
Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member James Tokioka (Member Wicker)

Members Excused:

None

Counsel Present, virtually:

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

Staff Present, virtually:

Wendy L. Gady, Executive Director (Ms. Gady)
Mark Takemoto, Senior Executive Assistant
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Frankie Empeno, Contract Manager
Roger Clemente, Property Manager

Guests Present, virtually:

ADC Guest
Dale Sakata, Deputy Attorney General, HDOH (Mr. Sakata)
Dawn Huff, KIUC
Dexter Kishida, HDOA
Elena Bryant, EarthJustice
Guest
Guest Guest

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Jaymie
Josh Uyehara, Kekaha Agriculture Association (Mr. Uyehara)
Mike Faye
Thomas Heaton

Guests Present, physical location:

None.

A. Call to Order

Chair called the meeting to order at 9:04 A.M.

Chair conducted a roll call of the Board. Chair called the name of each Board member and asked them to acknowledge their presence and state who if anyone over the age of eighteen was present in the room with them. 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, Member Cooke, Member Hong, Member Hurd, Member Kanaka'ole, Member Okimoto, Member Okuhama, Member Seddon, Member Trump, Member Watts, Member Wicker acknowledged their presence with no one in the room with them.

B. Approval of Minutes

Chair called for a motion to approve the June 20, 2024 executive session minutes.

Motion to approve: Member Hong; Second: Member Okuhama.

Chair asked if there was any presentation from staff. 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.

Member Wicker, Member Okimoto, and Member Trump noted they were not present at the June 20, 2024 executive session meeting and would abstain from voting.

Chair conducted a roll call vote: Chair, Member Cooke, Member Hong, Member Hurd, Member Kanaka'ole, Member Okuhama, Member Seddon, and Member Watts voted to approve the June 20, 2024 executive session minutes. Member Wicker, Member Okimoto, and Member Trump abstained: Motion approved: 8 – 0; 3 abstained.

Chair deferred approval of the Agribusiness Development Corporation (ADC) regular and executive session minutes from the July 18, 2024 and the August 20, 2024 meeting until the next meeting.

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C. Chairperson's Report

Chair reported that since the last meeting the staff and Executive Director (ED) have been working on the capital improvement projects, doing site visits and working on getting applicants on vacant land with the Land Permitted Interaction Group. Chair commended the ED and staff on their work.

D. Committee Reports

There were no committee reports.

Chair took Informational Item F-1 out of order.

F. Informational Items

1. Presentation by Deputy Attorney General Dale Sakata for the Hawaii Department of Health (HDOH) regarding the National Pollutant Discharge Elimination System (NPDES) permit for Sunrise/Aloun

Chair stated that at the August 20, 2024 meeting, the Board approved Sunrise Capital Inc.'s (Sunrise) request to convert their eight Department of Agriculture (HDOA) Ag Park Lease Agreements to ADC-Kekaha License Agreements, retroactive to September 23rd, 2021, the execution date of Executive Order No. 4660, which transferred the Ag Park land to ADC for agricultural and related purposes. The Board also approved Sunrise's request to assign the eight license agreements to Aloun Kauai Farming LLC (Aloun), effective upon the closing of the Asset Purchase Agreement. After that Board meeting, HDOH notified the parties that the NPDES permit issued to Sunrise was not immediately transferable to Aloun. Chair called on Mr. Sakata to give his presentation.

Mr. Sakata introduced himself as a deputy attorney general that advises HDOH, specifically their Clean Water Branch. The Sunrise NPDES permit has been administratively extended, which means technically the NPDES permit expired in 2016. Sunrise did submit a timely application to renew the permit but HDOH has not fully processed that application yet. An administrative extension allows the permitted operation to continue until a decision on the renewal application is made. Once HDOH makes a decision the permit is transferable under certain circumstances. The Hawaii Administrative Rules and federal regulations govern NPDES permits. A permit under administrative extension is not a permit per se and is not transferable in the same way that an actual permit is transferable. That's the situation Sunrise is operating under now. It appears that Sunrise was unaware that an administrative extension can't be transferred to a subsequent purchaser. Both HDOH and the Environmental Protection Agency have confirmed an administrative extension is not transferable.

Chair asked if there was any from the public who wished to testify. There was none.

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

Chair thanked Mr. Sakata and returned to the agenda action items.

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E. Action Items

- 1. Request for approval to authorize rent credits in the amount of \$20,474.50 under License Agreement LI-GA2002 issued to SJ Farms, Inc. for agricultural infrastructure improvements at the Galbraith Agricultural Lands at Waialua, Oahu, State of Hawaii, Tax Map Keys (1) 6-5-002:010 (por.) and (1) 7-1-001:003**

Chair called for a motion to approve.

Motion to approve: Member Wicker; Second: Member Trump.

Chair called on Mr. Nakamoto to give the staff presentation.

Mr. Nakamoto stood on his written submittal.

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

Chair asked if there was any Board discussion.

Member Wicker asked for details on what the infrastructure improvements were.

Mr. Nakamoto said the area is the Galbraith agricultural lands. ADC is in the process of purchasing deep wells from Dole. The plan is to run some transmission lines from one of these Dole wells back to Galbraith to serve as a backup to the Bott Well and increase capacity. The Bott Well is operated by Kalena Farms. If the Bott Well goes down our farmers would not have water. ADC is trying to integrate this well into the Galbraith irrigation system. SJ Farm is providing the connection point to integrate the well and has purchased the necessary equipment and has done some engineering so when our pipeline from the Dole well is ready, we can just plug into the system. Once the license expires the infrastructure reverts to ADC.

Member Hurd asked if an environmental assessment (EA) was necessary.

Mr. Nakamoto replied that our consultants will determine whether or not an EA is necessary or if an exemption applies.

Chair called for the vote. Hearing no objections or abstentions the motion was approved: 11-0.

- 2. Request to rescind Board approval dated April 18, 2024 to issue a right-of-entry agreement to Hawaii Farm Bureau Foundation for 10 acres, more or less, to host the 2024 Hawaii State Farm Fair in Whitmore, Oahu, State of Hawaii, Tax Map Keys (1) 7-1-002:037 (por.), :041 (por.); :044 (por.)**

Chair called for a motion to approve.

Motion by Member Wicker; Second: Member Okimoto.

Chair called on Mr. Nakamoto for staff presentation.

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Mr. Nakamoto said unfortunately the infrastructure and clearing of the land could not be completed in time for the fair this year and stood on his written submittal.

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

Chair asked if there was any Board discussion.

Member Okimoto asked if the Farm Bureau was going to use the site again next year.

Mr. Nakamoto said yes, ADC is continuing to clear the land and put in some infrastructure. If everything lines up they will be back again asking for a new right of entry (ROE).

Member Cooke asked if an EA was required.

Mr. Nakamoto did not believe an EA was required to issue a ROE. If any development on the site is contemplated we will look into it.

Member Hurd asked why the ROE was not extended if the Farm Bureau was going to use the site next year for the Farm Fair.

Mr. Nakamoto replied that at this point it was undecided. If they want to use the site next year they will come back to the Board for a new ROE.

Member Hurd asked if we rescind the ROE does that mean the work of clearing the land can continue.

Mr. Nakamoto explained that the Farm Bureau was not clearing the property. ADC was preparing the property for use; whatever that use may be. It could be agriculture. The work will not stop.

Chair called for the vote. Hearing no objections or abstentions the motion was approved: 11-0.

3. Request to move the next ADC Board of Directors meeting from October 17, 2024 to October 24, 2024

Chair called for a motion to approve.

Motion by Member Wicker; Second: Member Hurd.

Chair called on Ms. Gady for staff presentation.

Ms. Gady said that she, Member Okuhama, and Member Wicker were unavailable on October 17, 2024 and asked if the meeting could be rescheduled to accommodate their unavailability.

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

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

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Chair called for the vote. Hearing no objections or abstentions the motion was approved: 11-0.

Agenda item E-4, a motion to approve a change in physical meeting location of the October 24, 2024 hybrid meeting, was inadvertently omitted from the agenda discussion. When the omission was discovered Ms. Waihee-Polk noted that E-4, as well as E-3, the motion to change the Board meeting date, did not require formal action by the Board. ADC staff controls Board hearing dates and physical meeting locations. Agenda item E-4 was withdrawn.

Chair stated that action item E-5:

- 5. Request for approval to authorize the Executive Director (ED) to execute an agreement on behalf of ADC agreeing to KIUC's counteroffer dated September 3, 2024, that permits KIUC to withdraw from the Waimea Watershed Agreement and requires ADC to accept responsibility for the installation and maintenance of in-stream monitoring stations on the Waiakoali, Kawaikoi, Kauaikinana, Kokee, Waiahulu, Koaie, and Waimea streams and ensuring that the IIFS numbers at the Kokee, Kauaikinana, Kawaikoi, and Waiakoali diversions are met, subject to approval of the agreement by the Commission on Water Resource Management (CWRM), DHHL, and EarthJustice**

and E-6:

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

would be heard in executive session pursuant to HRS section 92-4(a). HRS section 92-5(a)(4) allows the Board to go into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunity, and liability, and HRS section 92-5(a)(2) allows the Board to consider the evaluation of an employee, when consideration of matters affecting privacy will be involved.

Chair stated that before going into executive session, did anyone from the public wish to give testimony on action item E-5?

Mr. Uyehara testified as a member of the Kekaha Agriculture Association (KAA) and wanted to note that KAA was also involved in this matter and he was available to answer any questions.

Chair asked if there was any more public testimony on action item E-5? There was none.

Chair asked if there was anyone from the public wished to give testimony on action item E-6? There was none.

Chair called for a motion to go into executive session.

Motion by Member Wicker; Second: Member Trump.

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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. Chair, Member Cooke, Member Hong, Member Hurd, Member Kanaka'ole, Member Okimoto, Member Okuhama, Member Seddon, Member Trump, Member Watts, and Member Wicker voted to approve the motion. Motion approved: 11-0.

The public meeting was in recess subject to reconvening at the conclusion of the executive session.

Exited the public meeting at 9:36 A.M.

Chair called the meeting back to order at 10:54 A.M.

E-5:

Chair stated that pursuant to HRS section 92-4(b) (2023), the following actions were taken by the Board in executive session. The Board discussed E-5 with the Board's attorney pursuant to HRS section 92-5(a)(4). Chair called for a motion to approve agenda item E-5, the request for approval to authorize the ED to execute an agreement on behalf of ADC, agreeing to KIUC's counteroffer dated September 3, 2024, that permits KIUC to withdraw from the Waimea Watershed Agreement and requires ADC to accept responsibility for the installation and maintenance of in-stream monitoring stations at the Waiakoali, Kawaikoi, Kauaikinana, Kokee, Waiahulu, Koaie, and Waimea streams, and ensuring that the IIFS numbers at the Kokee, Kauaikinana, Kawaikoi, and Waiakoali diversions are met, subject to approval of the agreement by the CWRM, DHHL, and EarthJustice.

Motion by Member Trump; Second: Member Cooke.

Chair asked if anyone from the public 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: 11-0.

E-6:

Chair stated that the Board also discussed action item E-6 in executive session pursuant to HRS section 92-5(a)(2), where matters involving personnel privacy were discussed. The Board received the report and recommendations from the permitted interaction group assigned to conduct the annual performance evaluation of the ED. No action was taken. The motion to accept the group's recommendation will be held at the next Board meeting. The permitted interaction group formed on March 21, 2024 to conduct the annual ED performance evaluation was dissolved.

F. Information Items

- 1. Presentation by Dale Sakata from HDOH regarding the NPDES permit for Sunrise/Aloun**

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This agenda item was heard out of order at the beginning of the meeting.

2. Executive Director's Report regarding prior weekly reports to the Board

Chair called on Ms. Gady to give her report.

Ms. Gady stated that her weekly reports were available on the ADC website and reminded everyone about the Ag Leadership Conference on November 7th and 8th at the Convention Center.

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

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

3. Presentation by Mr. Nakamoto, ADC project manager regarding the procurement process for the high-pressure processing (HPP) facility in Whitmore, Oahu, previously approved on May 18, 2022

Chair called on Mr. Nakamoto to give the presentation.

Mr. Nakamoto gave a power-point presentation and explained that the high-pressure processing facility will be built in Whitmore. HPP technology is a non-thermal clean technology that doesn't use heat or chemicals; basically uses pressure to pasteurize the products. ADC entered into a Memorandum of Understanding with the Department of Business and Economic Development and Tourism (DBEDT) who provided \$6 million from the legislature for this project. \$500,000 went to University of Hawaii, School of Architecture and the Community Design Center to come up with the conceptual plan. On May 18, 2022 the request for proposal (RFP) was approved that authorized the remaining \$5.5 million to purchase the HPP machine and build the facility. On November 15, 2022 we received the sole offer. On January 25, 2023 ADC established a permitted interaction group (Group) to negotiate a deal with the sole offeror. On May 5, 2023, ADC was given permission to negotiate with the sole offeror. The ADC chair at that time was a member of the Group. When the chair resigned the Group had to be dissolved. In September a new Group was established. On November 8, 2023, the sole offeror informed ADC that he was no longer interested in pursuing the project. ADC decided to reissue the RFP. ADC received guidance from one of our sister agencies and DBEDT and decided to split up the RFP; one will be for the design and build of the facility; the second RFP would be to purchase the HPP machine, operate, and maintain the facility. We still have the \$5.5 million that was approved back in 2021 when the project first started. We're making other changes and will need additional funding to complete the project. Target date to release the design build RFP is September 25th. Our anticipated award date will be on December 2nd.

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.

Member Hurd asked if a proposal evaluation committee had been selected.

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Mr. Nakamoto said they are in the process of getting approvals, and we're getting help from DBEDT and the Hawaii Community Development Authority. They've been very helpful.

Member Cooke asked what was the reason the first sole offer backed out?

Mr. Nakamoto replied that time killed the deal. ADC took a long time to respond to the offer due to internal disruptions and couldn't agree to some of the proposals like providing free rent for the life of the contract and requiring ADC to sustain any losses the operator may incur. That's an unfunded liability that the state cannot agree to. As time passed, he decided that he was no longer interested in the project.

Member Cooke asked for the new approach on the two RFPs, what kind of funding would be needed to operate and maintain? If the facility's there, it's constructed, what's the big funding need?

Mr. Nakamoto said we may not need it. We're still working on the details. It depends on what the operation entails. Some operators may require a little bit of startup.

Member Hurd said whatever the requirements are for production of the goods that's going to take place in the value-add facility will determine the type of maintenance you need and operating expenses. There are some requirements that might need a USDA inspector on hand.

Member Okimoto asked if the intent was to make the operation self-sustaining. At the beginning people need to figure out what to use it for. In the long run it should be self-sustaining.

Member Wicker said that Leeward Community College has a smaller scale HPP machine now. When we move forward, we can look to Leeward for guidance.

Chair stated that this was just an informational update, and we're at the end of our meeting. Having no further business before the Board, Chair called for a motion to adjourn.

Ms. Prescott-Tate noted for the record that Member Seddon left the meeting at 11 A.M.

G. Adjourn

Chair called for a motion to adjourn.

Motion by Member Hong; Second: Member Okimoto.

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

The meeting was adjourned at 11:15 A.M.