

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Regular Meeting held Virtually on August 20, 2024

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Ste. 204, Honolulu, HI 96813

Pursuant to section 92-3.7, Hawaii Revised Statutes (HRS), this meeting was held remotely with Board members, Staff, Applicants, and the Public participating via Zoom meeting venue, and an In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Suite 204, Honolulu, HI 96813.

Members Present, virtually, Regular Session:

Lyle Tabata, Chair, Kauai County Member (Chair)
Glenn Hong, member-at-large (Member Hong)
Sharon Hurd, HBOA ex officio member (Member Hurd)
Dean Okimoto, member-at-large (Member Okimoto)
Jason Okuhama, member-at-large (Member Okuhama)
Karen Seddon, member-at-large (Member Seddon) (exited the meeting at 9:53 A.M.)
Nathan Trump, Hawaii County Member (Member Trump) (exited the meeting at 10:27 A.M.; rejoined the meeting at 11:07 A.M.)
Jayson Watts, Maui County Member (Member Watts)
Dane Wicker, designee for DBEDT ex officio member James Tokioka (Member Wicker) (exited the meeting at 11:16 A.M.)

Member excused from Regular Session:

Jesse Cooke, City & County of Honolulu Member
Ryan Kanaka'ole, designee for ex officio member of BLNR Dawn Chang

Counsel Present for Regular Session:

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

Staff Present for Regular Session:

Wendy Gady, Executive Director (Ms. Gady)
Mark Takemoto, Senior Executive Assistant
Roger Clemente, Property Manager
Frankie Empeno, Contract Manager (Mr. Empeno)
Ingrid Hisatake, Executive Secretary, ZOOM operator

Guests Present for Regular Session:

ADC Guest (1)
ADC Guest (2)
Alec Sou
Craig Inouye

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Craig Wagnild
David Kerr
Grant Kunishima
Iphone (68)
Mac Blanchard
pssg
Steven Hisaka

A. Call to Order

Chair called the regular session to order at 9:05 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, the Chair would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Chair, Member Hong, Member Hurd, Member Okimoto, Member Okuhama, Member Seddon, Member Trump, Member Watts, and Member Wicker acknowledged attendance with no guests present.

B. Approval of Minutes

1. Regular Session Minutes, May 16, 2024

Chair asked for a motion to approve the May 16, 2024 regular session minutes.

Motion by Member Wicker; Second by Member Okuhama.

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

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. Member Trump and Member Watts abstained from the vote.

Chair conducted a roll call vote: Chair, Member Hong, Member Hurd, Member Okimoto, Member Okuhama, Member Seddon, and Member Wicker voted in favor of approving the minutes. Vote 7-0. Member Trump and Member Watts abstained.

2. Regular Session Minutes, June 20, 2024

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Chair asked for a motion to approve the June 20, 2024 regular session minutes.

Motion by Member Okuhama; Second by Member Hong.

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

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. Member Okimoto and Member Wicker abstained from the vote.

Chair conducted a roll call vote: Chair, Member Hong, Member Hurd, Member Okuhama, Member Seddon, Member Trump, and Member Watts voted in favor of approving the minutes. Vote 7-0. Member Okimoto and Member Wicker abstained.

3. Executive Session Minutes, June 20, 2024

Chair stated that during the executive session held on June 20, 2024 the Board discussed agenda item E-3, a request for approval to delegate authority to the Executive Director to enter into negotiations with the Hawaii Department of Education regarding Lease Agreement LE-K1201, Kekaha, Kauai. HRS sections 92-4 and 92-5(a)(4) allows a meeting to be closed to the public when necessary to consult with the Board's attorney. In order to maintain the confidentiality of matters discussed in executive session the draft minutes were provided directly to the Board Members for review. Chair asked that the Board respect the confidentiality of the executive session held on June 20, 2024 when discussing approval of these minutes.

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

Motion by Member Okuhama; Second by Member Hong.

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

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. Member Okimoto, Member Trump, and Member Wicker abstained from the vote.

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Chair conducted a roll call vote: Chair, Member Hong, Member Hurd, Member Okuhama, Member Seddon, and Member Watts voted in favor of approving the minutes. Vote 6-0. Member Okimoto, Member Trump and Member Watts abstained. [**Due to a miscount of the Board Members who voted to approve the June 20, 2024 minutes from the executive session, the approval of the June 20, 2024 executive session minutes was deferred until the next Board meeting due to lack of quorum.**]

4. Special Meeting Minutes, August 1, 2024

Chair asked for a motion to approve the June 20, 2024 regular session minutes.

Motion by Member Trump; Second by Member Wicker.

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

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. Member Watts abstained from the vote.

Chair conducted a roll call vote: Chair, Member Hong, Member Hurd, Member Okimoto, Member Okuhama, Member Seddon, Member Trump, and Member Wicker voted in favor of approving the minutes. Vote 8-0. Member Watts abstained.

5. Special Meeting Executive Session Minutes, August 1, 2024

Chair stated that during the executive session held on August 1, 2024 the Board discussed agenda item B-1, a request to consent to the assignment of eight lease agreements from Sunrise Capital, Inc. to Aloun Farms Inc. HRS sections 92-4 and 92-5(a)(4) allows a meeting to be closed to the public when necessary to consult with the Board's attorney. In order to maintain the confidentiality of matters discussed in the executive session the draft minutes were provided directly to the Board Members for review. Chair asked that the Board respect the confidentiality of the executive session held on August 1, 2024 when discussing approval of these minutes.

Chair asked for a motion to approve the August 1, 2024 executive session minutes from the Special Session.

Motion by Member Wicker; Second by Member Trump.

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

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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. Member Watts abstained from the vote.

Chair conducted a roll call vote: Chair, Member Hong, Member Hurd, Member Okimoto, Member Okuhama, Member Trump, Member Seddon, and Member Wicker voted in favor of approving the minutes. Vote 8-0. Member Watts abstained.

C. Chairperson's Report

Chair reported that a few weeks ago he traveled with the Executive Director to Kohala to meet with the Kohala Irrigation Association. They had very productive discussions with the community. Recent articles reflected action being taken to refurbish a deep well for irrigation to help the farming community. While ADC does not have a specific role in the Kohala ag community, Member Trump is from Kohala, and the community is anxious to participate in whatever ADC can bring to the table.

D. Committee Reports

Chair noted there were no committee reports.

E. Action Items

1. Request for consent to convert Hawaii Department of Agriculture (HDOA) Ag Park lease agreement numbers 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 land previously dedicated as the HDOA Kekaha Agricultural Park pursuant to Executive Order No. 3633 to ADC for agricultural and related purposes.

Chair asked for a motion to approve.

Motion: Member Wicker; Second by Member Hong.

Chair asked for presentation by staff.

Mr. Empeno, introduced himself as the new ADC contract manager and stated that the Kekaha Agricultural Park was created by Executive Order (EO) No. 3633 in 1994. EO No. 3633 gave control and management of the Kekaha Ag Park to HDOA. The Ag Park leases were originally awarded to various business entities for approximately \$150 per

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acre, per year. The leases were subsequently obtained by Sunrise Capital, Inc. for aquaculture purposes. On April 9, 2020, the Board of Land and Natural Resources (BLNR) approved the cancellation of EO No. 3633, which resulted in the closure of the Kekaha Ag Park. On September 23, 2021, pursuant to EO No. 4660, the property formerly known as the Kekaha Ag Park was reset aside to ADC. With the demise of the Kekaha Ag Park and the transfer of the premises to the control and management of ADC, the leases were to be converted to ADC licenses, but that never happened due to various ADC issues. In June 2024, Sunrise Capital sought ADC's permission to allow Aloun Kauai Farms to assume the Ag Park leases. ADC had to locate the files and research the history of the Ag Park leases. Staff discovered that the Ag Park leases contain several terms and conditions that do not exist in ADC licenses, such as the ability to assess additional rental, rent reopening on the 15th, 25th and 35th years, instead of every five or ten years, the right of first refusal for assumption of lease purposes, and the ability to charge a premium based on the amount of consideration paid for assumption of leases. These terms and conditions are unique to Ag Park leases and were never intended to apply to the properties EO'd to ADC. Staff believes the issue of delayed transfer of the Ag Park leases to ADC Kekaha license agreements could be corrected by issuing the ADC licenses retroactive to September 23, 2021, the execution date of EO No. 4660. This would preserve the intent of transferring the property to ADC for agriculture and related purposes. Had the Ag Park leases been transferred in September 2021 when they were supposed to, none of the unique Ag Park terms and conditions would exist today. Accordingly, staff requests the Board consent to converting the HDOA Ag Park lease agreement numbers 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 September 23, 2021. Additionally, staff requests that the Board declare the action of changing the leases to licenses be exempt from preparing an environmental assessment under HRS chapter 343 based on ADC's comprehensive exemption list dated May 1st, 2018, which exempts actions that are routine in nature, involve negligible impacts beyond those previously existing, and have no significant effect on the environment, pursuant to exemption class 10.

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 Watts asked if ADC can grant itself an environmental assessment waiver that has to go to somebody else? Can you explain what these exemptions are.

Mr. Empeno said ADC has a HRS chapter 343 comprehensive exemption list that was approved May 1, 2018, pursuant to the Hawaii Administrative Rules. ADC can declare exemptions under certain circumstances. Exemption Class 10 (continuing administrative activities), item 9 (creation or termination of rights in land); item 12 (licenses issued by ADC that are routine in nature, involving negligible impacts beyond that previously

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existing); and item 14 (issuance of licenses for the possessory interest of ADC lands; not the underlying purpose or use of the land). ADC can claim these exemptions.

Member Watts asked if they are for negligible impacts, did Aloun tell us what they're going to do on ADC lands?

Mr. Empeno replied that he believed that was the subject matter of action item E-2.

Ms. Waihee-Polk interjected that this agenda item relates to Sunrise; not Aloun Farms.

Member Watts continued that he was just trying to understand exempting them from any kind of environmental assessment. Did ADC receive a full plan of what they plan to do on our property.

Ms. Waihee-Polk clarified again that this agenda item is for Sunrise as the current tenant.

Member Watts asked if Aloun was going to continue all of Sunrise's activities?

Ms. Waihee-Polk explained that is the second agenda item. The Board right now is discussing converting the Ag Park leases into ADC licenses.

Member Watts do these exemptions apply to the next agenda item?

Ms. Waihee-Polk said this agenda item is changing leases to licenses. The request is simply recommending that the Board turn the leases to ADC licenses. Changing leases to licenses does not have a significant effect on the environment.

Chair reiterated that this action item E-1 is to just convert, from lease to license.

Member Hong asked for clarification on the terms. Footnote 1 says, "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." Is the Board going to address this in the next agenda item. I'm wondering if the Kekaha appraisal will affect this.

Ms. Waihee-Polk responded that if you change the leases into licenses retroactive to September 2021, technically those lease terms won't exist. Those terms are in there because they are ag park leases.

Member Hong asked about the annual rent. If you have 145 acres at \$150 per acre, that comes to over \$21,000 but the submittal says its \$16,685.

Mr. ~~Empena~~ Empeno apologized and said the correct number is around \$21,000.

Member Hong asked that the record reflect that 145.65 acres times \$150 is \$21,847.50 that Sunrise is currently paying under the lease, which we're converting to a license.

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Chair asked if that was appropriate.

Member Hong said he was just correcting the presentation. So this item E-1 is to convert from leases to licenses on the same terms.

Ms. Waihee-Polk responded yes, except for the rent reopening because we don't have an appraisal. And there will be none of the special terms that are only in Ag Park leases. You will get the general terms that you get in the ADC licenses. Maybe, we should talk about this in agenda item E-2.

Member Hong asked if we're converting to licenses, is the rental amount fixed at \$150 a year for the entire term of the license?

Ms. Waihee-Polk responded that the leases/licenses do allow for an increase in rent.

Member Watts asked to clarify that the gross acres is 145.65, and we should be multiplying that by \$150 per acre, and that comes out to \$21,847.50. If the gross acres are incorrect, that should be corrected as well, because we are voting on this.

Ms. Waihee-Polk asked if the Board wanted to move into executive session to discuss the discrepancies. There seem to be a lot of legal questions.

Member Watts stated he would like to move into executive session.

Chair said pursuant to HRS section 92-4, the Board will be discussing Action Item 1 or 2, or 1 and 2, in executive session to allow the Board to confer with its attorney pursuant to HRS section 92-5(a)(4).

Chair asked if any member of the public wished to testify on Action Items 1 or 2. There was none.

Chair asked for a motion to enter executive session.

Motion: Member Wicker; Second by Member Watts.

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

Chair asked if there was any public testimony on the decision to go into executive session. There was none.

Chair conducted a roll call vote: Chair, Member Hong, Member Hurd, Member Okimoto, Member Okuhama, Member Seddon, Member Trump, Member Watts, and Member Wicker unanimously approved the motion to enter executive session: 9-0.

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Chair stated that the public meeting was in recess subject to reconvening at the conclusion of the executive session.

Exited the public meeting at 9:43 A.M.

Back on the public record at 10:31 A.M.

Chair stated that pursuant to HRS section 92-4(b) (2023), the following action was taken by the Board in executive session. Action item 1 was discussed with the Board's attorney.

Chair noted that the motion to approve action item one, which was the request to consent to convert HDOA Ag Park lease agreement nos. S-8001, S-8002, S-8005, S-8008, S-8012, S-8013, S-8017, S-8020 from Sunrise Capital, Inc., to Aloun Kauai Farming LLC, effective upon the closing of the asset purchase agreement tentatively scheduled for October 1, 2024, was moved by Member Wicker, and seconded by Member Hong earlier in the meeting. We will now be moving on to the vote.

Chair asked if anyone from the public wished to provide testimony on this agenda item. 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 but noting that Member Seddon and Member Trump left the meeting during executive session, Chair conducted a roll call vote: Chair, Member Hong, Member Hurd, Member Okimoto, Member Okuhama, Member Watts, and Member Wicker approved the motion. Vote: 7-0.

Chair moved on to Action Item 2:

2. Request for consent to assign the ADC Kekaha License Agreements, if the conversion of HDOA lease agreement numbers 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.

Chair asked for staff presentation on action item two.

Mr. ~~Empena~~ Empeno said that starting June 19, 2024, ADC received a joint request from Sunrise and Aloun Kauai Farming to consent to the assignment of leases from Sunrise to Aloun. On August 2, 2024, ADC received a revised request from Sunrise to convert the leases to licenses similar to LI-K1001, which is a license agreement between ADC and Sunrise dated July 21, 2009. Sunrise asked that the license agreements be retroactive to EO No. 4660 on September 23, 2021. This was today's action item E-1, which the Board

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just approved. Now Sunrise and Aloun requests that ADC consent to the assignment of the newly approved license agreements effective upon the closing of the asset purchase agreement tentatively scheduled for October 1, 2024. It is anticipated that Aloun will continue the aquaculture operation, but Aloun has not yet provided an operational plan for the subject parcels. Sunrise is current on its lease rent. The rent was subject to reopening in 2022 by appraisal. However, this was not done. Sunrise has committed to paying the updated rental amount retroactive to the reopening date through the date of assignment to Aloun. ADC has contracted for an appraisal of its Kekaha properties, but it has not been completed. In lieu of waiting for the appraisal, the Board has the option to use section 4.4 of the ADC Land Management Policy and Procedure Manual, which allows the use of a 2.5% escalator of the current rate. This will allow a quick resolution to Sunrise's outstanding rent increase. Staff requests the Board consent to the assignment and assumption of the ADC Kekaha License Agreements as earlier approved from Sunrise Capital Inc. to Aloun Kauai Farming LLC, effective upon the closing of the asset purchase agreement, conditioned upon resolution of submittal items 1. a. to i. (submittal page 042.) Additionally, staff requests that the Board declare this assignment and assumption of license agreements, from Sunrise to Aloun be exempt from the preparation of an environmental assessment as earlier stated under the chapter 343 exemption list.

Ms. Gady added that Sunrise will continue to do the breed stock program for shrimp and 100% of the food production will be going to Aloun. If the transfer does not happen, the staff believes the food production will cease. And this is in line with our mission to grow more local food.

Chair asked if there was any public testimony. There was none.

Chair asked if there was any Board discussion.

Ms. Waihee-Polk asked for a second executive session regarding action item E-2.

Chair said pursuant to HRS section 92-4, the Board will be discussing Action Item E-2, in executive session to allow the Board to confer with its attorney pursuant to HRS section 92-5(a)(4).

Chair asked if any member of the public wished to testify on Action Item 2. There was none.

Chair asked for a motion to enter executive session.

Motion: Member Wicker; Second by Member Watts.

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

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Chair asked if any there was any public testimony on the decision to go into executive session. There was none.

Chair conducted a roll call vote: Chair, Member Hong, Member Hurd, Member Okimoto, Member Okuhama, Member Watts, and Member Wicker unanimously approved the motion to enter executive session: 7-0.

Chair stated that the public meeting was in recess subject to reconvening at the conclusion of the executive session.

Exited the public meeting at 10:42 A.M.

Back on the public record at 11:17 A.M.

Chair stated that pursuant to HRS section 92-4(b)(2) (2023), the following action was taken by the Board in executive session. The Board discussed action item E-2 with the Board's attorney. Chair asked if Ms. Prescott-Tate could restate the motion of action item E-2.

Ms. Prescott-Tate reframed action item E-2 by reciting the amended motion to request the Board to assign the licenses from Sunrise Capital to Aloun Kauai Farms effective as of the closing of the asset purchase agreement; that Aloun be required to provide the utilization plan before the closing of the asset purchase agreement; that the Board determine whether rent reopening for Sunrise be by appraisal or by use of the Policies and Procedures Manual that allows for a 2.5% increase; approving the rent reopening by appraisal upon Aloun's assignment and assumption of the lease; and that Aloun be required to provide proof of compliance with all federal, state, and county permits. That would be the motion.

Chair asked for a motion to approve.

Motion by Member Wicker; Second by Member Hong.

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

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

Chair called for a roll call vote because Member Trump rejoined the meeting during executive session: Chair, Member Hong, Member Hurd, Member Okimoto, Member Trump, Member Watts, and Member Wicker voted to approve action item E-2 as amended. Vote: 7-0. Member Okuhama abstained.

F. Informational Items

1. Executive Director's Report

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Chair called on Ms. Gady for the executive director's report.

Ms. Gady referred the Board and public to the director's reports on the ADC website.

G. Adjourn

Having no further business before the board, Chair asked for a motion to adjourn.

Motion by Member Watts; Second by Member Hong.

Chair called for the vote, hearing no objections or abstentions the motion was approved. Vote: 8-0.
Meeting adjourned at 11:26 A.M.