Minutes of the Regular Meeting of the Board of Directors held on November 21, 2024 Via Zoom Teleconference and In-Person at 235 S. Beretania Street, 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 Office Tower, 235 S. Beretania Street, Suite 205, Honolulu, HI 96813

Members in Attendance, virtually:

Lyle Tabata, Kauai County member (Chair)

Jesse Cooke, Honolulu City and County member (Member Cooke)

Glenn Hong, member-at-large (Member Hong)

Sharon Hurd, HDOA ex officio member (Member Hurd) exited the meeting at 11:30 a.m.

Ciara Kahahane, designee for DLNR ex-officio member Dawn Chang (Member Kahahane) exited the meeting at 11:02 a.m.

Dean Okimoto, member-at-large (Member Okimoto)

Jason Okuhama, member-at-large (Member Okuhama)

Karen Seddon, member-at-large (Member Seddon)

Nathan Trump, Hawaii County member (Member Trump)

Jayson Watts, Maui County member (Member Watts) entered the meeting at 9:08 a.m. and exited the meeting at 11:20 a.m.

Dane Wicker, designee for DBEDT ex officio member James Tokioka (Member Wicker)

Members Excused:

None

Counsel Present, virtually:

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

Staff Present, virtually:

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

Guests Present, virtually:

ADC Guest Aldric Ulep, LTG Amy Perruso (Amy) Otter.ai notes Benjamin Berridge, Stantec GS Inc. (Mr. Berridge) Bryan Yee, Deputy Attorney General

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FIN - Stacey
Guest Guest 1
Guest Guest 2
Joshua Uyehara (Mr. Uyehara)
Kaleo Chang
Kimi Makaiau
Malachi Burrows
Mike Faye
Office of Sen. DeCoite
Ted Tyler
Thomas Heaton
WAM Staff

Guests Present, In-Person:

Albert Tiberi, Department of Education Randy Moore, Department of Education Ryan Roylo, Deputy Attorney General

A. Call to Order:

Chair called the meeting to order at 9:02 a.m.

Chair conducted a roll call of the Board members present. Chair called the name of each Board member and asked them to verbally 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, Chair would ask if there were any objections or abstentions. If there were none, the motion would be approved on the same basis as the initial roll call.

Roll call: Chair, Member Cooke, Member Hong, Member Hurd, Member Kahahane, Member Okimoto, Member Okuhama, Member Seddon, Member Trump, and Member Wicker acknowledged their presence with no one in the room with them. Member Watts entered the meeting at 9:08 a.m.

B. Approval of Minutes

1. Regular Session Minutes, August 20, 2024

Chair called for a motion to approve.

Motion by Member Wicker; Second by Member Hong.

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 Hong corrected a misspelling on submittal page 13: should be Empeno not Empena.

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

Chair called for the vote on the motion to approve the minutes as amended: Hearing no objections or abstentions the motion was unanimously approved: 10-0.

2. Executive Session Minutes, August 20, 2024

Member Watts entered the meeting at 9:08 a.m.

Chair called for a motion to approve.

Motion by Member Trump; Second by Member Okimoto.

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. There was none.

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

C. Chairperson's Report

1. Chair said he had something to report in executive session.

D. Committee & Permitted Interaction Group Reports

1. Administration Committee charging for the new applicants CAM, etc.

Chair called on Ms. Gady for presentation on the Administration Committee meeting held on October 11, 2024.

Ms. Gady stated that the Administration Committee met and reviewed the fiscal year 2024 actuals and the fiscal year 2025 budget; reviewed the recent appraisal on Oahu and Kauai CAM [common area maintenance fees], license fees for pasture and diversified ag; and a recommendation for license rates for new licensees. A request was made for staff to inquire about the membership fee for ADC to join the Hawaii Chamber of Commerce. Staff was also asked to inquire what the current tenants thought about the appraisal fees. No action was taken by the committee.

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

Chair asked if there was any Board discussion.

Member Watts was concerned about the current lessees being unaware of the appraisal documents and asked that the Board, current lessees, and people who are thinking about becoming lessees be given copies of the appraisal to allow for public comment.

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2. Presentation of report and findings of the land permitted interaction group

Chair called on Ms. Gady to present the land permitted interaction group's report and recommendations.

Ms. Gady stated that one of the strategic recommendations was to recognize the need for faster action and implementation by ADC; that staff revisit the HRS chapter 343 exemptions; create a fire mitigation plan; suggest changes to the land management policy and procedures manual; create communication plan for the land application process; update the land management policies; update the soil conservation plans; and update the termination of license procedures. Second recommendation was to acknowledge that ADC has commercial property in its asset portfolio and ask staff to create draft commercial property policy and procedure manual based on best management practices. Third recommendation was to proactively show dynamic and aggressive leadership in agribusiness. Moving forward, ask staff to create a report on the difference between licenses and leases, and the pros and cons of each. Create maps that include acres under license, and acres available, and unfarmable lands.

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

Mr. Uyehara with Kekaha Agriculture Association (KAA) asked that KAA to be involved in the review of the land management policy that pertains to Kekaha property, which is consistent with past practices. He believes it would be good for KAA to be involved in a review of potential changes related to the Kekaha property.

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

Chair stated that the land permitted interaction group was dissolved and the vote on this agenda item would take place at the next meeting.

3. Presentation of report and findings of the distribution permitted interaction group

Chair called on Ms. Gady to provide the distribution permitted interaction group report and recommendations.

Ms. Gady stated that there were three strategic recommendations. First, to recognize the strategic significance and urgency of the distribution of water and power as part of the ADC statute; second was to actively protect the need for water and food production; and third was to proactively show dynamic and aggressive leadership in agribusiness around distribution services. Staff was requested to draft a distribution services plan for the ADC Board to review; draft potential distribution services, acquisitions for food production, including any assets that may impact food production; create a Hawaii Fire mitigation plan; create a comprehensive capital improvement plan; identify gaps in food production due to insufficient water in ADC lands; and conduct a salary survey for distribution services staffing.

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

Mr. Uyehara from KAA had the same comment asking that KAA be allowed to comment on the irrigation, water, and power, which is currently under the management of KAA, at least in regard to the Kekaha property.

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

Chair stated that the distribution permitted interaction group was dissolved and the vote on this agenda item would take place at the next meeting.

4. Presentation of report and findings of the CIP permitted interaction group

Chair called on Ms. Gady to provide the CIP [capital improvement project] permitted interaction group report and recommendations.

Ms. Gady described what was recommended for ADC to submit to DBEDT [department of business economic development and tourism] for fiscal year 2026. See pages 030 to 031 of the 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 stated that B&F recommendations are public. There was an opportunity for rebuttal and we are asking for reconsideration of putting some of these items back in.

Chair stated that the CIP permitted interaction group was dissolved and the vote on this agenda item would take place at the next meeting.

5. Presentation of report and findings of the land opportunities project for small and disadvantaged farmers on Oahu

Chair called on Mr. Clemente to provide the report and recommendations for the land opportunities for small and disadvantaged farms on Oahu permitted interaction group.

Mr. Clemente read the submittal into the record. See submittal pages 033-035. There were three recommendations, that: 1) applicants meet the USDA definition of socially disadvantaged farmers and ranchers; 2) the program be limited to truck crop farmers; and 3) award minimum size lots of ten acres and maximum size lots of one hundred acres for field crops.

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

Chair asked if there was any Board discussion.

Ms. Gady stated that the ADC statute was changed in 2022 to add a requirement that ADC help small, disadvantaged farmers.

Member Cooke asked if licensees would be responsible for the development of irrigation water infrastructure. If so, do these folks have the resources necessary to do that.

Ms. Gady replied yes, they do. These individual families plan to hui up so that they will work together to put in the infrastructure. That's something they've done in the past. They could also use help from the community, from nonprofits, to establish small reservoirs.

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Member Wicker added that the Wahiawa irrigation system will eventually be a potential source of water.

Member Okimoto stated that for processing, potable water is going to be crucial. Are there plans for hooking up to the Board of Water Supply or is it going to be reservoir water that needs to be brought up to potable standards.

Member Wicker stated that a well on the west side of Kamehameha Highway could potentially be a potable water resource and there's a neighboring irrigation system DBEDT is exploring.

Member Okimoto stated that he has a concern about a couple of farmers on Kauai that were being displaced. Is there a timeline of how we can give them land before being displaced?

Chair said that was part of his report for Executive Session.

Mr. Roe added that Agenda Item E-7 is a request for approval to establish a permitted interaction group to make recommendations on land opportunities on the island of Kauai.

Member Okuhama stated we've got to remember that the Kunia farmers lease is up soon. When their lease expires they're out. In a few months they have to wind down operations, look for a new location and plant. They're definitely going to need water.

Chair stated that the permitted interaction group for the land opportunities project for small and disadvantaged farmers on Oahu was now dissolved and the vote on this agenda item would take place at the next meeting.

E. Action Items

1. Request for Approval for Pioneer Hi-Bred International Inc. to Upgrade Site Access Culvert Bridge in Kekaha, County of Kauai, State of Hawaii Tax Map Key (4) 1-2-002:001 (por.)

Chair called for a motion to approve.

Motion by Member Okuhama; Second by Member Hong.

Chair called on Mr. Empeno for the staff presentation.

Mr. Empeno stated that in 2019 ADC obtained a structural assessment for a culvert bridge that provides access to Pioneer Hybrid International's (Pioneer) licensed property and found the bridge to be in poor condition. On July 24, 2024, Pioneer asked that the bridge be replaced to allow access by heavy weight vehicles in case of emergency or fire. Pioneer purchased a replacement bridge with an estimated fifty ton capacity. Pioneer intends to pay for removal of the old bridge, site design, materials, and installation. Staff requests that the Board authorize Pioneer to upgrade the culvert bridge and find that pursuant to ADC's Comprehensive Exemption List dated May 1, 2018, the Board declare that the bridge replacement will have minimal or no significant impact on the environment and is exempt from environmental assessment pursuant to chapter 343, HRS.

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.

Chair asked Mr. Empeno to ensure the precast bridge has a structural stamp that denotes the support capacity.

Mr. Empeno stated he would follow up with Pioneer.

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 unanimously approved: 11-0.

Chair stated that items E-2 and E-3 were being deferred for more discussion with the Department of Education and hopefully the things will be resolved for the next Board meeting in December.

2. Request for approval to terminate Lease Agreement No. LE-K1201 assigned to Hawaii Department of Education; and delegate authority to the executive director to execute a Memorandum of Agreement with the Hawaii Department of Education regarding access to ADC-tenant operations in Kekaha, County of Kauai, State of Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Chair deferred Agenda Item E-2.

3. Request for approval to issue a new land license agreement to State of Hawaii, Department of Education for 4.8 acres, more or less, of land for the purpose of building a centralized kitchen facility in Whitmore Village, City and County of Honolulu, State of Hawaii, Tax Map Key Nos. (1) 7-1-002:009 (por.); :004 (por.)

Chair deferred Agenda Item E-3.

4. Request to authorize the executive director to negotiate and execute a Memorandum of Agreement with the Hawaii Farm Bureau Federation

Chair stated that he would like to correct the agenda. The document to be executed is a Memorandum of Understanding, not a Memorandum of Agreement.

Chair called for a motion to approve.

Motion by Member Wicker; Second by Member Okimoto.

Chair called on Mr. Roe for the staff presentation.

Mr. Roe stated that the Hawaii Farm Bureau (HFB) has been holding their annual Farm Fair for many years and this year they would like to use ADC land for the Farm Fair. The memorandum of understanding would formalize the process that ADC would use to work with HFB.

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.

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

Chair stated that agenda Items E-5 and E-6 are related. In order to add another task to the executive director evaluation permitted interaction group that was formed at the last meeting, the permitted interaction group must be dissolved and reformed.

5. Request to dissolve the executive director goals and objectives permitted interaction group

Chair called for a motion to approve.

Motion by Member Wicker; Second by Member Trump.

Chair called on Lyle Roe for the staff presentation.

Mr. Roe stated that the reason for this action is the original scope of the Permitted Interaction Group didn't include asking the committee to consider salary recommendations. We're asking the Board to dissolve the original group, and create a new permitted interaction group with the added scope.

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

6. Request to establish a permitted interaction group to develop goals and objectives for the executive director for FY 2024/2025; to consider salary amount for the executive director for FY 2025 and to consider salary amount for the executive director retroactive July 1, 2024; appointment of members thereto

Chair stated that he would like to make another correction to the Agenda. Item E-6 of the Agenda, and the Subject Line on submittal page 122 should be amended to read: Request for approval to establish a permitted interaction group to develop goals and objectives for the executive director for FY 2024-2025 and to consider the salary amount for the executive director for FY 2024-2025, to cover the time period between July 1, 2024 and June 30, 2025; appointment of members thereto.

Chair called for a motion to approve.

Motion by Member Wicker; Second by Member Cooke.

Chair called on Mr. Roe for the staff presentation.

Mr. Roe stated that the prior request dissolved the permitted interaction group to develop goals and objectives for the executive director. This request is to form a new one to consider the original scope plus the salary considerations for fiscal year 2025.

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

Chair appointed Member Seddon, Member Watts, and himself to this permitted interaction group and instructed the group to develop specific goals and objectives for the executive director to accomplish during FY 2024-2025 and make a salary recommendation for that same time period. Be prepared to present the report with the goals, objectives, and salary recommendation at the next regular Board meeting on December 5, 2024.

Member Wicker asked to be considered for this permitted interaction group.

Chair took Member Wicker's request under advisement and would get back to him.

7. Request for approval to establish a permitted interaction group to make recommendations on land opportunities project on the island of Kauai for small and disadvantaged land applicants; appointment of members thereto

Chair called for a motion to approve.

Motion by Member Wicker; Second by Member Okimoto.

Chair called on Mr. Clemente for the staff presentation.

Mr. Clemente read the submittal into the record. See submittal pages 127-128. Staff recommended that the Board approve the request, and that Chair appoint members to a permitted interaction group to consider a small and disadvantaged farmer/rancher program on Kauai, that the group be dissolved upon presentation of the final report and that the Board declare that the proposed action is de minimis and will have minimal or no significant effect on the environmental pursuant to ADC's comprehensive exemption list dated May 1, 2018.

Chair asked if there was anyone from the public wish to give testimony.

Mr. Uyehara asked that the Board consider partnering with KAA on this project. KAA has several ongoing projects right now doing the same thing. KAA is familiar with the property, infrastructure conditions, suitability for crops in different locations and things related to the property. This is part of KAA's ongoing strategic effort so they would like to be part of this project.

Hearing no further public testimony, Chair asked if there was any Board discussion.

Member Hong noted that there was a reference to Exhibit A in the submittal but it was missing from his materials. Did Exhibit A show the proposed location?

Mr. Clemente replied that Exhibit A was supposed to be a map of Kekaha and Kalepa, which was inadvertently omitted from the submittal.

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There was no further Board discussion.

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

Chair appointed Member Okimoto, Member Cooke, and himself to the permitted interaction group and instructed the group to consider a potential land opportunity project for small and disadvantaged farmers who may be imminently displaced from their current farming operations on Kauai. The group was to consider and determine the proposed location, criteria, timeframe, special license terms, and eligibility requirements for the proposed project. The group shall include KAA in discussion regarding Kekaha and present the report containing findings and recommendation to the full Board.

8. Request to authorize the executive director to negotiate and execute a Memorandum of Agreement with the Hawaii Department of Agriculture to acquire the Wahiawa Spillway TMK (1)7-1-012-014

Chair called for a motion to approve.

Motion by Member Wicker; Second by Member Hong.

Chair called on Mr. Takemoto for the staff presentation.

Mr. Takemoto explained that this request was related to the Wahiawa irrigation system. As previously discussed this irrigation water is much needed for agriculture operations on the North Shore. It's also related to projects currently occurring on ADC property. During the 2023 Legislative Session, Act 218 provided funds to make improvements to the Wahiawa Reservoir Dam spillway. The Hawaii Department of Agriculture (HDOA) was assigned to make the improvements, and after completion transfer ownership of the irrigation system to ADC to operate. Act 218 assigned HDOA to purchase the property, but HDOA does not have the statutory authority to purchase real property. This memorandum of agreement will allow HDOA to transfer the funds to ADC who will complete the purchase with approval by the governor.

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 clarified that at no point will HDOA own anything and will not control management of the property.

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

F. Informational Items

Chair said at this point they were moving onto informational items. The following are for informational purposes only, so there will be no motion or vote needed.

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1. Presentation regarding the practical implications of the Draft NPDES Permit issued to the Agribusiness Development Corporation (HI0021940) and County of Kauai (HI0021945) for the outfalls of the Mana Plain Drainage Ditch System

Chair called on Mr. Berridge from Stantec GS Inc. for the presentation. Mr. Berridge has been conducting ADC's court ordered environmental testing for many years, and based upon the years of testing, he will speak on the challenges that may result from the draft NPDES permit requirements.

Mr. Berridge shared a PowerPoint presentation and talked about the preservation of agricultural lands on Kauai, the water and irrigation, and financial stressors that are already being carried by ADC and its tenants. A copy of the PowerPoint presentation is attached to the minutes. Mr. Berridge focused on the immediate implications to ADC. This permit signals the beginning of the end of agriculture in Hawaii. It attempts to regulate 7 ocean outfalls on the West Side of Kauai. It is important to understand that these canals were engineered during the sugar era. HDOH is trying to figure out how to regulate post-sugar by using industrial facility regulation. The outfall at Kikiola Boat Harbor was expected to be monitored by Kauai County but HDOH made ADC and County of Kauai co-permittees. Under this permit you've got 7 outfalls, and an extensive list of parameters, or pollutant list, for each outfall. The co-permittees would be required to monitor all sites for an extensive list of parameters. ADC has been monitoring this area since 2020. The draft NPDES permit conditions represent a significant increase in testing and obviously additional cost and effort. The sample points for enterococcus and turbidity would be exceeded most of the time, which is pretty common throughout the State, where there is soil erosion and ungulates. The maps show areas of concern; bare soil that is actually not on ADC property. It's in the upper watershed on DHHL property. The way the permit is issued, ADC and County of Kauai will be responsible for water quality at the coast discharge points. This is the first time we've seen an NPDES permit issued for this type of modified stream. HDOH is treating this watershed like an industrial facility. They're imposing a vast list of parameters with frequent monthly monitoring requirements with very stringent water quality standards that appear to be unachievable.

What does this mean for ADC and potentially the rest of the State? There's a significant cost to either comply with this permit, or pay for violations or penalties, which typically goes towards corrective actions. If this permit is issued there would be significant costs to either comply or cover violations. It also sets a precedent of treating a watershed like an industrial facility. The vast list of parameters are typically not relevant to the water quality issues within the watershed. It imposes unnecessary costs to landowners and doesn't actually solve the problem. We expect to see the same story playing out across the State. We would expect similar litigation to take place on similar properties. With this permit being in the draft phase, we see two courses of action. One is for ADC and County of Kauai to prepare to comply with the permit. There would be significant costs involving watershed management strategies to prevent the pollutants from entering waterways that we think are probably most effective in impacting water quality. But in order to comply, you're going to need some type of treatment near the discharge point or a strategy that could include combining outfalls or multiple treatment systems. Any of those options would be extremely expensive and not necessarily practical. We're estimating treatment costs in excess of one hundred million dollars, and the annual cost for the monitoring

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> alone in the permit to be millions of dollars. Similar landowners can expect similar costs. Compliance is one option, and challenging the permit through available avenues is another. We encourage folks to engage with their elected officials. There are legal challenges; try and persuade the regulators to use reasonable and cost effective strategies to improve water quality. Get all the State agencies together to encourage nonpoint source solutions for these type of watersheds. Get the message out to the community, especially those that could be impacted. We want them to be educated and engaged, especially folks that will be immediately impacted. We're trying to get the message out that NPDES permits are an effective regulatory tool for certain operations, they're not meant for what HDOH is trying to apply here. NPDES is required for the discharge of pollutants from any point source, 40 CFR section 122.2 actually states that a point source does not include return flows from irrigated agriculture, agricultural storm runoff. 40 CFR section 122.3 also excludes agricultural land from such point source regulations explicitly. There are arguments to be made. In summary, HDOH is proposing to issue an NPDES permit for outfalls from agricultural lands in West Kauai on the Mana plain. We do not feel that NPDES permits are the right regulatory tool to manage water quality on West Kauai and if HDOH is successful in issuing this permit, it will have implications for any stream or waterway with an outfall to the ocean throughout the State. Again, we feel there are two courses of actions: prepare for the new precedent; or prepare to challenge the permit and find a more effective solution. We encourage the Board members and the general public to engage, become informed, and make public comment on this draft permit before the comment period ends.

Chair asked if there was any Board discussion.

Member Wicker asked for a copy of the PowerPoint presentation due to the amount of information provided and appreciated being given actual options to move forward.

Chair asked if there was anyone from the public who wished to give testimony.

Mr. Uyehara from KAA stated that they have been internally assessing the legal issues and looking for options and solutions. For example the Open Floodable Space project that KAA was able to secure DOD [Department of Defense] funding to help address the suspended solids. We have tried to address the underlying physical issues here and noted that whoever is going to be working on this is going to have to address the Clean Water Act and the Hawaii Administrative Rules that were outlined in the presentation. It's a lot of detailed work and thinking through the precedence. KAA members have agricultural and land interest elsewhere in the State and for agriculture to expand in Hawaii, this is something we need to tackle very quickly. It is an issue with a long history and very far reaching precedent.

There was no further public testimony.

Member Hurd added that this issue does have far reaching consequences and appreciated that Mr. Berridge pointed out there are statutes in place that exempt natural runways and agricultural operations. The effects of climate change result in more frequent and intense weather events like runoff and the effect it has on the ocean. Pointing out that existing legislation exempts natural and agricultural operations is very important. Right now we're talking about a specific parcel in Kauai, but it does have statewide implications.

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Member Kahahane noted that she was unaware of the background of this matter and asked if applying for the NPDES permit was part of a settlement in a pending case.

Mr. Berridge replied that there were two NPDES permit applications that were part of two separate cases. HDOH combined these two separate cases into a single draft permit.

Member Kahahane asked if one of the cases involved ADC against HDOH.

Ms. Prescott-Tate replied that there are several cases involving different parties and if you want to confer with the Board's attorney the Board could move into executive session.

Member Kahahane said she had to leave at 11 a.m. so it was unnecessary to confer with the Board's attorney on this question at this time.

2. Executive Director's Report

Chair asked to defer the executive director's report until after the executive session.

Ms. Gady agreed.

Chair stated that HRS section 92-4 allows the Board to hold an executive meeting closed to the public. HRS section 92-5(a)(4) allows the Board to consult with the Board's attorney on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities and/or HRS section 92-5(a)(8), allows the Board to deliberate on matters that require the consideration of information that must be kept confidential pursuant to State or Federal law. The Board will be discussing informational matters related to the Chair's report, which must be kept confidential.

Chair called for a motion to go into executive session.

Motion by Member Wicker; second by Member Okuhama.

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

Chair conducted a roll call vote:

Chair	Yes
Member Cooke	Yes
Member Hong	Yes
Member Hurd	Yes
Member Kahahane	Yes
Member Okimoto	Yes
Member Okuhama	Yes
Member Seddon	Yes
Member Trump	Yes
Member Watts	Yes
Member Wicker	Yes

The motion was unanimously approved: 11-0.

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

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Exited the public meeting at 10:37 a.m.

Member Kahahane exited the meeting at 11:02 a.m.

Member Watts exited the meeting at 11:20 a.m.

Member Hurd exited the meeting at 11:30 a.m.

Chair called the meeting back to order at 11:33 a.m.

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 confidential information related to a possible land purchase.

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.

Recalling Agenda Item F-2: Executive Director's Report

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

Ms. Gady gave some highlights from her weekly reports that are available on the ADC website. ADC is in the process of licensing land for the first time since COVID. Ms. Gady and Member Wicker attended the Ag Leadership Conference along with Chair, Member Hurd, Member Cooke, Member Okuhama, and Member Watts.

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

Chair asked if there was any more discussion from the Board members. There was none.

G. Adjourn

Chair called for a motion to adjourn.

Motion by Member Trump; Second by Member Cooke.

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

Having no further business before the Board Chair adjourned the meeting at 11:37 a.m.





State of Hawai'i Agribusiness Development Corporation Hui Ho'oulu Aina Mahiai

National Pollutant Discharge Elimination System (NPDES) Draft Permit for the Mānā Plain Drainage Ditch System on Kaua'i (Draft Permit No. H10021940/H10021945)

November 21, 2024

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Stantec Meeting Overview

- Review of Draft NPDES Permit for the Mānā Plain Drainage Ditch System on Kaua'i
 - Overview
 - Precedent setting permit with statewide impacts
 - Stringent water quality criteria, streams are not pipes
 - Expectations of exceedances
- Immediate Impacts to ADC and Tenants on the Mānā Plain
 - Challenge of upland contributions
 - High costs for compliance (treatment plant) or violation penalties
 - Beginning of the end of agriculture
- Broader State Impacts and Precedent
- Courses of Actions on Draft Permit

Stantec Draft NPDES Permit Summary

- ➤ The approval of a proposed National Pollutant Discharge Elimination System (NPDES) permit (Draft (Permit No. HI0021940/HI0021945) for the Mānā Plain Drainage Ditch System on Kaua'i signals the beginning of the end of agriculture in Hawai'i
- Statewide impacts with risk of setting regulatory precedent for ANY ocean discharges in Hawaii
 - Regulates modified streams similar to industrial facility ocean outfalls
 - Highly stringent water quality limits and extensive list of parameters for analysis
- Comments are being accepted through November 29, 2024, by the Hawaii Department of Health.
- Co-Permittees
 - State of Hawaii Agribusiness Development Corporation (ADC)
 - County of Kaua'i
- Regulates 7 Ocean Outfalls
 - > Dry Ditch, Kawaiele, Nohili, Kikiaola Harbor, Cox Drain, First Ditch and Second Ditch

Stantec Draft NPDES Permit Summary - Outfalls



Outfall 1 – Dry Ditch

Outfall 2 – Kawaiele Outlet (E-1)

Outfall 3 – Nohili Outlet (near D-8)

Outfall 4 – Kikiaola Harbor Drain

Outfall 5 – Cox Drain (E-2)

Outfall 6 – First Ditch (WW-2)

Outfall 7 – Second Ditch (WW-3)

Figure 1 – Mana Plain Drainage System Location Map

Stantec Draft NPDES Permit Summary – Kikiaola

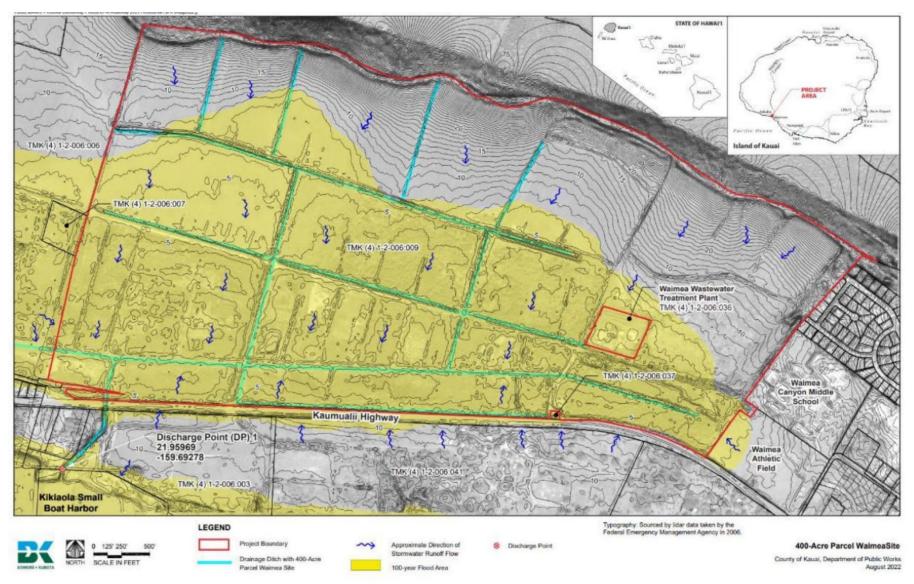


Figure 2 – County of Kauai's 400-Acre Parcel Waimea Site Topographic Map





Stantec Draft NPDES Permit Summary - Parameters

NPDES Outfall	Description Comment		Flow	Duration of Discharge	Hd	Ammonia Nitrogen	Total Nitrogen	Total Phosphorus	Turbidity	Enterococcus	Accute Toxicity Pimephales promelas	Acute Toxicity Ceriodaphnia dubia	Chronic Toxicity Tripneustes gratilla	Section A Pollutant List	
	Units		MGD	hours	standard	μg/L	μg/L	μg/L	NTU	CFU/100 mL	pass/fail	pass/fail	pass/fail		
	Sample Typ	e		Calculated	Grab	Grab	Grab	Grab	Grab	Grab	24-Hr Composite	24-Hr Composite	24-Hr Composite		
Outfall 002	Kawaiele Outlet	Dry and wet weather flow	х		х	Х	Х	Х	Х	Х	X	X	X	Х	
	Frequency		Continuous/e stimate		1/Day	1/Month	1/Month	1/Month	1/Month	1/Month	1/Quarter	1/Quarter	1/Quarter	1/Year	
Discharge Limitation															
		Single Sample Maximum				5.0	180	30	0.50		Pass	Pass	Pass		
		Daily Maximum								130				See Section A	
		Monthly Geometric Mean			7.0 ≤ pH ≤ 8.6					35				Effluent Limitations	
		Annual Geometric Mean				2.0	110	16	0.20					2tationo	
Outfall 004	Kikiaola Harbor	Flood flow only	х	х	х	х	х	х	х	х	х	х	х	х	
	Frequency		Continuous/e stimate	1/discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Year during discharge	
					Discha	rge Limitatio	n								
		Single Sample Maximum				15.0	350	60	1.50		Pass	Pass	Pass		
		Daily Maximum			7.0 ≤ pH ≤ 8.6					130				See Section A Effluent	
		Monthly Geometric Mean								35				Limitations	
		Annual Geometric Mean				3.5	150	20	0.40						
Outfall 001	Dry Ditch	Flood flow only	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	
Outfall 003	Nokili Outlet	Flood weather flow only during pumping	x	х	х	X	Х	X	Х	Х	х	Х	х	х	
Outfall 005	Cox Drain	Sand Berm opened during flood conditions	х	х	х	х	х	х	х	х	х	х	х	х	
Outfall 006	First Ditch Outlet	Flood flow only	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	Х	
Outfall 007	Second Ditch Outlet	Flood flow only	Х	Х	Х	X 1/Ouerter	X 1/Ouerton	X 1/Ouerter	X 1/Ouerter	X 1/Ouerter	Х	Х	X 1/Ouerter	Х	
	Frequency		Continuous/e stimate	1/discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Quarter during discharge	1/Year during discharge	
					Discha	rge Limitatio	n								
		Single Sample Maximum				9.0	250	45	1.0	130	Pass	Pass	Pass	See Section A	
				7.0 ≤ pH ≤ 8.6									Effluent		
					7.0 3 pri 3 0.0									Lintaonit	
		Monthly Geometric Mean Annual Geometric Mean			7.0 3 pr 1 3 0.0	2.0	110	 16	0.20	35				Limitations	





Stantec Draft NPDES Permit Summary - Parameters

Acenaphthene Acrolein Aldrin Anthracene Benzo(a)Anthracene Dibenzo(a,h)Anthracene

Parameter	Previous Monitoring Requirement (2024)	Draft NPDES
Flow		Χ
Turbidity	X	Χ
Temperature	X	
Salinity	Х	
DO	Х	
pН	Х	Х
Enterococcus	Х	Х
TPH	X	
Arsenic	X	Part A List
Mercury	Х	Part A List
Atrazine (3 sites)	Х	
Chlorpyrifos (3 sites)	Х	Part A List
Metolachlor (3 sites)	Х	
Glyphosate (3 sites)	Х	
Paraquat dichloride (3 sites)	Х	
Permethrin (3 sites)	X	
Toxicity (3 sites)	Х	Χ
Ammonia nitrogen		Х
Total nitrogen		Х
Total Phosphorous		Х
NPDES Part A List		X

Parameter ^{1,2,3}	Parameter ^{1,2,3}	Parameter ^{1,2,3}	Parameter ^{1,2,3}	Para
hene	Antimony	1,2-Dichloropropane	Methylene Chloride	Vinyl Chloride
	Arsenic	1,3-Dichloropropene	Bis(2-Chloro-1-methylethyl) Ether	Zinc
ile	Benzene	Dieldrin	Methylmercury	-
	Benzidine	Diethyl Phthalate	Mirex	T
ne	Beryllium	Dimethyl Phthalate	Naphthalene	T
Anthracene	Bromoform	2,4-Dimethylphenol	Nickel	T
a,h)Anthracene	Butylbenzyl Phthalate	Dinitrophenols	Nitrobenzene	T
. ,	Cadmium	2,4-Dinitrophenol	Nitrophenols	T
	Carbon Tetrachloride	2-Methyl-4,6-Dinitrophenol	Nitrosamines	T
	Chlordane	Dinitrotoluenes	Nitrosodibutylamine	T
	Chlorine	2,4-Dinitrotoluene	Nitrosodiethylamine	T
	Chlorobenzene	1,2-Diphenylhydrazine	N-Nitrosodimethylamine	T
	Chlorodibromomethane	Endosulfan	N-Nitrosodiphenylamine	\top
	Bis(2-Chloroethyl) Ether	alpha-Endodulfan	N-Nitrosodi-n-Propylamine	T
	Chloroform	beta-Endosulfan	Nitrosopyrrolidine	T
	Bis(Chloromethyl) Ether	Endosulfan Sulfate	Pentachlorobenzene	\top
	2-Chloronaphthalene	Endrin	Pentachloroethane	T
	2-Chlorophenol	Endrin Aldehyde	Pentachlorophenol	T
Chlorp	3-Methyl-4-Chlorophenol	Ethylbenzene	Phenol	T
	Chlorpyrifos	Bis(2-Ethylhexyl) Phthalate	Polychlorinated Biphenyls (PCBs)	T
	Chromium (VI)	Fluoranthene	Pyrene	T
	Chrysene	Benzo(b)fluoranthene	Benzo(a)Pyrene	T
	Copper	Benzo(k)fluoranthene	Indeno(1,2,3-cd) Pyrene	T
	Cyanide	Fluorene	Selenium	
ile Ine Ine Ine Ine Ine Ine Ine Ine Ine In	Demeton	Guthion	Silver	T
	Di-n-Butyl Phthalate	Heptachlor	1,2,4,5-Tetrachlorobenzene	T
	Dichlorobenzenes	Heptachlor Epoxide	2,3,7,8-TCDD (Dioxin)	(
	1,2-Dichlorobenzene	Hexachlorobenzene	1,1,2,2-Tetrachloroethane	T
	1,3-Dichlorobenzene	Hexachlorobutadiene	Tetrachloroethylene	I
Anthracene	1,4-Dischlorobenzene	Hexachlorocyclohexane -technical	2,3,5,6-Tetrachlorophenol	
	3,3'-Dichlorobenzidine	Hexachlorocyclohexane-alpha	Thallium	
	Dichlorobromomethane	Hexachlorocyclohexane-beta	Toluene	T
	DDD	Hexachlorocyclohexane -gamma	Toxaphene	
	DDE	Hexachlorocyclopentadiene	Tributyltin	
	DDT	Hexachloroethane	1,2,4-Trichlorobenzene	T
	1,2-Dichloroethane	Isophorone	1,1,1-Trichloroethane	
	1,1-Dichloroethylene	Lead	1,1,2-Trichloroethane	Τ
	Trans-1,2-Dichloroethylene	Malathion	Trichloroethylene	Τ
	2,4-Dichlorophenol	Mercury	2,4,5-Trichlorophenol	Τ
	Chlorophenoxy Herbicide (2,4-D)	Methoxychlor	2,4,6-Trichlorophenol	Τ
	Dichloropropanes	Methyl Bromide	Chlorophenoxy Herbicide (2,4,5-TP)	-

Parameter^{1,2,3}

NPDES Part A Pollutant List





Stantec Draft NPDES Permit Summary – Schedule/Parameters

Draft NPDES Pern	nit																		
Parameter(s)	Qualifier	Sample type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	# parameters monitored	# locations	subtotal parameters	Total parameters per year	Total monitoring events
	Outfall 002 (Kawaiele Outlet)																		
Flow		calculated Continuous (estimate)																	
рН	Comple during	grab		Daily												1	365		l
List 1	Sample during	grab	Χ	X	X	X	Χ	X	Χ	Χ	X	Χ	Χ	Χ	60	1	60		
List 2	dry/wet weather	24-hr composite	Х			Χ			Х			Х			12	1	12	1577	12 (not including
NPDES Part A List		grab?	Χ												132	1	132		
	0ι	itfall 001 (Dry Ditch)	, 003 (N	lokili Ou	utlet), 0	04 (Kiki	aola Ha	rbor), 0	05 (Cox	Drain),	006 (Fir	rst Ditch	1), 007 (Second	Ditch)				
Flow	Only during	calculated					Coi	ntinuou	s (estim	nate)									pH)
рН	flood flow (up to	grab						1/disc	charge						4	6	24		J ,
List 1	4 times per	grab	Χ			Χ			Χ			Χ			20	6	120		
List 2	· ·	24-hr composite	Χ			Χ			Χ			Χ			12	6	72		
NPDES Part A List	year)	grab?	Χ												132	6	792		
List 1: ammonia nitroge	en, total nitrogen, to	otal phophorous, tur	bidity,	enteroc	occus														
List 2: Accute toxicity, c	hronic toxicity																		
Red text = significant sc	ope increase from	current (2024 and p	revious	s vears)	monito	ring													

2024 Current Mo	nitoring																							
Parameter(s)	Qualifier	Sample type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	# parameters monitored	# locations	subtotal parameters	Total parameters per year	Total monitoring events					
			U-2/W\	N-5; U-3	3/WW-4	1; WW-2	2; WW-3	3; WW-6	6; D-4; I	D-6; D-7	7; D-8, E	-1; E-2												
Turbidity																								
Temperature																								
Salinity	2 dry and 2 wet																							
DO							weather events																	
pН	(separate grab samples	grab samples X				Х			Х			Х			36 11	11	396							
Enterococcus	quarters)																							
TPH	quarters)																							
Arsenic																		453	4					
Mercury																		100	-					
						I	E-1, E-2	, WW-3																
Atrazine	2 dry and 2 wet																							
Metolachlor	weather events	grab samples	X			X			Х			X			16	3	48							
Paraquat dichloride	(separate	Pran annihies	^			_ ^			^			^			10		40							
Permethrin	quarters)																							
Toxicity	1 dry and 1 wet	grab	X						Х						3	3	9							
1	event		I					1				ĺ	1											

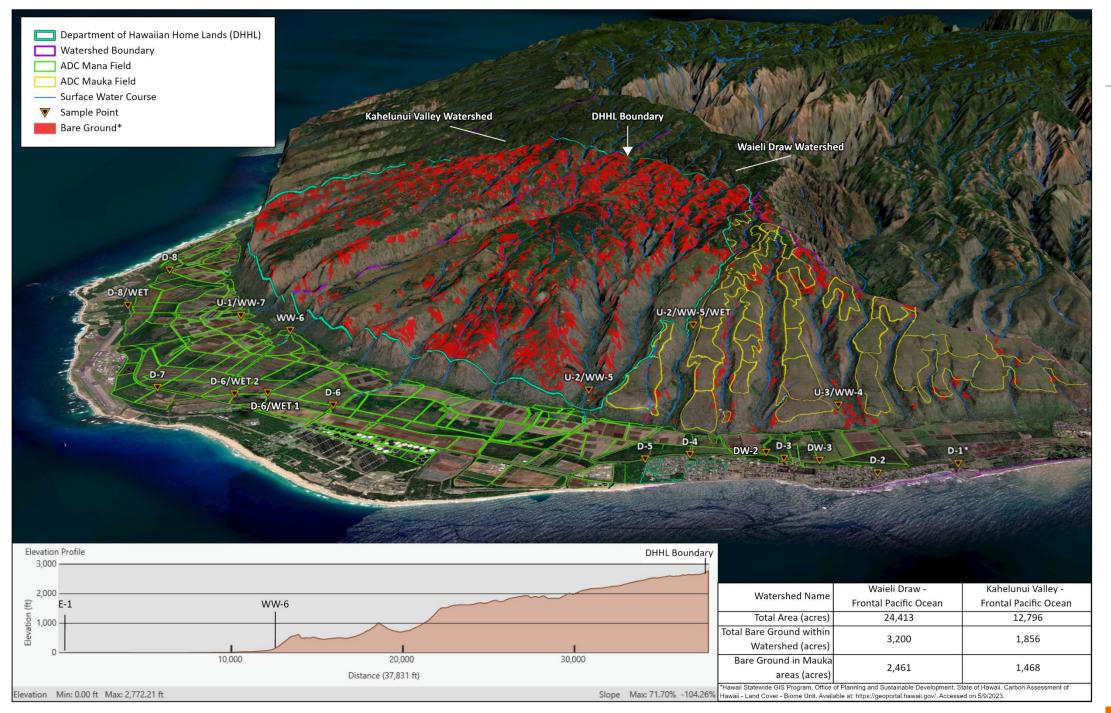


Stantec Enterococcus and Turbidity Monitoring (2019-2024)

Draft NPDES Criteria Upland							Mana Plain Drainage Sample Locations												Outlets	
Paremeter	Units	Daily Maximum /Simple Samle Maximum	U-1/ WW-7	U-2/ WW-5	U-3/ WW-4	WW-6	D-2	D-3	D-4	D-5	D-6	D-7	D-8	DW-1/ WW-1	DW-2	WW-2	WW-3	E1	E2	
Enterococcus	CFU/100 mL	130	100 % 3,100 - 24,000	100% 228- 69,000	100 % 140- 4,400	100 % 590- 20 ,000	100 % 132- 13 ,000	93% 340- 24,000	100 % 250- 24,000	90 % 180- 1200	71 % 200-20,000	100% 260- 24,000	94 % 320- 13 ,000	60 % 400- 800	90 % 200- 3,400	25 % 150- 2,200	69 % 140- 24,000	36% 180- 17,000	83 % 210- 4600	
Turbidity	NTU	0.5-1.5*	100 % 911-3,289	100 % 3.89-4000	100 % 11.4- 4,000	100% 1.58- 4,000	100 % 4.75- 38.6	100 % 3.51-4,000	94 % 3.79- 4,000	92% 1.86- 99	100 % 5.82-4,000	100% 21.4- 4,000	100 % 4.64- 4,000	100% 2.46- 2,820	100 % 4.69- 1,509	92 % 3.72-4,000	100% 1.63- 4,000	95 % 2.09-4,000	100 % 1.95- 23	

- ➤ Table shows percent of past samples that would exceed future proposed criteria (red=2 OOM+)
- Cannot distinguish upland contributions (e.g., erosion + ungulates) from Mānā Plain activities/unlined ditch contributions.
- ➤ Monitoring from 2019-2024 shows enterococcus and turbidity would exceed the criteria at outlets (E-1, E-2) most of the time (particularly during wet weather events)









Stantec What does this Mean for ADC... and the State?









ADC MĀNĀ PLAIN **MONITORING** 2019-2024

Together we will do great things

Stantec Courses of Action

- COA 1: ADC and County of Kaua'i can prepare to comply with the permit.
 - Expect significant costs in watershed management strategies to prevent pollutants form entering waterways as well as treatment system near the coast.
 - ➤ ROM Cost: \$100M+ (Not including potential land acquisition)
 - > Expect significant costs in long term monitoring in addition to treatment.
 - ➤ ROM Cost:\$1-2M annually
 - Expect similar requirements across the state for similar landowners.
- COA 2: ADC and County of Kaua'i could work with HDOH through public comment, elected officials, legal challenge, and other avenues to persuade a more reasonable and effective regulatory strategy.
 - More cost-effective strategy
 - Encourage non-point source solutions and regulations





Stantec Encourage Outreach

Get the message out get the communities, especially those that could be impacted educated and engaged.

Call for Action

Keep Your Food Local - Support Agriculture in Hawaii

The approval of a proposed National Pollutant Discharge Elimination System (NPDES) permit for the Mānā Plain Drainage Ditch System on Kaua'i signals the beginning of the end of agriculture in Hawai'i! Voice your concerns now this is a precedent-setting issue with statewide impacts. Comments are being accepted through November 29, 2024, by the Hawai'i Department of Health. Act now!

NPDES Permits are for THIS





- The Hawai'i Department of Health Clean Water Branch is proposing to issue a NPDES permit for outfalls from agricultural lands on the Mānā Plain. NPDES permits are intended to control water pollution from man-made infrastructure or industry sources NOT agriculture or natural waterways.
- An NPDES permit is not the right regulatory tool to manage water quality for waterways that flow mauka to makai through an entire watershed with multiple landowners.
- If the Hawai'i Department of Health issues this NPDES permit, it will have implications for any stream or waterway with an outfall to the ocean statewide. These outfalls could also be regulated under NPDES permits with the responsibility falling upon landowners to meet permit requirements and face fines.

Not THIS



- Responsible parties include tenant farmers, agricultural lands, federal lands, DLNR lands, DHHL lands, State Parks, and any other landowners in the watershed.
- These landowners could be held financially responsible for permit violations of an improper permit. This could decrease the amount of public funding that these landowners and agencies such as DLNR and DHHL can use to protect the watershed.
- The cost to comply with the improper permit and/or violation costs would drive out agricultural production throughout the state and could lead to exorbitant costs to treat stream waters as industrial waste waters.

Act Now To Submit a Comment or Request a Public Hearing -Comments Accepted Through November 29, 2024

- E-mail: cleanwaterbranch@doh.hawaii.gov
- Mail: Hawai'i Department of Health Clean Water Branch, P.O. Box 3378, Honolulu, HI 96801-3378
- Include your name, address, and email address with your comment
- · The comment must also include the reason why you believe the NPDES permit is inappropriate and reference the associated federal regulation. Some examples you can use in your comment to the State are provided below for your convenience.

The Hawai'i Department of Health Clean Water Branch has very specific comment submittal requirements, please consider including the following objection, specific references, and a request for a public hearing in your comment. Don't forget to include your name, address, and email address in your submittal.

Some examples with regulatory citations that illustrate that the NPDES permit does not apply to this agricultural area include:

- I object to the approval of NPDES permit Nos. HI0021940 and HI0021945 for outfalls of the Mana Plain Drainage Ditch System. The NPDES permit is not the right tool to use to use for this purpose. I recommend that the State of Hawai'i Department of Health develop a permitting system with the objectives of Hawai'i Administrative Rules HAR 11-56 to control pollution from public lands due to agriculture forestry, marinas, and recreational boating.
- I would like to request that a public hearing be held on this proposed NPDES permit Nos. HI0021940 and HI0021945 as it violates 40 CFR §122.2 and 40 CFR §122.3.
- A NPDES Permit is required for the discharge of "pollutants" from any "point source". 40 CFR §122.2 states that the term of "point source" does not include return flows from irrigated agriculture or agricultural storm water runoff.
- 40 CFR §122.3(e) excludes pollutants from non-point source agriculture and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands from the requirement of a NPDES permit.

To read the full text of the proposed NPDES permit Nos. HI0021940 and HI0021945, go to: https://health.hawaii.gov/cwb/clean-water-branch-home-page/public-notices-and-updates/

You can make a difference! Continue to the next page for details on how to submit a comment —



Stantec Legal Challenge and Elected Officials

Encourage counsel and elected officials to review legality and effectiveness of this precedent setting regulatory approach.

Not "Point Source"

➤ A NPDES Permit is required for the discharge of "pollutants" from any "point source". 40 CFR §122.2 states that the term of "point source" does not include return flows from irrigated agriculture or agricultural storm water runoff.

Exempt as Agricultural Land

➤ 40 CFR §122.3(e) excludes pollutants from non-point source agriculture and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands from the requirement of a NPDES permit.

Summary

- ➤ The Hawai'i Department of Health Clean Water Branch is proposing to issue a NPDES permit for outfalls from agricultural lands on the Mānā Plain. NPDES permits are intended to control water pollution from man-made infrastructure or industry sources NOT agriculture or natural waterways.
- A NPDES permit is not the right regulatory tool to manage water quality for water ways that flows mauka to makai through an entire watershed with multiple landowners.
- ➤ If the Hawai'i Department of Health issues this NPDES permit, it will have implications for any stream or waterway with an outfall to the ocean statewide. These outfalls could also be regulated under NPDES permits with the responsibility falling upon landowners to meet permit requirements and face fines and thus SIGNIFICANT COSTS!
- > This will set new precedent that could have significant costs to the state to comply with overreaching permits that could signal the end of agriculture in the state.
- > Permitees have two COAS at this stage, prepare to comply or prepare to fight the permit.
- ➤ Please take the first step to submit challenges and public comments to the draft permit during the public comment period ending November 29, 2024.





State of Hawai'i Agribusiness Development Corporation Hui Ho'oulu Aina Mahiai

Questions?

Actions?

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