

Exhibit "10"

Electronically Filed
FIRST CIRCUIT
1CCV-24-0000050
23-OCT-2024
11:58 AM
Dkt. 66 EXH



Agribusiness Development Corporation
Meeting of the Board of Directors
EXECUTIVE SESSION
Thursday, March 16, 2023

The Motion to Enter Executive Session was approved by the Board at 9:35 a.m.

Members present virtually for the Executive Session:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member (Mr. Wicker)

Members Excused from the March 16, 2023 Board Meeting:

Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member
Jayson Watts, Maui County Member

Counsel Present, virtually for the Executive Session:

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

Staff Present, virtually for the Executive Session:

Lynette Marushige, Secretary

Executive Session called to order at 9:41 a.m.

Chair called on Ms. Seddon to present the draft evaluation report.

Ms. Seddon stated the draft evaluation report was previously distributed to the Board members. In the Committee's interview with [REDACTED], they discussed the concerns to continue to work on and why. There were a couple of things they wanted [REDACTED] to do by June. One was the position description that needs to be cleaned up. The Committee asked [REDACTED] to work on that with Human Resources (HR) between now and June 30th this year.

Mr. Watanabe agreed with Ms. Seddon's statement.

[REDACTED]

Ms. Seddon said [REDACTED]

Chair stated the committee did a really good job. They're getting really good at this. One of the things he found interesting was the [REDACTED] Chair said he was worried about [REDACTED] Chair asked the committee if they had talked to [REDACTED] about this.

Ms. Seddon said they spoke to [REDACTED] about it.

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Chair asked if the committee could elaborate.

Mr. Watanabe said that [REDACTED]

Chair said the [REDACTED]

Ms. Seddon said, yes, and she thinks [REDACTED]

Chair said there needs to be [REDACTED]

Ms. Seddon said apparently [REDACTED]

Chair said he has spoken to [REDACTED]

And, he thinks that's really important.

Ms. Seddon said yes it is but they also need to [REDACTED]

Mr. Wicker said that he agrees with what Chair and Ms. Seddon are saying. [REDACTED]

The Board has raised some good ideas.

Chair said that his concern is that [REDACTED]

Mr. Wicker asked when does [REDACTED]

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[REDACTED]

Mr. Wicker asked, [REDACTED]

[REDACTED]

Mr. Hong said he wanted to make sure that the Board has gone through an open search process. [REDACTED]

[REDACTED]

His understanding is that they have full capacity as a board to act in personnel matters. And, everyone's employment [REDACTED] is subject to the pleasure of the board.

[REDACTED]

[REDACTED]

Chair said this was difficult because [REDACTED]

Mr. Hong said that's where he thinks Chair would have to have a discussion with [REDACTED]

Chair said he agrees.

Mr. Hong said that's the downfall of too many organizations.

Chair said ok, what do we do here now? [REDACTED]

[REDACTED]

Mr. Hong said he would amend that, [REDACTED]

Ms. Seddon said yeah, exactly.

Mr. Hong continued, it's the board's decision to support that.

[REDACTED]

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Ms. Seddon asked why wouldn't they do what's normally done? She doesn't disagree with Mr. Hong, but she thinks they should look at all the possibilities that everybody who would like the position to be able to apply.

[REDACTED]
Ms. Seddon said, but we can't put anybody in place until [REDACTED] That's the State.

Mr. Hong said but you could for example, if you wanted to establish a new position, associate executive director or whatever you want to call it. And in the hierarchy of the organization it's clear that has been established to understudy if you will, the position.

Chair said the problem is the wheels of State Government, we'd have to get a position for one thing, salary, it would take years.

Mr. Hong said, we've got open positions. You could re-designate something.

Ms. Seddon said, [REDACTED]
[REDACTED] The only thing you could do is redo one of the other open positions. You're right. I haven't seen that done in the State.

Mr. Tabata added, you can reallocate the position, but you have to have funding to go with it. If there's no funding, just grabbing a position won't work. It needs the funding to go with it.

[REDACTED]
Ms. Seddon asked if this can be done without connecting it to [REDACTED]
[REDACTED]
[REDACTED]

Chair said he just wanted to bring that up because they have talked about this multiple times already. We keep saying there should be a [REDACTED] So, that's why he brought it up.

Mr. Hong added that the [REDACTED]
[REDACTED] ADC should give their people as much experience and exposure as possible.

Ms. Hurd asked the Chair, [REDACTED]
[REDACTED]

Chair said the Board can ask [REDACTED]
[REDACTED] But the other thing is that he

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feels [REDACTED] If you guys look at what ADC is trying to do.

Ms. Hurd remarked, including [REDACTED]
[REDACTED]
[REDACTED]

Ms. Hurd responded I see.

Mr. Hong says he absolutely agrees with that. The staff, and [REDACTED] serve at the pleasure of the Board. ADC acts like a regular corporation. This is not a civil service situation. The good thing about ADC is that we the board have the power to retain people. The [REDACTED] can be retained over a longer period of time and doesn't have to change with every administration. So, we can have better continuity.

Ms. Hurd said that she now has a better idea how things operate. What we can do is like what they would do with the land at the department, you post a letter of interest and ask people to submit a form that they're interested [REDACTED]

[REDACTED] You can have them intern, you know all these people with letters of interest to serve. And you do kind of like we do with that. Ask do you have the means, do you have the time, do you have the skills and we push forward with that. [REDACTED] is certainly a good idea.

Chair thanked Ms. Hurd for the suggestions. If we go into 2023-2024 at least there's time to [REDACTED] you know, if we have someone [REDACTED]. The answer to the earlier question is [REDACTED]
[REDACTED]

Mr. Hong said for him, just for consideration going forward, if [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Chair said he really likes that idea and has actually suggested that, but he really doesn't know how they do that in the public sector; in private sector you just pay the guy.

Ms. Seddon said there are two pieces to that, specific projects and a specific length of time.

Ms. Hurd said, isn't there a rule that says if you [REDACTED]
[REDACTED]

Mr. Hong asked if there was an 89-day rule and does that even apply to ADC? It applies to a lot of normal government agencies. [REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

Chair said ok, they have several options, and he agrees with Ms. Seddon that they should move this. This is a separate issue, but he wanted to broach the discussion and it should be paid more attention. The next review comes up in June and that will be upon them shortly.

Ms. Hurd asked Chair, if this discussion was done, she did have another thing she wanted to bring up.

Chair told her to go ahead.

Ms. Hurd said

[REDACTED]

Chair said he thought it was [REDACTED] who made the comment.

[REDACTED]

Ms. Hurd said,

[REDACTED]

Mr. Wicker said [REDACTED] should have [REDACTED]

[REDACTED]

[REDACTED]

Mr. Hong said maybe staff

[REDACTED]

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Ms. Hurd said, it is [REDACTED]
[REDACTED]

[REDACTED]

Ms. Hurd said it was [REDACTED]

Chair said he's going to go back to the minutes because he doesn't remember [REDACTED]
[REDACTED]

Ms. Hurd said it was the [REDACTED]
[REDACTED]

[REDACTED]

Chair said but again, it's like Mr. Wicker said, [REDACTED]

Mr. Wicker asked if [REDACTED]
[REDACTED]

[REDACTED]

Mr. Wicker said, [REDACTED]
[REDACTED] Was that the area?

[REDACTED]

Chair thanked Ms. Hurd and said that was a good point. He will look at the minutes. [REDACTED]
[REDACTED] Is there any further discussion?

[REDACTED]

Chair said no. Do we want to have a discussion on the KIUC license vs. lease matter or wait for staff to come back with recommendations?

[REDACTED]

Chair asked [REDACTED]

[REDACTED]

Chair asked that [REDACTED]

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[REDACTED]

Chair asked if there was any further discussion.

Ms. Hurd said just one more thing, [REDACTED]
[REDACTED]

Chair responded, not a problem, they got it, and he agrees. They need to pay attention to [REDACTED] there and he intends to go read the minutes.

[REDACTED]

Chair called for a motion to exit the executive session: Mr. Hong; Seconded, Ms. Seddon.

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

Executive Session adjourned at 10:09 a.m.

Respectfully submitted:

Lynette Marushige, Secretary

Exhibit "11"

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on April 20, 2023

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

APPROVED AS AMENDED:
ADC BOARD MTG May 18, 2023

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:

Frederick Lau, City & County of Honolulu, Chairperson (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Kaleo Manuel, Designated Representative, DLNR, Ex-Officio Member (Mr. Manuel)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Warren Watanabe, Member-At-Large (Mr. Watanabe)
Jayson Watts, Maui County Member (Mr. Watts)
Dane Wicker, Designated Representative, DBEDT, Ex-Officio Member (Mr. Wicker) exited the meeting at 10:25 a.m. Rejoined the meeting at 10:31 a.m.
Vacant – Hawaii County Member

Earl Yamamoto, Designated Representative for HBOA Chair, Ex-Officio Member (Mr. Yamamoto) joined the meeting at 9:14 a.m. Exited the meeting at 10:37 a.m.
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd) joined the meeting at 10:37 a.m.

Members Excused:

None.

Counsel Present, virtually:

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

Staff Present, virtually:

James Nakatani, Executive Director (Mr. Nakatani)
Mark Takemoto, Executive Assistant
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)
Lynette Marushige, Executive Secretary

Guests Present, virtually:

ADC Guest
Alison Fraley
Basil Gomez
Bill DeCosta, Kauai County Council (Mr. DeCosta)
Brad Rockwell
Chauncie
Chris Y.
D. Arruda
David Bissell, KIUC

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Dawn Huff, KIUC
Ford Fuchigami
Fredrick Berg, AES
Jhanavi Pomerantz
Josh Uyehara, KAA (Mr. Uyehara)
Keola Aki
Lei Leong (Ms. Leong)
Mike Faye, KAA (Mr. Faye)
RG
Scott
Scott Enright
Mark L
Senator Tim Richards

Guests Present, physical location: None.

A. Call to Order

Chair called the virtual meeting to order at 9:06 a.m.

Chair apologized for his camera not working, so he would not be visible.

B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each Board member and asked them to indicate their presence with a “here” or “present” and to state who if anyone over the age of eighteen was present in the room with them. Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Chair would ask if there were any objections. If there were no objections the motion would be approved on the same basis as the roll call.

Roll call: Mr. Hong, Mr. Manuel, Mr. Okuhama, Ms. Seddon, Mr. Tabata, Mr. Watanabe, Mr. Watts, Mr. Wicker acknowledged attendance with no guests present. Mr. Yamamoto joined the meeting at 9:14 a.m. and exited the meeting at 10:37 a.m. Ms. Hurd joined the meeting at 10:37 a.m.

C. Approval of Minutes

1. Board of Director’s Meeting, March 16, 2023

Chair called for a motion to approve: Mr. Watanabe; Second: Mr. Tabata.

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

Chair asked if there was any comment from the public. There was none.

Chair asked for Board discussion.

Mr. Manuel asked to abstain from voting because he was not present at that meeting. Mr. Okuhama also asked to abstain from voting because he was not present at the meeting.

Chair called for the vote. The motion was approved: 7-0; Mr. Manuel and Mr. Okuhama abstained.

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**APPROVED AS AMENDED:
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2. Executive Session Meeting Minutes, March 16, 2023

Chair stated that during the executive session held on March 16, 2023 the Board considered matters pertaining to the evaluation of the executive director's performance for fiscal year July 2021 to June 2022. HRS sections 92-4 and 92-5(a)(2) allow the meeting to be closed to the public when necessary to discuss an employee evaluation where consideration of matters affecting the privacy will be involved. 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 March 16, 2023 when discussing approval of these minutes.

Chair called for a motion to approve: Mr. Wicker; Second: Mr. Watts.

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

Chair asked if there was any comment from the public. There was none.

Chair asked for Board discussion.

Mr. Manuel stated he will abstain from voting because he was not present. Mr. Okuhama also abstained.

Chair called for the vote. The motion was approved: 7-0; Mr. Manuel and Mr. Okuhama abstained.

D. New Business

1. Request for Approval to Amend Site Location for License Agreement LI-KA-22-03 issued to Mahipapa, LLC, and Approval to Amend Exhibit "B" for License Agreement LI-KA-22-01 issued to Hanahanapuni Farm, to Reflect Changed Site Location of Unit GE(L), in Kalepa, Kauai, Hawaii, Tax Map Key No. (4) 3-9-002:001 (por.)

Chair called for a motion to approve: Mr. Tabata; Second: Mr. Wicker.

Chair asked if there was anything from the staff.

Mr. Roe stated that as noted in the submittal, license number K1102 originally issued to Green Energy Team (GET) in 2011, was assigned to Mahipapa in 2022. Before the assignment, GET negotiated with other revocable permit (RP) holders in Kalepa for about 1,000 acres divided amongst each of the RP holders for a portion of each of their units. In 2018, GET and Hanahanapuni Farms apparently came to an agreement to relocate a portion of GET's property within Unit L. Hanahanapuni Farm believes ADC was made aware of the change, but no formal action was ever taken by ADC to approve the change. This item is to request after-the-fact approval of the relocation of Unit GE(L) within Unit L and amend Exhibit B of Mahipapa's license to reflect the relocation.

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

Mr. Nakamoto said there was one hand raised and called Ms. Leong to join the meeting.

Ms. Leong was representing Mahipapa in this matter. She just wanted to reiterate that Mahipapa supported this motion and if there were any questions or follow-up she would be glad to communicate that to them.

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Chair thanked Ms. Leong and asked if there was any Board discussion or questions.

Chair asked if there was any impact from the relocation?

Mr. Roe responded no, it's the same acreage, 28-acres, they just moved from one spot to the other with agreement from the parties. There appears to be no negative impact between either of the parties. The move was at their impetus.

Ms. Prescott-Tate interrupted to note that Mr. Yamamoto had joined the meeting on behalf of Ms. Hurd.

Chair asked if there were any other questions or any discussion on this. There were none.

Chair called for the vote. Hearing no objections, the motion was approved: 9-0 (Mr. Yamamoto's vote excluded due to his arrival just before the vote.)

2. Presentation by Josh Uyehara and Mike Faye Regarding Kekaha Agriculture Association's Activities and Projects in Kekaha, Kauai, Hawaii

Mr. Uyehara thanked the Board for the opportunity and started the presentation with the Kekaha Agriculture Association's Goals and Objectives. (See PowerPoint presentation attached for reference.)

Chair mentioned that ADC was installing a Yardi system for inventory of land and infrastructure. Would KAA be integrating their areas into that system?

Mr. Uyehara responded that was something that could certainly work with. One thing they are working on is building a GIS database of infrastructure, tenants, assets on the property under management, operational status, things like that. They have quite a bit of those systems with bits and pieces here and there and they're hoping to have that online in something like the ESRI, Arc GIS cloud or something like that. For example, right now a lot of the large tenants have separate GIS systems with data about the irrigation infrastructure on their parcel. KAA would like to consolidate that and give all the tenants access to that kind of information. It really doesn't make sense for tenant operations to duplicate that resource and it just makes all of their lives easier if they can share on a platform like that. Integration across systems like that would be ideal. If they don't have to build out a whole system to track tenants at the level of detail they need, that information can be provided to ADC system. He doesn't see why they would want to duplicate effort.

Chair said that would be great and KAA can work with Mr. Roe on that.

Mr. Uyehara finished the presentation with Kekaha Lands: the future. (See page 13 of PowerPoint.)

Chair stated that Mr. Uyehara touched on the energy project with KIUC and about the benefits from KIUC repairs to the ditch system and the Mana reservoir. How would KAA utilize the water from the pump station?

Mr. Uyehara responded that the benefits would be that the Kokee system is expensive to maintain; it's at a higher elevation, a little more remote. The three major reservoirs on the system, Pu'u Lua, Pu'u 'Ōpae and Mānā are all sort of in that registered dam scale. So, the cost to remediate them to meet the dam safety requirements and then continue to operate them as registered dams would be prohibitive. Certainly KIUC could justify to ADC to make that type of investment. The energy project, first and foremost, will provide for the rehabilitation and maintenance of all of that infrastructure. That's a great benefit because

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that provides for the security of that water system. As far as the water itself, they are looking at that flooded field agriculture on page 13 (of the PowerPoint Presentation). The really cold water that will come out of the Kokee System is ideal for that type of agriculture and working with KIUC, similar to how they have the pump storage, when it's dry they can figure out how to pump water to provide when necessary in between periods of rain. And when it's raining, they'll take that water, instead of pumping it and be able to use it for, whether it's taro, rice, watercress; there are some high value crops that they have been looking at that would really make sense, if you had that kind of flow available and that would be an opportunity provided by the energy project. The other thing Chair mentioned was the infrastructure. So, all the infrastructure they use, they are going to improve roads, they're going to improve the drainage canal system that's downstream of the project that will all be essential to the common benefit.

Chair asked if they would be supplying power to the farmers.

Mr. Uyehara responded that is part of the secondary agreement set around the project where they already have a power purchasing agreement in place between ADC, KAA and KIUC for the hydro(power) plants that they already have online. So, they are going to fold into that project with that agreement that will provide additional capacity and price stability for the farmers on the ADC property. They already provide through the KAA and ADC microgrid system below market price power to the farmers and they would anticipate that the capacity to do that would be increased with the energy project.

Mr. Nakatani remarked that going back and looking at the Becks facility, he thinks that rather than looking at the mill site, the VEX facility is the perfect spot for value added since it's pretty clean.

Mr. Uyehara agreed.

Mr. Nakatani said it has all the entitlements there and that rather than trying to rebuild something, he's pretty sure that the Department of Education is not going to use ten acres, or half of that but just for consideration.

Mr. Uyehara responded that he definitely agrees. Whatever they can put there, they would maximize the use of that. The things they are thinking about are, if things transition more from ag processing into the value-added manufacturing side, that will require a whole lot of work to put that on ADC land. That's an ag use, versus an industrial zoned area. That's kind of where they're thinking the difference would be.

Chair asked if there were any other questions for Mr. Uyehara or Mr. Faye.

Mr. Nakamoto said there was one hand raised and called Mr. DeCosta to join the meeting.

Mr. DeCosta introduced himself as a Kauai Councilmember. He has some ideas as a councilmember with some of the west-side community members on the mauka lands. A big group, including Mr. Tabata and Mr. Faye, wanted to do some kind of prescribed grazing whether it be sheep or cattle. He knows there are some mauka lands that's not in the forecasted future project of KAA and ADC. Mr. DeCosta believes he saw a slide that said Mauka Timber of 450-acres and Mauka Diversified ag of 600-acres, but he didn't know what the Mauka Diversified ag was for. He was wondering if that project that they had discussed with Mr. Tabata and Mr. Faye, and he believes Mr. Uyehara knows about the community project, they want to install out there to become food security and the fire mitigation that the County was really concerned about the grasslands in the mauka area are not managed. He was just wondering when they, Mr. Uyehara, when they did the community outlay of the ahupua'a, they did not mention the County fire department and the fire mitigation of keeping that tall grasslands under control. So, he wanted to know if he could submit a community proposal to this Board with some type of explanations and some slides to

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show what they were thinking about, and it will help with the silt runoff. He wants everyone to know that the silt runoff comes from lands that are not managed and when the guinea grass, that's the type of grass that is on that 1200+, 12,000+ acres up in the mauka land. Guinea grass gets so tall that under the guinea grass there is trenches of dirt because sunlight cannot reach it, so the seedlings of the guinea grass isn't able to propagate. Guinea grass helps as a silt modification if it's held at 18 inches above the ground level which means if you have grazing going on, the guinea grass will help keep back some of the silt runoff from the mauka lands. They had a professional from UH, a grazing specialist present for them. So, he was wondering if they could hear out this project or incorporate this project or at least help out the community. They wanted to do this back in 2015 and they had Representative Morikawa lead the charge on this out there and now it has been forgotten. He's just bringing it back, hoping to get some positive ears out there listening. He's willing to take any questions right now if they don't understand what is being proposed.

Chair thanked Mr. DeCosta for coming and said he would really like the board to look at what he was talking about. He briefly sat in on that meeting but had to jump off the call after a bit, so he'd like to hear about everything Mr. DeCosta had put together. Chair believes that Mr. Faye and Mr. Uyehara have some concerns. The Board does not have all the information they need to have a discussion. Could he get them that information?

Mr. DeCosta asked who would he send that information to?

Chair responded to Mr. Roe.

Mr. DeCosta said ok. He said that before he closed he just wanted everybody to know that this is not something like a rabbit out of a hat at a circus show. This was a community outcry to do some kind of livestock grazing and he knows ADC is underneath an environmental watch and there's some lawsuits going on with Earthjustice but some of the lawsuits is because, according to the professional from UH, of prescribed grazing, the guinea grasses are too tall up in the mountain area and underneath the guinea grass has a lot of open red dirt that allows the rain water bring its silt down to the makai ditches. We could work hand in hand with each other and do a pilot program possibly across the Kokee state road on the Waimea side. They want to do a 500-acre parcel to keep the grass down to a minimum, help with the fire mitigation. He believes across the State, Governor Green is moving towards keeping low grasses in fire hazard areas and their County fire department is really concerned when they fought the two fires out there. A lot of those valleys have no entrance or exit for fire trucks, so they have to go on foot and if the wind changes and these firefighters get caught in the six-foot tall grasses there is nowhere for them to run or get out. Whereas if it's more of a pasture, grazing lower end. They can do the numbers where they can keep the prescribed grazing to a minimal under the environmental impact so they could do like one cow per ten acres or maybe ten sheep per two acres. They could do something really, really low-impact and rotate them vigorously, so the grasses have a chance to stay at the 18-inches or 24-inches. They would hate to have to put some kind of stipulation where it says those grasses would have to be mowed in order to help with fire mitigation; he thinks there is much more intellectual ways to control grass heights and they do it all over the world actually. We are way behind the times. He's been to a place in California where they use goats on the side of the road to keep the guinea grass or their grasses down. There's ways to do it and there's smart techniques to use to be environmentally friendly and he would like to present that to the board.

Ms. Prescott-Tate reminded Mr. DeCosta that his presentation was scheduled today as agenda item 5. Did he want to send additional information? The Board could move the presentation to the next meeting.

Mr. DeCosta said he is a schoolteacher and took a break to join the meeting on Zoom. So, he doesn't have access to get the documents to the board.

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Ms. Prescott-Tate said that's ok. We will reschedule the presentation to the next meeting.

Mr. DeCosta asked if he was scheduled to do his presentation today?

Ms. Prescott-Tate responded yes, he was scheduled as item 5, but we're still on item 2.

Chair told Mr. DeCosta they'd like to defer item 5 to the next meeting so the board can get his information.

Mr. DeCosta responded ok.

Chair said so if he can submit that over the next month, they'll get him on the agenda.

Mr. DeCosta thanked everyone.

Chair asked if anyone had anything to say. There was none.

Chair thanked Mr. Uyehara and Mr. Faye for the excellent presentation.

Ms. Prescott-Tate asked if they could take a break.

Chair called for a five-minute break at 10:16 a.m.

Chair called the meeting back to order at 10:25 a.m.

Mr. Wicker exited the meeting at 10:25 a.m.

3. Request for Approval of Re-Opened Lease Rents for General Lease No. S-3940 Assigned to Kauai Island Utility Cooperative, Kalepa, Kauai, Hawaii, Tax Map Key No. (various)

Chair called for a motion to approve: Mr. Tabata; Second: Mr. Hong.

Chair asked if there was anything from the staff.

Mr. Roe stated that Lease No. S-3940 was issued by DLNR in 1965 for 65-years and it was issued to Citizens, McBride Sugar Company. Through a series of transfers and assignments it is now held by Kauai Island Utility Cooperative for 74.38 acres of land under easement for electro-utility transmission lines. The lease was reopened in 2020 and ADC conducted a fair-market rent appraisal. KIUC commissioned a review of ADC's appraisal and reached their own conclusion. At KIUC's suggestion, to avoid the added time and expense of appointing a third appraiser to mediate the fair-market value, ADC and KIUC agreed to split the difference between ADC's appraised value and the value associated with KIUC's review with a final figure shaded slightly in favor of ADC. You can see the details in the submittal, but we have reached the amount of \$64,000 a year for the new reopened rent.

Chair asked just to be clear that this has been agreed on by both parties, so this is not up for negotiation, this has been agreed to.

Mr. Roe responded yes and stressed that this amount was at KIUC's suggestion. ADC felt that it was fair and appropriate.

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on April 20, 2023

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

APPROVED AS AMENDED:
ADC BOARD MTG May 18, 2023

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

Chair asked if there were any questions or discussion by the Board.

Mr. Manuel stated in reviewing the submittal, there are eight-years left on this lease; is there an option to extend or what is the strategy considering these are utility easements.

Mr. Roe stated he doesn't recall if there was an option to extend. He is pretty sure he looked for that and didn't see it. So, KIUC would have to request a renewal. He would imagine these lines head over Princeville, Hanalei area so he would imagine unless they have alternate routes, KIUC would be interested in renewing this. The property came over to ADC as part of an EO (executive order), so we have control and management over it.

Mr. Manuel said he was wondering in terms of procurement if they would have to go out to bid and open it up, which doesn't seem logical if the infrastructure is there. He guessed that was something the future boards will have to deal with, but he just wanted to note that in the discussion.

Chair thanked Mr. Manuel and asked if there were any other questions or discussion.

Mr. Okuhama said he had a question just for his reference. So, Hastings, Conboy did the appraisal for us and then KIUC had Medusky do the review and the differences were quite big. What was the basis for the differences in the valuations and did our appraiser review Medusky's review to come up with rationale as to why there's such a big difference in the rent value versus our higher amount?

Mr. Roe responded that the Medusky review identified a couple of properties that they thought should have been identified as commercial that Conboy identified as residential. They did take the appraisal back to Conboy who looked at it and said that they could go either way but stood by their appraisal amount; he didn't defer to the review. So, then it became a discussion between ADC and KIUC as to whether they could find agreement or whether or not they needed to find a third appraiser to find a mediated amount.

Mr. Okuhama said he's used to normally; the lessor and the lessee agrees to a third appraiser and then you get a valuation from an independent agreed upon appraiser and then you come out with a lease rent amount going forward. That's normally what he's seen, not a split the difference type of valuation on the lease rent. He was just kind of curious on how that works and for future reference when they come to situations like this.

Mr. Roe responded okay.

Chair asked if there were any other questions or discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 9-0

Mr. Wicker rejoined the meeting at 10:31 a.m.

4. Request for Approval to Issue a 35-year non-Exclusive License to the County of Kauai for Two Monitoring Wells in Field 311 in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Chair noted that Mr. Wicker had rejoined meeting.

Chair asked for a motion to approve. Mr. Tabata; Second: Mr. Watanabe.

AGRIBUSINESS DEVELOPMENT CORPORATION

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APPROVED AS AMENDED:
ADC BOARD MTG May 18, 2023

Chair asked if there was anything from the staff.

Mr. Roe said the County of Kauai owns and operates the Kekaha landfill and the Hawaii Department of Health is requiring the landfill to establish background water quality monitoring, upgradient of the landfill. The County has requested permission to install two monitoring wells in field 311 across the highway from the landfill. That land is currently licensed to Hartung. Hartung has agreed in principle, if the county will agree to coordinate with them for access to the wells to avoid disrupting field activities and, if the structures can be located makai of the interior field road. You'll see the location on the map, and that location is satisfactory. That's basically what the board is being asked to approve.

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

Chair asked if there were any questions or discussion.

Mr. Manuel said, these are ground water monitoring wells regulated by the Department of Health, so the water commission doesn't regulate this development. He totally supports groundwater monitoring for the purposes of managing landfills.

Chair thanked him and asked if there were any other discussion or questions.

Mr. Okuhama asked if the monitoring wells are along the roadside. Is that correct?

Mr. Roe responded yes they will be.

Mr. Okuhama asked if the bollards and protection around it is going to be satisfactory so that in case a vehicle hits it or anything like that there won't be any risk of contamination or anything like that going into the well system.

Mr. Roe said that it should be high enough. It will be covered. There will be bollards protecting it, there may even be fencing but that is not certain yet. In spite of how it looks on the map, there is a fair amount of distance from the actual highway.

Chair asked if there were any other questions, discussion? There was none.

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

5. Discussion of Pilot Grazing Project on ADC Mauka Lands in Kekaha, Kauai, Hawaii, Tax Map Key No. (4) 1-2-002:001 (por.)

Chair stated that this item will be deferred until next month's agenda.

E. Old Business

- 1. Update Regarding Discussion of License Agreement Nos. LI-K1702 (Kokee Ditch) and LI-K1703 (Mana Reservoir) Issued to Kauai Island Utility Cooperative for the West Kauai Energy Project in Kekaha, Kauai, Hawaii, Tax Map Key (4) 1-2-002:001 (por.), Various (continued from March 16, 2023, Item D-2)**

AGRIBUSINESS DEVELOPMENT CORPORATION

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APPROVED AS AMENDED:
ADC BOARD MTG May 18, 2023

The Board may go into executive session pursuant to HRS section 92-5(a)(4) to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

2. Request for Approval of the Draft Annual Performance Review of the Executive Director (continued from March 16, 2023, Item E-1)

The Board may go into executive session pursuant to HRS section 92-5(a)(2) to allow discussion of an employee evaluation where consideration of matters affecting privacy will be involved.

Chair stated that the Board would be going into executive session to discuss Old Business Agenda Items 1 and 2.

Chair asked if there was any public testimony before they enter Executive Session. There was none.

Chair called for a motion to approve: Mr. Manuel; Second: Mr. Watts.

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

The Board entered Executive Session at 10:35 a.m.

Mr. Yamamoto exited the meeting at 10:37 A.M. and Ms. Hurd joined the meeting at 10:37 a.m.

The open meeting resumed at 11:10 a.m.

Regarding agenda item E-2, Chair called for a motion to adopt the Evaluation Committees' report and recommendation to retain the Executive Director at his present salary.

Motion by Mr. Tabata; Second by Mr. Wicker.

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

Mr. Okuhama noted that he would abstain from voting since he was not present at the previous meeting.

Chair called for the vote. Hearing no objection the motion was approved: 9-0; Mr. Okuhama abstained.

Chair said the tenure of the ad-hoc committee to evaluate the fiscal year 2021-2022 annual performance of the Executive Director that was established on January 25, 2023 has now expired. Chair thanked Ms. Seddon, Mr. Watanabe and Mr. Manuel for their hard work on this committee.

F. Executive Director's Report

Chair called on the Executive Director to give his report.

Mr. Nakatani said that they have the report before them. The big bill is Senate Bill 833, SD2 that is related to the Wahiawa Irrigation System. That bill is going to conference and hopefully they'll get something out. They have conferees on the Senate side, but he hasn't seen the conferees on the House side. The other thing was, with legislature advise and consent on April 5, 2023, the Senate committee on Agriculture and Environment recommended to advise and consent the following gubernatorial nominees to serve on the ADC Board, and that's Jayson Watts, Karen Seddon and Jason Okuhama.

AGRIBUSINESS DEVELOPMENT CORPORATION

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APPROVED AS AMENDED:
ADC BOARD MTG May 18, 2023

Some other updates, if you turn to the next page, you'll see that we're progressing slowly except for one, item number 5. Some other bills that are still with the legislature is SB 818 to transfer aquaculture to ADC. That's going to conference. Other bills, HB 852 which amends the definition to allow eligible businesses to include value-added products grown within their enterprise area zone, that's also going to conference. And lastly, HB 1426 that establishes a food network statewide will also go to conference.

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

Before ending the meeting Chair asked Mr. Okuhama to give a little introduction and background on himself.

Mr. Okuhama said he's a former banker and for a number of years he's been in the lending industry and banking for about forty years give or take. He's been self-employed for the past 22 - 23 years and primarily specializes in doing government loan programs. So, the farm service agency, USDA, USDA rural development, small business administration, he primarily does all these types of government lending and lately over the last several years he's been doing quite a bit of agricultural loans. And over the years too with the rural development programs, off and on over the years he's done food related type industries in financing. So, he thought that ADC would be an agency where, with his background and knowledge, he could contribute to the agency going forward. Especially, with the agriculture industry and food industry going forward and the responsibility ADC has with agricultural lands on Oahu and Kauai and some of the facilities they were talking about being funded, he hopes he can contribute going forward.

Chair thanked Mr. Okuhama and asked if the Board had any questions. There was none.

Mr. Watanabe said before closing he wanted to congratulate Chair for being the outstanding CTAHR alumnus.

Chair responded that was kind of fun.

G. Adjourn

Chair called for a Motion to Adjourn: Mr. Manuel; Second: Mr. Watts.

Chair asked for board discussion. There was none.

Chair called for the vote. Hearing no objection, the motion was approved: 10-0

The meeting was adjourned at 11:19 a.m.

Respectfully submitted:

Lynette Marushige
Secretary

Exhibit "12"

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on May 30, 2023

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

Members Present, virtually:

Warren Watanabe, Member-At-Large, Vice-Chair (Vice-Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Jayson Watts, Maui County Member (Mr. Watts)
Dane Wicker, Designated Representative, DBEDT, for Ex-Officio Member James Tokioka (Mr. Wicker)
Kaleo Manuel, Designated Representative, DLNR for Ex-Officio Member Ms. Dawn Chang (Mr. Manuel)
Leo Obaldo, Designated Representative, HBOA, for Ex-Officio Member Sharon Hurd (Mr. Obaldo)

VACANT, City & County of Honolulu Member

VACANT, Hawaii County Member

Members Excused:

None

Counsel Present, virtually:

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

Staff Present, virtually:

Mark Takemoto, Acting Executive Director
Ken Nakamoto, Project Manager
Lyle Roe, Property Manager

Guests Present, virtually:

ADC Guest
WAM Staff
F Fuchigami
L Marushige

Guests Present, physical location: None.

A. Call to Order

Vice-Chair called the virtual meeting to order at 3:32 p.m.

B. Roll Call

AGRIBUSINESS DEVELOPMENT CORPORATION

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Vice-Chair conducted a roll call of the Board. Vice-Chair called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone was present in the room with them. Vice-Chair stated that the roll call served as the roll call vote, and for each subsequent vote, the Vice-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: Mr. Hong, Mr. Obaldo, Mr. Manuel, Mr. Okuhama, Ms. Seddon, Mr. Tabata, Mr. Watts, and Mr. Wicker acknowledged attendance with no guests present.

C. Approval of Minutes

1. None

D. New Business

1. Presentation of executive director hiring process and timeline by the Executive Director Search Committee; and appointment of new member(s) to the Executive Director Search Committee

a. Presentation of Executive Director Hiring Process and Timeline by the Executive Director Search Committee

Vice-Chair announced that effective May 25, 2023, Chair Fred Lau (former Chair Lau) resigned from the ADC Board of Directors so he could apply for the Executive Director position. Article 3, section 4 of the ADC Bylaws states that should the office of the chairperson become vacant, the Board of Directors shall fill the vacancy by electing another chairperson from among its members.

Article 3, section 2 of the ADC Bylaws further states that elections to fill vacancies shall be held at the meeting at which the vacancy was officially declared to exist.

However, due to the notice requirement under the Sunshine Law, section 92-7(b), Hawaii Revised Statutes, the election to fill the vacancy of the chairperson will be held at the next regular Board Meeting on Thursday, June 15, 2023.

In the absence of the chairperson, article 3, section 2 of the ADC Bylaws states that the vice-chair shall perform the duties of the chair.

Accordingly, as acting Chair and as a member of the executive director search committee, Vice-Chair provided the presentation of the executive director hiring process and timeline.

At the regular board meeting held on May 18, 2023, former Chair Lau asked the Board to approve the establishment of an Executive Director Search Committee, pursuant to section 92-2.5, HRS, and article 4, section 3 of the ADC By-Laws, and to give the Chair authority to appoint four members to the committee. Former Chair Lau asked that the Executive Director Search Committee be comprised of Vice-Chair, Ms. Seddon, Mr. Tabata, and Mr. Wicker, and that the committee be tasked with six responsibilities:

1. The Committee shall develop an application process for non-civil service applicants.
2. The Committee shall develop a solicitation/advertisement for the position of executive director.

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3. The Committee shall select a method of posting the solicitation/advertisement and post the solicitation/advertisement.
4. The Committee shall develop criteria for ranking the applicants.
5. The Committee shall accept the applications and conduct initial review and ranking of the applicants; and
6. Depending on the number of valid applications received, the Committee shall narrow the selection to the top two candidates and report their findings to the Board.

The Board unanimously approved former Chair Lau's request.

Shortly after the committee was established, a member of the Executive Director Search Committee wanted clarification of the committee's assigned tasks. Before a meeting to clarify the committee's duties could be scheduled, former Chair Lau resigned from the Board in order to apply for the executive director position. This raised a question about the propriety of allowing a committee of board members hand-picked by the chair, to also make a hiring recommendation for the executive director position, where former Chair Lau was an applicant.

The question was submitted to the State Ethics Commission.

After close of business on Friday, May 26, 2023, the State Ethics Commission responded in pertinent part as follows:

It is likely that the public would question Mr. Lau's actions as impacting the fairness or propriety of the hiring process, resulting in erosion of confidence in government. . . . It is the Commission staff's strong recommendation to disregard any proposal provided by the current search committee, and instead start the process anew without consideration of any involvement or action by Mr. Lau in establishing the executive director search. This may mean, for example, that the Board establishes a reconstituted committee to conduct the executive director search. Removing Mr. Lau's involvement in the search process reduces the appearance of impropriety and, hopefully, creates an objectively fair procedure.

Based upon the advice of the State Ethics Commission, Vice-Chair proposed that the Executive Director's Search Committee appointed by former Chair Lau, be dissolved and a new three- or four-member Executive Search Committee be reconstituted with the following directives:

1. The Committee shall develop an application process for non-civil service applicants.

For example: does the committee want the applicants to fill out an application form or just send in a resume? There's a non-civil service form used to apply for State of Hawaii jobs – form # HRD 278. Does the committee want to list a salary range or just base the salary on experience/education? Decide what type of information the applicant should provide to assist the committee's review process.

2. The Committee shall develop a solicitation/advertisement for the position of executive director.

The committee shall create a job description for the executive director position. The job description must be approved by DBEDT director pursuant to HRS section 26-35(a)(4).

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For example, the committee shall decide if the job description/solicitation will be appropriate for all advertising methods or if separate job descriptions are necessary for each type of solicitation, such as formal letter request, or an advertisement like in a newspaper or agricultural newsletter, or email request to organizations asking for interested parties to apply, or just on the State job site.

3. The Committee shall select a method of posting the solicitation/advertisement and post the solicitation/advertisement.

The committee shall select how the job solicitation will be posted. For example, should the job solicitation only be posted on the state job site; or also on the ADC/HDOA/DBEDT/etc. websites, newspaper, farming associations, other local job search engines. The committee shall decide how long the solicitation/advertisement should be posted. The minimum amount of time the job solicitation must be posted is four working days.

4. The Committee shall develop criteria for ranking the applicants.

For example, the committee should decide what skills, education, work history, personality, salary expectations, etc. are important. What qualities would the committee like to see in the next executive director. Create a ranking system and develop a timeline for completing the ranking system.

5. The Committee shall accept the applications and conduct initial review and ranking of the applicants.

When the applications come in, the committee shall review the applications. For example, the committee can decide whether to do in-person interviews of all the applicants, or just a few of the more promising applicants, or just review the applications. Rank all the applicants according to the ranking criteria. Develop a timeline for completing the applicant review.

6. The Committee shall narrow the selection of the top two or three candidates and report their findings to the Board.

Select the top two or three candidates.

Once the above six steps are completed, the committee shall write a report that describes how the two or three applicants were selected (how the committee accomplished the six steps). The report should conclude with the committee's findings and recommendations. For example, the report may suggest how the full board could complete the final selection, like have the candidates make a presentation to the board, or conduct further interviews by the entire board, or just select the person based on the committee's findings and recommendations.

The committee's report, which shall include the findings and recommendations, is presented at a duly noticed board meeting. At this meeting, the Board discusses the report and findings and recommendations. The Board decides how to select the final candidate. If the Board wants to conduct personal interviews with each of the two or three candidates this can be done in executive session to protect the individual's privacy interest as allowed by HRS sections 92F-14(b)(4) and 92-5(a)(2).

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At the next duly noticed meeting the Board deliberates and selects the new executive director.

b. Appointment of New Members to the Executive Director Search Committee

Vice-Chair called for a Motion to approve the dissolution of the Executive Director Search Committee appointed by former Chair Lau comprised of Vice-Chair, Ms. Seddon, Mr. Tabata, and Mr. Wicker, and allow the Vice-Chair to appointment three new members to a reconstituted Executive Director Search Committee?

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

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

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

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

Vice-Chair said that although the approval of the motion gave him the authority to appoint new members, he would prefer to take any volunteers.

Mr. Watts volunteered.

Mr. Wicker also volunteered.

Ms. Prescott-Tate interjected that Mr. Wicker's volunteering might raise the appearance of impropriety because he was on the previous committee that was chosen by former Chair Lau.

Mr. Wicker stated that he was absent from that meeting so would that still be an impropriety?

Ms. Prescott-Tate said he was appointed to the selection committee, so yes.

Mr. Wicker asked if not him, could another representative from DBEDT be there as their DBEDT designee?

Ms. Prescott-Tate responded, if they cannot get enough volunteers that could fill the positions today that may be a consideration and asked if they could get just a couple of more volunteers.

Mr. Okuhama said he would volunteer.

Ms. Seddon asked who are the three volunteers?

Vice-Chair said they have two volunteers, Mr. Watts and Mr. Okuhama.

Ms. Prescott-Tate asked if one more person could volunteer.

Ms. Seddon suggested that Mr. Hong volunteer.

Mr. Hong acknowledged Ms. Seddon's suggestion and added if Vice-Chair would like to appoint him, he will do it.

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Vice-Chair said yes, he was planning on appointing Mr. Hong anyways if there were no further volunteers.

Ms. Prescott-Tate said three was enough.

Vice-Chair said, to reiterate, the reconstituted committee consists of Mr. Watts, Mr. Okuhama, and Mr. Hong. Vice-Chair thanked them for volunteering.

E. Old Business

1. None

F. Acting Executive Director's Report

1. None

G. Adjourn

Having no further business before the Board, Vice-Chair called for a Motion to Adjourn: Ms. Seddon; Seconded: Mr. Watts.

Vice-Chair asked if there was any discussion. There was none.

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

The meeting was adjourned at 3:51 p.m.

Date of Next Meeting: The next meeting will be held on June 15, 2023, at 9 A.M.

Exhibit "13"

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on June 15, 2023

Via Zoom Teleconference and/or In-Person at 235 S. Beretania St., Suite 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:

Warren Watanabe, Member-At-Large, Vice-Chair (Mr. Watanabe)
Glenn Hong, Member-At-Large (Mr. Hong)
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member (Mr. Tabata)
Kaleo Manuel (Mr. Manual), DLNR Designated Representative for Ex-Officio Member Dawn Chang (joined meeting at 9:34 a.m.)

Members Excused:

Dane Wicker, DBEDT Designated Representative for Ex-Officio Member James Tokioka
Jayson Watts, Maui County Member (Mr. Watts)

Counsel Present, virtually:

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

Staff Present, virtually:

Mark Takemoto, Executive Assistant (Mr. Takemoto)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)

Guests Present, virtually:

ADC Guest
Carol Okada, HDOA
Ford Fuchigami
HDOA
LM
Michael Yadao
Rr0109
Thomas Heaton (2x's)
18082272350
Mark Ladao

Guests Present, physical location: None.

A. Call to Order

Mr. Watanabe called the virtual meeting to order at 9:05 a.m.

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B. Roll Call

Mr. Watanabe conducted a roll call of the Board. Mr. Watanabe called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone over the age of eighteen was present in the room with them. Mr. Watanabe stated that the roll call served as a roll call vote, and for each subsequent vote, he would ask if there were any objections. If there were no objections the motion will be approved on the same basis as the roll call.

Roll call: Mr. Watanabe, Mr. Hong, Ms. Hurd, Mr. Okuhama, Ms. Seddon, and Mr. Tabata acknowledged attendance with no guests present. Mr. Manual joined the meeting at 9:34 a.m.

C. Approval of Minutes

1. Board of Directors Meeting, May 18, 2023

Mr. Watanabe asked for a motion to approve the May 18, 2023 meeting minutes.

Motion to Approve: Ms. Seddon; Second: Ms. Hurd.

Mr. Watanabe asked if there was anything from the staff. There was none.

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

Mr. Watanabe asked for board discussion. There was none.

Mr. Watanabe called for the vote. Hearing no objects the motion was approved: 6-0.

2. Special Board Meeting Minutes, Board of Directors Meeting, May 30, 2023

Mr. Watanabe asked for a motion to approve the May 30, 2023 minutes from the special board meeting.

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

Mr. Watanabe asked if there was anything from the staff. There was none.

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

Mr. Watanabe asked for board discussion. There was none.

Mr. Watanabe called for the vote. Hearing no objections the motion was approved: 6-0.

D. New Business

1. Request for approval to issue new and amended revocable permits to The Davey Tree Expert Company and Davey Tree Surgery Company in Whitmore Village, Oahu, Hawaii, TMK (1) 7-1-002:004 (por.); 009 (por.)

Mr. Watanabe asked for a motion to approve: Ms. Hurd; Second: Mr. Tabata.

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Mr. Watanabe asked for presentation by Staff.

Mr. Roe stated that at one of the previous meetings the Board was updated on asbestos and lead being discovered at a couple of the buildings in Whitmore. This request and the next two requests involve the areas we know were affected, and are sort of open spaces for Licensee operations. Testing was still being done on some of the other buildings so, there's a chance that they're will be further requests for license amendments once they have those test results. But the three requests, D1 through D3, were taking care of the issues they know about, and he's available for any questions.

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

Mr. Watanabe asked if there was any board discussion. Hearing none, Mr. Watanabe said he had a question. What will be the ultimate resolution to this issue, if any?

Mr. Roe responded, uncertain. They're operating on the information they have at the moment. They don't know what they don't know and won't know what they're going to do until the final test results come in. The testing should let them know and the future actions will be based off the findings of the testing that's going on right now.

Mr. Watanabe thanked Mr. Roe and asked if there were any other questions. There were none.

Mr. Watanabe called for the vote. Hearing no objections the motion was approved: 6-0.

2. Request for approval to amend Lease Agreement No. LE-W257-22-01 issued to Ohana Hui Ventures, Inc. in Whitmore Village, Oahu, Hawaii, TMK (1) 7-1-002:004 (por.)

Mr. Watanabe asked for a motion to approve. Ms. Seddon; Second: Mr. Hong.

Mr. Watanabe asked for staff presentation.

Mr. Roe said same presentation as before, but he did want to point out for Agenda items D 1 to D 3, the tax map key numbers on the agenda should be (1) 7-1-002:004 (por.), not (1) 7-2-002:004 (por.), and further noted in a footnote on Agenda items D 1 and D 2, the amended square footage was still under discussion. So if anything deviates from what we've presented to the Board today, the Board will be advised at the next meeting. But nothing should change drastically.

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

Mr. Watanabe asked for Board Discussion.

Mr. Tabata said his question also applies to the previous item as well. When ADC received these facilities, these buildings, was no due diligence done as far as looking for the presence of the lead and asbestos, which leads us into this predicament now.

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Mr. Roe responded that there was a phase one and a phase two environmental assessment done. But it looked primarily at the soil, in and around the 257-acre and the 24-acre parcel. It wasn't disclosed, as far as he knows, that there was lead or asbestos in the paint.

Mr. Tabata asked how old were these buildings?

Mr. Roe responded the oldest ones were probably built in the 1940's. The newer ones, the newer one on the end occupied by Ag Tech, were built he thinks in the 1990's or early 2000's.

Mr. Tabata said okay, those should be clean, anything after 1980 was probably OK.

Mr. Hong said yeah, in the prior minutes the discussion was that the focus was on the soils. And the expectation was that these older buildings were going, these older sheds were going to be demolished and they likely will be at some point, pending funding and planning.

Mr. Watanabe asked if there were any other questions. There were none.

Mr. Watanabe called for the vote. Hearing no objections the motion was approved: 6-0.

3. Request for approval to amend Lease Agreement No. LE-W1502 issued to Dole Food Company, Inc. in Whitmore Village, Oahu, Hawaii, TMK (1) 7-1-002:004 (por.)

Mr. Watanabe asked for a motion to approve: Mr. Okuhama; Second: Ms. Hurd.

Mr. Watanabe asked for staff presentation.

Mr. Roe said he doesn't have anything to present beyond what he's already mentioned for the previous two agenda items.

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

Mr. Watanabe asked if there was any Board discussion. These was none

Mr. Watanabe called for the vote. Hearing no objection the motion was approved: 6-0.

4. Presentation by Deputy Attorney General regarding Sunshine Laws and discussions between board members

Mr. Watanabe called on Ms. Prescott-Tate for the presentation.

Ms. Prescott-Tate said she's going to focus on permitted interactions between board members outside of a duly noticed public board meeting. The Sunshine Law is set forth in HRS chapter 92. One major rule of the Sunshine Law is that all board business must be discussed in a duly noticed open meeting.

HRS section 92-2.5(a) allows two board members to discuss between themselves matters related to board business as long as no commitment to vote is made or sought, and that two members does not constitute a quorum of the board. The purpose of this two-person interaction is to enable those two people to perform their duties faithfully. So, two board members can talk about board business as long as no commitment to vote is sought.

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What is board business? “Board Business” refers to specific matters that fall within the board’s authority, which refers to the matters where the board has supervision, control, jurisdiction, or advisory power. The ADC Board has authority to approve such things as the granting or denial of land licenses or leases, decisions on the sale or purchase of real property, input on procurement of goods and services, infrastructure investment, decisions on what projects to pursue, employment decisions, and ADC policy. What is not board business? Board business does not include past matters that were at one time before the board but have been concluded and not expected to be reconsidered or raised again in the foreseeable future. Board business does not include ministerial tasks such as scheduling of meetings, what items should be on the agenda, or board members’ travel arrangements.

A board member may provide information and materials to staff for inclusion in staff’s analysis or report on board business. So, this is for the staff members report. And the information and materials may be distributed to the board members as part of the staff’s report. But the staff’s report must not discuss or identify the individual board members’ position on the issue.

Board members must not use staff as a go-between to carry messages between board members. This is called “serial communications.” An example of this would be to ask staff to provide a report or memorandum to the board that was drafted by the board member urging a particular position, or a board member emailing their position to other board members. Another example of “serial communications” occurs when two members of a board discuss board business one-on-one, then the member or members go on to discuss this same matter with other members of the board one-on-one. Limiting the discussion to two people but having the same discussion with the whole board by a series of one-on-one interactions is not allowed. So, you can’t use the permissible two member scenario, and then one of each member goes to another board member, and goes to another board member, and so on, and they’re limiting their conversation to two, but in that way, the whole board is going to learn about the same conversation. So that’s another example of serial communications. And that’s not allowed.

So, you have a two-member permitted interaction, and then you have a Permitted Interaction Group. You may hear this interaction referred to as a “PIG.” The PIG is allowed pursuant to HRS section 92-2.5(b)(1), and it is also allowed through the ADC By-Laws, Article 4, section 3. The bylaws also refer to a PIG as an ad hoc committee. The board may establish a permitted interaction group composed of two or more board members. The maximum number of group members must be less than a quorum. The work of a permitted interaction group encompasses three meetings before the full board. At the first meeting, the permitted interaction group is formed; members are appointed to the group, and the scope of the group’s authority or mission is defined. Like what occurred at the May 30, 2023, meeting, the board created a three-member permitted interaction group for the purpose of selecting the top three candidates for the executive director position. After selection of that three member “PIG”, the committee was given the authority to accomplish six tasks, which will ultimately result in the selection of the top three candidates for the executive director position. Once the investigative permitted interaction group is formed, no new members or issues can be added to the group after that first meeting. So, once the group is formed and group’s authority defined, like in the example of the May 30th meeting, the authority of the selection committee was defined where they were given those six tasks to perform, those three members are permitted to have meetings outside of the open board meeting until their mission is accomplished. In the case of the executive director search committee, they are allowed to meet outside of a public meeting to review the applications, conduct candidate interviews, and prepare findings and recommendations.

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At the second meeting of the full board, the findings and recommendations of the investigative permitted interaction group are presented to the board. The board may not act on the findings or recommendations at the second meeting. This allows the public the opportunity to become involved in the process and present informed testimony at the third meeting. The third meeting is where the full board will discuss the investigative permitted interaction group's findings and recommendations.

Just remember, the purpose of the Sunshine Law is to allow open and public communication between all the board members for purposes of decision-making or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. The permitted interaction rules may not be used to circumvent the spirit of the Sunshine Law requirements.

For more information on the subject, go to the Office of Information Practices website, under training, and look for links to the "Quick Review: Who Board Members Can Talk to and When – Parts 1 to 3."

<https://oip.hawaii.gov/wp-content/uploads/2018/07/23Jul13-Who-Bd-Members-Can-Talk-To-PART-1-rev-July-2018.pdf>

<https://oip.hawaii.gov/wp-content/uploads/2022/08/QR-Who-Bd-Members-Can-Talk-to-PART-2-2022.pdf>

<https://oip.hawaii.gov/wp-content/uploads/2022/12/QR-Who-Bd-Members-Can-Talk-to-When-PART-3-12.14.2022-final.pdf>

Anyone have any questions?

Mr. Hong asked, so, the PIG, and the task assigned is a personnel matter. Do all those requirements apply to the PIG in a personnel matter, or is that done in an executive session?

Ms. Prescott-Tate said in this instance, it's a search committee and the candidates are not employees. The candidates have a right to privacy, which would be preserved in executive session. The candidates may waive that right to privacy. So, if the PIG selects the top three contenders and the top three contenders waive their right to privacy, then the names can be announced in that open meeting. If they do not waive their right to privacy, then it would be held in executive session. So right now we don't know what's going to happen. Does that answer your question?

Mr. Hong said because, the way it was described if we bring two or three candidates to the open board we're going to be discussing qualifications and we're talking about the interviews, open to the public.

Ms. Prescott-Tate responded only if the candidates waive their right to privacy. The candidates do have a right to privacy, which could be preserved if the discussion was conducted in executive session.

Mr. Hong then asked, what if one candidate waives the right and two don't.

Ms. Prescott-Tate said, well, how this is going to happen has not been decided yet. But in that scenario the board could choose to conduct in-person interviews of the three prospective

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candidates in executive session, or the Board could decide, if only one were to waive the right to privacy, then the Board could decide to conduct the one interview in the public meeting. It's a Board decision.

Mr. Hong asked, could the PIG recommend that they all be conducted in executive session?

Ms. Prescott-Tate responded, sure, the recommendation is up to the committee.

Ms. Prescott-Tate asked if there were any other questions. There were none.

Mr. Watanabe said this was just an informational briefing so, there's no need for a motion or vote on this matter.

5. Election of officers to the Board of Directors for term July 1, 2023, to June 30, 2024

Mr. Watanabe stated the ADC Board of Directors has two officers: the Chair and Vice-Chair. According to Article 3, Section 2 of the ADC By-Laws, the positions of Chair and Vice-Chair shall be elected by the Board of Directors from among its members, provided that neither of them shall be an ex officio member. The election shall be held on the last regular meeting held prior to July 1st of each year, and the officers elected at each regular election shall take office on the first day of July following their election.

The duties of the officers are set forth in Article 3, Section 5 of the ADC By-Laws, which explains that the chair shall preside at all meetings of the Corporation. At the meetings, the chair shall submit any information and recommendations the chair may deem proper concerning the policies and other affairs of the Corporation. In the absence or disability of the chair, the vice-chair shall perform the duties of the chair and such other duties as may be assigned by the Board of Directors. Members of the Board who qualify to hold office are Mr. Hong, Mr. Okuhama, Ms. Seddon, Mr. Tabata, myself Mr. Watanabe, and Mr. Watts.

I now open nominations for Chair from the floor.

Ms. Prescott-Tate stated for the record, Mr. Manuel had joined the meeting at 9:34 a.m.

Mr. Tabata nominated Mr. Watanabe to be Chair.

Mr. Watanabe said I've been nominated for Chair. Are there any other nominations for Chair? Don't be shy. Hearing no further nominations, are there any objections to closing the nominations? Hearing no objections the nominations for Chair are now closed.

Mr. Watanabe proposed that the vote be taken by voice vote. Is there any objection to a voice vote? Hearing none, Mr. Watanabe called for the vote, all those in favor of Warren Watanabe for Chair, say "Aye." All seven members present responded "Aye."

Mr. Watanabe called for those opposed to say "No." There were none

Mr. Watanabe said the ayes have it. Mr. Watanabe is elected Chair by a vote of 7-0.

Mr. Watanabe asked for nominations for Vice-Chair from the floor.

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Ms. Prescott-Tate said the members could volunteer; they don't have to be nominated

Mr. Watanabe asked if Mr. Tabata would consider being Vice-Chair.

Mr. Tabata responded, to support Mr. Watanabe, he would say yes.

Mr. Watanabe stated Mr. Tabata has been nominated for Vice-Chair.

Mr. Watanabe asked if there are any further nominations for Vice-Chair. There were none.

Mr. Watanabe stated that hearing no further nominations, were there any objections to closing the nominations. Hearing no objections the nominations for Vice-Chair were closed.

Mr. Watanabe proposed that the vote be taken by voice vote. Are there any objections to a voice vote? Hearing none, Mr. Watanabe called for the vote, all those in favor of Mr. Tabata for Vice-Chair, say "Aye." All seven members present responded Aye.

Mr. Watanabe called for those opposed to say "No." There were none.

Mr. Watanabe said the ayes have it. Mr. Tabata is elected Vice-Chair by a vote of 7-0.

E. Old Business

1. Update regarding ADC-owned buildings in Whitmore Village, Oahu, Hawaii TMK (1) 7-1-002:004; :009

Mr. Watanabe called on Mr. Nakamoto to give the report.

Mr. Nakamoto stated that ADC hired OSHE Group LLC to conduct the hazmat sampling. So far, they've completed most of the buildings; they're out there today to complete the rest. Hopefully, we'll have a report for the Board as soon as possible. The intent is to demolish these buildings at some point. Once we get this sampling report we'll know what we're dealing with and how to properly demolish the buildings according to Department of Health and EPA standards. Timeline as far as completion of the sampling, we're hoping to get them before the next meeting for discussion. So far, nothing alarming has been found; nothing above action levels. Basically there have been findings of lead and asbestos in the paint and light bulbs; things like that. Other than that, nothing extraordinary; but it's ongoing and we'll provide a report as soon as possible.

2. Update on the progress of the Executive Director Search Committee

Mr. Watanabe called on Ms. Prescott-Tate for an update.

Ms. Prescott-Tate said you can all read along with me, Agenda Item E 2. On May 30th, the executive director search committee was appointed and given the following six tasks to perform:

- (1) The committee shall develop an application process for non-civil service applicants;
- (2) The committee shall develop a solicitation for the position of the executive director;

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- (3) The committee shall select a method of posting the solicitation and post the solicitation;
- (4) The committee shall develop criteria for ranking the applicants;
- (5) The committee shall accept the applications and conduct initial review and ranking of the applicants; and
- (6) The committee shall narrow the selection of the top two or three candidates and report their findings to the board.

So far the committee has drafted the ADC job description; the job description was submitted to the director of the department of business and economic development and tourism (DBEDT) for approval on May 31st; it was approved on June 5th. The committee discussed the application process and decided to request that the applicants fill out the state of Hawaii non-civil service employment form and provide a resume and cover letter. The committee discussed where the job solicitation should be posted and for how long it should be posted. The committee decided that the job description should be posted on the state job site, the ADC, DBEDT, and department of agriculture (HDOA) website and to be distributed as widely as possible by asking our partner agencies to help get the word out. The committee decided to accept applications for 21 days, which will be until June 26th. The job notice was posted on June 5th. So please spread the word and let everyone you know that if they meet the job description to apply. The first three tasks have been completed. The committee is now working on drafting criteria for ranking the applicants. The top three candidates will be referred to the full board. Are there any questions? There were none.

Mr. Watanabe thanked Mr. Nakamoto and Ms. Prescott-Tate and stated these were just informational briefings so there was no need for a motion or a vote on these matters.

F. Acting Executive Director's Report

Mr. Watanabe called on Mr. Takemoto to give his report.

Mr. Takemoto said in light of the ending of the legislative session he thought they'd go through the bills. They did receive the governor's intent to line item veto yesterday, and appreciated that it was sent early. It was quite a task to cut a billion dollars out of the biennium budget. Please let me know at any time if you have questions.

1. Legislative items:

HB 1426 Related to Value-added Products – Food and Product Innovation Network: Did not pass, but we did get some funding to support this initiative by putting together a food innovation network statewide, so there is some money to work on this.

HB 852 Related to State Enterprise Zones – value-added agriculture products to enterprise zones: Did not pass. This was related to state enterprise zones, which also did not pass.

Mr. Watanabe said he thought that Value-Added was already a part of the enterprise zone.

Mr. Takemoto responded that they're trying to expand the use of properties that are already part of the enterprise zones, or add enterprise zones in locations that support farmers.

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Ms. Hurd added that this bill would allow solar, wind, geothermal type of activities within the ag zones that were considered ag related and that HDOA opposed that bill, or maybe not opposed but comment. HDOA doesn't consider those practices to be ag related in an agricultural enterprise zone.

Mr. Takemoto said ADC was focusing on the parts where they were going to have enterprise zones and working with FTZs (foreign trade zones), to support farmers to bring in products, and store it there like a foreign trade zone. He agreed with Ms. Hurd that a solar facility was not keeping with trying to preserve agriculture and should not be defined as ag related in an ag enterprise zone. What ADC wanted to focus on was working with the FTZ folks and setting up locations where farmers could draw product, especially as they start to do innovation, packaging, and those types of things.

Ms. Hurd said absolutely, washing stations, refrigeration.

Mr. Takemoto responded exactly, that's what they were focused on.

SB 818 Related to Aquaculture – Move aquaculture from HDOA to ADC: did not pass. ADC wants to promote and support aquaculture and we're very happy to work with HDOA to do that. He's talked to Chair Hurd about supporting aquaculture and looked forward to working on that.

Waiahole debt relief – Requested \$4 million to pay off debt: Did not pass. Mr. Takemoto said that ADC was looking at that to pay down the debt. When the Waiahole ditch was purchased, it cost just north of \$4 million. Continuing to carry this debt is taking away ADC's ability to development farmland and the water use was going down because less acres are in production. They're finding the cost of water to the farmers is slowly creeping upward because there are fewer users. ADC requested that money because all this time later the debt exceeds the original loan. This bill was getting some traction up until the very last moment.

HB 690 Hawaii Agricultural Investment Program: Did not pass. This bill was to give grant funding to ADC. He spoke to Chair Hurd about this, and ADC intends to work with HDOA to come up with some program that doesn't overlap and where they're not competing for funding. ADC and HDOA want to complement each other; to benefit the farmers by working together.

AAHOAKA reservoir improvements – ADC requested \$1.1 million in CIP funds and will transfer to DAGS (Department of Accounting and General Services) to complete improvements on the reservoir in Kalepa, Kauai. This was approved by the Governor and the legislature. But the CIP list hasn't come out yet and is subject to change.

Reservoir 155 & 225 improvements: \$6.7 million in funds for HDOA to complete the improvements to these two reservoirs in Kunia, Oahu, at the end of the Waiahole water system. This project has been ongoing for about 20 years. The funds are part of the HDOA budget. It is important to finish work on those two reservoirs.

Agriculture Worker Housing: ADC requested \$6.5 million that was reduced to \$5 million in the budget to purchase agricultural worker housing. ADC is looking for an opportunity to purchase worker housing, as everybody knows, it's critical for agricultural workers.

Purchase of agricultural land: \$3 million in budget to purchase a parcel from Dole. This purchase was presented to the Board recently and the board approved ADC staff to do due

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diligence on a piece of property. We're doing that now. Once the money is approved, and the due diligence complete, ADC will submit an LOI (letter of intent) to Dole.

Central Oahu Food Hub: ADC requested \$5.65 million to complete project. The funds are in DAGS budget. These funds were approved to finish some of the work on the central Oahu, Whitmore food hub.

Purchase of Whitmore property: \$3 million requested for the parcel adjacent to the Wahiawa Value-Added Product Development Center. Funds not approved. This project was handed off to HDOE (Hawaii Department of Education). This is property adjacent to the value-added product development center. It's good that HDOE will make this purchase.

Galbraith field clean up: ADC requested \$500K. Funds not approved. This was to do the cleanup of the parcel that had the fire where the illegal activity was occurring. Testing of the area showed much better than expected. It's a lot cleaner resulting in a much smaller impact area; much better than first feared. Testing should be completed soon; then we'll know what funding to request for the cleanup. But this request was not approved.

Slaughterhouse: ADC requested \$1 million for fiscal year 2024 and \$3 million for fiscal year 2025. \$4 million was approved for fiscal years 2025. One million dollars for planning; three million for construction, all approved for the 2025 fiscal year. Right now we're doing some legwork looking for the location. This is the small animal slaughterhouse, for pigs, goats, those types of animals, to help support that industry.

Food and Product Innovation Network: \$10 million. ADC is working with UH CDC (University of Hawaii Community Design Center) to develop food and product innovation facilities for Hawaii County, Maui County, Kauai County, and Honolulu County. There's \$10 million in the budget for planning, outreach, and site development. Not really the construction or groundwork, but just going out there to start the planning process. They're going to go to all the counties and look at developing Innovation facilities and then we'll network together with all the counties.

Wahiawa Wastewater Treatment Facility water reuse: \$90 million for ADC to connect treated wastewater to reservoir for use as irrigation water. ADC will work with City and County of Honolulu. This is the big project you've probably heard about. With respect to ADC, they speak about this 90 million, a hundred-million-dollar water project, irrigation project, and for the board's understanding, this project is taking wastewater that has been discharged from the Wahiawa Wastewater treatment facility into Lake Wilson and then further into the river. What this project would do is take that water out of that river and lake and use that water for irrigation purposes. That's why the price tag is so steep. It's more of a sewer pipe, initially, to move wastewater out of those waterways and into areas that ADC can use for irrigation. This, for the most part seems to have been on the veto list. The governor has reduced the amount by \$88.8 million. We'll be working with the governor's office to understand the reason for the reduction and hopefully move forward with this project. And so, what we've intended to do is find out what the intention is and is there an opportunity to restore even a small portion of funding to maybe complete planning for this project

Related to the Wahiawa Irrigation System Operation: \$800 thousand to operate the system if needed in FY 2024. This is related to the dam project. It's money to operate the system in the event the state took over the system from Dole. ADC would need some funding in the interim

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until they could start building and gaining revenue from the irrigation system. This was also part of the \$90 million reduction. The way the budget was, there was \$90 million for land purchase, the \$800,000 for the operating system, and the \$3 million land purchase. Of that \$93 million, about \$5 million is left, that's how the math works. ADC should have enough money to purchase the land. But we'll continue to work with the governor's office to see if they can restore funding for the pipeline. That's an important project. It's not so much an irrigation project as it's getting treated wastewater out of the lake and the river. Any questions?

As you know, the governor still could change things. We haven't seen the veto list for anything other than this line-item veto. It was good of the governor to get that out so early and give us the chance to see if we can get some of the money back to ADC.

SB 833 Wahiawa Irrigation System Due Diligence: Passed this session. ADC is to perform a due diligence study on the entire ditch system, approximately thirty miles, survey the five parcels owned by Sustainable Hawaii, and include a Phase I and Phase II environmental assessment if needed. ADC did get a cost proposal from a consultant for \$770,000. The funds are being transferred from HDOA to ADC. This money, \$3.5 million was given to HDOA in FY 2022-2023, and they're sharing that money with ADC and Department of Land and Natural Resources (DLNR) to work on due diligence with respect to the dam improvements and management of Lake Wilson and irrigation system. The study resulted from ADC, DLNR, and HDOA collaboration. We expect to receive preliminary information from the study by the end of this calendar year. ADC has been working with HDOA who will JV (joint venture) the money over. ADC will work with the consultant then turn the study over to HDOA who will compile the work that will be used for the final study of that larger project. We expect the preliminary results this year, but don't have a solid timeline for completion of the entire project. That depends on what the study reveals. Any questions on that?

2. Purchase of Dole Wells #24, #25, and #26

The purchase was supposed to close the end of May but was delayed on Dole's end. The filing and recording of the land court documents is expected in June or July 2023. The purchase is nearly complete. Dole was supposed to provide some documents for land court and they're working on that. The delay is waiting for specific documents and review of those documents by the attorney general's office. Then we should be able to move forward on closing that sale. Are there any questions?

Ms. Hurd said she does have a question on the Wahiawa irrigation system. HDOA's moving forward on that. HDOA already divvied up the money and the work is progressing. But that project was it in support of the Wahiawa dam bigger project, the whole project?

Mr. Takemoto responded yes, that is correct; it's a portion of that.

Ms. Hurd continued, and that project the one HDOA is responsible to bring the dam up to safety standards. I don't see it on the list of projects that made it.

Mr. Takemoto said SB 833, did pass. This is the bill that required the governor or governor's team to negotiate with Dole for the State to take over the lake, the dam, and operation of the irrigation system. The way it was divvied up was DLNR will manage the lake portion, which is currently freshwater recreational resource area. There's boating and fishing there. ADC would manage the irrigation system. HDOA would bring the dam up to standard and then turn that

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over to ADC. So, at that point, HDOA would step out of the project because part of the dam management would be part of managing the irrigation system. Because DLNR was also dam safety, DLNR did not want to be managing the dam repair and at the same time overseeing the compliance of the dam. They didn't want the same agency doing both. And HDOA also has condemnation powers for agricultural purposes. Some of the properties with respect to the Sustainable Hawaii parcels may be condemned; and a couple of other parcels that are either part of the lake or part of the irrigation system and the tunnel system downstream. This bill could either be passed into law or vetoed. But right now, it did pass, the \$26 million dollars. The governor did not share his veto items for the bills. So we'll have to wait and see whether it proceeds. But ADC, HDOA, and DLNR are proceeding with the due diligence. We just don't know for sure what's going to happen past that.

Ms. Hurd said she'd like to add to what he said earlier about HDOA, after they passed dam safety, they're turning it over completely to ADC to manage, which includes the collection of the water fees to pay for the operation of the irrigation system.

Mr. Takemoto responded, Ms. Hurd is right, that's an important part of it. The initial funding is to sort of bridge the gap until they can start collecting revenue. Currently the system as-is does make a little bit of money or breaks even. The due diligence will reveal more. There's a nice nexus with the sewer pipeline. If you take the treated sewer water out of the reservoir, suddenly you maximize the uses of the lake water. And that benefits DLNR. You could start doing more fishing right, you can start stocking that. And then for irrigation purposes, the water has a greater use to maximize that use. So, there's a nice benefit there if they can get both projects done. But you're correct, once ADC takes over, they would start drawing revenue and that should hopefully take care of the costs.

Ms. Hurd asked, the Wahiawa water, is that water considered R2 water?

Mr. Takemoto responded the water coming out of the wastewater treatment facility, it's R1. The city has done a good job slowly upgrading it, so the water quality is quite good, it's R1. The pipeline will have R1 water, which is very good quality for agriculture use. When they discharge it into the lake, it causes the system to be R2.

Mr. Manuel offered a gentle reminder on the well acquisitions. ADC should reach out to the commission for water resource management (CWRM) to make sure that transferring ownership of the water use permits tied to those wells makes it on CWRM records. Just trying to close the loop on that acquisition, to make sure they're in compliance with all the water use permit requirements. And, real quick, going back to the executive director search, can someone send the board members the link to the job notice so they can forward that out to their networks. He can't find it on the web.

Ms. Prescott-Tate responded that's a wonderful idea. I'll send it around. Thank you. I think it's on the ADC website.

Mr. Takemoto said it is on the ADC website under careers. And thank you Board Member Manuel for the reminder. The water permit paperwork has been filled out as part of the purchase agreement and when it closes, the transfer will be done.

Mr. Hong said he just had some global questions on this. The Wahiawa dam is currently owned by Dole; which is the lead agency in the negotiations?

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Mr. Takemoto responded that hasn't been determined yet. If SB 833 passes, the governor will put together a team. So, he couldn't tell you at this time. The bill delegates the authority to negotiate, to the governor.

Mr. Hong said, okay just in general, I'm looking at it from Dole's standpoint. Dole has a huge liability with that system because it's old, if it fails it's going to be catastrophic. Dole has that liability and they want to get out of that liability. My take on it is that Dole should be doling out a lot of money to the state agency to prevent that liability. Basically, it's a liability that's probably not on their books yet, but it should be. And to get out of it, they need to come up to the plate and pay the piper.

Mr. Watanabe asked if there were any other questions for Mr. Takemoto.

Mr. Okuhama said he had a request, if possible. He knows the staff is busy, but he thinks that it's a good idea to tour some of their lands and facilities that they manage on Oahu. The Board would have a much better idea whenever they talk about all these facilities, properties, and such. It would be good to have some perspective by visiting. I've been around the areas Waialua, Whitmore, and stuff, but still, I'm not sure what is what. So, whenever you guys would have some time to do that.

Mr. Takemoto responded that's an excellent idea. We'll set something up. There are quite a few spots that would be interesting to see; including the Waiahole water system, the value-added product development center, they would be a great place to visit.

Mr. Hong said I think if you do that, you must also make that tour available to the public. Is that correct?

Mr. Takemoto said I think they certainly would be open to that. He doesn't think why they wouldn't be; you know, they just must keep everybody together. We don't want anybody getting hurt going around agricultural facilities.

Mr. Watanabe asked if there were any other questions for Mr. Takemoto. There were none.

G. Adjourn

Mr. Watanabe asked for a motion to adjourn: Mr. Manuel; Second: Ms. Seddon.

Mr. Watanabe called for a vote. Hearing no objections the meeting was adjourned at 10:18 a.m.

Respectfully submitted,

Acting Executive Director
Mark Takemoto

Exhibit "14"

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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:

Warren Watanabe, Member-At-Large (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Karen Seddon, Member-At-Large (Ms. Seddon)
Lyle Tabata, Kauai County Member, Vice-Chair (Mr. Tabata)
Jayson Watts, Maui County Member (Mr. Watts)
Dane Wicker, DBEDT Designated Representative for Ex-Officio Member James Tokioka (Mr. Wicker)
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd)

Members Excused:

Kaleo Manuel, DLNR Designated Representative for Ex-Officio Member Dawn Chang

Counsel Present, virtually:

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

Staff Present, virtually:

Mark Takemoto, Acting Executive Director (Mr. Takemoto)
Ken Nakamoto, Project Manager (Mr. Nakamoto)
Lyle Roe, Property Manager (Mr. Roe)

Guests Present, virtually:

ADC Guest
ffuchigami
lm
18082272350
Beth Amano, KIUC
Korynn Grenert
Mark Ladao
Thomas Heaton
Trisha Yamato
Linda
Scott Enright

Guests Present, physical location: None.

A. Call to Order

Chair called the hybrid meeting to order at 9:05 a.m.

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B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone 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: Ms. Hurd, Mr. Okuhama, Ms. Seddon, Mr. Tabata, and Mr. Wicker acknowledged attendance with no guests present. Mr. Hong and Mr. Watts stated they were together at the same location with no guests present.

C. Approval of Minutes

1. Board Meeting Minutes, June 15, 2023

Chair asked for a motion to approve the June 15, 2023 meeting minutes.

Motion to Approve: Mr. Watts; Second: Mr. Hong.

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

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

Chair asked for board discussion. There was none.

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

D. New Business

1. Request for approval to amend License Agreement No. LI-KA-21-03 issued to Hawaii Golden Farm Inc. to re-characterize portions of Unit A-1 in Kalepa, Kauai, Hawaii, TMK (4) 3-9-002:001 (por.)

Chair asked for a motion to approve: Mr. Wicker; Second: Mr. Tabata.

Chair asked for staff presentation.

Mr. Roe said the history of this license was documented in the submittal background. Mr. Roe and Mr. Takemoto met with the licensee yesterday who confirmed that she was agreeable to the re-characterization being made by the board today. In short, Hawaii Golden Farm requests that 15 total acres be characterized and billed at the orchard rate, 20 acres be characterized and billed at the non-tillable rate due to slope and rocky terrain; that 9 acres be characterized and billed at the non-tillable rate as it’s part of the ditch system; and 1.7 acres of primary access road on the perimeter of the premises be excluded from the license to preserve access to other units and some critical infrastructure. While the process of getting this unit under license was at times a little frustrating, Hawaii Golden Farms is a reputable GAP certified grower, providing produce in Hawaii and for export markets.

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

Chair asked if there was any Board discussion.

Mr. Wicker asked how long this license agreement was.

Mr. Roe said this amends the existing license agreement which is a 35-year license. It really just adds the unit A-2 into unit A and then combines them into one contiguous unit, A-1.

Mr. Wicker said it looks like the re-characterization was changing the type of farm uses, to include orchards. What type of activity are they doing now or is this a shift in direction.

Mr. Roe responded it's not really a shift. The orchards may be a little bit of a shift. They're talking about fruit crops and ornamentals, but the remainder of the tillable acres are reserved for sweet potato and ginger.

tillable

Mr. Hong asked how many acres are in the non-orchard.

Mr. Roe responded, 185.3 acres.

Mr. Hong asked what is the change in the annual revenues with the re-designation of these acres?

Mr. Roe responded, based on the last amendment, as of November 22, 2022, the annual rental income for the combined unit was \$44,500. This request decreases the annual rental income to \$40,455; roughly about \$4,000.00.

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

Chair called for the vote. Hearing no objection the motion was approved: 8-0.

2. Request for approval for Helemano Farms, LLC under License Agreement No. LI-WM1504 to construct improvements in Whitmore Village, Oahu, Hawaii, TMK (1) 7-1-002:004 (por.)

Chair asked for a motion to approve: Mr. Tabata; Second: Mr. Watts.

Chair asked for staff presentation.

Mr. Roe stated that Helemano Farms is a farm in good standing in Whitmore Village. They grow Christmas trees for sale, seasonal. As the letter in the back of the submittal, Exhibit B notes, over the past 3 years they've experienced a rash of theft, vandalism, trespassing etc. and they request board approval to construct a non-residential structure for security staff to monitor the premises. They have been made aware that residential activity on the property is strictly prohibited.

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

Chair asked if there was any Board discussion.

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Mr. Wicker asked if the dimensions or a rendering of this security building will be provided.

Mr. Roes responded they don't have one yet but one of the recommendations would be, if the board approved the request, they submit the new building construction plans for ADC approval before construction begins.

Mr. Wicker asked if there was an existing building on-site now right?

Mr. Roe said there is.

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

Chair called for the vote. Hearing no objection the motion was approved: 8-0.

E. Old Business

1. Update regarding ADC-owned buildings in Whitmore Village, Oahu, Hawaii, TMK (1) 7-1-002:004, 009.

Chair called on Mr. Nakamoto to provide an update.

Mr. Nakamoto said they completed a pre-demolition hazmat survey of all of the remaining buildings and they're still awaiting the results. They need to see the report before they can make a determination. The report should have been provided this week; he's hoping to have the results for the next meeting.

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

Chair said this was just an informational update so there is no need for a motion or vote.

2. Presentation by the Executive Director Search Committee regarding their findings and recommendations.

Chair called on the committee for their findings and recommendations.

Mr. Watts asked if they were going to discuss this now. He wanted to make sure what is public and what is not public as far as the findings.

Ms. Prescott-Tate stated that the public findings were provided in the submittal. Mr. Watts could read that or if people have already read it then they can just go into executive session.

Mr. Watts said he will defer to the submission in writing.

Ms. Prescott-Tate said ok, all the public information is available in the submittal if anybody wants to read it. Then we can go into executive session.

Chair stated HRS section 92-4 allows the board to hold an executive meeting closed to the public. The board will be further discussing Old Business Item 2, which is the presentation by the executive director's search committee established to review applications, conduct interviews and recommend the top 2 or 3 applicants for further review and action by the full board. This

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presentation may be closed to the public pursuant to HRS section 92-5(a)(2) to allow discussion of a hiring decision where consideration of matters affecting privacy will be involved.

Chair asked if there was any public testimony before they go into executive session and advised that testimony was limited to the decision to go into executive session. There was none.

Chair asked for a motion to go into executive session. Motion: Mr. Hong.

Mr. Tabata asked if he could ask a question.

Chair told Mr. Tabata to go ahead.

Mr. Tabata asked if they could get the Executive Director's update first, before they go into executive session, and asked Ms. Prescott-Tate if that was appropriate.

Ms. Prescott-Tate said it's up to the board; they could motion to take it out of order.

Mr. Tabata made the motion to take the acting executive director's update out of order, prior to going into executive session.

Mr. Hong withdrew his motion to go into executive session.

Motion to take Agenda Item F out of order by Mr. Tabata; Second: Mr. Watts.

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

F. Acting Executive Director's Report.

Mr. Takemoto stated that a copy of his report was provided with the submittals. He wanted to talk about the budget first. For fiscal year 2024 the budgeted projects are:

ADC received \$10MM to do a food product innovation network in all counties. The funds are mainly for planning. So far, we've met with some consultants and reached out to Hawaii, Maui, Kauai, and Honolulu counties to start coordinating the project and get the funds encumbered before the end of the fiscal year. This project is similar to what's being done in Wahiawa to provide agricultural producer's with an opportunity to expand their market and make use of a greater amount of what's grown.

ADC received \$2MM to complete the plans for the Wahiawa Wastewater pipeline. The governor cut the funds for construction but provided funding to complete the design work. At that time, we should know what the actual project cost may be. Mr. Tabata asked if the money goes to the City [City and County of Honolulu] (City), because the City Environmental Services, Wastewater Branch would be in charge of this design. Mr. Takemoto responded, no, this money is for design of the pipeline connection point. The City did receive funding to do the work that is on their property and the City was actually working on that. Mr. Tabata continued that he thought the City was responsible all the way to the end because they're also responsible for the backup system for disposal in case they don't meet the R-1 standards. Mr. Takemoto said that's correct. The City is building the backup system on City property. ADC is building a connecting point to deliver water to the rest of the system. The design consultant has completed the design and can prepare an update for the board. Mr. Tabata said to keep in mind

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there's supposed to be a diversion system designed into this water transfer in case they don't meet the R-1 standard, and asked what method will be used to determine if the City is not meeting the standard? Mr. Takemoto stated that was a good point and he'll ask the consultant to include that in the update to the board, which he believed will be planned for August. Mr. Hong asked who the consultant was and have they been working on the project from the beginning. Mr. Takemoto responded the consultant was Brown and Caldwell and he believed they have been working on the project since the beginning.

ADC received \$3MM in fiscal year 2024 for the property that the board approved for ADC to start due diligence on the purchase from Dole. This is a 49, 50-acre parcel that ADC basically owns the surrounding 3-sides of the property. The property was approved for purchase a number of years ago but during due diligence ADC found there was a question on the title. Dole has since attempted to clear the title question and now ADC is looking to do the due diligence to complete the purchase.

ADC received \$1.1MM CIP [capital improvement project] funds for the Aahoaka reservoir improvements. This is on Kauai to complete the work on that reservoir. ADC is going to transfer the funds to DAGS [Department of Accounting and General Services] since DAGS has been working on this since the beginning. Mr. Tabata said he was working on this project with Mr. Nakatani since 2010 when he became Public Works Director on Kauai. He would appreciate an update of where the plan is now. There were ongoing costs associated with the reservoir and the pipeline to get to the ADC lands. Mr. Tabata asked if staff could get him an update on what this all entails, the entire project. Mr. Takemoto said staff will put something together and send it to the board.

ADC received \$4MM CIP for slaughterhouse design and construction. ADC will be looking at a small animal slaughterhouse on Oahu. There is a slaughterhouse for larger animals but it's difficult for them to set up and reset for smaller animals. Right now this is a market that could be restarted on Oahu. ADC is looking for a location. A meeting is scheduled with Department of Agriculture (HDOA) and DLNR [Department of Land and Natural Resources] and some of the stakeholders to resolve the land issue and then they'll be moving forward on doing design work and construction.

Mr. Takemoto went on to item number 2. As you are aware, ADC purchased Yardi property management software. ADC actually sent out some of the invoices from that system. Approximately 90% of the land licenses and agreements are in there. Staff is working on the water system to get them in there and that ties into the next item. An accounting consultant has been hired and will be part of implementing this Yardi system; so it's tying in very nicely there. It's not fully operational but it's getting there. Mr. Hong asked when they will be 100% on the Yardi system. Mr. Takemoto responded he thinks once they input all the Waiahole/Waikane clients, and they complete confirming some of the important facts on a few tenants, they should be done by the end of the month. Once they have everything entered we'll start rolling it out, working with the consultants and DBEDT finance. We've already started; sent a few invoices. He expects to be operational by the end of August, and we'll keep improving on it. We'll be tying it into some of the mapping systems. The maps will eventually be added to the website.

Mr. Watts asked if the property management system and the accounting consultant, will address all of the previous accounting concerns identified in the audit?

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Mr. Takemoto replied yes. The scope of work that we did for the accounting consultant was based off recommendations from the 2021 financial audit. The accounting consultant is aware of that scope of work, and he said it's going to take some time to go through this. They're in the discovery phase now, going from task to task. So yes, it should address all of the questions or recommendations raised by the financial audit.

Mr. Watts said he had a couple of personal concerns and was glad to see them addressed. One was to give the public the ability to move through the website and these sites on their own and look into whatever they want to look into; so if that's what it can do then that's wonderful.

Mr. Takemoto moved on to the Wahiawa irrigation system. That's the project about the state acquiring the Wahiawa reservoir, dam and irrigation ditch system. ADC's consultant is starting on that now. ADC's portion that we'll be working on is primarily due diligence on some of the properties and of course the ditch system. That's just beginning and the timeline for the state is for the due diligence to be completed and make a decision one way or the other on that acquisition by 2026.

Mr. Takemoto continued, real quick just an update on vacant positions. We have interviews scheduled for the Accountant V, and we're just waiting for approval of the interview panel. One of the tasks assigned to the Accountant V, will be to hire the Accountant IV. So the Accountant V will hire their staff. The accountants will be helping with Yardi and with the accounting consultants. We hope to fill those two positions soon. The asset manager, we've received and reviewed some applications and are waiting for approval from the Governor to go ahead and make offers so hopefully we're very close on filling that job. We received approval to redescribe the administrative services officer position to a contract administrator and this will help them a lot on the procurement contracting and help support the project management as well as the other functions in the office. The position he left off the list was the secretary. We have a plan for an 89-day hire. The position has been posted for a while and we haven't had a lot of applications.

Mr. Watts asked Mr. Takemoto, about the projects he had talked about, if he could provide the board with a list of those that still need to be encumbered; a timeline working backwards so they don't miss any critical deadlines on where they are; what they're working on; what's been assigned; what's been included in the governor's budget; what's been approved/not approved. Could you give us an idea of where things are?

Mr. Takemoto responded, sure. Starting with the \$10MM food and product innovation network, funds must be encumbered by June 30, 2024. The way they're doing this right now is we're in the process of getting the appropriation codes so we can start requesting funding. That's the first step we're in right now with budget and appropriation guidelines; the rules on how you spend the money. We're making requests to have the codes set up. Once we get that we can request funding then we start contracting with some of the consultants. We create a scope of work. The scope of work and delivery have to be completed by January/February 2024. Then they take the scope of work and go out and start hiring more consultants to develop construction drawings. They need to be done so that can be posted, and those contracts can be awarded before the end of the fiscal year. That's the timeline for that project. We can start some contractor selection. We normally get help from HDOA. DLNR. Many times, they loan engineers to get things teed up and ready to submit, go out for selection, then people can start bidding. We need to get that scope of work done by early 2024 to hit that deadline. We've already reached out to all the area stakeholders, Hawaii Island, Maui, Molokai, Kauai and Oahu so we can start identifying some projects to start, not too broad in the beginning, so we can narrow it down and encumber that money.

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For the \$2MM, we're completing the plans and don't think we'll have a problem once the money is released. It will go out to bid. The drawing, the design work is already done. There are different portions of the project, one is the long pipeline, one is the inter-connecting pipelines between reservoir, and one is the lake irrigation pump system, to pump water out of the lake. Because once you remove the wastewater from the lake, you change that water, it's no longer R-1; it becomes non-spec water. Then you can start pumping from the lake directly and that's the irrigation water. You can use the water to its fullest value as non-spec water.

Mr. Watts asked who's pumping water into Lake Wilson.

Mr. Takemoto responded right now City and County of Honolulu. About 1.6 million gallons goes in every day, that's the estimate. That's one project we shouldn't have a problem encumbering the funds.

Ms. Hurd said as she understands it, isn't the wastewater that's being pumped into the area R-1?

Mr. Takemoto said yes, over the years, they've been steadily improving the discharge so it's R-1 now.

Mr. Takemoto continued, the \$3MM for the purchase of the Dole property, we would have to make a decision, contract, and encumber by June 30, 2024, which should be no problem. We expect to make a decision on this much sooner than that.

The \$1.1MM for the Aahoaka reservoir improvements, this is an ongoing project. We're going to transfer the funds to DAGs because they're the ones who are actually managing the project. Once we get the warrant codes we'll transfer the funds.

Mr. Watts asked where the water from the Aahoaka reservoir is going

Mr. Takemoto said Aahoaka feeds some of the ADC property. It was part of the East Kauai irrigation system and there are several other reservoirs tied to that. The Aahoaka is one of them. It's not very big but it's considered high risk because it's up slope from a residential area and that's why improvements are being made. That reservoir doesn't have the kind of inlet that you would typically have, so as long as you manage it properly it should be fine. There's no river flowing into it so if it rains heavily there would be no great increase of water intake. Basically, you close the gate, and nothing more goes into it.

The \$4MM CIP slaughterhouse, that one is 2026. Because that money was funded in the first year of the biennium, CIP funds have 3-years, so technically they have to encumber by 2026. So the goal right now is get the land. They'll want to transfer some of the funds by 2025 to start the design work and then complete construction. So it's find the location, start the design work, complete the design work, go out to bid for construction, and we have till 2026 to do that. We can certainly continue to provide updates on these projects to the Board.

Ms. Hurd asked, regarding the slaughter house, we have until the end of fiscal year 2026 to encumber the funds but are any of the funds available now?

Mr. Takemoto responded no. The funds were actually given in 2025 but we need to do something now so they're requesting through Budget and Finance and then to Governor to give them some of the money earlier and we're waiting to hear back. There's going to be a lot of back and forth on that before we can do that, but we'd like to start some of the design work now.

Ms. Hurd asked, but you can't do that until you move some the funds from 2025 to 2024 right?

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Mr. Takemoto said correct.

Mr. Okuhama asked regarding the voyager [Yardi] software system. He knows that the accountant just started but do we have a target date when financial reports will be coming out? Or at least set some goals on that.

Mr. Takemoto said, that's a good point. He doesn't have that right now but we're just trying to get it set up for the very basic functions, but once that's all in, he's guessing it could generate a report immediately. There wouldn't be much to report because it will just have information from the present and going forward. As time goes by and the accountant gets on board, we can start inputting the historical data, going back at least to 2019. That is what we're trying to do. Then we'll be able to start generating some historical information too.

Mr. Okuhama said having the reports going forward at least it's a start and then going forward when you look at what they have on hand, at least it's a good start.

Mr. Takemoto said that was a goal we really want to do. The plan is to produce a financial report for every board meeting, once we get it running and with help from the accounting consultant and the accountant. We tried generating a report but, not being an accountant, we didn't know if the report was accurate, or error filled so we want to wait until the accountants are on board. We do try to work with DBEDT fiscal, but they have a lot of work too. We believe we'll be able to provide the report once we get the system, the consultant, and the accountant in place. Then a monthly report will be provided.

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

Recalling Old Business Agenda Item E-2, regarding the presentation by the executive director search committee regarding their findings and recommendations:

Chair asked for a motion to go into executive session: Mr. Hong; Second: Ms. Hurd.

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

Chair asked if anyone from the public wished to give testimony on the subject of entering into executive session. There was none.

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

Chair called for the vote. Hearing no objection the motion was approved: 8-0.

Mr. Roe reminded the Board members to mute or log out of the regular session before going into executive session.

The regular meeting recessed at 9:50 A.M.

The regular meeting reconvened at 10:23 A.M.

Chair stated pursuant to Act 19 of the 2023 legislative session, the Board will take the following actions based upon discussions by the full board in executive session. The motion to adopt the executive director's search committee recommendation will be heard at the board meeting to be held on Thursday,

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August 3, 2023 at 9:00 a.m. The executive director's search committee recommendations were to hold an in-person meeting of the board of directors on August 3, 2023, provided that the top two applicants are available. The board of directors will conduct in-person interviews of the applicants in executive session on August 3, 2023. Following the in-person interviews in executive session on Thursday, August 3, 2023, the board of directors will decide on the executive director's salary and in executive session on Thursday, August 3, 2023, the board of directors will select the person to be offered the executive director position and salary amount. If the two applicants are unavailable on August 3, 2023, the August 3, 2023 meeting will be cancelled. A mutually agreeable date will be selected, and the new date posted on the ADC website and State calendar. This completes the work of the executive directors search committee, which will now be dissolved. Chair thanked the committee for working so quickly and diligently to fill the executive director position.

Ms. Prescott-Tate stated the vote to accept the executive director search committee recommendations will be held at the August 3rd meeting, so the public is invited to give any input that they wish. She will contact the applicants and make sure that they're available for a second interview on August 3rd at 9:00 a.m. If the candidates are not available then we'll reschedule to a date when everybody can be there. The interviews will be conducted at an in-person session of the Board. That means bringing all the outer island members to Oahu for the meeting.

G. Adjourn

Seeing there was no other business before the Board, Chair asked for a motion to adjourn: Mr. Wicker;
Second: Mr. Tabata.

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

The meeting adjourned at 10:27 a.m.

Date of Next Meeting: Next meeting tentatively scheduled for August 3, 2023, at 9 A.M.

Exhibit "15"

AGRIBUSINESS DEVELOPMENT CORPORATION

Executive Session Minutes of the Board of Directors Meeting held Virtually on July 20, 2023
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HRS section 92-4 allows the board to hold an executive meeting closed to the public. The board will be further discussing Old Business Item 2, which is the presentation by the executive director's search committee established to review applications, conduct interviews and recommend the top 2 or 3 applicants for further review and action by the full board. This presentation may be closed to the public pursuant to HRS section 92-5(a)(2) to allow discussion of a hiring decision where consideration of matters affecting privacy will be involved.

Members Present, virtually:

Warren Watanabe, Member-At-Large (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Karen Seddon, Member-At-Large
Lyle Tabata, Kauai County Member, Vice-Chair
Jayson Watts, Maui County Member (Mr. Watts)
Dane Wicker, DBEDT Designated Representative for Ex-Officio Member James Tokioka (Mr. Wicker)
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd)

Members Excused:

Kaleo Manuel, DLNR Designated Representative for Ex-Officio Member Dawn Chang

Counsel Present, virtually:

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

Staff Present, virtually: None.

Guests Present, virtually: None.

Guests Present, physical location: None.

A. Call to Order

Chair called the Executive Session to order at 9:51 a.m.

Chair stated that the item to be discussed was Old Business Item E-2 regarding the presentation of the Executive Director Search Committee Report and Recommendations and turned the matter over to the committee.

Mr. Watts [REDACTED]
[REDACTED] To paraphrase the report, at the first meeting we reviewed fourteen applications. Of the fourteen applicants we selected seven to interview. At the second meeting we interviewed the seven people. A report was generated, and everyone should have a copy of the report, but the gist of the recommendation, we recommended that the Board consider three applicants. But last week one of the applicants withdrew [REDACTED] name to accept a position [REDACTED]. So that left us with two applicants, [REDACTED]. I just want to add a [REDACTED]

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[REDACTED]

Mr. Watts added that [REDACTED]

[REDACTED] One of the things we have to think about as an organization is building our bench strength and how do we get people into the organization that can be the future leaders. So something for us to think about is the long term. We just have to make a decision. You know, one of the things [REDACTED]

[REDACTED]

[REDACTED] Another thing we at ADC are struggling with are the critical vacancies – the ASO and accountant. Whoever is selected will have to recruit an experienced team to move these projects forward and navigate some very complex issues. That is why I asked the question of Mr. Takemoto earlier about where we are in projects and deadlines to get a grasp of our deadlines and the realities of trying to move forward, encumber some funds so we don't drop projects. I wanna go on a bit of a tangent and ask some questions. [REDACTED]

[REDACTED]

[REDACTED]

Mr. Watts continued, so the question I had was [REDACTED]

[REDACTED]

Mr. Watts asked so [REDACTED]

[REDACTED]

Mr. Watts continued, so the [REDACTED]

[REDACTED]

Mr. Watts just wanted to bring this up because this is a good learning opportunity for the board. Based off of the audit concerns, then looking at the projects that ADC currently is working on that the next executive director will be assigned to meet with a very comprehensive timeline. The person we select will have to hit these deliverables. So the committee's recommendation was to interview the top two

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candidates, [REDACTED] on August 3, 2023, but they have not been contacted and their availability on that date is not confirmed. Hopefully they're in town and not traveling. So recommendation is that the board interview them in person, and actually meet them fact-to-face here in the conference room. So, Chair that is our recommendation to the board.

Chair called on Ms. Hurd who asked if it was proper for her to make a comment on the candidates?

Hearing no objection, Ms. Hurd continued that [REDACTED]

Mr. Watts responded that it's not a negative thing, [REDACTED]

[REDACTED] The Board's gonna have to do its own due diligence and investigate the matter further and make a decision. My comments were not meant to skew anybody's opinion one way or the other. [REDACTED]

[REDACTED] So it is for the Board to evaluate. So that's why I think our mission is to talk to the two candidates, then weigh who we feel would be the best for the organization. And Chair, we offer those comments not to knock on anybody, I offer those comments and those questions because unlike other agencies, the audit was very critical of the board's abdication of its role. The executive director is not just working for ADC, but the Board. The Board itself is being taken to task on its responsibilities and so the question was asked to kind of get an idea of where we are and how do we go forward. It's not meant as a negative thing at all.

Mr. Okuhama added that it was just a part of the [REDACTED]

[REDACTED] And that's why it's best to have the board talk to and interview the two, would have been three, you know and then go from there. So the selection was not just based on [REDACTED] Now it's really up to the board to decide of the two, who gets selected as the executive director.

Mr. Watts states that he wanted to briefly touch on the interview process. We actually started off [REDACTED]

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Chair called on Mr. Wicker.

Mr. Wicker just wanted to say thank you to the committee. All the time you guys took out of your schedule to do the interviews. I'm looking at the list [REDACTED]

[REDACTED] It is interesting having ADC attached to DBEDT and helps complete an economic system. I think we have [REDACTED]

[REDACTED]

[REDACTED] Some of the projects are a creature of the legislature. At the end of the day, the legislature decides on our budget and the policy, in addition to the Board. We need to foster some relationships with individual legislators to help support our new executive director as well. Thank you to the Committee for the job you've done.

Chair stated, [REDACTED]

Ms. Hurd raised a [REDACTED]

Hearing no further discussion, Chair asked for a motion to exit executive session. Motion by Mr. Okuhama; Second Mr. Watts.

Chair asked [REDACTED]

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

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

Executive session ended at 10:23 A.M.

Exhibit "16"

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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 at the In-Person meeting location available for public participation at the State of Hawaii, Leiopapa A Kamehameha, State Office Tower Building, 235 S. Beretania St., Room 204, Honolulu, HI 96813.

Members Present, in person:

Warren Watanabe, Member-At-Large (Chair)

Glenn Hong, Member-At-Large (Mr. Hong)

Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd) (arrived at 9:50 A.M.)

Jason Okuhama, Member-At-Large (Mr. Okuhama)

Lyle Tabata, Kauai County Member, Vice-Chair (Mr. Tabata) (left at 12:30 P.M.)

Jayson Watts, Maui County Member (Mr. Watts)

Dane Wicker, DBEDT Designated Representative for Ex-Officio Member James Tokioka (Mr. Wicker) (left at 12:30 P.M.)

Members Excused:

Kaleo Manuel, Designated Representative, DLNR for Ex-Officio Member Ms. Dawn Chang (Mr. Manuel),
Karen Seddon, Member-At-Large (Ms. Seddon)

Counsel Present, in person:

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

Staff Present, in person

Ken Nakamoto, Project Manager (Mr. Nakamoto)

Staff Present, virtually:

Mark Takemoto, Executive Assistant

Lyle Roe, Property Manager

Guests Present, virtually:

Beth Amaro

Brian Miyamoto

Dexter Kishida

Mark Ladao

Thomas Heaton

Guests Present, physical location: None.

A. Call to Order

Chair called the meeting to order at 9:11 a.m.

B. Roll Call

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Chair conducted a roll call of the Board. Chair called the name of each board member and asked them to identify their presence with a “here” or “present”. Chair stated that the roll call served as the 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, Mr. Hong, Mr. Okuhama, Mr. Tabata, Mr. Watts, and Mr. Wicker acknowledged attendance with no guests present. Ms. Hurd entered the meeting at 9:50 A.M.

C. Approval of Minutes

None.

SEE OLD BUSINESS AGENDA ITEM E-1, WHICH WAS TAKEN OUT OF ORDER AS THE FIRST AGENDA ITEM.

D. New Business

Chair stated HRS Section 92-4 allows the board to hold an executive meeting closed to the public. The board will be discussing new business items 1, 2, and 3, which is the interview of the top 2 applicants, salary discussion, selection of the applicant and salary amount, and decide on the public notification method. This discussion may be closed to the public pursuant to HRS Section 92-5(a)(2) to allow discussion of a hiring decision where consideration of matters affecting privacy will be involved. Chair said before they go into executive session is there any public testimony. Please be advised that testimony is limited to the decision to go into executive session.

There was no public testimony.

Chair asked for a motion to go into executive session.

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

Chair noted there was no staff presentation.

Chair asked for board discussion. There was none.

Chair called for the vote. Hearing no objection the motion was approved: 6-0

Chair stated that the public meeting was in recess subject to reconvening at the conclusion of the executive session. The Board entered into executive session at 9:20 A.M. pursuant to HRS section 92-5(a)(2).

The Board lost quorum at 12:30 p.m. with the departure of Mr. Tabata and Mr. Wicker.

Chair Watanabe called the virtual meeting back to order at 12:31 p.m.

Chair stated that pursuant to Act 19, SLH 2023, the board took the following actions based upon discussions by the full board in executive session. The board of directors conducted in-person interviews of the top 2 applicants; the board of directors discussed the salary range to be offered to the selected executive director applicant; the board of directors selected the person to be offered the executive director position and salary amount; the board of directors will offer the selected person

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the executive director position in writing via letter to be delivered by the US postal service. If the offer is accepted, the name of the new executive director will be made public by press release.

E. Old Business (taken out of order as first agenda item)

1. Deliberation and decision making on the recommendation(s) of the Executive Director Search Committee permitted interaction group submitted to the Board at the July 20, 2023 regular meeting.

Chair stated that on July 20, 2023 the Executive Director Search Committee presented its findings and recommendations to the full board. The committee recommended that the full board conduct in person interviews of the top 2 applicants in executive session. The term in-person interview means all board members and two applicants attend the executive session in-person. It was suggested that the in-person interviews take place on Thursday, August 3, 2023 provided that the 2 applicants were available that day. If the applicants were unavailable, the committee recommended that the in-person interviews be scheduled on a mutually agreeable date. Following the in-person interviews, the committee recommended that in executive session the full board discuss the salary to be offered and select the applicant who will be offered the Executive Director position and the salary amount. The committee recommended that the selected candidate be notified of the offer by written letter and if the offer is accepted, the board decide how the public should be notified, such as by press release, posting on the ADC website, and/or at the next board meeting to be held on August 17, 2023.

Chair asked for a motion to accept the July 20, 2023 recommendations of the Executive Director Search Committee.

Motion: Mr. Watts; Second: Mr. Tabata.

Chair noted that the applicants were not available on August 3, 2023 and the next mutually agreeable date is today, August 8, 2023.

Chair asked for public testimony on the Committee's recommendations. There was none.

Chair asked for board discussion. There was none.

Chair called for the vote. Hearing no objection the motion was approved: 6-0.

F. Adjourn

Chair stated seeing no other business he asked for a motion to adjourn.

Motion to adjourn: Mr. Hong; Second: Mr. Watts.

Chair called for the vote – hearing no objections the motion was approved.

Vote: 5-0. Mr. Wicker and Mr. Tabata excused.

Meeting adjourned at 12:32 p.m.

Date of Next Meeting: The next meeting will be held on August 17, 2023, at 9 A.M.

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Exhibit "17"

Approved: 9/21/2023

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HRS section 92-4 allows the board to hold an executive meeting closed to the public. The board will be further discussing New Business Items 1 (Interview Two Top Executive Director Candidates), 2 (Discuss Executive Director Salary and Candidate Selection), and 3 (Method of Public Notification). This meeting was closed to the public pursuant to HRS section 92-5(a)(2) to allow discussion of a hiring decision where consideration of matters affecting privacy will be involved.

Members Present, in person:

Warren Watanabe, Member-At-Large (Chair)
Glenn Hong, Member-At-Large (Mr. Hong)
Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd) (arrived at 9:50 A.M.)
Jason Okuhama, Member-At-Large (Mr. Okuhama)
Lyle Tabata, Kauai County Member, Vice-Chair (Mr. Tabata) (left at 12:30 P.M.)
Jayson Watts, Maui County Member (Mr. Watts)
Dane Wicker, DBEDT Designated Representative for Ex-Officio Member James Tokioka (Mr. Wicker) (left at 12:30 P.M.)

Members Excused:

Kaleo Manuel, DLNR Designated Representative for Ex-Officio Member Dawn Chang
Karen Seddon, Member-At-Large (Ms. Seddon)

Counsel Present, in person:

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

Staff Present, in person: Ken Nakamoto, Project Manager, operated recording device (Mr. Nakamoto)

Guests Present, in person: None.

A. Call to Order

Chair called the Executive Session to order at 9:20 a.m.

Chair announced that the interviewing process would proceed by going around the table with each board member asking questions unless anyone had other ideas how to proceed.

Hearing no other suggestions Chair asked that [REDACTED] (Candidate One) be called into the meeting.

Candidate One entered the room at approximately 9:30 a.m. [REDACTED]

Chair called on Mr. Wicker for the first question.

Mr. Wicker asked [REDACTED]
[REDACTED]
[REDACTED]

Candidate One responded [REDACTED]
[REDACTED]

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[REDACTED]

Mr. Tabata asked the next question. [REDACTED]

Candidate One said [REDACTED]

Mr. Wicker acknowledged [REDACTED]

Candidate One continued [REDACTED]

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[REDACTED]

Mr. Tabata said [REDACTED]

Candidate One stated [REDACTED]

Mr. Tabata thanked Candidate One [REDACTED]

Candidate One said [REDACTED]

Mr. Tabata went on to remark [REDACTED]

Candidate One said [REDACTED]

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[REDACTED]

Chair called on Mr. Watts for the next question.

Mr. Watts wanted to ask a couple questions [REDACTED]

Candidate One responded [REDACTED]

Mr. Watts asked [REDACTED]

Candidate One clarified [REDACTED]

Mr. Watts responded [REDACTED]

Candidate One stated [REDACTED]

Mr. Watts asked [REDACTED]

Candidate One responded [REDACTED]

Chair called on Mr. Hong for the next question.

Mr. Hong said [REDACTED]

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[REDACTED]

Candidate One said that's a good question.

[REDACTED]

Mr. Hong said

[REDACTED]

Candidate One answered

[REDACTED]

Mr. Tabata responded,

[REDACTED]

Candidate One stated,

[REDACTED]

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[REDACTED]

Mr. Tabata responded [REDACTED]

Candidate One remarked [REDACTED]

Mr. Tabata said [REDACTED]

Candidate One responded [REDACTED]

Mr. Tabata stated [REDACTED]

Candidate One responded [REDACTED]

Mr. Tabata said [REDACTED]

Candidate One [REDACTED]

Mr. Wicker added [REDACTED]

Candidate One said [REDACTED]

Mr. Watts said [REDACTED]

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Candidate One responded [REDACTED]

Mr. Watts believed [REDACTED]

Candidate One said [REDACTED]
[REDACTED]

Mr. Watts stated [REDACTED]
[REDACTED]

Candidate One responded [REDACTED]
[REDACTED]

Mr. Tabata remarked, [REDACTED]
[REDACTED]
[REDACTED]

Candidate One stated [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Watts stated [REDACTED]
[REDACTED]
[REDACTED]

Candidate One said [REDACTED]
[REDACTED]

Mr. Tabata said, [REDACTED]
[REDACTED]
[REDACTED]

Candidate One continued, [REDACTED]
[REDACTED]
[REDACTED]

Mr. Tabata added [REDACTED]
[REDACTED]

Candidate One added [REDACTED]

Mr. Hong said [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

Candidate One stated [REDACTED]

[REDACTED]

Candidate One asked [REDACTED]

[REDACTED]

Mr. Tabata added [REDACTED]

Mr. Hong added [REDACTED]

[REDACTED]

Ms. Hurd joined the meeting at 9:50 a.m.

Mr. Wicker continued [REDACTED]

Candidate One responded [REDACTED]

Mr. Wicker remarked that [REDACTED]

Candidate One [REDACTED] stating [REDACTED]

Mr. Tabata remarked [REDACTED]

[REDACTED]

Candidate One said, [REDACTED]

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Chair called on Mr. Okuhama for the next question.

Mr. Okuhama said [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Candidate One stated [REDACTED]
[REDACTED]

Mr. Nakamoto interjected [REDACTED]
[REDACTED]

Candidate One stated [REDACTED]
[REDACTED]
[REDACTED]

Mr. Wicker said [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Candidate One stated [REDACTED]
[REDACTED]

Mr. Hong went on saying [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Candidate One answered [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Hong said [REDACTED]
[REDACTED]

Candidate One responded, [REDACTED]
[REDACTED]

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[REDACTED]

Mr. Okuhama stated [REDACTED]

Candidate One stated [REDACTED]

Mr. Watts asked [REDACTED]

Candidate One stated [REDACTED]

Mr. Watts said [REDACTED]

Candidate One continued, [REDACTED]

Mr. Watts stated [REDACTED]

Candidate One said [REDACTED]

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[REDACTED]

Ms. Hurd apologized for being late and took the last question. Ms. Hurd noted [REDACTED]

[REDACTED]

Candidate One answered [REDACTED]

[REDACTED]

Ms. Hurd said [REDACTED]

[REDACTED]

Candidate One responded, [REDACTED]

[REDACTED]

Ms. Hurd remarked, [REDACTED]

Mr. Wicker said [REDACTED]

[REDACTED]

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[REDACTED]

Candidate One asked [REDACTED]

Mr. Wicker replied, [REDACTED]

Mr. Watts stated [REDACTED]

Candidate One acknowledged [REDACTED]

Mr. Watts continued, [REDACTED]

Candidate One [REDACTED]

Mr. Hong stated [REDACTED]

Candidate One [REDACTED]

Mr. Watts said [REDACTED]

Candidate One said [REDACTED]

Candidate One said, [REDACTED]

Mr. Watts stated [REDACTED]

Candidate One stated [REDACTED]

Ms. Hurd said [REDACTED]

Candidate One stated [REDACTED]

Ms. Hurd responded [REDACTED]

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[REDACTED]

Candidate One remarked [REDACTED]

Mr. Hong said [REDACTED]

Candidate One remarked, [REDACTED]

Mr. Tabata asked [REDACTED]

Mr. Wicker asked [REDACTED]

Candidate One stated [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Hong said, [REDACTED]

Candidate One repeated, [REDACTED]
[REDACTED]

Mr. Watts asked [REDACTED]

Candidate One stated [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Hong said [REDACTED]
[REDACTED]

[REDACTED]

Candidate One said [REDACTED]
[REDACTED]
[REDACTED]

Ms. Hurd stated [REDACTED]

Candidate One stated [REDACTED]
[REDACTED]

Candidate One stated [REDACTED]

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Candidate One exited the meeting at 10:30 A.M.

Chair called for a recess at 10:30 A.M.

The meeting reconvened at 10:40 A.M.

Back on the record, Chair called for the next interviewee [REDACTED] (Candidate Two). [REDACTED]

Mr. Tabata stated we should start from the other side of the table because we kind of monopolized the last conversation.

Ms. Hurd asked [REDACTED]

Candidate Two said [REDACTED]

Ms. Hurd continued, [REDACTED]

Candidate Two responded [REDACTED]

Ms. Hurd said [REDACTED]

Candidate Two said, [REDACTED]

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Mr. Okuhama stated, [REDACTED]

Candidate Two said [REDACTED]

Mr. Okuhama asked, [REDACTED]
[REDACTED]

Candidate Two stated [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Watts asked [REDACTED]
[REDACTED]

Mr. Wicker asked [REDACTED]
[REDACTED]
[REDACTED]

Mr. Hong acknowledged [REDACTED]

Candidate Two asked [REDACTED]
[REDACTED]

Mr. Hong responded [REDACTED]
[REDACTED]
[REDACTED]

Candidate Two said [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

Chair said [REDACTED]

Candidate Two said [REDACTED]

Mr. Watts responded [REDACTED]

Candidate Two responded [REDACTED]

Mr. Okuhama replied [REDACTED]

Mr. Hong said [REDACTED]

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[REDACTED]

Candidate Two stated [REDACTED]

Mr. Watts asked [REDACTED]

Candidate Two said [REDACTED]

Mr. Watts asked [REDACTED]

Candidate Two asked [REDACTED]

Mr. Watts said [REDACTED]

Candidate Two [REDACTED]

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[REDACTED]

Mr. Watts responded [REDACTED]

Mr. Tabata took the next question. [REDACTED]

[REDACTED]

Candidate Two [REDACTED]

Mr. Tabata continued [REDACTED]

Candidate Two asked [REDACTED]

Mr. Tabata continued [REDACTED]

Candidate Two said [REDACTED]

Mr. Tabata said [REDACTED]

Candidate Two said [REDACTED]

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[REDACTED]

Mr. Tabata said [REDACTED]

Candidate Two said [REDACTED]

Mr. Tabata asked [REDACTED]

Candidate Two said [REDACTED]

Mr. Tabata said [REDACTED]

Candidate Two stated [REDACTED]

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Mr. Watts said [REDACTED]

Candidate Two asked [REDACTED]

Mr. Tabata said [REDACTED]

Candidate Two said [REDACTED]

Mr. Tabata said [REDACTED]

Candidate Two responded [REDACTED]

Mr. Tabata said, [REDACTED]

Candidate Two said [REDACTED]

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[REDACTED]

Mr. Tabata said [REDACTED]

Candidate Two said [REDACTED]

Ms. Hurd responded [REDACTED]

Candidate Two said [REDACTED]

Mr. Watts said [REDACTED]

Ms. Hurd stated [REDACTED]

Mr. Watts continued [REDACTED]

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[REDACTED]

Candidate Two said

[REDACTED]

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[REDACTED]

Mr. Watts responded, [REDACTED]

Candidate Two asked [REDACTED]

Mr. Tabata remarked [REDACTED]

Mr. Hong said [REDACTED]

Candidate Two responded, [REDACTED]

Mr. Tabata responded [REDACTED]

Candidate Two continued [REDACTED]

Mr. Watts asked [REDACTED]

Candidate Two replied [REDACTED]

Mr. Tabata said [REDACTED]

Candidate Two said [REDACTED]

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[REDACTED]

Chair called on Mr. Wicker for the next question.

Mr. Wicker said [REDACTED]

Candidate Two responded, [REDACTED]

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[REDACTED]

Mr. Wicker interjected [REDACTED]

Candidate Two responded, [REDACTED]

Mr. Wicker replied [REDACTED]

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Candidate Two responded [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Hong stated [REDACTED]

Candidate Two responded, [REDACTED]

Mr. Hong remarked [REDACTED]

Candidate Two asked [REDACTED]

Mr. Hong replied [REDACTED]
[REDACTED]

Candidate Two said [REDACTED]
[REDACTED]

Mr. Wicker stated [REDACTED]

Candidate Two replied [REDACTED]
[REDACTED]
[REDACTED]

Mr. Hong stated [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Candidate Two said [REDACTED]
[REDACTED]

Mr. Hong interjected, [REDACTED]
[REDACTED]
[REDACTED]

Mr. Watts stated [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Candidate Two stated [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Mr. Watts said [REDACTED]

Chair said [REDACTED]

Candidate Two said [REDACTED]

Mr. Wicker stated [REDACTED]

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Candidate Two exited the session at 11:45 A.M.

Ms. Hurd addressed Mr. Wicker stating that HDOA cannot purchase or own land, so it's been a real challenge. ADC is the only one that can do that.

Mr. Wicker acknowledged that fact and said HDOA can only get land [by Executive Order] EO'ed to you.

Ms. Hurd remarked well you can, but it's still not a purchase right. HDOA still doesn't own the land, it's still state land. DLNR keeps saying this is state land, this is state land. We do have a parcel on Hamakua that came to us because of a bankruptcy on an ag loan but that's small. Your point is really important. ADC can buy land.

[REDACTED]

Mr. Wicker responded I have an appointment at 12:30. We got to walk there. Are we doing action today?

Mr. Nakamoto asked we're still in Executive Session, right?

[REDACTED]

Chair stated he was moving on to Agenda Item 2 for the Board executive session discussion of salary. The former executive director salary was \$147,000.

Mr. Hong: 147?

Chair responded 147. ADC's budget allows us to offer up to \$150,000.

[REDACTED]

Mr. Wicker asked does that match the budget general table?

[REDACTED]

Mr. Watts said we're in the middle of the biennium, right? So if you gave the person the 147 at least you can give them \$3,000 on the pay raise next year.

Mr. Wicker clarified that would be after their annual eval, right for ED?

[REDACTED]

Mr. Wicker asked at the end of the fiscal year?

[REDACTED]

Mr. Hong asked so that's a function of the budget, right? And not a function of anything else because the board has full authority in terms of hiring of the executive director.

[REDACTED]

Mr. Wicker said thank you. On a side note, [REDACTED] What the legislature authorized

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per the budget journal table because at the end of the day, it's the DBEDT director that has to go in front of the Leg to justify the budget; not the chair. I'm going to start asking Chairs and boards that if you're going to go above and beyond what the legislature authorized, you defend it. There's some fiscal restraint here because some of these boards I tell you don't know whose money they think they're spending and to Ms. Prescott-Tate's point it's the tax payer's money. I know we want to hire and retain good people but at the same time we have to be fiscally responsible and the legislature is going come down on the boards and the director for spending above and beyond.

Mr. Hong said my sense is the salary is not that much of an issue [REDACTED] so whether it's 147, or 148, or 149, or 150 it doesn't really matter.

Mr. Okuhama agreed.

Mr. Wicker asked did they disclose the salary range during the PIG process?

[REDACTED]

Mr. Hong said no, but if they do their homework they can get in to the budget and find the appropriation.

Mr. Wicker said true. It's public information. Chair, what is our next action?

[REDACTED]

Ms. Hurd asked wasn't it 147 and change?

[REDACTED]

Mr. Hong said I remember the change because it was a percentage of the base before. We can give them a round number.

Ms. Hurd said I would round up 148.

Mr. Hong said I'm good with that.

[REDACTED]

There was a unanimous response of yes and nodding heads.

Chair said now we discuss the candidates?

[REDACTED]

Mr. Hong said I think we should discuss it.

Mr. Wicker asked remind me who was on the PIG again, please?

Mr. Hong responded, us three (pointing to Mr. Hong, Mr. Okuhama and Mr. Watts).

Mr. Wicker replied I think that you folks did a very good job and I mean going through fourteen candidates this is not an easy decision right now quite frankly.

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[REDACTED]

Mr. Wicker said [REDACTED]

I really like that ADC came to DBEDT. In our ecosystem ADC is at the beginning portion of the cradle and the grave. We have the foreign trade zone, the Hawaii technology development corporate, and the business development support division. All will reap and go in line with what ADC's projects are going to do in the long run. It's a really good fit. Our HR has jumped on board and it's helping them out and it's one of my major focuses.

Mr. Watts said you know I agree and [REDACTED]

Mr. Wicker interjected, I wanted to ask that question [REDACTED]

[Unidentified] responded, [REDACTED]

[REDACTED]

Mr. Hong agreed saying yeah [REDACTED]

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[REDACTED] But it's important that ADC show results in the next year.

Ms. Hurd asked because I came in late do I recuse myself from the discussion?

[REDACTED]

Ms. Hurd replied, [REDACTED] I would like to say thank you to the committee for these candidates are very, very good. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ms. Hurd replied [REDACTED]

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Mr. Hong said [REDACTED]

Mr. Watts said [REDACTED]

Mr. Wicker stated there's still an opening on the board.

Mr. Watts stated they're two openings on the board. And I think this board is different from past boards.

Mr. Wicker responded yes, I like the questions and the openness of this board. It's not a director telling us what you want us to do. There's a diverse background, good neighbor island representation, good diversity. I mean, I wish, [REDACTED]

Mr. Hong said that's an interesting way to look at it.

Mr. Watts said I'll be honest. [REDACTED]

Mr. Hong said [REDACTED]

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Mr. Okuhama said yeah I agree it's a tough one. I'm just concerned [REDACTED]

Mr. Hong remarked but [REDACTED]

Mr. Okuhama responded right that's the problem [REDACTED]

Mr. Hong said I think [REDACTED]

[REDACTED]

Mr. Watts said that's definitely a valid thing. But I think that buys us time for the board to really work with Ms. Evans folks to present a vision.

Mr. Wicker said Ms. Evans is working on the strategic plan.

Mr. Watts said [REDACTED]

Mr. Hong asked [REDACTED]

Mr. Tabata said for me [REDACTED]

[REDACTED]

Mr. Wicker replied twenty minutes. I just got to go back to my office.

[REDACTED]

Mr. Watts continued [REDACTED]

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Mr. Nakamoto offered, [REDACTED]
[REDACTED]

Mr. Wicker added, [REDACTED]

Mr. Nakamoto said [REDACTED]

Mr. Watts said, no understood.

Mr. Nakamoto said [REDACTED]
[REDACTED]
[REDACTED]

Mr. Nakamoto continued, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Watts asked [REDACTED]

Mr. Nakamoto replied [REDACTED]
[REDACTED]

Mr. Watts continued [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Nakamoto continued [REDACTED]
[REDACTED]
[REDACTED]

Mr. Nakamoto said [REDACTED]
[REDACTED]
[REDACTED]

Mr. Hong said [REDACTED]

Mr. Watts said [REDACTED]

Mr. Wicker stated [REDACTED]
[REDACTED]
[REDACTED]

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Mr. Watts said [REDACTED]

Mr. Hong added, [REDACTED]

Mr. Wicker responded [REDACTED]

Ms. Hurd asked [REDACTED]

Mr. Wicker said [REDACTED]

Ms. Hurd said [REDACTED]

Mr. Wicker added [REDACTED]

Mr. Hong said [REDACTED]

Mr. Watts asked [REDACTED]

Ms. Hurd said [REDACTED]

Mr. Hong said [REDACTED]

Ms. Hurd said [REDACTED]

Mr. Watts asked [REDACTED]

Mr. Hong asked so do we then have a unanimous decision?

Mr. Hong asked do we have a consensus of a unanimous board?

The board nodded and Mr. Hong replied yes.

Mr. Wicker, for consistency, [REDACTED] I'm ok with unanimous.

Ms. Hurd said [REDACTED]

Mr. Hong said it's a good decision.

Mr. Okuhama asked this is the recommendation? Not approval?

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[REDACTED]

Mr. Hong asked do we go out of executive session now?

[REDACTED]

Mr. Wicker said do we do a press release? We have Becker Communications.

[REDACTED]

Mr. Hong said I think, after acceptance though.

Mr. Tabata asked [REDACTED]

[REDACTED]

Mr. Watts said my preference would be [REDACTED] we go through the process again

Mr. Hong repeated, the process again? My position is to go with [REDACTED].

[REDACTED]

[REDACTED]

Mr. Watts said well you know I'll go with it because I think it's important to get somebody going as quickly as we can. And I think that Scott Ishikawa and Becker Communication should be evaluated and that there be a more aggressive media push, to be as broad as possible. I didn't even see this ED selection thing on the news at all. So when somebody tells me that they went put out a press release I don't believe it because on Maui, Mauinow.com they just print press releases. They don't even do any reporting at all. So if it's not even there. I just think a wider net would've been better.

Ms. Hurd said to your point when it was announced at the board meeting that the application was on the HDOA website I texted our [Public Information Officer] (PIO), and it wasn't. So, it was immediately put it, but it wasn't there.

[REDACTED]

Mr. Hong said speaking for the committee I think we had a great list of candidates. We had fourteen and we had a whole day meeting getting it down to seven and we interviewed seven and so I think we had a really good representation of the people out there. I mean could we have gotten more candidates? Maybe, but I think we got some great candidates.

Ms. Hurd said you did. I'm good with [REDACTED].

Mr. Wicker said I agree with Mr. Watts on Becker Communications. My experience with them 'cause they have contracts with other attached agencies as clients and they're not aggressive enough. I've asked them to get ahead of stuff so we can revisit that approach. However, I think ADC doesn't need its own PIO, it should continue to contract out because we have a communications officer in DBEDT that's something ADC was able to benefit from. On the timetable, [REDACTED] I think the longer we wait, we're going to lose funds. We're not going to encumber in

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time. That's just the way the legislature did it. And the second thing, the names of the people that applied, I was familiar with some of them, and I thought there was such diverse backgrounds of those who applied, it would have been interesting to see if there was an even bigger push. ADC got fourteen applicants. The HTDC is also doing its executive director search and they got fifteen.

Ms. Hurd commented "wow."

Mr. Wicker said he was impressed, and kind of shocked at the same time that there was that much turn out for both of these positions. I think there was enough time and HTDC got only one additional and they're in the same ballpark as a salary range.

Mr. Okuhama said he went through the [Hawaii Community Development Authority] (HCDA) executive director search and the quality of candidates was a bit disappointing actually. We had a lot of candidates but not the quality of candidates. I think this time, the ones that we interviewed there was not one person that didn't encompass everything. They were pretty good quality and they had strengths, each of their own in different things. Speed is important so I agree that [REDACTED] because we need to move on this pretty quick

Mr. Hong asked so who's doing the letter?

Mr. Wicker asked Becker Communications?

[REDACTED]

Mr. Hong asked so how fast could [REDACTED]?

[REDACTED]

Mr. Hong asked so by tomorrow we're going to have a press release?

[REDACTED]

Mr. Watts asked will we be able to review the press release before it goes out? I only ask because I think . . . is it going to just be the board saying we're announcing this person or is it going to be the board saying we announce this person and kind of talk a little bit about the vision going forward?

[REDACTED]

Mr. Hong said so the full board has to approve this action, this offer?

Mr. Wicker noted we are the full board.

Mr. Hong said no I understand that but we're in executive session, does it have to be in an open forum?

[REDACTED]

Mr. Hong repeated with no names. Ok, that's good but before we do a press release, [REDACTED]

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[REDACTED]

Mr. Okuhama asked so the press release would be pretty immediate then.

[REDACTED]

Mr. Okuhama said if [REDACTED] we wait to the 17th, which is the next meeting, the word will get out. That's how I feel; it's going to get out.

Mr. Tabata suggested the letter goes out, [REDACTED], then we notify [REDACTED] then we can do a press release.

[REDACTED]

[REDACTED]

[REDACTED]

The board members nodded in agreement.

Mr. Hong said we can actually just record it in open session saying that the board has made a decision, no names yet, and put it to a vote and it can be unanimous at that point.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Watts confirmed postal mail?

Mr. Hong asked so it's going to be a couple days?

Mr. Okuhama asked can't we e-mail [REDACTED]?

[REDACTED]

Mr. Hong said unless [REDACTED] willing to come in and pick up a letter

[REDACTED]

Mr. Hong said that'll save two, three days. That's what it comes down to really.

[REDACTED]

[REDACTED]

Mr. Hong acknowledged right. That'll give you a day or two to get the press release done with Becker.

[REDACTED]

[REDACTED]

Mr. Wicker said I think just for awareness we should look at it before it goes out, just to make sure.

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Mr. Watts noted that [REDACTED] rewrote three or four op eds of Becker's, I don't trust that Becker's will be appropriate. I'd like to review it first.

[REDACTED]

Chair asked just press release?

[REDACTED]

Mr. Okuhama said it will be good to see what goes out before it goes out.

Mr. Wicker asked can I excuse myself?

[REDACTED]

Mr. Wicker said thank you, Chair, thank you, Board. Sorry I got to head out.

Mr. Tabata added can we tell whoever made my flight that I'm not going to make it? My flight is 1:20 p.m. I've got to return a car and everything. Can I leave already?

Mr. Okuhama asked Chair if he was going to do the press release?

Mr. Watts said we're supposed to go back to Maui today too.

[REDACTED]

Mr. Hong said excuse me . . .

Mr. Okuhama said don't we need to stop executive session? We need six, yeah?

Chair called for a motion to exit executive session.

Motion by Mr. Tabata; Second: Mr. Watts.

Chair called for the vote. Hearing no objection the motion was approved: 6-0.

Executive session adjourned at 12:30 P.M.

Mr. Tabata and Mr. Wicker exited the meeting.

Exhibit "18"

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors Meeting held Virtually on August 17, 2023

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:

Warren Watanabe, Member-At-Large, (Chair)

Glenn Hong, Member-At-Large (Mr. Hong)

Sharon Hurd, HBOA, Ex-Officio Member (Ms. Hurd)

Jason Okuhama, Member-At-Large (Mr. Okuhama)

Karen Seddon, Member-At-Large (Ms. Seddon), joined the meeting at 9:35 a.m.

Lyle Tabata, Kauai County Member, Vice-Chair (Mr. Tabata)

Dane Wicker, Designated Representative (Mr. Wicker), DBEDT for Ex-Officio Member James Tokioka

Kaleo Manuel, Designated Representative (Mr. Manuel), DLNR for Ex-Officio Member Ms. Dawn Chang

Members Excused:

Jayson Watts, Maui County Member

Counsel Present, virtually:

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

Staff Present, virtually:

Mark Takemoto, Executive Assistant (Mr. Takemoto)

Ken Nakamoto, Project Manager (Mr. Nakamoto)

Lyle Roe, Property Manager (Mr. Roe)

Guests Present, virtually:

ADC Guest

Asokasaki

HDOA

LM

Mike Faye (Mr. Faye)

Mary Alice Evans (Ms. Evans)

Bill DeCosta

David Cho

Kaeo Kinoshita

Beth Amaro

Rmills

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Guests Present, physical location: Wendy Gady.

A. Call to Order

Chair called the virtual meeting to order at 9:04 a.m.

B. Roll Call

Chair conducted a roll call of the Board. Chair called the name of each board member and asked them to identify their presence with a “here” or “present” and to state who if anyone was present in the room with them. Chair stated that the roll call served as the 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, Mr. Hong, Ms. Hurd, Mr. Manuel, Mr. Okuhama, Mr. Tabata, and Mr. Wicker acknowledged attendance with no guests present. Ms. Seddon entered the meeting at 9:35 A.M.

C. Approval of Minutes

1. Board Meeting Minutes, July 20, 2023

Chair asked for a motion to approve the July 20, 2023 minutes.

Motion to Approve: Mr. Okuhama, Second: Mr. Wicker

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

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

Chair asked for board discussion. There was none.

Chair called for the vote. Mr. Manuel abstained from voting stating he was not present at the meeting. Hearing no further objections, the minutes of July 20, 2023 was approved 6-0: Chair, Mr. Hong, Ms. Hurd, Mr. Okuhama, Mr. Tabata, and Mr. Wicker. Mr. Manuel abstained.

2. Board Meeting Executive Session Minutes, July 20, 2023

Chair stated that during the executive session held on July 20, 2023 the Board received and discussed a report from the executive director search committee. HRS sections 92-4 and 92-5(a)(2) allow the meeting to be closed to the public when necessary to discuss matters affecting privacy. 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 July 20, 2023 when discussing approval of these minutes.

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Ms. Prescott-Tate noted that the executive session minutes needed non-substantive amendments.

Mr. Roe stated the amendment would be on page 2, first line of the first full paragraph, strike “They did not” at the end of the line; and the first line of the next paragraph, replace “Mr. Watts continued” with “Mr. Hong stated”.

Chair asked for a motion to approve the July 20, 2023 executive session minutes as amended.

Motion by approve as amended: Mr. Tabata; Second: Mr. Okuhama

Chair asked if there was anything from the 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 objection the Executive Session minutes of July 20, 2023 were approved: 8-0

D. New Business

1. Presentation by William “Bill” DeCosta, Councilmember, County of Kauai, regarding a ranching proposal for ADC’s mauka lands in Kekaha, and follow-up discussion, TMK (4) 1-2-002:001

Chair called upon Councilmember DeCosta to present his proposal.

Councilmember DeCosta thanked the board for having him and started the presentation regarding a ranching proposal for ADC’s mauka lands in Kekaha. (See PowerPoint presentation attached for reference.)

Following the presentation Chair thanked Councilman DeCosta and acknowledged that Ms. Seddon has joined the meeting at 9:35 a.m.

Chair asked for staff presentation.

Mr. Roe stated that staff has had discussions with Councilman DeCosta. Staff has a few concerns that the Councilman alluded to primarily erosion and the fact that on these lands are currently under a clean water act settlement agreement so as a result ADC does a number of tests at different sites. Mr. Roe explained that testing raises one area of concern is enterococcus and adding more animals up there increases enterococcus that were already over limit on. Mr. Roe stated that he forwarded the Councilman’s presentation to ADC’s consultants who do the testing. The consultants provided a summary. Mr. Roe read from

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the summary, which stated that in consideration of the history of elevated sediment and enterococcus levels, the potential additional contributions from proposed livestock and ranching operations will need to be considered and if approved appropriate robust best management practices will need to be adopted to prevent further increasing the settlement, enterococcus, nutrients, or other inputs related to the proposed activities. Mr. Roe reiterated that the concern really is the enterococcus and the fact that there's going to be animals up there tramping around potentially degrading those slopes that are considered at the moment to be highly erodible. We do have agricultural interest in those lands and ADC has let them know that due to the erodibility of those lands probably the best use of the land is orchard crops, where the trees will spread roots to stabilize the soil and you don't have constant disking tillage etcetera disturbing the soil. Mr. Roe went on and stated that although we have this presentation, we weren't provided with a farm plan so it's difficult to make a full analysis. Once we do receive a full farm plan we can run this past our consultants and do a fully analysis. Mr. Roe asked if Kekaha Agriculture Association (KAA) had any comments.

Councilmember DeCosta asked if Mr. Roe could educate him on enterococcus and asked for a definition.

Mr. Roe explained that it's bacteria that's naturally occurring in the soil and also comes from animal waste.

Councilmember DeCosta explained that in his slide presentation that area is DLNR's hunting area.

Mr. Roe stated that he believes the area is used for access and that no hunting on ADC lands was allowed.

Councilmember DeCosta stated that he was told by DLNR that there is bird hunting in the area and asked if ADC had any bird hunting going on.

Mr. Roe repeated ADC doesn't permit hunting on its properties. Hunters may be going through nearby, but ADC doesn't allow it as part of our license.

Councilmember DeCosta stated as a 4th generation hunter on Kauai the ADC lands are unmanaged and have been unmanaged since the 1990s when the plantation stopped. Those lands have wild pig, deer, and goats, but you cannot get rid of them because the grasses are so tall you don't know where they're hiding. With this prescribed grazing and lower grasslands the domestic animals will be able to bring out the wild animals; there will be a better harvest by getting rid of the large number of nuisance animals that are causing your enterococcus because your domestic animals, your cattle or sheep will be very limited to the amount of animals per acre. Those lands have not been managed well almost 30 years.

Mr. Roe explained that from their testing the concentration of enterococcus is highest at the border where it's coming in from DHHL land and DLNR land. It's slowly filtering out as it travels through ADC land. It doesn't yet appear to be coming from ADC property because we can track the concentration, which slowly reduces as it moves through ADC property.

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Councilmember DeCosta asked if anybody has shown interest in this property.

Mr. Roe stated ADC will be soliciting applications shortly.

Councilmember Decosta asked if they were going to use all 12,000 acres.

Mr. Roe responded ADC will be able to answer that when they receive the applications, but there has been interest in a substantial portion of the mauka lands.

Councilmember DeCosta asked how long ago was this application put in.

Mr. Roe explained they haven't received any applications yet but that the applications will be forthcoming.

Councilmember DeCosta explained that he's been working on this project for three years and that he's been talking with KAA and ADC and it seemed like he was given no consideration to put in an application and now you're telling me an application is forthcoming from another entity. Is this applicant a local entity or is ADC entertaining a mainland entity?

Mr. Roe explained he anticipates receiving an application from a Hawaii entity. Mr. Roe went on to explain that Councilmember DeCosta should submit an application and there's a reason why ADC invited him to make this presentation because we are giving you consideration.

Councilmember DeCosta stated that he hasn't turned in an application because he was told he had no financial numbers to go on the application; that you guys need five years of financial numbers to lease property on ADC and we didn't have that. Now that we have Keala foundation I believe we have something good for the community. Could we turn in an application under Keala foundation?

Mr. Roe replied you're certainly welcome to.

Chair thanked Councilmember DeCosta and asked if anyone from the public wished to provide testimony.

Mr. Faye introduced himself as the manager of the KAA. He stated that KAA has a hard time supporting this project. Mr. Faye thanked Councilmember DeCosta for all his community work he's put into this thing. The concepts he's presented are definitely engaging and highly creative, but he did not see the numbers that support it and in an earlier version of this that Councilmember DeCosta presented to KAA there were some numbers but they couldn't make sense of them. Mr. Faye explained they share the concern of highly erodible lands and finding a suitable use for it. We're concerned about overgrazing. We've seen it happen time and time again in spite of requests not to over graze. On a financial basis cattle ranching can pay about 50 bucks an acre max even when all the conditions are

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good. Mr. Faye explained that one head for ten acres is what they estimate. Running sixty head of cattle, butchering thirty a year; that's less than one a week. There's no real big economic impact here and KAA doesn't think this project can support Kekaha and ADC licensees shared cost of the infrastructure. All the members and licensees share the cost of the infrastructure and this project would need to be basically supported by the other licensees. KAA has concerns about liability with the children up there, with cattle getting on to the highways. For fire mitigation, we're a little bit unsure if converting this land to this organized farm would really truly mitigate fire. KAA is doing fire breaks along with DOFAW. KAA maintains about fifteen miles of firebreak roads. The bottom line is KAA doesn't think this is the highest and best use of the of the land considering alternatives. KAA doesn't think this project really meets the the goals and objectives of KAA, ADC, the legislature, or the governor.

Chair thanked Mr. Faye and asked if there was anyone else from the public that wanted to provide testimony. Hearing none Chair asked for board discussion.

Mr. Hong thanked Councilman DeCosta and stated if those lands are fallow now there's no contribution to the KAA costs. If you look at it from a larger perspective the issue of safeguarding our lands for future generations and preventing the fire hazard that is out there as shown by Kula, Lahaina, Big Island, Kauai, here in leeward Oahu, we've got to do a much better job managing our fallow land. Particularly those that have been in big ag before. He explained that he went to West Virginia and witnessed firsthand the impacts and benefits of good field management. Having that vision in my mind and looking at what is proposed here in terms of what Councilmember DeCosta was saying it makes sense to me to do something different than what we've always done before. Especially given the situation where you have these hazards to houses and to existing lands and how do we preserve all of this. Mr. Hong was concerned that if you put these mauka lands into orchards without doing the type of management of these invasive species that we're going to have the same problem over and over again. Mr. Hong stated he would be in favor of looking at this, investigating it, maybe doing a pilot program in certain areas to see how it works and study the results.

Mr. Wicker asked if ADC had a strategic plan for its Kekaha lands. If ADC has areas designated for orchards, vegetable crops and ranching, or are we continuing down this path of piecemealing. What is the strategy? Do we have alternatives? What's our long-term strategy? To acquire more lands? Does ADC have a strategy for its Kekaha lands?

Mr. Roe explained that he doesn't know if there's a specific strategy but we've always anticipated that the mauka lands would probably be orchard primarily because we're under the clean water act settlement agreement and we have to monitor enterococcus. Given all of these issues, including the settlement agreement that we have to consider that orchard is probably the best disposition for those lands because you don't have to till the soil; you don't get the soil runoff; you don't have animals up there with the waste product running down the hill into the to the communities and to the ocean. It's ultimately the Board's call.

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Mr. Wicker asked what type of orchard crops are we looking at based on the climate and ground conditions.

Mr. Roe explained we're still waiting to receive applications but we think tree crops. Something that's going to establish wide roots; hold soil in; doesn't require tillage.

Mr. Wicker asked if we have other land suitable for ranching.

Mr. Roe explained not in Kekaha. ADC has actively been removing animals and finding ways to mitigate runoff and most of it stems from the settlement agreement and the fact that our testing shows that we're high on enterococcus.

Ms. Hurd thanked Councilmember DeCosta for his well-prepared presentation. Ms. Hurd stated she believes in land management and she believes ranchers are excellent land managers. She knows there are plans for these parcels of land, but there's no plan right now. What we do have is a well thought out, mapped out, three year plan put together with a lot of thinking involved. What she found attractive was that there's a value added piece to this plan and that is workforce development, which we need. We need a place where kids can go and decide if they want to have a future in agriculture. The plan she saw today is a really good land management plan. There's potential. There's no other plan in place, an orchard is a great idea but it is only an idea. We have a plan in front of us and we have people willing to do it. It involves land management and they're ranchers. Ranchers are great land managers so she supports moving forward with the plan. An orchard is a good plan but when you have an orchard you do have transportation problems, you have to move things back and forth, you need machinery. Basically she's making a plan for people that haven't presented a plan yet. She supports the plan we have in front of us; it's a good plan.

Mr. Tabata thanked Councilmember DeCosta and asked Mr. Roe if there was something on the east side that was more conducive to growth that can be made available in Kalepa.

Mr. Roe stated that ADC does have 160 acres, the former unit J, in Kelapa and apologized to Mr. Wicker for not answering his question about other lands that might be available. The county has 400 acres that is available for them to use should Kauai County decide this is a project they want to support.

Mr. Tabata commented that starting back in 2003 to be exact, when we started diversified crops at Kekaha Sugar, they planted 50-100 acres of a variety of mango from the Philippines that is opposite the Hawaiian varieties, and it did very well. There is a farmer still farming a part of it and he has expanded it where his varieties are made available on the west side. Traditionally back in the sugar days all of the valleys was where we had the cattle, both at Lihue plantation and Kekaha Sugar. He explained the cattle had to climb all those hills so the beef was tough, but now we get all of these flat lands, it should be a no brainer but in the right location. They had an opportunity for dairy on Kauai a few years ago and his wife grew up on a dairy so he's very familiar with the outcome of what could happen as far as real fresh milk it's not double pasteurized as it is today. That's why he brought it up if it's possible to do a test plot on the east side where you don't need the

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irrigation; you can rely on the rainfall. There's opportunities and we just need to bring the right minds together and look at it more closely. It's been mentioned there are acres available in the Kalepa. It's on the other side of the island from where Councilmember DeCosta wants to set up, but it's a good area to at least try something.

Chair asked for any further board comments or discussion.

Councilman DeCosta thanked everyone who shared their mana'o and those who supported the project and was honored that his presentation made sense. The value added products is not only the meat in our local markets but giving our children an opportunity; the next leaders not only lawyers and doctors and nurses and firemen. We need farmers and ranchers. We don't need large companies. He asked Mr. Faye why he wasn't asked to be on the community resilience board when he and his family are from that moku or area. He will bring in revenue to pay for the ADC land. It would be an opportunity to mitigate fire; the dry grasses are very hazardous to the community of Waimea. The 400 acres cannot be used because that's going to be the County's housing project and the area collects water during the rainy season so your livestock cannot be in water. He asked the Board to give them a chance to do a small pilot project on 3 to 500 acres in an area that's adjacent to Kokee state road right above the Waimea Heights community and the Waimea community housing so we don't end up being Lahaina, and don't end up being Kula. He asked ADC to give them a chance. The community on the west side, the men and women of the west side want to do this project and humbly ask the board to consider the application that they're going to do with Keala foundation. If we put in orchards, the ground will need to be tilled, fencing would need to be installed, and the grass will need to be mowed. That's going to be intense labor and that's why no orchard plan came to fruition yet.

Mr. Manuel thanked Councilmember DeCosta for his presentation and asked Mr. Roe to clarify his statement made in his presentation regarding enterococcus.

Mr. Roe explained that was one of the things ADC agreed with EarthJustice to test for.

Mr. Manuel thanked Mr. Roe for the clarification. He wanted to clarify if it was the Waimea Watershed Agreement because that language is not in that agreement that you have with Earth Justice, which is tied to the commission. Just for the record, he doesn't want the agreement to be used as an a reason not to potentially consider this application.

Ms. Prescott-Tate clarified it's in another agreement.

Mr. Manuel explained he wanted to make it very clear it's not the agreement with the Water Commission or ADC as the parties; not the Waimea Watershed Agreement with the Water Commission

Ms. Prescott-Tate replied, this would be the clean water act case.

Mr. Manuel just wanted to clarified that this requirement was part of the Clean Water act case and not the Waimea Watershed Agreement; just to make it clear for the record.

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Mr. Hong reiterated the benefits of land management and if done well it can make those lands greener, more productive, and safer for the community. And maybe some of the native herbs and grasses that don't exist in this grassland today will make a comeback.

Chair commented that this is something he's going to pursue with other organizations. The NRCS is on Maui today going around looking at the damage to agriculture. He was notified by the Hawaii Farm Bureau president, Randy Cabral that they'll be meeting with Senator Hirono tomorrow to address some of the issues that we're facing on Maui. One concept I like in this plan is the fuel breaks. We don't have enough of them across the state and it's something he'd personally like to see increased or working with all these land owners to maintain those fuel breaks. That's a critical part of it.

Chair explained that this was just an informational briefing so there is no need for a motion or vote on this matter. He suggested that Councilmember DeCosta submit a formal application and the board can review it again.

2. Presentation by Mary Alice Evans, Interim Director of the Hawaii Office of Planning and Sustainable Development providing a brief progress update on the ADC Agribusiness Plan

Ms. Evans stated that this will be the first periodic status report on our work to complete the memorandum of agreement (MOA) we have entered into with ADC to do an update on the agribusiness plan for ADC. Ms. Evans highlighted that together with Mr. Wicker they went and saw a consolidated kitchen facility in Waipahu that showed how to take in local agricultural products and make them into local food products for sale. They had a meeting with the USDA Farm Services Agency to go over the kind of services they provide to local farmers and ranchers here because that will be part of what we'll put in the Agribusiness Plan they're a partner and they offer low interest loans to farmers and ranchers and that the economics of ranching and farming are one of the most challenging parts of growing agribusiness here in Hawaii. Ms. Evans explained that they were very fortunate to get an intern this summer who also worked with the USDA Farm Services Agency and she made a lot of progress on stakeholder engagement strategy and the analysis of accessory facilities and services.

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

Mr. Manuel asked what's the time frame for completion of this plan?

Ms. Evans replied it's an eighteen month agreement. We won't have a final report for the board's consideration until next fall, but she will continue to make progress reports.

Mr. Manuel asked if there was any community engagement opportunity for participation in the planning process or is this clearly just agency to agency.

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Ms. Evans explained that the scope of work includes a public engagement strategy. They'll have that approved by the staff before we start that. They're looking to involve a variety of stakeholders including the licensees if the staff agrees for each of the main areas for ADC's licensees going out to them not asking them to come to us and also looking at language access as part of that. We haven't got that into a draft yet for the staff to review but we have a pretty good outline thanks to our intern.

Mr. Manuel remarked that's awesome. Is this all in-house, no contractor?

Ms. Evans said at this point, yes.

Mr. Manuel gave kudos to Ms. Evans and her team and thanked Ms. Evans for the update. As a planner he is excited that there is that community facing component, which is sometimes what we get criticized with as an agency.

Ms. Evans stated that with the support of Mr. Wicker they will be able to do whatever needs to be done to finish this plan.

Chair asked if there were any other questions.

Mr. Okuhama commented that it was good timing that we should be having a new Executive Director just as they are getting heavily involved in the agribusiness plan. He thinks it a good time to start on this when we also have a new Executive Director.

Ms. Evans thanked Mr. Okuhama and stated that the new Executive Director can initiate any changes to the scope of work that he or she feels is appropriate and that would come to the Board as a supplement agreement. She explained that within the MOA there's a provision for making midcourse corrections.

Chair asked if there were any other questions. Hearing none Chair thanked Ms. Evans and stated this was just an informational briefing so there is no need for a motion or vote on this matter.

3. Request for approval to enter into a Water Facility Agreement with Dole Food Company, Inc. to access water resources at TMK (1) 6-4-004:007 benefiting ADC parcels at TMK (1) 6-4-004:008, :006

Chair asked for a motion to approve: Mr. Tabata; Second: Mr. Hong

Chair asked for staff presentation.

Mr. Roe stated that in February 2021, ADC advertised notice of available lands and they accepted application for those lands. In September 2021, the board approved a number of tenants including Hawaii Sustainable Agricultural Products for the subject properties. It was noticed at the time that these lands did not have approved access to water so the applicant approached Dole. However, Dole prefers to have the water use agreement with the

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landowner. ADC has been working with Dole to develop an agreement and now they are seeking board approval to enter into this agreement to provide ditch water and occasionally some pumped water to the subject parcels. One brief thing to change, he did receive word from Dole this morning that they're willing to enter into a five year agreement instead of a one-year agreement.

Chair asked for public testimony. There was none.

Chair asked for board discussion.

Mr. Manuel stated it was great to hear that it wasn't just a year to year agreement and he's glad there is some extended commitment to this water agreement. He did read the agreement and it does reference pumped water. Is it well water or water pumped out of the reservoir?

Mr. Roe stated that he was not certain on that but it was his understanding that all of the water is coming from Tanada Reservoir also known as the Upper Helemano Reservoir and the ditch water or surface water.

Mr. Manuel explained he just wanted to get that on the record and clarified.

Chair asked for any further board discussion. There was none.

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

E. Old Business

1. Update regarding ADC-owned buildings in Whitmore Village, Oahu, Hawaii, TMK (1) 7-1-002:004, 009

Chair called on Mr. Nakamoto to provide an update.

Mr. Nakamoto said there was no real update. They are setting up a meeting with HIOSH on how to move forward and whether or not there was any additional testing they can do to determine whether or not the facilities are in decent or working condition.

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

Chair said that this was an informational update so there is no reason for a vote.

2. Update on the progress of the Executive Director search

Chair stated that he was happy to announce that Wendy Gady has been selected as the new Executive Director effective August 21, 2023.

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Ms. Gady introduced herself and stated that she was so humbled to be serving the entire state in this new role. She wanted to echo what Chair had said earlier in that our hearts and thoughts are with all of Maui which is part of everyone's community. To those people that don't know her yet that she has over 20 years of farm management experience 15 of which have been on Oahu managing, getting operators and farms off the ground, from a fallow state to a live production. She's managed land and water, budget, staff, regulatory issues, teaching operators the GAPS and FSMA rules regulations, as well as, state and I'm looking forward to engaging the entire state as we move forward to fulfill the ADC charter.

Chair thanked Ms. Gady and asked if the Board had any comments.

Mr. Manuel asked if she could pop her head in and say hi so they could see her. Mr. Manuel further congratulated her and welcomed her to the board.

Chair echoed welcome aboard and that they look forward to great things.

Mr. Tabata also said welcome aboard.

F. Acting Executive Director's Report.

Mr. Takemoto remarked that the Board should have a copy of his update. For fiscal year 24 the budgeted projects are: \$10MM to do a food product innovation network. They will be working with UHCDC to do the initial study. The funds are mainly for planning and this is for all the counties. So far, they've already met with some of the consultants and they've reached out to all the counties. They've reached out to Hawaii, to Maui County, Kauai and Oahu to start coordinating the project to try to get all the funds encumbered before the end of the fiscal year.

Chair asked if ADC identified the project for Maui. Mr. Takemoto replied, no and explained they are just identifying stakeholders and handing it off to UHCDC. They are look at existing or ongoing projects to see how ADC can support what the community wants.

ADC received \$2MM in the budget to complete the plans for the Wahiawa Wastewater pipeline. Funding to complete all the design work is pending the Governor's approval. At which time, they should be able to receive you know a tighter budget on what the actual project cost may be. So that's part of the Wahiawa wastewater pipeline.

Mr. Takemoto continued, \$3MM in FY24 is for the property that the board approved for ADC to start due diligence on the purchase. It was a property that was approved for purchase a number of years ago but during due diligence they found that there was a question on the title and Dole has gone through and taken care of the title question and now we're looking to do the due diligence to complete purchase.

Letter D is \$1.1MM CIP funds for the Aahoaka reservoir improvements. These funds were transferred to DAGS. They've been working on this since the beginning. This is on Kauai to complete the work on that reservoir. They requested plans and they are still waiting for those plans from DAGS.

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Reservoir 155 & 225 improvements. ADC requested \$6.7M on behalf of HDOA to complete the project. ADC is working with all of the players to complete these improvements in Kunia, Oahu.

The Central Oahu Food Hub. ADC requested \$5.65M that was given to DAGS. ADC will be working with DAGS as they proceed. This work is primarily infrastructure work and underground portions.

Letter G, the purchase of Well #24, #25, and #26. ADC anticipates the sale will close by end of August 2023. Once the sale is complete, ADC will be working on the permitting and connecting the wells. ADC has \$4M to complete the connections. Well #25 is operational. Well #24 is close to operational, but we don't have a connection. Well #26 will need some work.

Letter H, \$4MM CIP for slaughterhouse design and constructions. We're looking for a location. They have a meeting set up with HDOA and DLNR and some of the stakeholders to resolve that and then they'll be moving forward on doing design work and construction.

The Yardi property management software, we're already billing tenants. It's up and running. We hired an accounting consultant and an accountant and they're going to be setting up and managing the Yardi system;

Staff is working with the accounting consultant. The accountant will be starting on Thursday, August 24. The timing of all this worked out with the consultant, Yardi and the new Executive Director, so he believe ADC will have a good system, which addresses a big concern of the Audit.

Mr. Takemoto said the last item, the Wahiawa irrigation system. That's the project the state's acquiring the Wahiawa reservoir, dam and irrigation ditch system. Their consultant is starting on that. ADC's portion that we'll be working on is primarily some of the properties that are owned by state of Hawaii, they'll be doing due diligence on that and of course the ditch system. The work has started and the Consultants should have something done by the end of the year.

Mr. Takemoto asked if there were any questions on the projects. There was none.

Mr. Takemoto provided an update on vacant positions. The Accountant V will start on August 24. ADC will work with the Accountant V to hire the Accountant IV. For the other positions, the Governor will not give a blanket approval. It's not a hard no, but acknowledged that it will be tough to hire. This was in response to the impact to the state revenues caused by the Maui fires. ADC is working with HR because we are really short-handed.

Mr. Takemoto asked if there were any questions. Hearing none Chair thanked Mr. Takemoto for the report.

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G. Adjourn

Seeing no other business before the Boar, Chair asked for a motion to adjourn.

Motion to adjourn: Mr. Manuel; Second: Mr. Hong.

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

Meeting adjourned at 10:56 a.m.

Date of Next Meeting: The next meeting will be held on September 21, 2023, at 9 A.M.

Exhibit "19"

Agribusiness Development Corporation Executive Director

(<https://www.governmentjobs.com/careers/h>)
  

Salary	See Position Description	Location ⓘ	Island of Oahu
Job Type	Non-Civil Service	Job Number	102627
Department	Business, Economic Development & Tourism	Opening Date	06/05/2023
Closing Date	6/26/2023 11:59 PM Hawaii		

<u>DESCRIPTION</u>	<u>BENEFITS</u>
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Recruitment Information

This posting is for the State of Hawaii, [Department of Business, Economic Development & Tourism, Agribusiness Development Corporation](#).

The position is located on the Island of [Honolulu, Oahu](#). (Location of this position).

Salary: \$ Commensurate with education and experience

If you have any questions regarding this [non-civil service](#) exempt position, please Email Steven.s.sung@hawaii.gov.

The State Recruiting Office will refer all inquiries regarding this exempt position to the [Department of Business Economic Development & Tourism, Agribusiness Development Corporation](#).

Duties Summary

The Agribusiness Development Corporation (ADC) is seeking to hire an Executive Director. ADC's mission is to create a vehicle and process to make optimal use of agricultural assets for the economic, environmental, and social benefit of the people of Hawaii, through aggressive and dynamic leadership. The purposes of ADC shall be to support the production of local agricultural products for local consumption and value-add products in a manner that is economically and environmentally sustainable while continuing to develop commercial exports of locally produced agricultural products and value-add products.

ADC's powers are vested in an eleven-member Board of Directors (Board). The Executive Director shall be directly responsible for the day-to-day operations of the corporation, including control of and responsibility for the execution of the policies of the Board, the supervision of the staff, and the administration of the corporation's programs, projects, and affairs, including approving transactions involving purchasing, property management, budgeting, accounting, travel, insurance claims, and the issuance of manuals of administrative procedure, and shall also perform such other duties as may be delegated from time to time by the Board.

Minimum Qualification Requirements

Knowledge:

Principles and practices of agricultural marketing, including product development and promotion; value-add product development; principles, theories, and practices of financial and economic research and analysis; principles and practices of agribusiness planning, budgeting, organization and operations; principles and practices of farm production, including cropping and post-harvest treatment systems and land, water, and production infrastructure use; agricultural transitional issues; and, environmental issues related to hazardous materials and climate change.

Skills/Abilities:

Plan, develop, and coordinate the long range plans for utilization of natural resources; apply principles and practices of administration and skill to organizational, procedural, and control problems; exercise sound judgment in appraising and evaluating administration problems and procedures; acquire a good understanding of legislation and directives pertinent to administration of the agency and standard operating procedures; understand state and local laws, rules, and ordinances relating to the public; evaluate program operations; establish and maintain effective working relationships; express ideas effectively orally, and in writing; maintain appropriate demeanor when meeting with the public; and conduct complex negotiations.

Education:

Graduation from an accredited four-year college or university with a bachelor's degree in economics, business, accounting, public administration, agriculture, agricultural science, or engineering (civil, mechanical, electrical, or agricultural). Post-graduate work leading to a Master of Business Administration degree (MBA) is desirable.

Work experience as described under the Specialized Experience of any other progressively responsible administrative, professional, or other analytical work experience that provided knowledge, skills, and abilities comparable to those acquired in four years of successful study while completing a college curriculum leading to a baccalaureate degree with a major in subjects mentioned above, may be substituted for a year-for-year basis for the required education. To be acceptable, the experience must have been of such scope, level and quality as to ensure the possession of comparable knowledges, skills and abilities.

The education or experience background must also demonstrate the ability to write clearly and comprehensively such materials as reports and analyses; read and interpret complex written material; and solve complex problems logically and systematically.

Experience:

Specialized Experience: Five years of progressively responsible work experience that demonstrates the possession and application of knowledge, abilities, and skills of agribusiness management planning that include farm product market identification and quantification, capital and production financing, production management (such as selection of cost-effective cropping and post-harvest treatment systems), engineered design and costing of the production infrastructural improvements and equipment requirements, supervision of farm production and support personnel and the contracting for land, water service, outside services, goods and production materials provided to the business. The farm business experience should be on a for-profit basis and required profit budgeting.

Supervisory or Administrative Experience: Two years of demonstrated supervisory or administrative experience that includes planning, organizing, promoting and directing a program or project through staff guidance, team leading, advise, and assistance towards the successful completion of assignments.

Citizenship Requirement: The State of Hawai'i requires that all persons seeking employment with the government of the State shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States.

Other Information

This position is exempt from the civil service and considered temporary in nature. Therefore, if you are selected for the position, your employment will be considered "at will," which means that you may be discharged from your employment at the discretion of the Board. Salary commensurate with experience

Interested applicants need to complete the State Application Form, HRD 278:

<https://dbedt.hawaii.gov/adf/files/2023/06/state-application-adc-exempt-temp.pdf>
(<https://dbedt.hawaii.gov/adf/files/2023/06/state-application-adc-exempt-temp.pdf>) (Download PDF reader)
(<https://get.adobe.com/reader/>)

Then send completed State Application Form with your resume and cover letter to:
steven.s.sung@hawaii.gov (mailto:steven.s.sung@hawaii.gov)

Job posting will close on June 26, 2023.

NOTE: The State Recruiting Office will refer you to the Department of Business Economic Development & Tourism, Agribusiness Development Corporation regarding this exempt position.

Agency

State of Hawai'i

Address

DHRD - Employee Staffing Division

235 S. Beretania Street, 11th Floor, Honolulu, Hawaii, 96813-2437

Phone

808-587-0936 or 1-877-447-5990 (TTY)

Website

<http://jobs.hawaii.gov/> (<http://jobs.hawaii.gov/>)

Exhibit "20"

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

**TESTIMONY OF JAMES J. NAKATANI
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION**

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

**Tuesday, February 22, 2022
10:00 A.M.**

**SENATE BILL NO. 2473
RELATING TO ECONOMIC DEVELOPMENT**

Chairperson Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate Committee on Ways and Means.

Thank you for the opportunity to testify on Senate Bill No. 2473. The Agribusiness Development Corporation (ADC) submits comments on this measure, which transfers the ADC from the Hawaii Department of Agriculture (HDOA) to the Department of Business, Economic Development, and Tourism (DBEDT).

Transferring the ADC from HDOA to DBEDT could be beneficial to the State because its goals and objectives supports DBEDT's mission, which is to achieve a Hawaii economy that embraces innovation and is globally competitive, dynamic and productive, providing opportunities for all Hawaii citizens. HDOA's priority and primary functions are regulatory and enforcement, which mean non-regulatory functions are secondary. This includes a long-term vision and overall plan for economic development to support operations such as ADC.

Thank you for your consideration of our testimony.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

CHUNG I. CHANG
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: dbedt.hawaii.gov

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
MIKE MCCARTNEY
Director

Department of Business, Economic Development, and Tourism
before the

SENATE COMMITTEE ON WAYS AND MEANS

Tuesday, February 22, 2022
10:00 AM

State Capitol, Conference Room 211 & Videoconference

In consideration of
SB2473, SD1
RELATING TO ECONOMIC DEVELOPMENT.

Chair Dela Cruz, Vice Chair Keith-Agaran and members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) supports SB2473, SD1, which transfers the administrative attachment of the Agribusiness Development Corporation (ADC) from the Department of Agriculture to DBEDT.

As the lead agency in the Executive branch in achieving a Hawaii economy that embraces innovation and is globally competitive, dynamic, and productive to provide opportunities for all Hawaii's citizens, we look forward to supporting ADC in its mission of commercial agriculture development. In our most recent assessment, properly supporting ADC would require a fiscal accountant position and a procurement officer.

Thank you for the opportunity to testify.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

FEBRUARY 22, 2022

10:00 a.m.

Via VIDEOCONFERENCE & CONFERENCE ROOM 211

**SENATE BILL NO. 2473 SD1
RELATING TO ECONOMIC DEVELOPMENT**

Chairperson Dela Cruz and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2473 SD1. This measure transfers the administrative attachment of Agribusiness Development Corporation (ADC) from the Hawaii Department of Agriculture (HDOA) to the Department of Business, Economic Development, and Tourism (DBEDT). HDOA supports the intent of this measure and offers comments.

Innovative strategies are an effective means to achieve the ambitious and important goals of the State. The pandemic driven economic shut down and reset has presented Hawaii with a unique opportunity to rebuild its economy into a vibrant and globally competitive environment to re-imagine government operations and career opportunities for all Hawaii residents. The transfer of ADC from HDOA to DBEDT may support this objective by aligning similar goals of DBEDT's and ADC's respective missions to spur economic development.



Unlike ADC and DBEDT, HDOA's priorities and functions are primarily regulating, managing, and supporting the existing agricultural industry and community. HDOA continues to support the agricultural community and pursue and protect policies, programs, and outcomes that are in the best interests of agriculture. While the HDOA appreciates the intent of this measure to optimize rapid economic development through a focused restructuring of government, we are, however, concerned about possible unforeseen impacts that may occur from a disentanglement of our operational relationship with ADC.

Thank you for your consideration of our testimony.

SB-2473-SD-1

Submitted on: 2/20/2022 4:25:24 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Megan Fox	Testifying for Malama Kaua'i	Oppose	No

Comments:

This bill will not address the longstanding structural problems that have led to the failures of the ADC but simply shift the problem to another agency. HB2418 seems a much more effective piece of legislation to address these issues.



Senate Committee on Ways & Means

Hawai'i Alliance for Progressive Action (HAPA) Opposes: SB2473 SD1

Tuesday, February 22nd, 2022 at 10:00a.m. Conference Room 211

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

Hawai'i Alliance for Progressive Action (HAPA) **opposes SB2473 SD1** and the transfer of the administrative attachment of the Agribusiness Development Corporation (ADC) from the Department of Agriculture to the Department of Business, Economic Development, and Tourism (DBEDT).

In January of 2021 the State Auditor released its audit report to the legislature and found that in its nearly 30 year history, the Agribusiness Development Corporation “has done little to support the development of diversified agriculture and fill the economic void created by the demise of sugar and pineapple”.¹

The ADC Should Be Aligned w/ State Mandates to Increase Local Food Production

Since the creation of the ADC, the state has shifted its focus from agricultural production for export towards increasing Hawaii's food production for local consumption and public procurement. The state has enacted policies to increase state procurement of locally grown and raised food, initiated a robust state-wide farm to school program and set benchmarks for the percentages of local food procurement. To successfully meet these state policies for increased procurement of local food, the management of agricultural lands under the state's purview must be aligned to support these mandates. It is not clear how removing the agency from agricultural expertise within the DOA will support those mandates.

The ADC is Lacking in Agricultural Expertise

One reason attributed to the agencies failings is a lack of food production or food systems expertise on the staff or board of the ADC, along with the absence of a strategic planning process (which is mandated by statute) that meaningfully engages a broad array of food producers input. In fact during the audit process the ADC Executive Director admitted that “no one here has deep agricultural experience”². The audit finds that “even if ADC had the correct strategy in place, it does not have the staff to do the work of an industry leader.”³ Food producers and the organizations that represent them are intimately acquainted with the challenges faced on the ground. Moving the ADC out of the Department of Agriculture will further alienate the agency from the knowledge and expertise needed to inform the ADC on how it can successfully meet state goals for ramping up local food production.

¹ ADC Audit (page 1)

² ADC Audit (page 11)

³ ADC Audit (page 11)

While some business and economic development expertise should certainly guide the effort of increasing local food production enterprises in Hawaii, an agency tasked with catalyzing the transition from pineapple and sugar to diversified agriculture must be well versed in the needs of the agricultural sector. Moving the agency into DBEDT would only further alienate the agency from its key stakeholders. The agency does not need to be housed under DBEDT to access business and economic development acumen.

Farmers Identify Access to Affordable Land as a Major Barrier:

Multiple farmer surveys have been conducted which consistently find access to affordable land as the primary barrier that farmers face.^{4 5} The ADC could be leading the way in ensuring that farmers have access to the ADC inventory of lands, along with a clear and equitable process of applying for ADC leases that are sized to a variety of farmer/food producers needs. However, the audit found that “when we requested documents we believed would be essential to the day-to-day operations of a corporation that manages land and properties – such things as land management policies, land acquisition guidelines, inventories of land holdings, and tenant listings – we were informed that the requested materials did not exist and would need to be assembled.”⁶ It is not clear how moving the agency from DOA to DEBDT will remedy this shortcoming.

ADC Reform Requires a More Comprehensive Approach:

Furthermore, the failings of the agency are various and reform will require a more comprehensive approach. The House Investigatory Committee has developed a set of recommendations based on a careful analysis of the audit findings and recommendations.

We respectfully request that the Senate consider adopting a more comprehensive approach to ADC reform and oppose SB2473 SD1. Thank you for your consideration.

Respectfully,



Anne Frederick
Executive Director

⁴ Malama Kaua'i Farmer Survey <https://secureservercdn.net/45.40.148.147/i79.5c3.myftpupload.com/wp-content/uploads/2019/06/2017-Kauai-Farmer-Survey-Report.pdf>

⁵ Hawaii Farmers Survey <https://www.hawaiifarmersurvey.com/>

⁶ ADC Audit (page 17)



LATE

**Hawai'i Food+ Policy
Testimony in Opposition to SB2473**

February 22, 2022

To the honorable members of the Hawai'i State Senate Ways & Means Committee:

Hawai'i Food+ Policy expresses our **opposition to SB2473**. As it does not make sense to transfer an agriculture-based agency under a department that has valued development as its primary source of economic development.

In light of the recent audit, it is clear that resources are better allocated to directly benefit our farmers rather than further bureaucracy and mismanagement from this agency. The ADC has had over 25 years to help revitalize Hawai'i's Agricultural Industry and yet we ask ourselves today, where are the results? We would recommend that the ADC be repealed and resources allocated to directly support our farmers and other existing government programs that have demonstrated their ability to bolster our food systems. **There are other ways and means which can support our farmers.**

The Honolulu Civil Beat reported on January 14, 2021, that "In recent years, the Legislature has appropriated more than a quarter of \$1 billion to the ADC, including about \$23.4 million for operations and \$238 million for capital investments. But it has been difficult at times for lawmakers to determine where that money had gone and how well the corporation had been fulfilling its duties." To have a mystery of where a quarter of \$1 billion has gone is beyond concerning and raises questions of whether such an agency should continue operation. An ongoing House investigation into the auditor has opened the door for public speculation into the integrity of our elected officials.

Therefore, there remains a need to take action that will bolster the public's faith in our elected officials. The public needs to see money well spent with tangible results that we can enjoy. Such as alternative means to bolster our food systems to provide locals with affordable healthy foods. Such as:

1. Removing the GET tax on organic produce;
2. Leasing Agricultural lands for the purpose of producing food, not GMO or chemical test sites;
3. Development of added value sites; and
4. Development of affordable farm plots.

Hard-earned taxpayer dollars should not be used to feed a machine that is broken. It is time for the State to pursue other avenues to revitalize Hawai'i's agricultural industry and take more

bottom-up methods to work with and directly serve communities. We must build from the bottom-up rather than filtering resources down, with farmers and those working within the food system industry receiving the pennies of the pot.

Mahalo for taking the time to read this testimony and please vote no on SB2473.

Mahalo,
Bronson Azama

SB-2473-SD-1

Submitted on: 2/20/2022 4:31:12 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
John NAYLOR	Individual	Oppose	No

Comments:

Aloha,

I oppose SB 2473 as written

Sincerely, JN Makawao

SB-2473-SD-1

Submitted on: 2/20/2022 5:23:58 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
B.A. McClintock	Individual	Oppose	No

Comments:

Please oppose this bill!

This bill will not address the longstanding structural problems that have led to the failures of the ADC but simply shift the problem to another agency.

SB-2473-SD-1

Submitted on: 2/20/2022 7:35:19 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sherry Pollack	Individual	Oppose	No

Comments:

I oppose SB2473 SD1. This bill will not address the longstanding structural problems that have led to the failures of the ADC but simply shift the problem to another agency. The ADC does not need to be housed under DBEDT to access business and economic development acumen. The legislature should take a more comprehensive approach to addressing the failings of the agency and enact reforms based on the recommendations of the state audit.

SB-2473-SD-1

Submitted on: 2/20/2022 10:01:02 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sandra Herndon	Individual	Oppose	No

Comments:

I emphatically oppose this bill on the grounds that it is an Agricultural measure and can only effectively be administrated by farmers with the assistance/guidance and expertise of the business community.

Our Islands need to be self supportive to feed our people. This bill doesn't fix what's wrong, it only puts it on someone else's desk!

SB-2473-SD-1

Submitted on: 2/20/2022 10:52:51 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Thomas Brandt	Individual	Oppose	No

Comments:

Moving ADC into DBEDT would only further alienate the agency from its key stakeholders, in my opinion. The agency does not need to be housed under DBEDT to access business and economic development acumen. The legislature should take a more comprehensive approach to addressing the failings of the agency and enact reforms based on the recommendations of the state audit.

Thank you for the opportunity to offer these comments.

SB-2473-SD-1

Submitted on: 2/21/2022 8:33:45 AM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dennis O'Shea	Individual	Oppose	No

Comments:

I oppose this bill. It does not address the issues.

Mahalo.

SB-2473-SD-1

Submitted on: 2/21/2022 9:39:55 AM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ashley Lee	Individual	Oppose	No

Comments:

Aloha,

I strongly oppose SB2473.

The state audit raises a multitude of concerns that cannot be addressed by simply moving oversight of the agency. Therefore, we oppose the transfer of the agency and respectfully request that the legislature take a more comprehensive approach to reforming the ADC.

While some business and economic development expertise should certainly guide the ADC’s effort of increasing local food production enterprises in Hawai‘i, an agency tasked with catalyzing the transition from pineapple and sugar to diversified agriculture must be well versed in the needs of the agricultural sector. Moving the agency into DBEDT would only further alienate the agency from its key stakeholders. The agency does not need to be housed under DBEDT to access business and economic development acumen. The legislature should take a more comprehensive approach to addressing the failings of the agency and enact reforms based on the recommendations of the state audit and the House Investigative Committee.

The state audit found that the ADC was “lacking in deep agricultural expertise”. Moving the agency out of DOA into DBEDT would only further exacerbate this disconnect with the needs of farmers/food producers on the ground. The ADC should seek to increase the agricultural expertise on its board and staff through its strategic planning process.

Several studies have shown that small farmers overwhelmingly identified a lack of access to affordable, right-sized farm leases as a major barrier to farming. If the state is to meet its local food production goals, the ADC should be a part of the solution in prioritizing access for farmers that are committed to sustainably producing food for local consumption.

Mahalo,

Ashley Lee

SB-2473-SD-1

Submitted on: 2/21/2022 9:51:22 AM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kelsey Amos	Individual	Oppose	No

Comments:

I am concerned that transferring the ADC into DBEDT will put the focus even more on a business-driven approach to agriculture. At this moment in history, with climate change looming and our food security precarious, we need approaches that take into account the human side of agriculture (farmers) and the needs of the land itself. Will DBEDT be equipped to maximize the biocultural potential of agriculture? Or will it focus on economic potential alone?

LATE

SB-2473-SD-1

Submitted on: 2/21/2022 10:11:52 AM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Poli'ahu Dulay	Individual	Oppose	No

Comments:

To: Chair Dela Cruz, Vice Chair Keith-Agaran and WAM Committee Members

Subject: OPPOSITION TO SB2473 SD1 Relating to economic development

Aloha e Chair Dela Cruz, Vice Chair Keith-Agaran & Committee members,

I strongly OPPOSE SB2473 SD1 Relating to Economic Development and urge you to NOT pass this measure.

The transfer of “administrative attachment of Agribusiness Development Corporation (ADC) from the Hawaii Department of Agriculture (HDOA) to the department of Business, Economic Development, and Tourism (DBEDT)” will worsen the current state of Hawaii’s food security and food self-sufficiency.

Legislative action is needed INSTEAD to strengthen Hawai’is DOA by implementing strategies with the support of the many agricultural expertise across Hawaii’s farming organizations to ensure a stronger food system in Hawai’i.

Context to consider:

“Increase Demand for and Access to Locally Grown Foods”

“Increase Production of Locally Grown Foods”

“Provide Policy and Organizational Support to Meet Food Self-Sufficiency Needs”

As presented in the “Increased Food Security and Food Self-Sufficiency Strategy” a comprehensive approach must be taken for ADC within the HDOA to ensure actions taken

are within the alignment of Hawai'i's agricultural needs, **INSTEAD** of transferring to another State agency.

Thank you for your time and consideration on this matter. We urge you to vote against this measure.

Mahalo,

Poli'ahu Dulay

Resources:

<https://files.hawaii.gov/dbedt/op/spb/INCREASED FOOD SECURITY AND FOOD SELF SUFFICIENCY STRATEGY.pdf>

LATE

SB-2473-SD-1

Submitted on: 2/21/2022 10:19:30 AM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Shannon Rudolph	Individual	Oppose	No

Comments:

Oppose.

Just kicking the (expensive) can down the road.

Nothing will help the ADC. It needs to be repealed, disbanded. and absorbed back into the Dept. of Ag.

LATE

SB-2473-SD-1

Submitted on: 2/21/2022 11:21:31 AM

Testimony for WAM on 2/22/2022 10:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
janice palma-glennie	Individual	Oppose	No

Comments:

Aloha,

Any agency tasked with moving our state's agricultural focus from pineapple and sugar to diversified agriculture must be well versed in the needs of the agricultural sector. Moving the agency into DBEDT would only further alienate the agency from its key stakeholders. The agency does not need to be housed under DBEDT to access business and economic development acumen. The legislature should take a more comprehensive approach to addressing the failings of the agency and enact reforms based on the recommendations of the state audit.

Please vote against SB2473 SD1.

mahalo,

janice palma-glennie

kailua-kona

SB-2473-SD-1

Submitted on: 2/21/2022 7:21:14 PM

Testimony for WAM on 2/22/2022 10:00:00 AM



Submitted By	Organization	Testifier Position	Remote Testimony Requested
jeanne wheeler	Individual	Oppose	No

Comments:

I oppose this bill, please do NOT pass it. Mahalo, JW

SB-2473-SD-1

Submitted on: 2/21/2022 7:36:25 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Elizabeth Hansen	Individual	Oppose	No

Comments:

As a registered voter in Hakalau HI 96710 - and a small farmer - I oppose this bil.

SB-2473-SD-1

Submitted on: 2/21/2022 7:59:16 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Rodger Hansen	Individual	Oppose	No

Comments:

As a registered voter in Hakalau HI 96710, and a small farmer, I support this bill.

Mahalo.

SB-2473-SD-1

Submitted on: 2/21/2022 11:32:39 PM

Testimony for WAM on 2/22/2022 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Janet L Pappas	Individual	Oppose	No

Comments:

Dear WAM members,

I strongly disagree that the administration of ADC, the Agriculture Development Corporation, should be shifted from the Dept. of Agriculture to DBEDT. This does not address the heart of the problem. The issues uncovered by the state audit need to be attended to. Bill HB2418 HD1 does just that--shifts the focus of ADC from food exporting to local food production.

I urge you to oppose SB2473 SD1.

Sincerely,

Jan Pappas

Aiea, Hawaii 96701

SB-2473-SD-1

Submitted on: 2/22/2022 7:53:37 AM

Testimony for WAM on 2/22/2022 10:00:00 AM



Submitted By	Organization	Testifier Position	Remote Testimony Requested
cheryl hendrickson	Individual	Oppose	No

Comments:

An agency tasked with catalyzing the transition from pineapple and sugar to diversified agriculture must be well versed in the needs of the agricultural sector. Moving the agency into DBEDT would only further alienate the agency from its key stakeholders. The agency does not need to be housed under DBEDT to access business and economic development acumen. The legislature should take a more comprehensive approach to addressing the failings of the agency and enact reforms based on the recommendations of the state audit.

SB-2473-SD-1

Submitted on: 2/22/2022 10:38:02 AM

Testimony for WAM on 2/22/2022 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sylvia Dolena	Testifying for Pele Lani Farm LLC	Oppose	No

Comments:

I strongly OPPOSE SB2473.

Exhibit "21"



JOSH GREEN, M.D.
GOVERNOR

**STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES**

CHERYL KAKAZU PARK
DIRECTOR

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.oiip.hawaii.gov

OPINION

Requester: Anonymous
Board: Agribusiness Development Corporation Board of Directors
Date: November 3, 2023
Subject: Selection of New Executive Director (S APPEAL 24-02)

REQUEST FOR OPINION

Requester, an anonymous member of the public, seeks a decision as to whether the Agribusiness Development Corporation (ADC) Board of Directors (Board) violated the Sunshine Law during its selection of a new executive director (ED).

Unless otherwise indicated, this decision is based upon the facts presented in an email from Requester to OIP dated August 21, 2023; a Notice of Appeal from OIP to the Board dated August 24, 2023, but emailed to the Board on August 21, 2023, with enclosures; an email from ADC to OIP dated September 5, 2023, with attachments; an email from the Department of the Attorney General (AG) on behalf of ADC to OIP dated September 12, 2023, with attachment; an email from the AG to OIP dated September 15, 2023, with attached email thread; a letter from OIP to the AG dated September 15, 2023; an email from Board member Mr. Dane Wicker (Wicker) to OIP dated September 22, 2023, with attached email thread; an email from ADC to OIP dated September 26, 2023, with attachments; an email from OIP to the AG dated October 3, 2023, with attached email thread; an email from the AG to OIP dated October 4, 2023, with attached email thread; an email from ADC to OIP dated October 4, 2023; an email from the AG to OIP dated October 6, 2023, with attachment; an email from the AG¹ to OIP dated October 13, 2023, with attachments; an email from ADC to OIP dated October 16, 2023, with attachments;

¹ The AG's responses to this appeal on behalf of the Board are collectively referred to herein as "Response."

and an email from ADC to OIP dated October 31, 2023, with attachment and attached email thread.

QUESTIONS PRESENTED

1. Whether the Board gave proper notice that the location of an executive session would be solely the in-person location listed on a remote meeting notice, with no indication that the executive portion of the meeting was in-person only; and whether this allowed the Board to require board members to attend in-person only for the executive session portions of the agenda.

2. Whether a board may discuss an item in executive session without having first allowed public testimony on the agenda item to be discussed in the executive session.

3. Whether the Board properly considered and voted on the hire of an officer or employee in an executive session.

4. Whether the Board was authorized under the Sunshine Law to take a secret ballot vote on an item of board business.²

5. Whether the executive session summary provided after the Board's executive session on August 8, 2023, complied with Act 19 of 2023, to be codified at section 92-4(b), HRS (Act 19).³

6. Whether the Board has options to remedy Sunshine Law violations, including taking a subsequent vote to ratify selection of the ED.

² "Board business" is defined as "specific matters over which a board has supervision, control, jurisdiction, or advisory power, that are actually pending before the board, or that can be reasonably anticipated to arise before the board in the foreseeable future." HRS § 92-2 (Supp. 2022) (definition of "[b]oard business").

³ Act 19, which was enacted on April 19, 2023, and effective July 1, 2023, amended section 92-4, HRS, by retaining the statute's original language in a new section (a), and creating a new subsection (b), which requires that any discussion or final action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held; provided that the report need not defeat the purpose of holding the executive session. Act 19 is discussed in detail in section V, *infra*.

BRIEF ANSWERS

1. No. As explained in section I starting on page 16, the Sunshine Law requires that a notice be filed six days before a meeting; that the notice include the location of the meeting; and for remote meetings, the notice must list at least one physical location that is open to the public. The notice for the Board's meeting on August 8, 2023, clearly stated it was a remote meeting under section 92-3.7, HRS. The notice did not state that the executive session would be in-person only. OIP therefore concludes that the notice did not give proper notice that the "location" of the executive session would be only the listed in-person meeting location and Board members could not participate via remote link. OIP finds that the fact that there was no legal notice that the executive session was in-person only resulted in little, if any, harm to the general public, as the public is not entitled to attend the executive session. However, the Sunshine Law's protections apply to board members as well as the general public, and a meeting notice also serves as notice to the members of a board. Because members were prevented from participating remotely in the executive session, OIP finds that the improper notice of the in-person only executive session deprived Board members of the ability to attend and participate in the executive session in violation of section 92-3, HRS.

2. No. As explained in section II starting on page 19, section 92-3, HRS, requires that boards accept oral and written testimony on any agenda item, and does not exclude executive session agenda items from that requirement. Prior to taking a vote to enter executive session during the public portions of the meetings on August 8, September 21, and October 3, 2023, the Board allowed public testimony only on the decision to go into executive session, and not on the executive session agenda items themselves. OIP therefore finds that the Board denied the public's right to testify on the agenda items the Board discussed in executive session, and OIP concludes that the Board's denial violated section 92-3, HRS.

3. Yes. As explained in section III starting on page 20, section 92-5(a)(2), HRS, allows a board to enter an executive session to consider the hire of an officer or employee where consideration of matters affecting privacy will be involved. The Board relied on this executive session purpose when it met in executive session to interview the top two candidates⁴ for the ED position, to set the next ED's salary, to select a candidate to make an employment offer to, and to decide how to inform the public of its hiring decision. OIP finds that the Board properly voted to enter an executive session in accordance with section 92-4(a), HRS, and had a valid reason to enter an executive session under section 92-5(a)(2), HRS, to interview candidates, and then to discuss the selection and salary of the new ED. OIP finds it could be reasonably anticipated that the executive session discussion of the candidates,

⁴ ADC used the terms "candidates" and "applicants" in various meeting notices and minutes, and OIP uses both terms herein interchangeably.

including the salary discussion, involved consideration of matters affecting privacy, either directly or indirectly. OIP therefore concludes that the Board was properly in executive session for these discussions. OIP concludes, however, that the discussion on how to inform the public of the successful candidate's selection did not implicate any privacy interests and should have been in the public portion of the meeting.

OIP further concludes that the Board was permitted by the Sunshine Law to vote in executive session on selection of the ED to avoid revealing the candidates' identities as both had privacy interests to be protected, and to protect the privacy interests of the selected candidate until such time as she accepted the employment offer. Holding this vote in a public meeting would have revealed the candidates' identities, which, at that time, carried privacy interests that allowed the Board to hold the executive session.

However, the Board should have voted in the public portion of the meeting on selection of the new ED's salary because the minutes show the salary discussion focused primarily on budgetary considerations and not on qualifications of either candidate such that a privacy interest would have been implicated.

4. No. As explained in section IV starting on page 26, multiple provisions of the Sunshine Law require that votes be taken in a way that makes clear how each member voted. HRS §§ 92-3.7(b)(5); 92-4; 92-9(a)(3), (b)(3) (Supp. 2022). Because the secret ballot did not identify how each member voted during the executive session on August 8, 2023, the Board was unable to meet the requirements of section 92-9, HRS, to keep minutes for all meetings, including executive session meetings, that include a record by individual member of any votes taken. OIP therefore concludes that the Board's secret ballot vote to select the ED taken during its executive session on August 8, 2023, was in violation of the Sunshine Law.

5. Yes. As explained in section V starting on page 29, Act 19 requires that any discussion or final action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held. Act 19 further specifies that the information reported should not be inconsistent with the purpose for which the executive meeting was convened, and a board may maintain confidentiality of information for as long as its disclosure would defeat the purpose of convening the executive meeting. The Act 19 report for the Board's executive session on August 8, 2023, did adequately describe what happened, including reporting that the board had decided to make an offer to a candidate. The Board's failure to specify which candidate it had decided to make an offer to was justifiable to protect the candidates' privacy, and thus avoid frustrating the purpose of the executive session, because the candidates had a privacy interest in the fact that they had applied for the ED position and at that point, the chosen candidate had not yet accepted the offer.

6. Yes. As explained in section VI starting on page 32, the Sunshine Law does not provide a way for a board to undo a prior violation by its subsequent action, so a board cannot entirely "cure" a violation, but it can make efforts to mitigate public harm from past violations and to follow proper procedures in the future. While this appeal was pending, the Board publicly voted to ratify its earlier selection of the ED via secret ballot vote, which did mitigate the public harm from that and other violations. While OIP favorably views timely and appropriate mitigation efforts, only the courts can determine whether such actions make voiding a board's final action inappropriate or unnecessary, as only the courts have the power to void the final action of a board under section 92-11, HRS. A circuit court action under section 92-11, HRS, to void a final action of a board must be filed within 90 days of the final action to be challenged. The courts may provide additional remedies under section 92-12(b), HRS.

FACTS

ADC is "a public body corporate and politic and an instrumentality and agency of the State" that was created "to administer an aggressive and dynamic agribusiness development program." HRS § 163D-1 and 3(a) (Supp. 2022). Its purpose is "to support the production of local agricultural products for local consumption in a manner that is economically and environmentally sustainable while continuing to develop commercial exports of locally produced agricultural products. HRS § 163D-1. In furtherance of that purpose, ADC's mission is to "acquire and manage, in partnership with farmers, ranchers and aquaculture groups, selected high-value lands, water systems and infrastructure for commercial agricultural use and to direct research into areas that will lead to the development of new crops, markets and lower production costs." Agribusiness Development Corporation, About Us, <https://dbedt.hawaii.gov/adc/about-us/> (last visited October 27, 2023).

ADC is headed by the Board and is administratively attached to the Department of Business, Economic Development, and Tourism (DBEDT). *Id.* The Board has eleven members: three ex-officio and eight private citizens appointed by the Governor. HRS § 163D-3(b). The Board's ex officio voting members include the DBEDT Director, the Chairperson of the Board of Agriculture, and the Chairperson of the Board of Land and Natural Resources (DLNR), or their designated representatives. *Id.* At all times relevant to this appeal, the Board had two vacant positions.

The Board appoints the ADC ED, delegates authority to the ED, evaluates the ED's work performance annually, and sets the ED's salary. HRS § 163D-3(d), (f), (g). The ED may hire staff and prescribe staff duties, among other things. HRS § 163D-3(h).

On April 23, 2023, ADC's ED passed away. The Board held an emergency meeting⁵ on April 24, 2023, to appoint a staff member as the Acting ED. At its next regular meeting on May 18, 2023 (May 18 Meeting), the Board Chair⁶ established a permitted interaction group (PIG) pursuant to section 92-2.5(b)(1), HRS,⁷ for the purpose of searching for the new ED (First PIG).

At its meeting on May 30, 2023 (May 30 Meeting), the Board disbanded the First PIG and created a new PIG referred to as the "Search Committee" with different Board members assigned to it. The assigned tasks of the Search Committee were to: (1) develop an ED application process; (2) develop a solicitation/advertisement for the ED position; (3) select a method of posting the solicitation/advertisement and post it; (4) develop criteria for ranking applicants; (5) accept applications and conduct the initial review and ranking of applicants; and (6) narrow the selection to the top two or three candidates and report the findings to the Board.

⁵ The Sunshine Law allows a board to hold an emergency meeting "[i]f an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, with less time than is provided for in section 92-7 to notice and convene a meeting of the board[.]" HRS § 92-8(b) (Supp. 2022). At an emergency meeting, a board may "deliberate and decide whether and how to act in response to the unanticipated event[.]" subject to certain conditions. *Id.* The Board's emergency meeting held on April 24, 2023, is not at issue in this appeal.

⁶ On May 25, 2023, the Chair resigned from the Board and member Warren Watanabe (Watanabe) thereafter became the Chair.

⁷ While the formation and actions of the Board's PIGs are not at issue here, a brief summary of investigative PIGs may be helpful. Section 92-2.5(b)(1), HRS, allows a board to create an investigative PIG consisting of two or more members of a board, but less than the number of members which would constitute a quorum. Investigative PIGs may be assigned to investigate a matter relating to board business. HRS § 92-2.5(b)(1) (Supp. 2022). In order for a board to take action on a matter investigated by a PIG, three separate board meetings must occur. *Id.* At the first meeting of the full board, the PIG is formed, and the scope of the investigation and the scope of each member's authority are defined. *Id.* The PIG may then conduct its investigation outside of open meetings. At a second meeting of the full board, the findings and recommendations of the PIG are presented to the board. *Id.* After the PIG makes its report to the board at the second meeting, the PIG is automatically dissolved and should not continue working. OIP Op. Ltr. No. F23-01 at 16. The board cannot discuss, deliberate, or make any decisions regarding the PIG's report until a third meeting held separately, which gives the public the opportunity to testify on the PIG's findings and recommendations that had been presented at the second meeting. *Id.* A detailed discussion of PIGs is set forth in OIP Opinion Letter Number F23-01 (Opinion F23-01).

At its meeting on July 20, 2023 (July 20 Meeting), the Search Committee reported to the Board as required by section 92-2.5(b)(1)(B), HRS. The Search Committee reported that it had selected the top three applicants for the ED position, but one subsequently withdrew from consideration. The Search Committee recommended, among other things, that the Board interview the two remaining top applicants, determine the salary to be offered, and decide upon how the public would be notified of the new ED's selection.

ADC Board Meeting on August 8, 2023

Boards may hold remote meetings using interactive conference technology (ICT) in accordance with section 92-3.7, HRS. The Board published a notice for its meeting to be held "via Teleconference" on August 8, 2023 (August 8 Meeting). The August 8 Meeting notice included instructions for Board members, staff, and the public to remotely attend the meeting or to attend at the in-person location.⁸

The August 8 Meeting notice included the following agenda items of relevance here:

D. New Business

Executive Director candidate interviews

The Board may go into executive session pursuant to section 92-5(a)(2), Hawaii Revised Statutes.

2. Discussion of Executive Director Salary

The Board may go into executive session pursuant to section 92-5(a)(2), Hawaii Revised Statutes.

3. Board selection of Executive Director

The Board may go into executive session pursuant to section 92-5(a)(2), Hawaii Revised Statutes.

E. Old Business (to be taken out of order as first agenda item)

⁸ Section 92-3.7(a), HRS, requires that remote meetings held using ICT shall have "at least one meeting location that is open to the public and has an audiovisual connection." Section 92-3.7(a)(1), HRS, requires that the notice for an ICT meeting "[l]ist at least one meeting location that is open to the public that shall have an audiovisual connection[.]" Due to the in-person location requirement, remote meetings are sometimes referred to as "hybrid" meetings.

1. Deliberation and decision making on the recommendation(s) of the Executive Director Search Committee permitted interaction group submitted to the Board at the July 20, 2023 regular meeting.

At the August 8 Meeting, agenda item E.1 was taken out of order. The Chair announced that the Search Committee had recommended that the Board hold in-person interviews of the two candidates, and, among other things, select a candidate to make an employment offer to, decide on the new ED's salary, and decide on how to notify the public should the selected candidate accept the offer of employment, such as by press release, on the ADC website, and/or at the next meeting to be held on August 17, 2023.

The Board voted unanimously to accept the recommendations of the Search Committee. It then voted to enter executive session⁹ for agenda items D.1, 2, and 3, and the two candidates were thereafter interviewed in executive session.¹⁰ Although the notice did not state that the executive session would be held in-person only, the members not present at the listed physical location were unable to attend the executive session remotely.¹¹

After the candidate interviews, the Board deliberated on which candidate to offer the ED position to, and at what salary. A detailed discussion of the

⁹ Prior to the vote, the Chair asked if there was any public testimony and stated that testimony would be limited to the decision to go into executive session. This testimony limitation is discussed in more detail in section II, *infra*.

¹⁰ The Board's attorney was also present for this executive session and the other executive sessions discussed herein. OIP has recognized that a board may properly have its attorney in executive session whether the executive session is convened under section 92-5(a)(4), HRS, to consult with its attorney, or for one of the other executive session purposes, so it is appropriate for a board's primary attorney to be in attendance whenever it is in executive session. OIP Op. Ltr. No. F20-01 at 6 (citations omitted).

¹¹ The public and executive minutes of the August 8 Meeting list six members who were present "in person" at the physical location when the meeting started, one who arrived late to the physical location, and none who were present remotely. However, board members' recollections at the executive sessions held later to discuss this appeal suggested that the two absent members had initially logged in remotely and when it became clear that members could only attend the interviews in-person, one of the four remotely attending members came to the physical location and was present there from the beginning of the public meeting. Another member arrived late at the physical location but was present there for the remainder of the meeting. The remaining two members were listed as excused in the August 8 Meeting minutes. The in-person only requirement for this executive session is discussed in more detail in section I, *infra*.

deliberations and votes, or lack thereof, during this executive session is set forth in sections III and IV, *infra*. The Board then discussed how to inform the public once the new ED accepted the position.

As the executive session was ending, one member left the meeting to catch a flight, and another left to attend another meeting, so the Board lost quorum¹² and the five remaining members could not take further action. After losing quorum, the Board returned to the public portion of the August 8 Meeting and the Chair provided the report of the executive session pursuant to Act 19.¹³ He announced that the Board had conducted in-person interviews of the top two applicants; discussed the salary range to offer the selected applicant; had selected an unidentified applicant to be offered the ED position and salary amount; would offer the position to the selected applicant via U.S. mail; and if the selectee accepted the position, would issue a press release naming that person as the new ED.

That same afternoon, fires resulted in the catastrophic loss of life and property on Maui, and "in respect for the ongoing tragedy," the Response stated that the Director of DBEDT and the Board "withheld the news of Ms. Wendy Gady's (Gady) acceptance of the offer of the position" until the next Board meeting.

¹² Quorum for Sunshine Law boards is set in section 92-15, HRS, which states, in relevant part:

[w]henever the number of members necessary to constitute a quorum to do business, or the number of members necessary to validate any act, of any board or commission of the State or of any political subdivision thereof, is not specified in the law or ordinance creating the same or in any other law or ordinance, a majority of all the members to which the board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board or commission is entitled shall be necessary to make any action of the board or commission valid[.]

HRS § 92-15 (2012). The Board is entitled to eleven members and its quorum is six.

¹³ OIP reminds the Board that, as explained in Opinion F23-01 at pages 19-20, a board lacking quorum is, by definition, not in a meeting. It thus cannot discuss or take action on its agenda items. Further, it is unnecessary for a board to vote to adjourn a meeting (as the Board did after losing quorum at the August 8 Meeting) for the meeting to end; once quorum is lost, the meeting has ended, and the Chair can so announce to those present. OIP discusses the effect of losing quorum on the required executive session report in section V, *infra*.

The approved minutes¹⁴ of the public portion of the August 8 Meeting stated, in relevant part:

SEE OLD BUSINESS AGENDA ITEM E-1, WHICH WAS TAKEN OUT OF ORDER AS THE FIRST AGENDA ITEM.

D. New Business

Chair stated HRS Section 92-4 allows the board to hold an executive meeting closed to the public. The board will be discussing new business items 1, 2, and 3, which is the interview of the top 2 applicants, salary discussion, selection of the applicant and salary amount, and decide on the public notification method. This discussion may be closed to the public pursuant to HRS Section 92-5(a)(2) to allow discussion of a hiring decision where consideration of matters affecting privacy will be involved. Chair said before they go into executive session is there any public testimony. Please be advised that testimony is limited to the decision to go into executive session.

There was no public testimony.

Chair asked for a motion to go into executive session.

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

Chair noted there was no staff presentation.

Chair asked for board discussion. There was none.

¹⁴ The August 8 Meeting minutes presented the events of the meeting in the same order that they were listed on the agenda instead of in chronological order reflecting when they were discussed at the meeting, which differed from the agenda order because the Board took an item out of order. By listing meeting events in order of their agenda number instead of in chronological order, the August 8 Meeting minutes give the misleading impression that the meeting was adjourned due to loss of quorum prior to the Board's (actually earlier) discussion and decision to accept the Search Committee's recommendations. Because the sufficiency of the minutes was not raised in this appeal, OIP will not address it in detail, but reminds the Board that section 92-9(a), HRS, requires written minutes to "give a true reflection of the matters discussed at the meeting and the views of the participants." To give a true reflection of what happened at a meeting, the minutes of that meeting should present events in the order in which they actually occurred, regardless of their listing on the agenda, and preferably with some indication of the times at which different events occurred.

Chair called for the vote. Hearing no objection the motion was approved: 6-0

Chair stated that the public meeting was in recess subject to reconvening at the conclusion of the executive session. The Board entered into executive session at 9:20 A.M. pursuant to HRS section 92-5(a)(2).

The Board lost quorum at 12:30 p.m. with the departure of Mr. Tabata and Mr. Wicker.

Chair Watanabe called the virtual meeting back to order at 12:31 p.m.

Chair stated that pursuant to Act 19, SLH 2023, the board took the following actions based upon discussions by the full board in executive session. The board of directors conducted in-person interviews of the top 2 applicants; the board of directors discussed the salary range to be offered to the selected executive director applicant; the board of directors selected the person to be offered the executive director position and salary amount; the board of directors will offer the selected person the executive director position in writing via letter to be delivered by the US postal service. If the offer is accepted, the name of the new executive director will be made public by press release.

E. Old Business (taken out of order as first agenda item)

- 1. Deliberation and decision making on the recommendation(s) of the Executive Director Search Committee permitted interaction group submitted to the Board at the July 20, 2023 regular meeting.**

Chair stated that on July 20, 2023 the Executive Director Search Committee presented its findings and recommendations to the full board. The committee recommended that the full board conduct in person interviews of the top 2 applicants in executive session. The term in-person interview means all board members and two applicants attend the executive session in-person.

It was suggested that the in-person interviews take place on Thursday, August 3, 2023 provided that the 2 applicants were available that day. If the applicants were unavailable, the committee recommended that the in-person interviews be scheduled on a mutually agreeable date. Following the in-person interviews, the committee recommended that in executive session the full board discuss the salary to be offered and select the applicant who will be offered the Executive Director position and the salary amount. The committee recommended that the selected candidate be notified of the offer by written letter and if the offer is accepted, the board decide how the public should be notified, such as by press release, posting on the ADC website, and/or at the next board meeting to be held on August 17, 2023.

Chair asked for a motion to accept the July 20, 2023 recommendations of the Executive Director Search Committee.

Motion: Mr. Watts; Second: Mr. Tabata.

Chair noted that the applicants were not available on August 3, 2023 and the next mutually agreeable date is today, August 8, 2023.

Chair asked for public testimony on the Committee's recommendations. There was none.

Chair asked for board discussion. There was none.

Chair called for the vote. Hearing no objection the motion was approved: 6-0.

ADC Board Meeting on August 17, 2023

The Board held a meeting on August 17, 2023 (August 17 Meeting). The relevant portion of the August 17 Meeting notice stated under "Old Business" item "2. Update on the progress of the Executive Director search[.]" The relevant portion of the August 17 Meeting minutes read the "Chair stated that he was happy to announce that Wendy Gady has been selected as the new Executive Director effective August 21, 2023."

After the August 17 Meeting, Requester filed this appeal. Requester's concerns were: (1) the announcement of the ED appointment was withheld from the public until August 17, 2023, when the press release was issued, and the press release did not state when the vote was taken or ratified; (2) the announcement was made at the Board's August 17 Meeting and not the August 8 Meeting; and (3) it was not clear how and when the vote was taken, and who voted in favor and who voted against the selected candidate. Requester asked for "a review of the process that was taken to hire the" ED, and asked that OIP confirm whether the executive session vote on August 8, 2023 was ratified or whether a vote to approve the ED's appointment was made at that meeting. Two more Board meetings relevant to this appeal were subsequently held and are described next.

ADC Board Meeting on September 21, 2023

The Response stated that at the Board's next meeting on September 21, 2023 (September 21 Meeting), the Board Chair "will call for a motion to confirm the selection of Gady as the new [ED]" to address the complaint regarding the "absence of the vote and/or ratification by the" Board.

Relevant portions of the Board's notice for the September 21 Meeting stated:

E. Action Items

...

6. Discussion of Sunshine Law complaint (S APPEAL 24-02) by anonymous complainant regarding the hiring of the new ADC Executive Director

The Board may go into executive session, pursuant to section §92-5(a)(4), Hawaii Revised Statutes.

7. Confirmation vote regarding the hiring of the new ADC Executive Director

OIP asked the AG to have OIP's letter to the AG dated September 15, 2023, placed in the Board packet¹⁵ for its September 21 Meeting to provide guidance on various Sunshine Law provisions, such as the procedures for entering executive sessions and how to write legally sufficient minutes. It was not meant to serve as OIP's inclinations as to whether the Board had violated the Sunshine Law because OIP had not yet received or reviewed all of the extensive materials for this appeal.¹⁶

Eight members were present at the September 21 Meeting.¹⁷ Before taking the vote on whether to enter the executive session for agenda item E. 6., the Chair stated, "[p]lease be advised that testimony is limited to the decision to go into executive session." The Board then voted to enter executive session.

The public minutes for the September 21 Meeting state that, when the Board returned to the public session, the Chair gave his executive session report. With regard to agenda item E. 6, the Chair stated "Board requires no further action." No vote was taken on agenda item E. 7 in the executive or public portion of the September 21 Meeting and the Board moved on to other agenda items not relevant to this appeal.

ADC Board Meeting on October 3, 2023

The notice for the Board's meeting on October 3, 2023 (October 3 Meeting), contained only two substantive agenda items:

C. New Business

¹⁵ "Board packet" means documents compiled by a board and distributed to the members before a meeting for use at the meeting. HRS § 92-7.5 (Supp. 2022). The board packet law requires that the packet be available to the public to the extent the documents are public under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA). Board packets need not disclose executive session minutes or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available. *Id.* OIP did not review board packets for any of the relevant meetings.

¹⁶ OIP reviewed draft public minutes for all four meetings discussed herein, and Board approved public minutes for the August 8, August 17, and September 21 Meetings. OIP also reviewed copies of draft executive minutes for the August 8, September 21, and October 3 Meetings, and approved executive minutes for the August 8 and September 21 Meetings that had been provided by ADC, along with ADC's written transcript for the executive session on September 21, 2023. Additionally, OIP reviewed recordings for the relevant public and executive sessions for all four meetings.

¹⁷ Member Russell Tsuji (Tsuji) became the DLNR Chairperson's designee and replaced DLNR designee Mr. Kaleo Manuel (Manuel) at the Board meetings on September 21 and October 3, 2023.

1. Executive Session to be held pursuant to HRS section 92-4, HRS section 92-5(a)(2) to discuss personnel matters, and HRS 92-5(a)(4), to consult with the board's attorney regarding OIP S APPEAL 24-02
2. Discussion and action regarding Motion for Ratification of the Selection of Wendy L. Gady as Executive Director for the State of Hawaii, Agribusiness Development Corporation

The Chair called for a motion to go into executive session for agenda item C. 1. The Chair then asked if there was any public testimony and stated that testimony was limited to the decision to go into executive session. The Board voted to enter executive session.

When the Board returned to the public session, the Chair summarized what happened in the executive session as required by Act 19 (Act 19 is discussed in detail in section V, *infra*). The Chair's summary stated that agenda item C. 1 was discussed with the board's attorney, and no action was taken. The Chair then asked for a motion "for the ratification of the selection of Wendy L. Gady as the Executive Director of the State of Hawaii, Agribusiness Development Corporation." It was moved and seconded. The Chair asked whether the two members who were not present at the August 8 Meeting¹⁸ had sufficiently reviewed the materials provided and whether they were able to make an informed decision. Both replied in the affirmative. The Chair then asked the other members whether they had reviewed the materials and refreshed their recollections of the August 8 Meeting so that they could make an informed decision and all members answered in the affirmative. The Chair determined all nine members were able to make a decision and discussion ensued. The Board then voted by roll call, voting 7-2 in favor of the ratification.

Requester asked to know how and when the vote for ED was taken, as well as who voted in favor and who voted against the selected candidate. During the public meeting, Chair Watanabe and members Lyle Tabata, Jason Okuhama, Glenn Hong, Sharon Hurd, Karon Seddon, and Wicker voted in favor of the motion. Members Jayson Watts and Tsuji voted against the motion and indicated that the reason for their no votes was a preference to wait until the Board either consulted with OIP regarding the August 8 Meeting or received the OIP decision for this appeal.

¹⁸ Member Seddon was not present at the August 8 Meeting, and member Tsuji was not yet on the Board on August 8, 2023.

DISCUSSION

I. The August 8 Meeting was Noticed as a Remote Meeting with an In-Person Location, so Requiring In-Person Attendance of Members for the Executive Session was Improper

After this appeal was opened a Board member asked whether the Board met the Sunshine Law's notice requirements for the location of the in-person only executive session of the August 8 Meeting. Accordingly, OIP first discusses whether the August 8 Meeting notice complied with the Sunshine Law.

Boards have three options to conduct their meetings: (1) a meeting in person at one site, which is the traditional method; (2) a meeting in person at multiple sites connected via ICT, without any requirement to provide remote access, as allowed by section 92-3.5, HRS; or (3) a "remote" meeting using ICT where board members and the public may participate either remotely, or from an in-person site listed on the notice, as allowed by section 92-2.7, HRS.

The Sunshine Law requires that notice be filed six days before a meeting, and that the notice include the date, time, and location of the meeting, among other things. HRS § 92-7(a) (Supp. 2022). For remote meetings, section 92-3.7(a), HRS, requires that the notice inform the public how to contemporaneously remotely view the video and audio of the meeting through internet streaming or other means. Section 92-3.7(a), HRS, also requires that a remote meeting notice list at least one meeting location that is open to the public and has an audiovisual connection to the meeting. It also requires that a board provide a method for remote oral testimony that allows board members and other meeting participants to hear the testimony through an internet link, a telephone conference, or other means.

The August 8 Meeting was noticed as a remote meeting "Held via Teleconference." The notice stated:

Pursuant to section 92-3.7, Hawaii Revised Statutes, this meeting will be held using interactive conference technology (ICT). Board members, staff, persons with business before the Board, and the public may participate remotely online using ICT, or may participate via the in-person meeting site which provides ICT.

The August 8 Notice contained detailed instructions for Board members and the public to participate in the meeting by ICT, telephone, or in person. The August 8 Notice did not state that the executive sessions or any other part of the meeting would be in-person only.

The Search Committee had recommended in-person candidate interviews of the top candidates, and the Board voted to adopt those recommendations at the August 8 Meeting. However, the location of a meeting is set by a board's notice, and the Sunshine Law does not generally allow a board to amend a previously filed notice and agenda. See HRS § 92-7(a), (c) (requiring agenda to include place of meeting; prohibiting board from adding items to an agenda within six days of a meeting except in limited circumstances). The Board's adoption of the Search Committee's recommendation could not retroactively amend the August 8 Meeting notice that had already been posted for a remote meeting. Similarly, the notice could not be retroactively amended by the email sent to the Board members on August 7, 2023,¹⁹ which indicated that the candidate interviews would be conducted in person during the executive session. Indeed, because the August 8 Meeting notice clearly indicated that it was a remote meeting, at least two Board members initially attended the public portion of the meeting via ICT, suggesting that the email not only failed to provide legally sufficient notice of the location of a Sunshine Law meeting, but was also ineffective as a form of actual notice to the Board members.

The public meeting minutes for the August 8 Meeting list members Manuel and Seddon as excused. During the October 3 Meeting executive session, a member recalled that when the August 8 Meeting started, four members were at the in-person location and four members (Hurd, Manuel, Seddon, and Wicker) were attending remotely by Zoom link, but that Hurd and Wicker "rushed over" to attend in person after it became apparent that members could not participate unless they were present in person. Member Hurd noted that she arrived late to the in-person location, and she was told she missed approximately 20 minutes of the first candidate's interview. Member Seddon stated at the October 3 Meeting that she did not "log in" to the August 8 Meeting because she had informed the Chair she was not available to attend in-person that day. Manuel was no longer a Board member or present at the October 3 Meeting, but another member stated that Manuel was instructed to "show up" but he was not feeling well and did not want to spread his germs. As noted in footnote 11, *supra*, this account of events differs from the August 8 Meeting minutes, which indicate six members were present at the in-person location when the meeting started.

The August 8 Meeting notice included over a page of detailed instructions regarding participation in the meeting, but nowhere did it state that the executive session would be in-person only. Had the notice filed six days before the August 8 Meeting included language stating that the executive session would not be

¹⁹ OIP did not receive a copy of the materials provided to the Board for the August 8 Meeting, but the executive session discussions on October 3, 2023, referred to an August 7 email that was sent to Board members indicating the executive session would be in-person only.

conducted as a remote meeting and would be in-person only, it would have been sufficient notice to comply with the requirement in section 92-7, HRS, that the notice and agenda include the "location" of the meeting. However, OIP finds that the Board's adoption on August 8 of the Search Committee's recommendation for an in-person executive meeting and the August 7 email sent to the Board members requiring in-person attendance the next day were not part of the meeting notice required by section 92-7, HRS. OIP therefore concludes that those attempted amendments to the meeting location could not constitute proper notice of the "location" of an in-person only executive session on August 8.

The Sunshine Law's requirements are primarily intended to protect the general public's access to the formation and conduct of public policy, but its protections apply with equal force to the board members themselves. See HRS § 92-1 (2012) (setting out policy and intent of the Sunshine Law). A meeting notice serves not only to notify members of the public of the details of an upcoming meeting, but also serves to notify the members of a board of those same details.

OIP finds that failing to provide notice of the in-person location of the executive session resulted in little, if any, harm to the public, as the public is not entitled to attend an executive session anyway. OIP finds, however, that Board members were improperly prevented from participating remotely in the August 8 Meeting executive session by the Board's decision to require in-person participation in that executive session when the meeting notice clearly stated that it was a remote meeting. Although in-person participation by all members could have been encouraged while still allowing remote participation for the members who were unable to participate in person, no members were allowed to participate remotely in the executive session despite the notice indicating the meeting was remote.²⁰ Thus, OIP must conclude that the improper notice of the in-person only executive session

²⁰ Without having to amend its agenda, a potential way the Board could have encouraged in-person attendance was by continuing the executive meeting to a reasonable day and time, pursuant to section 92-7(d), HRS. This provision has been used to move a noticed physical location to a more suitable location, such as when a larger room was needed, or the air conditioning was inoperable. Although OIP and the courts have not previously addressed the legality of continuing a remote meeting to a fully in-person location, it may be an acceptable way to accommodate the desire for in-person interviews during an executive session where all members were already on the same island. When a meeting is continued for a short time, and especially when it is recessed and reconvened on the same day, supplemental written notice to the public is not generally necessary and the continuance requirements of section 92-7(d), HRS, can be met by an announcement of when and where the meeting will be reconvened. Here, the board could have announced that the public meeting would be recessed and then reconvened in-person for the executive session after a time period that reasonably allowed board members remotely participating to reach the in-person physical location. After the executive session was concluded, the meeting could have been recessed again and reconvened as a remote public meeting.

deprived members of the ability to attend and participate in the executive session in violation of the Sunshine Law. OIP further finds that some public harm could have resulted from the decision to require in-person attendance because the vote to select the ED could possibly have turned out differently if two additional members had been able to participate and vote remotely as the meeting had been noticed. This speculative public harm, however, was partially mitigated by the public vote taken by the Board at the properly noticed October 3, 2023, meeting to ratify the selection of Gady as the ED, as discussed in section VI, infra.

II. Testimony Not Allowed on Topic of Executive Session

During the public portion of the August 8, September 21, and October 3 Meetings reviewed by OIP, and prior to taking votes to enter executive session, the Chair asked if there was any public testimony and stated that testimony was limited to the decision to go into executive session. Each time, the Board's staff stated that no one from the public had raised their hand to testify.

The Sunshine Law requires that "boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item." HRS § 92-3 (Supp. 2022). Boards shall also "afford all interested persons an opportunity to present oral testimony on any agenda item[.]" Id. OIP previously concluded that the requirement that a board must "afford all interested persons an opportunity to present oral testimony on any agenda item" does not have any qualification or exception for agenda items that the board will discuss in executive session. OIP Op. Ltr. No. F15-02 at 8, citing OIP Op. Ltr. No. 05-02 (stating the general rule that a board must accept testimony on any agenda item at every meeting and distinguishing items not on the board's agenda, which it is not required to hear testimony on). OIP then clarified that the requirement to accept testimony applies to every agenda item at every meeting, including items to be discussed in executive session at a meeting where only executive session items are on the agenda. Id.

Here, OIP finds that by limiting testimony only to a discussion of whether the Board could go into executive session, the Board denied the public the opportunity to testify on the agenda items that would be discussed in executive session. For example, agenda items on the August 8 Meeting notice included candidate interviews, and the salary and selection of a new ED, and the Board did not allow public testimony on those issues. Although no one from the public raised their hand to testify on the decision to go into executive session or to object to not being able to testify on the actual agenda items being discussed in the executive sessions, that does not mean there was no public harm because the Chair's routine announcement that testimony would be limited to the decision to go into executive session apparently had the effect of deterring public testimony on the actual agenda items.

It is unknown how many members of the public may have wished to testify on the agenda items, but were not interested in testifying on the limited question of whether the Board would be going into executive session. It is clear, however, that the public was not invited to provide testimony on executive meeting agenda items. OIP therefore concludes that the Board violated the public testimony requirements of section 92-3, HRS, by preemptively declining to accept testimony on executive agenda items. A discussion on mitigation of these violations is in section VI, *infra*.

III. A Board May Hold an Executive Session to Consider the Hire of an Officer or Employee and May Vote in Executive Session in Appropriate Circumstances

The questions raised on appeal require OIP to next discuss whether the Board was allowed by the Sunshine Law to interview two candidates and deliberate and vote in executive session regarding the salary and selection of a new ED.

Section 92-4(a), HRS, authorizes a board to hold an executive session closed to the public "upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled."²¹ The board must also publicly announce the reason for holding the executive session "and the vote of each member on the question of holding a meeting that is closed to the public shall be recorded and entered into the minutes of the meeting." HRS § 92-4(a).

Citing the Hawaii Supreme Court (Court), OIP previously stated:

[h]aving entered into a closed session, however, the board is obligated by the Sunshine Law to limit its discussion to topics "directly related to" its purpose for closing the meeting. *Id.* at 487, 445 P.3d 68, *citing* HRS § 92-5(b). A determination of whether a board's discussion was properly closed to the public thus requires first examining whether the topic to be discussed fell within the scope of the claimed purpose or purposes for the executive session, and then whether and to what extent the board's discussion and deliberation of that topic were "directly related to" the executive session's purpose or purposes. *Id.* at 486-87, 445 P.3d at 67-68; *see also* HRS §§ 92-4, -5.

OIP Op. Ltr. No. F20-01 at 10, *citing* Civil Beat Law Center for the Public Interest v. City & County of Honolulu, 144 Haw. 466, 445 P.3d 47 (2019) (CBLIC).

²¹ Section 92-4, HRS, was amended by Act 19, which recodified its existing language as section 92-4(a), HRS.

A. The ADC Board Properly Voted to Enter the Executive Session at its August 8 Meeting

OIP finds that seven members were present during the public portion of the August 8 Meeting at the time of the Board's 6-0 vote to enter an executive session, with the Chair apparently abstaining from voting. The Board is entitled to eleven members (including the two vacant positions) and a majority is six. OIP therefore concludes that the 6-0 vote met the requirement for an affirmative vote of "two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled" in section 92-4(a), HRS.

The August 8 Meeting minutes stated that, prior to the vote, the Chair announced that the Board was entering the executive session for:

new business items 1, 2, and 3, which is the interview of the top 2 applicants, salary discussion, selection of the applicant and salary amount, and decide on the public notification method. This discussion may be closed to the public pursuant to HRS Section 92-5(a)(2) to allow discussion of a hiring decision where consideration of matters affecting privacy will be involved.

OIP further finds that the reason for holding the executive session was "publicly announced" by the Chair as required by section 92-4(a), HRS. OIP therefore concludes that the vote to enter the executive session at the August 8 Meeting complied with the procedural requirements in section 92-4(a), HRS.

B. The ADC Board's Candidate Interviews, and Discussions on Salary and Selection of a Candidate Were Allowed Under the Sunshine Law

The Sunshine Law does not require that meetings related to personnel matters be closed to the public; rather, that decision is discretionary, provided that certain statutory requirements are met. CBLC, 44 Haw. at 476-477, 445 P.3d at 57-58. Section 92-5(a)(2), HRS, allows boards to hold an executive session "[t]o consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held[.]"

The August 8 Meeting notice stated that the Board anticipated entering an executive session under section 92-5(a)(2), HRS to discuss three agenda items: (1) ED candidate interviews; (2) discussion of ED salary; and (3) selection of the new ED. As noted above, the August 8 Meeting minutes show the Board first voted to accept the recommendations of the Search Committee. The Chair called for a

motion to enter executive session to interview the top two applicants, and to select the new ED and set the ED salary.

A board may enter an executive meeting and deliberate and vote in an executive session "convened to protect an employee's privacy interest." See OIP Op. Ltr. No. 20-01 at 10-11 (concluding that the Maui County Council had a proper basis for invoking the personnel-privacy purpose under section 92-5(a)(2), HRS, when it could reasonably anticipate that it would be discussing the potential hire of employees and possibly the details of individual employee's performance and past evaluations that were likely to concern their individual privacy); OIP Op. Ltr. No. 06-07 at 4 (finding that executive meeting minutes discussing a board's evaluation and dismissal of the ED of the Charter School Administrative Office reflected a discussion and vote properly done in executive session, but portions of the minutes were publicly disclosable at the time the minutes were requested because the ED no longer had a privacy interest in that information).

The applicability of section 92-5(a)(2), HRS, which the Court refers to as the "personnel-privacy exception" to the Sunshine Law's public meeting requirement, must be determined on a case-by-case basis because an analysis of privacy requires a specific look at the person and the information at issue. CBLC, 144 Haw. at 478, 445 P.3d at 58. For section 92-5(a)(2), HRS, to apply, the person at issue must have a "legitimate expectation of privacy" in the information to be discussed, and people have a legitimate expectation of privacy in "highly personal and intimate information[.]" including financial and employment records. CBLC, 144 Haw. at 480, 445 P.3d at 61 (citations omitted).

A matter discussed in an executive session affects the privacy of an individual if it is one that would generally be protected under the UIPA, which governs access to public records. OIP Op. Ltr. No. 06-07 at 4 (Opinion 06-07).²² The UIPA includes a list of information in which individuals have a significant privacy interest, including "applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position," and information

²² Footnote 8 in Opinion 06-07 notes that, because the Sunshine Law does not elaborate on what kinds of matters affect an individual's privacy, the AG opined that it is appropriate to look to the UIPA for guidance in construing the phrase "matters affecting privacy[.]" Footnote 8 goes on to say that matters protected would be those falling within section 92F-13(1), HRS, which protects information when disclosure would constitute a clearly unwarranted invasion of personal privacy. However, the Court clarified that it does "not read the UIPA's balancing test [at section 92F-14(a), HRS] into the Sunshine Law's personnel-privacy exception. We adhere to the plain language of this exception, which allows specific personnel discussions to take place in a closed meeting, conditioned on whether 'consideration of matters affecting privacy will be involved.' HRS § 92-5(a)(2)." CBLC at 144 Haw. 480, 445 P.3d 61.

describing an individual's finances and income. HRS § 92F-14(b)(4), (6) (Supp. 2012).

Section 92-5(a)(2), HRS, explicitly allows executive discussions regarding the "hire" of an employee. The candidates interviewed at the August 8 Meeting were prospective employees at that time, and OIP finds that their status as applicants for government employment was a matter affecting privacy. OIP further finds that their respective interviews revealed not just their identities but additional information about their backgrounds and qualifications in which, as applicants, they had a privacy interest of the sort recognized under section 92-5(a)(2), HRS.

A discussion of the salary amount for an unfilled position is not, by itself, a matter affecting privacy, and budgetary issues relevant to that discussion are not matters affecting privacy, particularly if the salary is already set by statute. In this instance, however, OIP finds that there was no statutorily set salary and the Board's discussion of the salary amount to offer whichever applicant it chose could be reasonably anticipated to be so intertwined with its discussion of the applicants themselves and their respective qualifications for the position that the full discussion involved consideration of matters affecting privacy, whether directly or indirectly. For example, depending on which candidate was ultimately selected and offered the ED position, it was possible that the salary would be a different amount due to the individual's qualifications or salary requirements. Consequently, the salary discussion could have impacted the applicants' privacy interests.

OIP further finds that because the candidates' status as applicants for government employment was a matter affecting privacy, and the candidates remained applicants until such time as the successful candidate accepted the Board's offer, the Board could not have publicly voted on the question of hiring a specific candidate without revealing that candidate's identity and thus frustrating the purpose of the executive session. OIP therefore concludes that the Board's interviews of and discussions about the two candidates in executive session, including salary discussions, were proper.²³

²³ The Search Committee made its recommendations to the Board in executive session during the July 20 Meeting. OIP did not review the executive session minutes, recordings, or board packet for the July 20 Meeting. The actions taken by the Search Committee were not at issue for this appeal, and OIP notes that generally it would be appropriate for a PIG to supplement its report given for public consumption during the public portion of a meeting with a more detailed version of the report delivered in executive session, so long as the executive session was for one of the reasons set forth in section 92-5(a), HRS, and the public report sufficiently informed the public of the PIG's work to allow the public to meaningfully testify on it at the next meeting. See also footnote 7, supra.

C. The Discussion of the PIG's Recommendation on How to Inform the Public of the Successful Candidate's Selection as ED Should Have Occurred in the Public Portion of the August 8 Meeting

One of the Search Committee's recommendations that the Board approved at the August 8 Meeting was to decide on "how the public should be notified [about the selection of the ED], such as by press release, posting on the ADC website, and/or at the next board meeting to be held on August 17, 2023." This discussion occurred during the executive session at the August 8 Meeting. Having reviewed the recordings and minutes, OIP finds that this discussion in executive session did not implicate the privacy interests of the candidates, would not have frustrated the purpose of the executive session if done publicly, and thus did not fall within the executive session purpose cited to justify it. OIP concludes that the discussion on how to inform the public that the selected candidate had accepted the employment offer was not authorized to be held in executive session and should instead have been done during the public session. Although this executive session discussion was not justified by the personnel-privacy exception of section 92-5(a)(2), HRS, OIP recognizes that it occurred when the Board was about to lose quorum and was rushing to wrap up its business before two members left the meeting.

D. Boards May Vote in Executive Session in Appropriate Circumstances

Decisions of a board are made by a majority vote of members in attendance at a meeting, and they may not deliberate toward a decision or vote unless a quorum of the board is present. OIP Op. Ltr. No. 01-01 at 21, 37. OIP advises that, in most instances, a board must vote in an open meeting on the matters considered in an executive session. However, OIP has previously opined that boards may deliberate and make decisions in executive sessions in limited situations. OIP Op. Ltr. No. 03-07 at 4 (Opinion 03-07). OIP reasoned that, in some circumstances, to require a vote in an open meeting on matters discussed in executive sessions would defeat the purpose of going into an executive session. "Thus, it would be illogical if boards could enter into executive meetings pursuant to section 92-5(a), HRS, but could not vote on the matters discussed, except in an open meeting." *Id.* at 5. Opinion 03-07 further stated that, in keeping with the Sunshine Law's policy on openness, votes should only be held in executive session when to do otherwise would defeat the lawful purpose for holding an executive session in the first place, and such a determination must be made on a case-by-case basis. *Id.*

In appropriate circumstances, a vote on the hire, evaluation, discipline, or dismissal of a government employee can be one that, if taken in open session, would frustrate the purpose of the executive session in which the proposed action was discussed. In the case of a board's vote on whether to hire a particular individual, unless the individual had previously been publicly identified as a candidate, the

individual would have a significant privacy interest as an applicant. E.g., OIP Op. Ltr. No. 95-2 (finding the UIPA's personal privacy exception at section 92F-13(1), HRS, permits an agency to withhold the names and other identifying information of unsuccessful "eligibles"). Additionally, OIP has recognized the privacy interest of unsuccessful candidates and that disclosure of candidates' identities may discourage people from applying for positions due to possible adverse effects on their current employment. See OIP Op. Ltr. No. 91-08 at 4 (concluding that information identifying unsuccessful applicants for appointment to government boards and commissions can be withheld under section 92F-13(1), HRS, to avoid a clearly unwarranted invasion of their privacy).

OIP finds that the executive session during the August 8 Meeting was an appropriate circumstance for the Board to vote in executive session to select the winning candidate, to protect the privacy interests of both candidates while they remained applicants. However, the manner of voting – by secret ballot – was not appropriate and was a violation of the Sunshine Law for the reasons discussed in section IV, infra.

With regard to the Board's decision on a salary, OIP concluded above that it was proper for the Board to enter into executive session because it could have reasonably anticipated that it would be discussing different salaries to offer the ultimately selected candidate based on their individual qualifications or salary requirements. See OIP Op. Ltr. No. 20-01 at 10-11 (recognizing that because the executive session had not yet been held, the board did not know exactly what would be said and that it could go into executive session if it reasonably anticipates that it would be discussing a matter concerning possible hiring and individual privacy). The executive minutes reveal, however, that the discussion did not concern the candidates' qualifications or salary requirements, but rather what the Board could afford to pay based on its budget. OIP finds that the discussion of the salary amount was not so intertwined with the discussion of the two candidates, their qualifications, or their salary requirements as to justify a vote in executive session on the salary to be offered to an unidentified candidate. OIP finds the Board could have voted on the salary amount in public without frustrating the executive session

purpose of protecting candidates' privacy interests. OIP therefore concludes that the salary vote should have been taken in public session.²⁴

Finally, the Board discussed and agreed, without a vote, upon the method by which the public would be notified of the Board's decision on selection of the new ED. Having reviewed the evidence, OIP does not find any privacy interest that would have been affected by this portion of the executive discussion. OIP concludes this discussion should also have occurred during the public portion of the meeting.

IV. Boards May Not Take Secret Ballot Votes Because the Sunshine Law Requires a Record by Individual Member of Votes Taken

Having confirmed that a board may in limited circumstances vote in an executive session, OIP next discusses the secret ballot vote that was taken to select the ED.

Several sections of the Sunshine Law clearly show that boards may not take secret ballot votes. First, section 92-9, HRS, sets forth the requirements for meeting minutes. Boards must keep written or recorded minutes of all meetings, and the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. HRS § 92-9(a). Written minutes "shall include" the substance of all matters proposed, discussed, or decided; and "a record, by

²⁴ The executive session minutes for the August 8 Meeting state that a member suggested a dollar amount, the attorney asked if everyone was "good with that," and "[t]here was a unanimous response of yes and nodding heads." The Sunshine Law does not require that votes be conducted by making and seconding of a motion, or that boards otherwise follow parliamentary procedure. However, without some kind of adherence to parliamentary procedure, it may be difficult to meet the reporting requirements in section 92-9, HRS, which states that meeting minutes shall include the substance of all matters proposed, discussed, and decided, the views of the participants, and a record of votes by individual member of motions and votes made. The motion and vote structure of typical parliamentary procedure clarifies what proposition a board is currently considering and how many of the members are for or against it, and allows each member to confirm that his or her vote has been registered correctly. The absence of that structure in the Board's executive session discussions and decisions left considerable ambiguity as to when it was discussing and when it was voting on an issue, what constituted its decision, and which members were for or against that decision. OIP therefore recommends that if a board prefers not to follow standard parliamentary procedure, it should ensure that its discussion and decisions are done in a way that makes clear when it is discussing an issue and when it is voting on a proposal, as well as what the proposal is and which members are voting for or against it. OIP specifically recommends against head nods or other types of inaudible votes because there may be confusion as to whether a vote is unanimous and because it could make it difficult for a board to create an accurate record of the meeting as required by section 92-9, HRS.

individual member, of any votes taken[.]” HRS § 92-9(a)(3). A written summary must accompany any minutes that are posted in a digital or analog recording format and shall include a “record, by individual member, of motions and votes made by the board[.]” HRS § 92-9(b)(3). The requirement to keep minutes applies to “all” meetings, and does not distinguish between public or executive sessions, and minutes shall be publicly disclosed unless “such disclosure would be inconsistent with section 92-5[(a),]” HRS, which allows executive meetings to be closed to the public for eight specified purposes. HRS § 92-9(b).²⁵

Second, for a remote meeting held by ICT, section 92-3.7(b)(5), HRS, requires that “[a]ll votes shall be conducted by roll call unless unanimous[.]”

Third, section 92-4(a), HRS, requires that “the vote of each member on the question of holding a meeting that is closed to the public shall be recorded and entered into the minutes of the meeting.”

All these sections clearly require, based on a plain reading, that boards record votes by individual member. To have a record of votes by individual member, a board must use a roll call vote unless the vote is unanimous (in which case it is evident that all members recorded as present voted for the same result). OIP therefore concludes that boards may not hold secret ballot votes, whether in public or executive session.

Here, during the August 8 executive session discussion of the applicants, it was suggested that the vote could be done by “secret ballot.” The executive session minutes indicate that while discussions about the candidates continued, “paper ballots” were passed out and each member present wrote the name of one of the two candidates. The votes were placed in an envelope that was passed around.

Before the secret ballot results were announced, one board member asked whether, “whatever the results are,” the Board could announce publicly that it was unanimous, and further discussion ensued as to whether the board could reach a “unanimous decision based on the majority.” The Board’s attorney then announced that Gady had received more votes, and another member asked whether there was a “consensus of a unanimous board” on selection of the candidate who had more votes. The executive minutes then show that a member asked if it was “unanimous based on a majority” and “[t]he board members nodded in agreement” without

²⁵ Notably, the Court has stated that executive minutes must be disclosed “[w]here an executive meeting, or a portion thereof, unlawfully took place behind closed doors[.]” *CBLC* at 144 Haw. 490, 445 P.3d 71.

specifying that "all" members had nodded.²⁶ Due to the imminent loss of quorum, it is unclear whether board members may have intended to follow up with a more formal vote once it returned to the public meeting, but because the Board lost quorum and the ability to act, no vote could have been taken in the public portion of the meeting. Notwithstanding the ambiguity as to what constituted the Board's actual number of votes to select Gady as the ED, OIP finds that the Board's subsequent actions were consistent with an understanding that it had decided to make an offer to her.

Members also discussed the timing and approval of a press release that would subsequently be issued to announce the new ED's identity to the public. It was stated that there would be a press release, but there was no vote on the matter. Soon thereafter, two members left the executive session and the Board returned to the public session. Because there was no quorum, the Board could not take any further action on August 8, but the Chair did provide the report required by Act 19 in public session.²⁷

Based on this review of the recordings and minutes of the executive sessions for the August 8 and September 21 Meetings (which recounted what occurred at the August 8 Meeting), OIP finds that (1) the Board voted by secret ballot on which candidate to make an offer to when each member wrote the name of his or her selected candidate on a paper ballot; (2) the paper ballots were collected while the Board continued to discuss the issue; and (3) the number of votes for each candidate was announced, with Gady having more votes, but without identifying how each member voted. OIP further finds that shortly before the results of the secret ballot were announced, there was a discussion on whether it would be publicly announced that there was a unanimous decision for whichever candidate had been selected by the secret ballot, and an unspecified number of Board members voted by head nods in favor of announcing that the vote for the selected candidate was unanimous.

Due to the ambiguity surrounding the head nod vote, it is not clear whether the Board's intent was to treat the secret ballot vote as an interim decision on which candidate to focus on and with that decided, agree unanimously to make an employment offer to Gady, or to publicly announce unanimous support for her despite the secret ballot vote. In either event, OIP notes that the secret ballot vote clearly affected the eventual outcome. Once the majority had selected Gady via the

²⁶ During the executive discussion at the subsequent September 21 Meeting, a member stated that the Board had not taken a second vote on August 8 to select the ED, but the understanding was that the Board wanted to be "unanimous as a general rule." Thus, at least one member apparently did not understand the head-nods as a second vote to unanimously select Gady.

²⁷ The question of whether the Sunshine Law authorized giving the Act 19 report after the meeting ended due to lack of quorum is addressed in section V, *infra*.

secret ballot vote, the Board treated the question of which candidate to select as being closed; in other words, regardless of the Board's intent in the head nod vote, it is clear that the secret ballot vote decided the issue of who was the winning candidate.

Thus, OIP concludes that the secret ballot vote violated the Sunshine Law's provisions requiring a vote by individual board member. HRS §§ 92-9(a)(3); 92-3.7(b)(5); see also HRS § 92-9(b)(3). OIP also concludes that without identifying how each member had secretly voted, the Board cannot meet the Sunshine Law's requirement that the minutes of the August 8 Meeting executive session include a record, by member, of votes taken. HRS § 92-9. These conclusions are "consistent with the legislature's '[d]eclaration of policy and intent' set forth in § 92-1 (1985), 'that the formation and conduct of public policy -- the discussions, deliberations, decisions, and action of governmental agencies -- shall be conducted as openly as possible' in order 'to protect the people's right to know[.]'" Kaapu v. Aloha Tower Dev. Corp., 74 Haw. 365, 383, 846 P.2d 882, 890 (1993). OIP again suggests that following parliamentary procedure, even in executive session, would make clearer what decisions a board is making and how each member is voting.

V. Executive Session Reports

Act 19 requires that any discussion or final action²⁸ taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held. Act 19 further provides that the information reported should not be inconsistent with the purpose for which the executive meeting was convened, and allows a board to maintain confidentiality of information for as long as its disclosure would defeat the purpose of convening the executive meeting.

The sufficiency of the executive session report made at the August 8 Meeting, and specifically whether it should have named the selected candidate, has been questioned as part of this appeal. At the August 8 Meeting, after the executive session, the Chair announced the Board had:

conducted in-person interviews of the top 2 applicants; . . . discussed the salary range to be offered to the selected executive director applicant; . . . selected the person to be offered the executive director

²⁸ The Sunshine Law does not define the term "final action," but the Court has defined it in the context of section 92-11, HRS, to mean "the final vote required to carry out the board's authority on a matter." Kanahele v. Maui County Council, 130 Haw. 228, 259, 307 P.3d 1174, 1205 (2013) (Kanahele) (holding that multiple continuances of public meetings did not violate the Sunshine Law, but the distribution of memoranda between councilmembers was a violation).

position and salary amount; [and noted it] will offer the selected person the executive director position in writing via letter to be delivered by the US postal service. If the offer is accepted, the name of the new executive director will be made public by press release.

Although the executive session report did not state which candidate had been selected, OIP finds that the Board was authorized under Act 19 to withhold Gady's name as the selectee at that time because she had not yet been informed of her selection and had not accepted the position. At that time, the Board had not disclosed the name of any applicant for the ED position to protect their privacy interests, and as OIP has already concluded, the Board legally discussed and voted on which candidate to select in executive session under section 92-5(a)(2), HRS, to protect their privacy as applicants. OIP accepts that there was a significant privacy interest here by Gady in the fact that she applied for the ED position and that premature disclosure would have frustrated the purpose of the executive session at the August 8 Meeting, which was to protect applicant privacy.²⁹

Gady retained a privacy interest in the fact that she was an applicant until she accepted the offer, and OIP declines to find here that the Board should have disclosed a "short list"³⁰ of the top two candidates who were interviewed. The Board did not publicly disclose the names of any candidates during the selection process, including when the Search Committee reported its recommendations. The applicants were all being treated as having significant privacy interests. OIP therefore concludes that in this instance, Act 19 allowed the Board to leave out the

²⁹ OIP notes, that one way to protect a candidate's privacy interests while also conducting the meeting as openly as possible could have been to conduct a vote in public without stating the candidate's name or providing any other identifying information or candidate ranking. For example, a vote could have been taken in the public session on a motion to "make an offer of employment to Candidate X or Candidate Y."

³⁰ For some positions of particularly high public interest, a "short list" of finalists being considered is made public prior to selection of the individual to be offered the position. See OIP Op. Ltr. No. 93-13 (finding that lists of nominees generated by the Judicial Council to fill vacancies on the State Ethics Commission from which the Governor must make an appointment are public under the UIPA because none of the exceptions to disclosure at section 92F-13, HRS, permit the Judicial Council to withhold the list). However, this is not a UIPA appeal where publication of a list of names is at issue. Further, the Court previously stated that it does "not read the UIPA's balancing test [at section 92F-14(a),HRS] into the Sunshine Law's personnel-privacy exception. We adhere to the plain language of this exception, which allows specific personnel discussions to take place in a closed meeting, conditioned on whether 'consideration of matters affecting privacy will be involved.' HRS § 92-5(a)(2)." CBLC, 144 Haw. at 480, 445 P.3d at 61.

selected candidate's name, even though it was a key detail of the action taken, to avoid frustrating the purpose of the executive session.

Regarding the salary amount the Board had agreed upon, OIP has already concluded that the salary amount to be offered, by itself, was not a matter affecting privacy since the candidates remained unidentified, and the vote on it should have been taken in public. OIP therefore concludes that in this case the salary amount decided upon at the time of the August 8 Meeting should have been disclosed in the executive session report.³¹

OIP notes also that the executive session report for the August 8 Meeting was actually delivered after the meeting had ended due to the Board's loss of quorum. In other words, five members of the Board (including the Chair) were present at the time the Chair made the executive session report to the public, but they were not in a meeting. No permitted interaction clearly authorizes this situation, and the most applicable permitted interaction, section 92-2.5(d), HRS, only authorizes board members "present at a meeting that must be canceled for lack of quorum" to receive testimony and presentations on agenda items, with no deliberation or decision-making. Yet at the same time, the plain language of Act 19 calls for the executive session report to be given "when the board reconvenes in the open meeting at which the executive meeting is held." HRS §92-4(b). A board that loses quorum in executive session could technically meet that requirement by continuing the meeting to a later date and time at which it can make its executive session report, but the delay entailed in doing so would be contrary to Act 19's purpose to promptly inform the public as to what occurred in an executive session. OIP therefore concludes that to give effect to Act 19 when a board's meeting has ended prematurely due to a loss of quorum in executive session, the Sunshine Law must be interpreted to allow the remaining members present to nonetheless give the

³¹ The actual salary or salary range for most current and former government employees is public under section 92F-12(a)(14), HRS. Until an ED was hired, this section would not have required the ED's actual salary to be disclosed. A board could, however, discuss in public the salary or salary range that it intended to offer any successful applicant for a position, without discussing individual applicant's qualifications or confidential information.

public executive session report before announcing the meeting's adjournment, as the Board did here.³²

VI. Potential Remedies

A. Courts May Void a Board's Final Action

OIP does not have the power to void final actions taken in violation of the Sunshine Law. This power is reserved to the courts, as section 92-11, HRS, states that "[a]ny final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action."

For an action to be voided, there must first be a violation of section 92-3 or 92-7, HRS, or a violation of another Sunshine Law provision that also results in violation of the open meetings requirement of section 92-3, HRS. CBLC, 144 Haw. at 491, 445 P.3d at 72 (concluding that discussions and deliberations that are not directly related to a permissible exception, as required under section 92-5(b), HRS, also violate the open meetings requirement under section 92-3, HRS, and thus the board's final action is voidable under section 92-11, HRS).

Second, the final action must be timely challenged within 90 days under section 92-11, HRS. The Court has recognized that in establishing a 90-day limit on the voidability provision of section 92-11, HRS, the Legislature recognized that "[v]iolations cannot be made to render administrative action invalid without durational limitations" as to do so would mean that "administrative actions would be robbed of all sense of finality." Kanahale, 130 Haw. 228, 258, 307 P.3d 1174, 1204 (2013) (citing the Senate Judiciary Committee's S. Stand. Comm. Rep. No. 878 in the 1975 Senate Journal at 1178). The 90-day limit helps to bring finality to board actions and avoid a perpetual cloud of uncertainty as to whether a board's

³² OIP notes there were executive summaries given after the executive sessions at the September 21 and October 3 Meetings. The sufficiency of those executive summaries was not raised in this appeal, so OIP does not make a determination regarding them. OIP nonetheless reminds the Board that an executive session report is specifically required to include the board's "discussion" during the executive session. When no action was taken the report should not simply state that no action was necessary but instead should generally summarize the issues raised or considered by the board in the course of its discussion, leaving out any details that might frustrate the purpose of the executive session.

action is final. The beginning of the 90-day period for a court challenge depends upon when the final vote is taken.³³

The Court has "expressly decline[d] to adopt a standard for determining when the Sunshine Law would warrant invalidation under HRS § 92-11." Kanahele 130 Haw. at 260, 307 P.3d at 1206. Moreover, the Court has warned that it is not suggesting "that HRS § 92-11 applies only to meetings at which a "final action" is taken, or that any actions taken in violation of the Sunshine Law during meetings or discussions prior to "final action" are "cured" if the final action is taken in compliance with the Sunshine Law. Id. at 259, 307 P.3d at 1205.

Finally, even if section 92-11, HRS, is not directly applicable, the courts "may award any appropriate remedy" pursuant to section 92-12(b), HRS, which states, "The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy." CBLC, 144 Haw. at 489, 445 P.3d at 70. In CBLC, in addition to possibly voiding a retirement agreement, the Court stated that the circuit court "shall order the Commission to release the applicable executive meeting minutes, either in full or in redacted form, if a violation is found." Id. at 489-90, 445 P.3d at 70-71.

B. Ratification and Other Mitigation Efforts

When a violation of the Sunshine Law has occurred, a board's later action cannot undo the fact that the violation occurred. As discussed above, the Court has recognized that retroactive attempts to correct improper procedures may not necessarily "cure" a Sunshine Law violation. Kanahele at 259, 307 P.3d at 1205.

Nevertheless, boards will often take steps to attempt to "cure" a violation and in such a case, what the board is really doing is acting to "mitigate" public harm that may have resulted from it. Boards have also changed their procedures so as to not repeat past Sunshine Law violations.

This opinion makes clear that the Board did violate the Sunshine Law by, among other things, preventing Board members' remote participation in the executive session and taking the secret ballot vote that resulted in selection of the ED at the August 8 Meeting. At its October 3 Meeting, the Board proactively took action to mitigate possible violations by voting 7-2 "for the ratification of the selection of Wendy L. Gady as the Executive Director of the State of Hawaii, Agribusiness Development Corporation."

³³ In Kanahele, the Court concluded that because the Maui County Council's first of three readings on bills did not constitute a "final action," the complaint was prematurely filed and had not been taken within 90 days of the final action as required by section 92-11, HRS. Kanahele, 130 Haw. At 259, 307 P.2d at 1205.

Black's Law Dictionary includes four legal definitions for "ratification." The one most relevant here defines "ratification" as "[c]onfirmation and acceptance of a previous act, thereby making the act valid from the moment it was done[.]" Black's Law Dictionary 1289 (8th ed. 2004). Robert's Rules of Order, which sets suggested rules for parliamentary procedure, describes ratification as a motion used to confirm or make valid an action already taken that cannot become valid until approved by the assembly. Robert, Henry M. (2011). Robert's Rules of Order Newly Revised, 11th ed., p. 124. Based on the legal and parliamentary definitions of the term that are generally aligned, OIP's understanding is that "ratification" is generally the act of adopting or confirming a prior act, including one that was not validly taken. Ratification, however, does not necessarily "cure" Sunshine Law violations. Kanabele at 259, 307 P.3d at 1205.

Nevertheless, OIP commends the Board's attempt to mitigate its Sunshine Law violations by taking a ratification vote by roll call at the October 3 Meeting. OIP further finds that, despite the multiple Sunshine Law violations found herein, there was no bad faith by the Board, and the Board evidenced its desire to be transparent and to comply with the law. OIP, however, is unable to predict whether the ratification would satisfy the courts if a lawsuit challenging the Board's action is timely filed.

There may be no other practical remedy besides ratification of the August 8 secret ballot vote. While "re-doing" the hiring process and starting from scratch is theoretically an option, this could raise new problems given that Gady is already in place as the ED, and it seems unlikely that the Board's support of Gady would have changed following the August 17 public announcement of her selection as the ED. Moreover, different and potentially greater harm to the public could occur from a complete "re-do" as the delay and uncertainty could hamstring the Board and cast doubt on the validity of actions taken in the interim by it and the ED.

OIP notes, however, it may not be possible to mitigate any harm caused by disallowing Board members' remote participation at the August 8 Meeting or by failing to provide an opportunity for public testimony on executive session agenda items. Moreover, the Board's ratification still does not inform the public what the original vote was by member, and thus does not meet the purpose of the minutes requirement and other Sunshine Law requirements that call for recording votes by member to ensure that each member agrees his or her vote was reflected correctly and inform the public of who voted in which way.

Because the ratification vote would not serve to mitigate these and other Sunshine Law violations, the Board may want to consider the guidance regarding potential remedies provided by the Court in CBLC, such as the disclosure of executive session minutes. Here, relevant executive session minutes could be disclosed with redactions to only those portions that related to the applicant

interviews or that could identify unsuccessful applicants or adversely affect any applicants' legitimate privacy interests under section 92-5(a)(2), HRS. CBLC, 144 Haw. at 478-482, 445 P.3d at 59-63; OIP Op. Ltr. No. F20-01 at 11-17. Factors relevant to applicants' legitimate privacy interest include whether the information is required by law to be disclosed or has already been publicly disclosed. CBLC at 481-82, 445 P.3d at 62-63. Further redactions may be possible if the executive session materials may also be withheld under the attorney consultation exception at section 92-5(a)(4), HRS, regarding "questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities."³⁴ See OIP Op. Ltr. No. F20-01 at 11-12, 16-17 (concluding that the board's discussion of internal management issues at a systemic level and their legal implications fell within the attorney consultation exception of 92-5(a)(4), HRS, and could be redacted).

In conclusion, OIP is unable to predict what the courts would do if a timely lawsuit is filed under section 92-11, HRS, but it has found no bad faith by the Board and has provided guidance to aid the Board with additional mitigation possibilities and advice on how to comply with the Sunshine Law in the future. Additionally, OIP has extensive online training materials at oip.hawaii.gov, and reminds the members of the Board that they, as well as the public, are always welcome to contact OIP's "Attorney of the Day" (AOD) by email or telephone for informal guidance on the Sunshine Law or UIPA.

RIGHT TO BRING SUIT

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.

This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint with the circuit court within thirty days of the date of an OIP decision in accordance with section 92F-43, HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). OIP and the person

³⁴ As the Court explained in CBLC, the Sunshine Law's attorney consultation exception is not equivalent in scope and is far narrower than the attorney-client privilege. CBLC, 144 Haw at 488-89, 445 P.3d at 69-70.

who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES



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