

AGRIBUSINESS DEVELOPMENT CORPORATION

Minutes of the Board of Directors meeting of August 29, 2018
Department of Agriculture Plant Quarantine Conference Room
1849 Auiki Street, Honolulu, Hawaii 96819

Members:

Letitia Uyehara	Margarita Hopkins
Lloyd Haraguchi	Yukio Kitagawa
Denise Albano	Sandra Kato Klutke
Leilyn Koev	Douglas Schenk
Scott Enright, DOA	

Absent: Jeffrey Pearson, DLNR Robbie Melton, DBEDT

Guests:

Dawn Huff, KIUC/Joule Group

Staff:

Counsel:

James Nakatani	Andrew Goff
Myra Kaichi	
Lynn Owan	
Ken Nakamoto	
Todd Low	
Cindy Doi	

A. Called to order

Chairperson Uyehara called the meeting to order at 9:12 am.

Everyone wished a Happy birthday to Lynn.

B. Approval of Minutes from the July 11, 2018.

Mr. Kitagawa moved to approve the minutes; Ms. Hopkins seconded; motion carried unanimously.

C. Request to Issue a License to Kevi Lovan dba K & L Produce LLC for 136.6 acres of land in Waialua, Oahu, Tax Map Key (1) 6-5-005:002 (por). Item deferred on May 30, 2018.

Mr. Nakamoto made the presentation to issue a license to Kevi Lovan dba K & L Produce for 136.6 acres of land in Waialua. This item was deferred at the ADC Board meeting of May 30, 2018 due to the required documents needed. K & L provided those

documents and have made substantial improvements to their property by removing feral animals and abandon vehicles. Photos were received however, Mr. Nakamoto was not able to confirm because of the bad weather. But he will go out to check to make sure the items were removed. The recommendation is for a three year license agreement and if all goes well we may offer a longer term. The proposed base rent will be \$200 an acre a year for the first two years. Permittee shall pay its share of utilities and no subletting without ADC's prior approval in writing. In the May minutes there were questions regarding the water agreement with Dole. Currently all the licensees have their own meters and had agreements with Dole. We do not control any of their water. There is one valve that controls the entire property and they have worked it out for the past eight years understanding that everyone waters at a certain time.

Mr. Enright moved to approve the recommendations; Ms. Klutke seconded the motion.

Mr. Enright asked if they are okay, then would it possibly increase to a longer license. Mr. Nakamoto replied they are all on one tax map key. They farm on a total of 109 acres and have about 50 acres with Dole on the mauka side of our property. This is just for our portion. They were on a holdover and paying the same conditions as Dole until this license with ADC is converted.

Motion carried unanimously.

D. Approval to amend License No. LI-K1503, issued to Kekaha Farms/Under Da Mango Tree LLC to reduce their acreage from 68.57 to 5.20, in Kekaha, Kauai; Tax Map Key (4) 1-2-02:001 (por).

Ms. Owan made the presentation to amend License No. LI-K1503 issued to Kekaha Farms/Under Da Mango Tree to reduce their acreage from 68.57 to 5.20 in Kekaha, Kauai. She stated that Kekaha Farms' 35-year license annual rent of \$2,850 for the first two years with an increase of \$10,285.50 for the third to ninth year, rent reopening every 10 years therefore. Over the past two years, Kekaha Farms graded and planted nearly 2,000 trees but external factors including above average hot weather, damping off disease and failed grafting trials, resulted in only 70 trees surviving. Kekaha Farms requested to reduce the acreage and informed ADC that they was dissolving and would re-organize. They were informed that the new company would need to apply for the license. In July, the members decided to dissolve and instead, members Steve Kai and Marla Suga will resign and Gerald Shimatsu will join. They are currently working with an attorney to finalize a revised operating agreement to update their Hawaii business registration with the Department of Commerce and Consumer Affairs. Kekaha Farms would be primarily managed by Gerald Shimatsu. While the remaining mango trees are maturing, Kekaha Farms is planting papaya, okra, pumpkin banana and squash. Kekaha Farms' financial projection shows operating at a loss of about \$22,000 through 2020 then showing profit beginning in 2021. Members will personally absorb the business losses until the company becomes profitable. To date, their rent account is up to date. The recommendation is that this Board approve amending License No. LI-K1503 to: reduce acreage from 68.57 to 5.20 acres, retroactive to May 1, 2018; continue rental rate of

\$150/acre/year for the 3rd to 9th year of the license; all other terms and conditions of License LI-0K1503 to continue and be in full force and effect.

Mr. Enright moved to approve the recommendations; Ms. Klutke seconded the motion.

Mr. Kitagawa asked how old the trees are. Ms. Owan said they just planted the trees three years ago. She showed pictures of when the trees were planted and what they look like today. Ms. Klutke commented that she has been out to the farm numerous times and the trees today are very small. It could be the soil condition that has caused the trees from growing. But it also could be the grafting or seedlings of the trees. Ms. Klutke stated that she wanted another business plan. She believes they still want to farm and their intent is good.

Mr. Kitagawa said his concern was whether they would meet the income they projected. If they cannot do it, he suggested lowering the lease for a period of time until the plants become more mature because they were struggling.

Mr. Schenk stated that they have scaled back their land. How much did they lose? Ms. Klutke stated that this is a family and they took the hit of the losses. Can we direct them to some expertise? Anything that we can do to help them would be his suggestion. Maybe Steve Kai could still help.

Mr. Enright said at one time it looked like it would be a viable commercial operation but now it is a hobby farm so they don't need to be viable.

Mr. Nakatani said the request is to reduce the acreage so we need to focus on that.

Motion carried unanimously.

E. Request to approve acceptance of 54.024 acres of Department of Hawaiian Home Lands (DHHL) Whitmore parcels, Tax Map Key numbers 7-1-002-031 and 7-1-002-033, from DHHL.

Ms. Kaichi made the presentation to approve the acceptance of 54.024 acres of Department of Hawaiian Home Lands (DHHL) Whitmore parcels. She gave a brief background on the acceptance of the 54.024 acres. She mentioned that the transaction enter into a memorandum of understanding with DHHL and HDOA, setting for the obligations of each party, and designated the ADC as the recipient of the parcels. On November 18-19, 2017, the Hawaiian Homes Commission approved the MOU. It is unclear when the Board of Agriculture is scheduled to entertain the request to approve the MOU. The transfer of the parcels will complete the ADC's acquisition of the former pineapple lands in the Whitmore area, thereby ensuring that the lands will be used for agricultural purposes.

The recommendation is to authorize the Executive Director or his designee to work cooperatively with DHHL and HDOA to facilitate the transfer of the two parcels

described as tax map key nos. (1)7-1-002-0031 and (1) 7-1-002-033 from DHHL to the ADC.

Mr. Enright moved to approve the recommendations; Mr. Schenk seconded the motion.

Mr. Haraguchi asked whether this would be a win-win situation. Because it is mentioned that it is not considered available lands, are we comfortable with that transfer and ownership. Ms. Kaichi replied yes she is comfortable because the title report did not pick up any encumbrance on the title because there was no requirement that it be available lands. DHHL did not make that requirement on the transfer.

Motion carried unanimously.

F. Request to seek withdrawal Executive Order 4287 (Kekaha and Kokee irrigation systems, and the right to take water therefrom) from the Board of Land and Natural Resources, Department of Land and Natural Resources, and re-set aside of only the irrigation systems back to ADC.

Ms. Kaichi made the presentation to seek withdrawal of Executive Order 4287 from BLNR and re-set aside of only the irrigation systems back to ADC. She gave a brief background. She did mention that the right to take water into and from the Kokee and Kekaha ditches was originally granted to the ADC under a revocable permit. In 2003, the RP was replaced with EO 4287. In discussion with the DLNR, the parties involved agree that the DLNR through its land board, is the more appropriate agency to vet and award water leases. Irrigation water users such as the ADC, KAA and KIUC would then receive ditch water, if at all, through water leases granted by the BLNR.

The recommendation is for the board to authorize a request to the BLNR to withdraw Executive Order 4287, and to re-set aside the Kokee and Kekaha ditches back to ADC without the right to take water. Staff will work with DLNR to ensure that the transfer of the right to take water from both the Kokee and Kekaha ditches does not interfere with land tenants or other water users' current use of ditch water.

Mr. Enright moved to approve the recommendations; Mr. Haraguchi seconded the motion.

Mr. Schenk asked what we have to do for the diversion/modification, what kind of work. Ms. Kaichi replied we have to reduce the amount of water fluids taken into the ditches to leave water in the streams. For a year now we are in the process of designing the modifications but because of the heavy rains on Kauai our engineers are having a difficult time going up. The surveyors just went up last month. We are a little behind but are doing the best we can.

Ms. Albano asked what the changes are. Ms. Kaichi replied right now everyone takes water without leases or licenses. The right to take water now comes from the set aside because then DLNR gave ADC the ditches it gave us the right to take water. But since

2003 the state recognizes this is probably not the best way to do this so we are trying to comply with the state Supreme Court direction.

Mr. Enright asked why do we take a proactive stance on this and why won't we hold on the Executive Order and start negotiations with CWRM and land board on what the license would look like in the future then move on. Ms. Kaichi replied our thinking is that DLNR and land board staff are better at doing leases than ADC so we could take that route. There is nothing preventing us from that but was never discussed because that would start from zero on the learning curve on how to do water leases. Initially we thought that we would issue the water leases but realized that we would have to do administrative rules. Mr. Enright stated they would still be doing the work and we would wait for them to finish the work before we relinquish the right to the water by pulling back on the EO. Why don't we let them hold onto the water instead of being proactive? Ms. Kaichi stated that we could do it as a conditional request for water license or the withdrawal of the right to take water dependent upon the issuance so it occurs simultaneously which is an option. Our request would be that we want to lease the water at which point we would also request the right to take water from our EO instead of withdraw.

Mr. Enright suggested that we withdraw this request for the time being and staff can come back with the recommendation.

Item is deferred until more information is provided.

Short recess called at 10:10 am.

Item H was taken up first.

H. Update on (1) Petition to Amend the Interim Flow Standard, and (2) Compliant for Dispute Resolution, and (3) Compliant for Declaratory Order Against Waste in Waimea River and its Tributaries, Waimea, Kauai, filed by EarthJustice.

Ms. Kaichi updated the petition to amend the interim flow standard and compliant for dispute resolution and compliant for declaratory order against waste in Waimea River and its tributaries. She stated that we hope to get water use data soon. Everything is going as planned and the modification work is proceeding as discussed earlier subject to weather conditions.

Mr. Enright moved to go into executive session for Item g; Ms. Klutke seconded; motion carried unanimously.

G. Update on (1) Clean Water Act Federal Lawsuit, Na Kia'I Kai, Surfrider Foundation and Pesticide Action Network North America vs State of Hawaii, Agribusiness Development Corporation and Department of Health, Civil No. 1:16-cv-00405-ACK-RLP and (2) Compliant Under Title VI of the Civil Rights Act of 1964, EPA File No. 45RNO-16-R9, both filed by EarthJustice.

Mr. Goff gave an update on this item.

Mr. Enright moved to go out of executive session; Mr. Schenk seconded the motion; motion carried unanimously.

I. Executive Director's Reports and Updates

1. Waialeale
2. Kalepa
3. Galbraith Ag.Land
4. Storm update

Mr. Nakatani reported (1) Waialeale is still in negotiations. (2) Kalepa – Ms. Klutke commented that Green Energy cut the albizia trees and left the stumps. Cooperation is needed from the farmers. Green Energy is not obligated to take out the stump according to their contract. The small farmers need to find a way to farm and take care of the stumps and genie grass. The cost was too high to hire someone. One of the farmers still cannot farm because of the stumps. She is trying to help him look for an excavator to get the stumps out. Also Lin's farm won the best tomato at the Kauai county fair.

(3) Galbraith ag. land - Ohana Best is still being worked out.

(4) Storm update – no report from Kekaha and they are working it themselves. Ms. Klutke said yesterday the streams did overflowed in Kalepa and Kekaha.

A report was given on the Executive Director's trip to Dallas trip to look at their technology on green houses. He is trying to find the right mix to see if this can be done in Whitmore. We may want to do a demonstration project which is why he is looking into it.

Meeting adjourned at 10:55 am.

Respectfully submitted,



Cindy Doi
secretary